

2012 IL App (2d) 100820-U  
Nos. 2-10-0820, 2-10-0821, 2-10-0822, 2-10-0823 cons.  
Order filed February 1, 2012

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-1266
	)	
JERMMIE R. CARLISLE,	)	Honorable
	)	Theodore S. Potkonjak,
Defendant-Appellant.	)	Judge, Presiding.

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-1267
	)	
JERMMIE R. CARLISLE,	)	Honorable
	)	Theodore S. Potkonjak,
Defendant-Appellant.	)	Judge, Presiding.

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-1269

JERMMIE R. CARLISLE, )  
 ) Honorable  
 ) Theodore S. Potkonjak,  
 Defendant-Appellant. ) Judge, Presiding.

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THE PEOPLE OF THE STATE ) Appeal from the Circuit Court  
 OF ILLINOIS, ) of Lake County.  
 )  
 Plaintiff-Appellee, )  
 )  
 v. ) No. 08-CF-1270  
 )  
 JERMMIE R. CARLISLE, ) Honorable  
 ) Theodore S. Potkonjak,  
 Defendant-Appellant. ) Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Bowman concurred in the judgment.

### ORDER

*Held:* We vacated the ruling on defendant’s Rule 604(d) motion and remanded for new postplea proceedings, as defense counsel’s certificate did not state that he had consulted with defendant about any contentions of error in the plea, which consultation was required even though the motion was directed only at his sentence; although this was the second Rule 604(d) remand, the facts provided the requisite doubt that defendant had received a full and fair opportunity to present all of his contentions of error.

¶ 1 In these consolidated cases, defendant, Jermmie R. Carlisle, pleaded guilty to armed robbery (720 ILCS 5/18-2(a)(1) (West 2008)) (case No. 08-CF-1266), aggravated criminal sexual abuse (720 ILCS 5/12-16(a)(1) (West 2008)) (case No. 08-CF-1270), and two counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 2008)) (case Nos. 08-CF-1267 and 08-CF-1269). In exchange for the plea, the State agreed to a sentencing cap of 40 years’ imprisonment and dismissed 38 other counts against defendant. On October 2, 2009, the trial court imposed a sentence of 35 years’ imprisonment: 15 years in case No. 08-CF-1267; 14 years in case No. 08-CF-1269, to be

served consecutively to the 15-year term; and 6 years in each of the remaining cases, to be served concurrently with each other but consecutively to the 15-year and 14-year terms.

¶ 2 In each case, defendant filed a “motion for new sentencing hearing before a different judge or as a less favored alternative motion to reconsider sentence.” The trial court denied the motion, and defendant timely appealed. On appeal, we vacated the denial and remanded for new postplea proceedings to be conducted in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). See *People v. Carlisle*, Nos. 2-09-1096, 2-09-1097, 2-09-1098, 2-09-1099 cons. (2010) (unpublished order under Supreme Court Rule 23).

¶ 3 On remand, defendant filed a new “motion for new sentencing hearing before a different judge or as a less favored alternative motion to reconsider sentence.” The motion alleged that, in sentencing defendant, the trial court erroneously considered in aggravation that defendant received compensation for his crime, erroneously relied on information obtained at codefendants’ proceedings, made a “personal attack on defense counsel,” and ignored mitigating evidence presented by substitute counsel. According to defendant, the trial court’s actions constituted a denial of defendant’s right to due process.

¶ 4 On May 21, 2010, the trial court, after addressing and refuting the allegations in the motion, denied the motion. Thereafter, defense counsel asked the court to direct the clerk to file a notice of appeal, to find defendant indigent, and to appoint the appellate defender. The court refused to do so, noting that defendant had not filed a motion to withdraw his plea. The court continued the matter, allowing defense counsel time to provide the court with law in support of defendant’s position.

¶ 5 Thereafter, on June 7, 2010, the trial court found that defendant did not have a right to file an appeal from the denial of the motion, because defendant failed to first file a motion to withdraw his guilty plea. The court refused to direct the clerk of the court to file a notice of appeal, refused to order a transcript of the hearing, and refused to appoint the appellate defender.

¶ 6 On July 6, 2010, defendant filed a motion to vacate the court's June 7, 2010, order denying his right to appeal. On August 12, 2010, the trial court denied defendant's motion to vacate. Defendant appealed.

¶ 7 On appeal, defendant argues: (1) the trial court erred in refusing to allow defendant to appeal from the trial court's denial of his motion; (2) the trial court's error in refusing to allow defendant to file notices of appeal (which the State concedes was error) was not harmless, because the general rule precluding an appellate court from considering the merits of an appeal taken by a defendant who entered a negotiated plea but failed to file a motion to withdraw the plea does not apply here, where defendant alleged that his sentences were imposed without due process; and (3) the sentencing hearing violated defendant's due process rights. For the reasons that follow, we vacate and remand.

¶ 8 As noted above, this is the second time that this case is before us. The first time, we remanded for compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). Rule 604(d) provides, in pertinent part:

“No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. \*\*\* 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).

We noted that “counsel’s certificate did not state, even inartfully, that he had ‘examined the trial court file and report of proceedings of the plea of guilty.’ ” *Carlisle*, slip op. at 3. We further noted that defendant was not entitled to move to reconsider his sentence. *Carlisle*, slip op. at 4.

¶ 9 Although not raised in the present appeal by defendant or the State, defense counsel on remand failed to comply with Rule 604(d) yet again. Counsel’s certificate provided, in pertinent part, that he:

“has consulted with [defendant] personally to ascertain [defendant’s] contentions of error in the sentence, has examined the trial court file and has examined the record of proceedings. He was personally present at the hearing and has read transcripts of record. Other than this motion filed, there are no additional amendments necessary for adequate presentation of the defects in those proceedings.”

Even though defendant again challenged only his sentence, his attorney was still required to certify that he had consulted with him about any contentions of error in the entry of the plea. See *People v. Hampton*, 335 Ill. App. 3d 1041, 1043-44 (2003). Thus, the question becomes whether a second remand for compliance with Rule 604(d) is warranted.

¶ 10 It is well established that “[d]efense counsel must strictly comply with Rule 604(d)’s certificate requirement, and, when counsel fails to do so, the case must be remanded to the trial court for proceedings in compliance with the rule.” *People v. Love*, 385 Ill. App. 3d 736, 737 (2008). Nevertheless, our supreme court has rejected the proposition that the requirement of strict

compliance “must be applied so mechanically as to require Illinois courts to grant multiple remands and new hearings following the initial remand hearing.” *People v. Shirley*, 181 Ill. 2d 359, 369 (1998). In *Shirley*, the defendant’s attorney originally failed to file a Rule 604(d) certificate and the case was remanded to the trial court for compliance with that rule. On remand, the defendant’s attorney filed a certificate, but then withdrew as counsel. A new attorney was appointed to represent the defendant, and she filed a new Rule 604(d) motion. She also filed a Rule 604(d) certificate of her own, but not until four days after the motion was heard. The defendant argued that the Rule 604(d) certificate filed after the hearing was untimely and that a second remand was necessary. Our supreme court disagreed. The court noted that there was “nothing in the record, or in the two motions to reduce sentences, or in the two Rule 604(d) certificates filed by two different attorneys, which indicates any reason why this court should remand the cause for a third hearing on defendant’s claim that his sentences were excessive.” *Id.* at 370. The court stated, “Where, as here, the defendant was afforded a full and fair second opportunity to present a motion for reduced sentencing, we see limited value in requiring a repeat of the exercise, absent a good reason to do so.” *Id.* at 369. In the court’s view, a second remand would have been “an empty and wasteful formality.” *Id.* at 370.

¶ 11 In contrast, in *Love*, we held that a second remand—for additional proceedings on the defendant’s motion to withdraw his guilty plea—was appropriate where the record seemed to contradict counsel’s certification that she had examined the report of proceedings of the defendant’s guilty plea. We reasoned as follows:

“In *Shirley*, there was no claim that either of the Rule 604(d) certificates filed on remand was defective. Here, in contrast, the record impeaches defense counsel’s certificate with respect

to one of her basic duties under Rule 604(d)—the duty to examine the report of proceedings of the guilty plea. \*\*\* [W]e cannot comfortably say that defendant had a fair opportunity on remand to challenge his guilty plea. Thus, we do not believe that a second remand would be an empty and wasteful formality.” *Love*, 385 Ill. App. 3d at 739.

¶ 12 Here, defendant’s attorney twice failed to certify compliance with his basic duties under Rule 604(d). Although defendant did not move to withdraw his guilty plea, consultation was required as to both the plea and the sentence. See *People v. Prather*, 379 Ill. App. 3d 763, 768-69 (2008). Moreover, we note that defendant’s failure to challenge his guilty plea may very well result in the foreclosure of the merits of his appeal. Under these circumstances, we cannot say that a second remand (so that we can comfortably say that trial counsel consulted with defendant to ascertain any contentions of error in the guilty plea) would be an empty and wasteful formality.

¶ 13 Last, because this issue may recur on remand, we address defendant’s argument that the trial court erroneously precluded him from appealing the denial of his postplea motion. The trial court’s decision to preclude defendant from appealing the denial of his postplea motion was premised on defendant’s failure to first file a motion to withdraw his plea. See Ill. S. Ct. R. 604(d) (eff. July 1, 2006) (“No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment.”). However, as the parties agree, the failure to file an authorized Rule 604(d) motion does not impact our jurisdiction, because the requirements of Rule 604(d) are not jurisdictional. See *People v. Flowers*, 208 Ill. 2d 291, 301 (2003); *People v. Green*, 375 Ill. App. 3d 1049, 1053 (2007). Accordingly, we find that the court erred in denying defendant’s right to appeal.

¶ 14 In light of the foregoing, we vacate the trial court's May 21, 2010, order denying defendant's postplea motion, we vacate the trial court's June 7, 2010, order denying defendant his right to appeal, and we remand the cause for "(1) the filing of a [valid] Rule 604(d) certificate; (2) the opportunity to file a new motion \*\*\*, if counsel concludes that a new motion is necessary; and (3) a new motion hearing." *People v. Lindsay*, 239 Ill. 2d 522, 531 (2011). We note again, however, that defendant may not move to reconsider his sentence. We do not comment on the propriety of his motion for a new sentencing hearing.

¶ 15 Vacated and remanded.