

NOTICE
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2012 IL App (4th) 110937-U

Filed 5/17/12

NO. 4-11-0937

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
MICHAEL LEON TYNER,)	No. 09CF463
Defendant-Appellant.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice McCullough concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court (1) concluded that defense counsel strictly complied with Illinois Supreme Court Rule 604(d), and (2) vacated the \$10 drug-court and \$15 children's-advocacy-center assessments imposed by the circuit clerk and remanded with directions.
- ¶ 2 In January 2010, defendant, Michael Leon Tyner, entered an open guilty plea to financial institution robbery (720 ILCS 5/16H-40 (West 2008)). In exchange for his guilty plea, the State agreed to (1) recommend an eight-year sentence cap and (2) dismiss a second charge for aggravated robbery (720 ILCS 5/18-5(a) (West 2008)). In March 2010, the trial court sentenced defendant to eight years in prison.
- ¶ 3 In April 2010, defendant *pro se* filed a motion to withdraw guilty plea, which the trial court later denied. Defendant appealed, and this court summarily remanded to the court because defense counsel had not strictly complied with the requirements of Illinois Supreme

Court Rule 604(d) (eff. July. 1, 2006). *People v. Tyner*, No. 4-11-0116 (May 6, 2011) (minute order summarily remanding). On remand, the court conducted a new hearing on defendant's *pro se* motion to withdraw guilty plea, at which point defense counsel filed a new Rule 604(d) certificate. The court thereafter denied defendant's motion.

¶ 4 Defendant appeals, arguing that (1) defense counsel failed to comply with Rule 604(d) on remand and, thus, he is entitled to (a) file a new postplea motion, (b) a new hearing on his postplea motion, and (c) strict compliance with Rule 604(d); and (2) his \$10 drug-court and \$15 children's-advocacy-center assessments must be vacated because these fines were imposed by the circuit court clerk. Because we agree only that the fines were improperly imposed, we affirm as modified and remand with directions.

¶ 5 I. BACKGROUND

¶ 6 In May 2009, the State charged defendant with aggravated robbery. In August 2009, the State added a second charge of financial institution robbery.

¶ 7 In January 2010, defendant appeared in open court, waived his right to a jury trial, and entered an open guilty plea to financial institution robbery. In exchange for defendant's guilty plea, the State agreed to (1) a sentence cap of eight years in prison and (2) dismiss the aggravated-robbery charge. In March 2010, the trial court sentenced defendant to eight years in prison with credit for time served and awarded him \$1,260 of pretrial detention credit. Additionally, the court ordered "[f]ines, fees, costs and restitution as were with the evidence." The McLean County circuit clerk issued a notice to party which included a \$15 children's-advocacy-center assessment and a \$10 drug-court assessment.

¶ 8 In April 2010, defendant *pro se* filed a motion to withdraw guilty plea, which

alleged as follows:

"Information; In [sic] the list of convictions were [sic] inaccurate. Upon co[n]senting to a PSI report 'I was promised the investigated info[rmation] would be accurate, and if upon reviewing the information it was not accurate, I would be able to withdraw my consent and correct my errors.' [A]nd after a brief review of the PSI Report I noticed a considerable errors and complained to have the report withdraw[n] or corrected but the courts proceeded to use the info[rmation]. Upon further review: The investigating officer purposely noted the attempt domestic battery: [T]he officer used a CCDOC case identification number to do so. Counsel was unable to review particulars in detail and should have been allowed ample time considering my complaint."

¶ 9 In December 2010, defense counsel adopted defendant's *pro se* motion and later filed a Rule 604(d) certificate stating he had (1) "consulted with defendant in person to ascertain his contentions of error in the sentence or entry of the plea of guilty[,]" (2) "examined the court file and report of proceedings of the plea of guilty[,]" and (3) "reviewed the motion regarding the plea of guilty." Thereafter, the trial court denied defendant's *pro se* motion. Defendant appealed.

¶ 10 In May 2011, this court summarily remanded the case to the trial court "for the filing of a 604(d) certificate, the opportunity to file a new post-plea motion, if counsel concludes that a new motion is necessary, a hearing on the motion, and strict compliance with requirements of Supreme Court Rule 604(d)." *People v. Tyner*, No. 4-11-0116 (May 6, 2011) (minute order

summarily remanding).

¶ 11 On remand, the trial court conducted a hearing at which defense counsel asked for a continuance to speak with defendant. In September 2011, following a second continuance, the court conducted a hearing on defendant's motion to withdraw guilty plea. In September 2011, defense counsel filed a new Rule 604(d) certificate stating that he had (1) "[c]onsulted with [defendant] in person or by mail to ascertain the defendant's contentions of error in entry of the plea and sentence[.]" (2) "[e]xamined the court file and transcripts of the plea and sentencing, and has made any amendments to the motion necessary to adequately present any defects in the plea and sentencing proceedings," and (3) "[c]onsulted with [d]efendant regarding any contentions of error in the plea or sentence." The court later denied defendant's motion to withdraw guilty plea.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Defendant argues that (1) defense counsel failed to comply with Rule 604(d) on remand and, thus, he is entitled to (a) the filing of a new postplea motion, (b) a new hearing on his postplea motion, and (c) strict compliance with Rule 604(d); and (2) the \$10 drug-court and a \$15 children's-advocacy-center assessments must be vacated because these fines were imposed by the circuit court clerk. We address defendant's contentions in turn.

¶ 15 A. Defendant's Rule 604(d) Claim

¶ 16 We review the issue of whether defense counsel complied with Rule 604(d) (eff. July 1, 2006) *de novo*. *People v. Grice*, 371 Ill. App. 3d 813, 815, 867 N.E.2d 1143, 145 (2007).

¶ 17 Rule 604(d) 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." Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 18 On remand, defense counsel filed a certificate of compliance with Rule 604(d) that met the aforementioned requirements. Defendant concedes that the certificate filed by defense counsel conformed to the technical requirements of Rule 604(d) on its face. However, defendant asserts that the record reveals defense counsel failed to fulfill his substantive obligations under the rule. Specifically, defendant complains that counsel failed to file an amended motion to withdraw his guilty plea in order to clearly present all of defendant's claims of error. We disagree.

¶ 19 Initially, we note that defendant's claim is based, in part, on a statement defense counsel made during the initial August 2011 hearing on remand. As defendant points out, counsel stated as follows: "I can certify, however, your Honor, that I have consulted with [defendant] in person to ascertain his contentions of error, and he tells me that he has some new contentions that are not contained in his *pro se* motion filed last year." However, prior to making this statement, counsel had declared, defendant "has indicated to me that he has some new contentions of error, which he would not discuss with me today, wanting instead to get a

continuance of this matter to discuss it at some length." The court granted a continuance to give defense counsel an opportunity to confer with defendant. Later that month, the court allowed another continuance because counsel had not been able to meet with defendant as planned.

¶ 20 In September 2011, the trial court conducted a hearing on defendant's *pro se* motion at which time defense counsel filed a new Rule 604(d) certificate, which strictly complied with the technical requirements of the rule. Counsel did not amend defendant's *pro se* motion or file a new motion, but informed the court that he had discussed defendant's concerns and "assignments of error" and found defendant's concerns were "largely set out in his filings with the Court in our prior arguments."

¶ 21 Defendant cites *People v. Love*, 385 Ill. App. 3d 736, 739, 896 N.E.2d 1062, 1066 (2008), for the proposition that a subsequent remand may be necessary where defense counsel files a Rule 604(d) certificate that technically complies with the Rule but is impeached by the record. In *Love*, defense counsel filed a Rule 604(d) certificate that technically complied with the rule's requirements; however, comments that defense counsel made during the hearing cast doubt on whether she had actually reviewed the transcripts of the guilty plea proceedings prior to filing the certificate. *Love*, 385 Ill. App. 3d at 737-38, 896 N.E.2d at 1065. The court concluded that "where compliance with the substantive requirements of Rule 604(d) is doubtful, so is the fairness of the proceedings. Accordingly, multiple remands are appropriate." *Love*, 385 Ill. App. 3d at 739, 896 N.E. 2d at 1066.

¶ 22 Unlike *Love*, and contrary to defendant's contention, nothing in the record casts doubt on defense counsel's certifications in the Rule 604(d) certificate. Instead, counsel's statement to the trial court during the September 2011 hearing—that counsel had discussed

defendant's concerns and "assignments of error" with defendant and determined that defendant's concerns were largely set out in his *pro se* motion—supports counsel's decision not to amend or file a new motion. There is no requirement that defense counsel amend or file a new motion on remand. Indeed, the supreme court has held that on remand defense counsel must be given "*the opportunity to file a new motion to withdraw the guilty plea and/or reconsider the sentence, if counsel concludes that a new motion is necessary.*" (Emphases added.) *People v. Lindsay*, 239 Ill. 2d 522, 531, 942 N.E.2d 1268, 1274 (2011). After speaking to his client about his concerns, counsel determined that an amended or new motion was not necessary.

¶ 23 Defendant further argues that because the trial court had to ask for clarification regarding defendant's claim that the presentence investigation report (PSI) contained errors during the September 2011 hearing, that allegation of error in defendant's *pro se* motion was not clear or adequately presented. Thus, defendant seems to be arguing that defense counsel should have amended defendant's *pro se* motion or filed a new motion to clarify this specific issue. However, defense counsel responded to the court's questions and expanded on defendant's contentions of error orally during the hearing. Further, after defense counsel addressed the court, the court declared that it would "assure the record, though, that those issues [with respect to the accuracy of information contained in the PSI], as they were, did not play a meaningful part in the Court's determination of the sentence. "

¶ 24 Accordingly, we conclude that the September 2011 Rule 604(d) certificate filed by defense counsel in response to this court's remand strictly complies with the requirements of the rule.

¶ 25 B. Defendant's Improperly Imposed Fines Claim

¶ 26 Defendant next contends that the McLean County circuit court clerk lacked authority to impose the \$10 drug-court (55 ILCS 5/5-1101(d-5) (West 2008)) and \$15 children's-advocacy-center (55 ILCS 5/5-1101(f-5) (West 2008)) fines and, thus, these assessments must be vacated. The State responds that although the circuit court clerk lacked authority to impose these mandatory assessments, this court can reimpose them, and should. We agree with the State.

¶ 27 We accept the State's concession that these fines were improperly imposed by the circuit clerk. Because McLean County has enacted ordinances that provide for a \$10 fee for drug court and a \$15 fee for children's advocacy center, these assessments are mandatory in McLean County, and this court may reimpose mandatory fines. *People v. Folks*, 406 Ill. App. 3d 300, 305-06, 943 N.E. 2d 1128, 1132-33 (2010). Accordingly, we vacate the circuit clerk's fines and remand with directions that the trial court amend its sentencing order to reflect the imposition of the \$10 drug-court and \$15 children's-advocacy-center fines.

¶ 28 In closing, we note that the circuit clerk's notice to defendant of the fines and court costs assessed against him cites to the wrong statute (citing 730 ILCS 5/5-9-1(d-5) (West 2008)). The correct citation is 55 ILCS 5/5-1101(d-5) (West 2008)), which authorizes the drug-court fees.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's order denying defendant's motion to withdraw guilty plea. We vacate the \$10 drug-court and \$15 children's-advocacy-center assessments imposed by the circuit clerk and remand with directions that the court amend its sentencing order to reflect the imposition of these fines. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 31

Affirmed as modified and remanded with directions.