

NOTICE
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2011 IL App (4th) 090672-U

Filed 7/14/11

NO. 4-09-0672

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Logan County
JOHN K. ADAMS,)	No. 07CF135
Defendant-Appellant.)	
)	Honorable
)	Thomas M. Harris,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justice Appleton concurred in the judgment.
Justice Turner dissented.

ORDER

¶ 1 *Held:* Defense counsel's certificate did not comply with Supreme Court Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. Jul. 1, 2006).

¶ 2 Following a negotiated plea of guilty to driving while license revoked with fourteen or more prior driving-while-license-revoked convictions (625 ILCS 5/6-303(a), (d-5) (West 2008)), defendant, John K. Adams, appeals the denial of his *pro se* petition to withdraw his guilty plea and vacate judgment. Defendant argues, in part, the cause should be remanded for further proceedings because counsel did not comply with the certificate requirements of Illinois Supreme Court Rule 604(d) (eff. Jul. 1, 2006). We agree and reverse and remand with directions.

¶ 3

I. BACKGROUND

¶ 4 In October 2008, defendant entered into a partially negotiated plea of guilty to driving while license revoked with fourteen or more prior driving-while-license-revoked convictions (625 ILCS 5/6-303(a), (d-5) (West 2008)). In return, the State agreed to cap its sentencing recommendation at 10 years' imprisonment. Due to two previous felony convictions, defendant was subject to mandatory Class X sentencing. 730 ILCS 5/5-5-3(c)(8) (West 2008). In November 2008, the trial court sentenced defendant to 10 years' imprisonment, with 2 years' mandatory supervised release.

¶ 5 In December 2008, defendant filed a *pro se* petition to withdraw guilty plea and vacate judgment. In his petition, defendant alleged he was coerced into the guilty plea by courthouse personnel who beat him. He also stated he was taking a number of medications and had serious mental-health issues. In January 2009, the trial court appointed counsel to represent defendant on his postplea motion.

¶ 6 On September 1, 2009, after a hearing, the trial court denied defendant's petition. By an affidavit, dated the same date, defense counsel averred the following:

- "1. Affiant is an attorney licensed to practice law in the State of Illinois.
2. That Affiant has been appointed by the Court to represent the defendant in challenging the sentence imposed in the above-captioned cause.
3. That Affiant has consulted with the Defendant, either by mail or in person, to ascertain his contentions of error in the

sentence or the entry of the plea of guilty.

4. That Affiant has examined the trial court file and report of proceedings of the Plea of Guilty, if relevant.

5. That Affiant has made any amendments to the Motion necessary for adequate presentation of any defects in those proceedings."

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant presents three arguments: (1) defense counsel failed to comply with Rule 604(d)'s certificate requirements; (2) before he entered his plea, the trial court improperly advised defendant he would serve a two-year term of mandatory supervised release when he, in fact, had to serve a three-year term; and (3) the trial court failed to award the correct amount of sentence credit. We find defendant is entitled to remand on his first issue. We need not decide the remaining issues until the proceedings are completed on remand, and defendant raises them again. *People v. Janes*, 158 Ill. 2d 27, 36, 630 N.E.2d 790, 794 (1994) ("If, upon completion of the proceedings on remand, defendant's motion to withdraw his guilty plea is denied, this court will address, at defendant's request, the correctness of that decision and the remaining issues raised herein.").

¶ 10 Defendant's Rule 604(d) argument challenges counsel's statement he "examined the trial court file and report of proceedings of the Plea of Guilty, *if relevant*." (Emphasis added.) Defendant states the term "if relevant," when read with the rest of the sentence, does not meet the requirement counsel *must* specify he examined the court file and report of proceedings of the

guilty plea. According to defendant, "if relevant" suggests counsel did not review the entire court file or the report of the guilty-plea proceedings.

¶ 11 The State maintains defense counsel's certificate complies with Rule 604(d). The State, relying on *People v. Wyatt*, 305 Ill. App. 3d 291, 712 N.E.2d 343 (1999), argues the "if relevant" language is surplusage.

¶ 12 When a defendant who pleads guilty files a motion to withdraw the guilty plea, his or her counsel must file a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. Jul. 1, 2006). According to Rule 604(d), counsel must state in the certificate he or she:

"has consulted with the defendant either by mail or in person to ascertain defendant's contentions of error in the sentence 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." Ill. S. Ct. R. 604(d) (eff. Jul. 1, 2006).

Counsel's failure to comply strictly with the certificate "provisions of Rule 604(d) requires 'remand to the circuit court for the filing of a new motion to withdraw guilty plea *** and a new hearing on the motion.'" *People v. Grice*, 371 Ill. App. 3d 813, 815, 867 N.E.2d 1143, 1145 (2007), quoting *Janes*, 158 Ill. 2d at 33, 630 N.E.2d at 792.

¶ 13 To determine whether defense counsel complied with Rule 604(d), this court may not examine the record to ascertain "whether defense counsel's conduct satisfied Rule 604(d)'s requirements." *Grice*, 371 Ill. App. 3d at 816, 867 N.E.2d at 1146. We will only consider the

certificate itself when considering compliance with Rule 604(d). *People v. Neal*, 403 Ill. App. 3d 757, 760, 936 N.E.2d 726, 728 (2010).

¶ 14 The certificate does not indicate defense counsel complied with Rule 604(d). The term "if relevant" implies counsel only examined the portions of the court file and guilty-plea proceedings he deemed relevant and did not examine any portions he deemed irrelevant. Such statement and the conduct it infers does not satisfy Rule 604(d)'s requirement counsel review the entire court file and the entire guilty-plea proceedings.

¶ 15 The State's case is distinguishable. In *Wyatt*, counsel stated, in part, he "examined the trial court file and report of proceedings of the plea of guilty and the sentencing for of [sic] making any amendments necessary for an adequate presentation of any defects in the proceedings." *Wyatt*, 305 Ill. App. 3d at 296, 712 N.E.2d at 347. That language indicates counsel examined the entire file and report of proceedings.

¶ 16 III. CONCLUSION

¶ 17 We vacate the order denying defendant's petition to withdraw his guilty plea and remand for "further proceedings consistent with Rule 604(d), that is, the appointment of counsel, the filing of a new motion to withdraw guilty plea or to reconsider sentence, a new hearing on the motion, and for strict compliance with Rule 604(d)." *Neal*, 403 Ill. App. 3d at 761, 936 N.E.2d at 729.

¶ 18 Reversed and remanded with directions.

¶ 19 JUSTICE TURNER, dissenting:

¶ 20 I respectfully dissent. As I highlighted in my dissent in *People v. Prather*, 379 Ill. App. 3d 763, 771, 887 N.E.2d 44, 49 (2008), a verbatim recitation of Rule 604(d)'s language is not required for a certificate to comply with the rule. Here, counsel's addition of the phrase "if relevant" does not render the certificate noncompliant with Rule 604(d). The additional language is surplusage and does not indicate counsel may have failed to adequately review the trial court file and the report of proceedings for the guilty plea. I disagree with the majority's hypertechnical application of Rule 604(d)'s certification requirement and would not remand the cause for further proceedings.