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2011 IL App (4th) 100985-U

Filed 7/25/11

NO. 4-10-0985

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
LOUIS GRIFFIN,)	No. 10CM1153
Defendant-Appellant.)	
)	Honorable
)	Esteban F. Sanchez,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Steigmann and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* Where the trial court did not admonish defendant pursuant to Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001), remand for further proceedings was necessary.

¶ 2 This appeal comes to us on the motion of defendant Louis Griffin's counsel, the office of the State Appellate Defender (OSAD), for remand for strict compliance with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001).

¶ 3 I. BACKGROUND

¶ 4 On December 7, 2010, defendant pleaded guilty to domestic battery (720 ILCS 5/12-3.2 (West 2008)), pursuant to a negotiated plea. The trial court sentenced him to probation for one year.

¶ 5 On December 9, 2010, defendant *pro se* filed a one-page document containing a narration of the events leading up to his arrest and titled "the appeal." The *pro se* document was

treated as a notice of appeal but was not preceded by a motion to withdraw the guilty plea or to reconsider the sentence. Nothing in the record indicates defendant was admonished regarding the procedure for filing an appeal following the entry of a guilty plea as required by Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001).

¶ 6 Because the record did not indicate whether the trial court properly admonished defendant at the plea proceeding, OSAD requested that a hearing be held in the trial court for the parties and the trial judge to make a record of their recollections of the plea proceeding. Defendant did not personally appear, and the record contains no indication that he was represented by counsel when he entered his plea of guilty.

¶ 7 At the hearing, the following colloquy occurred:

"MS. VINCENT (OSAD): [I]f either the State or the Court has any specific recollection of admonishing [defendant] that prior to a notice of appeal, he needed to file a motion to withdraw his plea in terms of the fact that the nature of his plea appears to have been a negotiated plea of guilty.

THE COURT: I don't have any specific recollection *** of any specifics of [defendant's] case. All I know is that *** we set a bond and a trial date. It was crossed over, so that suggests that he did change his mind, and then I rely on Miss Steere's notes or recollections of events. I have no recollection of [defendant].

Anything else? Does that satisfy you, Ms. Vincent?

MS. VINCENT: Yes, Your Honor, it does.

THE COURT: Miss Steere, do you have anything to add?

MISS STEERE (Assistant State's Attorney): No, Your Honor.

I would just add that I do recall admonishments regarding right to trial and right to counsel, but I do not have any specific recollection regarding right to appeal and the need to file a motion to withdraw a plea."

¶ 8

II. ANALYSIS

¶ 9

OSAD asserts this case should be remanded for further proceedings in accordance with Rule 605(c). The State filed an objection to OSAD's motion for summary remand, arguing we should presume the Rule 605(c) admonishments were given because any doubts that arise from the incompleteness of the record should be resolved against defendant.

¶ 10

Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) states, in pertinent part, 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."

A defendant's failure to comply with Rule 604(d) will result in the dismissal of the appeal. *People v. Foster*, 171 Ill. 2d 469, 471, 665 N.E.2d 823, 824 (1996).

¶ 11

However, if a defendant's failure to comply with Rule 604(d) is attributable to the trial

court's noncompliance with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001), then the cause should be remanded for the court to admonish the defendant as required by Rule 605(c) and to allow the defendant an opportunity to comply with Rule 604(d). *People v. Crowder*, 351 Ill. App. 3d 1096, 1098, 815 N.E.2d 1244, 1246 (2004). Rule 605(c) requires the trial court, after entering judgment upon a defendant's negotiated guilty plea, to advise the defendant of the conditions that must be satisfied before an appeal may be taken. See Ill. Sup. Ct. R. 605(c) (eff. Oct. 1, 2001) (setting forth the required admonishments).

¶ 12 In this case, the record does not indicate whether defendant was admonished regarding his right to appeal from his conviction and sentence as required by Rule 605(c). The State asks us to deny OSAD's motion and assume the proper admonishments were given due to the incompleteness of the record. However, the record suggests (1) no court reporter was present to take defendant's guilty plea, and (2) defendant was proceeding *pro se*. In an attempt to determine what admonishments were given, OSAD requested a hearing in the trial court. The transcript of the hearing, which was made a part of the record of appeal, is the equivalent of a bystander's report. See Ill. S. Ct. R. 323 (c) (effective Dec. 13, 2005) ("If no verbatim transcript of the evidence of proceeding is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection."). Because the transcript indicates neither the trial judge nor the assistant state's attorney remembered whether defendant was admonished regarding his appeal rights, we agree with OSAD that this case should be remanded to the trial court.

¶ 13 III. CONCLUSION

¶ 14 Accordingly, we remand with directions that the trial court properly admonish defendant in strict compliance with Rule 605(c) and allow him the opportunity to file an appropriate

postplea motion. See *Crowder*, 351 Ill. App. 3d at 1098, 815 N.E.2d at 1246.

¶ 15 Remanded with directions.