

No. 1-13-0859

**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.	)	Nos. 10 CR 1407
	)	10 CR 27
	)	
FREDRIC HAYWOOD,	)	Honorable
	)	Arthur F. Hill,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Justices Howse and Ellis concurred in the judgment.

**O R D E R**

- ¶ 1 **Held:** Where defendant was substantially admonished of his appellate rights under Supreme Court Rule 605(c), his failure to file a timely motion to withdraw his plea cannot be excused by the admonition exception, and the appeal is dismissed; the 30- day period following a defendant's guilty plea is not a "critical stage" requiring the automatic appointment of counsel.
- ¶ 2 Defendant Fredric Haywood entered a fully negotiated plea of guilty to the charges of theft pursuant to section 16-1(a)(1)(A) of the Criminal Code of 1961 (the Code) (720 ILCS 5/16-

1(a)(1)(A) (West 2008)) and being an organizer of a continuing financial crimes enterprise pursuant to section 16H-55 of the Code (720 ILCS 5/16H-55 (West 2008)). On appeal, defendant concedes that an appeal from a negotiated plea must be dismissed if a defendant did not first file a motion to withdraw his plea in the trial court, which defendant failed to do. However, he contends that this court should remand for proper Supreme Court Rule 605(c) (Ill. S. Ct. R. 605(c) (eff. October 1, 2001)) admonishments and the opportunity to file a postplea motion, because the trial court failed to advise defendant that appointed counsel was available to assist him in preparing the postplea motion necessary for him to exercise his right to appeal. We dismiss the appeal.

¶ 3 Defendant and various co-defendants were charged under two indictments with numerous offenses related to certain mortgage applications and the corresponding disbursal of funds. Pursuant to a negotiated plea agreement, defendant pled guilty to one count of theft and one count of being an organizer of a continuing financial crimes enterprise. In return, the State agreed that defendant be sentenced to 12 years on each count, to be served concurrent to each other and concurrent to defendant's federal sentence in a related case. Before accepting defendant's plea, the trial court informed defendant of the charges against him and asked defendant if he understood them. Defendant said he understood. The court also informed defendant of his possible sentences, his right to trial by the court or jury, his right to require the State to prove their case against him, to confront witnesses and to testify on his own behalf. The court then asked defendant if he understood and would like to waive these rights. Defendant again stated that he understood. After a hearing, the trial court accepted the pleas and continued the case for sentencing. The trial court found that defendant had freely and voluntarily waived

these rights. On December 27, 2012, the court imposed the agreed-upon sentence. After sentencing, the court admonished defendant. The following conversation took place:

"The Court: \*\*\*You have the right to appeal everything about these cases, but if you want to appeal, there is something you have to do first. That is, you have to file a motion seeking permission to vacate or take back the guilty pleas that you just gave. The motions would have to be in writing and list every single reason why I should allow you to take back your guilty pleas. If you forgets [*sic*] to list a reason, you could never argue that reason. If you didn't file that motion within 30 days of today's date, you would waive or give up forever your ability to be able to take back you guilty pleas. Do you understand that, Mr. Haywood?

Defendant Haywood: Yes.

\* \* \*

The Court: If you file the motion and win it, it's as if today never happened. Any kind of agreement between the lawyers would be null and void. Any dismissed charges would be reinstated to their original form, and we'd set the whole thing down for trial. Do you understand that, Mr. Haywood?

Defendant Haywood: Yes.

\* \* \*

The Court: If you file the motion and you lost [*sic*] it, you'd have 30 days from the date of losing that motion to file your Notice of Appeal. If you didn't file your Notice of Appeal within that time period, you would waive or give up forever your ability to appeal this case. Do you undertstand that, Mr. Haywood?

Defendant Haywood: Yes.

\* \* \*

The Court: If you didn't have the money to hire your own attorney or to purchase the transcript which would be necessary, those things would be provided free of charge.

Do you understand that, Mr. Haywood?

Defendant Haywood: Yes, sir."

¶ 4 On January 24, 2013, defendant filed a " *Pro se* Motion Notice of Direct Appeal," where defendant asked the court to "appoint counsel to help him in the appeal process" and to be given "all his sentence transcripts" to "help further motions and briefs concerning this case and appeal process." Defendant did not file a motion to withdraw his guilty plea.

¶ 5 On appeal, defendant concedes he failed to move to withdraw his guilty plea, but contends that this case must be remanded because the admonishments were insufficient where the court failed to inform him that he had the right to counsel to assist him in the preparation of his postplea motion, instead informing him that he was entitled to such assistance only in the event that his postplea motion was denied and he appealed. The State responds that the court substantially complied with Rule 605(c), and, as such, we should dismiss defendant's appeal because he failed to file a timely motion to withdraw his plea under Supreme Court Rule 604(d). Ill. S. Ct. R. 604(d) (eff. July. 1, 2006).

¶ 6 Rule 604(d) provides, in pertinent part, that "[n]o 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." Generally, when a defendant fails to file a timely motion to withdraw his guilty plea

under Rule 604(d), the appellate court is precluded from considering the appeal on the merits, and must dismiss it. *People v. Flowers*, 208 Ill. 2d 291, 301 (2003).

¶ 7 Under the admonition exception to this rule, however, defendant's noncompliance with the requirements of Rule 604(d) will not result in dismissal of the appeal if the court failed to advise defendant of the procedural steps necessary to perfect his appeal as set forth in Rule 605. *Id.*; *People v. Foster*, 171 Ill. 2d 469, 473 (1996). In that situation, the proper course is to remand the cause for proper admonishments. *People v. Dominguez*, 2012 IL 111336, ¶ 11; *Flowers*, 208 Ill. 2d at 301. We review the trial court's compliance with the rule *de novo*. *People v. Breedlove*, 213 Ill. 2d 509, 512 (2004).

¶ 8 Rule 605(c), which serves as a corollary to the requirements of Rule 604(d), provides the admonitions the trial judge must give after entering judgment upon defendant's guilty plea, to advise defendant of the conditions that must be satisfied before an appeal may be taken. Rule 605(c) states:

“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:

- (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 a part of a plea agreement will 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."

¶ 9 The trial court must substantially advise defendant of the content of the rule, *i.e.*, it must "impart to a defendant largely that which is specified in the rule, or the rule's 'essence,' as opposed to 'wholly' what is specified in the rule." *Dominguez*, 2012 IL 111336, at ¶ 19. So long as defendant is properly informed, or put on notice, of what he must do in order to preserve his right to appeal his guilty plea or sentence, the admonitions are sufficient to impart to defendant the essence or substance of the rule and the court has substantially complied with Rule 605. *Id.* ¶ 22.

¶ 10 Defendant's appeal must be dismissed for his failure to file a motion to withdraw his guilty plea as required by Supreme Court Rule 604(d). The trial court explained to defendant that he had the right to appeal, but in order to do so, he was required to file a written motion to withdraw his guilty plea with the court within 30 days. By informing him that he had certain appellate rights, but that he had to file a motion challenging the plea within 30 days in order to

exercise them, the trial court properly imparted the essence of the rule and therefore substantially advised defendant under Rule 605(c). See *People v. Claudin*, 369 Ill. App. 3d 532, 534 (2006). Defendant told the trial court that he understood this requirement, but did not file a motion to withdraw his plea, and instead filed a notice of appeal. Under these circumstances, defendant's failure to file a Rule 604(d) motion to vacate the judgment and withdraw the guilty plea is not excused under the admonition exception, and he has thus waived his right to a direct appeal. *Id.* at 534-35.

¶ 11 Defendant's contention is similar to the one addressed by our supreme court in *Dominguez*, 2012 IL 111336. In that case, defendant challenged the court's Rule 605 admonishments based on, *inter alia*, the court's failure to inform him that he had the right to the assistance of counsel in preparing his postplea motions, alleging that the court, instead, implied that counsel was only available after postplea proceedings. *Id.* ¶ 47. The court admonished defendant in *Dominguez* that, "even though you have pled guilty and been found guilty, you have certain rights. Those rights include your right to return to the courtroom within 30 days to file motions to vacate your plea of guilty and/or reconsider your sentence. The motions must be in writing and contain all the reasons to support them. \*\*\* In the event the motions are denied, you have 30 days from denial to return to file a notice of appeal 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." *Id.* ¶¶ 41, 46. The court found that the trial court's admonishments did convey the substance of the rule to defendant and complied with Rule 605(c). *Id.* ¶ 51. In the instant case, defendant was made aware of his right to appeal, and the court also stated that an attorney and transcript would be provided free of charge. We find no meaningful difference in the admonishment given in *Dominguez* and the admonishment at issue

here, and we likewise conclude that defendant was substantially admonished pursuant to Rule 605(c), and that his failure to file a Rule 604(d) motion is not cured by the admonition exception. *Id.* ¶ 51.

¶ 12 Defendant disagrees, and contends that *Dominguez* is distinguishable because the defendant in that case was given both oral and written admonishments of his rights. We observe, however, that in finding the admonishment sufficient, the court in *Dominguez* relied on *In re J.T.*, 221 Ill. 2d 338 (2006), and *People v. Dunn*, 342 Ill. App. 3d 872 (2003), neither of which involved written admonishments. Our supreme court noted that in those cases, the trial court also "arguably did not explicitly inform defendant that he was entitled to have an attorney appointed to help him prepare the postplea motions," but despite the imperfection of the oral admonishments, they were sufficient to convey the substance of the rule to defendant and thus complied with Rule 605. *Dominguez*, 2012 IL 111336, ¶ 51. Thus, we reject defendant's contention, and find that the court properly admonished him, and the exception to Rule 604(d) is inapplicable in this case.

¶ 13 Defendant alternatively contends that, to avoid rendering Supreme Court Rule 606(a) unconstitutional, this court should construe Rule 606(a) to require the automatic appointment of counsel during the postplea stage when a defendant files a *pro se* notice of appeal. He maintains that because "perfecting an appeal, following a guilty plea, is a stage of the proceedings where substantial rights can be lost if not correctly exercised," the time for filing a postplea motion is a "critical stage" in proceedings, in which a right to counsel is required. He thus asks this court to remand the matter for the appointment of counsel and for an opportunity to file a postplea motion with the assistance of counsel. We decline to construe Rule 606(a) as requiring the automatic appointment of counsel.

¶ 14 Defendant cites *Roe v. Flores-Ortega*, 528 U.S. 470 (2000) and *Evitts v. Lucey*, 469 U.S. 387 (1985) to argue that Rule 606(a) violates the Sixth Amendment if defendant completely loses his right to appellate review if he files a notice of appeal instead of a motion to withdraw plea. This court rejected this very argument in *Merriweather*, 2013 IL App (1st) 113789, ¶ 33 reasoning that the holding in *Flores-Ortega* and *Evitts* does not "stand for the proposition that a defendant who pleads guilty and later defaults on the procedural requirements of Rule 604(d), shall be entitled to the appointment of counsel to assist him in perfecting an appeal upon the filing of a *pro se* notice of appeal under Rule 606(a)." As was the case in *Merriweather*, defendant did not file a motion to withdraw his guilty plea nor was there any indication in his *pro se* notice of appeal that he desired to withdraw his guilty plea; it only showed that the defendant sought to directly appeal the order of judgment. See *Id.* ¶ 21. We find no reason to depart from the analysis and result obtained in that case.

¶ 15 For the reasons stated, we dismiss the appeal.

¶ 16 Appeal dismissed.