

No. 1-12-0103

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. 11 CR 7877
)	
NICHOLAS GRANDISON,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Where trial court's admonishments substantially advised defendant under Rule 605(c), failure to file proper Rule 604(d) motion not excused; mittimus reflected incorrect amount of presentence custody credit; appeal dismissed and circuit court ordered to correct the mittimus.

¶ 2 Defendant Nicholas Grandison entered a negotiated plea of guilty to burglary and was sentenced to six years in prison. On appeal, defendant argues that because the trial court did not comply with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001), he is entitled to a remand for proper admonishments and an opportunity to move to withdraw his plea. In addition, defendant

contends his mittimus reflects an incorrect amount of presentence custody credit. We dismiss defendant's appeal and order correction of the mittimus.

¶ 3 On November 4, 2011, defendant indicated he would accept the State's offer of a six-year prison sentence in exchange for pleading guilty to burglary. The trial court erroneously considered defendant to be a Class X offender with a sentencing range of 6 to 30 years. After the trial court admonished defendant as to the rights he was giving up by pleading guilty, the State presented the factual basis for the plea. On May 3, 2011, defendant and another individual fled after they were seen tampering with a lock to a storage unit in a building located at 915 West Cornelia in Chicago. Once police were called, defendant and the other individual were identified as being inside the storage unit without permission.

¶ 4 After discussing defendant's prior convictions, the trial court corrected itself and noted that defendant was not a Class X offender, but was eligible for a 3 to 14-year sentence. When defendant informed the court he did not understand his sentencing status, the court explained that defendant was not considered a Class X offender because burglary is a Class 2 felony with a sentencing range of three to seven years. The State was offering defendant a non-extended 6-year term even though, based on defendant's criminal background, the term could be extended with a range of 3 to 14 years. Defendant asked whether he was being offered the minimum sentence. The trial court told defendant that "the offer is six years," and asked him whether he still wanted to accept the offer. Defendant responded, "[s]ure, yes."

¶ 5 After accepting the factual basis for the plea and entering judgment on that finding, the trial court provided the following postplea admonishments:

"Sir, even though you have pled guilty, you do have certain appellate rights. In order for you to exercise those rights, within 30 days, you must file with this court a motion asking the Court

either to vacate your plea of guilty or to reconsider the Court's sentence. If you need an attorney to help you prepare that motion and cannot afford one, the Court would appoint one for you, as well as provide you with a free transcript of everything that was said here today. In your motion you must place every issue or claim of error with regard to the plea of guilty, the sentencing hearing, or the sentence itself, or it will be deemed waived on any subsequent appeal.

Do you understand that?"

Defendant responded that he "extremely" understood.

¶ 6 On November 28, 2011, defendant mailed a *pro se* "Motion for Notice of Appeal and Affidavit" from prison, stating his appeal had merit because:

"A Class 2 felony carries a sentence of 3-7 years; however, the trial judge stated in open court that it was "extended terms," which carries 6-30 years, sentence is incorrect, as it is not extendable" [sic].

On December 23, 2011, counsel was appointed to represent defendant on appeal.

¶ 7 On appeal, defendant first contends he is entitled to a remand because the trial court did not substantially comply with Rule 605(c), which enumerates six admonishments a trial court must give to a defendant after a negotiated plea of guilty. In particular, defendant directs attention to two admonitions, arguing that the trial court incorrectly informed defendant he could either file a motion to vacate his guilty plea or a motion to reconsider his sentence, and failed to inform him that if his motion to withdraw his guilty plea was allowed, his guilty plea and sentence would be vacated and a trial date would be set on the charge to which the guilty plea

was made. Defendant argues that as a result, he did not know how to perfect his appeal. The parties agree that defendant entered a negotiated plea and the trial court was required to admonish defendant under Rule 605(c).

¶ 8 Because this issue concerns the proper interpretation of a Supreme Court rule, our review is *de novo*. *People v. Dominguez*, 2012 IL 111336, ¶ 13. Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) requires that prior to filing an appeal, a defendant who enters a negotiated plea of guilty must file a motion to withdraw the plea of guilty and vacate the judgment within 30 days of sentencing. In a negotiated plea, the prosecution has agreed to recommend to the trial court a specific sentence, or a specific range of sentence, or has made concessions relating to the sentence to be imposed and not merely to the pending charge. Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001). Filing the proper Rule 604(d) motion is a condition precedent from an appeal from a defendant's plea of guilty. *People v. Wilk*, 124 Ill. 2d 93, 105 (1988). Generally, a defendant who pleaded guilty and fails to timely file the proper Rule 604(d) motion will have his appeal dismissed. *People v. Flowers*, 208 Ill. 2d 291, 301 (2003).

¶ 9 However, there is an exception to the rule that filing the proper Rule 604(d) motion is a condition precedent to appealing a judgment based on a guilty plea. Rule 605 requires the trial court to advise defendants at sentencing on the procedural steps required by Rule 604(d) to appeal. *Id.* If the trial court fails to give these admonishments and the defendant then attempts to appeal without first filing the correct motions required by Rule 604(d), the cause is remanded to the trial court for proper admonishment. *Id.*; *People v. Lloyd*, 338 Ill. App. 3d 379, 384 (2003).

¶ 10 Rule 605(c) states that "the trial court shall advise the defendant substantially" as to six points:

- 1) That the defendant has a right to appeal;

- 2) That prior to taking an appeal the defendant must file in the trial court, within 30 days of the date on which the sentence is imposed, a written motion asking to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;
- 3) That if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;
- 4) That upon request of the State any charges that may have been dismissed as a part of the plea agreement will be reinstated and will also be set for trial;
- 5) That if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant and counsel will be appointed to assist the defendant with the preparation of the motions; and
- 6) That in any appeal taken from the judgment on the plea of guilty any issue or claim or error not raised in the motion to vacate the judgment and to withdraw the plea of guilty shall be deemed waived.

¶ 11 While trial courts must strictly comply with Rule 605(c) and give the admonishments to defendants who plead guilty, the rule does not need to be read verbatim. *Dominguez*, 2012 111336 at ¶ 11. Defendants must be "substantially" advised of the actual content of the rule. *Id.* Trial courts "substantially" advise defendants when they are put on notice of what they must do to preserve their right to appeal their guilty plea or sentence. *Id.* at ¶ 22. Trial courts must impart to defendants largely what is specified in the rule, or the rule's "essence," as opposed to "wholly" what the rule specifies. *Id.* at ¶ 19.

¶ 12 Here, the trial court's admonishments were sufficient to put defendant on notice of how to perfect his appeal rights. Rule 605(c)(2) provides that a defendant must be informed:

"that prior to taking an appeal the defendant must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion."

In this case, the trial court told defendant:

"[Y]ou do have certain appellate rights. In order for you to exercise those rights, within 30 days, you must file with this [c]ourt a motion asking the [c]ourt either to vacate your plea of guilty or to reconsider the [c]ourt's sentence."

¶ 13 While we agree that it was incorrect for the trial court to provide defendant with the choice of either filing a motion to vacate the judgment or a motion to reconsider the sentence, we find that the admonishments here substantially advised defendant of his appeal rights because he was informed that he had to file a postplea motion in the trial court within 30 days. Defendant instead filed a notice of appeal and affidavit. This situation is factually similar to *People v. Claudin*, 369 Ill. App. 3d 532, 534 (2006) (relying on *In re J.T.*, 221 Ill. 2d 338, 347-48 (2006) and cited with approval in *Dominguez*, 2012 IL 111336 at ¶ 54), where the trial court also incorrectly told the defendant he could appeal by first filing either a motion to withdraw the plea or reconsider the sentence, and the defendant filed a notice of appeal instead. There, the court found that the defendant's failure to file a proper Rule 604(d) motion was not excused because although the admonishments did not strictly comply with Rule 605(c), they put defendant on notice of the postplea action necessary to preserve his appeal, and he ignored it. *Id.* Similarly

here, the trial court's incorrect admonition does not warrant a remand because defendant was informed he had to first file a postplea motion, and he filed a notice of appeal and affidavit instead.

¶ 14 We also disagree with defendant that the admonishments were insufficient because the trial court failed to tell him that if his postplea motion were allowed, the charge would be reinstated and a new trial date could be set, per Rule 605(c)(4). We find that defendant was substantially advised of his appeal rights—particularly the necessary first step of filing a postplea motion—and so he was not prejudiced by this "missing verbiage" (*People v. Crump*, 344 Ill. App. 3d 558, 563 (2003) (finding that the defendant was substantially advised of his appeal rights, including the requirement to file a postplea motion before a notice of appeal, even though the trial court did not admonish him that he will waive any issues not raised in the motion to withdraw his guilty plea and vacate the judgment)).

¶ 15 Defendant next asserts and the State correctly concedes that defendant's mittimus incorrectly reflects 154 days of presentence custody credit. Defendants are entitled to receive credit against their sentences for time spent in custody as a result of the offense for which they were sentenced. 730 ILCS 5/5-8-7(b) (West 2011). Defendant spent 184 days in custody between the date of his arrest and the date he was sentenced, not 154 days, as his mittimus currently states. Accordingly, we order the circuit court to correct the mittimus to reflect 184 days of presentence custody credit.

¶ 16 Appeal dismissed; mittimus ordered corrected.