

¶ 3

BACKGROUND

¶ 4 While represented by counsel, the defendant pled guilty to two counts of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2006)) and was sentenced to 10 years' imprisonment for each count, to run consecutively, in the Illinois Department of Corrections, as well as 3 years of mandatory supervised release. After his sentencing, the defendant filed a *pro se* motion to withdraw his guilty plea. He alleged that his trial counsel, Chet Kelly, was ineffective for failing to argue the motions that the defendant wanted him to argue, advising the defendant not to go to trial, not communicating with the defendant, and inadequately investigating the defendant's case. The defendant also argued that there was no factual basis to support his plea. Kelly did not argue the defendant's motion to withdraw the guilty plea but was present at the hearing where the defendant argued that he had been ineffective.

¶ 5 The circuit court began the hearing with the following:

"THE COURT: Mr. Christ is here for the State. Mr. Williams is present. And Mr. Kelly is here, who was his trial attorney; however, Mr. Williams has filed a pro se motion on ineffective assistance of counsel, which includes threats and a factual basis not supporting his plea. So, Mr. Williams, specifically, what actions of Mr. Kelly's do you believe indicate that he was ineffective in representing you?"

¶ 6 The defendant then argued the motion, alleging that his counsel was ineffective for the several reasons outlined above. Kelly refuted the defendant's allegations. The court went on to deny the defendant's motion to withdraw his guilty plea, finding that there was no credible evidence to suggest ineffective assistance of counsel, threats, or coercion. This appeal followed.

¶ 7

ANALYSIS

¶ 8 The defendant argues that the circuit court violated both constitutional requirements

and Rule 604(d) when the court did not first determine whether the defendant desired the assistance of counsel at his postplea hearing, and after, failed to secure a waiver of the right to counsel. We agree.

¶ 9 We review *de novo* whether a defendant's right to counsel was violated. *People v. Abernathy*, 399 Ill. App. 3d 420, 426-27 (2010). We also review, *de novo*, the circuit court's compliance with supreme court rules. *People v. Dismuke*, 355 Ill. App. 3d 606 (2005). The right to counsel is necessary in every critical stage of the proceedings. *People v. Ledbetter*, 174 Ill. App. 3d 234, 237 (1988). The postplea stage where a defendant seeks to withdraw a guilty plea and vacate a sentence is considered a critical stage. *People v. Thomas*, 335 Ill. App. 3d 261, 264-65 (2002). Rule 604(d) provides that, when a defendant files a motion to withdraw his guilty plea, the circuit court must determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the court must appoint counsel. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). "Rule 604(d) gives a defendant who wishes to withdraw his guilty plea the right to consult with an attorney in the presentment of the motion to the trial court." *People v. Velasco*, 197 Ill. App. 3d 589, 591 (1990).

¶ 10 The court must also determine that any waiver of the right to counsel by the defendant in a Rule 604(d) proceeding is done so knowingly and understandingly. *Ledbetter*, 174 Ill. App. 3d at 237. For a defendant to waive his right knowingly and understandingly, the court must alert him to the dangers of self-representation, and the record must establish that he was fully aware of both the nature of the right abandoned and the consequences of the decision to relinquish it. *People v. Kidd*, 178 Ill. 2d 92, 104-05 (1997).

¶ 11 Here, the defendant filed a *pro se* motion to withdraw his guilty plea, alleging that his counsel was ineffective and the factual basis did not support his plea. Though Kelly was present when the defendant argued the *pro se* motion to withdraw his guilty plea, Kelly did

not act as the defendant's counsel, which indicates that the defendant was not represented by counsel at the hearing. The defendant argued his motion without any assistance, and it was obvious that the defendant was representing himself at this stage. His former counsel, Kelly, argued against the defendant's allegations. The circuit court did not inquire as to whether the defendant wanted representation when he argued his motion. Further, it did not inquire as to whether the defendant wished to waive his right to counsel.

¶ 12 The circuit court began the hearing by stating that the defendant had filed a motion to withdraw his guilty plea alleging that his trial counsel was ineffective. It then proceeded to have the defendant explain why his counsel was ineffective such that his guilty plea should be withdrawn. It never secured a waiver of the defendant's right to counsel or asked the defendant whether he wanted counsel to represent him. Therefore, the circuit court failed to comply with Rule 604(d) and the defendant's right to counsel was violated.

¶ 13 **CONCLUSION**

¶ 14 For the foregoing reasons, the order of the circuit court of St. Clair County denying the defendant's *pro se* motion to withdraw his guilty plea is vacated, and this cause is remanded with directions that the court conduct a new hearing consistent with this order.

¶ 15 Vacated and remanded with directions.