

NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 210699-U

NO. 4-21-0699

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 23, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Woodford County
MARSHALL R. GLASS,)	No. 21CF49
Defendant-Appellant.)	
)	Honorable
)	Michael L. Stroh,
)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court’s order denying the defendant’s motion to reconsider the sentence. The appellate court held that the defendant waived his right to challenge his guilty plea when he elected to proceed only on his motion to reconsider the sentence.

¶ 2 Defendant, Marshall R. Glass, appeals the order of the circuit court of Woodford County denying his motion to reconsider his sentence. Defendant pleaded guilty to aggravated driving while his license was revoked (625 ILCS 5/6-303(a), (d-3) (West 2020)) and was sentenced to three years’ imprisonment. Defendant contends that he was not admonished in accordance with Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001). We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 1, 2021, a Woodford County grand jury charged defendant with felony aggravated driving while his license was revoked. The indictment alleged that defendant’s

license was revoked because of a conviction for driving while under the influence (DUI) and that defendant had eight previous convictions for driving while his license was revoked. Defendant was also charged by traffic citation for misdemeanor driving while his license was revoked (625 ILCS 5/6-303(a) (West 2020)). The State dismissed the misdemeanor in exchange for defendant's open plea to the felony.

¶ 5 On July 13, 2021, defendant, who was represented by counsel, pleaded guilty to the indictment. Defendant stated that he was 51 years old and was medically disabled. Defendant stated that sometimes his medication made it difficult for him to "understand things." Defendant said that he understood the present proceedings, though, because "I took my medication." In response to the court's inquiries, defendant stated that he understood the consequences of a guilty plea. When the court explained the charge to defendant, defendant stated that he "would like the court to know" that, except for the DUI, he was "never drunk, driving under the influence, when I got pulled over all those times." The court noted that the State "didn't allege that." Defendant responded, "Okay. Thank you, sir." Defendant acknowledged that (1) he was satisfied with the public defender's representation, (2) he discussed the discovery with his attorney, and (3) he discussed any potential defenses with his attorney. Defendant then responded that he understood each of the court's admonishments. The factual basis for the guilty plea showed the following. On March 22, 2021, while on routine patrol, Deputy Mekley timed defendant driving 67 miles per hour in a 55-mile-per-hour zone. Upon being stopped by the deputy, defendant admitted that his license was revoked. The State represented that defendant's driving abstract corroborated that his license was revoked, and, according to the State's representation, defendant's driving history revealed seven prior offenses of driving while license revoked. At sentencing on September 7, 2021, the court noted that defendant "has a 30-year

history of committing [offenses] on almost a continual basis dating back to 1988 and proceeding up to this year 2021.” The court also noted that defendant had been imprisoned “on multiple occasions *** for years at a time” in “one state or another.” The court sentenced defendant to three years in the Illinois Department of Corrections.

¶ 6 The court then told defendant he had a right to appeal by filing a notice of appeal within 30 days. The court admonished defendant of his appeal rights, as follows.

“If you desire to challenge any part of the sentence or sentencing hearing, you must file prior to an appeal a motion to reconsider the sentence or any challenge to the sentencing hearing within 30 days of today’s date. The motion must be in writing and must set forth all the issues or claims of error about the sentence or sentencing hearing.

If you cannot afford it, a copy of the transcript of the trial and sentencing hearing will be provided to you. If you can’t afford an attorney, one will be appointed to assist you in the appeal or motion to reconsider the sentence.

If the Notice of Appeal or motion to reconsider [the sentence] is not filed within 30 days of today, you will lose the right to appeal and challenge your sentence. If the motion to reconsider sentence is denied and you still desire to appeal, you must request the clerk to file a Notice of Appeal within 30 days of the date the motion to reconsider [the sentence] was denied.

Any issue or claim of error about the sentence imposed or any part of the sentencing hearing you fail to raise in the written motion will not be considered by the Appellate Court.”

¶ 7 On September 30, 2021, defendant, through counsel, filed a motion to withdraw his guilty plea. The basis for the motion was that defendant was under the influence of drugs when he entered the guilty plea and did not understand the consequences of pleading guilty. On the same date, defendant also filed a motion to reconsider his sentence, contending it was excessive and disproportionate to the nature of the offense. The court heard those motions on November 30, 2021. At the commencement of the hearing, defense counsel stated: “In consultation with [defendant], we are asking to withdraw [the motion to withdraw the guilty plea].” The court then addressed defendant:

“Okay. Mr. Glass, you filed two motions before the court, one being a motion to vacate [the] guilty plea, the other being a motion to reconsider [the] sentence. Your attorney *** has told me that you wish to no longer proceed on your motion to vacate [the] guilty plea; is that correct?”

Defendant answered, “That’s correct, sir.” The court then clarified that defendant wished to proceed with his motion to reconsider the sentence but not with the motion to withdraw the guilty plea. Defendant again answered, “That’s correct.” Defendant stated that no one had forced him to “do this.” The court stated: “All right. [The] Court, then, will show *** that motion has been withdrawn.” After the parties argued the motion to reconsider the sentence, the court denied it.

¶ 8 Defendant filed a timely notice of appeal and an amended notice of appeal.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues that the trial court failed to admonish him in accordance with Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001) after the September 7, 2021, sentencing hearing. Rule 605(b) provides that, in all cases in which a judgment is entered on a guilty plea,

other than a negotiated plea of guilty, the trial court shall substantially advise the defendant of the following: (1) he or she has the right to appeal; (2) prior to taking an appeal, he or she must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking the trial court to reconsider the sentence or to vacate the judgment and for leave to withdraw the guilty plea; (3) if the motion is allowed, the sentence will be modified, or the guilty plea, sentence, and judgment will be vacated and a trial date will be set on the charges to which the guilty plea was made; (4) upon the State's request, any charges that were dismissed as part of a plea agreement will be reinstated and set for trial; (5) if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's guilty plea and sentence will be provided without cost and counsel will be appointed to assist the defendant with his or her motions; and (6) any issue not raised in the motion to reconsider the sentence or vacate the guilty plea is deemed waived on appeal. Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001). Here, defendant contends that the court failed to admonish him of his right to file a motion to withdraw his plea. Defendant argues that we must remand for proper admonitions and the opportunity to file new post-plea motions.

¶ 11 Compliance with Rule 605(b) ensures that a defendant understands the procedure set forth in Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) for appealing a sentence imposed after a guilty plea. *People v. Anderson*, 309 Ill. App. 3d 417, 420 (1999). Rule 604(d) provides in pertinent part:

“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.” Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

Substantial compliance with Rule 605(b) is required. *People v. Dominguez*, 2012 IL 111336, ¶ 22. That is, the rule need not be read verbatim. *Dominguez*, 2012 IL 111336, ¶ 22. However, the admonitions are insufficient where the court leaves out the rule’s substance. *Dominguez*, 2012 IL 111336, ¶ 22. We review *de novo* compliance with supreme court rules. *People v. Starks*, 344 Ill. App. 3d 766, 768 (2003).

¶ 12 Preliminarily, the State argues that defendant waived this issue by failing to include it in his motion to reconsider sentence. The State notes that Rule 604(d) provides that “[u]pon appeal[,] any issue not raised by the defendant *** shall be deemed waived.” Ill. S. Ct. R. 604(d) (eff. July 1, 2017). Similarly, Rule 605(b) provides that “any issue or claim of error not raised in the motion to reconsider the sentence or to vacate the judgment and to withdraw the plea of guilty shall be deemed waived.” Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001). Defendant responds that holding him responsible for noncompliance with the strictures of Rule 604(d) would violate procedural due process, citing *People v. Foster*, 171 Ill. 2d 469, 472 (1996) (stating where admonitions pursuant to Rule 604(d) have not been given, it would violate procedural due process rights to hold a defendant responsible for noncompliance with the written-motion requirement of Rule 604(d)). We agree with defendant and hold that defendant has not waived his contention.

¶ 13 On the merits, the State argues that the court substantially complied with Rule 605(b). Although the State concedes that the court did not admonish defendant regarding his right to file a motion to withdraw the guilty plea, the State argues that, because defendant filed such a motion on the same day that he filed a motion to reconsider the sentence, the admonitions

given defendant were sufficient. The State, thus, distinguishes *People v. Jamison*, 181 Ill. 2d 24 (1998), upon which defendant relies. In *Jamison*, our supreme court held that, when a defendant is not given Rule 605(b) admonishments and subsequently *fails* to file a motion to withdraw his guilty plea, the cause should be remanded for further proceedings. *Jamison*, 181 Ill. 2d at 31. The State relies on *People v. Roberts*, 2012 IL App (1st) 093500-U, where the court held that advising the defendant only as to his right to file a motion to reconsider his sentence “conveyed *** the essence” of Rule 605(b). *Roberts*, 2012 IL App (1st) 093500-U, ¶ 16. *Roberts* is not precedential. Illinois Supreme Court Rule 23(e) (eff. Jan. 1, 2021) provides that unpublished orders prior to January 1, 2021, are not precedential except to support contentions of double jeopardy, *res judicata*, collateral estoppel, or law of the case. Even were we to consider *Roberts*, it is distinguishable. In *Roberts*, the defendant pleaded guilty to mitigate against the death penalty, and the trial court stated that the defendant’s guilty plea was the only reason that the court did not impose the death penalty. *Roberts*, 2012 IL App (1st) 093500-U, ¶¶ 7, 16. In other words, the guilty plea was the consideration for receiving a prison sentence rather than death. *Roberts*, 2012 IL App (1st) 093500-U, ¶ 16. In that situation, which is not present here, the defendant had no reason to file a motion to withdraw the guilty plea. *Roberts*, 2012 IL App (1st) 093500-U, ¶ 16.

¶ 14 Here, unlike in *Jamison*, defendant—who had the benefit of counsel—filed both a motion to withdraw the plea and a motion to reconsider the sentence. Defendant argues that the filing of the motion to withdraw the guilty plea is irrelevant because the record is “silent” about his reasons for withdrawing the motion. Citing *Jamison*, defendant argues that it would be “speculation” to assume that when defendant withdrew the plea-withdrawal motion, he was aware of Rule 604(d)’s requirements regarding preservation of his appeal rights. Defendant

misinterprets *Jamison*. In *Jamison*, our supreme court was concerned with the defendant's *failure to file* a motion to withdraw his plea. The court said:

“With nothing to guide us in the record about [the] defendant's reasons for filing only a motion to reconsider his sentences, *** it would be speculation on our part to assume that [the] defendant was aware of the requirements of Rule 604(d) and, moreover, deliberately chose not to seek withdrawal of his guilty plea.” *Jamison*, 181 Ill. 2d at 30.

Because our supreme court was unable to discern from the record whether the defendant was aware of his right to file a motion to withdraw his guilty plea in addition to a motion to reconsider his sentences, the court determined that remand was necessary “so that [the] defendant may be admonished and have an opportunity to file a motion to withdraw his plea of guilty under Rule 604(d) if he desires.” *Jamison*, 181 Ill. 2d at 31.

¶ 15 Here, there is no point in remanding to give defendant an opportunity to file a motion to withdraw his guilty plea, because he, in fact, already filed such a motion. Unlike in *Jamison*, we need not speculate whether defendant was aware of his right to file a motion to withdraw the plea. Rule 604(d) permits a defendant to file two types of motions, those being, (1) a motion to reconsider sentence and (2) a motion to withdraw a plea of guilty. Ill. S. Ct. R. 604(d) (eff. July 1, 2017). That defendant filed both of those motions indicates strongly that he was aware of his right to do so under the rule. Further, in both motions, defendant recited that he was proceeding pursuant to Rule 604(d). Thus, the record, unlike that in *Jamison*, allows us to discern that defendant was aware of the rule's requirements. Then, in consultation with his attorney, and after the court's inquiry on the record, defendant elected to proceed only on the motion to reconsider the sentence. Under these circumstances, we hold that defendant waived his

right to challenge his guilty plea. We emphasize, however, that our holding in no way condones the trial court's failure to give proper admonishments.

¶ 16

III. CONCLUSION

¶ 17

For the reasons stated, we affirm the trial court's judgment.

¶ 18

Affirmed.