

No. 1-14-3619

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.)	Nos. 14 CR 13726
)	14 CR 13727
)	
ADAM JOBES,)	Honorable
)	Rosemary Higgins,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held:* Remanded to the trial court for strict compliance with Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013)). Defendant's fines, fees and costs order modified, vacating the \$5 Electronic Citation Fee (705 ILCS 105/27.3e (West 2012)).

¶ 2 Following a fully negotiated guilty plea, defendant Adam Jobes was convicted of two counts of identity theft and sentenced to concurrent terms of four years' imprisonment. On appeal, defendant contends that the trial court failed to properly admonish him in accordance with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001), and therefore his case should be

remanded for proper admonishments. Defendant also contends that his fines and fees order should be corrected. We remand and modify.

¶ 3 Defendant was arrested on July 5, 2014, and subsequently charged by two indictments (14 CR 13726 and 14 CR 13727) with a total of nine counts of identity theft. On August 14, 2014, defendant entered into a negotiated plea of guilty to one count of identity theft under each indictment in exchange for two concurrent sentences of four years' imprisonment and the State's agreement to not charge him with a third case.

¶ 4 At the plea hearing, the court admonished defendant of the possible penalties for each offense. The court also admonished defendant that, in order to plead guilty, he must give up his rights to a jury and bench trial. Defendant acknowledged understanding those rights and waived them freely and voluntarily. The parties then stipulated to the factual basis for defendant's plea. The court found defendant understood the nature of the charges against him, the possible penalties for each offense, that there was a sufficient factual basis for the plea and that defendant was freely and voluntarily pleading guilty. Defendant waived his right to a presentence report and the court sentenced him to concurrent terms of four years' imprisonment. After doing so, the court admonished defendant as follows:

"THE COURT: Even though I've entered judgment, you have a right within 30 days to withdraw your plea and make a motion to reconsider the sentence or to vacate the judgment.

If you cannot afford a lawyer and a transcript, I will provide one. If I grant your request, I would reinstate your case. But there is a nolle pros on all the remaining counts in both cases, correct?

[THE STATE]: That's correct, your Honor.

THE COURT: If you withdraw the plea and I reinstate it or agree to allow you to withdraw the plea, I would reinstate all the counts including those nolle prossed as well [as] the State's agreement not to charge that third case at the Best Buy would no longer be in effect. [The State] could charge it if [it] chose to.

You understand?

THE DEFENDANT: Yes, your Honor.

THE COURT: Even though I have entered judgment and sentence on both cases you have the right to – all right."

¶ 5 On October 31, 2014, defendant filed in the circuit court a *pro se* "motion for reduction of sentence." In the motion, defendant stated that he was sentenced to two years imprisonment for each offense and that the court admonished him that his sentences would be concurrent. On December 11, 2014, the court denied the motion, finding that defendant received the correct sentences and that his mittimus showed they were concurrent.

¶ 6 On December 17, 2014, this court granted defendant's motion for leave to file a late notice of appeal from his August 14, 2014, guilty plea.

¶ 7 On appeal, defendant contends that the trial court failed to comply with Rule 605(c) (Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001)) because the court did not admonish him: (1) about his right to appeal; (2) that his postplea motion must be written, include grounds for withdrawal and be filed before an appeal is taken; and (3) that any issue he did not include in his postplea motion would be waived on appeal. Defendant maintains that the trial court's failure to properly

admonish him requires us to remand the case for proper admonishments. In setting forth this argument, defendant acknowledges that he did not file a postplea motion within 30 days of pleading guilty as required by Rule 604(d) and would ordinarily be precluded from submitting an appeal, but argues that we may consider his claim under the "admonition exception" to that rule. Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013).

¶ 8 The State, relying on *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34 (2011), responds that this appeal must be dismissed because the trial court did not have jurisdiction to consider defendant's *pro se* motion to reduce sentence where defendant failed to file a timely, written, postplea motion to withdraw his plea in accordance with Rule 604(d). The State does not substantively respond to defendant's argument that the trial court's admonishments failed to comply with Rule 605(c).

¶ 9 In his reply brief, defendant argues that this court resolved the jurisdiction issue when we granted his motion for leave to file a late notice of appeal from his August 14, 2014, guilty plea.

¶ 10 Rule 604(d) provides that when a defendant wishes to appeal from a judgment entered on a negotiated guilty plea he must first file a written motion with the trial court to withdraw the guilty plea and vacate the judgment. *People v. Dunn*, 342 Ill. App. 3d 872, 876 (2003); Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). Compliance with Rule 604(d) is a condition precedent to an appeal. *People v. Jamison*, 181 Ill. 2d 24, 28-9 (1998). Generally, the failure to file a timely Rule 604(d) motion precludes this court from considering the appeal on the merits. See *Skryd*, 241 Ill. 2d at 40 (where a defendant has failed to file a motion to withdraw the guilty plea, we must dismiss the appeal), citing *People v. Flowers*, 208 Ill. 2d 291, 301 (2003) (collecting cases). However,

under the "admonition exception" to this rule, if the trial court fails to admonish defendant in accordance with Rule 605 and 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 trial court for strict compliance with Rule 604(d). *Flowers*, 208 Ill. 2d at 301.

¶ 11 Here, defendant failed to file any postplea motion in the trial court within 30 days of entering his plea. The record shows that defendant entered his guilty plea and was sentenced on August 14, 2014. Defendant did not file a timely notice of appeal from that order. Defendant also did not file a written motion to withdraw his plea or vacate the judgment. Rather, on October 31, 2014, more than 60 days after entering his plea, defendant filed an untimely *pro se* motion for reduction of sentence. The trial court denied the motion. We briefly note that the trial court should have dismissed the motion because it lacked subject matter jurisdiction to consider it where more than 30 days had passed since the trial court imposed the sentence and the court had not extended the time limitation. See *People v. Hood*, 387 Ill. App. 3d 380, 387 (2008) (citing *Flowers*, 208 Ill. 2d at 303).

¶ 12 After the denial of his motion to reconsider sentence, defendant filed, and, on December 17, 2014, we granted his motion for leave to file a late notice of appeal from the August 14, 2014, entry of his guilty plea. Contrary to the State's argument, we find *Skryd* unpersuasive where defendant in this case is not appealing from the trial court's order denying his motion to reconsider sentence, which, as mentioned, was entered without jurisdiction and the admonition

exception would thus be inapplicable. See *Skryd*, 241 Ill. 2d at 43. Rather, here, we granted defendant's motion for leave to file a late notice of appeal from the entry of his guilty plea without him first timely filing the requisite Rule 604(d) motions in the trial court. Defendant's failure to do so may result in the waiver of his right to a direct appeal, unless the trial court failed to admonish defendant in accordance with Rule 605(c). *People v. Claudin*, 369 Ill. App. 3d 532, 533 (2006).

¶ 13 In *People v. Dominguez*, 2012 IL 111336, ¶ 11, our supreme court held that a trial court must strictly comply with Rule 605(c) and failure to do so requires remand for proper admonishments. The court explained that, although a "verbatim reading of the rule is not required," a defendant must be "substantially advised of the actual content of Rule 605(c)." *Id.* This means that a trial court must admonish the defendant "in such a way that the defendant is properly informed, or put on notice, of what he must do in order to preserve his right to appeal his guilty plea." *Id.* ¶ 22. We review the trial court's compliance with supreme court rules *de novo*. *People v. Lloyd*, 338 Ill. App. 3d 379, 384 (2003).

¶ 14 Rule 605(c) states that when the trial 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).

¶ 15 Here, we find that the trial court did not substantially admonish defendant in accordance with Rule 605(c). The record shows the court failed to advise defendant of: (1) his right to appeal; (2) that he must submit a *written* postplea motion asking to have the judgment vacated and for leave to withdraw the plea of guilty; and (3) 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. Although the court advised defendant that he had the right, within 30 days, to withdraw his plea and make a motion to vacate the judgment, it failed to advise defendant that he had a right to appeal. While we are mindful that defendant took no action in 30 days, we cannot confidently say that he would have taken no action had he been properly admonished of his right to appeal. Under these circumstances, we

find remand for strict compliance with Rule 604(d) is the appropriate course of action. *Foster*, 171 Ill. 2d at 474.

¶ 16 In reaching this conclusion, we observe that our research has not yielded cases analogous to the case at bar where the trial court advised defendant of his right to withdraw his plea and file the requisite postplea motions, but failed to somehow link that action with defendant's actual right to appeal. Given that the requirement of filing postplea motions is procedural in nature and not synonymous with the defendant's right to appeal, we cannot say that a trial court's admonishment, which fails to advise the defendant of his right to appeal, amounts to substantial compliance with Rule 605(c).

¶ 17 Defendant next contends, the State concedes, and we agree that the \$5 Electronic Citation Fee assessed pursuant to section 27.3e of the Clerks of Courts Act (705 ILCS 105/27.3e (West 2012)) must be vacated as that fee only applies to traffic, misdemeanor, municipal ordinance and conservation violations, and does not apply to defendant's felony offenses. *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115. Accordingly, we direct the clerk of the circuit court to vacate the \$5 Electronic Citation Fee from the fines, fees and costs order in indictment number 14 CR 13726. After removing the \$5 Electronic Citation Fee, defendant's fines and fees order should reflect a total of \$424.

¶ 18 The parties also agree that defendant's presentence incarceration credit should be applied to the \$15 State Police Operations charge because it is a fine, not a fee. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31.

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¶ 19 For the reasons stated, we conclude that defendant's failure to file a Rule 604(d) motion is excused by the admonition exception and remand the cause to the trial court for strict compliance with the rule. We direct the clerk of the circuit court to amend the fines, fees and costs order by vacating the \$5 Electronic Citation Fee.

¶ 20 Remanded with instructions; fines, fees and costs order modified.