

more than 30 years prior, reported to the Carbondale police department on March 27, 2009, in order to register as a sex offender pursuant to the Sex Offender Registration Act (the Act) (730 ILCS 150/3 (West 2008)).

¶ 5 After he registered, the defendant was told that he must return within seven days to report where he had stayed the prior week, as required by the Act. The defendant signed a form indicating that he understood that he must report again on April 3 between the hours of 8 a.m. and 4 p.m. According to the defendant, he reported back to the police department on April 3, but because the bus bringing him back to Carbondale from work was late, he did not arrive until 4:37 p.m. When he arrived at the police station, he discovered that there was no one present to process his registration. The defendant was subsequently charged with failure to register as a sex offender, a Class 2 felony. 730 ILCS 150/6 (West 2008).

¶ 6 On May 8, 2009, the defendant was brought to the Jackson County courthouse from the Jackson County jail, where he had been held in lieu of \$750 cash bond, and he pled guilty to the charge of failure to register as a sex offender. The court advised the defendant that he faced a maximum sentence of "three to seven years in the Department of Corrections, a two-year period of mandatory supervised release to follow any incarceration and up to \$25,000 in fine[s]." The court also advised him that he could instead be sentenced to a term of probation of up to 48 months.

¶ 7 After being advised of the range of possible sentences, the defendant persisted in his plea of guilty and the court sentenced him to 18 months' conditional discharge and 30 days in the county jail, gave him credit for 30 days he had already served on the charge, and ordered him to pay a total of \$500 in fines and costs. The defendant was released from custody at the conclusion of the plea hearing.

¶ 8 Later that day, a powerful storm struck Jackson County, uprooting trees,

damaging homes, and leaving most of Carbondale without electricity for several days. The State alleged that the defendant took advantage of the confusion following the storm by smashing a glass door at the Carbondale Walgreens store, which was closed in the aftermath of the storm, and entering the store through the broken door. The defendant allegedly absconded with hundreds of packs of cigarettes, worth thousands of dollars, some of which he gave away and some of which he tried to sell to individuals and to at least one retail establishment.

¶ 9 On June 5, 2009, the Jackson County public defender's office filed on behalf of the defendant a motion to withdraw his guilty plea. As its only support for the motion, it stated that "the defendant wants to withdraw his guilty plea because he believes he should not be subject to the reporting requirements of Sexual Offender Registration." On July 1, 2009, the office of the public defender moved to withdraw as counsel for the defendant, contending that every attorney in the office would have a conflict of interest due to the defendant's claim that he pled guilty under duress, which, he alleged, was at least in part caused by the public defender's ineffectiveness. The court granted the motion to withdraw as counsel and appointed Mark Costa, a private attorney, to represent the defendant.

¶ 10 On July 14, 2009, Costa entered his appearance on behalf of the defendant and filed an amended motion to withdraw the guilty plea, in which he contended that the defendant had been coerced into pleading guilty by his former counsel, that counsel had failed to adequately explain the defendant's rights to him, and that the defendant had a valid defense to the charges that counsel had failed to raise. Following a hearing, the court denied the defendant's motion to withdraw his plea.

¶ 11 On August 3, 2009, the State filed a petition to revoke the defendant's sentence of conditional discharge, alleging that the defendant had failed to comply with the

terms of his sentence by possessing more than \$300 worth of cigarettes that he knew or reasonably should have known had been stolen. The court granted the State's petition and revoked the defendant's bond. The defendant then remained in custody for more than two years after filing his notice of appeal until the circuit court released him on his own recognizance on July 27, 2011. On September 9, 2011, this court issued an order vacating the denial of the defendant's motion to withdraw his plea due to counsel's failure to strictly comply with Supreme Court Rule 604(d) (eff. July 1, 2006). On December 14, 2011, the circuit court again denied the defendant's motion to withdraw his plea, and on December 14, 2011, the defendant again filed a notice of appeal. On appeal, the defendant argues that the circuit court erred in denying his motion to withdraw his guilty plea.

¶ 12

ANALYSIS

¶ 13

Guilty pleas must be made knowingly and voluntarily. *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1969). Pleas of guilt that are not affirmatively shown on the record to be knowingly and voluntarily made are violative of due process and thus void. *People v. Davis*, 145 Ill. 2d 240, 248-49 (1991). A defendant must be permitted to withdraw his guilty plea where (1) the plea was based on the misapprehension of facts or law, due to misrepresentations by the State or defense counsel, (2) there is doubt as to the defendant's guilt, (3) the defendant has a defense worthy of consideration by the court, or (4) the ends of justice would be better served by allowing the case to proceed to trial. *Id.* at 244. It is within the sound discretion of the circuit court to determine whether a defendant may withdraw his guilty plea, and we will not disturb such a finding absent an abuse of that discretion. *Id.*

¶ 14

The Act mandates that people convicted of certain sex-related crimes keep the State apprised of their whereabouts by providing local law enforcement agencies up-

to-date information regarding where they are living, working, and attending school. Pursuant to section 3 of the Act, a sex offender "who lacks a fixed residence must report weekly, in person, *** with the chief of police in the municipality in which he or she is located." 730 ILCS 150/3 (West 2008). The Act makes no mention of specific times of the day within which a homeless sex offender must report.

¶ 15 The defendant argues that because the Act does not specify the times within which an offender must report, and despite the fact that he signed a form acknowledging that he must report by 4 p.m., it was permissible for him to report at any time prior to midnight on April 3 and the circuit court thus erred in denying his motion to withdraw his guilty plea. In support of his contention that the circuit court erred in denying his motion to withdraw his plea, the defendant maintains that "he did in fact appear to register at the police department on the seventh day, as required by statute," and that he has therefore established his actual innocence of the crime with which he was charged and to which he ultimately pled guilty.

¶ 16 The defendant points out that the Act does not specify hours within which a homeless sex offender must report to local authorities, but only that he must do so every seven days. He further argues that "law enforcement agencies are always open" and that the legislature could have specified that registration must be done during business hours had it chosen to do so. Thus, the defendant contends, he complied with the Act and having established his actual innocence, the court erred in denying his motion to withdraw his plea.

¶ 17 The defendant also argues that his guilty plea was clearly based on a misapprehension of the law fostered by defense counsel's ineffectiveness. The defendant claims that he raised with his counsel his argument that he was actually innocent of the charge, but counsel did not believe it was a viable defense and thus

failed to pursue it.

¶ 18 In response to the defendant's arguments, the State argues that because "registering as a sex offender is a[n] administrative function, not a law-enforcement function," and "ordinary administrative functions do not take place after regular business hours," limiting the permissible times to register as a sex offender "is a logical and well-established business practice." Differentiating between administrative and law-enforcement functions, the State notes that "although you can report a crime or request assistance from the police station 24/7, you cannot meet a parole officer, pay a fine or register as a sex offender except during business hours."

¶ 19 But most importantly, the State argues, is the fact that the defendant knew about and agreed to the police department's policy requiring registrations to occur during business hours. The State contends that the defendant has thus failed to carry the burden necessary in order to be permitted to withdraw his guilty plea. We agree.

¶ 20 As noted above, there is no absolute right to withdraw a guilty plea. *People v. Feldman*, 409 Ill. App. 3d 1124, 1127 (2011). The defendant must show that it is necessary to withdraw his plea in order to prevent a manifest injustice, and in order for a court of review to reverse the denial of a motion to withdraw a plea, the defendant must establish that the lower court abused its discretion in denying the motion. *Id.*

¶ 21 We cannot say that the court here abused its discretion in denying the defendant's motion. The defendant signed an acknowledgment that he was required to register with the police department between the hours of 8 a.m. and 4 p.m. on April 3, 2009, and he failed to do so. The requirement that he report during business hours was not an onerous one, and the defendant did not tell anyone that he would be unable

to do so due to work or any other reason. To now complain that the agreement he signed was invalid does not rise to the level that would establish that the court abused its discretion in denying his motion.

¶ 22 The defendant also contends that he should be permitted to withdraw his plea because he was improperly admonished in regards to the possibility that he would be subject to an extended-term sentence. At the sentencing hearing, the defendant was advised by the court that he faced from three to seven years in the Department of Corrections or as much as four years of probation. Actually, though, the defendant could have been sentenced to as much as 14 years in prison due to his two prior convictions of Class X felonies, rape and armed robbery, in 1974.

¶ 23 The State contends that the inaccurate admonition was not error, or if it was, it was harmless. We agree that any error was harmless.

¶ 24 In order for a defendant to be properly sentenced to an extended-term sentence following a guilty plea, it must be apparent on the record that he was advised that he faced an extended-term sentence. *People v. Taylor*, 368 Ill. App. 3d 703, 707 (2006). The circuit court's failure to properly admonish a defendant as to the sentencing range he faces does not, however, necessarily provide adequate grounds to allow him to withdraw his guilty plea. *People v. Thompson*, 375 Ill. App. 3d 488, 493 (2007). Whether to permit a defendant to do so comes down, instead, to whether real justice has been denied or whether he was prejudiced by the improper admonishment. *Id.*

¶ 25 Here, the defendant was not prejudiced by the court's inaccurate admonishment. He received the lightest sentence possible on the charge to which he pled guilty, and the extended-term sentence for which he was theoretically eligible did not come into play at all. Furthermore, "when an extended-term sentence is imposed after the revocation of a lesser punishment such as probation, the proper remedy is to

vacate the extended-term sentence so that a nonextended-term sentence may be imposed." *Taylor*, 368 Ill. App. 3d at 707. Thus, if the defendant here had been issued a sentence in excess of the maximum permitted for a nonextended-term crime, his sentence would be reduced to seven years' in the Department of Corrections. He was not, though, so he is not entitled to relief.

¶ 26 Finally, the defendant argues that the cause must be remanded to the circuit court due to a deficient certificate that counsel filed pursuant to Supreme Court Rule 604(d). Rule 604(d) requires that appointed counsel file contemporaneously with a motion to withdraw a guilty plea "a certificate stating the attorney has consulted with the defendant *** to ascertain defendant's contentions of error ***, 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). The defendant argues that the certificate counsel filed here does not aver that counsel reviewed the transcript of the plea hearing, but only that of the sentencing hearing.

¶ 27 As the State correctly notes, however, the sentencing hearing and the plea hearing were one and the same. If counsel reviewed the transcript of the sentencing hearing, it follows that he necessarily reviewed the transcript of the plea hearing, and vice versa. The certificate was thus in compliance with Rule 604(d).

¶ 28 The defendant also contends that the Rule 604(d) certificate is deficient because counsel averred he had amended the motion to withdraw the defendant's plea to include all the claims of the defendant, but the motion failed to include an argument that the court erred by failing to admonish the defendant regarding the possibility of an extended-term sentence. As discussed above, the faulty admonition did not prejudice the defendant and is thus not reversible error, so counsel's failure to include

the issue in the motion to withdraw the defendant's guilty plea was likewise not in error.

¶ 29

CONCLUSION

¶ 30

For the foregoing reasons, the judgment of the circuit court of Jackson County is affirmed.

¶ 31

Affirmed.