

## TRANSCRIPT NOT ALWAYS REQUIRED

### WAIVER OF COUNSEL - BOTH MISDEMEANORS AND FELONIES

S.Ct. Rule 401 concerning waiver of counsel states:

(b) Transcript. The proceedings required by this rule to be in open court shall be taken verbatim, and upon order of the trial court transcribed, filed and made a part of the common law record.

Although Rule 401 isn't specific in the "Transcript" paragraph, the whole rule only applies to felonies AND misdemeanors that carry the potential for jail or prison:

(a) Waiver of Counsel. "Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court..."

(This clearly implies that not all proceedings need to be "on the record" and transcribable.)

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(Rule 401 was later extended to all offenses involving imprisonment, thus making it applicable as well to misdemeanor offenses punishable by imprisonment in the county jail.

People v. Nikonowicz, 127 Ill. App. 3d 738, 743, 469 N.E.2d 625, 628 (1984)

### GUILTY PLEAS - ONLY FELONY OFFENSES

S.Ct Rule 402 concerning pleas of guilty states:

(e) Transcript. In cases in which the defendant is charged with a crime punishable by imprisonment in the penitentiary, the proceedings required by this rule to be in open court shall be taken verbatim, and upon order of the trial court transcribed, filed, and made a part of the common law record.

(Take notice that Rule 402 only applies to felony offenses.)

## MISDEMEANOR GUILTY PLEAS - NOT REQUIRED

The Hopping court held, however, that there was no constitutional requirement of a verbatim transcript in misdemeanor guilty plea proceedings, as alternative means were available to provide a “record of sufficient completeness to permit proper consideration of the specific claims [made on appeal]” (60 Ill.2d 246, 251-2, 326 N.E.2d 395, 398) as required by the Constitution.

People v. Nikonowicz, 127 Ill. App. 3d 738, 743, 469 N.E.2d 625, 628 (1984)

*Additionally:*

Because defendant here was charged with misdemeanors not punishable by imprisonment in the penitentiary, a transcript of the proceedings at the guilty plea hearing was not required.

People v. Spooner-Tye, 349 Ill. App. 3d 100, 103, 812 N.E.2d 783, 786 (2004)

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## Withdraw Guilty Pleas - 604(d) Certificate

Prior to the motion to withdraw the guilty plea, defense counsel filed a certificate of compliance with Supreme Court Rule 604(d). The certificate indicated that defense counsel: (1) consulted with defendant to ascertain his contentions of error; (2) examined the court file, although “[t]here were no reports of proceedings of the plea of guilty”; and (3) made any necessary amendments to the motion.

“...defendant contends that Rule 604(d) requires that defense counsel review guilty plea transcripts or their equivalent in order to be effective. Essentially, defendant argues that, without a transcript or the equivalent, defense counsel was unable to comply with Rule 604(d) and, therefore, was ineffective.

Because defendant was convicted of misdemeanors not punishable by imprisonment in the penitentiary, there was no requirement that a transcript be prepared under Rule 402(e). As a result, Rule 607(b) may not be used to provide a transcript that does not exist. Additionally, Rule 323 does allow alternate means for the preparation of a record with respect to review of such guilty pleas where no verbatim transcript is available.

In sum, we hold that defense counsel's certificate was in full compliance with Rule 604(d) and that a remand for new filings is not required. For these reasons, the judgment of the circuit court of Lake County is affirmed.

People v. Spooner-Tye, 349 Ill. App. 3d 100, 104, 812 N.E.2d 783, 786 (2004)

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## SENTENCING OF A MISDEMEANOR - NOT REQUIRED

The offense in question is a misdemeanor (Ill.Rev.Stat.1979, ch. 951/2, s 6-303(a)). There is neither statutory nor case law requirement for the transcription of a sentencing hearing in a misdemeanor case.

People v. Gold, 99 Ill. App. 3d 468, 469, 425 N.E.2d 1337, 1338 (1981)

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## SAFE-T ACT

The Safe-T Act has its own rules. Supreme Court Rule 605 (d)(2) states:

(2) at the time of its ruling on the defendant's motion for relief under Rule 604(h)(2), the circuit court shall advise the defendant substantially as follows:

(A) that the defendant has a right to appeal at any time before conviction and, if indigent, to be furnished, without cost to the defendant, with a transcript or audiovisual communication or other electronic recording of the proceedings of the hearing;

(B) that the defendant, if indigent, has the right to have counsel appointed on appeal.

This Rule does NOT apply to sanctions hearings.

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## SAFE-T ACT

(4) Report of Proceedings. Court reporting personnel, as defined in Rule 46, shall certify and file a report of proceedings of hearings concerning pretrial detention or release held in the circuit court with the clerk of the circuit court within 21 days of the filing of the notice of appeal.

IL R S CT Rule 604

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## ABSENCE OF A TRANSCRIPT

(c) Procedure If No Verbatim Transcript Is Available (Bystander's Report). If no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection. In any trial court, a party may request from the court official any recording of the proceedings.

IL R S CT Rule 323

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## SENTENCING AFTER FINDING OF GUILT

(1) In all cases in which the defendant is found guilty and sentenced to imprisonment, probation or conditional discharge, periodic imprisonment, or to pay a fine, or in which a sentence of probation or conditional discharge has been revoked or the conditions attached to such a sentence have been modified, excluding cases in which the judgment and sentence are entered on a plea of guilty, the trial court shall, at the time of imposing sentence or modifying the conditions of the sentence, advise the defendant of the right to appeal, of the right to request the clerk to prepare and file a notice of appeal, and of the right, if indigent, to be furnished, without cost to the defendant, with a transcript of the proceedings at the trial or hearing.

IL R S CT Rule 605

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## SENTENCING PURSUANT TO A BLIND PLEA.

In all cases in which a judgment is entered upon a plea of guilty, other than a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

(5) that if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant

IL R S CT Rule 605

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## SENTENCING PURSUANT TO A NEGOTIATED PLEA.

In all cases in which a judgment is entered upon a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

(5) that if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant

IL R S CT Rule 605

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## ARRAIGNMENT

The official court reporter in attendance at any arraignment wherein the accused upon conviction shall, or may be punished by imprisonment in the penitentiary, shall take full stenographic notes of the proceedings, including in particular the plea or change of plea by the accused and the receipt and entry thereof by the court, the admonishment given by the court, the inquiries made by the court on the matters required by Rules 401 and 402 of the Illinois Supreme Court and the answer of the accused. When required by Court rule or otherwise ordered by the court, the reporter shall transcribe such notes and the transcript shall be filed in the case and become a part of the common law record.

705 ILCS 75/1

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## TRIAL EVIDENCE TO BE TRANSCRIBED

Report of Proceedings; Time. The report of proceedings contains the testimony and exhibits, the rulings of the trial judge, and all other proceedings before the trial judge, unless the parties designate or stipulate for less. It shall be certified by court reporting personnel or the trial judge and shall be filed in the trial court within 49 days after the filing of the notice of appeal. The report of proceedings shall be taken as true and correct unless shown to be otherwise and corrected in a manner permitted by Rule 329.

IL R S CT Rule 608

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## VOIR DIRE - NOT REQUIRED

Defendant urges that his rights were denied when the voir dire examination was not transcribed. Particularly, it is emphasized that the record does not affirmatively indicate that the defendant waived the transcription of voir dire examination. He has failed to cite any authority requiring either that the record affirmatively indicate waiver by the defendant of transcription of voir dire examination or that the failure to transcribe voir dire examination has caused prejudicial error. As this Court knows of no such requirement under the existing law it finds no merit in this contention.

People v. Thome, 111 Ill. App. 2d 215, 226, 250 N.E.2d 9, 14 (Ill. App. Ct. 1969)

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## FINAL ARGUMENTS

The defendant also contends that the prosecution made improper and prejudicial references to his statement in its closing argument. No specific remarks are mentioned, however, and the absence of specification is sought to be justified on the ground that 'the final arguments were not reported by the official reporter.' The defendant's position is that because the court reporter did not take down the final arguments of the attorneys, he is precluded from showing their prejudicial nature, and that his conviction must therefore be reversed. We cannot accept this contention. The responsibility for the proper preservation of the record of the proceedings before the trial court rests upon the defendant.

People v. Smith, 42 Ill. 2d 479, 483, 248 N.E.2d 68, 71 (1969)

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## ARGUMENTS AT TRIAL

The court reporter was acting, as we understand the record, under the provisions of the statute providing for the appointment by the circuit judges of court reporters in counties outside of the county of Cook to take down evidence in all trials. Hurd's Stat. 1916, p. 795. This statute, fairly construed, authorizes the reporter to take down the arguments of counsel as well as the evidence. The court, on request of counsel, should have required the closing arguments to be taken down by the court reporter.

People v. King, 276 Ill. 138, 154–55, 114 N.E. 601, 608 (1916)

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## DEFENDANT'S BURDEN TO PRESERVE RECORD

The responsibility for the proper preservation of the record before the trial court rests on the defendant.

Where the record on appeal is incomplete, the court will indulge in every reasonable presumption favorable to the judgment or order appealed from.

Absent an adequate presentation of the record by the appellant, every reasonable intendment against the defendant is presumed on appeal.

People v. Malley, 103 Ill. App. 3d 534, 536, 431 N.E.2d 708, 710 (1982)

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