

No. 1-14-0559

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 13980
)	
JONATHAN MORRIS,)	Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's failure to file a motion to withdraw his guilty plea and vacate the judgment in accordance with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013) requires dismissal of his appeal where the circuit court's admonitions substantially complied with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001).

¶ 2 In October 2013, the defendant, Jonathan Morris, pled guilty to residential burglary (720 ILCS 5/19-3(a) (West 2012)) and was sentenced to seven years' imprisonment with a judicial recommendation for the impact incarceration program, boot camp, and a two-year mandatory

supervised release (MSR) term. On appeal, the defendant contends that the circuit court's admonitions were insufficient. Accordingly, he asks that we remand his case so that he may be properly admonished by the court and file the necessary post-plea motion. We find that the court's admonitions substantially complied with Rule 605(c) and dismiss his appeal.

¶ 3 On July 29, 2013, the defendant was charged by indictment with residential burglary.

¶ 4 At an October 29, 2013, hearing, the State and the defendant presented an agreement to the circuit court wherein the defendant would plead guilty to residential burglary in exchange for seven years' incarceration with a recommendation for boot camp. The following colloquy occurred between the court and the defendant regarding the defendant's acceptance of this offer:

"THE COURT: And the range of penalties, it could go up to 30 years in the penitentiary for you.

THE DEFENDANT: Yes.

THE COURT: Now, with that understanding, do you understand the nature of the charge and the range of penalties?

[THE DEFENDANT]: Yes.

THE COURT: With that understanding, do you still wish to accept the prosecutor's offer?

THE DEFENDANT: For boot camp, yes."

¶ 5 The State offered the following factual basis for the plea. On June 22, 2013, at approximately 10:39 p.m., Officers Coughlin and Russell responded to a report that a door was ajar at a house owned by Oscar Espinoza and located at 5416 South Rockwell Street in Chicago. Espinoza did not authorize anyone to be in the home at that time. When the officers arrived at the house, they noticed that a front window was shattered. They entered through the front door

and observed the defendant in the living room attempting to flee the home. Thereafter, the officers detained the defendant and found an iPod, flash drive, and three laptops in his possession; all of which belonged to Espinoza.

¶ 6 The court accepted the defendant's plea and entered a judgment of guilty. The court then sentenced the defendant to seven years' incarceration with a judicial recommendation for the boot camp program and a two-year MSR term.

¶ 7 After sentencing, the court stated:

"Now that you've been sentenced, Mr. Morris, and judgment of guilty has been entered, I must now advise you of your appellate rights.

You have a right to appeal this sentence and judgment of guilty. However, before you can appeal you must first file a written motion with this court. That must be done within the next 30 days. That would either be a motion seeking reconsideration of the sentence or a motion seeking to take back your plea of guilty.

If this court allows you to take back your plea of guilty, the prosecutor will be allowed to reinstate the charge against you and then, of course, there will have to be a trial.

If you cannot pay for today's transcript, the court will provide this transcript to you free of cost and appoint counsel for the purpose of appeal upon a finding that you are indigent.

Now, you should include in the motion I just told you about any claim of error that you believe has occurred in this proceeding, otherwise such claim of error will be deemed waived for purpose of appeal if it's the *[sic]* not in that motion."

¶ 8 On approximately January 29, 2014, or precisely 90 days after judgment and sentencing, and while the defendant was awaiting his transfer to the boot camp program, the defendant learned that he was ineligible for the program due to his history of taking psychotropic medication. The defendant did not file a motion to withdraw his guilty plea and vacate the judgment in the circuit court. Rather, with leave of this court, he filed a late *pro se* notice of appeal in March 2014, requesting counsel.

¶ 9 This appeal followed.

¶ 10 The defendant's arguments on appeal are that the circuit court erred by: (1) advising him that he could file a motion to withdraw his plea and vacate the judgment *or* a motion to reconsider the sentence; and (2) failing to inform him that he was entitled to the assistance of appointed counsel specifically for the purpose of filing a motion to withdraw and vacate. Based upon these alleged errors, the defendant contends that we should remand his case for the issuance of proper admonitions and an opportunity to file a motion to withdraw and vacate. We disagree. Whether a court complied with a supreme court rule is a matter which we review *de novo*. *People v. Dominguez*, 2012 IL 111336, ¶ 13.

¶ 11 "[A] negotiated plea is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending." Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001). A defendant wishing to appeal from a guilty plea must follow the procedure set forth in Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). Rule 604(d), in relevant part, states:

"No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in

the [circuit] court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment." Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2003).

The Illinois Supreme Court has previously held that, when a defendant enters into a negotiated plea, he must file a motion to withdraw the plea and vacate the judgment in order to preserve the issue for appeal pursuant to Rule 604(d). *People v. Evans*, 174 Ill. 2d 320, 332 (1996).

¶ 12 Once a guilty plea has been entered and at the time when the sentence is imposed, the circuit court must provide a defendant with certain admonitions that outline the procedural steps for appealing his case in accordance with Rule 604(d). *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). These admonitions are contained in sections (b) and (c) of Rule 605. Ill. S. Ct. R. 605(b)-(c) (eff. Oct. 1, 2001). Admonitions for negotiated guilty pleas are governed by Rule 605(c). *People v. Dunn*, 342 Ill. App. 3d 872, 878 (2003). Under Rule 605(c), when a defendant enters into a negotiated guilty plea, the circuit court must provide the following admonitions:

"(1) that the defendant has a right to appeal;

(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;

(3) that if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;

(4) that upon the request of the State any charges that may have been dismissed as a part of a plea agreement will be reinstated and will also be set for trial;

(5) 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; and

(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."

¶ 13 Neither of the parties in this case dispute that the circuit court was required to admonish the defendant pursuant to Rule 605(c) because he entered into a negotiated plea. Rather, the State and the defendant disagree about whether the court substantially advised the defendant about the actual content of Rule 605(c).

¶ 14 Generally, if a defendant fails to comply with Rule 604(d), he waives his right to appeal and the reviewing court must dismiss his case. *In re William M.*, 206 Ill. 2d 595, 600-01 (2003); *People v. Foster*, 171 Ill. 2d 469, 471 (1996). However, under the admonition exception, reviewing courts "may entertain an appeal," despite the defendant's non-compliance with the requirements of Rule 604(d), where the circuit court failed to properly admonish him. *Dunn*, 342 Ill. App. 3d at 877-78; *Foster*, 171 Ill. 2d at 472-73. Admonitions are insufficient where the circuit court fails to convey the substance of Rule 605. *Dominguez*, 2012 IL 111336, ¶ 22. However, a verbatim reading of sections (b) and (c) of Rule 605 is not required as long as the defendant is substantially advised of the actual content of the applicable rule. *Id.*

¶ 15 In *Dominguez*, the circuit court admonished a defendant of his "right to return to the courtroom within 30 days to file motions to vacate [his] plea of guilty and/or reconsider [his] sentence." *Dominguez*, 2012 IL 111336, ¶ 5. The court further advised: "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.* Additionally, the court provided the defendant with a waiver form containing written admonitions that used language "almost verbatim" to the actual language of Rule 605(c). *Id.* at ¶¶ 5-6.

¶ 16 On appeal, the supreme court rejected the defendant's arguments that the circuit court's admonitions misinformed him that he must "return to the courtroom" to file his post-plea motions and that the admonitions implied that appointed counsel was available only after the conclusion of his post-plea proceedings. *Dominguez*, 2012 IL 111336, ¶¶ 42, 47. The court explained: "Simply because the circuit court used the phrase 'return to the courtroom' does not indicate [that the] defendant was not substantially put on notice of what he must do within 30 days to withdraw his guilty plea." *Id.* at ¶ 43. The court also reasoned that, although the circuit court "arguably did not explicitly inform [the] defendant that he was entitled to have an attorney appointed to help him prepare the post[-]plea motions ***, the admonitions reflect that a court-appointed attorney would be available for" him. *Id.* at ¶ 51. Additionally, the court noted that the circuit court's written admonitions only supplemented its oral admonitions. *Id.* Therefore, the court held that the circuit court's admonitions were sufficient to apprise the defendant of the substance of Rule 605(c). *Id.* at ¶¶ 43, 51.

¶ 17 We find *Dominguez* instructive and conclude that the circuit court's admonitions substantially complied with Rule 605(c). The admonitions in this case incorrectly advised the defendant that he could file a motion to withdraw his guilty plea and vacate the judgment *or* a motion to reconsider the sentence although a motion to withdraw and vacate is the appropriate post-plea motion for negotiated pleas under Rule 604(d). *Dominguez*, 2012 IL 111336, ¶ 5.

Like the admonitions in *Dominguez*, while the court's admonitions were not a verbatim reading of Rule 605(c), we believe that they were sufficient to inform the defendant that he could challenge his guilty plea and that a post-plea motion was required within 30 days in order to preserve the issue on appeal. *Dominguez*, 2012 IL 111336, ¶ 43.

¶ 18 Also like the admonitions in *Dominguez*, the circuit court's admonitions here incorrectly implied that the defendant's right to appointed counsel was solely for an appeal rather than for the preparation of post-plea motions. Although the court's admonitions did not explicitly state that the defendant was entitled to counsel for assistance with his post-plea motions, we find that its admonitions did "reflect that a court-appointed attorney would be available for" him. *Dominguez*, 2012 IL 111336, ¶ 51. Accordingly, the defendant had notice of the steps that he needed to take in order to preserve an appeal in accordance with Rule 604(d). *Dominguez*, 2012 IL 111336, ¶ 51. Although he was notified about these steps, the defendant did not file a post-plea motion. Therefore, we hold that the defendant was substantially advised in accordance with Rule 605(c), and, as such, his failure to file a Rule 604(d) motion does not fall within the admonition exception. *Id.*

¶ 19 The defendant argues that *Dominguez* is distinguishable because the defendant in that case was admonished orally *and* in writing. We reject this argument, however, because the supreme court in *Dominguez* relied on two cases—*Dunn*, 342 Ill. App. 3d 872, and *In re J.T.*, 221 Ill. 2d 338 (2006)—that did not involve written admonitions. *Dominguez*, 2012 IL 111336, ¶ 51. Like the circuit court's admonitions in *Dominguez* and in this case, the admonitions in *Dunn* and *J.T.* did not clearly inform the defendants that they were entitled to the assistance of appointed counsel in the preparation of their post-plea motions. The *Dominguez* court noted that, in those cases, the oral admonitions sufficiently conveyed the substance of the Rule 605. *Id.*

¶ 20 The defendant also analogizes his case to *People v. Anderson*, 309 Ill. App. 3d 417 (1999), and cites to *People v. Young*, 387 Ill. App. 3d 1126 (2009). However, these cases do not convince us to change the outcome of his case.

¶ 21 In *Anderson*, the circuit court advised the defendant that he would be appointed counsel *on appeal* if he could not afford to pay. *Anderson*, 309 Ill. App. 3d at 419. The Fourth District Appellate Court found that the admonitions were insufficient under Rule 605(b) and remanded, *inter alia*, because they implied that the defendant "would not have the aid of appointed counsel in preparing and arguing [a post-plea] motion." *Id.* at 422. In *Young*, the Fourth District Appellate Court remanded the case because the circuit court's admonitions incorrectly advised the defendant that he could preserve his appeal by filing either a motion to withdraw and vacate *or* a motion to reconsider. *Young*, 387 Ill. App. 3d at 1127–29.

¶ 22 We believe that the supreme court's holding in *Dominguez* casts doubt upon the reasoning of these cases. *Anderson* and *Young* are based on the proposition that circuit courts must strictly comply with Rule 605. *Anderson*, 309 Ill. App. 3d at 421; *Young*, 387 Ill. App. 3d at 1127. *Dominguez*, which was decided after *Anderson* and *Young*, explained that, although a circuit court is required to strictly comply with Rule 605(c) "in that the admonitions must be given to a defendant," the court only needs to convey the essence of the Rule and notify a defendant about the necessary steps to preserve his appeal. *Dominguez*, 2012 IL 111336, ¶¶ 11, 51. We, therefore, find *Anderson* and *Young* unpersuasive.

¶ 23 For the foregoing reasons, we find that the circuit court's admonitions substantially complied with Rule 605(c) and, thus, the defendant's failure to file a motion in accordance with Rule 604(d) does not fall within the admonition exception. Accordingly, the defendant has waived his right to a direct appeal and we dismiss his case.

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¶ 24 Appeal dismissed.