

NOTICE

Decision filed 01/27/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0414

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 07-CF-1531
	)	
ROBERT C. STOCES,	)	Honorable
	)	James Hackett,
Defendant-Appellant.	)	Judge, presiding.

---

PRESIDING JUSTICE CHAPMAN delivered the judgment of the court.  
Justices Welch and Spomer concurred in the judgment.

**R U L E 2 3 O R D E R**

*Held:* Defense counsel's failure to file a Rule 604(d) certificate required a remand for further proceedings in compliance with the rule. Counsel's oral statements to the court were insufficient to establish strict compliance with the requirements of Rule 604(d).

The defendant, Robert Stoces, pled guilty to aggravated unlawful participation in methamphetamine manufacturing (720 ILCS 646/15(b)(1)(A) (West 2006)). He filed a timely motion to withdraw his guilty plea and reconsider sentence, which the circuit court denied. Defense counsel did not file a certificate of compliance with Rule 604(d) (eff. July 1, 2006). On appeal, the defendant argues that (1) the cause must be remanded to allow for further proceedings in compliance with Rule 604(d) and, alternatively, (2) he is entitled to a new sentencing hearing because the court improperly considered a factor inherent in the offense as a factor in aggravation. We agree with his first contention. Because we remand for further proceedings in compliance with Rule 604(d), we need not address the defendant's second argument.

The defendant pled guilty to one count of aggravated unlawful participation in methamphetamine manufacturing in exchange for the State's agreement to cap his sentence at 15 years and drop additional charges against him. The court accepted the defendant's guilty plea and sentenced him to 12 years in prison. The defendant filed a motion to withdraw his guilty plea and reconsider sentence. He subsequently filed an amended motion. Neither motion was accompanied by a certification of compliance with Rule 604(d) (eff. July 1, 2006). The circuit court denied both motions, and the defendant filed the instant appeal.

Rule 604(d) provides, in relevant part, as follows regarding an attorney representing a defendant in any postplea motion proceedings:

"The defendant's attorney *shall* file with the trial court a certificate stating that the attorney has consulted with the defendant \*\*\* to ascertain [the] defendant's contentions of error \*\*\*, 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. S. Ct. R. 604(d) (eff. July 1, 2006).

The certificate is required to ensure that counsel considers all possible grounds to withdraw the guilty plea, challenge the sentence, or (as in this case) both. *People v. DeRosa*, 396 Ill. App. 3d 769, 774, 919 N.E.2d 997, 1001 (2009).

The defendant argues that because the attorney representing him at his postplea proceedings did not comply with this requirement, we must remand to the circuit court so that counsel may comply with the rule. We agree. The supreme court has held that strict compliance with this provision is mandatory. *People v. Janes*, 158 Ill. 2d 27, 33, 630 N.E.2d 790, 792 (1994). Where an attorney has failed to file the required certificate, the case must be remanded to the circuit court for new proceedings that comply with this requirement. *People v. Lindsay*, No. 11089 (January 21, 2011); *Janes*, 158 Ill. 2d at 33, 630 N.E.2d at 792;

*DeRosa*, 396 Ill. App. 3d at 774, 919 N.E.2d at 1001. Thus, a remand is required in this case.

The State, however, argues that counsel complied with Rule 604(d) by *orally* certifying to the court that he had conferred with the defendant, ascertained the defendant's contentions of error, and amended the motion to include all the arguments the defendant wished to make. The State points to the following statement made by defense counsel at the beginning of the hearing on the defendant's motions:

"[T]he first thing we would like to do is add an addendum based upon my discussion with Mr. Stoces this morning. As your Honor may recall, I was unable to go see him in prison a second time after these documents came in and to talk to him because they transferred him from Graham to Logan. So I talked with him this morning to see if there was any additional area beyond what I put in my amended motion that he wanted me to bring to the Court's attention. So I am at this point in time just dating this addendum to my motion on count I, which will be a third paragraph, and I'll review it with the Court when we go into the actual motion."

Counsel then provided copies of the addendum to the court and the State's Attorney. The State argues that this language was sufficient to constitute an oral Rule 604(d) certificate. We disagree.

First, we note what is perhaps obvious: counsel's statement to the court was clearly intended simply to inform the court that he was presenting an additional argument and to explain why that argument was not included in either the original motion or the amended motion, the latter of which had been filed one day before the hearing. Counsel did not use any language indicating that he was "certifying" his compliance to the court. Nothing in Rule 604(d) itself or the cases explaining it indicates that an oral statement can satisfy the requirement of strict compliance. In addition, while the statement does indicate that defense counsel did three of the four things required by Rule 604(d)—that is, he consulted with the

defendant, determined the defendant's contentions of error, and amended the motion to include one of those contentions—it does not indicate that counsel reviewed the record as required by the rule. Thus, we would find a remand necessary even if we were to accept the State's argument that it is even possible to comply with Rule 604(d) with an oral statement.

The State's argument overlooks the rationale underlying the requirement of strict compliance with Rule 604(d). Strict compliance is necessary so that an appellate court need not waste judicial resources scouring the record to determine whether counsel complied with the rule's requirements. See *Janes*, 158 Ill. 2d at 35, 630 N.E.2d at 793; *People v. Dismuke*, 355 Ill. App. 3d 606, 609, 823 N.E.2d 1131, 1134 (2005). Appeals courts have generally held that we need not look beyond the certificate of compliance itself to determine whether the record reveals that counsel complied with the requirements of the rule. See *People v. Grice*, 371 Ill. App. 3d 813, 816, 867 N.E.2d 1143, 1146 (2007) (stating this rule); *Dismuke*, 355 Ill. App. 3d at 609, 823 N.E.2d at 1133-34 (rejecting the State's argument that the court could look beyond the certificate to determine whether defense counsel had complied with all the requirements of the rule where the certificate indicated compliance with some but not all of them).

The State's argument that it is even possible for an attorney to strictly comply with Rule 604(d) by orally "certifying" compliance is at odds with this principle. Accepting this argument in any case would require this court to read through the transcript to find words that appear to be certifying compliance with the rule's requirements. Accepting the State's argument in this case would additionally require us to scour the entire record to determine whether it appears that counsel reviewed the court file and transcripts of proceedings. As previously mentioned, counsel's statement to the court did not even arguably address this requirement.

In support of its argument, the State cites the Fourth District's decision in *People v.*

*Starks*, 344 Ill. App. 3d 766, 800 N.E.2d 1239 (2003). There, the defendant's attorney filed a written certificate pursuant to Rule 604(d). He certified that he had consulted with the defendant, determined his contentions of error, and made necessary amendments. *Starks*, 344 Ill. App. 3d at 768, 800 N.E.2d at 1241. However, while the attorney also certified that he had been given a copy of the transcripts and the court file (*Starks*, 344 Ill. App. 3d at 768, 800 N.E.2d at 1241), he did not specifically certify that he had *examined* the transcripts and the file (*Starks*, 344 Ill. App. 3d at 769, 800 N.E.2d at 1242). In holding that a remand for strict compliance was not necessary, the Fourth District looked beyond the certificate and reviewed the text of the written motion to withdraw the defendant's guilty plea. The court found that the content of the motion indicated that the attorney had in fact reviewed the record. *Starks*, 344 Ill. App. 3d at 769, 800 N.E.2d at 1242.

The State's reliance on *Starks* is misplaced. Four years after it was decided, the Fourth District itself "decline[d] to follow" *Starks*. *Grice*, 371 Ill. App. 3d at 815, 867 N.E.2d at 1146. Although the *Grice* court did not specifically state that it was overruling *Starks*, the fact that it declined to follow its own precedent without attempting to distinguish the two cases indicates that that is precisely what the court was doing. Thus, *Starks* is no longer good law and does not support the State's position.

The State also points out that the requirement of a written motion for a new trial (see 725 ILCS 5/116-1 (West 2006)) can be waived if the defendant makes an oral motion for a new trial and the State does not object. See *People v. Harrawood*, 66 Ill. App. 3d 163, 167, 383 N.E.2d 707, 710 (1978). The State argues, by analogy, that the requirement of a written certificate of compliance can be waived if "there is no objection." We do not find the two requirements remotely analogous. The State can waive its right to insist on a written posttrial motion if the prosecuting attorneys feel adequately prepared to respond to contentions of error made in an oral motion. By contrast, it would be ludicrous for this court to hold that

the State's failure to object to the lack of a written Rule 604(d) certificate can effectively waive that requirement. Even when the State does not object to the lack of a written certificate, the defendant should not be deprived of an opportunity to have his arguments presented by an attorney who has fully complied with Rule 604(d). Moreover, as previously discussed, the supreme court has specifically held that strict compliance with the requirement of a written and signed certificate under Rule 604(d) is mandatory. Thus, even if we found the State's analogy persuasive, we would be obliged to reject it.

We conclude that defense counsel's oral statement does not constitute strict compliance with Rule 604(d)'s certification requirement. We therefore reverse the order of the circuit court. We remand for compliance with the requirements of the rule in accordance with *People v. Lindsay*, No. 11089, slip op. at 8 (January 21, 2011). Because we reverse on this basis, we need not consider the defendant's alternative argument that the court considered an improper factor in sentencing him.

Reversed; cause remanded.