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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of DeKalb County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-CF-776
	)	
CASSIDY J. GREEN,	)	Honorable
	)	Robbin J. Stuckert,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE BURKE delivered the judgment of the court.  
Justices Jorgensen and Spence concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Appeal dismissed where defendant failed to timely file or ask for assistance in filing a proper motion to withdraw his guilty plea and to vacate the judgment.
- ¶ 2 Defendant, Cassidy J. Green, pleaded guilty to resisting a peace officer (see 720 ILCS 5/31-1(a-7) (West 2012)) in exchange for a sentence of 30 months' probation and 70 days in jail, with credit for that time already served. Defendant appeals the judgment, and the State argues we must dismiss the appeal for defendant's noncompliance with Supreme Court Rule 604(d) (eff. July 1, 2006). Defendant insists that his notice of appeal, when viewed with his statements to the trial court,

constitutes a proper motion under Rule 604(d) to withdraw his plea and to vacate the judgment. Defendant contends that we must remand the cause to the trial court with directions to appoint post-plea counsel and to hear a motion to withdraw the plea and to vacate the sentence. Contrary to defendant's claims, we agree with the State that defendant failed to timely move to withdraw his plea and to vacate the sentence. We dismiss the appeal, accordingly.

¶ 3

### FACTS

¶ 4 On January 18, 2012, defendant entered into a negotiated guilty plea to a charge of resisting a peace officer (see 720 ILCS 5/31-1(a-7) (West 2012)). The basis for the plea was that defendant's struggle with an officer resulted in the officer cutting his finger. The trial court sentenced defendant and admonished him as follows:

“THE COURT: Sir, you've entered a plea of guilty and been sentenced. You do have a right to an appeal, but there would be a procedure that you must follow. Within 30 days of this date you would be required to file a motion asking to withdraw the guilty plea that you have entered and for the Court to vacate the sentence. The motion must be in writing. Within that motion you would have to set forth all claims of error, any legal issues or challenges that you may have to the plea, sentence or both.

Have you understood all I've told you?

DEFENDANT: Yes, ma'am.”

¶ 5 On February 17, 2012, which was 30 days after the entry of judgment, defendant filed a *pro se* notice of appeal. Defendant filled out the document from a form, stating that he was appealing his sentence for resisting a peace officer and was requesting that the court appoint counsel because he was indigent. Defendant also filed a document labeled “notice of motion,” which stated that he

was requesting a hearing on February 22, 2012, but does not request any kind of relief. Neither defendant's notice of appeal nor his notice of motion contains argument or gives any indication that he wished to withdraw his guilty plea.

¶ 6 On February 22, 2012, defendant appeared with counsel in court and stated that he felt he had been coerced into taking the negotiated guilty plea, stating "I'm just being harassed [in this case] and on the case previously before this, too, I just took [the plea agreement] basically because they tried to scare me so I haven't gotten decent counsel that has defended me." After pointing out that he had languished in jail for 70 days before pleading guilty, defendant told the court that he felt compelled to "move forward with this case" because he was being harassed by certain officers. In response to defendant's request for appointed counsel, the court decided to appoint the appellate defender, rather than the public defender, because defendant already had filed a notice of appeal. This appeal followed.

¶ 7

#### ANALYSIS

¶ 8 The State advocates the dismissal of this appeal on the ground that defendant has failed to comply with Rule 604(d) by not moving within 30 days of sentencing to withdraw his guilty plea and vacate the judgment. Defendant responds that his *pro se* filings, combined with his oral request for counsel on February 22, 2012, establishes his compliance with Rule 604(d). Specifically, defendant asserts that the trial court erred because his notice of appeal, notice of motion, and his comments in court indicated his desire to withdraw his plea and for the appointment of counsel. We review *de novo* the trial court's compliance with supreme court rules. *People v. Garner*, 347 Ill. App. 3d 578, 583 (2004).

¶ 9 Rule 604(d) instructs that “[n]o appeal shall be taken upon a negotiated plea of guilty \*\*\* unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment.” Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). Rule 605(c), which complements and serves as a corollary to the requirements of Rule 604(d), provides the admonitions that the trial judge must give a defendant when imposing a sentence on a negotiated guilty plea. Rule 605(c)(2) provides that, where a judgment is entered upon a negotiated guilty plea, the trial court shall advise the defendant 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.” Ill. S. Ct. R. 605(c)(2) (eff. Oct 1, 2001).

¶ 10 A defendant must comply with the requirements of Rule 604(d) as a condition precedent to appealing from a guilty plea. *People v. Wilk*, 124 Ill. 2d 93, 105 (1988). Once the trial court administers the proper admonishments, the defendant must adhere to the time and filing requirements in Rule 604(d). *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). “Where a defendant has failed to file a written motion to withdraw his plea of guilty or to reconsider his sentence, the appellate court must dismiss the appeal, leaving the Post-Conviction Hearing Act as the defendant’s only recourse.” *Flowers*, 208 Ill. 2d at 301.

¶ 11 We reject defendant’s claim that his notice of appeal and notice of motion serve as a substitute for a conventional motion to withdraw his guilty plea. In *People v. Frey*, 67 Ill. 2d 77, 83 (1977), the defendant filed in the circuit court a *pro se* document entitled “notice of appeal” that he argued should have been treated as a motion to withdraw his plea because it was filed within the 30-day period following his conviction. The supreme court rejected the defendant’s argument,

emphasizing his failure to conform to the requirements of Rule 604(d) or to specifically request the withdrawal of the guilty plea. *Frey*, 67 Ill. 2d at 83. Like in *Frey*, defendant's notice of appeal and notice of motion neither conform with Rule 604(d) nor request the withdrawal of his plea.

¶ 12 Moreover, the trial court gave defendant the proper admonishments informing him of his appellate rights at his plea proceeding. Defendant acknowledged that he understood the admonishments and his right to appeal. Defendant filed his notice of appeal and notice of motion on February 17, 2012, within 30 days of his January 18, 2012, sentencing. However, defendant's notices do not mention the withdrawal of his guilty plea. The record establishes that defendant failed to take action to withdraw his negotiated guilty plea within 30 days of the entry of judgment. Consistent with *Frey*, we hold that defendant's notices do not function as a motion to withdraw the guilty plea under Rule 604(d).

¶ 13 Ordinarily, when a defendant files a *pro se* document, like defendant's notice of appeal and notice of motion, following the entry of judgment on a negotiated guilty plea, the documents should be forwarded to the trial judge, who can then appoint counsel for the purpose of assisting the defendant in perfecting his right to direct appeal. *People v. Trussel*, 397 Ill. App. 3d 913, 914 (2010); *People v. Barnes*, 291 Ill. App. 3d 545, 550 (1997) (A defendant's handwritten letter addressed to the trial judge triggered the court's affirmative duty to appoint counsel to assist the defendant in the preparation and presentation of a motion pursuant to Rule 604(d)). In light of the strict waiver requirements of Rule 604(d), fundamental fairness requires that a defendant be afforded a full opportunity to explain his allegations and that he have assistance of counsel in preparing the postplea motion. *Trussel*, 397 Ill. App. 3d at 915.

¶ 14 Even though defendant's *pro se* notices do not constitute a proper postplea motion under Rule 604(d), defendant's statement to the trial judge that he wished to "move forward with this case" arguably could have required the judge to investigate whether defendant desired counsel to assist in the preparation of a postplea motion. See *Trussel*, 397 Ill. App. 3d at 915; *People v. Griffin*, 305 Ill. App. 3d 326, 331 (1999). However, defendant's notice of motion asked for a hearing on February 22, 2012. By the time defendant appeared in court and asked for appointed counsel on that date, the period to move to withdraw the plea had run, which negated the court's duty to investigate whether defendant wished to withdraw his guilty plea. Under these facts, the trial court did not err in appointing counsel to proceed with this appeal rather than with a motion to withdraw the plea.

¶ 15 As in this case, the trial judges in *Griffin* and *Barnes* were informed that there might be a problem with the guilty pleas. However, defendant's reliance on those cases is misplaced because those trial judges owed a duty to investigate because they were put on notice within 30 days of the judgment. Here, defendant did not appear in court until February 22, 2012, the date he requested, which was more than 30 days after judgment was entered on the guilty plea. That fact distinguishes *Griffin* and *Barnes* from this case.

¶ 16 CONCLUSION

¶ 17 In sum, defendant's appeal from the judgment entered on his negotiated guilty plea must be dismissed because defendant failed to (1) conform to the requirements of Rule 604(d) or (2) ask the court for assistance in preparing a postplea motion within 30 days of judgment.

Appeal dismissed.