

No. 1-14-0425

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 21453
)	
SHERMAN McBRIDE,)	Honorable
)	Lauren Gottainer Edidin,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Hyman concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court's admonishments failed to substantially comply with Rule 605 where it failed to notify defendant that he must timely file his motion or of his rights as an indigent defendant.

¶ 2 Pursuant to a negotiated guilty plea, defendant Sherman McBride was convicted of being an armed habitual criminal and sentenced to seven years' imprisonment. Defendant now appeals without first filing a post-plea motion in the circuit court, contending that the trial court's post-plea admonishments did not substantially comply with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001) and that therefore, this court should remand for proper admonishments and the

opportunity to file a motion to withdraw his guilty plea. For the reasons that follow, we agree with defendant and remand the cause to the circuit court for proper admonishments.

¶ 3 Defendant's conviction arose from events that occurred November 4, 2012, when police officers allegedly found defendant in possession of a handgun. Following his arrest, defendant was charged with being an armed habitual criminal, unlawful use of a weapon by a felon, and four counts of aggravated unlawful use of a weapon. On November 7, 2013, pursuant to a negotiated plea agreement, defendant pled guilty to being an armed habitual criminal and the State dismissed the remaining charges. After determining a factual basis existed for the plea, the trial court sentenced defendant to seven years' imprisonment in accordance with the parties' recommendation under the plea agreement. Immediately following such judgment, the trial court admonished defendant as follows:

"[Y]ou do have a right to withdraw your plea of guilty and vacate the judgment.

In the motion, you must state all the reasons why you want to vacate your guilty plea. If I grant the motion, I will set your guilty plea, sentence and judgment aside, set your case for trial. Any charges that were dismissed could be reinstated.

If I deny your motion, you would have 230 *[sic]* days from that date to file a written notice of appeal. Any issue or claim of error that was not addressed would be waived for appeal purposes."

¶ 4 On February 18, 2014, defendant filed a late notice of appeal, which this court allowed.

¶ 5 On appeal, defendant alleges that because the trial court failed to admonish him (1) that he had a right to appeal; (2) that the motion to withdraw his guilty plea must be filed within 30 days from the date of sentencing; and (3) that an indigent defendant will be provided with a

transcript of the plea hearing and that counsel will be appointed to assist in preparation of his motion to vacate his guilty plea, the court's admonishments were incomplete and his cause should be remanded to the circuit court for proper admonishments and an opportunity to file the requisite motion in accordance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). The State responds that defendant's appeal should be dismissed because he failed to file a post-plea motion before filing his late notice of appeal, and because Rule 605 requires only substantial compliance and the court's admonishments substantially complied by notifying defendant of the substance of the rule.

¶ 6 We review *de novo* the trial court's compliance with Rule 605. *People v. Dominguez*, 2012 IL 111336, ¶ 13.

¶ 7 Rule 604(d) requires a defendant who wishes to appeal from a judgment entered upon a negotiated plea of guilty to first file a written motion with the trial court to withdraw his guilty plea and vacate the judgment. *People v. Dunn*, 342 Ill. App. 3d 872, 876 (2003). Compliance with Rule 604(d) is a condition precedent to an appeal; if a defendant fails to meet such requirement, the appellate court must dismiss the appeal. *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). Accordingly, Rule 605(c) mandates the trial court admonish defendants regarding the requirements of Rule 604(d). *Dunn*, 342 Ill. App. 3d at 877. Our supreme court, however, has determined that due process prohibits "[d]ismissal of an appeal based on a defendant's failure to file the requisite motions *** if the defendant did not know that filing such motions was necessary." *Flowers*, 208 Ill. 2d at 300 (citing *People v. Foster*, 171 Ill. 2d 469, 473 (1996)). Thus, under the "admonishment exception," if the trial court fails to give the requisite Rule 605 admonishments and a defendant subsequently attempts to appeal without first filing a Rule

604(d) motion, the appeal is not dismissed, and the cause is remanded to the trial court for strict compliance with Rule 604(d). *Flowers*, 208 Ill. 2d at 301.

¶ 8 Supreme Court Rule 605(c) requires that:

"the trial court shall advise the defendant substantially as follows:

- (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 for 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 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).

¶ 9 While our supreme court requires that trial courts strictly comply with the duty to give Rule 605 admonishments, the admonishments need only substantially convey the Rule's contents. *Dominguez*, 2012 IL 111336, ¶¶ 15-19. Thus, "[s]o long as the court's admonitions were sufficient to impart to a defendant the essence or substance of the rule, the court has substantially complied." *Id.* at ¶ 22. Admonishments, if sufficient to notify defendant that a timely post-plea motion is necessary to preserve an appeal, will be deemed to substantially comply with Rule 605(c) unless the "missing verbiage" resulted in prejudice to the defendant. See *People v. Crump*, 344 Ill. App. 3d 558, 563 (2003); see also *People v. Claudin*, 369 Ill. App. 3d 532, 534 (2006).

¶ 10 Here, the trial court failed to admonish defendant that (1) a motion to withdraw his guilty plea must be filed within 30 days from the date of his sentence; (2) that upon a showing of indigence defendant is entitled to a free transcript of the plea proceedings; and (3) an indigent defendant has a right to appointed counsel who may assist with the preparation and filing of his motion. See Ill. S. Ct. R. 605(c)(2), (5). Although defendant argues that the court's admonishments failed to notify defendant of his right to appeal as well, the essence of the court's admonishment – read as a whole rather than a selected portion – was that defendant has the right to an appeal which may only follow a denial of a motion that "states all the reasons why [defendant] want[s] to vacate [his] guilty plea."

¶ 11 Nonetheless, while Illinois courts of review have held that trial courts may substantially comply with Rule 605's requirements even when entire subsections of the rule have been omitted (see *e.g. Dunn*, 342 Ill. App. 3d at 882; *Claudin*, 369 Ill. App. 3d at 534), the admonishments given here failed to notify defendant of the basic procedural requirements necessary to perfect

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his appeal by omitting the timeliness requirement (see *Crump*, 344 Ill. App. 3d at 563) (admonishments sufficient if defendant notified that *timely* post-plea motion must be filed unless missing language results in prejudice)) and failing to advise defendant of the available assistance guaranteed him by law. As such, we cannot conclude that the admonitions as given imparted the essence of the rule or sufficiently put defendant on notice of the basic procedural requirements necessary to preserve his right to appeal. See *Dominguez*, 2012 IL 111336, ¶ 22; *Crump*, 344 Ill. App. 3d at 563.

¶ 12 The State argues that defendant's failure to file any post-plea motion whatsoever excludes his claim from being considered under the "admonishment exception," because he was not prejudiced by the missing admonishments where he "did not file his motion late, but instead failed to file it at all." However, the State has not provided authority on appeal where substantial compliance was found despite the trial court's omission of all of the subsections listed above. Moreover, the effect of the trial court's incomplete admonition arguably left defendant without the direction needed to prepare the proper post-trial motion where he was not notified that he may obtain a transcript of the applicable proceedings or that he was entitled to counsel who could have assisted with the creation and timely filing of such motion, or advised defendant that his "late notice of appeal" was not a proper post-plea motion and would subject his appeal to dismissal. Although we agree with the State that defendant's late notice of appeal was improper, it is evidence of his intent to challenge the court's judgment. Therefore, we disagree that defendant was not prejudiced by the trial court's failure to substantially comply with Rule 605 and thus, the "admonishment exception" applies and requires remand. See *Flowers*, 208 Ill. 2d at 301.

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¶ 13 Accordingly, we remand the cause to the trial court for proper admonishments under Rule 605(c) and an opportunity to file a motion to withdraw his guilty plea.

¶ 14 Cause remanded.