

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) 130101-U  
NO. 4-13-0101  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
May 16, 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.	)	Sangamon County
JEREMY V. BECK,	)	No. 10CF474
Defendant-Appellant.	)	
	)	Honorable
	)	Peter C. Cavanagh,
	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.  
Justices Knecht and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court granted defendant's motion for summary remand, given that counsel's Rule 604(d) certificate did not strictly comply with the rule.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to remand defendant's case to the trial court because his trial counsel's certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) does not strictly comply with the rule. Because we agree that defense counsel's purported certificate does not comply with Rule 604(d), we grant OSAD's motion to remand.

¶ 3 I. BACKGROUND

¶ 4 On May 15, 2012, defendant, Jeremy V. Beck, entered an open guilty plea to aggravated battery with a firearm (720 ILCS 5/12-4.2 (West 2010)). On August 2, 2012, the trial court sentenced defendant to 12 years' imprisonment.

¶ 5 On August 10, 2012, defendant filed a motion to reconsider sentence. The trial court denied the motion and defendant appealed. In November 2012, this court remanded to the trial court for the filing of a certificate in compliance with Rule 604(d). *People v. Beck*, No. 4-12-0794 (Nov. 9, 2012) (unpublished order under Supreme Court Rule 23).

¶ 6 On December 31, 2012, defendant filed an amended motion to reconsider sentence. Defendant's trial counsel filed a certificate averring compliance with Rule 604(d). The certificate states as follows:

"[C]ounsel \*\*\* hereby states that he has complied with Supreme Court Rule 604(d) and that he has consulted with the defendant personally after sentencing as to his motion for reduction of sentence and after sentencing by consulting with the Defendant by mail and has ascertained the Defendant's contentions of error in the sentence and sentencing hearing, has examined the court file and transcripts of the report of proceedings of the sentencing hearing, and has made any amendments to the motion for reduction of sentence necessary for the adequate presentation of any defect in the proceedings."

The trial court denied defendant's amended motion.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Defendant contends trial counsel's purported Rule 604(d) certificate is deficient for failing to certify counsel (1) reviewed the report of proceedings of the guilty plea and (2)

consulted with him to ascertain his contentions of error in the entry of the plea of guilty. The State concedes the certificate is deficient for failing to state counsel examined the report of proceedings of the plea of guilty. The State notes defendant's second issue is supported by *People v. Herrera*, 2012 IL App (2d) 110009, 970 N.E.2d 1219, and *People v. Mineau*, 2012 IL App (2d) 110666, \_\_\_ N.E.2d \_\_\_, and this issue is currently pending before the Illinois Supreme Court in *People v. Tousignant*, No. 115329.

¶ 10 A. Rule 604(d)

¶ 11 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).

¶ 12 "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. "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).

¶ 13 In *Grice*, this court stated:

"Because Rule 604(d) is lengthy, we set forth the following key aspects of that rule with which defense counsel must comply. We do so to facilitate a trial court's scrutiny of any purported Rule 604(d) certificate it receives. Such a certificate *must* contain each of the following:

(1) A statement 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.

(2) A statement that the attorney has examined the trial court file.

(3) A statement that the attorney has examined the report of proceedings of the plea of guilty.

(4) A statement that the attorney has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings." (Emphasis in original.) *Grice*, 371 Ill. App. 3d at 816-17, 867 N.E.2d at 1146-47.

¶ 14 In *Neal*, this court stated:

"The manifest purpose of reviewing a transcript of the guilty-plea proceeding is to permit defense counsel the opportunity to review and reflect upon the events as they transpired, with a fresh eye, rather than through memory alone. The final sentence of Rule 604(d) expressly provides: 'Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived.' [Citation.] The preparation of this postplea motion is thus significant to a defendant. The particulars of the certificate requirements both give meaning to a defendant's right to appeal and assist defense counsel in fulfilling counsel's duties to his or her client to the best of his or her ability." *Neal*, 403 Ill. App. 3d at 760-61, 936 N.E.2d at 728-29.

¶ 15 B. The Certificate's Compliance With Rule 604(d)

¶ 16 Here, counsel's certificate omits any mention of whether trial counsel has examined the report of proceedings of the plea of guilty. Accordingly, the certificate is deficient on its face.

¶ 17 The certificate does not state trial counsel consulted with defendant to ascertain defendant's contentions of error in the entry of the plea of guilty. Based on the absence of such a statement and a statement counsel examined the report of proceedings of the plea of guilty, we can only speculate whether counsel in fact consulted with defendant about the guilty plea. We note we will not fault counsel for following Rule 604(d) too closely or verbatim (*People v.*

*Mineau*, 2012 IL App (2d) 110666, ¶ 16, \_\_\_ N.E.2d \_\_\_), but counsel's certificate must contain the four statements required by Rule 604(d). See also *Herrera*, 2012 IL App (2d) 110009, ¶ 14, 970 N.E.2d 1219 (admonishing counsel a "word for word" recitation of Rule 604(d) is the best practice). Because the certificate, on its face, does not state counsel (1) examined the report of proceedings of the plea of guilty and (2) consulted with defendant to ascertain his contentions of error in the plea of guilty, we conclude the certificate fails to strictly comply with Rule 604(d).

¶ 18

### III. CONCLUSION

¶ 19 For the reasons stated, we reverse the trial court's judgment regarding Rule 604(d) compliance and remand for (1) appointment of counsel (if unrepresented), (2) the filing of new postplea motions (if defendant so desires), (3) a new hearing on defendant's postplea motions, and (4) strict compliance with the Rule 604(d) requirements.

¶ 20 Reversed and remanded with directions.