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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).

2012 IL App (4th) 120693-U

NO. 4-12-0693

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 6, 2012

Carla Bender

4th District Appellate
Court, IL

| | | |
|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Champaign County |
| JASON CARMAN, |) | No. 11CF1973 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | John R. Kennedy, |
| |) | Judge Presiding. |

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted defendant's motion and summarily remanded to the trial court where the trial court failed to properly admonish defendant about the actions he must take to preserve his right to appeal.

¶ 2 This appeal comes to us on motion of the office of the State Appellate Defender (OSAD) to remand defendant's case to the trial court for strict compliance with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001). We grant OSAD's motion and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 In February 2012, defendant, Jason Carman, pleaded guilty to aggravated driving under the influence. 625 ILCS 5/11-501(d)(2)(B) (West 2010). In exchange for defendant's guilty plea, the State agreed to a sentence cap of five years' imprisonment.

¶ 5 On April 9, 2012, the trial court sentenced defendant to four years' imprisonment.

After announcing defendant's sentence, the court admonished him as follows:

"Under the law, you have the right to appeal. Please let me explain to you at this time so that you understand your right to appeal.

As I said, sir, you do have the right to appeal. However, *prior to taking an appeal, you must file in this court within thirty days a written motion asking the court to reconsider the sentence or to have the judgment vacated and for leave to withdraw your guilty plea.*" (Emphasis added.)

¶ 6 On May 8, 2012, defendant mailed a *pro se* motion for reduction of sentence. The Champaign County circuit clerk file-stamped defendant's motion on June 4, 2012.

¶ 7 On June 15, 2012, the trial court held a hearing on defendant's motion, at which defendant did not appear personally. During the hearing, the following colloquy ensued:

"[DEFENSE COUNSEL]: Judge, we filed a Motion to Reconsider Sentence. It's my understanding of the law that you can't file that kind of motion on a partially negotiated plea. There was a cap.

I spoke to him on the phone on Wednesday.

[THE COURT]: Uh-huh.

[DEFENSE COUNSEL]: And I explained the law to him. He does not want to modify that to a motion to withdraw his plea so I don't think there needs to be a modification on the motion.

[THE COURT]: Okay. Do you want me to rule on the

merits of the motion?

[DEFENSE COUNSEL]: Yes."

¶ 8 Thereafter, the trial court took the matter under advisement. Later that day, the court, on its own motion, set a status hearing for June 18, 2012, at which it continued the matter for another status hearing on July 20, 2012.

¶ 9 On July 18, 2012, defense counsel filed a motion to reconsider sentence and a certificate of compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 10 On July 20, 2012, the parties appeared for the status hearing. Defendant did not appear. During the hearing, defense counsel represented he had spoken to defendant in the Department of Corrections, and defendant "[did] not want to withdraw his plea, he simply want[ed] a motion to reconsider." The court then denied the motion to reconsider and directed the circuit court clerk to (1) prepare and file a written notice of appeal on defendant's behalf, and (2) appoint OSAD to represent defendant on appeal.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 In its motion, OSAD argues the trial court's failure to strictly comply with Rule 605(c) requires us to remand defendant's case for proper admonishments. The State does not dispute the court's admonishments were improper, but responds remand is only required where a defendant has been prejudiced by a trial court's failure to give proper admonishments. The State contends defendant clearly did not suffer prejudice here because the record shows defense counsel advised defendant of the law regarding partially negotiated guilty pleas, and despite counsel's advice, defendant elected to persist in his motion to reconsider sentence. We find the

State's contentions unpersuasive.

¶ 14 Rule 605(c) provides, following a negotiated guilty plea, the trial court shall advise the defendant "substantially" as follows:

"[P]rior 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 judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion[.]" Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001).

¶ 15 Rule 605(c) "must be strictly complied with in that the admonitions must be given to a defendant who has pled guilty. Failure to do so requires remand for proper admonishment." *People v. Dominguez*, 2012 IL 111336, ¶ 11, 2012 WL 1356489, at * 3.

¶ 16 Rule 605(c) serves as a corollary to the requirements of Rule 604(d), which provides, in relevant part, as follows:

"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. *** Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived." Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 17 Because of the corollary nature between Supreme Court Rules 604(d) and 605(c), we conclude fundamental fairness requires us to remand defendant's case. See *People v.*

Goewey, 345 Ill. App. 3d 325, 326, 802 N.E.2d 371, 372 (2003). Where a defendant does not move to withdraw his plea, he cannot appeal his sentence pursuant to Rule 604(d). As OSAD points out, defense counsel's assertion he "explained the law" to defendant does not make clear counsel explained this consequence to defendant. Thus, we disagree with the State's contention the record in this case establishes the trial court's improper admonishments were harmless.

¶ 18

III. CONCLUSION

¶ 19

For the reasons stated, we grant OSAD's motion and summarily remand defendant's case to the trial court with directions to properly admonish defendant pursuant to Illinois Supreme Court Rule 605(c) and allow defendant the opportunity to withdraw his guilty plea.

¶ 20

Vacated and remanded with directions.