

**NOTICE**  
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2015 IL App (4th) 130903-U

NO. 4-13-0903

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
December 8, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Coles County
DANIEL W. FLICK,	)	No. 10CF72
Defendant-Appellant.	)	
	)	Honorable
	)	Mitchell K. Shick,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Turner and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court rejected defendant's argument that because he was ineligible for the drug court program, his sentence was void, and the parties should be returned to their positions before the plea agreement by vacating defendant's conviction and remanding with directions to permit him to withdraw his guilty plea. However, the appellate court orders remand for new admonitions under Rule 605.

¶ 2 In October 2011, defendant, Daniel Flick, pleaded guilty to methamphetamine possession (100 or more grams but less than 400 grams) (720 ILCS 646/60(a), (b)(4) (West 2010)), a Class X felony punishable by 6 to 30 years in prison (730 ILCS 5/5-4.5-25(a) (West 2010)). As part of his guilty plea agreement, the trial court ordered defendant's bond modified to require his "participation in and successful completion of Drug Court." According to the Coles County Drug Court Participant Agreement (drug court participant agreement) subsequently executed by defendant, defendant's sentencing would be stayed for up to 36 months while he participated in a drug court treatment program. It further provided that if defendant successfully com-

pleted treatment, the court would consider defendant's success as a mitigating factor during his sentencing hearing.

¶ 3 In August 2013, the State filed a petition to terminate drug court treatment, alleging that defendant violated the terms of the drug court participant agreement. Defendant admitted the violations, and the court later sentenced him to 12 years in prison.

¶ 4 Defendant appeals, arguing, in pertinent part, that because he was ineligible for the drug court program, his sentence was void, and this court should return the parties to their positions before the plea agreement by vacating defendant's conviction and remanding with directions to permit him to withdraw his guilty plea, if he so chooses. Alternatively, defendant argues this case should be remanded for strict compliance with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). We disagree with defendant's first argument and affirm. However, we agree with defendant's second argument and remand with directions.

¶ 5 I. BACKGROUND

¶ 6 A. The Charge and Time Defendant Spent in Custody

¶ 7 In February 2010, the State charged defendant with methamphetamine possession (100 or more grams but less than 400 grams) (720 ILCS 646/60(a), (b)(4) (West 2010)), a Class X felony because of the amount possessed, punishable by 6 to 30 years in prison (730 ILCS 5/5-4.5-25(a) (West 2010)). The trial court set bond at \$75,000.

¶ 8 In April 2010, the trial court accepted the parties' agreement to reduce defendant's bond to \$5,000. The parties explained that defendant was serving a sentence of probation on a conviction from another county. Defendant posted bond and was released.

¶ 9 In December 2010, the trial court issued a warrant for defendant's arrest for failing to appear in court. On March 26, 2011, defendant was arrested on that warrant and remained

in custody until October 2011.

¶ 10 B. The Guilty Plea Agreement

¶ 11 On October 13, 2011, defendant pleaded guilty in exchange for placement in the Coles County drug court program. (Defendant was not released from custody until October 17, 2011, because of a pending case in another county.) The trial court ordered defendant's bond modified to require his "participation in and successful completion of Drug Court." On October 4, 2011, defendant executed the drug court participant agreement, which set forth the conditions of his participation in drug court. According to the drug court participant agreement, sentencing on defendant's charge would be stayed while defendant participated in the drug court program. It indicated that if defendant failed to comply with the terms and conditions of the drug court program, the court could (1) impose sanctions, including incarceration; or (2) terminate defendant's drug court program and sentence defendant on the underlying charge. Defendant further agreed to, among other things, (1) cooperate with drug court officers, (2) submit to random drug tests, (3) be truthful with the court and drug court officers, (4) attend all court appearances and drug court program sessions, and (5) seek employment if so ordered by the court. According to the agreement, if defendant successfully completed the program, the "case will be set for sentencing and successful completion of Drug Court shall be viewed as a mitigating factor in sentencing."

¶ 12 C. Defendant's Participation in the Drug Court Program

¶ 13 Defendant participated in the drug court program from October 2011 until August 2013. On several occasions during the program, the State informed the trial court that defendant had violated the terms of the program. In response to those alleged violations, the court imposed various sentences of jail time, ranging from 2 to 60 days.

¶ 14 D. The State's Motion To Terminate the Drug Court Program

¶ 15 On August 15, 2013, the State filed a motion to reinstate criminal proceedings and remove defendant from drug court. The petition alleged that defendant violated the terms of the drug court participant agreement by (1) being dishonest with his probation officer and other drug court officials on multiple occasions and (2) failing to participate in treatment sessions and programs. At the August 20, 2013, hearing on the petition, defendant admitted the allegations in the State's petition. The court accepted defendant's admission and continued the matter for sentencing.

¶ 16 E. Sentencing

¶ 17 At the October 9, 2013, sentencing hearing, the trial court sentenced defendant to 12 years in prison, with credit for 467 days served in custody. The court admonished defendant that if he wanted to appeal the judgment, he would first need to file within 30 days a motion to withdraw his plea or a motion to reconsider his sentence. After the court gave those admonitions, the following exchange occurred:

"[THE COURT]: [Defense counsel], do you wish for me to have the Circuit Clerk file a Notice of Appeal and for me to appoint the Appellate Defender's office at this time?

[DEFENSE COUNSEL]: Please.

[THE COURT]: So ordered.

[DEFENSE COUNSEL]: Your Honor, do I have to file a motion to reconsider the sentence? I get so confused about this.

[THE COURT]: If there is error in the sentencing hearing, I suppose. I think you can attack the sentence itself, on appeal.

[DEFENSE COUNSEL]: Well, go ahead and appoint the

Appellate Defender. If they think we are premature, God knows they are not shy."

A notice of appeal was filed on October 15, 2013. Defendant did not file a postsentencing motion.

¶ 18

## II. ANALYSIS

¶ 19 Defendant argues that because he was ineligible for the drug court program, his sentence was void, and this court should return the parties to their positions before the plea agreement by vacating defendant's conviction and remanding with directions to permit him to withdraw his guilty plea, if he so chooses. (We note that defendant raises this argument for the first time on appeal.) In the alternative, defendant argues that because he failed to receive proper admonitions under Illinois Supreme Court Rule 605 (eff. Oct. 1, 2001), this court should remand for those admonitions. The State responds that (1) this appeal must be dismissed for lack of jurisdiction because defendant did not file a Rule 604(d) motion or, in the alternative, (2) defendant's guilty plea agreement is not void and his sentence should be affirmed. We conclude that we have jurisdiction to hear the present appeal and affirm defendant's conviction.

¶ 20

### A. Lack of a Rule 604(d) Motion

¶ 21 We address first the lack of a Rule 604(d) motion because the State argues that it affects our jurisdiction to hear the present case.

¶ 22

At the time of defendant's sentencing, Rule 604(d) provided as follows:

"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 trial court a motion to reconsider 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, 2013).

¶ 23 "The filing of a Rule 604(d) motion is a condition precedent to an appeal from a judgment on a plea of guilty." *People v. Flowers*, 208 Ill. 2d 291, 300-01, 802 N.E.2d 1174, 1180 (2003). The failure to file a timely Rule 604(d) motion in the trial court does not deprive the appellate court of jurisdiction over a subsequent appeal. *Id.* at 301, 802 N.E.2d at 1180. However, the failure to file a Rule 604(d) motion generally precludes the appellate court from considering the appeal on the merits. *Id.* In the absence of a Rule 604(d) motion, the appellate court usually must dismiss the appeal. *Id.*

¶ 24 An exception to the above rule requiring dismissal lies when a defendant challenges his guilty plea as void. *People v. Monson*, 2012 IL App (3d) 100868, ¶ 8, 972 N.E.2d 736. In such a situation, this court may decide the challenge on the merits, despite the lack of a proper Rule 604(d) motion. *Id.* Here, defendant claims that his sentence and guilty plea are void because he was ineligible for drug court treatment. As a result, we may decide the appeal on the merits, despite the lack of a Rule 604(d) motion, and we choose to do so.

¶ 25 B. Defendant's Challenge of His Guilty Plea

¶ 26 Defendant argues that his sentence is void because he was ineligible for the drug court program. We disagree.

¶ 27 1. *The Drug Court Treatment Act*

¶ 28 The Drug Court Treatment Act (Act) (730 ILCS 166/1 to 40 (West 2010)) provides statutory authority for a trial court to order a defendant to attend a "drug court program." A "drug court program" is defined as "an immediate and highly structured judicial intervention process for substance abuse treatment of eligible defendants that brings together substance abuse

professionals, local social programs, and intensive judicial monitoring in accordance with the nationally recommended 10 key components of drug courts." 730 ILCS 166/10 (West 2010). The program may be ordered prior to a conviction ("pre-adjudicatory drug court program") or after conviction, as part of the defendant's sentence ("post-adjudicatory drug court program"). *Id.* Drug court treatment may be entered only upon agreement of the parties and with the approval of the trial court. 730 ILCS 166/20(a) (West 2010). A defendant is ineligible to receive drug court treatment if he has been convicted of a "crime of violence"—specifically including aggravated battery causing great bodily harm—within the past 10 years, excluding incarceration time. 730 ILCS 166/20(b)(4) (West 2010).

¶ 29 If a defendant successfully completes a drug court program, the trial court "may dismiss the original charges against the defendant or successfully terminate the defendant's sentence or otherwise discharge him or her from any further proceedings against him or her in the original prosecution." (Emphasis added.) 730 ILCS 166/35(b) (West 2010). In this case, the record contains no indication whatsoever that if defendant successfully completed the drug court program, the trial court might "dismiss the original charges against the defendant or successfully terminate the defendant's sentence or otherwise discharge him \*\*\* from any further proceedings." To the contrary, the drug court participant agreement explicitly stated that under those circumstances, the cause would proceed to sentencing, and the court would consider defendant's success as a mitigating factor.

¶ 30 The Act further provides that if a defendant violates the terms of his or her drug court agreement, the trial court "may impose reasonable sanctions under prior written agreement of the defendant, including but not limited to imprisonment or dismissal of the defendant from the program and the court may reinstate criminal proceedings against him." 730 ILCS

166/35(a)(4) (West 2010).

¶ 31           2. *Defendant's Ineligibility for the Drug Court Program in This Case*

¶ 32           Defendant was ineligible for the drug court program under the Act because he was convicted of a crime of violence within the previous 10 years. 730 ILCS 166/20(b)(4) (West 2010). Specifically, in 2003, defendant was convicted of aggravated battery causing great bodily harm.

¶ 33                               3. *Guilty Pleas and Contract Principles*

¶ 34           "Absent due process concerns, the validity of a plea agreement is generally governed by contract law." *People v. Bannister*, 236 Ill. 2d 1, 9, 923 N.E.2d 244, 249 (2009).

" '[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.' "

*People v. Hughes*, 2012 IL 112817, ¶ 68, 983 N.E.2d 439 (quoting *Santobello v. New York*, 404 U.S. 257, 262 (1971)). "The principal inquiry, in that respect, is whether the defendant has received the benefit of his bargain." *People v. Donelson*, 2013 IL 113603, ¶ 19, 989 N.E.2d 1101.

"[W]here a defendant enters a negotiated plea of guilty in exchange for specified benefits, 'both the State and the defendant must be bound by the terms of the agreement.' " (Emphasis in original.) *People v. Grant*, 2015 IL App (4th) 140971, ¶ 22, 33 N.E.3d 871 (quoting *People v. Whitfield*, 217 Ill. 2d 177, 190, 840 N.E.2d 658, 666 (2005)).

¶ 35                               4. *Defendant's Sentence in the Present Case*

¶ 36           In the present case, defendant pleaded guilty to methamphetamine possession, a Class X felony punishable by 6 to 30 years in prison, pursuant to a guilty plea agreement. As part of that agreement, defendant and the State agreed that defendant's sentencing would be stayed for up to 36 months while defendant participated in the Coles County drug court program.

The drug court participant agreement executed by defendant provided that if defendant successfully completed the program, his "case will be set for sentencing and successful completion of Drug Court shall be viewed as a mitigating factor in sentencing." No mention was ever made of dismissal of defendant's charge or discharge of the proceedings. Defendant now argues that because he was ineligible for the drug court program, his sentence is void, and this court should return the parties to their positions before the plea agreement by vacating defendant's conviction and remanding with directions to permit him to withdraw his guilty plea, if he so chooses. However, we disagree because we conclude that defendant "received the benefit of his bargain."

*Donelson*, 2013 IL 113603, ¶ 19, 989 N.E.2d 1101.

¶ 37 Under the guilty plea agreement, defendant was permitted to participate in the drug court program, and the drug court participant agreement explicitly stated that if defendant successfully completed the drug court program, his success would be considered a mitigating factor at sentencing. If defendant failed to complete the drug treatment program, the cause would proceed to sentencing, as usual. We again emphasize that no mention was ever made of defendant's charge being dismissed upon successful completion of the drug court program. Thus, defendant received the benefit of his bargain. That is, he was given the opportunity to participate in the drug court program—and did for two years—with the agreement that successful completion of that program would be considered as a mitigating factor at sentencing. Defendant received that opportunity. He cannot now claim on appeal that his sentence is void because he received a beneficial opportunity to which he was not statutorily entitled. We note again that, as the supreme court held in *Donelson*, the principal inquiry regarding a guilty plea "is whether the defendant has received the benefit of his bargain." *Id.* Here, defendant did.

¶ 38 In support of his argument, defendant cites *People v. Johnson*, 338 Ill. App. 3d

213, 788 N.E.2d 152 (2003), a case in which the defendant pleaded guilty in exchange for a sentence of probation that, in fact, he was not eligible for because of a prior conviction. *Id.* at 214, 788 N.E.2d at 153. After the trial court revoked the defendant's probation, the court resentenced him to eight years in prison. The defendant later filed a postconviction petition alleging that the order placing him on probation was void because he was not eligible for probation, and as a result, the order revoking that probation and resentencing defendant to eight years in prison was also void.

¶ 39 The *Johnson* court agreed with the defendant's argument, stating that "[a] sentence that does not conform to statutory requirements is void." *Id.* at 215, 788 N.E.2d at 154 (citing *People v. Arna*, 168 Ill. 2d 107, 113, 658 N.E.2d 445, 448 (1995)). The court then concluded that "[b]ecause the probation order for defendant's original conviction is void, the subsequent order revoking his probation and imposing the eight-year sentence is likewise void." *Id.* at 216, 788 N.E.2d at 154.

¶ 40 *Johnson* is distinguishable from the present case because the Act is unique. Upon successful completion of a drug court program under the Act, the trial court "may dismiss the original charges against the defendant or successfully terminate the defendant's sentence or otherwise discharge him or her from any further proceedings against him or her in the original prosecution." (Emphasis added.) 730 ILCS 166/35 (West 2010). That is, a court is not required to dismiss the charges or discharge defendant upon successful completion of the program. Indeed, in this case, the agreement stated that upon successful completion of the program, the cause would be set for sentencing, and the court would consider defendant's success as a mitigating factor. An additional mitigating factor was the *only* benefit defendant was entitled to receive upon successful completion of treatment, as well as the only benefit the trial court promised him.

¶ 41 A sentence of probation, as in *Johnson*, is different because successful completion of probation requires an end to the proceedings. 730 ILCS 5/5-6-2(d) (West 2012) (Upon a defendant completing probation, the court "shall enter an order discharging the offender."). Other specialized sentencing statutes are similar to the probation statute regarding how a defendant who successfully completes that sentence is treated. For example, after successful completion of probation under the Methamphetamine Control and Community Protection Act, the trial court "shall discharge the person and dismiss the proceedings against the person." 720 ILCS 646/70(f) (West 2010). Likewise, upon successful completion of second-chance probation, the court "shall discharge the person and dismiss the proceedings against the person." 730 ILCS 5/5-6-3.4(f) (West 2014). Upon successful completion of the Offender Initiative Program, the State "shall dismiss the case or the court shall discharge the person and dismiss the proceedings against the person." 730 ILCS 5/5-6-3.3 (West 2012). After a defendant completes probation under the Cannabis Control Act, the "court shall discharge such person and dismiss the proceedings against him." 720 ILCS 550/10(f) (West 2012). Finally, successful completion of first-offender probation requires that "the court shall discharge the person and dismiss the proceedings against him or her." 720 ILCS 570/410(f) (West 2012).

¶ 42 This distinction between a drug court program and probation is significant because, in this case, no matter how defendant performed in the drug court program, defendant's eventual sentence would still fall within the statutorily authorized range. Defendant pleaded guilty to a Class X felony, which subjected him to a sentence of 6 to 30 years in prison. 730 ILCS 5/5-4.5-25(a) (West 2010). Defendant failed to successfully complete treatment and was sentenced to 12 years in prison, a sentence authorized by statute. Likewise, had defendant successfully completed treatment, he still would have been sentenced to somewhere between 6 and

30 years in prison.

¶ 43 The present situation is therefore distinguishable from *Johnson*, where the defendant would have served no jail time had he successfully completed probation. Under the applicable statutory authority in *Johnson*, the defendant was not eligible for probation, and a sentence of incarceration was required. 730 ILCS 5/5-5-3(c)(2)(F) (West 1998). Therefore, the plea agreement would have allowed the defendant to receive an unauthorized sentence had he successfully completed probation. In this case, on the other hand, no matter whether defendant successfully completed drug court treatment, his *ultimate* sentence would have been within the court's statutory authority. Therefore, the inclusion of drug court treatment did not cause defendant's sentence to become void.

¶ 44 We also note that regardless of the parameters of the drug treatment program under the Act, the trial court had the authority to unofficially accept the agreement the prosecutor and defense counsel reached in this case. The essential elements of the guilty plea agreement and the court's order were as follows: (1) defendant would plead guilty to the charge; (2) sentencing on the charge would be stayed while defendant participated in a drug treatment program; and (3) if defendant successfully completed the treatment program, the court would consider that success as a mitigating factor at sentencing. Thus, even if the court and counsel knew that defendant was not statutorily eligible to formally participate in the Coles County drug treatment program, he could have been permitted to do so unofficially. The court had the authority to stay sentencing on defendant's guilty plea, release him on a minimal bond, and give him the opportunity to demonstrate that he really was changed from the person who committed the offense to which he pleaded guilty. This could all have been done with the understanding that if defendant were to complete drug treatment, the court would consider it a mitigating factor at sentencing. If

the court, with the agreement of the parties, had the inherent authority to do what occurred here, the technicalities of the Act do not render defendant's sentence void.

¶ 45 We find support for our conclusion rejecting defendant's argument in *People v. Young*, 2013 IL App (1st) 111733, 2 N.E.3d 445, in which the court applied the contract principle of estoppel to bar a defendant from challenging his guilty plea where he received the benefit of the plea bargain. The defendant in *Young* pleaded guilty to first degree murder and attempted murder in exchange for consecutive sentences of 25 and 10 years' imprisonment, respectively. *Id.* ¶ 2, 2 N.E.3d 445. The factual bases stated that defendant used a firearm during the offenses. Three years later, defendant filed a postconviction petition, which the trial court dismissed. On appeal from that dismissal, defendant for the first time claimed that the sentences he received were void because they did not include a mandatory statutory firearm enhancement. *Id.* ¶ 14, 2 N.E.3d 445.

¶ 46 The *Young* court concluded that "the doctrine of estoppel should prohibit defendant from challenging a sentence after he has already received the benefit of a more lenient sentence." *Young*, 2013 IL App (1st) 111733, ¶ 39, 2 N.E.3d 445. The *Young* court explained that the doctrine of judicial estoppel "prohibits a party from assuming a position in a legal proceeding that is contrary to a position it held in a prior legal proceeding." *Id.* ¶ 40, 2 N.E.3d 445 (quoting *Dumke v. City of Chicago*, 2013 IL App (1st) 121668, ¶ 31, 994 N.E.2d 573). For estoppel to apply, the following elements must be present:

"[T]he party to be estopped must have (1) taken two positions, (2) that are factually inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) have succeeded

in the first proceeding and received some benefit from it." *People v. Caballero*, 206 Ill. 2d 65, 80, 794 N.E.2d 251, 262 (2002).

The *Young* court held that defendant had received the benefit of a more lenient sentence. As a result, he was estopped from raising the contrary stance that his sentence should be vacated as void. Under the contract principles outlined in *Young*, defendant is estopped from arguing that his sentence is void. *Young*, 2013 IL App (1st) 111733, ¶¶ 37-46, 2 N.E.3d 445.

¶ 47 C. Remand for Strict Compliance With Rule 604(d)

¶ 48 Although we conclude that defendant's conviction should be affirmed, we nonetheless remand with directions for new admonitions by the trial court pursuant to Rule 605. That rule requires a trial court, after entering judgment upon a negotiated guilty plea, as happened in this case, at the time of imposing sentence, to advise a defendant that he has a right to appeal, but that prior to taking an appeal, he must file in the trial court a written motion asking to have the judgment vacated and for leave to withdraw the plea of guilty. See Rule 605(c)(1), (c)(2) (eff. Oct. 1, 2001). Although the court at first complied with Rule 605, its later discussion with defense counsel might have served to render the court's admonitions unclear. Accordingly, we are remanding with directions that the court admonish defendant in accordance with Rule 605 so that, if defendant wishes to appeal the judgment or sentence, he understands he has a right to do so, provided that he first files 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. Defendant will then be able to decide what further action he wishes to take, if any, and if he wishes to appeal, he will be on notice that he must strictly comply with the requirements of Rule 604(d).

¶ 49 III. CONCLUSION

¶ 50 For the foregoing reasons, we affirm defendant's conviction and remand with di-

rections. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 51            Affirmed; cause remanded with directions.