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2018 IL App (3d) 160320-U

Order filed September 11, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-16-0320
SKYLAR L. PICKETT,)	Circuit No. 15-CF-1638
Defendant-Appellant.)	Honorable David M. Carlson, Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Carter and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court failed to provide defendant with the proper admonishments required by Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001).

¶ 2 Defendant, Skylar L. Pickett, appeals his convictions and sentence arguing that new postplea proceedings are required because the circuit court failed to properly admonish him pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001). We reverse and remand.

¶ 3 **FACTS**

¶ 4 Defendant entered an open guilty plea to charges of aggravated battery (720 ILCS 5/12-3.05(a)(1), (h) (West 2014)) and domestic battery (*id.* § 12-3.2(a)(1), (b)). The circuit court sentenced defendant to four years' imprisonment for aggravated battery. The court did not impose a sentence for domestic battery. The transcripts from the sentencing hearing do not show that the court provided defendant with any appeal admonishments.

¶ 5 Subsequently, defense counsel filed a motion to reconsider defendant's sentence for aggravated battery. Following a hearing, the circuit court denied the motion. Defense counsel then mentioned that the circuit court had previously provided defendant with appeal admonishments, though no such admonishments appear on the record. Later in the hearing, defendant said, "If I have the right to appeal, I want to." The court responded, "You do have the right to appeal. You absolutely have the right to appeal the sentence." The matter was continued.

¶ 6 At the next hearing, defense counsel informed the circuit court that it had neglected to impose a sentence for defendant's domestic battery conviction. In response, the court stated that it would enter a straight conviction on the charge and did not impose a sentence. The court then informed defendant of his right to appeal and provided the following admonishments:

"First, however, you must file in this court, once again, a written motion asking me to reconsider the sentence. If I grant that, we start all over again; meaning, I can modify the sentence on the felony and/or—[Defense counsel], I'll give you leave if you want to file a new motion to reconsider as it relates to the felony matter.

If I grant that, I can modify it to anything up to and including maximum, which in your particular case was 5 years on the felony, and 364 days in the Will County Jail on the misdemeanor. If I deny it, you have 30 days from that date

within which to file a Notice of Appeal. If you're found to be indigent an attorney will be appointed for you, transcripts will be provided for you, and the clerk's office will assist you in the preparation of the Notice of Appeal.

If you do nothing within the next 30 days, the pleas that you entered previously, the sentences that I have imposed, both the felony as well as the misdemeanor sentences, as well as the convictions that I have entered still stand. All right?"

Defense counsel then made an oral motion to reconsider the sentence on the domestic battery conviction (even though no sentence was imposed), which the court denied.

¶ 7

ANALYSIS

¶ 8

On appeal, defendant contends that remand for new postplea proceedings is required because the circuit court failed to properly admonish him pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001). Defendant argues that the court failed to properly advise him regarding his right to appeal the entry of the guilty plea as required by Rule 605(b). Because the circuit court omitted an admonishment regarding defendant's right to appeal the entry of the guilty plea, we find the court failed to substantially comply with Rule 605(b).

¶ 9

Rule 605(b) requires that after the entry of a sentence upon a plea of guilty, the circuit court shall advise 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 trial court reconsider the sentence or 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 sentence will be modified or 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 reconsider the sentence or to vacate the judgment and to withdraw the plea of guilty shall be deemed waived.”

Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001).

¶ 10 In the present case, the circuit court's admonishments were incomplete. The court failed to provide defendant with an admonishment regarding his right to appeal the entry of the guilty plea. Ill. S. Ct. R. 605(b)(2) (eff. Oct. 1, 2001). Additionally, the court failed to advise defendant of the procedural requirements he needed to satisfy to perfect and preserve his right to appeal the entry of his plea—that defendant must first file a motion to withdraw the plea. Ill. S. Ct. R. 605(b)(6) (eff. Oct. 1, 2001). We acknowledge that the court properly admonished defendant of his right to challenge his sentence by informing him that he needed to file a motion to reconsider sentence before appealing. However, the court's sentencing admonishment is insufficient to properly inform or put defendant on notice of what he must do in order to preserve his right to

appeal his guilty plea. To challenge his plea, defendant was required to file a motion to withdraw the plea—not a motion to reconsider sentence. Consequently, we find the court failed to substantially advise defendant of his appeal rights as required by Rule 605(b). When the circuit court fails to comply with Rule 605(b) the proper remedy is a remand for *de novo* postplea proceedings. *People v. Foster*, 171 Ill. 2d 469, 474 (1996).

¶ 11 In reaching this conclusion, we reject the State’s argument that remand is unnecessary because defendant was not prejudiced by the court’s incomplete admonishments. According to the State, defendant was not prejudiced because he filed a motion to reconsider sentence and exercised his right to appeal his sentence. In support, the State relies upon *People v. Leon*, 66 Ill. App. 3d 778 (1978).

¶ 12 In *Leon*, defendant pled guilty and later filed a timely motion to withdraw his guilty plea despite the circuit court’s failure to advise defendant pursuant to Rule 605(b) that he needed to file such a motion. *Id.* at 779. On appeal, the appellate court acknowledged that the circuit court failed to comply with Rule 605(b). *Id.* However, the appellate court found that remand was unnecessary because there was no prejudice resulting from the circuit court’s error. *Id.* In coming to this conclusion, the appellate court noted that defendant filed a motion to withdraw his plea without any advice from the circuit court. *Id.* In other words, the circuit court’s faulty admonishments were harmless because defendant still timely filed a motion to withdraw his guilty plea.

¶ 13 Unlike *Leon*, we cannot say that the circuit court’s faulty admonishments in this case were harmless. Here, defendant was never advised of the requirement to file a motion to withdraw his guilty plea and defendant *did not* file a motion to withdraw his plea. Stated differently, defendant did not cure the circuit court’s error by filing a motion to withdraw his

guilty plea on his own initiative. We therefore find *Leon* distinguishable from the present case and remand this case for new postplea proceedings.

¶ 14

CONCLUSION

¶ 15

The judgment of the circuit court of Will County is reversed and remanded.

¶ 16

Reversed and remanded.