

No. 1-09-1674

**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).

FIRST DIVISION  
March 31, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 275
	)	
KENT HURN,	)	Honorable
	)	Colleen McSweeney-Moore,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Hall and Justice Rochford concurred in the judgment.

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**O R D E R**

*HELD:* Circuit court properly denied defendant's *pro se* motion to reconsider the sentence imposed pursuant to a negotiated guilty plea.

Defendant Kent Hurn appeals from an order of the circuit court of Cook County denying his *pro se* "Motion for Reconsideration." On appeal, defendant contends that the court

should have considered that pleading as a motion to withdraw his guilty plea, and appointed counsel for further proceedings consistent with Illinois Supreme Court Rule 604(d) (eff. Jul. 1, 2006).

The record shows, in relevant part, that defendant was charged with two counts of armed robbery and three counts of aggravated unlawful restraint. Prior to trial, defendant informed the court that he wished to represent himself *pro se*, but the court denied his motion after finding that he was unqualified to do so. Defendant then filed unsuccessful motions for substitution of judge, suppression of evidence and statements, and a motion to quash his arrest.

On March 27, 2009, defendant, through counsel, asked the court to reopen the Supreme Court Rule 402 conference which had been held earlier. At its conclusion, defendant entered a negotiated plea of guilty to armed robbery and was sentenced to 15 years' imprisonment. The court admonished defendant of his right to appeal and the steps required to accomplish that, including the necessity of first filing a motion to withdraw his guilty plea pursuant to Rule 604(d).

On April 22, 2009, however, defendant mailed a *pro se* pleading labeled "Motion for Reconsideration" to the clerk of the circuit court, which was filed on April 30, 2009. In this pleading, defendant cited section 5-8-1 of the Unified Code of

Corrections (730 ILCS 5/5-8-1 (West 2008)), and alleged, *inter alia*, that the circuit court failed to take into account mitigating factors at sentencing, that his educational background prevented him from fully understanding the consequences of his plea bargain, that counsel never informed him that he could have witnesses testify on his behalf at sentencing, that his education level rendered his plea bargain "void" because he could not fully appreciate the benefit of the bargain, and that he was never given an opportunity to address the court in allocution. On May 8, 2009, the trial court summarily denied defendant's motion, finding that defendant did not ask to withdraw his plea, and because his plea agreement was fully negotiated, he did not have the right to move to reconsider.

In this appeal, defendant contends that the court should have considered his pleading as a motion to withdraw his guilty plea and appointed counsel for further proceedings consistent with Illinois Supreme Court Rule 604(d). We review *de novo* the trial court's compliance with supreme court rules. *People v. Garner*, 347 Ill. App. 3d 578, 583 (2004).

Under Rule 604(d), a defendant seeking to challenge his sentence under a negotiated guilty plea must, within 30 days of the date sentence is imposed, file in the trial court a motion to withdraw the plea of guilty and vacate the judgment entered thereon. Ill. S. Ct. R. 604(d); *People v. Evans*, 174 Ill. 2d

320, 332 (1996). Defendant's compliance with this rule is a condition precedent to an appeal; and his failure to file such a motion may result in the waiver of his right to direct appeal, unless the trial court failed to admonish him in accordance with Rule 605(c). *People v. Claudin*, 369 Ill. App. 3d 532, 533 (2006).

Defendant does not deny that he was fully admonished of the procedures required to perfect an appeal with respect to his guilty plea, but claims that the trial court should have treated his motion for reconsideration as a motion to withdraw his guilty plea because it "indicates" a desire to challenge his plea. By characterizing his claim in this manner, defendant acknowledges that it will not be found in the motion presented to the trial court. *People v. Taylor*, 237 Ill. 2d 68, 76 (2010). This is borne out by the record, which clearly shows that defendant presented a "Motion for Reconsideration," and that the trial court considered it as such when entering its ruling.

Defendant made no mention of his desire to "withdraw" his guilty plea in the motion, and the statute under which he sought relief, section 5-8-1, is a sentencing statute. In addition, the allegations in his motion ultimately address sentencing concerns, *i.e.*, mitigation, allocution, the benefit of the bargain, and the consequences of his plea bargain. Thus, contrary to defendant's claim, the record shows that he conspicuously failed to file a

motion to withdraw his guilty plea (*Taylor*, 237 Ill. 2d at 76), after having been properly admonished of the need to do so.

Defendant, nonetheless, calls our attention to his allegations that he did not understand the consequences of his plea bargain, and that it was "void," which, he claims, evince his intent to withdraw his plea. In support of his claim, defendant cites *People v. Trussel*, 397 Ill. App. 3d 913 (2010), *People v. Gonzalez*, 375 Ill. App. 3d 377 (2007), and *People v. Velasco*, 197 Ill. App. 3d 589 (1990).

In *Trussel*, 397 Ill. App. 3d at 914, defendant sent a *pro se* letter to the circuit court stating that his attorney scared him into taking a plea, and that he was not guilty, and the clerk filed it as a notice of appeal with no input from the court. The reviewing court thus remanded the cause for further proceedings under Rule 604(d), and appointed counsel to represent defendant. *Trussel*, 397 Ill. App. 3d at 915.

In *Gonzalez*, 375 Ill. App. 3d at 377, defendant filed a *pro se* document stating that she told her public defender that she did not want to plead guilty, but was threatened with her freedom; and, further, that she could prove that the punishment did not fit the crime, and also filed a notice of appeal. The reviewing court found that the trial court erred in not treating defendant's letter as a motion to withdraw her guilty plea, and

remanded the cause for further proceedings under Rule 604(d). *Gonzalez*, 375 Ill. App. 3d at 379.

Lastly, in *Velasco*, 197 Ill. App. 3d 590, defendant sent a handwritten letter to the trial court stating that he wished to withdraw his guilty plea because his sentence was excessive. The court treated defendant's letter as a motion to withdraw his guilty plea, and remanded the cause for further proceedings under Rule 604(d). *Velasco*, 197 Ill. App. 3d 591.

These cases are readily distinguishable from the case at bar. First, unlike *Trussel* and *Gonzalez*, defendant did not allege that he was threatened or pressured by counsel into pleading guilty, or that he is actually not guilty. Second, unlike *Velasco*, defendant never specifically stated a desire to withdraw his guilty plea. This case is also dissimilar from the three relied upon because, here, defendant clearly filed a "Motion for Reconsideration," cited a sentencing statute, and each allegation addressed a sentencing concern. His focus was thus on the punishment, and not on the plea, and we thus find his reliance on the cited cases misplaced.

Defendant finally cites the trial court's duty to liberally construe *pro se* post-plea pleadings, relying on *People v. Barnes*, 291 Ill. App. 3d 545, 551 (1997). In *Barnes*, 291 Ill. App. 3d at 548-49, the admonishments given by the trial court were ambiguous in light of the supreme court's decision in *People v. Evans*, 174

Ill. 2d 320, 332 (1996), that a defendant who enters into a negotiated guilty plea must file a motion to withdraw his plea and vacate sentence, rather than just challenge the sentence. Following *Barnes*, Illinois Supreme Court Rule 605(c) (eff. Oct. 5, 2000) was added, to require the trial court to specifically admonish defendants who enter negotiated pleas of guilty that they must file a motion to withdraw their guilty pleas and vacate the judgments thereon, in order to perfect an appeal. Thus, the circumstances that existed when *Barnes* was decided are not present here.

In this case, defendant does not dispute that he was properly admonished in accordance with Rule 605(c), but failed to heed the admonishments. As a result, he cannot now allege "unfairness when he suffers the ramifications of his noncompliance." *People v. Brooks*, 233 Ill. 2d 146, 155 (2009), quoting *People v. Foster*, 171 Ill. 2d 469, 472 (1996).

Accordingly, we affirm the order of the circuit court denying defendant's motion for reconsideration.

Affirmed.