



pleaded guilty to one count of murder. In exchange for defendant's plea of guilty, the State agreed to (1) dismiss the two remaining murder charges and (2) a sentencing cap of 45 years' imprisonment. At the plea hearing, the trial court heard the factual basis, admonished defendant, and accepted the guilty plea.

¶ 6 On December 11, 2009, the trial court sentenced defendant to 45 years' imprisonment with credit for 562 days previously served. After announcing the sentence, the court advised defendant regarding his right to appeal. In particular, the court informed defendant:

"[Y]ou have the right to appeal this case. However, because you pled guilty, if you want to appeal, you must first file a motion within 30 days of today asking this court to either allow you to withdraw or take back your plea of guilty or to reconsider the sentence that the court has just imposed. Either of those motions must be filed in writing. They must contain within them the reasons why you want the relief you're asking for. And any reason that you fail to list in the motion, then you may not be able to argue that reason to the Appellate Court if you did appeal.

If you file such a motion, we would have a hearing on it in this court, and if it were allowed, then the court could either allow you to withdraw your plea of guilty, in which case the State could be allowed to reinstate the charges that were dismissed, and the entire case could be set back for trial. Or if you were to file a motion to reconsider the sentence and your motion [was] allowed, the court could reconsider and change the sentence that was just imposed.

If your motion [was] denied, then you could file a notice of appeal to the

Appellate Court down in Springfield."

¶ 7 On December 28, 2009, defendant filed a motion to withdraw plea, arguing he had not fully considered or understood the consequences of entering a plea of guilty. On that same date, defendant also filed a motion to reconsider sentence, arguing his sentence was excessive. On March 2, 2010, defendant's counsel filed a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 8 Following a March 2010 hearing, the trial court denied both motions. In denying the motion to reconsider sentence, the court stated as follows:

"[A]fter having very carefully reviewed that transcript, I will tell you that sentencing is a responsibility that I take in my job as probably one of the most serious responsibilities that I have, and it's a very difficult one; and in this case it was very difficult because of the nature of the case, because of all the good things I heard about you, but also because of what happened here. It made it a very difficult case to decide for me. But after having reviewed all of this, I don't see anything in the record that suggests to me that I made a mistake or that I ought to reconsider and change what occurred.

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"Now that doesn't mean that I am necessarily right, and that's why I want to talk now about your appeal rights because at this point I am going to deny the motion to reconsider.

But you have a right to have the Appellate Court look at all this and give it a fresh look and decide whether or not I made any mistakes. If you want to

appeal, you have to file a notice of appeal within 30 days of today."

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues his guilty plea was not intelligently made with full knowledge of its consequences because he was not informed his guilty plea resulted in a waiver of his right to appeal the length of his sentence. Defendant argues he did not knowingly accept this risk when he pleaded guilty because both parties and the trial court were under the misapprehension defendant would be allowed to challenge the sentence on appeal.

¶ 12 The State argues defendant's negotiated guilty plea was validly made, and defendant presents no basis for disturbing the judgment. First, the State argues defendant was properly admonished before pleading guilty, and the trial court was not required to admonish defendant regarding his appeal rights at the plea hearing. Also, the State argues any inadequacy in the court's admonishments at sentencing could not affect the validity of defendant's plea because the admonishments were given after judgment was entered on the plea, as required by Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001). Further, the State agrees defendant implicitly conceded a sentence imposed within the agreed sentencing range was not excessive when he accepted the plea agreement. However, the State argues defendant was not precluded from challenging the sentence as excessive, as long as he filed a motion to withdraw his guilty plea.

¶ 13 Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) states, in pertinent parts, as follows:

"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."

"By agreeing to plead guilty in exchange for a recommended sentencing cap, a defendant is, in effect, agreeing not to challenge any sentence imposed below that cap on the grounds that it is excessive." *People v. Linder*, 186 Ill. 2d 67, 74, 708 N.E.2d 1169, 1172 (1999). Consequently, if the plea agreement limits or forecloses the State from arguing for a sentence within the prescribed statutory sentencing range, a defendant must move to withdraw his guilty plea in the trial court in order to challenge his sentence as excessive. *People v. Diaz*, 192 Ill. 2d 211, 225, 735 N.E.2d 605, 612 (2000).

¶ 14 Further, in all cases in which a judgment is entered following a negotiated guilty plea, the trial court is required to admonish the defendant regarding the procedure for appealing the judgment. Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001). According to Rule 605(c), the admonishments on defendant's right to appeal must be given at the sentencing hearing.

¶ 15 In the present case, the State agreed to cap its sentence recommendation at 45 years' imprisonment in exchange for defendant's plea of guilty. The trial court accepted defendant's guilty plea and sentenced him to 45 years' imprisonment. After announcing the sentence, the court admonished defendant regarding the procedure to preserve his right to appeal. Specifically, the court stated defendant must first file a motion within 30 days of the sentencing date "asking this court to either allow [him] to withdraw or take back [his] plea of guilty or to reconsider the sentence."

¶ 16 Defendant complied with the trial court's admonishments and filed a motion to withdraw guilty plea and a motion to reconsider sentence. Following the court's denial of both motions, it admonished defendant regarding his right to appeal.

¶ 17 Defendant argues the parties and the trial court proceeded under a misapprehension he would be allowed to appeal his sentence. Therefore, he argues his plea was not intelligently made because he was not informed his guilty plea resulted in a waiver of his right to appeal his sentence. Although the entry of the guilty plea prevented defendant from appealing his sentence without vacating the plea, defendant was still able to challenge the sentence by filing a motion to withdraw guilty plea and motion to reconsider sentence.

¶ 18 Additionally, the trial court was not required to admonish defendant regarding the procedure to challenge his sentence at the time he entered his plea of guilty. Instead, under Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001), these admonishments are required at sentencing. Because the admonishments are required after the judgment on the plea has been entered, any defects in the court's admonishments would not affect the validity of defendant's plea. Consequently, we find defendant's negotiated plea of guilty was knowingly made with full

knowledge of its consequences. Further, we note the trial judge was thorough in his admonitions and measured and thoughtful in his comments when denying the defendant's motions.

¶ 19

### III. CONCLUSION

¶ 20 For the reasons stated, 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.

¶ 21 Affirmed.