

NOTICE
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2011 IL App (4th) 110708-U

Filed 11/23/11

NO. 4-11-0708

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Woodford County
KENT E. MONTAG,)	No. 11CF12
Defendant-Appellant.)	
)	Honorable
)	Charles M. Feeney,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* Where the trial court's admonishments did not comply with Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001), remand for further proceedings was necessary.

¶ 2 This appeal comes to us on the motion of defendant Kent E. Montag's counsel, the office of the State Appellate Defender (OSAD), for remand (1) with directions to treat his July 19 and July 21, 2011, *pro se* letters as timely postsentencing motions or (2) for strict compliance with Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001).

¶ 3 I. BACKGROUND

¶ 4 In May 2011, defendant pleaded guilty to aggravated driving while license revoked (625 ILCS 5/6-303(a) (West 2008)), pursuant to an open plea. On June 21, 2011, the trial court sentenced him to four years' imprisonment to run concurrent with Woodford County

case No. 09-CF-46 and consecutive to Woodford County case No. 11-CF-45. (A joint sentencing hearing was held in Woodford County case Nos. 09-CF-46, 11-CF-12, and 11-CF-45.)

¶ 5 On July 19, 2011, defendant's wife, Darlene F.B. Montag, *pro se* filed a letter on defendant's behalf, stating the following:

"I, the defendant in the above captioned cases, motion the court to file a notice of appeal for each of the above cases [*i.e.*, Woodford County case No. 11-CF-45, Woodford County Case No. 09-CF-46, and Woodford County case No. 11-CF-12]. [T]his post-sentence motion to appeal is challenging the sentences in the above cases to be excessive.

And further, upon a finding of indigence, appoint the Appellate Defender's Office to represent me, Kent Montag, the Defendant."

The letter further stated that defendant had sent "one as well" on July 16, 2011, and indicated defendant's power of attorney (naming Darlene to serve as defendant's power of attorney) was attached.

¶ 6 On July 19, 2011, defendant mailed a *pro se* unnotarized letter from prison by depositing it into the prison mail system, requesting the circuit clerk file a notice of appeal in Woodford County case Nos. 11-CF-45, 11-CF-12, and 09-CF-46. (The *pro se* letter was filed July 21, 2011.) Further, the letter stated as follows: "This post sentence motion is to appeal by challenging the sentences in the above cases to be excessive." Defendant requested that the "appellate defense office" be appointed upon a finding of indigence. The trial court's July 21, 2011, docket entry indicates defendant's letter was treated as a motion to file appeal and, consequently, the circuit clerk filed a notice of appeal on his behalf and appellate counsel was

appointed.

¶ 7

II. ANALYSIS

¶ 8

OSAD has filed a motion for summary remand (1) with directions to treat defendant's July 19 and July 21, 2011, *pro se* letters as timely postsentencing motions or (2) for admonishments in strict compliance with Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001). The State concedes that (1) defendant's letter should not have been treated as a notice of appeal without further inquiry into whether defendant wanted counsel appointed to assist in the preparation of a postplea motion, and (2) the trial court failed to strictly comply with the requirements of Rule 605(b). The State suggests the case be remanded for strict compliance with Rule 605(b) because it "goes to the source of the error while fully protecting defendant's rights."

¶ 9

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).

¶ 10

However, "[the Illinois Supreme] court has found an exception to automatic dismissal when the trial judge fails to give Rule 605(b) admonitions and the defendant submits a

motion to withdraw a plea of guilty in an incorrect manner." *People v. Jamison*, 181 Ill. 2d 24, 29, 690 N.E.2d 995, 997 (1998). Rule 605(b) requires the trial court, after entering judgment upon a defendant's 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(b) (eff. Oct. 1, 2001) (setting forth the required admonishments). Specifically, the court must admonish defendant regarding the following:

"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[.]"

(Emphasis added.) Ill. Sup. Ct. R. 605(b) (eff. Oct. 1, 2001).

The remedy for the trial court's noncompliance with Rule 605(b) is to remand the cause to the trial court for further proceedings to allow the defendant an opportunity to strictly comply with Rule 604(d). *Jamison*, 181 Ill. 2d at 29-30, 690 N.E.2d at 998.

¶ 11 In this case, defendant's noncompliance with Rule 604(d) was excused by the trial court's noncompliance with Rule 605(b). Following sentencing, the court admonished defendant as follows:

"Mr. Montag, you have a right to appeal the orders of this court.

If you wish, you *may* file a written motion within 30 days of today asking this court *** for leave to withdraw your pleas of guilty or admissions to the petition to revoke. Or you *may* file a motion to

reconsider the sentence. Each and every reason must be stated in this written motion why I should allow you to withdraw your pleas of guilty or your admissions or why I should reconsider your sentence, or any other reason will be deemed waived or given up for the purposes of your appeal.

If I grant your motion, your pleas could be vacated, and a trial would be set on the charges to which you have pled guilty. Upon the State's request, any charges that were dismissed pursuant to any agreement could be reinstated and also set for trial or your sentence could be modified.

If I should deny your motion and you still wish to appeal, then within 30 days of the date that I would deny your motion you would need to file a written Notice of Appeal. You can ask the clerk to prepare and file that Notice of Appeal for you, but it still must be filed within that same 30-day time frame or you would lose or give up your right to an appeal.

If you cannot afford it, an attorney can be appointed to assist you on your motions and on your appeal without cost to you, and a copy of the transcript of these proceedings can be given to you without cost as well." (Emphases added.)

The trial court's admonishments were deficient because the court advised defendant that he *may* file a motion to withdraw his guilty plea or a motion to reconsider sentence before appealing the

court's orders. Instead, if defendant wished to challenge his sentence, he was *required* to file a written motion asking the trial court to reconsider the imposed sentence. Because defendant was not properly admonished pursuant to Rule 605(b), his failure to file an appropriate postplea motion is excused.

¶ 12

III. CONCLUSION

¶ 13

Accordingly, we grant OSAD's motion and remand the cause with directions that the trial court properly admonish defendant in strict compliance with Rule 605(b) and allow him the opportunity to file an appropriate postplea motion.

¶ 14

Remanded with directions.