

SIXTH DIVISION  
September 4, 2015

No. 1-14-3126

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. Y5852990
	)	
JASON SAYRE,	)	Honorable
	)	Thomas J. Condon,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE DELORT delivered the judgment of the court.  
Justices Cunningham and Harris concurred in the judgment.

**ORDER**

¶ 1 **Held:** The trial court lacked jurisdiction to consider defendant's motion to vacate his guilty plea, as he filed the motion 16 years after his guilty plea and sentencing. No "admonition exception" applied which would allow any court to consider the motion.

¶ 2 On September 8, 1998, defendant Jason Sayre entered a plea of guilty to driving under the influence of alcohol (DUI), and was sentenced to one year of conditional discharge. In 2014, he filed a motion pursuant to Supreme Court Rule 604(d) (eff. Feb. 6, 2013) to vacate that guilty plea. He now appeals from the trial court's denial of that motion. On appeal, he contends that

the so-called “admonition exception” permits this court, and by implication, permitted the court below, to consider the motion to vacate. The underlying basis for the motion, which no one contests, is that the trial court did not comply with Supreme Court Rule 605(b) (eff. Aug. 1, 1992) as it failed to “substantially advise” him regarding his post-plea appeal rights. We acknowledge the harshness of this result, but we must affirm based on recent binding authority from our supreme court.

¶ 3 When the case was originally before the court for trial in 1998, a plea conference was held pursuant to Supreme Court Rule 402 (eff. July 1, 1997). After the conference, the defendant indicated through counsel that he wished to change his plea to guilty. The trial court responded that in exchange for defendant’s plea of guilty, defendant would be sentenced to one year of conditional discharge. Defendant acknowledged that this was the agreement conveyed to him and that no one forced him to accept the agreement. The trial court also stated that defendant had the right to appeal. The court explained that defendant had to file a motion to vacate the plea and then the court would appoint counsel to represent defendant and defendant would be entitled to a free copy of the transcripts. Defendant indicated that he understood.

¶ 4 The record contains a document entitled “Acknowledgement by Defendant” which states, in pertinent part,

“I further understand that if I wish to appeal a judgment entered upon my plea of guilty I must file a WRITTEN PETITION within THIRTY DAYS of the sentencing date seeking to withdraw my guilty plea. I understand that the petition must include all grounds and facts which I feel entitle me to withdraw my guilty plea. I know that if I wish to file such a petition and am without

funds to hire counsel and secure a transcript of the proceedings,  
that the court will, upon request, appoint counsel free of charge  
and make a transcript of proceedings available free of charge.”

Defendant signed this document. Defendant’s counsel also signed the document, and further certified that counsel had “explained to the defendant and that he/she understands his/her rights pursuant to Supreme Court Rules 402 and 604.” However, the transcript of the trial judge’s discussion with the defendant reveals that the court itself did not, among other things, admonish defendant regarding his ability to withdraw the guilty plea by filing a motion within 30 days.

¶ 5 Apparently, the defendant’s 1998 DUI conviction, in combination with other matters in his background, still precludes him from legally driving. Accordingly, he filed a motion on September 10, 2014 to vacate his guilty plea and/or reconsider the sentence. The motion alleged that despite the fact that no evidence in aggravation or mitigation was presented on the record, the defendant was sentenced to conditional discharge, rather than merely supervision, for his first DUI offense. The motion further alleged that he was improperly admonished regarding his post-plea appeal rights.

¶ 6 The same trial judge who took the plea in 1998 heard the motion to vacate in 2014. At the hearing, counsel argued that defendant was not admonished that he had 30 days to appeal his conviction. Counsel further argued that defendant was eligible for supervision rather than conditional discharge, and that the sentence of conditional discharge resulted in a lifetime driving ban for defendant. The State responded that the court had no jurisdiction to consider defendant’s motion because more than 30 days had passed since the entry of the guilty plea. The case was continued for the court to review the original transcript and the authorities cited.

¶ 7 On September 19, 2014, the trial judge conceded that he failed to strictly comply with the requirements of Supreme Court Rule 605 (Ill. S. Ct. R. 605 (eff. Aug. 1, 1992)) at defendant's 1998 plea hearing. However, he concluded that, pursuant to *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34 (2011), the court had no jurisdiction to consider defendant's untimely motion to withdraw his plea. The trial court granted the State's motion to dismiss, and denied defendant's motion to withdraw his plea. In so doing, the trial judge commented on the defendant's apparent rehabilitation and the lifetime driving ban, stated that he thought the result was "unjust," and that "[i]t doesn't really make sense to me." He continued, "I've entered some sad orders during my 28 years on the bench. This is one of the sad ones, actually."

¶ 8 We review the trial court's decision to deny defendant's motion to vacate his guilty plea for abuse of discretion. *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009). Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013), provides that a defendant seeking to withdraw his guilty plea must file a motion within 30 days of sentencing. When more than 30 days have elapsed since the defendant's sentencing, and the trial court has not extended the limitations period upon proper application by the defendant, the trial court is divested of jurisdiction to entertain a defendant's post-plea motion under Rule 604(d). *Skryd*, 241 Ill. 2d at 40-41; see also *People v. Flowers*, 208 Ill. 2d 291, 306 (2003) (because the trial court's jurisdiction over the underlying criminal case had "long since lapsed" by the time the defendant filed her request for relief pursuant to Rule 604(d), the court had no authority to address the motion on the merits).

¶ 9 Here, defendant entered his guilty plea in 1998, and moved to withdraw that plea in 2014. Accordingly, the circuit court did not have jurisdiction to entertain defendant's motion to vacate his plea pursuant to Rule 604(d) and so it properly denied him any relief. *Skryd*, 241 Ill. 2d at 40-41. This court, in turn, has no authority to consider the merits of defendant's appeal from the

denial of that motion beyond the question of the circuit court's jurisdiction. *Flowers*, 208 Ill. 2d at 307. Therefore, *Skryd* requires us to affirm the trial court's denial of defendant's motion to withdraw his guilty plea.

¶ 10 Notwithstanding *Skryd*, defendant asserts that a so-called "admonition exception" applies when a court does not sufficiently admonish a defendant regarding his post-plea rights. However, a proper understanding of the "admonition exception" reveals why that argument is faulty.

¶ 11 Under the "admonition exception," when a circuit court fails to give the applicable Rule 605 admonishments and the defendant attempts to appeal without first filing the motions required by Rule 604(d), the *appeal* is not dismissed, but rather remanded for strict compliance with Rule 604(d). See *id.* at 300-01. In other words, the "admonition exception" is a rule which applies to appeals from guilty pleas, where a defendant simply appeals from his own guilty plea without ever first asking the trial court to withdraw the guilty plea. Accordingly, the admonition exception is not in play here, as the defendant did, in fact, first seek to withdraw his guilty plea before appealing. See also *People v. Moore*, 2015 IL App (5th) 130125, ¶ 30 (citing *Skryd*, 241 Ill. 2d at 42) (relying on *Skryd* to conclude that the admonition exception is for the appellate court to apply when a defendant files a timely notice of appeal even though he did not comply with any conditions precedent as required by supreme court rules; when there is no timely notice of appeal, the admonition exception does not apply).

¶ 12 Because defendant's motion to withdraw his plea was untimely, the trial court lacked jurisdiction to consider it, despite the admittedly incomplete admonishments at the original plea hearing. See *id.* (the admonition exception does not restore, jurisdiction to the circuit court when more than 30 days have passed since the entry of judgment). Because the trial court lacked

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jurisdiction to consider defendant's motion in the first instance, it follows that it could not have abused its discretion by denying the motion.

¶ 13 Affirmed.