

NO. 4-11-0534

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
CHARLES WILLIAMS,)	No. 10CF17
Defendant-Appellant.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court. Justices Appleton and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant failed to file a valid and timely Illinois Supreme Court Rule 604(d) motion, this court must dismiss defendant's appeal.

¶ 2 In January 2010, a grand jury indicted defendant, Charles Williams, with one count of unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2010)). In May 2010, pursuant to a plea agreement, defendant pleaded guilty to the charge. At an August 2010 sentencing hearing, the McLean County circuit court sentenced defendant to a prison term of 11 1/2 years.

¶ 3 On August 31, 2010, defendant filed a *pro se* motion to withdraw his guilty plea and vacate his sentence, asserting he received ineffective assistance of counsel. On September 2, 2010, defense counsel filed a motion to reconsider defendant's sentence and a motion to withdraw defendant's guilty plea. On October 13, 2010, the trial court struck defendant's *pro se*

motion under a circuit court rule. In January 2011, defendant sent the court two letters complaining about his counsel's performance and filed a *pro se* amended motion to withdraw his guilty plea and vacate his sentence. After a May 2011 hearing, the court denied the two motions filed by defense counsel and did not address defendant's January 2011 *pro se* documents.

¶ 4 Defendant appeals, asserting (1) his cause must be remanded for a hearing on his timely filed *pro se* motion to withdraw his guilty plea; (2) if this court finds the trial court properly considered defense counsel's motions, remand is required (a) because defense counsel failed to strictly comply with the certificate requirement of Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) and (b) to address defendant's ineffective-assistance-of-counsel claims; or (3) his cause must be remanded to allow him to withdraw his guilty plea because the court imposed assessments on him that were not part of the plea agreement. We dismiss the appeal.

¶ 5 I. BACKGROUND

¶ 6 The indictment alleged that, on January 6, 2010, defendant knowingly and unlawfully delivered less than one gram of a substance containing heroin to a confidential source. It also noted defendant was subject to Class X sentencing due to his prior record. See 730 ILCS 5/5-4.5-95(b) (West 2010).

¶ 7 The parties' plea agreement provided defendant was to plead guilty to the charge, and the State would not press charges related to a 2009 police report. The agreement also provided defendant would pay certain fines and fees. The agreement was open as to length of defendant's prison term.

¶ 8 At the August 2, 2010, sentencing hearing, the trial court sentenced defendant to 11 1/2 years' imprisonment and imposed the agreed upon fines and fees plus some additional

assessments. The court also admonished defendant under Illinois Supreme Court Rule 605 (eff. Oct. 1, 2001).

¶ 9 On August 31, 2010, defendant filed a *pro se* motion to withdraw his guilty plea, asserting ineffective assistance of counsel. That same day, the trial court entered a docket entry setting a hearing on the motion to withdraw for November 2, 2010. On September 2, 2010, defense counsel filed both a motion to reconsider, asserting defendant's sentence was excessive, and a motion to withdraw defendant's guilty plea, alleging defendant did not fully understand the consequences of his guilty plea and thus the plea was not voluntary and knowing. On October 12, 2010, defendant filed a *pro se* motion to proceed *in forma pauperis* and a request for transcripts. The next day, the trial court struck the *pro se* documents filed on August 31 and October 12, 2010.

¶ 10 In January 2011, defendant sent the trial court two *pro se* letters, complaining about his counsel's performance and noting specific acts of alleged inadequate performance. Defendant also filed an amended motion to withdraw his guilty plea, which again alleged ineffective assistance of counsel.

¶ 11 On March 29, 2011, defense counsel filed a certificate as required by Rule 604(d). On May 26, 2011, the trial court denied defense counsel's motion to withdraw defendant's guilty plea and the motion to reconsider defendant's sentence. On June 21, 2011, defendant filed his notice of appeal.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant first asserts his cause must be remanded for a hearing on his timely filed *pro se* motion to withdraw his guilty plea. In making his argument, he notes the

postplea motions filed by his counsel were untimely and thus argues "all of the proceedings that followed the filing of those motions were nugatory." The State agrees defense counsel's motions were untimely but contends the trial court still had jurisdiction to entertain them.

¶ 14 Rule 604(d) (eff. July 1, 2006) requires a postplea motion to be filed within 30 days of sentencing. In this case, the trial court sentenced defendant on August 2, 2010, and thus, under Rule 604(d), he had until September 1, 2010, to file a postplea motion. Thus, defense counsel's September 2, 2010, postplea motions were untimely, and the trial court lacked jurisdiction to consider them, if it had lost jurisdiction due to the passage of the 30-day period as alleged by defendant. See *People v. Flowers*, 208 Ill. 2d 291, 303, 802 N.E.2d 1174, 1181 (2003). We note defendant states his counsel's motions did not replace his timely filed *pro se* motion. Accordingly, we do not consider counsel's motions as motions that amended defendant's *pro se* motion.

¶ 15 The State asserts the trial court obtained jurisdiction over defense counsel's motions under the revestment doctrine. However, this court has held the revestment doctrine does not apply to untimely Rule 604(d) motions. *People v. Haldorson*, 395 Ill. App. 3d 980, 984, 918 N.E.2d 1280, 1284 (2009).

¶ 16 The State also asserts the trial court had jurisdiction to entertain defense counsel's motion because the court still had jurisdiction of the case when the motions were filed as a result of defendant's timely filed *pro se* motion. Thus, we address whether defendant's *pro se* motion was a proper postplea motion.

¶ 17 While a defendant has the right to counsel and a right to represent himself, a defendant does not have the right to both self-representation and the assistance of counsel.

People v. James, 362 Ill. App. 3d 1202, 1205, 841 N.E.2d 1109, 1113 (2006). In other words, "a defendant possesses 'no right to some sort of hybrid representation, whereby he would receive the services of counsel and still be permitted to file *pro se* motions.'" *James*, 362 Ill. App. 3d at 1205, 841 N.E.2d at 1113 (quoting *People v. Handy*, 278 Ill. App. 3d 829, 836, 664 N.E.2d 1042, 1046 (1996)). Thus, when represented by counsel, a defendant generally has no authority to file *pro se* motions. *James*, 362 Ill. App. 3d at 1205, 841 N.E.2d at 1113. However, one exception to the aforementioned rule is *pro se* ineffective-assistance-of-counsel claims. *James*, 362 Ill. App. 3d at 1206, 841 N.E.2d at 1113.

¶ 18 While ineffective-assistance-of-counsel claims are generally exempt from the prohibition of *pro se* motions, the exemption is not absolute. The First District Appellate Court has held bald allegations that counsel was ineffective are insufficient to invoke a *Krankel* inquiry. *People v. Ward*, 371 Ill. App. 3d 382, 432, 862 N.E.2d 1102, 1148 (2007) (quoting *People v. Radford*, 359 Ill. App. 3d 411, 418, 835 N.E.2d 127, 133 (2005)). Moreover, when a defendant's *pro se* ineffective-assistance complaints are "bald, ambiguous, and/or unsupported by specific facts," the complaints conflict with the general rule a defendant may not file *pro se* motions when represented by counsel. *Ward*, 371 Ill. App. 3d at 432, 862 N.E.2d at 1148. Thus, such complaints do not effectively raise any claim of ineffective assistance of counsel and should not be considered by the trial court since they do not meet an exception to the general rule that defendants may not file *pro se* motions when represented by counsel. *Ward*, 371 Ill. App. 3d at 432, 862 N.E.2d at 1148.

¶ 19 We recognize the Second District has disagreed with the *Ward* decision. In *People v. Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 16, 966 N.E.2d 1069, 1075, the Second

District noted its decision in *People v. Bolton*, 382 Ill. App. 3d 714, 721, 888 N.E.2d 672, 677 (2008), indicates "even a bare claim of ineffectiveness warrants some degree of inquiry." While our supreme court has not directly resolved the conflict between the districts, it has found no error when the trial court did not inquire into a defendant's *pro se* claim that was refuted by the record. *People v. Jocko*, 239 Ill. 2d 87, 93, 940 N.E.2d 59, 63 (2010). Thus, it appears not all ineffective assistance claims invoke a *Krankel* inquiry. Moreover, this court has agreed with *Ward's* statement minimum requirements do exist that a defendant must meet to trigger a *Krankel* inquiry. *People v. Montgomery*, 373 Ill. App. 3d 1104, 1121, 872 N.E.2d 403, 417 (2007). Accordingly, we follow the First District's decision in *Ward*.

¶ 20 Here, defendant's *pro se* motion to withdraw made only a bare allegation of ineffective assistance of counsel. The motion simply stated the following: "[d]efendant moves to withdraw his guilty plea and vacate the sentence because [*sic*] ineffective of assistance of counsel." Accordingly, the bare allegation of ineffective assistance of counsel did not invoke the exception to *pro se* motions for defendants represented by counsel, and thus the trial court could not consider it. See *Ward*, 371 Ill. App. 3d at 432, 862 N.E.2d at 1148. Thus, defendant's *pro se* motion was not a valid Rule 604(d) motion, leaving defendant without a timely filed Rule 604(d) motion.

¶ 21 To appeal a guilty-plea judgment, a defendant must file a Rule 604(d) motion. *Flowers*, 208 Ill. 2d at 300-01, 802 N.E.2d at 1180. While the discovery of a defendant's failure to file a timely Rule 604(d) motion does not deprive this court of jurisdiction, the failure does preclude this court from considering the appeal on the merits. *Flowers*, 208 Ill. 2d at 301, 802 N.E.2d at 1180. In such case, we must dismiss the appeal, leaving the Post-Conviction Hearing

Act (725 ILCS 5/art. 122 (West 2010)) as the defendant's only recourse. *Flowers*, 208 Ill. 2d at 301, 802 N.E.2d at 1180. Accordingly, we do so.

¶ 22

III. CONCLUSION

¶ 23 For the reasons stated, we dismiss this appeal. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 24

Dismissed.