

NO. 4-10-0763

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

<p><u>NOTICE</u></p> <p>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).</p>
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THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Douglas County
LERNELL JACKSON,)	No. 09CF85
Defendant-Appellant.)	
)	Honorable
)	Michael G. Carroll,
)	Judge Presiding.

JUSTICE MYERSCOUGH delivered the judgment of the court. Justices Knecht and Pope concurred in the judgment.

ORDER

Held: Where defense counsel did not strictly comply with the certification requirements of Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), remand for further proceedings was necessary.

This appeal comes to us on the motion of defendant Lernel Jackson's counsel, the office of the State Appellate Defender (OSAD), for remand for further proceedings in accordance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). The State concedes remand would be proper. We agree with the parties.

I. BACKGROUND

In March 2010, defendant pleaded guilty to aggravated battery (720 ILCS 5/12-4(b)(9) (West 2008)) and, in April 2010, the trial court sentenced defendant to four years in prison. In

May 2010, defendant *pro se* filed a motion for reduction of sentence and a motion to withdraw guilty plea and vacate sentence and the court appointed counsel to assist defendant with his postplea motions. In July 2010, defense counsel filed an amended motion to withdraw defendant's guilty plea, attaching thereto a certificate averring compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). Specifically, in relevant part, defense counsel's certificate avers, "Counsel has reviewed the Court file and report of proceedings in this matter. All post sentence [*sic*] motions have been prepared and filed based upon this review and Counsel's personal knowledge of the trial court proceedings." In September 2010, the court denied defendant's amended motion to withdraw his guilty plea. This appeal followed.

II. ANALYSIS

OSAD asserts, and the State concedes, this cause should be remanded for further proceedings in accordance with Rule 604(d). We agree.

Rule 604(d) sets forth requirements that must be satisfied before a defendant who pleads guilty can appeal. Specifically, Rule 604(d) states, in pertinent part,

"The defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by mail or in person to ascertain defendant's contentions of error in the sen-

tence or the entry of the plea of guilty, has examined the trial court file *and report of proceedings of the plea of guilty*, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings." (Emphasis added.) Ill. Sup. Ct. R. 604(d) (eff. July 1, 2006).

Defense counsel's certificate must strictly comply with Rule 604(d) on its face. *People v. Grice*, 371 Ill. App. 3d 813, 816, 867 N.E.2d 1143, 1146 (2007). "[T]his court cannot simply assume or infer compliance with Rule 604(d) because the strict waiver requirements of Rule 604(d) demand that any issue not raised in *** the motion to withdraw the plea of guilty is forfeited." *People v. Prather*, 379 Ill. App. 3d 763, 768, 887 N.E.2d 44, 47 (2008). "[T]he remedy for failure to strictly comply with each of the provisions of Rule 604(d) is a remand to the circuit court for the filing of a new motion to withdraw guilty plea or to reconsider sentence and a new hearing on the motion." *People v. Janes*, 158 Ill. 2d 27, 33, 630 N.E.2d 790, 793 (1994).

In this case, defendant's counsel's Rule 604(d) certificate is deficient since it fails to demonstrate counsel specifically examined the report of proceedings from defendant's guilty plea hearing. See Ill. Sup. Ct. R. 604(d) (eff. July 1, 2006) (requiring defense counsel to certify he or she "has examined the *** report of proceedings of the plea of guilty"); accord *Grice*, 371 Ill. App. 3d at 817, 867 N.E.2d at 1146-47 (stating the

certificate must show "the attorney has examined the report of proceedings of the plea of guilty"). Defense counsel's statements that he "reviewed the Court file and report of proceedings" and had "personal knowledge of the trial court proceedings" are insufficient to demonstrate to this court that he specifically examined the report of proceedings from defendant's guilty plea hearing. See *People v. Neal*, 403 Ill. App. 3d 757, 759-60, 936 N.E.2d 726, 727 (remanding where defense counsel certified "he examined the report of the *sentencing hearing*" (emphasis added)). Accordingly, we conclude this cause should be remanded for further proceedings in compliance with Rule 604(d).

III. CONCLUSION

Because the record does not show strict compliance with Rule 604(d), we grant OSAD's motion and remand this cause for further proceedings not inconsistent with this judgment.

In accordance with our judgment, the Clerk of the Illinois Appellate Court, Fourth District, shall mandate the circuit court appoint counsel for defendant, allow defendant to file a new postplea motion, hold a hearing on the motion, and require defense counsel to submit a Rule 604(d) certificate strictly complying with that rule.

Remanded with directions.

