

THIRD DIVISION
DATE

No. 1-13-3491

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 4530
)	
DARRYL HAWKINS,)	Honorable
)	Dennis J. Porter,
Defendant-Appellant.)	Judge Presiding.

JUSTICE _____ delivered the judgment of the court.
Justices _____ concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's appeal is dismissed because he did not file a motion to withdraw his guilty plea and the trial court substantially complied with appeal admonishments.

¶ 2 Defendant Darryl Hawkins entered a negotiated plea of guilty to delivery of a controlled substance and was sentenced to three years in prison. On appeal, defendant contends the trial court failed to provide proper postplea admonishments pursuant to Supreme Court Rule 605(c) (eff. Oct. 1, 2001). We dismiss this appeal.

¶ 3 The record shows that defendant was charged with one count of Class 2 felony delivery of less than one gram of heroin and one count of possession with intent to deliver less than one gram of heroin. Defendant was initially appointed a public defender but was allowed to proceed *pro se* after a fitness examination and hearing. On September 25, 2013, defendant told the court that he wished to accept the State's offer of a three-year sentence in exchange for a plea of guilty to Class 2 felony delivery of a controlled substance. After preplea admonishments, the State presented the factual basis showing that defendant sold heroin to an undercover police officer on the 700 block of North Christiana about noon on January 31, 2013. The court then accepted defendant's guilty plea, imposed the agreed-upon sentence of three years, and indicated the State would dismiss the remaining count.

¶ 4 Next, the court admonished defendant as follows:

"THE COURT: Mr. Hawkins, you have the right to appeal the judgment and sentence of the court even though you've plead guilty. To do that, however, you first have to file with the Clerk of the court a piece of paper called a motion to withdraw your plea of guilty. This would be asking me to let you take back your plea. If I let you do that, it makes it like your plea never happened.

Now, any motion to withdraw your plea of guilty has to be made in writing, it has to be signed by you, it has to state each and every reason that you would like to rely on in your appeal, and it would have to be filed within 30 days from today's date. Otherwise, your right to appeal is gone forever.

Do you understand that?

MR. HAWKINS: Yeah.

THE COURT: If you couldn't afford an attorney for that, I will appoint one for [sic]. I would give you a free transcript of this proceeding.

Do you understand that?

MR. HAWKINS: Yes.

THE COURT: If I were to grant your motion to withdraw your plea of guilty, then any charges that were dismissed or reduced as a part of your plea agreement, and there is one of them, two of them, they would be reinstated at the request of the State. You would then go to trial on all the charges.

Do you understand that?

MR. HAWKINS: Yes.

THE COURT: You also have a right to make a motion to reconsider your sentence within 30 days from today's date. Once again, that has to be filed with the Clerk within that period of time. If you couldn't afford an attorney for that, I will appoint one for you as well. However, because this is an agreed plea in your case, if you do try to change your sentence in any way, shape, or form, you would also have to make a motion to withdraw your plea of guilty. You couldn't do the one without the other.

Do you understand?

MR. HAWKINS: Yes."

¶ 5 Defendant did not file any postplea motion. On November 20, 2013, this court granted his motion for leave to file a late notice of appeal.

¶ 6 On appeal, defendant contends the trial court failed to provide proper postplea admonishments pursuant to Rule 605(c). Defendant argues the court's admonishments misled

him to believe that he only needed to file a single document to exercise his right to appeal, causing him to conflate the requirement to file a motion to withdraw his plea with the requirement of filing a notice of appeal. Defendant also argues the court's admonishments did not inform him that issues omitted from the motion would be waived.

¶ 7 Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013) requires a defendant who wishes to appeal from a judgment entered on a negotiated guilty plea to first file a written motion with the trial court to withdraw the guilty plea and vacate the judgment. Compliance with Rule 604(d) is a condition precedent to an appeal, and if the defendant fails to meet this requirement the appeal must be dismissed. *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40 (2011). However, under the admonishment exception to this rule, if the defendant appeals without first filing a postplea motion and the trial court failed to give the proper admonishments set forth in Rule 605, the appeal is not dismissed but remanded to the trial court for strict compliance with Rule 604(d). *People v. Flowers*, 208 Ill. 2d 291, 301 (2004).

¶ 8 Here, defendant entered a negotiated guilty plea and, thus, the court was required to admonish defendant in accordance with Rule 605(c), which provides, in relevant part as follows:

"(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;

(6) that in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to vacate the judgment and to withdraw the plea of guilty shall be deemed waived."

¶ 9 The trial court is not required to use the exact language of Rule 605. *People v. Dominguez*, 2012 IL 111336, ¶ 11. Rather, the admonition is insufficient only where the court omits the substance of the rule by failing to inform the defendant of what he must do in order to preserve his right to appeal his guilty plea. *Id.* at ¶ 22; *In re J.T.*, 221 Ill. 2d 338, 348 (2006). So long as the court's admonitions impart the essence or substance of Rule 605(c), the court has substantially complied with the rule. *Dominguez*, 2012 IL 111336, ¶ 22. We review *de novo* the trial court's compliance with supreme court rules. *Id.* at ¶ 13.

¶ 10 The trial judge here substantially provided the admonishments required by Rules 605(c)(2) and 605(c)(6). The court did not use the exact language of either rule but informed defendant that a motion to withdraw his plea must be filed before the notice of appeal, and that all grounds for withdrawing the plea must be included in the motion. In compliance with Rule 605(c)(2), the court explained the motion requirement as a distinct step in the appeal process. In so doing, the trial judge communicated everything that he was required to communicate, and he did it without the script that my specially concurring colleagues apparently think he should have taped to the desktop in his courtroom. What follows is the exact language used:

"Mr. Hawkins, you have the right to appeal the judgment and sentence of the court even though you've plead guilty. To do that, however, you first have to file with the Clerk of the court a piece of paper called a motion to withdraw your plea of guilty. This would be asking me to let you take back your plea. If I let you do that, it makes it like your plea never happened."

¶ 11 The court made clear that a direct appeal was not an option until defendant filed a motion to withdraw his plea. Contrary to defendant's contention, the court did not suggest the motion

and notice of appeal were a single document. *People v. Merriweather*, 2013 IL App (1st) 113789, ¶¶ 19-20 (rejecting claim that Rule 605(c) admonishments were confusing where trial court substantially explained requirements). Here, the court advised defendant that he was required to file a motion to withdraw his plea in order to exercise his right to direct appeal and had no obligation to state the rule verbatim. *Dominguez*, 2012 IL 111336, ¶ 11 ("[A] verbatim reading of the rule is not required."). Furthermore, this judge communicated this legalese in a manner that is undeniably more understandable than the "scripted" language that my colleagues clamor for.

¶ 12 In compliance with Rule 605(c)(6), the court advised defendant that issues not raised in a motion to withdraw his plea would be waived. The court stated:

"Now, any motion to withdraw your plea of guilty has to be made in writing, it has to be signed by you, it has to state each and every reason that you would like to rely on in your appeal, and it would have to be filed within 30 days from today's date. Otherwise, your right to appeal is gone forever."

¶ 13 This admonishment conveyed the substance of Rule 605(c)(6) and explained the concept of waiver to a greater extent than required in other decisions of this court. *People v. Crump*, 344 Ill. App. 3d 558, 563 (2003) (no error where trial court failed to indicate that allegations not raised in motion would be waived); *People v. Wyatt*, 305 Ill. App. 3d 291, 295-96 (1999) (defendant substantially advised where omission of waiver admonition did not prejudice postsentencing relief). Defendant acknowledges the holdings in *Crump* and *Wyatt* but urges that the former was wrongly decided and the latter is distinguishable on the facts. We find no reason to veer from our prior decisions, especially in view of *People v. Tlatenchi*, 391 Ill. App. 3d 705 (2009). In *Tlatenchi*, the trial court told the defendant that a motion to withdraw her guilty plea

"would have to state all the reasons that you think I should consider to allow you to take back your plea of guilty or as to why you think the sentence is not appropriate." *Id.* at 708. The defendant later appealed, arguing, among other things, the admonishments were improper. *Id.* at 708-09. We found the trial court's admonishments conveyed the substance of Rule 605(c)(6). *Id.* at 722. Here, the trial court admonished defendant that his motion "has to state each and every reason" for withdrawing his guilty plea and indicated that if defendant did not comply his "right to appeal is gone forever." That conveys the same information that any script would have supplied and we find no appreciable difference between this admonishment and the language used in *Tlatenchi*. Further, defendant indicated his understanding of each admonishment when asked by the court. *People v. Claudin*, 369 Ill. App. 3d 532, 534 (2006) (dismissing appeal where trial court conveyed substance of rule and defendant indicated understanding). Under these circumstances, the admonishment exception did not excuse defendant from filing a motion to withdraw his plea. Accordingly, defendant's noncompliance with Rule 604(d) requires us to dismiss his appeal.

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

¶ 15 Dismissed.