2017 IL App (2d) 151219-U
No. 2-15-1219
Order filed December 21, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JERMAINE J. JACKSON, Defendant-Appellant.	)))))))))))	Appeal from the Circuit Court of Kane County. No. 14-CF-1488 Honorable Susan Clancy Boles and Elizabeth K. Flood, Judges, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly summarily dismissed defendant's postconviction petition, which alleged that the court had failed to comply with Rule 605(c): as we had held on direct appeal, the court's admonishments were sufficient.

¶ 2 Pursuant to a negotiated plea agreement, defendant, Jermaine J. Jackson, pleaded guilty to unlawful delivery of a controlled substance (720 ILCS 570/401(a)(1)(A) (West 2014)) in return for an eight-year sentence. After the court accepted the plea and imposed the agreed-upon sentence, it admonished defendant pursuant to Illinois Supreme Court Rule 605(c) (eff. Oct, 1, 2001). Those admonishments provided that, within 30 days, defendant had to file a motion to

withdraw his plea if he wished to appeal; anything not raised in the motion would be "waived" on appeal; the matter would be set for trial if the motion were granted; defendant could appeal if the motion were denied; if defendant could not afford an attorney, one would be appointed to represent him; and defendant would be given a transcript of what transpired at the plea proceedings. Approximately 90 days after defendant pleaded guilty, he sent a letter to the court, expressing his desire to file a motion to withdraw his plea. The court appointed counsel for defendant, a notice of appeal was filed on defendant's behalf, and on appeal, this court dismissed the appeal for lack of jurisdiction, noting that "the trial court admonished defendant correctly."[1] *People v. Jackson*, 2015 IL App (2d) 150061-U, ¶ 7 (summary order). In the meantime, defendant petitioned *pro se* for postconviction relief. The trial court summarily dismissed the petition, and we allowed defendant to file a late notice of appeal (see Ill. S. Ct. R. 606(c) (eff. Dec. 11. 2014)). On appeal, defendant argues that he was denied due process, the right to appeal, and the assistance of counsel in perfecting his appeal when the trial court failed to advise him that he had the right to counsel in preparing and presenting his postplea motion. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant pleaded guilty on September 5, 2014. After hearing a factual basis for the plea and asking defendant a number of questions, the court found that the plea was knowingly and voluntarily entered. The court imposed the agreed-upon eight-year sentence and then admonished defendant about his appeal rights. In so doing, the court stated:

[1] The appeal came before the court on the appellate defender's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967).

"Today's order is final and appealable. So what that means is if you do wish to appeal, you would have 30 days from today's date in which to file a written motion in front of [me].

In that motion, you would have to state every reason why you would be seeking to withdraw your plea of guilty and vacate the judgment here today.

Understand that any reason not stated in that written motion would be deemed waived for purposes of appeal in the future.

If I were to grant your motion, what would happen then is we would come back here, we would set the matter, this charge, for trial. The additional counts that had been dismissed out pursuant to this agreement could be reinstated at the request of the State at that time; and those, too, would be set for trial.

If I denied your written motion, you would have 30 days from that date to appeal to a higher court, the appellate court. If you could not afford an attorney, one would be appointed to represent you and you would be given a written transcript of this morning so you knew what everybody said here today."

¶ 5 The court then asked defendant if he understood his appeal rights, and defendant said yes. However, defendant did have questions about a prior conviction and the fact that he received an 8-year sentence when the range was 6 to 30 years' imprisonment. Upon hearing this, defense counsel interjected that she would speak with defendant that morning and re-approach the bench if need be. Nothing further happened on defendant's case that day.

¶ 6 On December 9, 2014, defendant sent a letter to the court indicating that he would like to file a motion to withdraw his plea, "which [he had] been trying [his] best to do." Defendant explained that the facility where he was being held did not have a law library where he could get

assistance in filing the motion, and he asked the court to appoint an attorney to represent him. Soon thereafter, defendant filed a *pro se* motion for an extension of time to file a motion to reduce his sentence, a proposed motion to reduce his sentence, a petition for trial transcripts, and a notice of appeal. The court appointed an attorney to represent defendant, and a notice of appeal was filed on defendant's behalf.

¶ 7 Defendant then filed a *pro se* postconviction petition. He claimed that he now should be permitted to move to withdraw his plea, as he had been denied access to a law library. Defendant also asserted that his trial attorney was ineffective. In the affidavit attached to his petition, defendant stated that his attorney never came back to talk to him after he pleaded guilty, as she said she would do, and that he wanted to withdraw his guilty plea but he did not have any library privileges at the facility where he was sent. When he was transferred, defendant did not have access to the law library until February 2015. Defendant stated that, even though he did not have access to the library, he tried to research his rights and withdraw his guilty plea. In doing so, he learned that he had taken the wrong steps.

¶ 8 Thereafter, defendant withdrew his petition, indicating that he was going to file a new one, and this court dismissed defendant's direct appeal. See *Jackson*, 2015 IL App (2d) 150061-U. In determining that we lacked jurisdiction over the appeal, we noted that, in some unique circumstances, such as when the trial court fails to properly admonish a defendant pursuant to Rule 605(c), we may treat a late notice of appeal as timely filed. We found that this case did not present one of those unique circumstances, as "the trial court admonished defendant correctly." *Id.* ¶ 7.

¶ 9 After this court dismissed defendant's appeal, defendant filed a new postconviction petition, raising the same claims he raised before. In doing so, defendant explained that the

facility he was initially sent to was on lockdown, and the library was closed for four to five months. Thus, defendant could not get the forms he needed to timely move to withdraw his guilty plea. Defendant also reiterated that his attorney had promised to talk to him after he pleaded guilty, but she never did, and he indicated in his affidavit that "[a]ppeal was attempted but dismissed due to I took the wrong steps was [*sic*] advised on what steps to take." The trial court summarily dismissed the petition.

¶ 10 II. ANALYSIS

¶ 11 At issue in this appeal is whether defendant's petition stated a viable claim that the trial court did not properly admonish him that he had the right to counsel in the preparation and presentation of his postplea motion. Before addressing that issue, we mention again that this court has already found that "the trial court admonished defendant correctly." *Id.* Under the law-of-the-case doctrine, issues that a reviewing court has decided in a prior appeal cannot be reconsidered. *In re Christopher K.*, 217 Ill. 2d 348, 363 (2005). However, there are two exceptions to this rule. *People v. Anderson*, 2015 IL App (2d) 140444, ¶ 27. Specifically, issues already decided may be reconsidered if (1) a higher reviewing court made a contrary ruling on the same issue or (2) the reviewing court's prior decision was palpably erroneous. *Id.* Defendant has not argued that either of these exceptions applies. However, given that we mentioned the sufficiency of the admonishments in a summary order granting an *Anders* motion to withdraw for lack of jurisdiction, we feel compelled to address the issue in more depth.

¶ 12 In doing so, we note that defendant's claim that the admonishments were faulty arises in the context of postconviction proceedings. "The [Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016))] provides a remedy to defendants who have suffered substantial violations of their constitutional rights." *People v. Barcik*, 365 Ill. App. 3d 183, 190 (2006).

There are three stages to the proceedings. *Id.* This appeal concerns the dismissal of a petition at the first stage.

¶ 13 During the first stage, the trial court determines whether the defendant's allegations sufficiently demonstrate a constitutional violation that would necessitate relief. *People v. Coleman*, 183 Ill. 2d 366, 380 (1998). The trial court may summarily dismiss the petition if it finds that the petition is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2016). A petition is frivolous or patently without merit when it has no basis in law or fact. *People v. Alcozer*, 241 Ill. 2d 248, 257-58 (2011).

¶ 14 In considering whether a petition is frivolous or patently without merit, a court must determine whether the petition presents the gist of a constitutional claim. *People v. Harris*, 224 Ill. 2d 115, 126 (2007); *People v. Little*, 335 Ill. App. 3d 1046, 1050 (2003). "The 'gist' standard is 'a low threshold.' " *People v. Edwards*, 197 Ill. 2d 239, 244 (2001) (quoting *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996)). Although a "gist" is something more than a bare allegation of a deprivation of a constitutional right (*People v. Prier*, 245 Ill. App. 3d 1037, 1040 (1993)), it is something less than a completely pleaded or fully stated claim (*Edwards*, 197 Ill. 2d at 245). Thus, to set forth the "gist" of a constitutional claim, the petition need present only a limited amount of detail and need not set forth the claim in its entirety. *Id.* at 244. In resolving whether the petition is frivolous or patently without merit, the court must accept as true all well-pleaded allegations, unless the allegations are positively rebutted by the record. *Little*, 335 Ill. App. 3d at 1050. We review *de novo* the summary dismissal of a petition. *Id.* at 1051.

¶ 15 Defendant claims that he was denied procedural due process, the right to appeal his guilty plea, and his right to counsel to assist him in perfecting an appeal when he was not properly admonished that he was entitled to the assistance of counsel in preparing and presenting a motion

to withdraw his guilty plea within 30 days after he pleaded guilty.[2] Addressing the issue defendant raises necessarily begins with an examination of Illinois Supreme Court Rules 605(c) (eff. Oct. 1, 2001) and 604(d) (eff. Feb. 6, 2013). Rule 605(c) works in tandem with Rule 604(d) to promote the orderly presentation and consideration of challenges to guilty pleas and sentences entered upon guilty pleas. See *People v. Dominguez*, 2012 IL 111336, ¶ 13. Those rules require that such challenges initially be raised in the trial court, and they ensure that the defendant has a fair opportunity to do so. *People v. Foster*, 171 Ill. 2d 469, 471 (1996).

¶ 16 Rule 604(d) provides in pertinent part:

> "No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment. No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending." Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013).

[2] Although this precise claim was not explicitly raised in defendant's petition, a liberal reading of the petition reveals its basic substance. See *People v. Thomas*, 2014 IL App (2d) 121001, ¶¶ 4-5.

¶ 17 Rule 605(c) safeguards the defendant's right to review of his plea or sentence by mandating that, when a sentence is imposed upon a defendant who has entered a negotiated guilty plea, he be admonished 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 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." (Emphasis added.) Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001).

¶ 18 Here, because the State made a sentencing concession, defendant's plea was negotiated within the meaning of the rule, and to take an appeal, he was obligated to move to withdraw his plea and vacate the judgment. *Id.*; see also *Dominguez*, 2012 IL 111336, ¶ 13. Defendant did

not timely do so. The consequences of failing to timely file the proper motion under Rule 604(d) depend on whether the defendant was properly admonished under Rule 605(c). See *Foster*, 171 Ill. 2d at 473.

¶ 19 Rule 605(c) specifically requires that, when the defendant enters a negotiated plea, the trial court "shall advise the defendant substantially" about the rights and conditions of appealing that are delineated in the rule. Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001). Our supreme court has determined that this means that the court must advise the defendant about all six items contained in the rule, but the court need not recite the rule verbatim. *Dominguez*, 2012 IL 111336, ¶¶ 15, 22. Rather, substantial compliance occurs when the trial court imparts upon the defendant the essence of the rule. *Id.* ¶ 22.

¶ 20 Here, after pronouncing sentence, the trial court admonished defendant that he could appeal the order; if he wanted to appeal, he would have to file a written motion to withdraw his plea and vacate the judgment; any issue not raised in his motion to withdraw the guilty plea would be "waived" on appeal; if the court granted the motion, the case would be set for trial and the State could reinstate the charges it dismissed; if the motion were denied, defendant could appeal to this court; counsel would be appointed to represent defendant if he could not afford an attorney; and defendant would be provided a written transcript of the plea proceedings. These admonishments substantially complied with Rule 605(c). *Id.* ¶¶ 46, 51; see also *People v. Dunn*, 342 Ill. App. 3d 872, 882 (2003).

¶ 21 Defendant argues that, although the trial court advised him of the right to counsel, the court did not specify that counsel would be available to assist him with preparing and presenting his motion to withdraw his guilty plea and vacate the judgment. However, as the State notes,

Dominguez held that similar omissions did not render the admonishments insufficient. In *Dominguez*, the trial court advised the defendant, in relevant part, that:

> " 'Should your motion to reconsider sentence be granted, you will be resentenced. In the event the motions [*sic*] are denied, you have 30 days from the denial to return to file a notice of [*sic*] appeal the Court's ruling. If you wish to do so and could not afford an attorney, we will give you an attorney free of charge, along with the transcripts necessary for those purposes.' " *Dominguez*, 2012 IL 111336, ¶ 46.

¶ 22 The supreme court found that, although the trial court's admonishments arguably did not explicitly inform the defendant that he was entitled to counsel in the preparation and presentation of his postplea motion, the admonishments did advise the defendant that a court-appointed attorney would be available for him. *Id.* ¶ 51. Thus, the court's admonishments conveyed to the defendant the substance of the rule. *Id.* Because that is all that Rule 605(c) requires, the supreme court determined that the admonishments were sufficient. *Id.*

¶ 23 Defendant argues that *Dominguez* is distinguishable because (1) the defendant in *Dominguez* was given written admonishments, which indicated that counsel could be appointed to help the defendant prepare a postplea motion and (2) the verbal admonishment of the right to counsel was more broadly stated in *Dominguez* than here. We disagree. First, the fact that the defendant in *Dominguez* was given written as well as verbal admonishments is inconsequential. Our supreme court, while mentioning the written admonishments, did not rely on them to conclude that the trial court substantially complied with Rule 605(c). *Id.* Second, we cannot conclude, as defendant urges, that the court's admonishments in *Dominguez* more specifically "referred to the defendant's right to counsel in the context of all of the purposes the court had listed." Here, as in *Dominguez*, the trial court advised defendant about his right to counsel *after*

indicating that defendant could file a notice of appeal if the trial court denied his postplea motion. Arguably, the admonishments in *Dominguez* implied more strongly that defendant had the right to counsel only on appeal, as the court, after advising the defendant there that he had the right to appeal from the denial of his postplea motion, told the defendant that " 'if [he] wish[ed] to do so [(*i.e.*, appeal)] and could not afford an attorney, we will give you an attorney free of charge.' " *Id.* ¶ 46. Here, unlike in *Dominguez*, the court's admonishment about the right to counsel, while following the admonishment about the right to appeal, did not contain any limiting prefatory language.

¶ 24 Accordingly, because the trial court substantially admonished defendant pursuant to Rule 605(c), defendant's petition had no basis in law or fact, and the summary dismissal of his petition was proper. In reaching this conclusion, we find it unnecessary to address (1) the State's claim that the right to counsel in preparing and presenting a postplea motion is triggered only after a defendant files a postplea motion or (2) defendant's unsupported one-sentence claim in his reply brief that he arguably raised a claim of actual innocence.

¶ 25 III. CONCLUSION

¶ 26 For these reasons, the judgment of the circuit court of Kane County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 27 Affirmed.