NOTICE
Decision filed 03/10/11. 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. 5-08-0554

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,	)	Hamilton County.
	)	
v.	)	No. 07-CF-28
	)	
CYRUS CHARLES WOOD,	)	Honorable
	)	Barry L. Vaughan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Donovan concurred in the judgment.

RULE 23 ORDER

Held: Neither certificate filed by counsel pursuant to Supreme Court Rule 604(d) complied with the rule.

After pleading guilty to two offenses in the circuit court of Hamilton County, defendant, Cyrus Charles Wood, filed a motion to withdraw his guilty plea and a motion to reconsider his sentence. The record contains two separate certificates under Supreme Court Rule 604(d) (eff. July 1, 2006) from defense counsel. The motions were denied. On direct appeal, defendant raises issues regarding whether his counsel complied with the requirements for certificates under Supreme Court Rule 604(d). We reverse and remand.

FACTS

On July 3, 2007, defendant was charged with two Class X felonies for predatory criminal sexual assault and two Class 2 felonies for aggravated criminal sexual abuse. On October 1, 2007, defendant entered open pleas of guilt to one of the counts of predatory criminal sexual assault and one of the counts of aggravated criminal sexual abuse. Defendant

was sentenced to consecutive terms of 30 years' incarceration for the charge of predatory criminal sexual assault and 7 years for the charge of aggravated criminal sexual abuse.

On January 18, 2008, defense counsel filed motions to withdraw the guilty plea and reduce the sentence. On March 6, 2008, the court conducted a hearing on defendant's motions. At the hearing, the court commented that defense counsel was requesting a continuance in order to have transcripts prepared and reviewed so that counsel could file a certificate pursuant to Supreme Court Rule 604(d). The court rescheduled the hearing for April 24, 2008, and ordered the preparation of the transcripts. On March 13, 2008, the transcript of the plea hearing was filed. On March 28, 2008, the transcript of the sentencing hearing was filed.

The record contains a certificate file-stamped by the circuit court on April 24, 2008. Defense counsel pled the following: "3. That I have and will consult personally with [defendant] on April 24th, 2008." The proof of service for the document showed that it was mailed on April 23, 2008.

On April 24, 2008, defense counsel appeared in court and requested a continuance of 60 days. The court began the hearing with the following colloquy:

> "THE COURT: The case was scheduled today, I believe, for a hearing on a motion to reconsider sentence and a motion to withdraw guilty plea, and it was scheduled March the 6th. And there was not a [Rule] 604(d) certificate in the file, so we reset it to today's date. It's my understanding [defense attorney] has not had a chance to speak to [defendant] and has requested that opportunity before filing the [Rule] 604(d) certificate.
>
> Is that correct, [defense attorney?]
>
> [Defense attorney:] That is correct, your Honor.
>
> THE COURT: So we are going to reset the hearing on the motion to

reconsider and the motion to withdraw."

At the conclusion of the hearing, defense counsel stated again that he wished to "apologize to the court for this inconvenience." The matter was reset for a hearing on June 12, 2008.

On October 2, 2008, defense counsel filed another Rule 604(d) certificate. In this certificate, defense counsel averred that he had reviewed and discussed the transcripts with defendant. The defense counsel averred as follows:

> "4. That I have discussed the contents of the transcripts of the above dates with my client above [(defendant)] in person prior to Hearing on the Motion to Withdraw Guilty Plea/Motion to Reconsider Sentence."

The certificate was silent regarding whether any corrections or amendments to the motion to withdraw the guilty plea or the motion to reconsider the sentence had been made or discussed.

The circuit court denied the motion to withdraw the guilty plea and the motion to reconsider the sentence. Defendant appeals.

ANALYSIS

Neither certificate filed by defense counsel complied with Rule 604(d). The relevant portion of paragraph (d) of Supreme Court Rule 604 provides as follows:

> "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 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. July 1, 2006).

Strict compliance with this provision is mandatory. *People v. Janes*, 158 Ill. 2d 27, 29, 630 N.E.2d 790, 792 (1994).

In the certificate of April 24, 2008, defense counsel stated that he would consult with defendant prior to the hearing on his motions to withdraw the plea and reconsider the sentence. The certificate reads, "I have and will consult personally with [defendant] on April 24th, 2008." Any interpretation of this statement as meaning that defense counsel had consulted with defendant is belied by the record. The proof of service attached to the certificate was dated April 23, 2008–the date before the hearing. On the date the certificate was marked as filed, the court granted a continuance on the grounds that defense counsel "has not had a chance to speak to [defendant] and has requested that opportunity before filing the 604(d) certificate."

Defendant argues on appeal that counsel had intended to withdraw the certificate at the time of the hearing on April 24, 2008. In any event, the transcript for the proceedings of that date is enough to shake any confidence that the defense counsel had consulted with defendant in a manner to strictly comply with Rule 604(d). The trial court indicated that it was granting a continuance because defense counsel had not consulted with defendant. Where the record undermines the averments of the certificate, this court should find that the certificate is not compliant. See *People v. Neal*, 403 Ill. App. 3d 757, 759, 936 N.E.2d 726, 728 (2010); see also *People v. Turner*, 403 Ill. App. 3d 753, 756, 936 N.E.2d 700, 703 (2010) ("The record suggests defense counsel had not read the report of proceedings when he filed the motion to reconsider"). Whether or not the trial court considered the certificate actually filed is irrelevant, because any certificate filed merely in anticipation of compliance with the substantive requirements of Rule 604(d) is unacceptable (*People v. Love*, 385 Ill. App. 3d 736, 738, 896 N.E.2d 1062, 1065 (2008)). The record belies any claim that the certificate of April 24, 2008, complied with the requirements of Rule 604(d).

Nor was the noncompliance resolved by the filing of a later certificate on October 2, 2008. On appeal, the State contends that this second certificate was superfluous because the

initial certificate was sufficient. As defendant correctly asserts, the certificate of October 2, 2008, was noncompliant on its face. Rule 604(d) requires the certificate to state that defense counsel has consulted with the defendant and "made any amendments to the motion necessary for adequate presentation of any defects." Ill. S. Ct. R. 604(d) (eff. July 1, 2006). The October 2, 2008, certificate is silent on this requirement, and the rule mandates strict compliance with this provision. *People v. Willis*, 313 Ill. App. 3d 553, 556, 729 N.E.2d 961, 963 (2000). Thus both certificates were deficient. The requirements of Rule 604(d) were never satisfied.

Thus, the order of the circuit court of Hamilton County denying the postplea motions to withdraw the plea and to reduce the sentence is hereby reversed, and the matter is remanded with directions that defendant's attorney fully comply with Supreme Court Rule 604(d) (eff. July 1, 2006).

Reversed; cause remanded with directions.