NOTICE
Decision filed 05/04/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110165-U

NO. 5-11-0165

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Madison County. |
| | ) | |
| v. | ) | No. 10-CF-155 |
| | ) | |
| MARK S. LOHMAN, | ) | Honorable |
| | ) | James Hackett, |
| Defendant-Appellant. | ) | Judge, presiding. |

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Donovan and Justice Goldenhersh concurred in the judgment.

## ORDER

¶ 1 *Held*: The judgment of the circuit court is vacated and the cause remanded for strict compliance with Supreme Court Rule 604(d).

¶ 2 The defendant, Mark S. Lohman, pled guilty to home invasion and was sentenced to 20 years' imprisonment. He appeals the denial of his motion to reconsider his sentence, arguing that the cause must be remanded to the circuit court because counsel failed to file a certificate of compliance with Supreme Court Rule 604(d) (eff. July 1, 2006). The State has filed a confession of error. We find Lohman's argument and the State's confession to be well-taken. For the following reasons, we vacate the order of the circuit court denying Lohman's motion to reconsider his sentence and we remand the cause for further proceedings

¶ 3 BACKGROUND

¶ 4 On January 16, 2010, Lohman was charged in the circuit court of Madison County

with two counts of attempted first-degree murder, home invasion, armed violence, residential burglary, three counts of aggravated battery, and aggravated domestic battery. He subsequently entered an open plea of guilty to home invasion in exchange for the State's agreement to dismiss the remaining charges. Following a sentencing hearing, Lohman was sentenced to 20 years' imprisonment and 3 years of mandatory supervised release, and he was ordered to pay $5,000 in restitution for the victim's medical bills.

¶ 5 Lohman subsequently filed through counsel a motion to reconsider his sentence, arguing, *inter alia*, that his sentence was excessive. Lohman's motion to reconsider his sentence was denied without a hearing.

¶ 6 ANALYSIS

¶ 7 On appeal, Lohman argues, and the State concedes, that the cause must be remanded to the circuit court because counsel failed to file a certificate of compliance with Supreme Court Rule 604(d), which provides that no appeal from a judgment entered upon an open plea of guilty shall be taken unless the defendant first files in the circuit court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.

¶ 8 Rule 604(d) further 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).

Strict compliance with Rule 604(d) is required, and where the defendant's attorney fails to file a certificate demonstrating compliance with Rule 604(d), the cause must be remanded

for the filing of a certificate, the opportunity to file a new motion to withdraw the guilty plea if counsel concludes that a new motion is necessary, and a new motion hearing. *People v. Lindsay*, 239 Ill. 2d 522, 942 N.E.2d 1268 (2011). Because no Rule 604(d) certificate of compliance was filed in this case, the circuit court's order denying Lohman's motion to reconsider his sentence must be vacated and the cause must be remanded.

¶ 9 For the foregoing reasons, the judgment of the circuit court of Madison County is vacated, and the cause is remanded for (1) the filing of a Rule 604(d) certificate, (2) the filing of a new motion to withdraw the guilty plea and/or reconsider the sentence, if Lohman so wishes or if counsel concludes that a new motion is necessary, and (3) for a hearing on any new motion.

¶ 10 Judgment vacated; cause remanded with directions.