

FOURTH DIVISION
June 11, 2015

No. 1-13-1325

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. 13 CR 854
)	
SHEILA ROGERS,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Where defendant was substantially admonished of her postplea rights pursuant to Supreme Court Rule 605(c), but she failed to file a motion to withdraw her guilty plea, her appeal challenging her plea for lack of a factual basis was dismissed.
- ¶ 2 Defendant Sheila Rogers entered a negotiated plea of guilty to one count of retail theft and was sentenced to a 30-month term of probation with conditions. On appeal, she contends the

trial court failed to admonish her properly of her rights pursuant to Supreme Court Rule 605(c) (eff. Oct. 1, 2001) in that the court did not inform her of her right to counsel and a free transcript to assist her in preparing a postplea motion. Defendant also contends the record lacked a factual basis to support the entry of her guilty plea. We dismiss the appeal.

¶ 3 Defendant was charged with one count of retail theft. She requested, and the court agreed to hold, a conference pursuant to Supreme Court Rule 402 (eff. July 1, 2012). When the case was recalled after the conference, the court admonished defendant of the range of penalties she faced and the rights she was giving up by pleading guilty, and she indicated she understood. Defendant stated that she was pleading guilty of her own free will. Defendant acknowledged that she was present at the 402 conference, which was conducted off the record, and heard everything that was said. Then the court asked: "Do the parties stipulate that the factual basis in the conference is sufficient to support the plea?" Attorneys for the parties responded in the affirmative. The court found that defendant understood the nature of the charges against her and possible penalties, her plea was given freely and voluntarily, and a factual basis existed to support the guilty plea. The court accepted defendant's plea and sentenced her to 30 months of intensive probation with the first 120 days in the Women's Justice Residential Program, 130 hours of community service, credit for time considered served and actually served, and fines, fees and costs. Then the court admonished defendant as follows:

"Ma'am, you have a right to appeal. However, before you can appeal my decision, within 30 days of today's date, you must file with the Clerk of the Circuit Court, a written motion to withdraw your plea of guilty and vacate the judgment. In the motion you must state all the reasons why you wish to withdraw your guilty plea.

If the Court grants the motion, the Court will enter it and set your guilty plea, sentence and judgment aside and set your case for trial. However the charges dismissed per the agreement will be reinstated and also set for trial.

If the Court denies your motion, you have 30 days from the date of that denial to file a notice of appeal. Any issue or claim not raised in there would be waived for appeal purposes. If you are indigent, a copy of a transcript of today's proceedings at the time of pleading guilty will be provided to you free of charge, and you will be provided an attorney to assist you in the preparation of the motion free of charge."

¶ 4 Defendant acknowledged that she understood her appeal rights. She did not attempt to file a motion to withdraw her plea. Instead, she filed a notice of appeal 28 days later.

¶ 5 On appeal, defendant contends the trial court failed to properly admonish her of her appellate rights and, consequently, this court should remand for proper admonishments and the opportunity to file a motion to withdraw her guilty plea. Specifically, she contends the admonishments were insufficient because the trial court failed to inform her that she had the right to counsel and a copy of the transcript to assist her in preparing her postplea motion. Instead, she asserts, the court informed her that she was entitled to such assistance only in the event that her postplea motion was denied and she appealed. The State responds that the trial court substantially complied with Rule 605(c) and that we should dismiss defendant's appeal where she failed to file a motion to withdraw her plea under Supreme Court Rule 604(d) (eff. Feb. 6, 2013).

¶ 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 imposed, files in the trial court *** a motion to withdraw the plea of guilty and vacate the judgment." The failure to file a timely motion to withdraw a guilty plea under Rule 604(d) requires dismissal of an appeal from a conviction on a plea of guilty. *People v. Tejada-Soto*, 2012 IL App (2d) 110188, ¶ 19. However, under the admonition exception to Rule 604(d), the defendant's noncompliance with the rule's requirements will not result in the dismissal of the appeal if the trial court failed to advise the defendant of the procedural steps necessary to perfect an appeal as set forth in Rule 605. *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). In that event, the appropriate course is to remand the cause for proper admonishments. *Id.*; *People v. Dominguez*, 2012 IL 111336, ¶ 11.

¶ 7 The plain meaning of the rule requires only that defendant be "substantially" advised of the actual content of the rule. *Dominguez*, 2012 IL 111336 at ¶ 11 That is, "the court 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." *Id.* at ¶ 19. So long as the 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 the defendant the essence or substance of the rule and the trial court has substantially complied with Rule 605. *Id.* at ¶ 22. We review *de novo* the trial court's compliance with the rule. *Id.* at ¶ 13.

¶ 8 Here, where defendant entered a negotiated guilty plea, the trial court was required by Rule 605(c) to admonish her of the conditions that must be satisfied before an appeal might be taken. Rule 605(c)(5) provides "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;"

¶ 9 We agree with the State that our disposition of defendant's claim of error is controlled by our supreme court's decision in *Dominguez*. There, the defendant also challenged the trial court's Rule 605 admonishments based, *inter alia*, on the court's failure to inform him that he had the right to the assistance of counsel, together with transcripts, in preparing his postplea motions. There, as in the instant case, the defendant claimed the court implied that counsel was available only after postplea proceedings. *Id.* at ¶ 47. The court had admonished him of the necessity of filing written motions to vacate plea and/or reconsider sentence within 30 days. *Id.* at ¶ 41. The trial court continued: "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.* at ¶ 46. The supreme court noted that while the trial court "arguably did not explicitly inform defendant that he was entitled to have an attorney appointed to help him prepare the postplea motions ***, the admonitions reflect that a court-appointed attorney would be available for defendant." *Id.* at ¶ 51. The court concluded that the trial court's admonishments did convey the substance of the rule to the defendant and complied with Rule 605(c). *Id.*

¶ 10 Defendant contends *Dominguez* is distinguishable because the defendant in that case was given both oral and written admonishments of his rights. However, we note that in finding the oral 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 822 (2003), neither of which involved written

admonishments. We reject defendant's contention that the supreme court's opinion in *Dominguez* relied heavily on the fact the defendant there was also provided with a written copy of the admonishments.

¶ 11 In the instant case, the trial court stated: "If you are indigent, a copy of a transcript of today's proceedings at the time of pleading guilty will be provided to you free of charge, and you will be provided an attorney to assist you *in the preparation of the motion* free of charge." (Emphasis added.) Defendant was put on notice that a court-appointed attorney and a transcript of the guilty plea would be available for her. Here, more than in *Dominguez*, the oral admonishment, standing alone, clearly conveyed the substance of the rule where defendant was advised that counsel and the transcript would be provided to help her prepare "the motion" to withdraw her plea. Defendant was substantially admonished under Supreme Court Rule 605(c). Thus, defendant's failure to file a timely motion to withdraw her plea cannot be excused by the admonition exception to Rule 604(d).

¶ 12 Defendant also contends the trial court failed to comply adequately with the requirements of Supreme Court Rule 402(c) (eff. July 1, 2012) when it accepted a stipulation to the factual basis by the parties' attorneys that was based on an exchange off the record. She asserts the record reflects no basis to support her guilty plea in that the stipulation was not sufficient to show the factual basis. Because we have found that defendant was substantially admonished under Rule 605(c) and failed to file a written motion to withdraw her guilty plea before filing her notice of appeal, we cannot consider this appeal on its merits, but dismiss it for defendant's failure to comply with Rule 604(d). *Flowers*, 208 Ill. 2d at 301.

¶ 13 Appeal dismissed.