

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).

NO. 4-10-0658

Order Filed 3/30/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
STEVE D. STOLTZ,)	No. 09CF726
Defendant-Appellant.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and McCullough concurred in the judgment.

ORDER

Held: (1) Defense counsel's certificate averring he reviewed "transcripts of relevant proceedings" failed to comply with the requirement of Supreme Court Rule 604(d) (eff. July 1, 2006) specifying counsel examined the report of proceedings of the plea of guilty, requiring remand; and

(2) the circuit court is without authority to impose fines, requiring vacatur of and remand with directions for the trial court to reimpose the children's-advocacy-center and drug-court fees if appropriate.

This appeal comes to us on the motion of defendant's counsel, the office of the State Appellate Defender (OSAD), for remand for strict compliance with Supreme Court Rule 604(d) (eff. July 1, 2006).

I. BACKGROUND

In January 2010, defendant, Steve D. Stoltz, entered an

open guilty plea to having committed unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2008)), a Class 4 felony, on August 15, 2009. According to the State's factual basis, defendant was a passenger in a car stopped on the interstate. The driver did not have a valid driver's license and the vehicle was to be towed. The officers were going to offer defendant a ride, and in order to do so, the officers patted him down. The search disclosed a chunky white substance in his pocket, which field-tested positive for nine grams of cocaine. Defense counsel stipulated to the factual basis and offered as an additional fact defendant could not walk or hitchhike on the interstate, so he had to be given a ride off the interstate, which resulted in the search. Defendant was eligible for an extended-term sentence based on his prior criminal history in Colorado. The trial court admonished defendant he was eligible for a nonextended term of one to three years and an extended prison term of up to six years. The court accepted defendant's guilty plea.

On March 30, 2010, at the sentencing hearing, defense counsel again referenced defendant as (1) not having a driver's license and being on the interstate where he could not be a hitchhiker or pedestrian, (2) being put into a squad car to be transported away, and (3) being searched pursuant to protocol, at which point the drugs were discovered. The trial court sentenced defendant to a three-year prison term with credit for time served

from August 15, 2009, to August 17, 2009. By supplemental sentencing order (financial), the court ordered defendant to pay a \$500 drug-treatment-assessment fee, a \$100 drug-trauma-fund fine, and a \$100 State Police drug-lab analysis fee. The court admonished defendant of his rights to appeal under Supreme Court Rule 605(b) (eff. Oct. 1, 2001). On March 31, 2010, the circuit clerk issued a notice to party listing various fines and court costs, including, for example, a \$15 children's-advocacy-center fee and a \$10 drug-court fee, as well as the \$100 drug-trauma-fund fine and the \$485 drug-treatment-assessment fee (having credited defendant \$15 for three days' time served)

On April 29, 2010, defendant, by new private counsel, James Waller, filed a motion to withdraw plea, arguing misapprehension of facts and law, as well as a certificate averring compliance with Rule 604(d), stating as follows:

"1. I have personally consulted with the Defendant to ascertain his contentions of error in entry of his guilty plea.

2. I have examined the court file, reviewed transcripts of the relevant proceedings, and examined the discovery tendered in this case.

3. I have made any necessary amendments in motion to withdraw plea necessary for adequate presentation of any defects in the proceedings."

(Emphasis added.)

At two hearings, defense counsel Waller presented evidence and argument Public Defender Harvey Welch should have filed a motion to suppress because defendant did not consent to a search of his person and told officers at the scene that he could call and obtain a ride. Defendant testified he was wearing a tank top and shorts at the time of the car stop. Attorney Welch instead stated facts at the guilty plea and sentencing hearings which supported the admissibility of the evidence against defendant.

On July 28, 2010, after hearing testimony from defendant and attorney Welch, the trial court denied defendant's motion. This appeal followed, and OSAD has been appointed to represent defendant on appeal.

II. AVERRING REVIEW OF "TRANSCRIPTS OF RELEVANT PROCEEDINGS" DOES NOT FULFILL SUPREME COURT RULE 604(d) REQUIREMENTS

OSAD has filed a motion for summary remand, contending defendant's counsel failed to file a certificate strictly complying with Supreme Court Rule 604(d) (eff. July 1, 2006). Specifically, counsel failed to certify that he examined the report of proceedings of the January 2010 proceeding wherein defendant admitted his guilt in this case, *i.e.*, the transcript of the guilty-plea hearing. Rule 604(d) (eff. July 1, 2006) provides as follows:

"(d) Appeal by Defendant From a Judgment

Entered Upon a Plea of Guilty. *** The defendant's attorney shall file with the trial court a certificate stating that the attorney [(1)] has consulted with the defendant either by mail or in person to ascertain defendant's contentions of error in [(a)] the sentence or [(b)] the entry of the plea of guilty, [(2)] has examined the [(a)] trial court file and [(b)] *report of proceedings of the plea of guilty*, and [(3)] has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings." (Emphasis added.)

We note the certificate requirements are a single sentence of Rule 604(d). Brackets were added above to break out the elements. This court summarized these elements in its 2007 opinion in *People v. Grice*, 371 Ill. App. 3d 813, 817, 867 N.E.2d 1143, 1146-47 (2007).

OSAD asserts while defense counsel avers he reviewed transcripts of relevant hearings, Rule 604(d) requires the certificate show the attorney has reviewed the report of guilty-plea proceedings. *People v. Neal*, 403 Ill. App. 3d 757, 760, 936 N.E.2d 726, 728 (2010). OSAD claims defendant is entitled to remand for the filing of a new postplea motion. *People v. Janes*,

158 Ill. 2d 27, 33, 630 N.E.2d 790, 792 (1994); see also *People v. Prather*, 379 Ill. App. 3d 763, 769, 887 N.E.2d 44, 47-48 (2008) (Fourth District). The State concedes the cause should be remanded to the trial court for further proceedings consistent with Rule 604(d). We agree.

The question of whether defense counsel complied with Rule 604(d) is subject to *de novo* review. *People v. Johnson*, 363 Ill. App. 3d 356, 359, 843 N.E.2d 434, 437 (2006), *rev'd & remanded on other grounds*, 225 Ill. 2d 573, 870 N.E.2d 415 (2007) (citing *People v. Lloyd*, 338 Ill. App. 3d 379, 384, 788 N.E.2d 1169, 1173 (2003)); see also *Grice*, 371 Ill. App. 3d at 815, 867 N.E.2d at 1145.

The certificate itself is all this court will consider to determine compliance with Rule 604(d). *Grice*, 371 Ill. App. 3d at 816, 867 N.E.2d at 1146. The certificate *must* show defendant's "attorney has examined the report of proceedings of the plea of guilty." *Grice*, 371 Ill. App. 3d at 817, 867 N.E.2d at 1147. Our supreme court was not unclear in *Janes*. Strict compliance is required. *People v. Pressey*, 357 Ill. App. 3d 887, 890-91, 829 N.E.2d 426, 430 (2005).

Our supreme court has stated the following:

"The [certificate's] filing should precede or be simultaneous with the hearing in the trial court. Such a procedure will insure that the trial court, in considering a defendant's

motion to withdraw his or her guilty plea or to reduce sentence, will be apprised that defense counsel has reviewed the proceedings with the defendant and prepared any necessary amendments to the motion." *People v. Shirley*, 181 Ill. 2d 359, 371, 692 N.E.2d 1189, 1195 (1998).

Moreover, in *Grice*, this court stated the following:

"Although the responsibility for drafting a proper Rule 604(d) certificate lies initially with defense counsel, trial courts can, and should, play an important role in preventing the waste of judicial resources that occurs when we must address on appeal the validity of a Rule 604(d) certificate. Trial courts possess the power --and the duty--to examine any Rule 604(d) certificate when filed to determine whether it complies with that rule. Trial courts should reject those certificates that do not comply, and when doing so, instruct counsel to file another certificate in accordance with all of the requirements of Rule 604(d). If trial courts follow these suggestions, the terrible waste of judicial resources that now

occurs, as here, due to defective Rule 604(d) certificates should cease." *Grice*, 371 Ill. App. 3d at 816, 867 N.E.2d at 1146.

III. CONCLUSION

Accordingly, we grant OSAD's motion and remand the cause for further proceedings consistent with Supreme Court Rule 604(d), *i.e.*, the appointment of counsel, the opportunity to file a new postplea motion, a new hearing on the motion, and for strict compliance with Rule 604(d) in the filing of any certificate under the rule. Moreover, we note the circuit clerk was without authority to impose fines, and we vacate the imposition of the children's advocacy-center fee and the drug-court fee and remand with directions for the trial court to impose such fines if appropriate. See *People v. Folks*, No. 4-09-0579, slip op. at 9, 11 (Ill. App. December 28, 2010), ___ Ill. App. 3d ___, ___, ___ N.E.2d ___, ___ (wherein the appellate court found that drug-court and children's-advocacy-center assessments were mandatory and the clerk could not impose those fines on the court's behalf).

Vacated in part and remanded with directions.