

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-770
)	
ANTONIO E. ESPINO,)	Honorable
)	David R. Akemann,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* Defense counsel’s Rule 604(d) certificate was invalid: although defendant moved only to reconsider his sentence, counsel needed to certify that he had consulted with him about his contentions of error, if any, in both his sentence and his plea.

¶ 2 Defendant, Antonio E. Espino, entered a nonnegotiated guilty plea to four offenses and was sentenced to 24½ years’ imprisonment. Defendant filed a timely motion to reconsider the sentence. In her certificate under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), defense counsel stated, *inter alia*, that she had “personally consulted with the defendant, Antonio Espino, in person, to ascertain his contentions of error in the imposition of the sentence.” The trial court

denied the motion, and defendant timely appealed. On appeal, defendant argues that he is entitled to a remand because counsel's certificate did not strictly comply with the rule. See *People v. Janes*, 158 Ill. 2d 27, 33 (1994). We agree, and thus we vacate and remand.

¶ 3 Rule 604(d) provides that counsel's certificate must state, *inter alia*, that counsel "has consulted with the defendant either by mail or in person to ascertain [the] defendant's contentions of error in the sentence *or* the entry of the plea of guilty." (Emphasis added.) Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Here, the parties dispute the meaning of the emphasized "or." Relying on our decision in *People v. Jordan*, 2013 IL App (2d) 120106, defendant asserts that the "or" means "and," such that counsel's certificate, which evinced a consultation to ascertain his contentions only as to the sentence, was invalid. The State responds that the "or" means "or," such that, because defendant moved to reconsider his sentence and did not move to withdraw his plea, counsel was required to ascertain his contentions only as to the sentence, without ascertaining whether he had contentions as to the plea as well.

¶ 4 In *People v. Tousignant*, 2014 IL 115329, the supreme court adopted defendant's position. There, as here, the defendant entered a nonnegotiated plea and moved only to reconsider his sentence. There, as here, defense counsel certified that he had ascertained the defendant's contentions only as to the sentence. The court noted that "or" may be construed to mean "and" where necessary to effectuate the intent of the rule's drafters. It went on to observe that the certificate requirement is intended "to enable the trial court to ensure that counsel has reviewed the defendant's claim and considered *all* relevant bases for the motion to withdraw the guilty plea or to reconsider the sentence." (Emphasis in original.) *Id.* ¶ 16. The court thus concluded:

“We hold that in order to effectuate the intent of Rule 604(d), specifically the language requiring counsel to certify that he has consulted with the defendant ‘to ascertain defendant’s contentions of error in the sentence *or* the entry of the plea of guilty,’ the word ‘or’ is considered to mean ‘and.’ Under this reading, counsel is required to certify that he has consulted with the defendant ‘to ascertain defendant’s contentions of error in the sentence *and* the entry of the plea of guilty.’ ” (Emphases in original.) *Id.* ¶ 20.

Accordingly, the court affirmed the appellate court’s decision remanding the cause.

¶ 5 Here, under *Tousignant*, defense counsel’s certificate did not strictly comply with Rule 604(d). Thus, we vacate the denial of defendant’s motion to reconsider his sentence, and we remand the cause for “(1) the filing of a [valid] Rule 604(d) certificate; (2) the opportunity to file a new motion to withdraw the guilty plea and/or reconsider the sentence, if counsel concludes that a new motion is necessary; and (3) a new motion hearing.” *People v. Lindsay*, 239 Ill. 2d 522, 531 (2011).

¶ 6 The judgment of the circuit court of Kane County is vacated, and the cause is remanded.

¶ 7 Vacated and remanded.