SIXTH DIVISION
June 5, 2015

No. 1-13-2159

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. 10 CR 19678
	)	
ANDREW MARTIN,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

O R D E R

¶ 1 *Held*: Where defendant failed to properly file a motion to withdraw his guilty plea before filing a notice of appeal, the appeal was dismissed.

¶ 2 Defendant Andrew Martin entered a negotiated plea of guilty to one count of attempted first degree murder and was sentenced to 17 years' imprisonment. On appeal, defendant contends that this court should remand his cause to the circuit court for proper admonishments and the opportunity to file a motion to vacate his guilty plea because the trial court's admonishments did not substantially comply with Illinois Supreme Court Rule 605(c) (eff. Oct 1, 2001).

¶ 3 Defendant was charged with one count of attempted first degree murder, two counts of heinous battery, two counts of aggravated domestic battery, and two counts of aggravated battery. These charges stemmed from an incident on August 20, 2010, where defendant poured flammable liquid on his girlfriend, Lashonda Floyd, and lit Floyd on fire, causing burns to 40% of her upper body including her hands, chest, back, and face.

¶ 4 In March 2012, defendant requested that his attorney participate in a plea negotiation conference with the State and judge pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997). After the conference, the court offered defendant a 20-year sentence in exchange for a plea of guilty to heinous battery. The court held the offer open while defendant underwent surgery. On subsequent court dates, there was no mention of the outstanding plea offer as the matter was continued multiple times and ultimately set for a jury trial on April 30, 2013. On that date, at defendant's request, the parties and the court re-opened the Rule 402 conference. This time, the court offered defendant 17 years in exchange for a plea of guilty to attempted first degree murder. Defendant indicated that he wished to accept the plea offer. The court admonished defendant of the rights he was waiving by pleading guilty, and the parties stipulated to the facts, agreeing that the evidence would establish the offense of attempted first degree murder beyond a reasonable doubt. The court accepted the plea offer, indicated the State would be dismissing the remaining counts, and sentenced defendant per the agreement.

¶ 5 After sentencing him, the court admonished defendant as follows:

> "All right. Sir, even though you pled guilty, you still do have a right to appeal. In order to do that, though, you have to file in this court within 30 days of today's date — excuse me one second — (Whereupon, an off the record discussion was had.)

Ok, back on the record.

You would have to file first some type of a written motion or petition that would have to ask me to either reconsider the sentence I've imposed; otherwise, you may ask that the judgment of conviction that I have entered against you today be vacated and/or you may ask for leave of court to withdraw your plea of guilty. In filing any of those motions, you must set forth in writing the grounds, or in other words, the reasons as to why I should grant it. If you do not provide me with the grounds in your written motions, you have waived them. That means you would [be] unable to ever pursue those grounds in the future. If, however, your motions were granted, I will vacate the plea, the sentence and the conviction, and then I would set the case down for trial. Before the trial, I would allow the State to reinstate all of the other charges that they dismissed as a result of your plea of guilty to Count 1.

If you could not afford a lawyer to assist you with these motions that I just s[p]oke of, then I would appoint one at no cost to you and I would provide you with a free copy of the transcript of everything that has taken place today regarding our plea and sentence. Again, sir, be aware if you fail to place those grounds or reasons in your written motion or motions asking me to reconsider the sentence or allow you to withdraw your plea of guilty, if you fail to file those motions within 30 days of today's date in writing in this court, then you are permanently barred from ever being able to file them in the future. And that would prevent you from ever being able to appeal any decision of this court to a higher court. Do you understand your post plea and your [a]ppellate rights, sir?"

Defendant acknowledged that he understood the court's admonishments.

¶ 6 Defendant did not file any post-plea motions. However, on May 22, 2013, defendant placed a notice of appeal in the institutional mail. In a written statement that accompanied the notice of appeal, defendant indicated that his public defender "turned" on him before trial and that his public defender and the assistant State's Attorney frightened him into pleading guilty with the prospect of never leaving prison. Defendant alleged that he did not know what was happening until after the plea hearing, and further maintained that the assistant State's Attorney spoke to him in the bullpen while his public defender was not present. This appeal follows.

¶ 7 On appeal, defendant asserts that his failure to file a motion to withdraw his guilty plea is excused because the circuit court failed to provide adequate post-plea admonishments. Defendant maintains that the trial court improperly admonished him as though he had entered an open guilty plea pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001), instead of a negotiated guilty plea pursuant to Rule 605(c). The State responds that no relief is warranted because the trial court substantially complied with Rule 605(c) by informing defendant that he would have to first file a motion before filing a notice of appeal. We review *de novo* the trial court's compliance with Rule 605. *People v. Dominguez*, 2012 IL 111336, ¶ 13.

¶ 8 Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013), provides, in pertinent part, that "[n]o appeal shall be taken upon a negotiated plea of guilty *** unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment." Defendant's compliance with Rule 604(d) is a condition precedent to an appeal from a plea of guilty (*People v. Wilk*, 124 Ill. 2d 93, 105 (1988)), and his failure to file a post-plea motion can result in the loss of his right to direct appeal (*People v. Flowers*, 208 Ill. 2d 291, 301

(2004)). Defendant seeks to avoid losing his right to direct appeal by invoking the admonitions exception to filing a timely Rule 604(d) motion where the trial court fails to substantially admonish defendant in accordance with Rule 605(c). *Flowers*, 208 Ill. 2d at 301.

¶ 9 Rule 605(c) provides, in pertinent part, that where a judgment is entered upon a negotiated plea of guilty, the trial court shall advise the defendant:

> "(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." Ill. S. Ct. R. 605(c)(2) (eff. Oct 1, 2001).

¶ 10 Here, we find defendant was fully advised in accordance with Rule 605(c). Although the court did not use the exact language of the rule, it advised defendant that he was required to file a post-plea motion within 30 days, and if he failed to do so, he would be barred from appealing its decision. Furthermore, the trial court admonished defendant that he was required to set forth the grounds for withdrawing his plea, which he did, albeit in an attachment to his notice of appeal. In this way, the case at bar is similar to *Dominguez* where the supreme court concluded that "[s]o long as the court's admonitions were sufficient to impart to a defendant the essence or substance of the rule, the court has substantially complied with the rule." *Dominguez*, 2012 IL 111336, ¶ 22; see also *People v. Gougisha*, 347 Ill. App. 3d 158, 162 (2004) (stating that trial courts are not required to use the exact language of the rule).

¶ 11 In reaching this conclusion, we find unpersuasive defendant's argument that remandment to the trial court for proper admonishments and the opportunity to file an appropriate posttrial motion is necessary where the court erroneously admonished him according to Rule 605(b),

which is applicable to open not negotiated pleas. We acknowledge that in addition to admonishing defendant of Rule 605(c), the court also admonished him pursuant to Rule 605(b) when it stated that defendant could alternatively file a motion to reconsider his sentence. See Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001) (stating that if the plea was non-negotiated, the defendant has the option of filing a motion asking the court to reconsider the sentence without asking to have the plea withdrawn). However, as pointed out by the State, it is significant to note that defendant did not file a motion to reconsider his sentence, or any other post-plea motion. Being admonished of additional rights does not explain or excuse defendant's failure to file his pleading in the trial court as he was clearly advised to do. See *In re J.T.*, 221 Ill. 2d 338, 348 (2006) (finding that although the admonishments given to the defendant did not strictly comply with Rule 605(c), the defendant was 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"). In this way, *People v. Young*, 387 Ill. App. 3d 1126, 1129 (2009), relied on by defendant, is distinguishable from the case at bar where we remanded the defendant's cause for readmonishment and the opportunity to file a new post-plea motion because the defendant actually filed a timely motion to reconsider his sentence after the trial court improperly admonished him pursuant to Rule 605(b).

¶ 12 Defendant next contends that the trial court improperly admonished him that he "may" file a motion to vacate the judgment and withdraw his plea when said requirement was mandatory under Rule 605(c). In so arguing, defendant ignores the trial court's admonishments that he:

> "[W]ould have to file first some type of a written motion or petition that would have to ask me to either reconsider the sentence I've imposed; otherwise you may ask that

> the judgment of conviction that I have entered against you today be vacated and/or you may ask for leave of court to withdraw your plea of guilty. ***
>
> [I]f you fail to file those motions within 30 days of today's date in writing in this court, then you are permanently barred from ever being able to file them in the future. And that would prevent you from ever being able to appeal any decision of this court to a higher court."

¶ 13 We agree with the State that defendant's argument takes the use of the words "may" and "and/or" by the trial court out of context to suggest that it indicated to him that a post-plea motion was "allowable but not necessary" to perfect an appeal, and he could file either a motion to vacate the judgment or a motion to withdraw the plea instead of a motion asking for both as required by law. When read in context, the above quotes make clear that appealing directly to this court was not an option until defendant filed his motion in the trial court. This case is thus distinguishable from *People v. Castillo*, 243 Ill. App. 3d 818 (1993), and *People v. Cochrane*, 257 Ill. App. 3d 1047 (1994), relied on by defendant, because the trial courts' admonishments in those cases did not include any warning that the defendants' failure to file post-plea motions would prevent them from ever being able to appeal, as the court expressly advised defendant in the instant case. See *Castillo*, 243 Ill. App. 3d 819-820; *Cochrane*, 257 Ill. App. 3d at 1048-49.

¶ 14 Accordingly, we must dismiss defendant's appeal where he was adequately admonished by the trial court of his appeal rights under Rule 605(c), but nevertheless failed to file a motion to withdraw his guilty plea. See *Flowers*, 208 Ill. 2d at 301 (stating that a defendant's failure to file a timely Rule 604(d) motion following a plea of guilty generally results in the appellate court dismissing the appeal).

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

¶ 16 Dismissed.