

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).

2013 IL App (4th) 110616-U  
NO. 4-11-0616  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
January 29, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Coles County
DANIEL J. CLARK,	)	No. 08CF450
Defendant-Appellant.	)	
	)	Honorable
	)	James R. Glenn,
	)	Judge Presiding.

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PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Appleton and Knecht concurred in the judgment.

**ORDER**

¶ 1     *Held:* The appellate court reversed and remanded for compliance with Illinois Supreme Court Rules 604(d) (eff. July 1, 2006) and 605(c) (eff. Oct. 1, 2001).

¶ 2             In February 2011, defendant, Daniel J. Clark, agreed to a stipulated bench trial, after which the trial court found him guilty of involuntary manslaughter and criminal neglect of a person with a disability. In April 2011, the court sentenced defendant to 10 years in prison for involuntary manslaughter and 5 years in prison for criminal neglect of a person with a disability, ordering those sentences to run concurrently.

¶ 3             On April 29, 2011, defendant filed a motion to reconsider sentence, alleging that the trial court improperly considered factors inherent in the offense when it sentenced him. The court later denied defendant's motion.

¶ 4             Defendant appeals, arguing that the trial court erred by denying his motion to

reconsider sentence, given that it improperly considered factors inherent in the offense when it sentenced him. The State responds, arguing remand is necessary because defense counsel failed to file a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) and the court did not properly admonish defendant pursuant to Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001). Because we agree with the State, we reverse and remand with directions.

¶ 5

#### I. BACKGROUND

¶ 6 On November 14, 2008, the State charged defendant with first degree murder (count I) (720 ILCS 5/9-1(a)(2) (West 2008)), involuntary manslaughter (count II) (720 ILCS 5/9-3(a) (West 2008)), two counts of criminal neglect of a person with a disability (counts III and IV) (720 ILCS 5/12-21(a)(2) (West 2008)), and criminal abuse of a person with a disability (count V) (720 ILCS 5/12-21(a)(1) (West 2008)) based on the August 24, 2008, beating of Dustin Higgins, a developmentally disabled adult in a residential home, leading to Higgins' September 1, 2008, death.

¶ 7

In February 2011, defendant and the State reached an agreement wherein defendant would proceed with a stipulated bench trial on counts II and IV. The State also agreed that it would recommend that defendant's sentences be served concurrently. The stipulation provided that the evidence was sufficient to prove defendant guilty of involuntary manslaughter and criminal neglect beyond a reasonable doubt. Several residents hit and stomped Higgins, and defendant, an employee, was present and did not stop the beating. State witnesses would testify defendant and another employee encouraged and participated in the beating. Defendant and another employee attempted to revive Higgins but failed to take him to the hospital for three hours, which could have contributed to his death. The trial court accepted the stipulation, finding

defendant guilty on both counts, and advised defendant he was extended-term eligible and the stipulation did not prevent the court from imposing consecutive sentences.

¶ 8 At an April 2011 sentencing hearing, the trial court considered evidence and argument in mitigation and aggravation. The court thereafter sentenced defendant to concurrent sentences of 10 years in prison for involuntary manslaughter and 5 years in prison for criminal neglect.

¶ 9 Later that month, defendant filed a motion to reconsider sentence. Defendant alleged, in pertinent part, that the trial court "improperly enhanced [his] sentence based on aggravating factors that were elements of the offense for which he was convicted." (Defense counsel did not file a Rule 604(d) certificate with defendant's motion.)

¶ 10 In July 2011, the trial court conducted a hearing on defendant's motion to reconsider sentence. During the hearing, the prosecutor stated as follows: "It wasn't clear from the materials that I received if a [Rule] 604(d) certificate was ever filed. I believe, for a motion to reconsider, a certificate would have to be filed." Defense counsel disagreed:

"I don't think it has to be filed in this situation. I think it would have to be filed if you had a, if you were presenting a motion to withdraw the stipulation in some way. This is a straight motion to reconsider sentence of an open sentencing hearing. So our understanding was that a [Rule] 604(d) [c]ertificate would not be required."

The court agreed with defense counsel, stating as follows: "I'm of the understanding that its not necessary \*\*\* under these circumstances." The court thereafter denied defendant's motion.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Defendant argues that the trial court erred by denying his motion to reconsider sentence, given that it improperly considered factors inherent in the offense when it sentenced defendant. In response, the State argues that we must remand this matter to the trial court because (1) defense counsel did not file a Rule 604(d) certificate and (2) the court did not properly admonish defendant in accordance with Rule 605(c). We agree with the State. Accordingly, we reverse the court's denial of defendant's motion to reconsider sentence and remand for compliance with Rule 604(d) and 605(c).

¶ 14 In this case, the stipulated bench trial was tantamount to a guilty plea because defendant stipulated to the sufficiency of the evidence. See *People v. Bellmyer*, 199 Ill. 2d 529, 538-39, 771 N.E.2d 391, 397-98 (2002) ("[W]hen a defendant in a stipulated bench trial stipulates not only to the evidence, but also to the sufficiency of the evidence to convict, the proceeding is tantamount to a guilty plea."). The parties agree that defendant's stipulated bench trial was the equivalent of a negotiated guilty plea, given that the State agreed to certain sentencing concessions and the dismissal of several charges in exchange for the stipulation. In such a circumstance, "the supreme court rules pertaining to guilty pleas apply," including Rule 604(d), which requires a defendant to file either a motion to withdraw or motion to reconsider sentence within 30 days of sentencing. *People v. Smith*, 2011 IL App (4th) 100430, ¶ 13, 960 N.E.2d 595; see also Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 15 Rule 604(d) provides as follows:

"No appeal from a judgment entered upon a plea of guilty shall be

taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial 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." Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 16 Rule 604(d) provides further that the defendant's counsel must file a certificate with the motion, stating that he has consulted with the defendant, has examined the record, and has made any necessary amendments to the motion. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Our supreme court requires strict compliance with Rule 604(d). *People v. Neal*, 403 Ill. App. 3d 757, 760, 936 N.E.2d 726, 728 (2010). We review *de novo* whether counsel has complied with Rule 604(d). *Neal*, 403 Ill. App. 3d at 760, 936 N.E.2d at 728.

¶ 17 In this case, the parties agree that defense counsel failed to comply with Rule 604(d) and, based on the record, we accept the parties' concession. At the July 2011 hearing on defendant's motion to reconsider, the record shows that the parties discussed whether a certificate needed to be filed. The State indicated that it was not clear that a Rule 604(d) certificate had ever been filed and indicated that "for a motion to reconsider, a certificate would have to be filed." Defense counsel responded as follows:

"I don't think it has to be filed in this situation. I think it would have to be filed if you had a, if you were presenting a motion to withdraw the stipulation in some way. This is a straight motion to reconsider sentence of an open sentencing hearing. So our understanding was that a [Rule] 604(d) [c]ertificate would not

be required."

The court agreed with defense counsel.

¶ 18 Counsel's failure to comply with Rule 604(d) requires this court to reverse the trial court's denial of defendant's motion to reconsider sentence and to remand to allow counsel to file a new motion—if counsel deems it appropriate—and a certificate in compliance with Rule 604(d). See *People v. Petty*, 366 Ill. App. 3d 1170, 1176, 853 N.E.2d 429, 434 (2006) (remand is necessary where Rule 604(d) has been violated).

¶ 19 On appeal, both parties also agree that the trial court failed to admonish defendant in accordance with Rule 605(c), given that the stipulated bench trial in this case amounted to a negotiated guilty plea. We agree and direct that the trial court do so upon remand.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we reverse the trial court's order denying defendant's motion to reconsider sentence, and we remand the cause for compliance with Rules 604(d) and 605(c) and to provide an opportunity for defendant to file a new postplea motion, if he so wishes.

¶ 22 Reversed and remanded with directions.