

No. 1-14-0138

**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. 12 CR 00008
	)	
TIMOTHY JACKSON,	)	Honorable
	)	Maura Slattery-Boyle,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Justices Simon and Hyman concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Trial court's postplea admonishments did not substantially comply with Supreme Court Rule 605(c) (eff. Oct. 1, 2001). Consequently, defendant's failure to file a timely postplea motion is excused and the case is remanded for proper admonishments.

¶ 2 Timothy Jackson, the defendant, was charged by indictment with two counts of attempted murder, one count of aggravated battery and discharge of a firearm, one count of unlawful use or possession of a weapon by a felon, three counts of unlawful use of a weapon, and one count of possession of a stolen vehicle. Defendant entered a negotiated guilty plea to aggravated battery

and discharge of a firearm upon which the trial court sentenced him to 15 years' imprisonment. Defendant did not file a postplea motion as required by Supreme Court Rule 604(d) (eff. Feb. 6, 2013). He did, however, file a timely notice of appeal. On appeal, defendant contends that the circuit court's post plea admonishments did not substantially comply with Supreme Court Rule 605(c) (eff. Oct. 1, 2001), and thus he may avoid the dismissal generally required by *People v. Flowers*, 208 Ill. 2d 291 (2003). We find that the circuit court's post plea admonishments did not substantially comply with Supreme Court Rule 605(c), and therefore remand is proper for admonishments pursuant to Rule 605(c).

¶ 3 On December 11, 2013, defendant entered a negotiated plea of guilty to aggravated battery and discharge of a firearm. The trial court admonished defendant regarding the nature and possible consequences of the charges, as well as the rights he was giving up by pleading guilty.

¶ 4 The State presented a factual basis, stating that if called, multiple witnesses would testify that on the morning of November 30, 2011, defendant was a passenger in a stolen minivan with Steve and Patrick Brown. Steve Brown drove the minivan to an area where Britton Holt was standing with another individual. Defendant exited the van wearing gloves and a ski-mask. He pointed a handgun at Holt and fired twice as Holt fled. Holt was shot once in the thigh and fell to the ground. Defendant jumped back into the van, and it drove off. Bystanders rushed Holt to the hospital, and notified police of the shooting.

¶ 5 Subsequently, police officers pursued the minivan. During the pursuit, defendant threw a bag containing ski-masks, gloves, the firearm, and ammunition from the van's windows. Police

later recovered the bag and its contents. A shell casing recovered from the scene of the shooting matched the recovered gun. Additionally, DNA testing indicated that defendant was "the majority donor" of DNA found on the ski-mask.

¶ 6 Defense counsel 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.

¶ 7 Following sentencing, the trial court further admonished defendant and stated:

"THE COURT: Mr. Jackson, even though you have pled guilty and have been found guilty here today, you do have the right to file a notice of appeal, sir. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: That motion must be filed within 30 days of today's court date. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: In that motion, you must ask the court to either reconsider the sentence or vacate the judgment entered here and withdraw your plea, sir. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: If you fail to include in the motion any issues or arguments, they are forever waived. And if you cannot afford an attorney or transcript, those will be provided to you by the court. Do you understand that?

THE DEFENDANT: Yes."

¶ 8 Defendant did not file any postplea motions. He filed a notice of appeal on December 31, 2013.

¶ 9 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 the trial court failed to inform defendant that he was required to file a written motion to withdraw his plea, because a reasonable understanding of the admonishments implied that only a notice of appeal was required. He also 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 either withdraw his plea or ask the court to reconsider sentence were erroneous. Defendant asserts that the trial court failed to inform him that he had a right to an appeal because it only noted that he had a right "to file a notice of appeal." Finally, he argues that the court failed to inform him that if a motion to withdraw his plea were granted, the matter would be set for trial and the State could reinstate dismissed charges against him.

¶ 10 The State responds that defendant's failure to file a Rule 604(d) motion to withdraw his plea requires dismissal under *Flowers*. The State argues that the trial court's admonishments substantially complied with Rule 605(c) because they adequately informed defendant of the steps required to preserve his appeal. The State also argues that the court sufficiently distinguished the necessary motion from the notice of appeal because it used the word "motion" and explained

what needed to be included. Finally, the State argues that defendant cannot establish prejudice where he did not follow the trial court's instructions.

¶ 11 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). Generally, if a defendant fails to timely file a Rule 604(d) motion, the appellate court must dismiss the appeal and is precluded from considering the appeal on the merits. *Flowers*, 208 Ill. 2d at 301. 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. We review compliance with a Supreme Court Rule *de novo*. *Dominguez*, 2012 IL 111336, ¶ 13.

¶ 12 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 rule requires the trial court to advise a defendant of six propositions:

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

Defendant argues that the trial court failed to substantially admonish him of subsections (1) through (4) of Rule 605(c).

¶ 13 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). A trial court substantially complies with the rule, "[s]o long as the [trial] court's admonitions were sufficient to impart to a defendant the essence or substance of the rule." *Dominguez*, 2012 IL 111336, ¶¶ 19-22. 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.*

¶ 14 This court's opinion in *People v. Perry*, 2014 IL App (1st) 122584, is instructive. Following a negotiated plea in that case, the trial court admonished the defendant, stating:

"Sir, you have the right to appeal; that has to be filed within 30 days of today's date in writing, indicating all the reasons why you want to withdraw that plea.

If I grant that motion, the plea will be set aside and the matter will be set for trial. If I deny it, you have 30 days to appeal in writing, and if you don't have the money to hire a lawyer, one will be provided for you, free of charge." *Id.* ¶ 5.

The defendant then indicated that he understood the admonishment. He later filed a document entitled "Notification of Motion" seeking to retract his plea, but it did not list any basis for his request and the defendant never filed an actual postplea motion. *Id.* ¶ 7.

¶ 15 On appeal, this court ruled that the admonishments failed to substantially comply with Rule 605(c), explaining that the lower court had made no reference to the two of Rule 605(c)'s six subsections. *Id.* ¶ 16. We further explained that the admonishments were unclear because the rules require a defendant to file a written motion to vacate the judgment, but the trial court implied that the defendant "had 30 days to file a *direct appeal*" (emphasis in original), without any reference to a separate written motion. *Id.* ¶ 17. This court concluded that "the admonishments lacked the specificity necessary to resolve any ambiguity," and held that they were insufficient. *Id.*

¶ 16 We find no practical distinction between the admonishments in *Perry* and those in the present case. The trial court admonished defendant that he had the right to file a notice of appeal. Immediately thereafter, the trial court told the defendant that he was required to file "[t]hat

motion" within 30 days, and then stated that within "that motion" he must ask the court to reconsider the sentence or vacate the judgment. A reasonable understanding of the trial court's words indicates that, in order to preserve an appeal, defendant was solely required to file a notice of appeal, which must include within it a request to reconsider or vacate. However, defendant was required to file two separate documents: (1) a written motion seeking to vacate his plea and subsequently (2) a notice of appeal. As such, defendant was not "properly informed, or put on notice, of what he must do in order to preserve his right to appeal his guilty plea or sentence." See *Dominguez*, 2012 IL 111336, ¶¶ 19-22. Therefore, as in *Perry*, we find that the trial court's admonishments did not substantially comply with Rule 605(c).

¶ 17 The State attempts to distinguish *Perry* by arguing that the trial court in *Perry* only stated that the defendant had "the right to appeal, that has to be filed within 30 days," and then "[i]f I grant that motion, the plea will be set aside," quoting *Perry*, 2014 IL App (1st) 122584, ¶ 17. The State's argument overlooks the second portion of the trial court's admonishments. The *Perry* trial court told the defendant that he had a right to an appeal "that has to be filed within 30 days of today's date in writing, indicating all the reasons why you want to withdraw that plea. If I grant that motion, the plea will be set aside and the matter will be set for trial." *Id.* ¶ 5. Much like in the present case, a fair reading of the *Perry* trial court's statements erroneously indicates that a single document was required to preserve defendant's appeal.

¶ 18 The State also asserts that the present trial court reiterated the distinction between the notice of appeal and a postplea motion three separate times. This argument is unpersuasive. The trial court referred to the notice of appeal, then immediately and repeatedly thereafter referred to



"that motion." The only document referred to prior to the court referring to "that motion" is the notice of appeal. A fair reading of the phrase "that motion" is that it refers back to the notice of appeal. Thus, we disagree with the State that the trial court adequately distinguished the notice of appeal from the required written postplea motion.

¶ 19 The State also cites *In re J.T.*, 221 Ill. 2d 338 (2006), and argues that defendant was not prejudiced by the trial court's admonishments because he did not follow the trial court's explicit instructions regarding appealing. The State asserts that defendant's failure to perfect his appeal was due to his ignoring the trial court's admonishments rather than faulty admonishments.

¶ 20 In *In re J.T.*, the minor defendant pleaded guilty to criminal damage to property following a Rule 402 conference. *Id.* at 342. Following the plea, the trial court admonished the defendant, but did not specifically inform him of his right to an attorney in the preparation of a postplea motion, the requirement to set forth the grounds for withdrawal in the motion, the waiver of any grounds not raised, and the potential reinstatement of any dismissed charges. *Id.* at 342-43. The defendant later violated his probation and was incarcerated. *Id.* at 343-44. He appealed the revocation of his probation, arguing that his plea was void because the trial court had failed to properly admonish him under the supreme court rules, but he did not file a notice of appeal or a motion to withdraw his plea. *Id.* In determining whether to grant the defendant's request for supervisory relief, the supreme court held that "fundamental fairness" did not require relief because the defendant was not prejudiced where he had taken "no action whatsoever." *Id.* at 347-48. It reasoned that "[w]hile these admonitions did not strictly comply with Rule 605 (c),

they were sufficient to put [defendant] on notice that he could challenge his guilty plea, and that some action on his part within 30 days was necessary if he wished to appeal." *Id.* at 348.

¶ 21 We find the facts *In re J.T.*, to be distinguishable from the facts in this case. In that case, the minor defendant failed to file a postplea motion, despite being admonished of the necessity of doing so. Here, defendant did not completely ignore the trial court. He was admonished by the court that he needed to file a notice of appeal within 30 days and defendant did so by filing a notice of appeal that tracks the form provided in Rule 606(d). While defendant did not file a separate, written postplea motion, the trial court never admonished him to do so. Consequently, the trial court did not sufficiently put defendant on notice of the action necessary to comply with the Rules and preserve his appeal. See *id.*

¶ 22 We find that the trial court did not substantially comply with Rule 605(c), and therefore, the cause must be remanded for proper admonishment and compliance with Rule 604(d). See *Dominguez*, 2012 IL 111336, ¶ 11.

¶ 23 In light of the preceding, we find the trial court's admonishments were insufficient and therefore, defendant's failure to file a Rule 604(d) motion is excused by the admonition exception. Accordingly, we remand for proper admonishment under Rule 605(c) so the defendant has an opportunity to comply with Rule 604(d) if he so desires.

¶ 18 Remanded with instructions.