

No. 1-11-3588

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11DV 78971
)	
DOMINIQUEZ MHOON,)	Honorable
)	Yolande M. Bourgeois,
Defendant-Appellant.)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice Gordon and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's appeal is dismissed where he failed to file a timely Rule 604(d) motion after the trial court provided him adequate postplea admonishments under Supreme Court Rule 605(c).

¶ 2 Defendant Dominiquez Mhoon pleaded guilty to domestic battery and aggravated assault and was sentenced to 18 months' probation, in addition to other sentencing conditions. On

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appeal, defendant contends that this cause must be remanded because the trial court failed to provide adequate postplea admonishments under Illinois Supreme Court Rule 605 (eff. Oct. 1, 2001).

¶ 3 Defendant was charged with misdemeanor domestic battery and aggravated assault, stemming from an incident that occurred at 6832 South Elizabeth Street in Chicago on October 1, 2011, where defendant punched his girlfriend in the face and threatened to shoot her while displaying a gun in his waistband.

¶ 4 At a hearing on October 18, 2011, defense counsel requested a Supreme Court Rule 402 (eff. July 1, 1997) conference to determine whether the charges pending against defendant could be resolved by a plea of guilty. The court instructed defendant that both the State and defense counsel would be present at the conference, and that the court would recommend a sentence at the conclusion of the conference. Defendant acknowledged that he wanted the court to participate in the conference, and the case was passed for it to be held.

¶ 5 Following the conference, the trial court admonished defendant of the rights he was waiving by pleading guilty, and indicated that it could sentence him up to 364 days in jail, fine him up to \$2,500, or any combination of the above. After the State provided a factual basis for the guilty plea, the court accepted defendant's plea, and entered findings of guilt on the charges of domestic battery and aggravated assault. Both the State and defense declined to offer evidence in aggravation or mitigation and stated that they would "rest on the conference."

¶ 6 After sentencing defendant to 18 months' probation, the court admonished defendant as follows:

"You also have a right to appeal. However, before you can appeal my decision, within 30 days of today's date, you must file with the clerk of the court a written motion to withdraw your plea of guilty and vacate the judgment. In the motion you must state all the reasons why you want to withdraw your plea of guilty. If I grant the motion, I'll set your guilty plea, sentence, and judgment aside and set your case for trial. If I deny the motion, you have 30 days from the date of that denial to file a written notice of appeal.

Any issue or claim of error not raised in the motion will be waived for appeal purposes.

If you're indigent, you get a free transcript and an attorney to assist you in the preparation of the motion.

Do you understand your appeal rights?"

Defendant acknowledged that he understood the court's admonishments.

¶ 7 Defendant failed to file a motion to withdraw his guilty plea, but filed a late notice of appeal on November 18, 2011. Recognizing that the notice of appeal was untimely, defendant, through his counsel, filed a motion for supervisory order in the Illinois Supreme Court requesting that the notice of appeal be treated as timely filed. On January 7, 2013, the supreme court allowed defendant's motion for supervisory order, and directed this court to allow the subject notice of appeal to stand as validly filed.

¶ 8 Defendant's position on appeal is that the trial court erred by giving the appeal admonishments relating to a negotiated plea when defendant in fact entered a non-negotiated, or open, plea. His support for this position is that neither the parties nor the court expressly stated that there was an agreement and the court admonished defendant of the full range of penalties for his offense. The State responds that the record shows a negotiated plea, and that even if the plea was open, the admonishments substantially complied with the supreme court rule.

¶ 9 It is well-established that the party appealing the trial court's decision bears the burden of showing that an error occurred. See *People v. Stewart*, 186 Ill. App. 3d 833, 841 (1989) ("A court of review will not draw negative inferences from a record [citation], and all reasonable intendments not contradicted by the record are to be taken in favor of the validity of the judgment [citation]"). We will ordinarily presume that the trial court knows the law and that it acts in accordance with the law unless the record affirmatively rebuts that presumption. See *People v. Prince*, 288 Ill. App. 3d 265, 279 (1997) (a defendant must show affirmative error because a circuit court is presumed to know the law and apply it properly, and its decision regarding sentencing is entitled to great deference).

¶ 10 There are differences in procedure between negotiated and open guilty pleas. Negotiated pleas generally result from an off-the-record conference between the parties and the court pursuant to Supreme Court Rule 402. See *People v. Smith*, 406 Ill. App. 3d 879, 892 (2010) (defendant's guilty plea was negotiated because "the specific sentence [the] defendant pled guilty to was derived from a Rule 402 conference in which the State participated"). Where the sentence has resulted from negotiation, there is no need to hold a sentencing hearing to give the

parties the opportunity to present evidence in aggravation and mitigation because the sentence has already been determined. See *e.g.*, *People v. Rios*, 2011 IL App (4th) 100461, ¶¶ 5-7 (where the trial court held a sentencing hearing following an open plea of guilty).

¶ 11 Both negotiated and open pleas require a defendant to file a timely motion challenging the plea in the trial court before taking an appeal to this court. Ill. S. Ct. R. 604(d) (eff. July 1, 2006); *People v. Flowers*, 208 Ill. 2d 291, 300-01 (2004). If the plea was based on an agreement negotiated with the State, the defendant must move to withdraw his plea in order to appeal. Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001); *People v. Evans*, 174 Ill. 2d 320, 332 (1996). If the plea was non-negotiated, however, the defendant also has the option of filing a motion asking the court to reconsider the sentence without asking to have the plea withdrawn. Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001); *People v. Scott*, 363 Ill. App. 3d 884, 890 (2006).

¶ 12 Here, there was no on-the-record statement that defendant entered a negotiated guilty plea. However, everything that *is* in the record points to that conclusion. Defendant requested a Rule 402 conference, and the court informed defendant that it would make a recommendation as to the sentence. After the conference, the parties did not present evidence in aggravation or mitigation and did not argue as to what sentence should be imposed. Instead, they rested on the conference. The court immediately imposed a sentence of probation, then gave the appeal admonishments applicable to a negotiated guilty plea. To accept defendant's position that the plea was non-negotiated would require us to presume that no agreement resulted from the conference, that the court and parties elected to forgo any type of sentencing hearing even though the sentence had yet to be determined, and that the court erred by giving an incorrect

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admonishment. This flies in the face of appellate jurisprudence, which requires that error be shown on the record.

¶ 13 In arguing that this was an open guilty plea, defendant notes that the court admonished the defendant concerning the full range of penalties he could receive. We are not persuaded that this is evidence of an open plea. Supreme Court Rule 402(a)(2) (eff. July 1, 1997) requires the trial court to inform the defendant of the possible penalties regardless of whether the guilty plea is open or negotiated.

¶ 14 Defendant also relies on Rule 402(b), which states that if a plea is negotiated, "the agreement shall be stated in open court." He cites to the concurring opinion in *People v. Whitfield*, 217 Ill. 2d 177 (2005), in which Justice Thomas purportedly stated that if no agreement is expressed on the record, a reviewing court can assume the plea was not negotiated. We have read the concurrence, and Justice Thomas said nothing about making such an assumption, although he did state that the rule "takes the guessing game out of discerning the parties' oral understandings by reducing those understandings to a matter of record." *Whitfield*, 217 Ill. 2d at 209. This was not done here. If the court had complied with this provision, it would likely have rendered this appeal unnecessary.

¶ 15 In sum, we cannot say on the record before us that the trial court erred in giving the appeal admonishment for a negotiated guilty plea. In so finding, we note that defendant's contention that the trial court's admonishments pursuant to Rule 605 were inadequate presupposed that his plea was open, and thus is framed within the context of Rule 605(b). However, as this was a negotiated plea, the circuit court was required to admonish him in

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accordance with Rule 605(c), which it did. We thus reject defendant's argument that the admonishments should have included the language allowing a motion to reconsider sentence because such motion only applies to an open plea.

¶ 16 Accordingly, we must dismiss defendant's appeal where he was adequately admonished by the trial court of his appeal rights under Rule 605(c), but nevertheless failed to file a timely motion to withdraw his guilty plea. See *Flowers*, 208 Ill. 2d at 301 (stating that a defendant's failure to file a timely Rule 604(d) motion following a plea of guilty generally results in the appellate court dismissing the appeal).

¶ 17 For the foregoing reasons, we dismiss the appeal.

¶ 18 Dismissed.