

SIXTH DIVISION
November 4, 2016

No. 1-14-3256

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. 14 CR 1944
)	
LESLIE MANGUM,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.

Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

O R D E R

- ¶ 1 *Held:* We dismissed the appeal upon finding the circuit court substantially complied with Illinois Supreme Court Rule 605(c) and, therefore, defendant's failure to file a postplea motion was not excused. The appointment of counsel to assist defendant in perfecting her appeal was not required under Illinois Supreme Court Rule 606(a).
- ¶ 2 Following a negotiated guilty plea, defendant Leslie Magnum was convicted of theft and sentenced to two years' probation. On appeal, defendant contends that the circuit court failed to properly admonish her in accordance with Illinois Supreme Court Rule 605(c) (Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001)), and, therefore, we must remand her case for proper admonishments.

She also argues that we should construe Illinois Supreme Court Rule 606(a) (Ill. S. Ct. R. 606(a) (eff. Feb. 6, 2013)), as automatically requiring the appointment of counsel when a defendant files a *pro se* notice of appeal after a plea of guilty. We dismiss the appeal.

¶ 3 Defendant was arrested on January 2, 2014, and subsequently charged by indictment with theft and forgery. On August 27, 2014, defendant entered into a negotiated plea of guilty to theft of more than \$500 but less than \$10,000 in exchange for two years' probation and the State's agreement to *nolle pros* the forgery count.

¶ 4 At the hearing on defendant's negotiated guilty plea, the court admonished her of the possible penalties for theft, and that, by pleading guilty, she was waiving her right to a jury and bench trial. Defendant acknowledged her understanding of those rights and waived them freely and voluntarily. The parties then stipulated to the factual basis for defendant's guilty plea, which showed that defendant entered a bank and cashed a fraudulent check from the account of another person made out to defendant in the amount of \$3,500. The court found that defendant understood the nature of the charge against her and the rights she was waiving by pleading guilty, there was a sufficient factual basis for the plea, and defendant was freely and voluntarily pleading guilty. The court sentenced defendant to the agreed-upon term of two years' probation. After doing so, the court admonished defendant, as follows.

"THE COURT: Even though you pled guilty ma'am, you still do have a right to appeal. In order to do that, you have to file in this court within 30 days of today's date in writing a motion or petition asking me to either reconsider the sentence or you may ask that the judgment of conviction which has been entered against you today be vacated. You may also ask for leave of court to withdraw your plea of guilty.

If you file any of those motions, you must set forth within the motions themselves the grounds, in other words, the reasons as to why they should be granted.

If you don't file the written motions or you don't list the grounds when you file the written motions, then those grounds have been waived and you will be unable to pursue them in the future.

If your motions are granted, I will vacate the plea, the sentence, and conviction and set the case down for trial.

Before trial, I would allow the State to reinstate Count 2 which they dismissed as a result of your plea to Count 1.

If you could not afford a lawyer to help you with the motions I just spoke of, I will appoint one to you at no cost to you and provide you free copies of the transcript of everything that did take place today regarding your plea and your sentence.

Again, be aware if you forget to place the grounds or reasons in your written motions asking me to reconsider the sentence or to allow you to withdraw your plea of guilty or you fail to file it within 30 days of today's date in writing in this court, then you are permanently barred from being able to file it in the future. And that would prevent you from being able to appeal any decision of this court to a higher court.

Do you understand your post plea and your appellate rights, ma'am?

THE DEFENDANT: Yes."

¶ 5 Defendant did not file a postplea motion in the circuit court. On September 23, 2014, defendant filed a *pro se* notice of appeal.

¶ 6 On appeal, defendant contends that the circuit court failed to properly admonish her in accordance with Rule 605(c) and, thus, her case should be remanded to the circuit court for

proper admonishments and that she should be allowed an opportunity to file a motion to withdraw her guilty plea. Defendant acknowledges that she failed to file a postplea motion and would, ordinarily, be precluded from pursuing an appeal under Illinois Supreme Court Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013)). However, defendant argues that we should consider her claim under the "admonition exception" to that rule. In setting forth this argument, defendant asserts that, in admonishing her under Rule 605(c), the circuit court conflated the need to file a postplea motion with the need to file a notice of appeal, and never told her that a postplea motion had to be filed "prior to taking an appeal."

¶ 7 The State responds that the circuit court's admonishments substantially complied with the requirements of Rule 605(c). As a result, the State argues that this court must dismiss the appeal because defendant failed to file a postplea motion pursuant to Rule 604(d).

¶ 8 Rule 604(d) provides that when a defendant wishes to appeal from a judgment entered on a negotiated guilty plea she must first file a written motion with the circuit court to withdraw her guilty plea and vacate the judgment. *Id.*; *People v. Dunn*, 342 Ill. App. 3d 872, 876 (2003). Compliance with Rule 604(d) is a condition precedent to an appeal and, generally, if a defendant fails to meet this requirement, we must dismiss the appeal. *People v. Jamison*, 181 Ill. 2d 24, 28-29 (1998); *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). However, under the "admonition exception" to this rule, if the circuit court fails to admonish a defendant in accordance with Rule 605, and the defendant subsequently attempts to appeal without first filing the motions required by Rule 604(d), the appeal is not dismissed. *In re William M.*, 206 Ill. 2d 595, 605 (2003); *People v. Foster*, 171 Ill. 2d 469, 473 (1996). Rather, the appropriate course is to remand the case to the circuit court for the court to properly admonish the defendant under Rule 605 and for the defendant's strict compliance with Rule 604(d). *Flowers*, 208 Ill. 2d at 301.

¶ 9 Here, defendant failed to file a postplea motion in the circuit court and, instead, filed a notice of appeal. Defendant's failure to do so may result in the waiver of her right to a direct appeal, unless the circuit court failed to admonish her in accordance with Rule 605(c). *People v. Claudin*, 369 Ill. App. 3d 532, 533 (2006). Although the circuit court is not required to use the exact language of Rule 605(c), it must sufficiently convey the substance of the rule when admonishing the defendant. *Dunn*, 342 Ill. App. 3d at 881. We review the circuit court's compliance with Supreme Court Rules *de novo*. *People v. Lloyd*, 338 Ill. App. 3d 379, 384 (2003).

¶ 10 Rule 605(c) states that when a circuit court sentences a defendant pursuant to a negotiated guilty plea, the admonishments shall include:

- "(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).

¶ 11 Here, we find that the circuit court substantially admonished defendant in accordance with Rule 605(c). The record shows that the court informed defendant of her right to appeal, and the need to first, within 30 days, file a written motion to reconsider sentence, vacate the judgment, or withdraw her plea. The court also admonished defendant that any issues not raised in such a motion would be waived and that she had a right to a copy of the transcript of the proceedings, at no cost to her, and an attorney would be appointed to assist her in the preparation of the motion. The court further admonished defendant that, if the motions were granted, a trial date would be set for the case, and the State would be allowed to reinstate the forgery charge which it dismissed as part of the plea agreement. The court also warned defendant of the consequences of failing to file a postplea motion as follows: "be aware if you *** fail to file it within 30 days of today's date in writing in this court, then you are permanently barred from being able to file it in the future. And that would prevent you from being able to appeal any decision of this court to a higher court." These admonishments substantially complied with every subsection of Rule 605(c).

¶ 12 Defendant, nevertheless, argues that the circuit court violated Rule 605(c) by incorrectly stating that defendant could file a postplea motion to reconsider her sentence. See *People v Evans*, 174 Ill. 2d 320, 329 (1996) (motion to reconsider sentence provisions of Rule 604(d) do not apply to negotiated guilty pleas). Although the circuit court incorrectly stated that defendant could file a motion to reconsider her sentence, defendant did not attempt to file such a motion and, thus, was not prejudiced by the court's admonishment. Here, the court's admonishment does

not provide cause for reversal where it conveyed the substance of the rule and warned defendant that, in order to appeal, she needed to first file a postplea motion within 30 days. Defendant, however, failed to file any postplea motion. See *Claudin*, 369 Ill. App. 3d at 534 (the defendant ignored admonitions which did not strictly comply with Rule 605(c), but were sufficient to put him on notice of the postplea action necessary to preserve his appeal). As such, we find that defendant was substantially admonished pursuant to Rule 605(c) and that her failure to file a Rule 604(d) motion is not excused by the admonition exception. *Id.*

¶ 13 In reaching this conclusion, we are not persuaded by defendant's reliance on *People v. Young*, 387 Ill. App. 3d 1126 (2009), where this court remanded for admonishments in strict compliance with Rule 605(c) after finding that the trial court's admonition, that the defendant could file either a motion to reconsider sentence, or vacate the judgment and withdraw his guilty plea, mirrored the requirements applicable to a nonnegotiated plea of guilty, rather than defendant's negotiated plea. *Id.* at 1127-29.

¶ 14 Here, unlike in *Young*, defendant did not file a motion to reconsider her sentence, nor does the State concede that the circuit court incorrectly admonished her.

¶ 15 We are, likewise, not persuaded by defendant's reliance on *People v. Perry*, 2014 IL App (1st) 122584, which this court remanded for further proceedings after finding the trial court's admonishments were inadequate.

¶ 16 Here, unlike *Perry*, the circuit court's admonishments were not ambiguous and did not imply that defendant first had 30 days to file a direct appeal from her guilty plea, before filing the requisite Rule 604(d) motions. *Id.* ¶ 17. Contrary to defendant's argument, the court did not conflate the difference between a postplea motion and a notice of appeal. Rather, in this case, the record shows that the court specifically admonished defendant as follows:

"[Y]ou still do have a right to appeal. In order to do that, you have to file in this court within 30 days of today's date in writing a motion or petition asking me to either reconsider the sentence or you may ask that the judgment of conviction which has been entered against you today be vacated. You may also ask for leave of court to withdraw your plea of guilty."

As mentioned, this admonishment was more than sufficient to place defendant on notice of the necessity of first filing a postplea motion in order to appeal, yet defendant failed to file a postplea motion prior to filing her notice of appeal.

¶ 17 Defendant next contends that we should construe Illinois Supreme Court Rule 606(a) (Ill. S. Ct. R. 606(a) (eff. Feb. 6, 2013)), as automatically requiring the appointment of counsel when, as here, a defendant files a *pro se* notice of appeal without first filing the requisite postplea motions.

¶ 18 Rule 606(a) provides the procedure for perfecting an appeal:

"[A]ppeals shall be perfected by filing a notice of appeal with the clerk of the trial court. The notice may be signed by the appellant or his attorney. If the defendant so requests in open court at the time he is advised of his right to appeal or subsequently in writing, the clerk of the trial court shall prepare, sign, and file forthwith a notice of appeal for the defendant. No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional." Ill. S. Ct. R. 606(a) (eff. Feb. 6, 2013).

¶ 19 Defendant argues that, because Rule 606(a) permits a notice of appeal to be filed by a *pro se* defendant who pled guilty, without first filing the requisite postplea motions, the rule essentially allows for the unknowing waiver of a defendant's right to appeal. Defendant maintains that, because she has a constitutional right to counsel's assistance in perfecting her

appeal (*Evitts v. Lucey*, 469 U.S. 987, 393-97 (1985)), Rule 606(a) would be rendered unconstitutional unless we construe the rule as requiring the appointment of counsel to assist a defendant with perfecting an appeal upon the defendant's filing of a *pro se* notice of appeal from a guilty plea. In support of this argument, defendant relies on *Evitts*; *Roe v. Flores-Ortega*, 528 U.S. 470 (2000); and *People v. Ross*, 229 Ill. 2d 255 (2008).

¶ 20 This court has previously considered and rejected defendant's argument and the cases she has cited in support thereof. See *People v. Merriweather*, 2013 IL App (1st) 113789, ¶¶ 29-34. We see no reason to depart from our reasoning in *Merriweather* and continue to hold that the plain language of Rule 606(a), which allows for the filing of a notice of appeal by either the appellant or his attorney, is clear and unambiguous, and we decline to read into it exceptions, limitations, or conditions which conflict with its expressed intent, or interpret it as anything other than what is expressly written in the plain language of the rule. *Id.* ¶¶ 32, 34.

¶ 21 For foregoing reasons, we conclude that defendant's failure to file a Rule 604(d) motion is not excused by the admonition exception, and she has, therefore, waived her right to a direct appeal. Accordingly, we dismiss the appeal.

¶ 22 Appeal dismissed.