

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).

2013 IL App (4th) 111067-U

NOS. 4-11-1067, 4-11-1068, 4-12-0229, 4-12-0230 cons.

FILED  
April 26, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
LAWRENCE STEVEN ARTIS,	)	Nos. 11CF83
Defendant-Appellant.	)	11CF85
	)	
	)	Honorable
	)	Rebecca Simmons Foley,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Justices Knecht and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly admonished defendant under Rule 402(a) and did not abuse its discretion in denying defendant's motion to withdraw guilty plea.

¶ 2 In February 2011, a grand jury indicted defendant, Lawrence Steven Artis, on 10 counts of burglary, a Class 2 felony (720 ILCS 5/19-1(a), (b) (West 2010)), and 1 count of attempt (burglary), a Class 3 felony (720 ILCS 5/8-4(a), (c)(4), 5/19-1(a) (West 2010)), in McLean County case No. 11-CF-83; and 1 count of burglary in McLean County case No. 11-CF-85. On August 12, 2011, defendant entered a partially negotiated guilty plea on all counts in case Nos. 11-CF-83 and 11-CF-85. In October 2011, the trial court sentenced defendant to an aggregate 40-year prison term. In January 2012, defendant filed a motion to withdraw guilty plea and reconsider sentence. The court denied those motions.

¶ 3 Defendant appeals, arguing the trial court erred in denying his motion to withdraw guilty plea because his plea was not voluntarily and knowingly made because the court improperly admonished him, as required by Illinois Supreme Court Rule 402(a) (eff. July 1, 1997), of the possible maximum sentence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 On February 9, 2011, the State charged defendant in case No. 11-CF-83 with 10 counts of burglary, committed on January 7, 8, and 14, 2011, and January 20 through 22, 2011, (counts I to IV and VI to XI; 1 count of attempt (burglary) committed on January 7 and 8, 2011 (count V); and 1 count of burglary, committed on January 29, 2011, in case No. 11-CF-85.

¶ 6 On August 12, 2011, defendant appeared before the trial court to enter a partially negotiated guilty plea on case Nos. 11-CF-83 and 11-CF-85. Defendant agreed to plead to each count in exchange for the State's recommendation of a 10-year sentencing cap on each count. As part of the plea, defendant would seek concurrent sentences, while the State would seek consecutive sentences on "some" of the counts. The court admonished defendant burglary is a Class 2 felony but defendant was eligible for Class X sentencing on the 11 counts of burglary. The court explained "Class X sentencing is a six to 30-year term in the Illinois Department of Corrections." The court further explained attempt (burglary) is a Class 3 felony and defendant potentially faced 2 to 10 years on that count, as he was extended-term eligible. The State presented a factual basis for the plea, and the court accepted defendant's guilty plea. Defendant also signed a written plea agreement, which mirrored the agreement presented to the court, including the possibility of consecutive sentences on some counts.

¶ 7 On October 19, 2011, the trial court held a sentencing hearing. The State asked

for consecutive 10-year prison terms on each count, and defendant requested concurrent prison sentences of 6 years on each count. In the alternative, if the court found a consecutive sentence to be appropriate, defendant requested concurrent six-year prison terms on all counts in case No. 11-CF-83 to be served consecutive to a six-year term in case No. 11-CF-85.

¶ 8 In case No. 11-CF-83, the trial court sentenced defendant to a 10-year prison term on each of the 11 counts. The court ordered counts I through V to be served concurrently, with the 10-year term on count VI to be served consecutively thereto. Counts VII through XI were to be served concurrently with each other but consecutively to the two prior terms. Thus, the court sentenced defendant to a total of 30 years in case No. 11-CF-83. In case No. 11-CF-85, the court sentenced defendant to a 10-year prison term, to run consecutively to the sentences imposed in case No. 11-CF-83, for an aggregate sentence of 40 years.

¶ 9 On November 18, 2011, defendant filed a motion to reconsider sentence, which remained pending. In December 2011, defendant filed a "late notice of appeal" in case Nos. 11-CF-83 and 11-CF-85. Those cases were docketed in the appellate court as Nos. 4-11-1067 and 4-11-1068, respectively. On January 10, 2012, defendant filed a motion to withdraw guilty plea and reconsider sentence.

¶ 10 On February 8, 2012, the trial court held a hearing on defendant's motion to withdraw guilty plea and reconsider sentence. The court found it had admonished defendant at the guilty plea hearing of the possible penalties, as well as the State's position it "would seek discretionary consecutive sentences on some counts." The court further found the record showed defendant understood the plea agreement when he entered into it. The court denied defendant's motions.

¶ 11 On March 8, 2012, defendant filed notices of appeal in case Nos. 11-CF-83 and 11-CF-85 in the trial court. On March 9, 2012, these appeals were timely filed in our clerk's office and docketed in the appellate court as Nos. 4-12-0229 and 4-12-0230, respectively. This court consolidated Nos. 4-11-1067 and 4-11-1068 with Nos. 4-12-0229 and 4-12-0230.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues the trial court erred in denying his motion to withdraw his guilty plea. He contends his plea was not voluntarily and knowingly made because the court improperly admonished him, as required by Rule 402(a), of the possible maximum sentence.

¶ 14 As a threshold matter, we note defendant filed the appeals in Nos. 4-11-1067 and 4-11-1068 prematurely, as after entry of a negotiated guilty plea defendant must move to withdraw the plea under Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). Accordingly, we dismiss the appeals in Nos. 4-11-1067 and 4-11-1068.

¶ 15 We review the trial court's decision to deny a defendant's motion to withdraw guilty plea for an abuse of discretion. *People v. Delvillar*, 235 Ill. 2d 507, 519, 922 N.E.2d 330, 338 (2009). We review *de novo* whether the trial court properly admonished defendant and complied with Rule 402(a). See *People v. Hayes*, 336 Ill. App. 3d 145, 147, 782 N.E.2d 787, 789 (2002).

¶ 16 Rule 402(a) requires the trial court to admonish a defendant of "the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences." Ill. S. Ct. R. 402(a)(2) (eff. July 1, 1997).

¶ 17 Defendant argues the trial court did not properly admonish him under Rule 402(a) because the court did not inform defendant of the aggregate maximum sentence he faced. We disagree.

¶ 18 The trial court informed defendant he was eligible for Class X felony sentencing on the 11 counts of burglary with which he was charged. The court explained "Class X sentencing is a six to 30-year term in the Illinois Department of Corrections." The court also admonished defendant he faced 2 to 10 years' imprisonment on the Class 3 felony charge of attempt (burglary). In defendant's partially negotiated plea agreement with the State, the State agreed each count would have a sentencing cap of 10 years. However, as part of such agreement, the State also specified it would seek consecutive sentences on some of the charges. Defendant affirmatively told the court he understood the terms of the agreement. Further, the State's position of seeking consecutive sentences was expressed in the written plea agreement, signed by defendant. Thus, defendant cannot now argue he did not understand he was possibly subject to the aggregate 40-year prison term to which he was sentenced.

¶ 19 Defendant suggests the trial court should have admonished him he was potentially subject to 120 years in prison, in accordance with the State's 10-year sentencing cap (10 years on each count of burglary and 10 years on the count of attempt (burglary)). We disagree the court was required to add up the aggregate number of years to which defendant could have been sentenced and present such information to defendant. Defendant indicated at the time of the plea he understood the State would be seeking consecutive sentences. He told the court he understood what that meant. He signed a written plea agreement that disclosed the State would be seeking discretionary consecutive sentences. Consequently, the court did not abuse its discretion in

denying defendant's motion to withdraw guilty plea.

¶ 20

### III. CONCLUSION

¶ 21

For the reasons stated, we dismiss the appeals in Nos. 4-11-1067 and 4-11-1068 and affirm the trial court's judgment in Nos. 4-12-0229 and 4-12-0230. As part of our judgment we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 22

No. 4-11-1067, Dismissed.

¶ 23

No. 4-11-1068, Dismissed.

¶ 24

No. 4-12-0229, Affirmed.

¶ 25

No. 4-12-0330, Affirmed.