

appointed counsel and an opportunity for the defendant to file a postplea motion." *People v. Morse*, No. 5-08-0270, order at 6 (2008) (unpublished order under Supreme Court Rule 23 (eff. May 30, 2008)). On remand, an attorney was appointed to represent the defendant. On October 29, 2009, counsel for the defendant filed a motion to withdraw guilty plea, in which counsel contended that the defendant's plea was not voluntary because the defendant was pressured by his plea attorney to so plead. Accompanying the motion, and filed on the same day, was a Supreme Court Rule 604(d) certificate (Ill. S. Ct. R. 604(d) (eff. July 1, 2006)) signed by the defendant's counsel, who stated that he had consulted with the defendant in person to determine the defendant's "willingness to withdraw his open plea of guilt," had "examined the record in the trial court including the sentencing hearing," and had reviewed the defendant's rights with the defendant. On December 9, 2009, the transcript of the guilty plea proceeding was filed with the court. On January 28, 2010, a hearing was held on the defendant's motion, at which no evidence was adduced and the parties argued the matter on its merits. On February 2, 2010, the trial court entered a written order denying the defendant's motion to withdraw his guilty plea, finding that the plea was not involuntary.

¶ 5

ANALYSIS

¶ 6 On appeal, the defendant does not argue, as he did in the trial court, that his plea was not voluntary because he was coerced by counsel into making it. Accordingly, he has forfeited consideration of that issue by this court, and we shall consider no further the voluntariness of the defendant's plea in that regard. See Ill. S. Ct. R. 341(h)(7) (eff. Mar. 16, 2007) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Instead, the defendant argues that this case must be remanded because: (1) counsel's 604(d) certificate was inadequate because, *inter alia*, counsel did not certify "that he had read the guilty plea

transcript and raised any defect found therein" and (2) "no one ever read the charge to [the defendant], or explained the elements or nature of the case to him."

¶ 7 With regard to the defendant's contention that counsel's 604(d) certificate was inadequate, we agree with the State that *People v. Smith*, 248 Ill. App. 3d 729 (1993), controls our resolution of this issue. In *Smith*, counsel filed a 604(d) certificate, along with his motion to withdraw guilty plea, on February 19, 1991, certifying that he had examined, *inter alia*, the report of proceedings of the plea of guilty. 248 Ill. App. 3d at 730. The report of proceedings of the plea in question, however, was not actually available to counsel until February 21, 1991, the day of the hearing on the motion. *Smith*, 248 Ill. App. 3d at 730. Nevertheless, this court held that the strict compliance requirements of Rule 604(d) were satisfied because "Rule 604(d) does not *require* that the transcript be provided in advance of the hearing" (emphasis in original) scheduled on the motion, and that in any case the record affirmatively showed that defense counsel had reviewed the transcript during the hearing, although not before completing his 604(d) certificate. *Smith*, 248 Ill. App. 3d at 733.

¶ 8 Likewise, it is true, as the defendant suggests, that in the case at bar the transcript of the guilty plea proceeding was not available at the time counsel completed his 604(d) certificate, but it is also true, as the State points out, that it is clear from the record that counsel read the transcript prior to the hearing. The record shows that counsel was served by the State with a copy of the transcript of the guilty plea proceeding on the date it was filed, December 9, 2009, and that on December 14, 2009, counsel moved for a continuance of the hearing on his motion so that he could discuss how to proceed with the motion with the defendant in person. Moreover, once the hearing was held, six weeks later, counsel referred to the contents of the transcript in a manner that would not have been possible had he not read it, including stating that "the record in this case clearly shows that this Court admonished [the defendant] of his rights" and "questioned him about the knowingness and

voluntariness of his plea." We also agree with the State that strict compliance with Rule 604(d) exists even though the certificate did not state that counsel had made any necessary amendments to the motion to withdraw guilty plea: in this case, no amendments were necessary because no previous version of the motion existed, only that filed, along with the certificate, by counsel. As noted above, when the defendant first attempted to appeal in this case, he did so without first filing a motion to withdraw his guilty plea. See *People v. Morse*, No. 5-08-0270 (2008) (unpublished order under Supreme Court Rule 23).

¶ 9 Likewise, there is no merit to the defendant's claim that counsel "violated Rule 604(d) requirements" because his motion was not accompanied by an affidavit, as required by Rule 604(d) in cases where the motion to withdraw guilty plea is based upon facts not contained within the record. The defendant cites no cases finding a violation, by counsel, of the Rule 604(d) certificate requirements on the basis of a lack of an affidavit, and we have not found any such cases either. Appellate counsel for the defendant seems to insinuate, with no evidence whatsoever, that postplea counsel neglected to prepare an affidavit for the defendant's signature, and that by so doing somehow violated Rule 604(d). However, there are other reasons the defendant may have declined to put forward an affidavit. See, *e.g.*, *People v. Caro*, 381 Ill. App. 3d 1056, 1063 (2008) (defendant may be subject to charges of perjury if he files an affidavit that is sufficiently detailed and untrue). On the record before us, there is no basis to find that the absence of an affidavit from the defendant with regard to his claim that he was pressured by plea counsel into pleading guilty is the equivalent of a violation of Rule 604(d) by postplea counsel.

¶ 10 With regard to the defendant's claim that he should be allowed to withdraw his guilty plea because "no one ever read the charge to [the defendant], or explained the elements or nature of the case to him," this claim too is without merit. To determine whether a defendant understood the nature of the charges filed against that defendant, a reviewing court may

consider the entire record on appeal. *People v. Krantz*, 58 Ill. 2d 187, 192 (1974). Moreover, the rule governing the acceptance of a plea of guilty, Supreme Court Rule 402 (eff. Sept. 1, 1970), requires that there be "only substantial, not literal, compliance with its provisions." *Krantz*, 58 Ill. 2d at 192. In *Krantz*, although the defendant was advised of the charge against him by name only, compliance was found because the factual basis recited by the State at the guilty plea proceeding "made clear what criminal conduct of Krantz the People expected to prove." 58 Ill. 2d at 193. Likewise, in the case at bar, although the defendant was advised of the charge against him by name only, a detailed factual basis was recited, including the fact that the defendant's daughter walked into the defendant's room to find the defendant sexually molesting the defendant's four-year-old great-granddaughter. Also included in the factual basis was a recital of the defendant's statement to police, wherein the defendant claimed that the victim was playing with teddy bears and a puppy and that, "[t]he next thing [the defendant] knew, he pulled her pants down and was licking her vaginal area." The defendant agreed, on the record, that this factual basis was an accurate accounting of the events that led to the charges against him. There is no doubt that the defendant understood the nature of the charges against him, and under *Krantz* and its progeny, there was no error, nor were there any other violations of the substantial compliance requirements of Rule 402.

¶ 11 The defendant also claims ineffective assistance of counsel on the basis of the Rule 604(d) and Rule 402 errors alleged herein. However, because there were no errors, there was no ineffective assistance of counsel.

¶ 12 CONCLUSION

¶ 13 For the foregoing reasons, we affirm the denial of the defendant's motion to withdraw his guilty plea.

¶ 14 Affirmed.