

FIFTH DIVISION
JUNE 19, 2015

No. 1-13-0562

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 MC 1250522
)	
JOSHUA HALE,)	Honorable
)	Tommy Brewer,
Defendant-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice McBride concurred in the judgment.

O R D E R

¶ 1 **Held:** Judgment entered on defendant's guilty plea to criminal trespass to a vehicle affirmed over his challenge to the sufficiency of the trial court's admonishments under Supreme Court Rule 605(c).

¶ 2 Defendant Joshua Hale pleaded guilty to a charge of misdemeanor criminal trespass to a vehicle and was sentenced to 18 months of conditional discharge. On appeal, defendant contends that his cause should be remanded for proper admonishments and the opportunity to file a motion to withdraw his guilty plea because the court failed to advise him of his right to counsel to assist

him in the preparation of post-plea motions or to obtain a transcript of the trial proceedings. He also contends that he should be permitted to withdraw his plea because the record lacks any factual basis to support it.

¶ 3 The record shows that on October 27, 2012, defendant was charged with criminal trespass to a vehicle. When the case was called on November 16, 2012, the court informed defendant that he would be placed on 18 months' conditional discharge, and that if he violated any local, state, or federal laws during that period of time, he would be sentenced to jail. Defendant acknowledged his wish to plead guilty to the charged offense, and the court informed him of the nature of the charge against him and the penalties attendant thereto. The court also apprised him of the rights he was relinquishing by entering a guilty plea, ascertained defendant's understanding of the procedure, and accepted his jury waiver. The court found that defendant was entering his plea knowingly and voluntarily and that there was a factual basis for it. The court then accepted defendant's plea, and sentenced him, "as agreed," to 18 months of conditional discharge.

¶ 4 Following that, the court admonished defendant of his right to appeal within 30 days if he filed a motion with the clerk of the court to withdraw his plea. The court further informed him that if his motion to withdraw his plea was granted, a trial date would be set, and if it were denied he would have 30 days from the date of denial to file a notice of appeal. The court also informed him that if he could not afford an attorney or a transcript, both would be provided to him at no cost to help him with the appeal process.

¶ 5 Although defendant acknowledged his understanding of these admonitions, he did not file a post-plea motion, and instead filed a notice of appeal. In this court, defendant acknowledges his failure to file the requisite 604(d) motion (Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014)) to withdraw his plea, but he contends that he should be afforded the opportunity to do so under the admonition exception to the rule because the trial court failed to substantially comply with Supreme Court Rule 605(c) (Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001)). He specifically contends that the court did not advise him of his right to counsel to assist him in drafting a post-plea motion and to a free transcript of the hearing.

¶ 6 The State responds that defendant's appeal must be dismissed because defendant failed to file a motion to withdraw his guilty plea, which is a prerequisite to filing an appeal under Rule 604(d). The State further contends that defendant may not invoke the admonition exception to the rule because the trial court substantially complied with Rule 605(c).

¶ 7 Rule 604(d) provides in pertinent part that "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 withdraw the plea of guilty and vacate the judgment." Ill. S. Ct. R. 604(d). Where, as here, defendant fails to file a motion to withdraw his guilty plea, the appellate court is prohibited from hearing his appeal. *People v. Flowers*, 208 Ill. 2d 291, 300-01 (2004); Ill. S. Ct. R. 604(d). However, under the "admonition exception" to this rule (*People v. Jamison*, 181 Ill. 2d 24, 28-30 (1998)), the appeal is not dismissed, and the case will be remanded for strict compliance with Rule 604(d) (*Flowers*, 208 Ill. 3d at 301).

¶ 8 Defendant asserts that the admonition exception applies here because the court did not sufficiently admonish him in accordance with Rule 605(c), which applies to negotiated pleas. Although no specific reference was made to the nature of the plea during the plea proceeding, the comments of the court and counsel at the start of the proceeding, and the import of the court's language in announcing sentence, indicate that the plea was negotiated, and thus subject to Rule 605(c) admonitions. We therefore examine whether the court's admonishments complied with that rule (*People v. Dunn*, 342 Ill. App. 3d 872, 880 (2003)), and our review is *de novo* (*People v. Henderson*, 217 Ill. 2d 449, 458 (2005)).

¶ 9 In this case, defendant focuses on the admonitions contained in Rule 605(c)(5). That subsection provides: "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 that if the defendant is indigent, a copy of the transcript of the proceedings *** will be provided without cost to the defendant and counsel will be appointed to assist the defendant with the preparation of the motions." Ill. S. Ct. R. 605(c)(5). Defendant claims that the court's admonition, "[i]f you are indigent and cannot afford an attorney or transcript, both will be provided to you at no cost to help you with your appeal process," did not substantially comply with the rule because the court did not advise him that that counsel would be appointed to assist him in the preparation of post-plea motions.

¶ 10 In *People v. Dominguez*, 2012 IL 111336 ¶ 51, this precise claim was rejected by the supreme court. In that case, the trial court admonished defendant: "Should your motion to reconsider sentence be granted, you will be resentenced. In the event the motions are denied, you

have 30 days from denial to return to file notice of appeal of the Court's ruling. If you wish to do so and could not afford an attorney, we will give you an attorney free of charge, along with the transcripts necessary for those purposes." *Dominguez*, 2012 IL 111336 at ¶ 46. On appeal, defendant contended that the trial court failed to properly admonish him regarding his right to the assistance of counsel in drafting post-plea motions. The supreme court upheld defendant's conviction, stating that the trial court's admonitions reflected that a court-appointed attorney would be available to defendant, even though it did not explicitly inform defendant that he was entitled to have an attorney appointed to help him prepare post-plea motions. *Dominguez*, 2012 IL 111336 at ¶ 51.

¶ 11 In reaching that conclusion, the supreme court relied on *In re J.T.*, 221 Ill. 2d 338, 347-48 (2006) and *Dunn*, 342 Ill. App. 3d at 882, where admonitions were found sufficient to inform defendant of his right to counsel and a free transcript under Rule 605(c), despite the court's deviation from the exact language of the rule. In *J.T.*, the trial court informed defendant that he had the right to file a petition to withdraw his guilty plea, and that if his petition were denied, the petition would go to a higher court which would look at everything and that if he were "unable to hire an attorney to represent [him], the Court [would] appoint an attorney for [him] free of charge." *J.T.*, 221 Ill 2d. at 343. The supreme court found these admonitions "sufficient to put J.T. on notice that he could challenge his guilty plea and that some action on his part within 30 days was necessary if he wished to appeal." *Id.* at 347-48.

¶ 12 Similarly, in *Dunn*, the trial court admonished defendant that he had the right to appeal, but before doing so he had to "file a motion to withdraw [his] guilty plea within 30 days" and

that if he could not afford an attorney or copy of the transcript, they would be provided to him free of charge. *Dunn*, 342 Ill. App. 3d at 876. On appeal, the court held that the admonishments were sufficient because they reflected "that a court-appointed attorney would be available for defendant," and even though "the language used by the trial court was not exact language of the rule *** the trial court's admonitions did convey the substance of the rule." *Id.* at 882.

¶ 13 Defendant argues that *Dominguez* is distinguishable from the current case because the supreme court, in rendering its decision, largely relied on the fact that defendant was also given a written copy of the Rule 605(c) admonishments. We disagree. In *Dominguez*, the supreme court specifically relied on the holdings in *J.T. and Dunn*, two cases where no written admonishments were given, and noted that the written admonitions only served to further inform defendant of his rights. *Dominguez*, 2012 IL 111336 at ¶ 51.

¶ 14 We find no appreciable differences in the admonishments given in this case from those found sufficient in *Dominguez*, and the cases cited therein. Though imperfect, the trial court's admonishments put defendant on notice that he was required to file a post-plea motion to withdraw his plea within 30 days, and that an attorney would be available to him. *Dominguez*, 2012 IL 111336 ¶ at 51. Defendant indicated his understanding of the admonishment, but failed to file a post-plea motion, as required. Accordingly, we conclude that defendant failed to establish the admonition exception to excuse his failure to comply with the post-plea motion as required by Rule 604(d), and we dismiss his appeal. *Flowers*, 208 Ill. 2d at 301.

¶ 15 Defendant next contends that because the record contains no factual basis to support his guilty plea, he should be permitted to withdraw it. The State responds that because this appeal

must be dismissed due to defendant's noncompliance with Rule 604(d), this court may not reach the merits of defendant's claim. We agree with the State that because defendant failed to comply with Rule 604(d), and the admonition exception does not apply, this court is precluded from considering the appeal on the merits, and must dismiss it. *People v. McGee*, 314 Ill. App. 3d 1037, 1038 (2000); *People v. Flowers*, 208 Ill. 2d at 301.

¶ 16 Appeal dismissed.