

**NOTICE:** 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of De Kalb County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	Nos. 05—CF—438
	)	05—CF—450
	)	
ROBERT J. ANGAROLA,	)	Honorable
	)	Robbin D. Stuckert,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Zenoff and Burke concurred in the judgment.

*Held:* Defendant was not entitled to a second remand for compliance with Rule 604(d): counsel's tardy filing of his certificate on the first remand did not require a second remand; the record did not show that on the first remand the trial court ignored or neglected the original postplea proceedings; a new motion was not required on the first remand.

**ORDER**

Defendant, Robert J. Angarola, appeals a judgment denying his motion to reconsider his sentences in two consolidated cases in which he entered pleas of guilty. We affirm.

In case No. 05—CF—438, defendant was charged with one count each of criminal damage to property (720 ILCS 5/21—1(1)(A) (West 2004)), criminal damage to government-supported

property (720 ILCS 5/21-4(1)(a) (West 2004)), and resisting a peace officer (720 ILCS 5/31-1(a) (West 2004)) and three counts of aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a) (West 2004)). In case No. 05—CF—450, defendant was charged with two counts of deceptive practices (720 ILCS 5/17-1B(d) (West 2004)). On September 6, 2007, after the cases were consolidated, defendant entered open pleas of guilty to all of the charges. On November 29, 2007, the trial court sentenced defendant to five-year prison terms in case No. 05—CF—438 and three-year prison terms in case No. 05—CF—450, with all of the sentences to run concurrently with one another but consecutively to defendant's sentences in prior cases from Du Page County and Cook County.

On December 17, 2007, defendant filed a postjudgment motion applicable to both cases. Although the motion was labeled as one to vacate the guilty pleas or reconsider the sentences, it actually raised only sentencing issues. After hearing arguments, the trial court denied the motion. On appeal, this court vacated the postjudgment proceedings and remanded, because defendant's attorney, Robert P. Carlson, had not filed a proper certificate of compliance with Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Angarola*, Nos. 2—08—0249 & 2—08—0250 cons. (2008) (unpublished order under Supreme Court Rule 23).

On remand, the following occurred. On April 6, 2009, Carlson told the trial court that he would be switching jobs, so that perhaps "someone else should be appointed." The court continued the cause to June 11, 2009. On April 9, 2009, Carlson filed a Rule 604(d) certificate. On June 11, 2009, attorney Robert Nolan told the court that he now represented defendant. The court continued the cause several more times.

On October 15, 2009, the court held a hearing. Nolan had not yet filed a Rule 604(d) certificate. Nolan pointed out that there still had to be a hearing on defendant's postjudgment motion. The judge stated, "I would have to review the file as well so I make sure we're addressing the right motion. So there's two files here. We'll have to look through those and see because I'm not sure whether there had been a motion to reconsider sentence that had been filed." Assistant State's Attorney William Engerman told the judge, "You've never then reheard the motion to reconsider sentence or withdraw guilty plea. There's no order of that so I think that's what has to be accomplished." The judge agreed to "pass [the case] for a little bit so that I have some time—we can address it today so we can get things moving."

When the hearing resumed later that day, the judge stated, "Now, we'll get your motion today taken care of so you can appeal that if you believe that's an inappropriate sentence." After a discussion about sentencing credit, the following took place:

“THE COURT: But for purposes of today because we got the mandate back since the certificate wasn't filed you had filed a motion to reconsider sentence or withdraw your guilty plea. For all of the reasons stated previously on the record I will deny that motion once again. Well, I guess I need to ask if there's further argument or are you standing on your record from the original motion?

MR. ENGERMAN: The State would stand on the record at this time.

THE COURT: All right, so based on the arguments that were offered to the court previously I will deny the motion at this time. So a certificate has been filed so you can appeal this now.

MR. NOLAN: I would—Mr. Angarola has asked me to point out that the language in the order of the appellate court the last time, the reason why it was sent back here, it did say that the judgment in the circuit court is vacated. Mr. Angarola wants to point that out.

THE COURT: All right. So it was vacated and at this time for me to reconsider once again and rule on that motion. So the motion is denied on the motion [*sic*] to withdraw your guilty plea and to vacate the sentence. So that is denied based on prior arguments by both counsel and the rulings. So we should be ripe for appeal now with the filing of the certificate.

MR. NOLAN: That being so I would expect we have to file a new certificate and a notice of appeal. So I'll undertake to do that.”

That day, the court entered a written order denying defendant's postjudgment motion. On November 9, 2009, defendant filed a notice of appeal and Nolan filed a Rule 604(d) certificate.

On appeal, defendant contends that he is entitled to another remand and new postjudgment proceedings, including the filing of a new motion and a timely Rule 604(d) certificate by counsel. Defendant argues that the proceedings on remand were deficient because (1) Nolan did not file a Rule 604(d) certificate until after the trial court had heard and denied defendant's motion; (2) the record does not demonstrate that the trial judge actually reviewed the case file or the transcript of the hearing on the original postjudgment motion; and (3) Nolan stood on the original postjudgment motion even though he was obligated to file a new one. We consider these arguments in turn.

Defendant contends first that the proceedings on remand were deficient because Nolan did not file a Rule 604(d) certificate until after the trial court had heard and denied defendant's motion. We agree with the State that *People v. Shirley*, 181 Ill. 2d 359 (1998), defeats this argument.

In *Shirley*, the trial court denied the defendant's motion to reconsider the sentence, but the cause was remanded, as defendant's counsel had not complied with Rule 604(d). On remand, the defendant filed a new motion to reconsider the sentence. The trial court denied the motion. Four days later, the defendant's attorney filed both a notice of appeal and a Rule 604(d) certificate. Before the supreme court, the defendant argued that the certificate had not been timely filed, making a second remand necessary. *Id.* at 367. The supreme court disagreed. The court held that the tardy filing of a Rule 604(d) certificate does not require a second remand "[w]here, as here, the defendant was afforded a full and fair second opportunity to present a motion for reduced sentencing." *Id.* at 369. Here, *Shirley* requires us to reject defendant's assertion that Nolan's tardiness in filing the Rule 604(d) certificate entitles defendant to yet another postjudgment hearing.

Defendant contends next that he is entitled to relief because the record does not show that, before deciding his motion, the trial judge reviewed the case file and the transcript from the hearing on the original postjudgment motion. Defendant ignores the established rule that we must presume that the trial judge knew and correctly applied the law and that it is the appellant's burden to show otherwise. *People v. Robinson*, 368 Ill. App. 3d 963, 976 (2006). The record does not show that the judge ignored or neglected the proceedings on defendant's original postjudgment motion. Indeed, if anything, the record demonstrates that, before deciding defendant's motion, the judge passed the case so that she could take the time to "review the file." Defendant's second argument lacks merit.

Defendant contends third that the proceedings on remand were deficient because Nolan failed to file a new postjudgment motion. Defendant relies on *People v. Oliver*, 276 Ill. App. 3d 929, 932 (1995), which held that a defendant's counsel must file a new motion and obtain a new hearing after a remand for the failure to comply with Rule 604(d). Defendant's reliance on *Oliver* is unavailing,

as that opinion is no longer good law. In *People v. Lindsay*, 239 Ill. 2d 522, 529 (2011), the supreme court held that, although a defendant must be allowed to file a new motion on remand, his counsel is not required to do so. If counsel concludes that the first motion was sufficient, a new motion need not be filed. *Id.* at 523. Defendant's third argument is foreclosed by *Lindsay*.

Because defendant has shown no reversible error in the proceedings on remand, he is not entitled to any more postjudgment proceedings.

The judgment of the circuit court of De Kalb County is affirmed.

Affirmed.