



inadequate. We agree with the State. We remand for further proceedings.

¶ 4

## I. BACKGROUND

¶ 5 Following a January 2010 traffic stop, defendant, Shane Robert Edward Long, was charged with two counts of possession of cannabis (more than 30 grams but less than 500 grams) (720 ILCS 550/4(d) (West 2008)).

¶ 6 In March 2010, as part of a partially negotiated plea agreement, defendant pleaded guilty to count I. In exchange, the State agreed (1) to dismiss the lesser-included possession charge and a traffic offense and (2) to a bond reduction. At the time of the plea, defendant was represented by David Rumley, appointed counsel.

¶ 7 In April 2010, private counsel, Harold Jennings, who was representing defendant *pro bono*, filed a motion to withdraw the guilty plea, asserting the only reason defendant agreed to the plea was to secure a bond reduction so he could receive outside medical treatment. At an August 2010 hearing on the motion, Jennings informed the trial court the purpose of the motion to withdraw was "to buy some time" so defendant could receive treatment for his medical issues and the "motion may go away" in the future.

¶ 8 In November 2010, the parties convened for the purpose of creating a stipulation as to what Rumley would testify to regarding the purpose of defendant's guilty plea. According to Rumley, defendant's goal was to "get out of custody as soon as possible." Rumley also informed the trial court defendant mentioned his poor health.

¶ 9 In December 2010, at a hearing on defendant's motion to withdraw the guilty plea, defendant testified regarding his medical issues. He also testified he only pleaded guilty to secure a bond reduction so that he could obtain medical treatment. The matter was continued

because counsel had not yet procured a copy of the transcripts from defendant's guilty plea.

¶ 10 In May 2011, the parties reconvened. At that time, Jennings informed the trial court defendant wished to withdraw the motion to withdraw the guilty plea. Defendant hoped to be transferred to another facility to be with his father, who had been diagnosed with cancer. According to Jennings, the transfer could not be completed while the motion was pending. Defendant confirmed his decision to withdraw the motion and his wish to proceed directly to sentencing. The trial court sentenced defendant to six years in prison.

¶ 11 At the time of sentencing, the trial court admonished defendant if he wished to appeal, he must file a motion to withdraw the guilty plea within 30 days and that he could file this motion despite the previous motion to withdraw. The court also informed defendant any issues not included in the motion would be forfeited.

¶ 12 In June 2011, defendant filed a *pro se* motion to withdraw the guilty plea. At the first hearing on the motion in September 2011, the following colloquy occurred:

"THE COURT: Do you wish to represent yourself on this motion, Mr. Long?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. You understand you do have the right to seek appointment of counsel on this motion?

THE DEFENDANT: Yes

THE COURT: You're waiving that?

THE DEFENDANT: Yes, Your Honor."

Because defendant had not received his transcripts as of this hearing, the court continued the

proceedings.

¶ 13 In December 2011, defendant filed an amended motion to withdraw the guilty plea. In January 2012, the court reconvened and defendant argued the amended motion.

Defendant asserted he should be allowed to withdraw his guilty plea, in part, due to the fact he had been denied adequate medical care while in custody and had tendered the plea to receive the treatment he needed outside of custody. After hearing arguments, the trial court denied the motion to withdraw the guilty plea, finding it was procedurally barred because defendant had withdrawn an earlier motion to withdraw the plea, and alternatively, the motion was without merit.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant asserts his case must be remanded because he was not adequately admonished regarding (1) his right to appointed counsel in preparing his posttrial motion under Rule 605(c); or in the alternative (2) his decision to waive counsel in the post plea proceedings under Rule 401(a). The State concedes remand is necessary because Rule 605(c) admonishments were inadequate. We agree and remand for further proceedings.

¶ 17 A. Standard of Review

¶ 18 Following a guilty plea, trial courts must strictly comply with the admonition requirements of Rule 605. *People v. Young*, 387 Ill. App. 3d 1126, 1127, 903 N.E.2d 434, 435 (2009). Although strict compliance does not require a court to use the exact language in the rule, it cannot omit or misrepresent its substance. *People v. Harper*, 315 Ill. App. 3d 760, 764, 734 N.E.2d 1033, 1038 (2000). Whether a trial court strictly complied with Rule 605(c) is reviewed

*de novo*. *Young*, 387 Ill. App. 3d at 1127, 903 N.E.2d at 435.

¶ 19 B. Right to Counsel in Preparing Motion To Withdraw Guilty Plea

¶ 20 Rule 605(c) provides, in relevant part, as follows:

"In all cases in which a judgment is entered upon a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

\* \* \*

(5) that if the defendant is indigent \*\*\* counsel will be appointed to assist the defendant with the preparation of the [postsentencing] motions." Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001).

¶ 21 In this case, defendant entered a guilty plea as part of a partially negotiated plea agreement and was required to comply with the motion requirements of Rules 604(d) and 605(c), which are intended to work together. *Young*, 387 Ill. App. 3d at 1128, 903 N.E.2d at 436; *People v. Anderson*, 309 Ill. App. 3d 417, 421, 722 N.E.2d 244, 247 (1999). Rule 604(d) provides, "No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence \*\*\* or \*\*\* a motion to withdraw the plea of guilty and vacate the judgment." Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 22 Because of defendant's guilty plea, the trial court was required to admonish defendant pursuant to Rule 605 at the time of imposing sentence. Immediately following the imposition of the six-year sentence in this case, the trial court admonished defendant if he wished to appeal, he had to file a motion to withdraw his guilty plea within 30 days of sentencing.

Further the court informed defendant any issue not included in the motion to withdraw the plea would be forfeited. The court failed to admonish defendant that, if he was indigent, an attorney would be appointed to assist him in filing his postsentence motions as required by subsection (c) of Rule 605.

¶ 23 Defendant timely filed a *pro se motion* to withdraw his plea to preserve his appeal rights under Rule 604(d) and at the hearing on defendant's motion, the trial court asked defendant whether he understood he had the right to seek appointment of counsel on his motion. However, these actions do not cure the trial court's failure to strictly comply with Rule 605 admonishments. When a trial court fails to properly admonish a defendant under Rule 605 following a guilty plea, the proper remedy is to remand for proper Rule 605 admonishments and Rule 604(d) proceedings. *Young*, 387 Ill. App. 3d at 1129, 903 N.E.2d at 437.

¶ 24 Defendant is entitled to remand for strict compliance with Rule 605(c) and an opportunity to file a motion to withdraw his plea within 30 days of those admonishments.

¶ 25 C. Waiver of Counsel in Postplea Proceedings

¶ 26 Because we have determined remand is necessary for compliance with Rule 605, we need not address whether the trial court failed to substantially comply with Rule 401(a) before permitting defendant to proceed *pro se* on his motion to withdraw the plea.

¶ 27 III. CONCLUSION

¶ 28 We remand this case for further proceedings consistent with this order.

¶ 29 Remanded.