

No. 1-13-0511

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 MC 1600318
	)	
LEE WIGOD,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE MASON delivered the judgment of the court.  
Justices Lavin and Hyman concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Defendant's appeal is dismissed because he failed to file a postplea motion to withdraw his negotiated guilty plea and vacate the judgment.

¶ 2 Defendant, Lee Wigod, entered a negotiated guilty plea to minor indirect criminal contempt and was sentenced to 30 months' probation. On appeal, Wigod contends the trial court failed to properly admonish him of his appeal rights pursuant to Illinois Supreme Court Rule

605(c) (eff. Oct. 1, 2001) and imposed a void order when it allegedly sentenced him to pay \$25,000 in restitution. For the following reasons, we dismiss the appeal.

¶ 3 In August 2008, Wigod entered a blind guilty plea to a charge of failure to support (07 CR 8322).<sup>1</sup> *People v. Wigod*, 406 Ill. App. 3d 66, 68-70 (2010). The trial court later sentenced him to 18 months in prison and ordered him to pay \$85,802 in restitution. *Id.* 72. On appeal, this court concluded, among other things, that the trial court failed to provide sufficient preplea admonishments under Illinois Supreme Court Rule 402 (eff. July 1, 1997). *Id.* 75-77. Accordingly, in December 2010 we vacated the trial court's judgment and remanded the case to allow Wigod to withdraw his guilty plea and plead anew. *Id.* 77, 81-82.

¶ 4 While Wigod's case was pending on remand, the State also charged him with minor indirect criminal contempt (12 MI 1600318). The State later explained that it charged Wigod with "minor" contempt because it was asking for a prison term of six months or less. On December 27, 2012, the parties reached an agreement as to both the criminal contempt charge, which is the subject of the present appeal, and the failure to support charge, which is not included in this appeal. The State presented the following factual basis for Wigod's contempt plea. On April 26, 2011, Wigod pleaded not guilty to failure to support and was released on bond pending trial. One of the conditions of Wigod's bail bond was that he could not leave the state without the court's permission. On October 10, 2012, he sought permission to travel to Florida on November 27, 2012, which the court denied. Wigod had already purchased his plane ticket prior

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<sup>1</sup> The record before us does not contain the proceedings related to Wigod's original failure-to-support conviction. Accordingly, we have gleaned the facts related to those proceedings from our decision in *People v. Wigod*, 406 Ill. App. 3d 66 (2010).

to seeking the court's permission. On November 27, Wigod traveled to Florida and remained there until December 8, 2012. Before he left, Wigod appeared in court on November 26 and deliberately misinformed the court he could not have the case continued to November 30 because he had a job interview when, in fact, he actually could not appear in court because he would be in Florida. Wigod stipulated to the State's evidence, and the trial court accepted his plea.

¶ 5 The trial court pronounced sentence as follows: "Now, with regard to both cases, Mr. Wigod, you will be sentenced to 30 months of felony probation on both cases, \$25,000 in restitution to be paid at a rate of \$350 a month to begin on February 1st of next year, 2013."

¶ 6 The court then advised Wigod as follows:

"Sir, even though you pled guilty to these two cases, you do have certain appellate rights. In order for you to exercise those rights, within 30 days, you must file with this Court a written motion to withdraw your pleas of guilty. In those motions you must state all the reasons you wish to withdraw your plea of guilty, and any reason not stated will be deemed waived on any subsequent appeal.

If I were to grant your motion, I would allow you to withdraw your plea of guilty—your pleas of guilty and vacate the judgments and sentences and set one of your cases for trial. If I were to deny your motion, you would have 30 days from the date of that denial in which to file your written notice of appeal with the Clerk of the Court.

If you need an attorney to help you prepare the motion to withdraw and/or the notice of appeal and you could not afford one, the Court would appoint one for you as well as provide you with a free transcript of everything that was said here today or any transcript that you would need for your motion to withdraw your pleas of guilty."

¶ 7 Wigod indicated that he understood. But he did not file a postplea motion to withdraw either of his guilty pleas.<sup>2</sup> He filed a notice of appeal in his contempt case on January 28, 2013.

¶ 8 On appeal, Wigod first asserts the postplea admonishments by the trial court were inadequate under Rule 605(c) and, therefore, his case should be remanded for proper admonitions. The State responds that the trial court substantially complied with Rule 605(c) and, accordingly, Wigod's appeal should be dismissed based on his failure to file a postplea motion to withdraw his guilty plea.

¶ 9 Pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), a defendant who has entered a negotiated guilty plea and wishes to file an appeal must first file a motion to withdraw his guilty plea and vacate the judgment within 30 days of the imposition of his sentence. Generally, a defendant's failure to file a timely motion to withdraw his plea precludes this court from considering the merits of the defendant's appeal. *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). But where a trial court fails to provide the defendant with proper Rule 605(c)

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<sup>2</sup> In his brief, Wigod states that he "filed one post-plea motion (against the nonpayment of support plea) and one notice of appeal (against the contempt plea), even though the sentences in both cases were exactly the same." However, the record before us does not contain the postplea motion Wigod allegedly filed against the nonpayment of support plea. Docket entries in this case show that on January 7, Wigod filed a motion for appointment of an attorney and transcripts, which was stricken on January 14 based on his failure to appear.

admonishments, we will not dismiss the defendant's appeal but will instead remand to the trial court "for strict compliance with Rule 604(d)." *Id.*

¶ 10 Rule 605(c) provides that "the trial court shall advise the defendant substantially" of the following:

- "(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 judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;
- (3) that if the motion is allowed, 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 part of a plea agreement shall 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 vacate the judgment and to withdraw the plea of guilty shall be deemed waived." Ill. S. Ct. Rule 605(c).

A trial court must provide Rule 605(c) admonishments but need not read the rule verbatim.

*People v. Dominguez*, 2012 IL 111336, ¶¶ 17, 22. Rather, Rule 605(c) requires that the court advise a defendant in such a way as to properly inform him or put him on notice as to the actions he must take "to preserve his right to appeal his guilty plea or sentence." *Id.* ¶ 22. Where the court's admonitions are "sufficient to impart to a defendant the essence or substance of the rule, the court has substantially complied" with Rule 605(c). *Id.* We review *de novo* a trial court's compliance with a supreme court rule. *People v. Gougisha*, 347 Ill. App. 3d 158, 162 (2004).

¶ 11 Wigod points to three alleged deficiencies in the trial court's admonitions. First, he observes, the court advised him that he had "certain appellate rights." According to Wigod, the court thus suggested that "multiple appellate rights" existed and failed to inform him that he had a "right to appeal" or that he had to file a postplea motion before filing an appeal. Second, Wigod notes that the court told him any issue not raised in a postplea motion would be "deemed waived on any subsequent appeal." Wigod argues the court's use of the word "subsequent" implied that issues would only be waived if he appealed, lost, and appealed again. Finally, Wigod observes the court's admonitions repeatedly interspersed singular and plural language. By doing so, Wigod claims the court made unclear whether he had to file one motion or two, whether he could attack just one plea or both, whether he could waive issues in both cases by filing only one motion, and whether he could receive a new trial on one or both of his judgments and sentences.

¶ 12 Notwithstanding Wigod's arguments, we conclude the trial court substantially complied with Rule 605(c). The court advised Wigod that to exercise his "appellate rights," he was required to file within 30 days a motion to withdraw his plea or pleas of guilty setting forth all of

the reasons he wished to withdraw his plea. The court further instructed Wigod that any issues not raised in his motion would be waived on a subsequent appeal. The court also told him that, if it denied his motion to withdraw, he could file a written notice of appeal within 30 days.

Accordingly, the court clearly put Wigod on notice of the postplea action he was required to take, thereby complying with Rule 605(c). See *Dominguez*, 2012 IL 111336, ¶ 22 (a court must advise a defendant in such a way as to notify him of the actions he must take "to preserve his right to appeal").

¶ 13 We reject Wigod's contention that the trial court's use of the term "appellate rights" instead of "right to appeal" somehow rendered the admonitions deficient. The court was not required to read Rule 605(c) verbatim. *Dominguez*, 2012 IL 111336, ¶ 22. Moreover, even assuming the court implied Wigod had "multiple appellate rights," the court made clear that filing a postplea motion to withdraw was a condition precedent to exercising any of those rights. Although the court did not tell Wigod he "first" had to file a motion to withdraw his guilty plea, the court told him that to exercise his appellate rights, he had to file a motion to withdraw within 30 days, and if the court denied his motion, he would have 30 days from the date of denial to file his notice of appeal. For this same reason, we reject Wigod's assertion that the court's use of both singular and plural language made its admonitions confusing. Despite the court's usage of both singular and plural language, the court's admonitions put Wigod on notice that he had to at least file one motion to withdraw his guilty plea, setting forth his claims of error. Yet, the record before us does not reflect Wigod filed *any* motion to withdraw. Under these circumstances, the admonition exception does not excuse Wigod's failure to file a motion to withdraw his guilty

plea. See *People v. Claudin*, 369 Ill. App. 3d 532, 534-35 (2006) (finding the defendant waived his right to appeal because although the trial court incorrectly admonished the defendant that to preserve his right to appeal he could "file a motion to withdraw [his] plea of guilty, modify or reconsider the sentence," the court's admonishments put the defendant on notice of the postplea action he was required to take and the defendant ignored it). Finally, we find meritless Wigod's contention that by using the word "subsequent," the trial court implied waiver would only apply in a second appeal. When considering the court's use of the word "subsequent" in conjunction with the rest of its admonishments, it is clear that by "subsequent," the court meant an appeal following the filing of a motion to withdraw.

¶ 14 In sum, the trial court sufficiently complied with Rule 605(c), and Wigod's failure to file a motion to withdraw his guilty plea is not excused under the admonition exception.

Accordingly, we must dismiss the appeal.

¶ 15 Wigod alternatively contends that his claim is not subject to waiver because the purported restitution order in this case is void. He claims the court lacked authority to impose the \$25,000 restitution order because (1) restitution is not authorized for criminal contempt, as contempt is punishable by only imprisonment or a fine; (2) even assuming restitution was a fine, the court could only order a maximum fine of \$500; and (3) restitution to Wigod's ex-wife was improper because she was not a victim of his contempt.

¶ 16 As a threshold matter, we find that the record is ambiguous, at best, regarding whether any restitution was ordered for the minor indirect criminal contempt conviction, which was based

on Wigod's unauthorized travel out-of-state while such travel was prohibited by the conditions of his bond. As the trial court stated at the guilty plea proceeding,

"defendant's actions in travelling to Florida in direct defiance of the Court's orders and then lying to the Court about his reason for not being able to appear in court on a date when he was in Florida were willful and contemptuous and interfered with the orderly administration of justice and undermined the Court's authority."

¶ 17 The failure to support conviction was based on Wigod's failure to make child support payments. In considering Wigod's original 2008 blind guilty plea to that offense, we expressly reversed the plea on the basis that the trial court did not provide him with adequate preplea admonishments which, in relevant part, failed to advise Wigod that his sentence had to include a restitution order. *Wigod*, 406 Ill. App. 3d at 75. We specifically directed the trial court on remand "to ascertain a full accounting of the chronology of the arrearage, as well as the credits due by virtue of defendant's payments over time, in crafting a restitution order." *Id.* 81. During the remand, the contempt charge issued.

¶ 18 At the end of the negotiated guilty plea proceeding, when the court asked if the parties had anything to add, the State commented as follows:

"Just that, your Honor, per court records, I would ask to include with the order for restitution People's Exhibit No. 1 which includes the documentation of how the State came up with the amounts to present to the Court for restitution amounts which is what the Appellate Court had asked that also be considered by your Honor which you did at the 402 conference."

The court agreed and ruled "[p]ursuant to the Appellate Court's order, the restitution order will be entered with those attached exhibits regarding calculations." Notably, the same trial judge presided over both the 2008 blind guilty plea proceeding, which this court reversed in *Wigod*, and the subject December 27, 2012, negotiated guilty plea hearing.

¶ 19 The present record on appeal does not include the exhibit and certainly cannot reveal the content of the Rule 402 conference. Absent the calculations, we do not know the total amount owed by Wigod for the purpose of the required restitution in the failure to support conviction. However, the record is clear that the trial court ordered Wigod to pay restitution in the amount of \$25,000 for the failure to support conviction.

¶ 20 The record is unclear on the minor indirect criminal contempt conviction. Before Wigod pled guilty in 2012, the court admonished him of his sentence:

"Sir, in case 12-11600318, you are charged with indirect criminal contempt. If I were to find you guilty of indirect criminal contempt, I could sentence you up to six months in the county jail and fine you up to \$500.

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You understand that your sentence on the indirect criminal contempt will also be exactly the same sentence as the '07 case, but it will run concurrently or at the same time?"

Following the entry of the two guilty pleas, the court imposed sentence as follows:

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"Now, with regard to both cases, Mr. Wigod, you will be sentenced to 30 months of felony probation on both cases, \$25,000 in restitution to be paid at a rate of \$350 a month to begin on February 1st of next year, 2013."

The sentencing order for the contempt conviction reveals that under the heading of "Restitution" the handwritten figures of \$25,000 and \$350 per month have been crossed out.

¶ 21 In light of the history of this case and the record now on appeal, we find that Wigod has not shown that any restitution was ordered for the minor indirect criminal contempt conviction.

Accordingly, we need not consider any remaining issues regarding restitution.

¶ 22 For all the foregoing reasons, we dismiss this appeal.

¶ 23 Dismissed.