

No. 1-13-1483

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 CR 860
)	
LATANNYA BANKS,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Pucinski and Justice Lavin concurred in the judgment.

O R D E R

¶ 1 *Held:* Where trial court failed to substantially admonish defendant of her appellate rights under either Supreme Court Rule 605(b) or (c), her failure to file a timely motion to withdraw her plea is excused by the "admonition exception"; case remanded for proper admonishments.

¶ 2 Defendant LaTannya Banks entered a guilty plea on one count of retail theft and was sentenced to a term of 18 months' probation. On appeal defendant contends that her failure to file a postplea motion should not preclude this appeal because the trial court improperly admonished her of her appellate rights. We agree and remand.

¶ 3 In January 2012, defendant was charged by information with one count of retail theft. On August 7, 2012, following a plea conference, defendant informed the trial court that she would not be accepting the plea deal because she was concerned that she would lose her housing. But defendant later reconsidered and informed the court on March 27, 2013 that she would accept the prior offer of probation in exchange for her plea of guilty to a Class 4 charge of retail theft. A guilty plea hearing ensued, during which the trial court admonished defendant regarding, *inter alia*, the charge against her and the applicable sentencing range. After ascertaining that she was pleading guilty freely and voluntarily, the trial court accepted defendant's guilty plea and sentenced her to 18 months' probation. The trial court then stated:

"[Y]ou have the right to appeal. You have the right to request the clerk to prepare and file a notice of appeal. Your right to appeal the judgment and conviction will be preserved only if a notice of appeal is filed in the trial court within 30 days from the date on which sentence is imposed. However, prior to taking your appeal, if you cho[o]se to challenge the correctness of the sentence or any aspect of your sentencing hearing, you must file within 30 days of today's date a written motion to reconsider the sentence imposed or to consider any challenges to the sentencing hearing, setting forth in the motion all issues or claims of error regarding the sentence imposed at the sentencing hearing. Any issues or claim of error regarding the sentence imposed or any aspect of the sentencing hearing not raised in the written motion shall be deemed waived. Within 30 days of the court's ruling disposing of your motion to reconsider sentence or challenges to the sentencing hearing, if you then wish to appeal, you must file or request the clerk of the court to prepare and file in the trial court a

written notice of appeal. If you could not afford the cost of an attorney for the motions or the appeal or the cost of any transcripts you would need for the motion or the appeal, they would be provided to you free of cost."

Although defendant did not file a postplea motion of any kind, she filed a timely notice of appeal on April 25, 2013.

¶ 4 In this court, defendant acknowledges that due to her failure to file a motion to withdraw her guilty plea, as required under Supreme Court Rule 604(d) (eff. July 1, 2006), she would ordinarily be precluded from challenging her guilty plea on appeal. But she maintains that due to the insufficiency of the trial court's admonishments pertaining to her appellate rights, her noncompliance is excused by the "admonition exception." The State contends that defendant's appeal must be dismissed due to her failure to comply with Rule 604(d).

¶ 5 In general, a guilty plea defendant is required to file a proper postplea motion as a condition precedent to filing an appeal. S. Ct. Rule 604(d) (eff. July 1, 2006). Where a postplea motion is not filed, the appeal should be dismissed. *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). An exception to dismissal applies where the trial court failed to properly admonish the defendant regarding the appeal process as required by Supreme Court Rule 605 (eff. Oct. 1, 2001) (*Flowers*, 208 Ill. 2d at 301). A trial court's admonishments will be deemed insufficient where the court has omitted the substance of the rule (*People v. Dominguez*, 2012 IL 111336, ¶¶ 11, 19, 22). We review *de novo* the question of a trial court's compliance with supreme court rules. *Dominguez*, 2012 IL 111336, ¶ 13.

¶ 6 The initial inquiry in reviewing the propriety of the admonishments is to determine the type of guilty plea entered because a negotiated plea is governed by Rule 605(c) and an open plea is governed by Rule 605(b). Here, the parties suggest that the plea was probably negotiated,

but the record does not conclusively establish this fact. We note that in *People v. Smith*, 406 Ill. App. 3d 879, 892 (2010), this court rejected the contention that a plea is an open plea, rather than a negotiated plea, when, as here, it is the result of a Supreme Court Rule 402 (eff. July 1, 2012) conference in which the trial court participated. Nevertheless, we need not definitively determine whether this plea was negotiated or open because the fatal flaw in the trial court's admonishments here applied to either type of plea. As can be plainly seen in the above quoted admonishment, the court improperly failed to reference a motion to withdraw a guilty plea, a necessary component of proper admonishments with respect to either type of plea.

¶ 7 In a negotiated plea, the defendant is required to file a motion to withdraw the plea before appealing. Rule 605(c) expressly states, in relevant part, that the trial court is required to substantially advise a defendant 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." S. Ct. R. 605(c)(2) (eff. Oct. 1, 2001). Accordingly, if the plea was negotiated, the trial court erred in not admonishing defendant of this requirement.

¶ 8 In turn, Rule 605(b) expressly states, in relevant part, that in an open plea, the trial court is required to substantially advise a defendant 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 trial court reconsider the sentence *or* to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion." S. Ct. R. 605(b)(2) (eff. Oct. 1, 2001) (emphasis added). Accordingly, if the plea was open, the trial court erred in not admonishing defendant that she had the *option* of filing either a motion to challenge the sentence or a motion to withdraw the plea.

¶ 9 In reaching this conclusion, we have considered *In re J.T.*, 221 Ill. 2d 338 (2006), *People v. Claudin*, 369 Ill. App. 3d 532, 534-35 (2006), *People v. Crump*, 344 Ill. App. 3d 558, 562-63 (2003), and *People v. Wyatt*, 305 Ill. App. 3d 291, 295-96 (1999), which the State cites for the proposition that defendant suffered no prejudice because the trial court's admonishment was sufficient to put her on notice that some action on her part was necessary within 30 days if she wished to appeal. The State posits that given defendant's failure to file any postplea motion, she cannot demonstrate that she would have acted differently had the trial court advised her of the necessity of filing a motion related to her guilty plea. But in each of these cases, unlike here, the trial court admonished the defendant that he or she would need to file a motion to withdraw their guilty plea prior to filing an appeal. *In re J.T.*, 221 Ill. 2d at 342-43 ("You first have to file a petition before me asking me to allow you to withdraw your admission"), *Claudin*, 369 Ill. App. 3d at 533 ("You have a right to appeal. In order to do so you must first file a motion to withdraw your plea of guilty ***"), *Crump*, 344 Ill. App. 3d at 560 ("[B]efore you file a notice of appeal, you must file *** within 30 days *** a written motion asking to have your guilty pleas withdrawn ***"), *Wyatt*, 305 Ill. App. 3d at 295 (where Rule 605(b) applied, trial court admonished defendant "you must file within 30 days your motion to either withdraw your plea of guilty, motion to reconsider the sentence ***"). Here, although the trial court's admonishments referenced the need to file a motion to reconsider defendant's sentence, they did not include an admonishment regarding the necessity of filing a motion to withdraw defendant's guilty plea. Thus, the cases cited by the State are distinguishable.

¶ 10 In sum, in light of the flawed admonishments, we find that the admonition exception applies and remand the cause for new admonishments. Notably, the trial court should first

1-13-1483

definitively determine what type of plea was entered and then provide the appropriate admonishments to defendant.

¶ 11 Cause remanded with directions.