

NOTICE
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2014 IL App (5th) 140067-U

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).

NO. 5-14-0067

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Fayette County.
)	
v.)	No. 10-CF-121
)	
TYLER J. LEE,)	Honorable
)	Allan F. Lolie,
Defendant-Appellant.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Welch and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant is entitled to withdraw his guilty plea where he pleaded guilty in reliance on advice from counsel that was based on a misapprehension of the law and but for counsel's error in misinforming him of his appellate rights, he would not have pleaded guilty. The State may not appeal the failure to impose fines because Supreme Court Rule 604(a) does not authorize the State to appeal the imposition of fines.

¶ 2 The defendant, Tyler J. Lee, entered a negotiated guilty plea to the offenses of home invasion in violation of section 12-11(a)(2) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-11(a)(2) (West 2010)) and aggravated battery to a senior citizen in violation of section 12-4.6(a) of the Code (720 ILCS 5/12-4.6(a) (West 2010)). The plea provided for a sentencing cap, and the defendant was sentenced to consecutive terms of

14 years' and 5 years' imprisonment, terms that fell within the cap. He filed a motion to withdraw his guilty plea, which the trial court denied. The defendant filed a timely notice of appeal. We reverse.

¶ 3

BACKGROUND

¶ 4 On November 17, 2010, the defendant pleaded guilty to two counts of home invasion. On March 10, 2011, he filed a motion to withdraw his guilty plea and vacate the judgment. On November 23, 2011, the State and the defendant apprised the court that they were in agreement that the guilty plea was void and should be vacated. On December 13, 2011, the State added an additional count of aggravated battery to a senior citizen to the information.

¶ 5 On March 7, 2012, the defendant entered a guilty plea to one count of home invasion and aggravated battery of a senior citizen. The parties agreed to a sentencing cap of 20 years' imprisonment on the home invasion charge and 5 years' imprisonment on the aggravated battery of a senior citizen charge. The trial court explained the possible sentences for each charge to the defendant and informed him that it agreed to be bound by the sentencing cap for each charge. The trial court informed the defendant that both of the charges had a maximum fine of \$2,500, but the State agreed not to seek a fine and the court agreed not to impose one.

¶ 6 On April 26, 2012, the trial court held a sentencing hearing. The defendant was sentenced to 14 years' imprisonment for the home invasion and 5 years' imprisonment for the aggravated battery of a senior citizen, the sentences to run consecutively. The court admonished the defendant as follows:

"Sir, do you [*sic*] have a right to appeal. However, prior to taking an appeal you must file in this trial court within 30 days of today's date a written motion asking to have the trial court reconsider the sentence or to have the judgment vacated and for leave to withdraw your guilty pleas, setting forth your grounds for that motion. If the motion is allowed, the sentence would be modified, or your plea of guilty, sentence and judgment would be vacated and a trial date would be set on the charges to which the plea of guilty was originally made."

¶ 7 On May 2, 2012, the defendant filed a motion to withdraw his guilty plea and to vacate the judgment. He alleged that his admission was not made knowingly and voluntarily, that there was doubt of his guilt, and that the ends of justice would best be served by submitting the case to a jury. On the same day, he filed a motion to reconsider and reduce sentence. Both motions were denied on May 21, 2012. The defendant filed a notice of appeal. On July 19, 2013, this court entered an order vacating the trial court's order denying the defendant's posttrial motions and remanding the case for the filing of a Supreme Court Rule 604(d) certificate. *People v. Lee*, 2013 IL App (5th) 120262-U.

¶ 8 On November 18, 2013, the defendant's newly appointed attorney filed a Supreme Court Rule 604(d) certificate. On that same date, the defendant filed an amended motion to withdraw his guilty plea and to vacate the judgment. On January 16, 2014, the trial court heard the motion. The State agreed "that the admonishment at sentencing as to what [the defendant's] appeal right would have been at that time were [*sic*] incorrect, so to that extent he was given the wrong admonishment."

¶ 9 The defendant testified that it was his understanding that he would be able to file a motion for reduction of his sentence or file a motion to withdraw his guilty plea and vacate the judgment. He stated that he entered into the negotiated plea so that he would have the ability to argue for a lesser sentence and to be allowed to potentially withdraw his guilty plea. He testified that his guilty plea was not knowing and voluntary because he was "coerced into believing that if [he] took [his] plea that [he] could still have the chance to get a sentence reduction and also present evidence of why." The defendant asserted that when he told the court at the sentencing hearing that there had not been any promises made to entice him to plead guilty, he was not telling the truth because he pleaded guilty pursuant to the promise that he would have the right to have his sentence reconsidered. He stated that his counsel told him that "if [he] did it this way, doing the caps, [he] would be able to plead guilty and have [his] sentencing hearing, and if that went bad [he] could always ask for a reduction or try to get less time." The trial court found that the defendant's plea was knowingly and voluntarily entered. It denied the motion to withdraw the plea and vacate judgment.

¶ 10 The defendant filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 The defendant argues that he is entitled to withdraw his guilty plea because he was misadvised by his trial attorney that he would have the right to challenge his sentence in the trial court and on appeal, and he entered his plea in reliance on this misinformation. He contends that the ability to challenge his sentence was an essential component of his agreement to plead guilty, and because his plea was based upon his reasonable but

mistaken apprehension of the law, his plea was not knowingly and intelligently entered.

¶ 13 The defendant argues that he entered into the agreement to plead guilty in exchange for a sentencing cap and the dismissal of charges against him in reliance on the belief that he could challenge his sentence both in the trial court and on appeal. A sentence entered pursuant to a negotiated guilty plea cannot be directly challenged as excessive. *People v. Richard*, 2012 IL App (5th) 100302, ¶ 24. When a sentence is entered within the terms of the agreed-upon cap, a defendant must succeed in withdrawing his negotiated plea before the sentence may be reviewed on appeal. *Id.* Because the State had agreed to a sentencing cap and it was a negotiated plea, the defendant had no ability under the law to ask for reconsideration of his sentence, or to challenge the sentence on appeal. The defendant contends that because his plea was based on a misapprehension of the law, it was not knowingly and intelligently entered.

¶ 14 "Leave to withdraw a plea of guilty is not granted as a matter of right, but as required to correct a manifest injustice under the facts involved." *People v. Pullen*, 192 Ill. 2d 36, 39 (2000). Generally, the decision to allow a defendant to withdraw a guilty plea is left to the discretion of the trial court, and the trial court's decision is reviewed only for an abuse of discretion. *Id.* at 39-40. In considering a motion to withdraw a guilty plea, the court shall evaluate whether the guilty plea was entered through a misapprehension of the facts or the law, or if there is doubt of the guilt of the defendant and the ends of justice would be better served by submitting the case to trial. *Id.* at 40.

¶ 15 "That a defendant entered a guilty plea because of erroneous advice from counsel does not necessarily destroy the voluntary nature of the plea." *People v. Clark*, 386 Ill.

App. 3d 673, 676 (2008). Whether a defendant's plea, entered in reliance on counsel's advice, was voluntarily, intelligently, and knowingly made depends on whether the defendant had effective assistance of counsel. *People v. Pugh*, 157 Ill. 2d 1, 14 (1993). The two-part test announced in *Strickland v. Washington*, 466 U.S. 668 (1984), for ineffective assistance of counsel claims is applicable to the plea process. *Id.* To establish that counsel was ineffective, a defendant must establish both that his attorney's performance was deficient and that the defendant suffered prejudice as a result. *Id.* "In order to satisfy the 'prejudice' requirement in a plea proceeding, the defendant must show that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial." *Id.* at 15.

¶ 16 In guilty plea cases, the standard for reasonableness is not whether a court would retrospectively consider defense counsel's advice to be right or wrong, but whether that advice was within the range of competence demanded of attorneys in criminal cases. *Id.* at 17. Where defense counsel's advice is based on a misapprehension of the law, it falls outside of the range of competence required of attorneys in criminal cases. *Clark*, 386 Ill. App. 3d at 676. When defense counsel affirmatively gives a defendant unequivocal, erroneous, misleading representations about the consequences of a plea, it may amount to ineffective assistance of counsel that renders the defendant's plea involuntary. *Id.*

¶ 17 *People v. Edmonson*, 408 Ill. App. 3d 880 (2011), involves facts nearly identical to the instant case. In *Edmonson* the defendant entered into a plea agreement in which his sentence would be capped at 20 years' incarceration. *Id.* at 881. The court sentenced the defendant to 15 years' incarceration and advised him of his appeal rights including

misadvising him that, before he could appeal, he had to file within 30 days a written motion to reconsider the sentence or to withdraw the guilty plea. *Id.* at 883. The defendant filed a motion to reconsider the sentence which, following a hearing, the trial court denied. *Id.* The defendant filed a notice of appeal. *Id.* The parties debated whether a Rule 604(d) certificate was required and determined that it was unnecessary because the defendant was only appealing the sentence. *Id.* The appellate court remanded the case based on the lack of a 604(d) certificate. *Id.* The court noted that because the State agreed to a sentencing cap, the plea was negotiated and the defendant had no right to move to reconsider his sentence and could only move to withdraw his plea. *Id.*

¶ 18 On remand, the defendant moved to withdraw his plea alleging that he did not knowingly, intelligently, or voluntarily waive his rights because he did not understand the court's admonishments and his counsel was ineffective. *Id.* At the hearing to withdraw his plea, the defendant's attorney testified that she told him that if he accepted the State's offer with the sentencing cap, he could challenge the sentence by filing a motion to reconsider the sentence and by appealing if the motion was denied. *Id.* The defendant provided similar testimony and stated that if his attorney had not told him he would have the right to challenge his sentence, he would not have entered into the plea agreement. *Id.* The record showed that the parties and the trial court mistakenly believed that the defendant could attack his sentence as excessive on appeal from the denial of the motion to withdraw the plea. *Id.* The trial court denied the motion to withdraw the plea. *Id.* at 884.

¶ 19 The defendant appealed arguing that he would not have pleaded guilty had he been correctly informed that he would not be able to challenge the length of his sentence. *Id.* The court found that the defendant was affirmatively misinformed that he could challenge his sentence if he did not agree with it. *Id.* The court found that testimony from both the defendant and defense counsel showed that the defendant relied on the misinformation when he entered his plea and that it played a role in his decision. *Id.* The court held that counsel was ineffective and that the defendant's plea was not voluntary. *Id.* The court further found that the only prejudice the defendant needed to show was that he would not have pleaded guilty absent the misinformation. *Id.* The court noted that the trial court also mistakenly believed that the defendant could attack his sentence as excessive on appeal from the denial of the motion to withdraw his plea, thus its decision was based on misinformation. *Id.* The judgment of the trial court was reversed and the cause was remanded with direction that the defendant be allowed to withdraw his plea. *Id.* at 887.

¶ 20 In the instant case, the State concedes that the defendant was misinformed by the trial court about his appeal rights. The defendant testified that he entered into the negotiated plea so that he could argue for a lesser sentence and to potentially withdraw his guilty plea. He stated that his attorney told him that if he pleaded guilty and "things went bad" at the sentencing hearing, he could ask for a reduction in his sentence and try to obtain a lesser sentence. This establishes an affirmative misinformation of the law. The defendant testified that he pleaded guilty on the belief that if he took the plea he would still have the chance to seek a sentence reduction and present evidence about why he was entitled to a lesser sentence. The defendant's testimony that he relied on

misinformation from his attorney was unrefuted.

¶ 21 When the trial court gave the defendant the incorrect admonishments about his right to file a motion to reconsider his sentence, his defense counsel did not attempt to correct the court. Defense counsels' silence corroborates the defendant's claim that his counsel mistakenly believed that a motion to reconsider sentence was a viable option and that he advised the defendant accordingly. Additionally, defense counsel filed a motion to reconsider the sentence after both guilty pleas and sentencings. From these actions, it is clear that the defendant believed that a motion to reconsider sentence was viable and that his false belief arose from the advice of his counsel and the trial court's improper admonishments after both sentencing hearings. The defendant relied on the misrepresentation that he could seek a reduction in his sentence when he entered his plea and it played a role in his decision to plead guilty. Defense counsels' advice was based on a misapprehension of the law and, therefore, fell outside the range of competence required of attorneys in criminal cases.

¶ 22 The defendant established that but for his counsel's error in misinforming him of his appellate rights, he would not have pleaded guilty. The defendant was prejudiced by the erroneous advice provided by his attorney. He lost the right to challenge his sentence after he pleaded guilty. He believed he could challenge his sentence and when he attempted to do so, his motion to reconsider his sentence was denied because his guilty plea foreclosed a challenge to the sentence. The defendant showed prejudice in the lost opportunity to challenge his sentence.

¶ 23 Defense counsel's performance was deficient, and the defendant suffered prejudice as a result. Defense counsel provided ineffective assistance that rendered the defendant's plea involuntary. The defendant is entitled to withdraw his plea.

¶ 24 The State argues that the case should be remanded for the imposition of mandatory fees. It asserts that fees for clerk complaints filed, State's Attorney, DNA, arrestee's medical costs, automation, State Police Operations Fund, document storage, court security, and court system finance are all mandated by statute. There is no need for us to address this issue because we are reversing the judgment of the circuit court with directions that the defendant be allowed to withdraw his plea. However, we note that the State has no right to appeal this issue.

¶ 25 Supreme Court Rule 604(a)(1) sets out when the State may appeal. It provides, in pertinent part, as follows:

"In criminal cases the State may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; or suppressing evidence." Ill. S. Ct. R. 604(a)(1) (eff. Feb. 6, 2013).

¶ 26 "Rules adopted by the supreme court are mandatory, not optional, and we are obligated to follow them." *People v. Ramos*, 339 Ill. App. 3d 891, 904 (2003). Because Supreme Court Rule 604(a) does not include any language authorizing the State to appeal the imposition of fines, the State is not authorized to appeal the failure to impose fines.

People v. Newlin, 2014 IL App (5th) 120518, ¶ 30. As a result, this court lacks jurisdiction to address the State's argument.

¶ 27

CONCLUSION

¶ 28 For the reasons stated, we reverse the judgment of the circuit court of Fayette County and remand the case with directions that the defendant be allowed to withdraw his plea.

¶ 29 Reversed and remanded with directions.