2012 IL App (1st) 102408-U

THIRD DIVISION
May 2, 2012

No. 1-10-2408

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 6569
	)	
SHAHEED MUHAMMED,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Murphy concurred in the judgment.

O R D E R

¶ 1 *Held*: Remand required where postplea counsel's certificate in support of motion to withdraw defendant's guilty plea did not strictly comply with Supreme Court Rule 604(d) (eff. July 1, 2006); improperly assessed fees vacated; and defendant entitled to a credit against the remaining fines.

¶ 2 Defendant, Shaheed Muhammad, appeals from an order of the circuit court of Cook County denying his motion to withdraw his guilty plea. He contends that his cause should be remanded to the circuit court because his private counsel's certificate, filed in support of the motion to withdraw his guilty plea, did not comply with Illinois Supreme Court Rule 604(d) (eff.

July 1, 2006). He also challenges the propriety of various pecuniary penalties imposed by the trial court and contends that he is entitled to a $5-per-day credit against his fines for the 392 days he spent in presentence custody.

¶ 3 The record shows that on April 15, 2010, defendant was represented by a public defender and entered a negotiated plea of guilty to home invasion and aggravated domestic battery, for which he was sentenced to concurrent, respective terms of 15 and 7 years' imprisonment. The trial court stayed the mittimus until April 22, 2010, at which time, defendant was transferred to the penitentiary.

¶ 4 Thereafter, on May 6, 2010, defendant's private, postplea counsel filed a motion to withdraw the guilty plea alleging an insufficient factual basis, and that previously, "defendant was offered 12 years' incarceration, at which time defendant demanded a jury trial." Postplea counsel also filed a Rule 604(d) certificate stating, in part, as follows:

> "a. I consulted with defendant's father in person to ascertain defendant's contentions of error in connection with the *** plea of guilty. I could not consult with defendant either personally or by mail as defendant was recently discharged from Cook County Jail to the Illinois Department of Corrections;
>
> b. I have examined the Court file in this case. On May 03, 2010, I ordered an expedited transcript of the *** 4/15/10 plea of guilty and sentencing proceedings from the official court reporter's office. Joann Krolicky, who was the Court reporter in Judge Wadas' courtroom on 4/15/10, is on vacation but will call counsel upon her return to discuss preparation and delivery of the transcript of proceedings;

> c. I have made the necessary amendments to this motion to ensure the adequate presentation of any defects in these proceedings."

Postplea counsel attached the affidavit of defendant's father, Kareem Muhammad, Sr., to the motion to withdraw the guilty plea. Mr. Muhammad stated therein that he attended every court date in his son's case and repeated the contentions of error alleged in the motion.

¶ 5 On the next court date, May 19, 2010, postplea counsel informed the trial court that he did not have an opportunity to speak to defendant because he had already been transferred to the penitentiary, and that he had ordered a transcript of the guilty plea proceeding but had yet to receive it because the court reporter was on vacation. The trial court then continued the matter to July 13, 2010, at which time a hearing was held on defendant's motion to withdraw the guilty plea.

¶ 6 At the outset of the hearing, postplea counsel stated that he had reviewed the transcript of the guilty plea proceeding and observed that defendant received proper admonishments. He argued, however, that the real issue was whether there was "a denial of real justice," and called defendant to testify as to "whether his version [of the] facts is materially different from what was proffered at the April 15th guilty plea hearing." Following the hearing, the trial court denied the motion to withdraw the guilty plea, finding that there was a sufficient factual basis for the plea. The trial court noted that the motion was "strictly a challenge to *** facts that were stipulated to at the plea [hearing]," with no allegation of ineffective assistance of counsel or coercion.

¶ 7 In this appeal from that ruling, defendant first contends that because postplea counsel failed to strictly comply with the certificate requirements of Rule 604(d), this court should vacate the ruling of the circuit court denying his motion to withdraw his guilty plea and remand the cause to the circuit court to allow him an opportunity to file a new postplea motion and a

certificate in compliance with Rule 604(d). The State acknowledges that postplea counsel filed an imperfect certificate under Rule 604(d), but maintains that subsequently, counsel substantially complied with the requirements of the rule "by conferring with defendant as to the errors of contention with the guilty plea and then presenting defendant's testimony on those matters of contention at the hearing on his motion to withdraw his guilty plea."

¶ 8 When a defendant files a motion to withdraw a plea of guilty, Supreme Court Rule 604(d) (eff. July 1, 2006) provides, in pertinent part, 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."

Strict compliance with the certificate requirements of the rule is necessary, and the remedy for noncompliance is to remand the cause to the circuit court for the filing of a proper Rule 604(d) certificate, the opportunity to file a new motion to withdraw the guilty plea and/or reconsider sentence, if counsel deems it necessary, and a new hearing on the motion. *People v. Janes,* 158 Ill. 2d 27, 35 (1994); accord *People v. Lindsay,* 239 Ill. 2d 522, 529-31 (2011). We review *de novo* whether postplea counsel complied with Rule 604(d) in this case. *People v. Prather,* 379 Ill. App. 3d 763, 768 (2008).

¶ 9 This court has the duty to ensure that the supreme court mandate regarding the rule is followed. *People v. Grice,* 371 Ill. App. 3d 813, 816 (2007). In making that determination, the certificate itself is all this court will consider. *People v. Neal,* 403 Ill. App. 3d 757, 760 (2010).

Although a verbatim recitation of the language of the rule is not required (*Prather,* 379 Ill. App. 3d at 768), the certificate must contain each of the following: (1) a statement that counsel has consulted with *defendant*, either by mail or in person, to ascertain *defendant's* contentions of error in the sentence or the entry of the guilty plea; (2) a statement that counsel has examined the trial court file; (3) a statement that counsel has examined the report of proceedings of the guilty plea; and (4) a statement that counsel has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings (*Grice,* 371 Ill. App. 3d at 817).

¶ 10 Here, the certificate filed by postplea counsel reflects that he consulted with defendant's *father* regarding defendant's contentions of error, examined the court file, ordered an expedited transcript of the guilty plea proceeding, and made the necessary amendments to the motion to withdraw the plea for adequate presentation of any defects in the proceedings. We note that the certificate requirement is designed to provide proof of actual compliance with the rule, not merely the intent to comply; a certificate filed before actual compliance with the substantive requirements of the rule is insufficient. *People v. Love,* 385 Ill. App. 3d 736, 738-39 (2008). Thus, by failing to certify that he consulted with defendant or examined the guilty plea transcript, postplea counsel did not strictly comply with the Rule 604(d) certificate requirements. *Prather,* 379 Ill. App. 3d at 769.

¶ 11 The State maintains that remand is not required where the record shows that counsel "effectively" complied with the certification requirement. However, that postplea counsel may have consulted with defendant and examined the guilty plea transcript before the hearing on the motion to withdraw the plea, does not excuse counsel's failure to strictly comply with the certificate requirement. *Love,* 385 Ill. App. 3d at 738. We therefore reverse the denial of defendant's motion to withdraw his guilty plea and remand the cause for proceedings consistent with Rule 604(d). *Neal,* 403 Ill. App. 3d at 761; *Love,* 385 Ill. App. 3d at 739. In doing so, we

direct the circuit court to ensure that defense counsel strictly complies with the Rule 604(d) certificate requirements before considering any motions on remand. *People v. Willis,* 313 Ill. App. 3d 553, 558 (2000).

¶ 12 Defendant also challenges various pecuniary penalties imposed by the circuit court. He initially contends that the trial court was not statutorily authorized to assess a $5 court system fee (55 ILCS 5/5-1101(a) (West 2008)), a $25 traffic court supervision fee (625 ILCS 5/16-104c (West 2008)), a $20 serious traffic violation fee (625 ILCS 5/16-104(d) (West 2008)), and a $10 medical costs fund fee (730 ILCS 125/17 (West 2008)). Although not raised in the lower court, we may review these issues because a challenge to a void order is not subject to forfeiture. *People v. Marshall,* 242 Ill. 2d 285, 302 (2011).

¶ 13 The State concedes, and we agree, that the $5 court system fee, $25 traffic court supervision fee, and $20 serious traffic violation fee were improper and should be vacated as these fees can only be imposed upon conviction or placement on supervision for either a violation of the Illinois Vehicle Code or a municipal ordinance, or serious traffic violation, which is not the case here. *People v. Williams,* 2011 IL App (1st) 091667-B, ¶ 17. As for the $10 medical costs fund fee, we observe that the supreme court has resolved the issue and held that the statute imposes a mandatory fee on all convicted defendants. *People v. Jackson,* 2011 IL 110615, ¶ 24. In light of *Jackson,* we conclude that the trial court properly assessed the $10 medical costs fund fee. *People v. Stuckey,* 2011 IL App (1st) 092535, ¶ 34.

¶ 14 Lastly, defendant contends, and the State concedes, that he is entitled to a $5-per-day credit against the $10 mental health charge, the $5 youth diversion / peer court fee, the $5 drug court fee, and the $30 children's advocacy center fee. We agree with the parties that such credit is due (*Williams,* 2011 IL App (1st) 091667-B, ¶ 19), but only to the extent necessary to offset these fines (*People v. Isaacson,* 409 Ill. App. 3d 1079, 1086 (2011)).

¶ 15 For the foregoing reasons stated, we vacate the $5 court system fee, the $25 traffic court supervision fee, and the $20 serious traffic violation fee; affirm the $10 medical costs fund fee; and amend the fines, costs and fees order to reflect presentence incarceration credit toward the remaining fines as stated. We also reverse the order of the circuit court denying defendant's motion to withdraw his guilty plea, and remand for proceedings consistent with Rule 604(d) and for compliance with the certificate requirements of that rule.

¶ 16 Order reversed and cause remanded with directions; fee order vacated in part and modified.