

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).

2016 IL App (4th) 14150331-U

NO. 4-15-0331

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 24, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
RICHARD SULLIVAN,)	No. 96CF90
Defendant-Appellant.)	
)	Honorable
)	Robert M. Travers,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court was not required to readmonish defendant under Illinois Supreme Court Rule 605 (eff. Oct. 1, 2001) after reducing defendant's sentence at his request on a motion to reconsider.

¶ 2 In January 1997, defendant, Richard Sullivan, was found guilty of attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a) (West 1994)) and unlawful possession of a weapon in prison (720 ILCS 5/24-1.1(b) (West 1994)) for stabbing a correctional officer. In April 1997, the trial court sentenced defendant to consecutive prison terms of 40 and 20 years, respectively. These sentences were to be served consecutively with his previously imposed life sentence for murder.

¶ 3 Defendant's underlying murder conviction was later vacated, and a previously dismissed murder charge was reinstated against defendant. His prison stabbing sentence herein was reimposed based on the newly imposed murder conviction. On February 26, 2014, the trial

court granted defendant's motion to reconsider his prison stabbing sentences and reduce them. He was not admonished of his right to appeal. He filed a timely notice of appeal. On August 1, 2014, defendant filed a *pro se* motion to reconsider. This court remanded the case to hear the pending motion. *People v. Sullivan*, No. 4-14-0175 (Oct. 10, 2014) (agreed order on defendant's motion striking the notice of appeal and remanding for resolution of defendant's pending motion). The trial court dismissed the case for lack of jurisdiction because the motion to reconsider was filed over 30 days after the judgment. This appeal followed.

¶ 4

I. BACKGROUND

¶ 5 On September 29, 1995, defendant, Richard Sullivan, while incarcerated, stabbed a correctional officer. He was charged with attempt (first degree murder) (count I) (720 ILCS 5/8-4(a), 9-1(a) (West 1994)), unlawful possession of a weapon by a person in the custody of the Department of Corrections (count II) (720 ILCS 5/24-1.1(b) (West 1994)), and aggravated battery (count III) (720 ILCS 5/12-4(b)(6) (West 1994)). After a jury trial, defendant was found guilty of counts I and II. In April 1997, the trial court sentenced him to 40 years in prison for count I and 20 years in prison for count II, to be served concurrently. Defendant was already serving a life sentence for murder. *People v. Sullivan*, No. 90-CF-346 (Cir. Ct. Winnebago Co.).

¶ 6 In 1998, defendant appealed to this court. We affirmed his conviction and modified his sentence to allow for day-for-day good-time credit. *People v. Sullivan*, No. 4-97-0277 (Apr. 27, 1998) (unpublished order under Supreme Court Rule 23).

¶ 7 In an unrelated case, defendant's murder conviction was later vacated, along with his natural life sentence. A previously dismissed murder charge was reinstated against defendant. *People v. Sullivan*, No. 90-CF-344 (Cir. Ct. Winnebago Co.). In August 2011, the trial court sentenced defendant to 50 years in prison on the reinstated murder charge.

¶ 8 In January 2013, defendant filed the postconviction petition herein, arguing his

prison stabbing sentence violated the eighth and fourteenth amendments for considering a vacated conviction (No. 90-CF-346) in aggravation. The trial court agreed with defendant's petition. On January 13, 2014, the trial court reimposed defendant's sentence for stabbing a correctional officer. The new sentence considered his newly imposed murder conviction (No. 90-CF-344) in aggravation and maintained the same sentence as before. Defendant was credited for time already served. He was admonished of his rights under Illinois Supreme Court Rule 605(a) (eff. Oct. 1, 2001). He filed a motion to reconsider, arguing, among other claims, his sentence was imposed in violation of the statute on extended-term sentencing (730 ILCS 5/5-8-2 (West 2014)).

¶ 9 On February 26, 2014, after a hearing, the trial court granted defendant's motion to reconsider and reduced his sentence to consecutive terms of 30 and 15 years for his attempt (first degree murder) and unlawful-possession-of-a-weapon convictions. These sentences were ordered to run consecutively to his reinstated 50-year murder conviction in case No. 90-CF-344. The court did not readmonish defendant of his right to appeal or to file postjudgment motions. On March 5, 2014, after his motion to reconsider was granted, he filed a timely notice of appeal. On March 21, 2014, defendant sent a letter to the circuit clerk, alleging a discrepancy in the calculation of his prison sentence. He believed his release date was 2025, while the Department of Corrections stated it was 2037. Defendant claimed he did not have an attorney at the time. On April 4, 2014, defendant sent another letter to the circuit court judge addressing the same argument.

¶ 10 On August 1, 2014, defendant filed a motion to reconsider, addressing the same argument in further detail. Specifically, he calculated his discharge date as of the day his murder conviction in No. 90-CF-346 was vacated and his new murder charge was reinstated. He was not sentenced to 50 years in prison for the new murder charge at the time. In October 2014, this

court considered his motion from March 5, 2014, in appeal No. 4-14-0175. At the agreed request of the parties, this court struck the pending notice of appeal and remanded the case to resolve the pending motion. In March 2015, defendant filed a supplemental motion to reconsider, arguing the trial court abused its discretion in imposing the sentence. The State objected on the basis of jurisdiction, arguing the motion was filed over 30 days after the final judgment. The circuit court agreed with the State and dismissed the case for lack of jurisdiction. This appeal followed.

¶ 11

II. ANALYSIS

¶ 12 On appeal, defendant argues his case should be remanded to the circuit court to provide him with proper Rule 605(a) admonishments (Ill. S. Ct. R. 605(a) (eff. Oct. 1, 2001)) after his sentence was reduced on a motion to reconsider. We disagree. Since this is an issue regarding a supreme court rule, we review it *de novo*. *People v. Henderson*, 217 Ill. 2d 449, 458, 841 N.E.2d 872, 876 (2005).

¶ 13 When a defendant pleads "not guilty" to a crime and is later found guilty, circuit courts in Illinois are required to admonish the defendant of his rights under Illinois Supreme Court Rule 605(a) (eff. Oct. 1, 2001). The admonishments inform defendant of the 30-day time limit to file an appeal. *Id.* at (a)(3). Defendant must also file a motion to reconsider within 30 days, if he is challenging his sentence, before filing an appeal. *Id.* Failure to file a motion to reconsider sentencing issues results in forfeiture of those sentencing issues on appeal. *Id.* at (a)(3)(C). The Rule 605(a) admonishments must be given "at the time of imposing sentence or modifying the conditions of the sentence." *Id.* at (a)(3). We do not find it necessary to readmonish defendant after granting his motion to reconsider as no *condition* of his sentence was modified. See, *e.g.*, *In re J.R.*, 302 Ill. App. 3d 87, 122, 704 N.E.2d 809, 812 (1998) (distinguishing length of confinement from a condition of confinement).

¶ 14 Assuming, for the sake of argument, defendant should have been readmonished

after the circuit court granted his motion to reconsider, we find no prejudice occurred. Failure to give Rule 605(a) admonishments does not require an automatic reversal. *Henderson*, 217 Ill. 2d at 466, 841 N.E.2d at 881. Rather, we will remand for proper Rule 605(a) admonishments only when prejudice or a denial of real justice results. *Id.* Defendant was admonished at his initial resentencing on January 13, 2014, less than two months before the circuit court granted his motion to reconsider. Pursuant to those admonishments, he filed a motion to reconsider. His motion was granted and his sentence was reduced. Then he filed a timely notice of appeal. At that time, he adhered to the initial Rule 605(a) admonishments and preserved a different sentencing error for appeal, challenging his extended-term sentence. He clearly demonstrated he understood the admonishments. Ill. S. Ct. R. 605(a)(3)(B) (eff. Oct. 1, 2001).

¶ 15 Defendant filed his untimely August 2014 motion to reconsider his sentence calculation *after* he had properly filed his timely appeal on another sentencing issue in case No. 4-14-0175. At the agreed request of the parties, this court remanded the case to hear his untimely motion. Defendant was not prejudiced by the circuit court's dismissal for filing an untimely motion considering he previously understood and complied with the proper time constraints to file a motion to reconsider.

¶ 16 III. CONCLUSION

¶ 17 We affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 18 Affirmed.