

2013 IL App (2d) 130099-U
No. 2-13-0099
Order filed November 18, 2013

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
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lee County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-60
)	
BALAL ABDELHADI,)	Honorable
)	Jacquelyn D. Ackert,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Burke and McLaren concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's appeal must be dismissed, as he did not comply with Rule 604(d) and, despite his arguments to the contrary, the trial court substantially complied with Rule 605(b).

¶ 2 Defendant, Bala Abdelhadi, pleaded guilty to aggravated arson (720 ILCS 5/20-1.1(a) (West 2008)) and was sentenced to 10 years' imprisonment. Defendant filed a notice of appeal without filing a postplea motion. On appeal, he contends that the trial court failed to admonish him properly pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001). We disagree and thus dismiss this appeal.

¶ 3 On August 13, 2009, defendant entered an open guilty plea to aggravated arson. The State's factual basis was that Shanna Withers called 911 to report that her house was on fire. Witnesses would testify that defendant, along with Jennifer Hurd and Robert Cordle, filled bottles with gasoline. Defendant and Cordle walked to Withers' home, where defendant poured one of the bottles onto the porch, then lit another bottle and threw it at the porch, setting fire to the house. The house was occupied at the time.

¶ 4 At the sentencing hearing, the State introduced a probable-cause affidavit summarizing witness statements to police. Defendant, Hurd, and Cordle plotted to burn the house where the former boyfriend of Cordle's girlfriend was staying. Defendant told police that he threw a lighted bottle of gasoline at the house, causing it to catch fire. Cordle and defendant knew that people were in the house at that time. Defendant introduced pictures of the house, which showed only minor damage to the siding. The court sentenced defendant to 10 years' imprisonment.

¶ 5 Defendant filed a motion to reconsider the sentence, which the trial court denied. This court remanded the cause for defense counsel to comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Abdelhadi*, No. 2-10-0324 (2011) (unpublished order under Supreme Court Rule 23).

¶ 6 On remand, the trial court again denied the motion to reconsider the sentence. On appeal, this court held that the court considered an improper factor in sentencing. Accordingly, we reversed the sentence and remanded for a new sentencing hearing. *People v. Abdelhadi*, 2012 IL App (2d) 111053.

¶ 7 Following remand, the trial court again sentenced defendant to 10 years' imprisonment. The court admonished defendant as follows:

“Mr. Abdelhadi, I do need to advise you of your appeal rights. You do have the right to appeal, however, prior to your appeal if you wish to ask me to reconsider the sentence I imposed or if you wish to attempt to withdraw your plea of guilty, you must file the motion to reconsider and/or the motion to withdraw your plea of guilty within 30 days of today's date. In your motion you must set all issues or claims of error you believe I made in imposing your sentence or in taking your plea of guilty. If I granted the motion to reconsider, I would review the sentence imposed. If you filed a motion to withdraw your plea of guilty, I would consider that motion. If I denied either or both of your motions, then within 30 days of that denial you must then file or request the Clerk of the Court to prepare and file in the trial court a written notice of appeal. You will then be limited on your right to appeal those claims of error you set out in your motion. If you cannot afford the cost of an attorney or the cost of any transcript you need for your motions on appeal, they would be provided to you free of cost. Do you understand your appeal rights?”

¶ 8 Defendant stated that he understood. Defendant filed a notice of appeal without moving to withdraw the plea or to reconsider the sentence.

¶ 9 Defendant acknowledges that, normally, a defendant who pleads guilty and does not file a postplea motion under Rule 604(d) forfeits his right to a direct appeal. *People v. Linder*, 186 Ill. 2d 67, 74 (1999). However, he contends that we should overlook his failure to file an appropriate motion, because the trial court did not properly admonish him pursuant to Rule 605(b) that he had to file a postplea motion before appealing, that he had the right to an attorney and a free transcript to assist him in preparing the motion, and that any points not raised in the motion would be forfeited on appeal. See *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). The State responds that the court's

admonishments substantially complied with the rule and that, in any event, a further remand is not required. We agree with the State.

¶ 10 Rule 605(b) serves as a corollary to Rule 604(d) and prescribes admonitions that a trial court must give a defendant who has pleaded guilty without a negotiated sentence. *People v. Brooks*, 233 Ill. 2d 146, 154 (2009). The court must strictly comply with Rule 605(b) in the sense that it must give the admonishments; however, the rule's plain language requires only that the court substantially advise a defendant of the rule's content, *i.e.*, it need not read the rule verbatim. *People v. Dominguez*, 2012 IL 111336, ¶ 11. The court must advise a defendant so that he is properly informed, or put on notice, of what he must do in order to preserve his right to appeal his guilty plea or sentence and, so long as the admonitions are sufficient to impart to a defendant the essence of the rule, the court has substantially complied with it. *Id.* ¶ 22. We review the trial court's compliance with the rule *de novo*. *People v. Breedlove*, 213 Ill. 2d 509, 512 (2004).

¶ 11 Rule 605(b) requires a court to admonish a defendant, after sentencing him on an open plea, as follows:

“(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 sentence is imposed, a written motion asking to have the trial court reconsider the sentence or to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the ground for the motion;

(3) that if the motion is allowed, the sentence will be modified or 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 the request of the State any charges that may have been dismissed as a part of a 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 of error not raised in the motion to reconsider the sentence or to vacate the judgment and to withdraw the plea of guilty shall be deemed waived." Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001).

¶ 12 Before turning to defendant's specific contentions, we note the following. This is defendant's third appeal of his sentence. The admonishments at issue here were essentially the same as those the trial court gave before his prior appeals. Defendant apparently understood the admonishments sufficiently on those earlier occasions, as he filed a postplea motion each time. Moreover, following the trial court's most recent iteration of the admonishments, defendant assured the court that he understood them.

¶ 13 With this in mind, we consider defendant's specific arguments. He first contends that the court did not adequately admonish him that a postplea motion was mandatory. He argues that he could reasonably have interpreted the court's statement that "if you wish to ask me to reconsider the sentence *** you must file the motion to reconsider" as meaning that a motion was required only if he wanted the court to reconsider the sentence and, accordingly, that a motion was not a prerequisite to an appeal. However, the court later added that if it denied the motion "then within 30 days of that denial you must file *** a written notice of appeal. You will then be limited on your

right to appeal those claims of error you set out in your motion.” Thus, considering the admonishments as a whole, the court informed defendant that if he wanted the court to reconsider the sentence he must file a motion; but only if the motion were denied could he file an appeal, and he would then be limited to issues raised in the motion. Overall, while the court’s admonishments could have been more artfully phrased, defendant was informed that, in order to appeal, he first had to file a postplea motion.

¶ 14 Defendant next contends that the court failed to admonish him that he would be provided an attorney and a free transcript to assist in preparing his motion. He challenges the court’s statement, “If you cannot afford the cost of an attorney or the cost of any transcript you need for your motions *on appeal*, they would be provided to you free of cost.” (Emphasis added.) However, in *In re J.T.*, 221 Ill. 2d 338, 343 (2006), the trial court admonished the respondent, substantially identically, that “*if you go up on appeal* and you are unable to hire an attorney to represent you, the Court will appoint an attorney for you free of charge. *** Also, we will provide you with a free copy of the transcript.” (Emphasis added.) Yet, in *Dominguez*, 2012 IL 111336, ¶ 51, the supreme court ruled that those admonitions “did convey the substance” of Rule 605(c)(5) (Ill. S. Ct. R. 605(c)(5) (eff. Oct. 1, 2001)). Thus, here, the trial court’s admonition was sufficient.

¶ 15 Finally, defendant contends that the trial court failed to admonish him that any issue not raised in a postplea motion would be forfeited on appeal. Of course, the trial court expressly told defendant that any issue not raised in a postplea motion would be forfeited. However, defendant argues that this must be “read in conjunction” with the trial court’s failure to advise him that a postplea motion was mandatory. As noted, though, the trial court did advise him that a motion was mandatory.

¶ 16 This appeal from the judgment of the circuit court of Lee County is dismissed.