

**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).

2015 IL App (3d) 130540-U

Order filed June 17, 2015

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-13-0540
	)	Circuit No. 13-CM-1116
NATHAN T. LIDDELL,	)	Honorable
Defendant-Appellant.	)	Thomas A. Keith, Judge, Presiding.

---

JUSTICE LYTTON delivered the judgment of the court.  
Presiding Justice McDade and Justice Carter concurred in the judgment.

---

**ORDER**

¶ 1 *Held:* Due to defendant's expressed desire to file an appeal and the trial court's failure to inquire if defendant desired appointed counsel for the postplea proceedings, the cause is remanded for *de novo* postplea proceedings held in compliance with Supreme Court Rule 604(d).

¶ 2 Defendant, Nathan T. Liddell, entered a negotiated plea of guilty to possession of a firearm without a firearm owner's identification (FOID) card (430 ILCS 65/2(a)(1) (West 2012)) and resisting a peace officer (720 ILCS 5/31-1(a) (West 2012)). The trial court sentenced defendant to a term of 60 days' imprisonment and 24 months' probation. On appeal, defendant

argues that the cause should be remanded for further postplea proceedings. We remand with directions.

¶ 3

### FACTS

¶ 4

Defendant was charged by information with possession of a firearm without a FOID card and resisting a peace officer. Defendant entered a guilty plea in exchange for 24 months' probation and 60 days' incarceration in the county jail. The written plea that defendant signed included the following admonishments:

"I further understand that I have the right to appeal and that I must first file, within 30 days of being sentenced, a written motion to vacate the judgment and to withdraw my plea of guilty, which motion must contain all issues and errors I am claiming, and if said motion is granted, the plea of guilty, sentence and judgment will be vacated and trial date will be set on the charges and that any charges dismissed as part of the plea agreement may be reinstated and set for trial."

¶ 5

During the plea hearing, the court asked defendant if he wanted to waive his trial rights, and defendant responded "I was clear that I would be able to appeal." Defendant then clarified that he was aware of his right to a trial. The court accepted the plea and advised defendant that he had a right to an appeal. Defendant indicated that he had heard his appeal rights, and the court advised defendant that he had "30 days starting today to file [his] motion." In a written order, the court imposed the sentence of 24 months' probation and 60 days' incarceration.

¶ 6

Nine days after the plea hearing, defendant filed a notice of appeal. The notice listed defendant's attorney as "public defender" and was signed by a Peoria County deputy circuit clerk.

¶ 7

### ANALYSIS

¶ 8 On appeal, defendant argues that the cause should be remanded for further postplea proceedings because no verbatim transcript was made of the appeal admonishments and defendant indicated during the plea hearing that he wanted to appeal. Defendant acknowledges that the record appears to indicate that the court admonished him of his appeal rights at the outset of the plea hearing and the written plea agreement included appeal admonishments; however, defendant argues that the lack of a transcript of the admonishment and omission of the right to counsel admonishment require remand for *de novo* postplea proceedings. The State argues that remand is not required because defendant failed to present an adequate record to support his claim of error, and the court was under no obligation to appoint counsel as defendant did not express a desire to appeal. We conclude that defendant sufficiently indicated a desire to appeal and remand for further postplea proceedings.

¶ 9 Defendant's argument implicates both his right to appeal and the right to counsel on appeal. The right to appeal a criminal conviction is fundamental and guaranteed by the Illinois Constitution. Ill. Const. 1970, art. VI, § 6. Additionally, a defendant has a constitutional right to counsel during his appeal. U.S. Const., amends. VI and XIV; *People v. Love*, 312 Ill. App. 3d 424, 426 (2000).

¶ 10 After sentencing a defendant upon a plea of guilty, the trial court has an obligation to admonish defendant of his appeal rights in accordance with Supreme Court Rules 604(d) and 605(b). Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013); R. 605(b) (eff. Oct. 1, 2001); *People v. Barnes*, 291 Ill. App. 3d 545, 548 (1997). Rule 604(d) provides the procedure for an appeal from a judgment entered up on a plea of guilty, and Rule 605(c) provides the admonishments that the trial court is to give a defendant upon a judgment and sentence on a negotiated plea of guilty. The admonishment in Rule 605(c)(5) provides "that if the defendant is indigent, \*\*\* counsel will

be appointed to assist the defendant with the preparation of the [postplea] motions." Ill. S. Ct. R. 605(c)(5) (eff. Oct. 1, 2001). "[F]undamental fairness requires that a defendant receive the assistance of counsel to 'prepare and present' a postplea motion." (Emphasis in original.) *People v. Griffin*, 305 Ill. App. 3d 326, 330 (1999) (quoting *People v. Cunningham*, 294 Ill. App. 3d 702, 704 (1997)). Where a defendant demonstrates his desire to appeal, the trial court is obligated to inquire whether defendant seeks counsel. *Griffin*, 305 Ill. App. 3d at 330.

¶ 11 Here, the record does not contain complete Rules 604(d) and 605(c) admonishments. The written guilty plea form contains a partial admonishment, but it does not specifically mention that counsel may be appointed to assist defendant with the postplea proceedings. Although defendant was represented by counsel during the plea hearing, the lack of a contemporary admonishment left defendant without the knowledge that counsel could assist him with preserving his right to an appeal. Moreover, there is no evidence that counsel assisted defendant with the postplea proceedings as defendant did not file a postplea motion and did not specifically name his attorney on the notice of appeal.

¶ 12 The trial court was also obligated to inquire whether defendant sought the assistance of counsel with his postplea proceedings. During the plea hearing, the court inquired whether defendant had been admonished of his right to trial. In response, defendant immediately stated that "I was clear that I would be able to appeal." Defendant's statement, although not a direct invocation of his right to appeal or a response to the court's question, stated his intent to appeal his conviction that would result from the proceedings. Due to defendant's statement, the trial court was obligated to inquire during the proceedings whether defendant sought the assistance of counsel to help him with a postplea motion, which was a prerequisite to filing an appeal. See *Griffin*, 305 Ill. App. 3d at 330. As a result of this omission, we remand the cause to the trial

court for the appointment of postplea counsel and further proceedings in accordance with Rule 604(d).

¶ 13

#### CONCLUSION

¶ 14

The judgment of the circuit court of Peoria County is remanded with directions.

¶ 15

Remanded with directions.