

No. 1-14-0054

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 18327
)	
COREY HOOD,)	Honorable
)	Lawrence Edward Flood,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Hyman concurred in the judgment.

O R D E R

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

¶ 2 Defendant Corey Hood was charged by information with one count of possession of cannabis with the intent to deliver within 1,000 feet of a school. He pleaded guilty in a negotiated plea and the trial court sentenced him to 24 months of probation under section 10 of the Cannabis Control Act (720 ILCS 550/10 (West 2012)), commonly referred to as "710

probation." 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 October 8, 2013, the State offered defendant a sentence of 710 probation in return for his pleading of guilty, which he rejected. On December 12, 2013, he indicated that he wished to accept the offer and enter a negotiated plea of guilty. The trial court admonished defendant of the nature and possible consequences of the charges, as well as the rights he was giving up by pleading guilty. The State presented a factual basis, stating that if called, Chicago police officer Gilmore would testify that he observed defendant receive money from unknown individuals in exchange for small items less than 1,000 feet from an elementary school on October 14, 2010. When officers approached defendant, he stated that he "only had two clear small bags that he was going to smoke." The officers searched defendant and found 23 clear plastic Ziploc bags. An expert in forensic science would testify that she had tested the green plant-like material contained in the bags. The material tested positive for cannabis and weighed in excess of 2.5 grams. Defendant stipulated to the State's assertion and the trial court found that there was a factual basis for the charge. It also found that defendant's plea was knowing and voluntary and sentenced defendant pursuant to the agreement.

¶ 4 Following sentencing, the trial court further admonished defendant, stating:

"I want you to understand even though you pled guilty, you still have a right to appeal. In order to appeal, you must within 30 days of today's date file with this court a

written motion asking this court to either reconsider the sentence being entered here today, or asking leave of court to withdraw your plea.

If that motion were to be granted, the plea of guilty, sentence, and judgment would be vacated, and a trial date would be set on this case and any other matters that the State may seek to reinstate against you.

If you could not afford an attorney for the appeal, one would be provided free of charge, as well as copies of the transcripts which resulted in your plea of guilty and sentence. However, you must understand that if you fail or forget to put something in your petition for the court to reconsider the sentence or vacate the plea, it is waived and given up for all time."

Defendant stated that he understood his rights to appeal.

¶ 5 Defendant did not file any postplea motions. He filed a notice of appeal on December 19, 2013.

¶ 6 Anticipating the State's argument that his failure to file a Rule 604(d) motion to withdraw his 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 his case must be remanded for proper admonishments. He 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 his plea or a motion to reconsider sentence were erroneous. He also argues that the trial court failed to substantially inform him that he was entitled to the appointment of counsel to

assist with his postplea motion, because it informed him that he was entitled to appointment of an "attorney for the appeal."

¶ 7 The State responds that the defendant's failure to file a Rule 604(d) motion to withdraw his plea requires dismissal under *Flowers*. It argues that the trial court's admonishments substantially complied with Rule 605(c) because they informed defendant that he was required to file some form of postplea motion within 30 days to preserve his appeal, and he failed to do so. It further argues that the trial court sufficiently informed defendant of his right to postplea counsel.

¶ 8 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.

¶ 9 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. Yet, 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 him of subsections (2) and (5) of Rule 605(c). Subsection (2) requires the trial court to admonish 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).

Subsection (5) requires the court to indicate:

"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." Ill. S. Ct. R. 605(c)(5) (eff. Oct. 1, 2001).

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

¶ 10 Our supreme court's recent opinion in *Dominguez* is instructive. In that case, the trial court admonished the defendant of his "right to return to the courtroom within 30 days to file motions to vacate your plea of guilty and/or reconsider your sentence." *Id.* at ¶ 5. The court also stated: "In the event the motions are denied, you have 30 days from denial to return to file a notice of appeal the Court's ruling. If you wish to do so and could not afford an attorney, we will give you an attorney free of charge, along with the transcripts necessary for those purposes." *Id.* The trial court also provided the defendant with a waiver form containing written admonishments which tracked the language of the rule almost exactly. *Id.* at ¶¶ 5-6. On appeal, the defendant argued, *inter alia*, that the court's admonishments implied that counsel was

available only after postplea proceedings and that the admonishments regarding the requisite postplea motions affirmatively misled him. *Id.* at ¶¶ 42, 47. Noting that Rule 605(c) did not require the trial court to recite its admonishments verbatim, the supreme court explained that the trial court need only "impart to a defendant the essence or substance of the rule" in order for its admonishments to substantially comply. *Id.* at ¶ 22. In order to provide the essence of the rule, the trial court must ensure that a "defendant is properly informed, or put on notice, of what he must do in order to preserve his right to appeal his guilty plea or sentence." *Id.* Turning to the defendant's argument that his admonishments implied that counsel was available only after postplea proceedings, the supreme court noted that while the trial court "arguably did not explicitly inform defendant that he was entitled to have an attorney appointed to help him prepare the postplea motions * * *, the admonitions reflect that a court-appointed attorney would be available for defendant." *Dominguez*, 2012 IL 111336, ¶ 51, citing *In re J.T.*, 221 Ill. 2d 338 (2006). The court concluded that the trial court's admonishments did convey the substance of the rule to the defendant and complied with Rule 605(c). *Id.* The court then further noted that the written admonishments supplemented the more general oral statements. *Id.*

¶ 11 We find no practical difference between the admonishments given in *Dominguez* and the present case. Both sets of admonishments incorrectly link a defendant's right to postplea counsel to an appeal, rather than postplea motions. While the trial court's admonishments do not directly state that defendant was entitled to assistance of counsel with his postplea motions, they "reflect that a court-appointed attorney would be available for defendant." *Dominguez*, 2012 IL 111336, ¶ 51, citing *In re J.T.*, 221 Ill. 2d 338 (2006). The admonishments in each case also incorrectly state that a defendant could file a motion to withdraw his plea or a motion to reconsider his

sentence, despite the fact that only a motion to withdraw would have preserved his 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 he could challenge his guilty plea, and that a postplea motion was required within 30 days if he wished to appeal. See *id.* at ¶ 43; see also *People v. Claudin*, 369 Ill. App. 3d 532, 534 (2006). Thus defendant was put on notice of the "steps necessary to preserve an appeal pursuant to Rule 604(d)." See *Dominguez*, 2012 IL 111336, ¶ 51. Nevertheless, defendant filed neither a motion to withdraw his plea nor a motion to reconsider his sentence. We therefore find that defendant was substantially advised in accordance with Rule 605(c)(5), and that his failure to file a Rule 604(d) motion is not cured by the admonition exception. *Id.*

¶ 12 Defendant disagrees, and contends that *Dominguez* is distinguishable because the defendant in that case was given both oral and written admonishments. We note, however, that in finding the admonishment sufficient, the court in *Dominguez* relied on both *In re J.T.*, 221 Ill. 2d 338 (2006), and *People v. Dunn*, 342 Ill. App. 3d 872 (2003), neither of which involved written admonishments. Our supreme court noted that in those cases, the trial court also "arguably did not explicitly inform defendant that he was entitled to have an attorney appointed to help him prepare the postplea motions," but despite the imperfection of the oral admonishments, they were sufficient to convey the substance of the rule to defendant and thus complied with Rule 605. *Dominguez*, 2012 IL 111336, ¶ 51. Thus, we reject defendant's contention, and find that the court properly admonished him, and the exception to Rule 604(d) is inapplicable in this case.

¶ 13 Defendant nevertheless analogizes his case to *People v. Young*, 387 Ill. App. 3d 1126 (2009). In *Young*, the defendant entered into a negotiated plea deal and the trial court informed

him that in order to preserve his appeal, he must file a motion to reconsider his sentence or to vacate judgment and withdraw his guilty plea. *Young*, 387 Ill. App. 3d at 1127. The appellate court remanded the case for new admonishments because the trial court's admonishment had incorrectly informed the defendant that he could preserve his appeal by filing either motion. *Id.* at 1128-29. Defendant also cites *People v. Anderson*, 309 Ill. App. 3d 417 (1999). In that case, the trial court admonished defendant that he would be appointed counsel if he could not afford "an attorney to represent [him] on appeal." *Id.* at 419. The appellate court found the admonishments insufficient under Rule 605(b) and remanded, in part because they implied the defendant "would not have the aid of appointed counsel in preparing and arguing [a postplea] motion." *Id.* at 422. We believe that the supreme court's holding in *Dominguez* has cast the reasoning of both *Young* and *Anderson* into doubt. Both opinions were based on the proposition that strict compliance and remand are required in the context of Rule 605. See *Young*, 387 Ill. App. 3d at 1127; *Anderson*, 309 Ill. App. 3d at 421. However, *Dominguez* has since 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 and put a defendant on notice of the steps required to preserve his appeal. *Dominguez*, 2012 IL 111336, ¶¶ 11, 51. We therefore find *Young* and *Anderson* unpersuasive.

¶ 14 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 he has waived his right to a direct appeal. *Flowers*, 208 Ill. 2d at 301. Accordingly, this appeal is dismissed.

¶ 15 Appeal dismissed.