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2012 IL App (3d) 110282-U

Order filed November 9, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

|                                      |   |                               |
|--------------------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court |
|                                      | ) | of the 12th Judicial Circuit, |
| Plaintiff-Appellee,                  | ) | Will County, Illinois,        |
|                                      | ) |                               |
| v.                                   | ) | Appeal No. 3-11-0282          |
|                                      | ) | Circuit No. 10-CF-2222        |
| ZACHERY A. MARTIN,                   | ) |                               |
|                                      | ) | Honorable                     |
| Defendant-Appellant.                 | ) | Amy M. Bertani-Tomczak,       |
|                                      | ) | Judge, Presiding.             |

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Wright and Holdridge concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Defendant's postplea counsel failed to strictly comply with Supreme Court Rule 604(d) by filing an untimely certificate of compliance.
- ¶ 2 Defendant, Zachery A. Martin, pled guilty to failure to register as a sex offender (730 ILCS 150/4 (West 2010)). Defendant was sentenced to an extended term of five years of imprisonment. He was also ordered to pay \$860 in fines, fees, and costs, which included a \$500 "Sex Crimes" penalty.

¶ 3 On April 12, 2011, defendant's postplea counsel filed a motion to reconsider sentence, which was denied.<sup>1</sup> Defendant filed a notice of appeal. Subsequently, defendant's counsel filed a certificate of compliance pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). The certificate indicated that defendant's counsel consulted with defendant in person to ascertain his contention of error, examined the trial court file and report of proceedings, and made any amendments to the motion to reconsider sentence necessary for adequate presentation of any defects.

¶ 4 On appeal, defendant argues: (1) that the case should be remanded for new proceedings due to his counsel's failure to file a timely certificate of compliance required by Rule 604(d) prior to the hearing on his motion to reconsider sentence and the filing of his notice of appeal; and (2) he should receive \$5-per-day presentence credit toward his \$500 sex crime penalty. We reverse the trial court's dismissal of defendant's motion to reconsider and remand for compliance with Rule 604(d), with directions to modify the mittimus to reflect a \$500 credit against defendant's fines.

¶ 5 ANALYSIS

¶ 6 I. 604(d) Certificate

¶ 7 Rule 604(d) provides that before a defendant who pleaded guilty may appeal from his resulting sentence, the defendant must file a motion to reconsider the sentence in the trial court within 30 days of the date in which the sentence was imposed. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Rule 604(d) also provides that the defendant's attorney shall file with the trial court a

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<sup>1</sup> Defendant's postplea counsel was the same attorney that represented defendant through his guilty plea and sentencing.

certificate stating that he has: (1) consulted with 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; (2) examined the court file; (3) examined the report of proceedings of the plea of guilty; and (4) made any amendments to the motion necessary for adequate presentation of the defects in those proceedings. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Rule 604(d) is designed to protect due process rights and eliminate unnecessary appeals. *People v. Shirley*, 181 Ill. 2d 359 (1998). In determining whether defense counsel complied with Rule 604(d), the standard of review is *de novo*. *People v. Prather*, 379 Ill. App. 3d 763 (2008).

¶ 8 Strict compliance with Rule 604(d) is required. *People v. Janes*, 158 Ill. 2d 27 (1994); *Shirley*, 181 Ill. 2d 359 (reaffirming *Janes*, which followed the strict compliance standard and renounced the prior practice of determining whether errors in failing to comply with Rule 604(d) were harmless or prejudicial). Strict compliance with the certificate of compliance component of Rule 604(d) means that the filing of the certificate should take place in the trial court, rather than on appeal, and should precede or be simultaneous with the hearing in the trial court. *Shirley*, 181 Ill. 2d 359. When defense counsel fails to strictly comply with Rule 604(d), the appropriate remedy is a remand for: (1) the filing of a proper Rule 604(d) certificate; (2) the opportunity to file a new motion to withdraw guilty plea or reconsider sentence, or both, if counsel concludes a new motion is necessary; and (3) a new motion hearing. *People v. Lindsay*, 239 Ill. 2d 522 (2011).

¶ 9 In this case, there is no dispute that defendant's attorney failed to timely file the Rule 604(d) certificate. Therefore, the attorney did not properly comply with Rule 604(d), and remand is required. Accordingly, we reverse the trial court's denial of defendant's motion to reconsider

sentence and remand for further proceedings.

¶ 10 II. \$5-per-day Sentencing Credit

¶ 11 Defendant also contends that he is entitled to a \$500 credit against his "Sex Crimes" fine for time that he spent in presentence custody. The State concedes that defendant is entitled to the \$5 *per diem* credit, and we agree. See 725 ILCS 5/110-14(a) (West 2010) (providing that a defendant who is assessed a fine is allowed a credit of \$5 for each day spent in presentence custody on a bailable offense against any fine, not to exceed the amount of the fine).<sup>2</sup> In this case, defendant spent more than 100 days in presentence custody to earn credit that exceeds the amount of his \$500 fine. Because the credit cannot exceed the amount of the fine, on remand the mittimus should be modified to reflect a \$500 credit.

¶ 12 CONCLUSION

¶ 13 For the foregoing reasons, we reverse the denial of defendant's motion to reconsider sentence and remand this case to the circuit court of Will County for further proceedings in accordance with this order, and with directions to modify the mittimus to reflect a \$500 credit against defendant's \$500 fine.

¶ 14 Reversed and remanded with directions.

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<sup>2</sup> A defendant may apply for the credit at any stage of the proceedings. *People v. Caballero*, 228 Ill. 2d 79 (2008).