

No. 1-13-2720

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 DV 51485
)	
SHERI L. FORILLO,)	Honorable
)	Sheila McGinnis,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Fitzgerald Smith concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's failure to file a motion to withdraw her guilty plea pursuant to Supreme Court Rule 604(d) (eff. Feb. 6, 2013) requires dismissal of her appeal where trial court's admonishments informing defendant that she was required to file a postplea motion to preserve her appeal substantially complied with Supreme Court Rule 605(c) (eff. Oct. 1, 2001).

¶ 2 Defendant Sheri Forillo was charged by information with one count of domestic battery and one count of violating an order of protection. Following a conference pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012), she pleaded guilty to both charges and the trial court sentenced her to 200 days' incarceration, time served. Defendant did not file a postplea motion as

required by Supreme Court Rule 604(d) (eff. Feb. 6, 2013). On appeal, defendant attempts to avoid the dismissal generally required by *People v. Flowers*, 208 Ill. 2d 291 (2003), by contending that the trial court's postplea admonishments did not substantially comply with Supreme Court Rule 605(c) (eff. Oct. 1, 2001).

¶ 3 On January 9, 2013, the trial court held a Rule 402 conference at defendant's request. Defendant was offered a sentence of 200 days' incarceration with time served. Following the conference, defendant indicated that she was willing to accept the discussed terms.

¶ 4 On August 1, 2013, defendant pleaded guilty to both charges. The trial court admonished defendant of the nature and possible consequences of the charges, as well as the rights she was giving up by pleading guilty. The State presented a factual basis, stating that on November 27, 2012, defendant rang Carl Unnerstall's doorbell and kicked him in the shin, causing a laceration. At the time, Unnerstall was defendant's boyfriend and had an order of protection against her. Defendant stipulated to the State's assertion and the trial court found that there was a factual basis for the charges. It also found that defendant's plea was knowing and voluntary and sentenced defendant pursuant to the agreement.

¶ 5 Following sentencing, the trial court further admonished defendant, stating:
"Even though you plead guilty here today, you have a right to appeal this order. To appeal, you have to file with the Clerk of Court within the next 30 days a written motion either asking this Court to reconsider the sentence it just imposed or asking to have the plea withdrawn and vacate the judgment entered here today. In either one of your motions, you have to put all reasons why you want the Court to reconsider your sentence or why you want to withdraw your guilty plea. If I grant the motion to reconsider your

sentence, we would hold a new sentencing hearing. If I grant your motion to withdraw your guilty plea, [the] plea will be set aside and charges would be reinstated and set for trial. If I deny those motions, within 30 days of that date, you would need to file a written notice of appeal. And any issue or claim of error not in – you did not put in those written motions would be given up for purposes of appeal.

If you cannot afford a copy of the transcript of the hearing, it would be provided to you free of cost, as well as the services of an attorney."

Defendant stated that she understood her rights to appeal.

¶ 6 Defendant did not file any postplea motions. She filed a notice of appeal on August 27, 2013.

¶ 7 Anticipating the State's argument that her failure to file a Rule 604(d) motion to withdraw her plea requires dismissal under *Flowers*, defendant contends on appeal that the trial court's postplea admonishments did not substantially comply with Rule 605(c), and thus her case must be remanded for proper admonishments. She argues that because Rule 604(d) only allows an appeal from a negotiated guilty plea where a defendant has filed a motion to withdraw his or her plea, the trial court's admonishments indicating that defendant could file either a motion to withdraw her plea or a motion to reconsider sentence were erroneous. She further argues that she is entitled to remand without a showing of prejudice, citing *People v. Perper*, 359 Ill. App. 3d 863 (2005).

¶ 8 The State responds that the defendant's failure to file a Rule 604(d) motion to withdraw her plea requires dismissal under *Flowers*. Citing *People v. Claudin*, 369 Ill. App. 3d 532 (2006), it argues that the trial court's admonishments substantially complied with Rule 605(c)

because they informed defendant that she was required to file some form of postplea motion within 30 days to preserve her appeal, and she failed to do so.

¶ 9 A plea resulting from a Rule 402 conference is considered a negotiated plea. *People v. Smith*, 406 Ill. App. 3d 879, 889 (2010). In order to appeal a judgment arising from a negotiated guilty plea, a defendant must first file in the trial court a written motion to withdraw the plea and vacate the judgment. Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). Typically, if a defendant fails to comply with Rule 604(d) the appellate court must dismiss the appeal. *Flowers*, 208 Ill. 2d at 301. While the appellate court retains jurisdiction in such a case, it is precluded from considering the merits of the appeal. *Id.* However, if the trial court fails to sufficiently admonish the defendant and he or she attempts to appeal without filing the requisite motion, the cause must instead be remanded for proper admonishment and compliance with Rule 604(d). See *id.*; *People v. Dominguez*, 2012 IL 111336, ¶ 11.

¶ 10 Rule 605(c) governs the trial court's admonishment of a defendant regarding Rule 604(d)'s requirements. *People v. Dunn*, 342 Ill. App. 3d 872, 877, (2003). The court must strictly comply with Rule 605(c) "in that the admonitions must be given to a defendant who has pled guilty." *Dominguez*, 2012 IL 111336, ¶ 11. However, the admonishment need not be verbatim; the court is only required to "substantially" advise a defendant of the contents of Rule 605(c). *Id.*; see also Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001). While the rule requires the trial court to advise a defendant of six propositions, defendant solely argues that the trial court failed to substantially admonish her of subsection (2) of Rule 605(c), which indicates that the trial court must substantially inform the 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." Ill. S. Ct. R. 605(c)(2) (eff. Oct. 1, 2001).

We review compliance with a Supreme Court Rule *de novo*. See *Dominguez*, 2012 IL 111336, ¶ 13.

¶ 11 In *People v. Claudin*, 369 Ill. App. 3d 532 (2006), this court considered whether a trial court's admonishments substantially complied with Rule 605(c). In that case, the trial court advised the defendant that in order to appeal his negotiated plea, he first had to file "a motion to withdraw [his] plea of guilty, modify or reconsider the sentence." *Id.* at 533. The defendant, however, filed a notice of appeal without filing any postplea motions. *Id.* The appellate court noted that the defendant's appeal rights would not have been preserved by only filing a motion to modify or reconsider his sentence, and that the trial court's mention of such a motion was "extraneous and incorrect." *Id.* at 534. The court further explained, however, that the admonishments, when read in context, established that the trial court conveyed the substance of the rule by putting the defendant on notice that he had to file some type of postplea motion within 30 days. *Id.*, citing *In re J.T.*, 221 Ill. 2d 338 (2006). Thus, the defendant's failure to file a Rule 604(d) motion was not excused by the admonishment exception and he had waived the right to a direct appeal. *Id.* at 535; see also *People v. Crump*, 344 Ill. App. 3d 558, 562-63 (2003) (holding that admonishments substantially complied with rule where the defendant was not prejudiced by omitted verbiage).

¶ 12 Our supreme court's ruling in *In re J.T.*, 221 Ill. 2d 338 (2006), is similarly instructive. In that case, the minor defendant pleaded guilty to criminal damage to property following a Rule 402 conference. *Id.* at 342. Following the plea, the trial court admonished the defendant, but did not specifically inform him of his right to an attorney in the preparation of postplea motions, the requirement to set forth the grounds for withdrawal in the motion, the waiver of any grounds not raised, and the potential reinstatement of any dismissed charges. *Id.* at 342-43. The defendant later violated his probation and was incarcerated. *Id.* at 343-44. He appealed the revocation of his probation, arguing that his plea was void because the trial court had failed to properly admonish him under the supreme court rules, but he did not file a notice of appeal or a motion to withdraw his plea. *Id.* In determining whether to grant the defendant's request for supervisory relief, the supreme court held that "fundamental fairness" did not require relief because the defendant was not prejudiced where he had taken "no action whatsoever." *Id.* at 347-48. It reasoned that "[w]hile these admonitions did not strictly comply with Rule 605 (c), they were sufficient to put [defendant] 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." *Id.* at 348.

¶ 13 Defendant asks this court to reject *Claudin* as wrongly decided and argues that the reasoning in *In re J.T.* should be narrowly limited to the supreme court's exercise of its supervisory authority. We find these arguments unpersuasive. The Illinois Supreme Court recently cited both *Claudin* and *In re J.T.* favorably while determining whether a trial court's admonishments substantially complied with Rule 605(c). *Dominguez*, 2012 IL 111336, ¶ 54. In *Dominguez*, the supreme court clarified that the rule did not require admonishments to include "a strict verbatim reading of the rule," but rather "[s]o long as the [trial] 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, ¶¶ 19-22. In so holding, the supreme court relied upon the reasoning *In re J.T.* beyond the context of supervisory authority, noting that "[i]n *In re J.T.* we found that a circuit court's Rule 605(c) admonishments to a juvenile defendant satisfied the rule where the admonishments, while not perfect, largely specified the essence of the rule." *Id.*, ¶ 20, citing *In re J.T.*, 221 Ill. 2d at 347-48. Given the supreme court's favorable treatment of both *In re J.T.* and *Claudin*, we disagree with defendant's assertion that the cases are inapplicable to the present facts.

¶ 14 Defendant also argues that the Second District's holding in *People v. Perper*, 359 Ill. App. 3d 863 (2005), is dispositive of her case. In *Perper*, the defendant pleaded guilty to driving on a suspended license, but the trial court's admonishments did not inform defendant that all issues not raised in a postplea motion would be waived, that a free transcript of proceedings would be made available to him, or that certain consequences would follow if he prevailed on such a motion. *Id.* at 866. The appellate court held that a defendant was not required to show prejudice where the trial court's admonishments did not strictly comply with Rule 605(b). *Id.* As an initial matter, we note that the facts in *Perper* are readily distinguishable from the present case, as the trial court in *Perper* completely omitted different admonishments required by Rule 605(b) that are not at issue in this case. See *id.* at 865-66. Moreover, we believe that supreme court's holding in *Dominguez* has cast the reasoning of *Perper* into doubt. In finding that remand was required regardless of prejudice, the Second District noted that strict compliance and remand are required in the context of Rule 605(b). *Id.* at 866. However, *Dominguez* explained that while a trial court must strictly comply with Rule 605(c) "in that the admonitions must be given to a

defendant," the court need only impart the "essence" of the rule. *Dominguez*, 2012 IL 111336, ¶¶ 11, 54.

¶ 15 We find no practical distinction between the facts in *Claudin* and the present facts. The trial court in the present case admonished defendant that she could file a motion to withdraw her plea or a motion to reconsider her sentence, despite the fact that only a motion to withdraw would have preserved her right to appeal under Rule 604(d). While this admonishment did not exactly follow the wording of Rule 605(c), it was sufficient to inform defendant that she could challenge her guilty plea, and that a postplea motion was required within 30 days if she wished to appeal. See *In re J.T.*, 221 Ill. 2d at 348. Nevertheless, defendant filed neither a motion to withdraw her plea nor a motion to reconsider her sentence. Because the admonishments put defendant on notice that such inaction would preclude her appeal, they "were sufficient to impart the essence or substance of the rule to defendant." See *Dominguez*, 2012 IL 111336, ¶ 54.

¶ 16 For the foregoing reasons, we find that the trial court's admonishments substantially complied with Rule 605(c). Therefore, defendant's failure to file a Rule 604(d) motion is not encompassed within the admonition exception and she has waived her right to a direct appeal. *Flowers*, 208 Ill. 2d at 301. Accordingly, this appeal is dismissed.

¶ 17 Appeal dismissed.