

FOURTH DIVISION  
May 7, 2015

No. 1-13-0895

**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.
	)	
	)	Nos. 99 MC5 4748
	)	99 MC5 5600
v.	)	99 MC5 5601
	)	99 MC5 5602
	)	99 MC5 5603
	)	
MICHAEL O'CONNOR,	)	Honorable
	)	Joan M. O'Brien,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE COBBS delivered the judgment of the court.  
Justices Howse and Ellis concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Where defendant filed an untimely motion to withdraw his guilty pleas, the trial court did not err in finding that it lacked jurisdiction to consider the matter.

¶ 2 Defendant Michael Connor pleaded guilty to five separate charges of misdemeanor criminal sexual abuse and was sentenced to two years of conditional discharge and 30 days of community service. Thirteen years later, defendant filed a motion to withdraw his guilty pleas.

Following a hearing, the trial court denied the motion based on a finding that it lacked jurisdiction. On appeal, defendant contends that the trial court abused its discretion in not allowing him to withdraw his guilty plea because trial counsel was ineffective for failing to advise him that a consequence of his plea was lifetime registration as a sex offender.

¶ 3 For the reasons that follow, we affirm.

¶ 4 On July 30, 1999, defendant appeared in court and requested a Rule 402 conference. S. Ct. R. 402(d) (eff. July 1, 2012). Immediately after the conference, defense counsel stated as follows:

"Pursuant to that conference, we have reach[ed] an agreement or disposition and I have spoken to the defendant about it. I have explained the consequences of a plea of guilty to each of these matters. The primary consequence, besides compliance with the conditions of the order, was the fact that under Illinois law, he would be required to register as a sex offender in the community and the defendant is 17 years old. Apparently, there's no parent or guardian available to be with him today in court.

I did take the time to explain to him the consequences of the plea and all the collateral conditions. Pursuant to that, your Honor, the defendant does wish to plead guilty to the complaints."

¶ 5 The trial court admonished defendant regarding the nature of the charges against him, the possible sentencing ranges, and the rights he was giving up by pleading guilty. Defendant indicated that he understood, that he had signed five jury waivers, and that no threats or promises were made in order to induce him to plead guilty. The State then presented and defense counsel

stipulated to a factual basis for each of the pleas. After defendant indicated that he still wished to plead guilty, the trial court found that he understood the nature of the charges and possible penalties, that he knowingly waived his rights, that there was a factual basis for the pleas, and that the pleas were voluntary. Finally, defendant declined an opportunity to speak in allocution. The trial court accepted and entered judgment on defendant's guilty pleas, imposing the agreed-upon sentence of two years of conditional discharge and 30 days of community service on each charge, all sentences to run concurrently.

¶ 6 The trial court thereafter admonished defendant that if he wished to change his plea to not guilty, he "must within 30 days of today's date file a written petition with the court setting forth your reasons for asking that the plea of guilty be vacated." The court admonished defendant that if the guilty plea was vacated, a plea of not guilty would be entered and the matter would be set for trial or hearing. The court also advised defendant that if he could not afford an attorney, one would be appointed and he would be provided a free transcript. Defendant indicated that he understood and also signed a form acknowledging his desire to plead guilty, his understanding of the rights he was giving up, and his understanding of the requirements to perfect an appeal.

¶ 7 Over 13 years later, on November 5, 2012, defendant filed a motion to withdraw his guilty pleas, alleging that his pleas were not made voluntarily and intelligently. Specifically, defendant asserted that trial counsel and the trial court failed to advise him that he would have to register as a "sexual predator" for natural life, as opposed to 10 years, and that he found out about the lifetime registration requirement only when the Illinois State Police sent him a letter to that effect on August 20, 2009. Defendant alleged that had he been advised of the lifetime registration requirement earlier, he would not have pleaded guilty. Defendant acknowledged that

his motion to withdraw his guilty pleas was not filed within 30 days of sentencing, but argued that his case fell within an exception to that deadline due to the "lack of admonishments."

¶ 8 The State filed a motion to dismiss, arguing that the trial court lacked jurisdiction to consider defendant's motion to withdraw his guilty pleas because it was not filed within 30 days of sentencing, and that no exception to the 30-day filing requirement applied. In the alternative, the State argued that defendant had failed to establish the prejudice prong of a claim of ineffective assistance of counsel because he had not set forth a claim of actual innocence or offered a plausible defense to the charges against him.

¶ 9 At a hearing on defendant's motion to withdraw his guilty pleas, defendant testified that at the time he pleaded guilty, the trial court failed to admonish him that as a result of his pleas, he would be deemed a "sexual predator" and would have to register as such for life. He further testified that his attorney had advised him he would have to register as a sex offender for 10 years, and that he first learned he would have to register for life when he received the August 20, 2009, letter from the Illinois State Police. Defendant stated that if he had known about the lifetime registration requirement, he would not have pleaded guilty. At the time he entered his plea, he believed the reporting requirement would expire when he was 27, a time when he planned to start a family and "put this behind me." On cross-examination, defendant testified that if he had gone to trial instead of pleading guilty, his defense would have been consent. However, he also acknowledged that he was aware age and consent are not a viable defense to charges of criminal sexual abuse.

¶ 10 Following counsels' arguments, the trial court determined that it did not have jurisdiction to consider defendant's motion to withdraw his guilty pleas and denied the motion.

¶ 11 On appeal, defendant contends that the trial court abused its discretion in not allowing him to withdraw his guilty plea. Defendant argues that trial counsel was ineffective for failing to advise him that a consequence of his plea was lifetime registration as a sex offender. He asserts that counsel's conduct was deficient because counsel failed to ensure that his plea was entered voluntarily and intelligently, and that he was prejudiced because he would not have pleaded guilty had he known about the requirement of lifetime registration. Defendant suggests for the first time in his brief in this court that if he had gone to trial, he would have presented the "plausible defense" that at 17 years old, he did not believe he was an adult under the law. Although defendant acknowledges that his motion was not filed within 30 days of sentencing, he maintains that because the trial court failed to properly admonish him about lifetime registration, he is exempt from the 30-day filing requirement.

¶ 12 Under Supreme Court Rule 604(d) (eff. Dec. 11, 2014), a defendant who wishes to appeal from a judgment entered on a guilty plea must first file, within 30 days of sentencing, a written postplea motion with the trial court. *People v. Claudin*, 369 Ill. App. 3d 532, 533 (2006). In cases where more than 30 days have elapsed since sentencing and the trial court has not granted an application for extending the limitation period, the trial court is divested of jurisdiction to entertain a defendant's motion to withdraw his guilty plea. *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40-41 (2011); *People v. Flowers*, 208 Ill. 2d 291, 302-03 (2003). Here, defendant filed his motion more than 13 years after sentence was imposed and the trial court had not granted an application for extension. Accordingly, the trial court properly found that it lacked jurisdiction to consider the motion.

¶ 13 As noted above, defendant acknowledges that his motion to withdraw his guilty pleas was untimely, and that "generally," a lapse of more than 30 days divests the trial court of jurisdiction. Nevertheless, defendant argues that exceptions to this requirement have been made where the trial court failed to properly admonish the defendant pursuant to Rule 605, and implies that the "admonition exception" should apply to him because the trial court failed to admonish him as to his duty to report as a sexual predator for natural life. Defendant's argument is misplaced. Under the admonition exception to the postplea motion requirement, where a circuit court fails to give Rule 605 admonishments regarding the right to an appeal and the defendant thereafter attempts to appeal without first filing a Rule 604(d) motion, the appellate court must remand the cause for strict compliance with Rule 604(d). *Skryd*, 241 Ill. 2d at 41. Thus, the admonition exception is for the *reviewing court* to apply in cases where the defendant files a timely notice of appeal without first complying with Rule 604(d)'s condition precedent of filing a postplea motion in the circuit court. *Skryd*, 241 Ill. 2d at 42. The admonition exception does not restore jurisdiction to the *circuit court* after 30 days from the entry of judgment. *Skryd*, 241 Ill. 2d at 42. Even if a trial court has erred by failing to give sufficient Rule 605 admonishments, that error does not render the circuit court's judgment void so that the defendant can raise the issue at any time. *Skryd*, 241 Ill. 2d at 42.

¶ 14 In the instant case, defendant filed an untimely motion to withdraw his guilty pleas. Because the circuit court's jurisdiction over defendant's guilty pleas had long since lapsed, the court's determination that it had no jurisdiction over the matter was correct. Moreover, even if, *arguendo*, defendant had filed a timely notice of appeal, the admonition exception would not

have applied to save his appeal because Rule 605 does not require circuit courts to admonish defendants regarding sex offender registration. Defendant's arguments fail.

¶ 15 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 16 Affirmed.