



13(a)(4) (West 2010)). In exchange for his plea, the State agreed to dismiss two counts of criminal sexual assault (720 ILCS 5/12-13(a)(4) (West 2010)). At the same hearing, defendant pleaded guilty to one count of child pornography (720 ILCS 5/11-20.1(a)(1) (West 2010)) in Sangamon County case No. 11-CF-1056 (case No. 4-12-0924). In exchange for his plea, the State agreed to dismiss seven counts of child pornography (720 ILCS 5/11-20.1(a)(1) (West 2010)) and three counts of aggravated child pornography (720 ILCS 5/11-20.1B(a)(6) (West 2010)). At a September 2012 sentencing hearing, the trial court sentenced defendant in case No. 11-CF-736 to 35 years in prison for predatory criminal sexual assault and 10 years in prison for criminal sexual assault. The court also sentenced defendant in case No. 11-CF-1056 to 10 years in prison for child pornography, ordering that sentence to be served consecutively to his sentences in case No. 11-CF-736.

¶ 5 Later that month, defendant's trial counsel filed a "Motion to Withdraw Plea of Guilty and Vacate Judgment" in both cases. The motions were identical and requested "the Court to allow Defendant to withdraw his plea of guilty, vacate the judgment and to impose sentences [that are] less onerous than the sentences imposed and for any other relief as the Court deems just and proper." Defendant's trial counsel also filed a certificate, in both cases, claiming compliance with Rule 604(d). The certificates were identical, stating, in part, as follows: "[counsel] has consulted with the defendant either by mail or in person to ascertain his contentions of error in the sentences."

¶ 6 At a hearing on defendant's motions conducted the following day, counsel argued, in part, as follows: "I have filed a Motion to Withdraw Plea of Guilty and Vacate Judgment; although, as you will note, that's just more of a procedural matter, we're just changing [*sic*] the

sentence." The court denied the motions.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Supreme Court 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 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."

(Emphasis added.) Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 10 Defendant contends that his trial counsel's purported Rule 604(d) certificates are deficient because counsel failed to certify that he consulted with defendant to ascertain his contentions of error in the entry of his guilty plea. Further, defendant's argument addresses the purpose of Rule 604(d) by noting "Rule 604(d) is the only avenue for direct appeal of a conviction after a guilty plea." The State disagrees and contends that Rule 604(d) "is satisfied by conferring with defendant about either or both topics" because the consultation requirement is stated in the alternative. The State contends further that, "given the disjunctive language of Rule 604(d), when the postplea motion is limited to either the guilty plea or the sentence, defense counsel should not be faulted for only certifying he conferred with his client about the subject matter of the motion." We agree with defendant.

¶ 11 "The question of whether defense counsel complied with Rule 604(d) is subject to *de novo* review." *People v. Grice*, 371 Ill. App. 3d 813, 815, 867 N.E.2d 1143, 1145 (2007).

"[S]trict compliance with Rule 604(d) is required and a reviewing court must remand in any case where counsel failed to strictly comply." *People v. Prather*, 379 Ill. App. 3d 763, 768, 887 N.E.2d 44, 47 (2008). "While strict compliance does not require that the language of the rule be recited verbatim in the certificate, some indication must be presented that counsel performed the duties required under the rule." *People v. Richard*, 2012 IL App (5th) 100302, ¶ 10, 970 N.E.2d 35, 39. "The certificate itself is all this court will consider to determine compliance with Rule 604(d)." *People v. Neal*, 403 Ill. App. 3d 757, 760, 936 N.E.2d 726, 728 (2010).

¶ 12 In *People v. Dryden*, 2012 IL App (2d) 110646, ¶ 9, the State argued that Rule 604(d)'s consultation requirement is phrased in the disjunctive and the certificate need not state that counsel ascertained the defendant's contentions of error in the sentence. In that case, the defendant filed a motion to withdraw plea and a motion to reconsider sentence. *Dryden*, 2012 IL App (2d) 110646, ¶ 2. The Second District rejected the State's argument and stated "in this context, it is clear that 'or' means 'and.'" *Dryden*, 2012 IL App (2d) 110646, ¶ 9. *Dryden* noted that Rule 604(d)'s "purpose is to eliminate the need for guesswork about the 'core' of a defendant's contentions." *Dryden*, 2012 IL App (2d) 110646, ¶ 11. Further, the Second District noted that it would be "absurd to suggest" where counsel files a motion to withdraw plea and reconsider the sentence "counsel may arbitrarily choose to consult with the defendant about only one type of error." *Dryden*, 2012 IL App (2d) 110646, ¶ 9.

¶ 13 In *Prather*, this court held that a purported Rule 604(d) certificate failed to satisfy the consultation requirement where the certificate stated that counsel ascertained the defendant's

" 'contentions of error and sentence.' " *Prather*, 379 Ill. App. 3d at 768, 887 N.E.2d at 47. There, we explained that we need not take strict compliance with Rule 604(d) to "unreasonable extremes" and rejected the State's argument that defense counsel "probably did ascertain all of defendant's errors" because counsel failed to strictly comply with Rule 604(d). *Id.* Because the defendant only filed a motion to reconsider sentence, we could not be sure "whether counsel ascertained defendant's contentions of error in the guilty plea hearing as well as in the sentence." *Id.*

¶ 14 In this case, defendant's motions requested that he be permitted to withdraw his plea but, as the State argues, the substance of the motion urged reconsideration of the sentences imposed. As the court noted in *Dryden*, one of Rule 604(d)'s purposes is to eliminate the guesswork of the "core" of defendant's contentions. See *Dryden*, 2012 IL App (2d) 110646, ¶ 11. The State's argument would have us look to the "subject matter of the motion" to conclude the certificate complies with Rule 604(d). However, the substance of the motions requests defendant be permitted to withdraw the plea in addition to reconsideration of his sentences. We will not engage in guessing as to the "core" of defendant's contentions of error. On their face, counsel's certificates do not state whether he consulted with defendant to ascertain defendant's contentions of error in the entry of his guilty plea and this court will not speculate as to whether counsel did consult with defendant on this issue. Accordingly, we conclude that defendant's trial counsel failed to strictly comply with Rule 604(d).

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we reverse the trial court's order denying defendant's motion to withdraw plea of guilty and vacate judgment and remand for compliance with Rule

604(d), as well as for the filing of new postplea motions (if defendant so desires).

¶ 17            No. 4-12-0923, Reversed and remanded with directions.

¶ 18            No. 4-12-0924, Reversed and remanded with directions.

¶ 19 JUSTICE TURNER, specially concurring.

¶ 20 I concur in the outcome reached by the majority only to maintain a consistent body of case law. While I agree with *Dryden* that defense counsel must consult with defendant on the plea *and* sentence when both are challenged, *Dryden* does not control here because defendant did not seek to withdraw his guilty plea and vacate the judgment. The substance of defendant's postplea motion—despite its title—and counsel's argument clearly show the only issue raised by defendant was a challenge to his sentence. As such, defense counsel's Rule 604(d) certificate that stated counsel consulted with defendant on the only issue defendant wished to pursue satisfied Rule 604(d). Thus, in my view, counsel sufficiently complied with Rule 604's certificate requirement in this case and remand is unwarranted.