

THIRD DIVISION
June 17, 2015

No. 1-13-2998

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.)	Nos. 13 C6 60509
)	13 C6 608489
)	
KENNETH GREEN,)	Honorable
)	Luciano Panici,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

O R D E R

¶ 1 *Held:* The appellate court remanded for proper admonishments under Illinois Supreme Court Rule 605(c) following defendant's negotiated plea of guilty where the trial court erroneously admonished defendant under Rule 605(b).

¶ 2 Defendant Kenneth Green entered a negotiated plea of guilty to one count of burglary and one count of theft, and he was sentenced to consecutive prison terms of three years for burglary and one year for theft. On appeal, defendant contends the trial court erroneously gave him the admonishments of appeal rights for a non-negotiated plea of guilty under Supreme Court Rule

605(b) (eff. Oct. 1, 2001) rather than on a negotiated plea under Rule 605(c) (eff. Oct. 1, 2001), and that the court failed to inform him of his right to counsel to assist him in preparing a postplea motion. Defendant also asserts that this court should construe Supreme Court Rule 606(a) (eff. Feb. 6, 2013) to require the appointment of counsel to prepare a proper postplea motion when an indigent defendant who has pled guilty files a *pro se* notice of appeal. We remand with directions.

¶ 3 Defendant was charged in separate felony informations with one count of burglary and one count of theft. Pursuant to plea negotiations, defendant agreed to plead guilty to both charges in return for the State's recommendation of a prison term of three years for burglary and a consecutive one-year prison sentence for theft. At the change-of-plea hearing on August 19, 2013, the court read the charge from each information and defendant pled guilty to each charge. The court admonished defendant as to the range of penalties he possibly faced and the rights he was giving up by pleading guilty, and accepted his signed written jury waiver for each charge. The court found defendant's guilty plea was entered freely and voluntarily. Defendant's counsel stipulated to the detailed factual basis for the plea that the State presented on each charge. The court found a factual basis existed for each plea and entered a finding of guilty on each charge. Defendant waived his right to a presentence investigation report.

¶ 4 The court asked defendant if he wished to make a statement, and defendant responded, "I just wanted to ask if it was any type of alternative besides prison ***." The court responded:

"Sir, there was an agreement. You agreed to the sentence. I even read it to you as to what the sentence was, or as to what the agreement was. My understanding is three

years on the burglary and one year on the theft, and it's consecutive. That means one runs after the other. That is the agreement.

If you agree to that, that is what the sentence is going to be.

I am not going to change it. Now, if you don't want to accept it, I will vacate everything, and we'll start all over again. Is that what you want?"

¶ 5 Defendant responded, "No, your Honor." Then the trial court gave defendant the following admonishments:

"Now, Mr. Green, I want you to understand even though you plead guilty today, you have a right to an appeal. In order to appeal, you must within 30 days file with this Court a written motion asking this Court to reconsider the sentence or vacate the judgment being entered today, for leave to withdraw your plea of guilty setting forth in writing the grounds for the motion.

If the motion is allowed, the plea of guilty, sentence, and judgment will be vacated. A new trial date will be set on all the charges to which the State will seek to reinstate against you that have been dismissed as a result of this proceeding.

If you are unable to afford an attorney because you are indigent, one will be provided for you as well as a copy of the transcript of these proceedings that resulted in your plea of guilty and sentence. However, you must understand that if you fail or forget to put anything in your petition to vacate your plea of guilty or for the court to reconsider the sentence, it will be waived or given up for all times."

¶ 6 The trial court asked defendant if he understood his appeal rights. He responded, "Yes, your Honor." Defendant filed no motion to withdraw his guilty plea, and he filed no motion for reconsideration of his sentence. Instead, he filed a notice of appeal.

¶ 7 On appeal, defendant asserts that he failed to file any postplea motion because the court's admonishments did not substantially comply with Rule 605(c), which applies to negotiated pleas of guilty.

¶ 8 In general, Supreme Court Rule 604(d) (eff. Feb. 6, 2013) requires a defendant who is appealing from a plea of guilty to file a proper postplea motion within 30 days of the day sentence is imposed. *People v. Dominguez*, 2012 IL 111336, ¶ 12. Where a postplea motion is not filed, the appeal should be dismissed. *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). Defendant concedes that he did not file any postplea motion and, accordingly, his appeal should be dismissed.

¶ 9 However, defendant invokes the admonition exception, which applies where the defendant has failed to comply with the written postplea motion requirement of Rule 604(d) but the trial court has failed to properly admonish the defendant regarding the appeal process as required by Rule 605. *Id.* at 301. A trial court's admonishments will be deemed insufficient where the court has omitted the substance of the rule. *Dominguez*, 2012 IL 111336, ¶¶ 11, 19, 22. We must determine if the instant case is covered by the admonition exception, by determining whether the trial court complied with Rule 605(c), which applies where, as here, a negotiated plea was entered. We review *de novo* the question of a trial court's compliance with supreme court rules. *Id.* at ¶ 13.

¶ 10 Defendant observes that the court inaccurately advised him that he could file *either* a motion to reconsider the sentence *or* a motion to vacate the judgment and withdraw the plea of guilty. This option is available to a defendant who enters a non-negotiated plea. Ill. S. Ct. R. 605(b)(2) (eff. Oct. 1, 2001). In conjunction with this option, the court also advised defendant that any issue not raised in either of those motions would be waived. Ill. S. Ct. R. 605(b)(6) (eff. Oct. 1, 2001). However, the only option for a defendant who enters a negotiated plea is to file a motion to vacate the judgment and withdraw the guilty plea. Ill. S. Ct. R. 605(c)(2) (eff. Oct. 1, 2001). Consequently, in advising defendant that in order to appeal, he must *first* file a motion, the court's reference to a motion to reconsider the sentence was extraneous and incorrect. We agree with defendant that he could not preserve his appeal rights by filing only a motion to reconsider his sentence. Trial courts are held to strict compliance with Rule 605(c) admonishment requirements. *People v. Dunn*, 342 Ill. App. 3d 872, 881 (2003). Thus, when the trial court fails to admonish a defendant in accord with Rule 605(c), we must remand the cause to the trial court for the admonitions our supreme court rules require.

¶ 11 Defendant also asserts that the court did not substantially advise him of his right to have counsel appointed to assist in the preparation of any postplea motion pursuant to Rule 605(c)(5) (eff. Oct. 1, 2001), which 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." We need not address this issue as we are remanding this cause for proper Rule 605(c) admonishments, which include informing defendant that if he is indigent, counsel will be appointed to assist him with the preparation of the postplea motion.

¶ 12 Finally, defendant contends that this court should construe Rule 606(a) to require that when an indigent defendant convicted on a guilty plea files a *pro se* notice of appeal, he must be appointed counsel to prepare the proper postplea motion to perfect his appeal. This court rejected this very argument in *People v. Merriweather*, 2013 IL App (1st) 113789, ¶28, and we find no reason to depart from the analysis and result in *Merriweather*.

¶ 13 We find that the trial court failed to admonish defendant pursuant to Rule 605(c) and therefore the admonition exception to noncompliance with the postplea motion requirements of Rule 604(d) should be applied in this case. We must remand this cause to the trial court for proper admonishments in accord with Rule 605(c), including the admonishment under Rule 605(c)(5) to have counsel appointed if defendant is indigent to assist in the preparation of any postplea motion, and to allow defendant the opportunity to file a motion to withdraw his plea in compliance with Rule 604(d). If defendant files a postplea motion which the trial court denies, defendant may appeal the denial of that motion within 30 days. Accordingly, this cause is remanded with directions.

¶ 14 Remanded with directions.