

conditions of probation was that he must not commit other crimes in any jurisdiction. In March 1995, the State sought to revoke defendant's probation claiming that during his probationary period, he was convicted of a federal offense. In June 1996, defendant appeared in court on the probation revocation. Defendant admitted that he had violated probation. Defendant's agreed-to penalty would be an 18-month sentence to be served consecutive to the federal sentence. Defendant, however, had not yet been sentenced in federal court. The trial court accepted the agreement. The 18-month sentence was to be followed by a one-year period of mandatory supervised release. Defendant was admonished of his rights to appeal. The final judgment order was entered on July 5, 1996.

¶ 5 Thirteen years after defendant was sentenced on his probation violation, he filed a *pro se* motion with the court—"Motion to Vacate Judgment and Sentence and to Withdraw Guilty Plea." Defendant alleged that on August 22, 1996, he was sentenced for the federal charges—more than one month after his probation revocation sentencing. He argued that the state trial court lacked subject matter jurisdiction to sentence him consecutively to a then-nonexistent sentence. He asked the court to terminate his probation or to make the probation violation sentence concurrent to his federal sentence.

¶ 6 On September 4, 2009, the trial court entered a docket entry striking defendant's pleading on the basis that the court lost jurisdiction over the case after the passage of 30 days from the judgment on his negotiated plea of guilt—30 days after July 5, 1996.

¶ 7 On September 11, 2009, defendant filed a *pro se* motion to reconsider that order, arguing that the court would not lose jurisdiction if a constitutional violation was alleged, and he reiterated his argument that the court never had jurisdiction to enter the order of consecutive sentences as it did. The court denied this motion on September 21, 2009. From these orders, defendant appeals.

¶ 8 In this court, on February 4, 2010, we ordered defendant to show cause why he had

not waived his appeal rights for failing to timely file a motion seeking review of the probation revocation plea within 30 days of the date on which he was sentenced, pursuant to Supreme Court Rule 604(d) (eff. July 1, 2006). In response, defendant argued that at sentencing, the trial judge improperly admonished him as mandated by Supreme Court Rule 605(b) (eff. Aug. 1, 1992). Because of the improper admonishment, defendant argued that this court was not deprived of jurisdiction even though he had not filed a motion to withdraw his guilty plea within 30 days of sentencing. On July 1, 2010, we entered an order stating that the admonishments defendant should have received at his probation revocation sentencing were from Supreme Court Rule 605(a)—not 605(b) as defendant claimed. We also ruled that defendant was not required to file a 604(d) motion challenging the judgment, and we directed the parties to address the issue of admonishment in their briefs on appeal.

¶ 9

LAW AND ANALYSIS

¶ 10 Reviewing the admonishments given by the trial court to a defendant requires us to interpret supreme court rules. Legal questions of this type are reviewed *de novo*. *People v. Williams*, 344 Ill. App. 3d 334, 338, 800 N.E.2d 168, 172 (2003).

¶ 11 We start this analysis with a review of the relevant supreme court rules that apply to postjudgment actions taken by defendant. Supreme Court Rule 605 provides guidelines to the trial court about advice that must be provided to the defendant after a finding or a plea of guilt. Ill. S. Ct. R. 605 (eff. Aug. 1, 1992). At the time of defendant's negotiated plea of guilt to his probation violation in 1996, Supreme Court Rule 605 was different than it is presently. As it was then worded, Supreme Court Rule 605(a), which applies to a probation revocation sentencing, provided:

"In all cases in which *** a sentence of probation *** has been revoked ***, the trial court shall, at the time of imposing sentence ***, advise the defendant of his right to appeal, of his right to request the clerk to prepare and file a notice of appeal, and of

his right, if indigent, to be furnished, without cost to him, with a transcript of the proceedings at his trial or hearing, and, in all cases in which *** a sentence of probation *** has been revoked *** and a sentence or condition of imprisonment or periodic imprisonment imposed, of his right to have counsel appointed on appeal. The trial court shall also advise him that his right to appeal will be preserved only if a notice of appeal is filed in the trial court within 30 days from the date of the sentence." Ill. S. Ct. R. 605(a) (eff. Aug. 1, 1992).

¶ 12 At his 1996 probation revocation sentencing, the trial court admonished defendant as follows:

"COURT: Even though you've plead [*sic*] guilty and been sentenced accordingly after an agreement, you still have the right to appeal from the judgment and sentence of this court. In order to file a Notice of Appeal you'd have to first file in this court within thirty days a written motion asking to set aside your guilty plea. That motion would have to be in writing, would have to set out any errors or mistakes that you believe that I've made in accepting this guilty plea and imposing the sentence that was agreed upon. Do you understand Mr. Sadiq?

DEFENDANT: Yes, sir.

COURT: Do you have any questions?

DEFENDANT: No, sir."

A comparison of the admonishments given by the court with the admonishments included within Supreme Court Rule 605(a) reflects that the admonishments were incomplete and were also incorrect in that defendant was not required to file a motion asking to have the plea of guilt set aside before he could file a notice of appeal. The motion to withdraw a guilty plea referenced in the trial court's admonishments was then a part of Supreme Court Rule 605(b) for judgments entered on a plea of guilt. Ill. S. Ct. R. 605(b) (eff. Aug. 1,

1992). Apparently, the trial court mistakenly read from Rule 605(b), rather than from 605(a).

¶ 13 The 30-day time limit included in the Rule 605(a) admonishments is a jurisdictional mandate. This jurisdictional mandate stems from Supreme Court Rule 606(b), which provides:

"Except as provided in Rule 604(d), the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from or if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion." Ill. S. Ct. R. 606(b) (eff. July 1, 1984).

If 30 days have passed and the defendant has not filed a notice of appeal, the court loses jurisdiction over the case. If the trial court has lost jurisdiction, then the appellate court similarly has no jurisdiction to hear an appeal of the matter.

¶ 14 Due process concerns may provide an exception to the rule that the court loses jurisdiction if the defendant fails to comply with Supreme Court Rule 604(d), or in our case, Supreme Court Rule 606(b). If the court failed to properly admonish the defendant, his due process rights may have been violated. *People v. Flowers*, 208 Ill. 2d 291, 301, 802 N.E.2d 1174, 1180-81 (2003). "Dismissal of an appeal based on a defendant's failure to file the requisite motions in the trial court would violate due process if the defendant did not know that filing such motions was necessary." *Id.* 802 N.E.2d at 1180. If the proper admonishments were not given, on appeal, instead of dismissing the appeal, we must remand the case to the trial court for proper admonishments. *Id.* 802 N.E.2d at 1180-81.

¶ 15 Incomplete admonishments under Supreme Court Rule 605(b) are treated with more concern than incomplete admonishments under Supreme Court Rule 605(a). Failure to comply with the 30-day time limit after being sentenced on a plea of guilt would deprive that defendant of a perfected appeal, and thus the opportunity to raise any issue on appeal is

waived. *People v. Breedlove*, 213 Ill. 2d 509, 521, 821 N.E.2d 1176, 1183 (2004). Because the improperly admonished Rule 605(b) defendant was at risk of completely losing his ability to appeal, fundamental fairness required that the appellate court remand for proper admonishments rather than to dismiss the defendant's appeal. *People v. Henderson*, 217 Ill. 2d 449, 462, 841 N.E.2d 872, 878 (2005).

¶ 16 The purpose of 605(a) admonishments was explained (and differentiated from 605(b) admonishments) in *People v. Breedlove*. The court stated as follows:

"The purpose of Rule 605(a) is to inform defendants who have been convicted and sentenced after trial as to what they must do to perfect an appeal. It was never intended to advise defendants of every step necessary to preserve claimed errors for review." *Breedlove*, 213 Ill. 2d at 522, 821 N.E.2d at 1184.

¶ 17 In 2005, the Illinois Supreme Court thoroughly analyzed 605(a) admonishments in *People v. Henderson*. The defendant in *People v. Henderson* was convicted of two counts of robbery and two counts of aggravated battery, and was sentenced. *Henderson*, 217 Ill. 2d at 451, 841 N.E.2d at 872. He appealed alleging that he was improperly admonished pursuant to Supreme Court Rule 605(a) and sought a remand. *Id.* 841 N.E.2d at 872-73. The supreme court agreed that the trial court's admonishments were not in total compliance with Supreme Court Rule 605(a). *Id.* at 456, 841 N.E.2d at 876. However, the court held that remand is not always required when the defendant has been given incomplete Rule 605(a) admonishments regarding preservation of sentencing issues for appeal. *Id.* at 466, 841 N.E.2d at 881. Remand would only be required if the defendant could show prejudice or a denial of real justice because he was inadequately admonished. *Id.* In *Henderson*, the court concluded that the defendant was not prejudiced by the trial court's incomplete admonishments because he had not raised any sentencing issues on appeal. *Id.* at 468, 841 N.E.2d at 882. The court stated that if the defendant had appealed sentencing issues, the

appellate court would have been notified of the issues raised, and the court could have heard the issues raised or decided to remand those issues to the trial court. *Id.*

¶ 18 Here, defendant makes no argument that he was actually prejudiced as a result of the improper admonishments. Instead, he argues that prejudice is inherent in the court's error. *Henderson* does not support defendant's argument. *Henderson*, 217 Ill. 2d at 466, 841 N.E.2d at 881. Although defendant was inaccurately admonished that in order to appeal, he would need to first file a motion to withdraw his guilty plea within 30 days, he was in fact apprised of his right to appeal and that some action was necessary on his part within 30 days if he wanted to appeal. Still, defendant took no action in furtherance of an appeal in the requisite 30-day period. Thus, we are not persuaded that defendant was prejudiced or denied real justice as a result of the court's inadequate admonishments. *Id.* at 466-68, 841 N.E.2d at 881-82.

¶ 19 Our conclusion is further supported by a supreme court case decided in 2006. In *In re J.T.*, 221 Ill. 2d 338, 851 N.E.2d 1 (2006), a juvenile entered a negotiated plea of guilt to criminal damage to property for which he was sentenced to 18 months' probation. *Id.* at 341-42, 851 N.E.2d at 3. Shortly thereafter, his probation was revoked, and he was committed to the juvenile division of the Illinois Department of Corrections. *Id.* at 342, 851 N.E.2d at 3. He appealed—not from the sentence on probation revocation, but from the original sentence of probation—alleging that he was improperly admonished, and seeking to withdraw his guilty plea. *Id.* at 344, 851 N.E.2d at 4. J.T.'s sentence of probation was entered on January 11, 2002. *Id.* at 342, 851 N.E.2d at 3. The supreme court opinion does not include the date on which J.T.'s probation was revoked or the date on which he filed his appeal, but we know that the State filed its petition to revoke his probation on March 27, 2002, less than two months from the original sentence of probation. *Id.* at 343-44, 851 N.E.2d at 4. On appeal, the State argued that the court lacked jurisdiction to consider the

matter because more than 30 days had passed since the original sentencing. *Id.* at 344, 851 N.E.2d at 5. The appellate court agreed that J.T. did not receive proper admonishments. It held that therefore the judgment could be attacked at any time, and remanded the case to the trial court. *Id.* J.T. was admonished under the new version of 605 for negotiated pleas of guilt—Supreme Court Rule 605(c).¹ On appeal, the supreme court reversed the appellate court and found that the appellate court lacked jurisdiction to consider the admonishment issue. *Id.* at 346, 851 N.E.2d at 6. As the court stated:

"In the present case, J.T. did not file a timely notice of appeal from the order sentencing him to probation, a written motion to either withdraw his plea or reconsider his sentence, or a motion for leave to file a late notice of appeal. Consequently, the appellate court had no jurisdiction to consider any issues arising from either his guilty plea or his sentence." *Id.* at 346-47, 851 N.E.2d at 6 (citing *People v. Nordstrom*, 37 Ill. 2d 270, 226 N.E.2d 19 (1967)).

The supreme court declined to grant the juvenile any supervisory relief from the jurisdictional issue because it determined that he was not prejudiced or denied real justice. *Id.* at 347, 851 N.E.2d at 6. The court agreed that the admonishments did not strictly comply with Supreme Court Rule 605(c), but concluded that the juvenile was very familiar with the court system, and was aware of his 30-day time limit, and chose not to file a pleading as required. *Id.* at 347-48, 851 N.E.2d at 6-7. The court concluded that J.T.'s failure to file his pleading within 30 days was not due to his being incorrectly admonished but was due to the

¹Present Supreme Court Rule 605(c) (eff. Oct. 1, 2001) addresses admonishments in cases where the defendant has entered a negotiated plea of guilt. Under the amended Supreme Court Rule 605, in situations where a defendant enters a negotiated plea of guilt to a probation violation, the court must now admonish the defendant pursuant to the requirements listed in Supreme Court Rule 605(c).

fact that he was, in fact, satisfied with the sentence of probation he received. *Id.* at 348, 851 N.E.2d at 7.

¶ 20 Like in *In re J.T.*, we conclude that defendant chose not to appeal because at the time he was satisfied with his sentence. Now, some 13 years later, he is dissatisfied and seeks to challenge his sentence based on admonishments that he never acted on or relied on. In reality, defendant simply chose not to file an appeal. We have no jurisdiction now to consider the admonishment issues.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Marion County is hereby affirmed.

¶ 23 Affirmed.