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2013 IL App (3d) 110620-U

Order filed May 10, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-11-0620
)	Circuit No. 08-CF-2851
)	
CORTEZ BRANCH,)	Honorable
)	Daniel J. Rozak,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Defense counsel failed to comply with Illinois Supreme Court Rule 604(d) by failing to indicate counsel reviewed the report of proceedings from defendant's guilty plea hearing.

¶ 2 Defendant, Cortez Branch, pled guilty to the offense of second degree murder and the trial court sentenced him to 12 years of incarceration. Defendant appeals, contending his attorney did not comply with Illinois Supreme Court Rule 604(d). Ill. S. Ct. R. 604(d) (eff. July 1, 2006). We reverse and remand.

¶ 3

FACTS

¶ 4 On December 18, 2008, the State charged defendant with two counts of first degree murder, arising out of the death of Michael Fairbanks on November 26, 2008. On March 16, 2011, the State filed an information charging defendant with second degree murder. That same date, defendant, assisted by public defender Stewart Ferreira, pled guilty to the offense of second degree murder (720 ILCS 5/9-2(a)(2) (West 2010)), in exchange for the State's dismissal of the first degree murder charges. Attorney Ferreira was also present with defendant during the sentencing hearing on June 17, 2011. On July 1, 2011, the court sentenced defendant to serve 12 years of incarceration, followed by two years of mandatory supervised release (MSR).

¶ 5 On August 30, 2011, another public defender, Todd Lenzie, filed a Rule 604(d) certificate and an amended motion to reconsider defendant's sentence.¹ The Rule 604(d) certificate, prepared by Attorney Lenzie, contained the following language:

- “1. Counsel has consulted with the Defendant in person to determine the defendant's contentions of error in the sentence.
2. Counsel has examined the Trial Court file, the Report of Proceedings and has made all amendments necessary to the motion to reconsider sentence.”

The trial court denied defendant's amended motion to reconsider the sentence on August 30, 2011. Defendant appeals.

¶ 6

ANALYSIS

¶ 7 On appeal, defendant argues defense counsel failed to comply with Rule 604(d) by failing

¹ The certified transcript of defendant's guilty plea hearing, dated September 21, 2011, was filed with the trial court on September 22, 2011.

to certify he examined the report of proceedings of defendant's guilty plea hearing as required prior to filing any postconviction motions. The State responds that remand is unnecessary because defense counsel's Rule 604(d) certificate shows defense counsel read more than required and counsel's statements during the hearing on defendant's motion to reconsider sentence demonstrated a familiarity with the guilty plea proceedings.

¶ 8 When determining whether defense counsel complied with Rule 604(d), the standard of review is *de novo*. *People v. Prather*, 379 Ill. App. 3d 763, 768 (2008). Rule 604(d) provides, in relevant part:

“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 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. *People v. Grice*, 371 Ill. App. 3d 813, 816 (2007). Contrary to the State's position, this court is not at liberty to go beyond the certificate and examine the record to discover whether any non-compliance with Rule 604(d) should be excused by this court because defense counsel's conduct in the trial court otherwise satisfied the rule's requirements. See *Id.* Only the certificate should be considered on review when determining compliance with the rule. *Id.*

¶ 9 In this case, defense counsel's Rule 604(d) certificate fails to demonstrate that counsel specifically examined the report of proceedings from defendant's March 16, 2011 guilty plea

hearing. Ill. S. Ct. R. 604(d) (eff. July 1, 2006); *People v. Mast*, 305 Ill. App. 3d 727, 734 (1999); *People v. Dismuke*, 355 Ill. App. 3d 606, 610-11 (2005) (a certificate is deficient where it fails to contain a statement indicating defense counsel reviewed the proceedings of the guilty plea hearing). However, the record in the case at bar actually reveals the certified transcript of defendant's guilty plea hearing was neither completed nor filed with the trial court when Lenzie filed his Rule 604(d) certificate on August 30, 2011. See *Mast*, 305 Ill. App. 3d at 734 (it is unclear which transcripts counsel reviewed, particularly in light of the fact that the guilty plea transcript wasn't filed until two months following the hearing). Further, the court reporter did not certify the report of proceedings for accuracy until September 21, 2011, or provide copies to the court or counsel until September 22, 2011. Since the face of defense counsel Lenzie's Rule 604(d) certificate, filed with the court on August 30, 2011, does not indicate defense counsel reviewed any report of proceedings from defendant's guilty plea hearing, the matter must be remanded to allow defense counsel to strictly comply with the requirements of Rule 604(d).

¶ 10

CONCLUSION

¶ 11 For the foregoing reasons, we reverse and remand this case to the circuit court of Will County for further proceedings

¶ 12 Reversed and remanded.