

2014 IL App (2d) 120880-U  
Nos. 2-12-0880, 2-12-0881, 2-12-0882, 2-12-0883 cons.  
Order filed January 24, 2014

**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 Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-1266
	)	
JERMMIE R. CARLISLE,	)	Honorable
	)	Theodore S. Potkonjak,
Defendant-Appellant.	)	Judge, Presiding.

---

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-1267
	)	
JERMMIE R. CARLISLE,	)	Honorable
	)	Theodore S. Potkonjak,
Defendant-Appellant.	)	Judge, Presiding.

---

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-1269
	)	

JERMMIE R. CARLISLE, ) Honorable  
 ) Theodore S. Potkonjak,  
Defendant-Appellant. ) Judge, Presiding.

---

THE PEOPLE OF THE STATE ) Appeal from the Circuit Court  
OF ILLINOIS, ) of Lake County.

Plaintiff-Appellee, )

v. ) No. 08-CF-1270

JERMMIE R. CARLISLE, ) Honorable  
 ) Theodore S. Potkonjak,  
Defendant-Appellant. ) Judge, Presiding.

---

JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices McLaren and Hudson concurred in the judgment.

### ORDER

¶ 1 *Held:* Regardless of whether defendant’s attorney at his postplea-motion hearing was required to file a Rule 604(d) certificate, defendant was not entitled to a third remand for Rule 604(d) compliance: a proper certificate on the second remand established that defendant’s motion raised all of his postplea contentions, which defendant argued fully and fairly.

¶ 2 I. BACKGROUND

¶ 3 In these cases, defendant, Jermmie R. Carlisle, pleaded guilty to armed robbery (720 ILCS 5/18-2(a)(1) (West 2008)) (case No. 08-CF-1266), aggravated criminal sexual abuse (720 ILCS 5/12-16(a)(1) (West 2008)) (case No. 08-CF-1270), and two counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 2008)) (case Nos. 08-CF-1267 and 08-CF-1269). In exchange for the plea, the State agreed to a sentencing cap of 40 years’ imprisonment and dismissed 38 other counts against defendant. On October 2, 2009, the trial court imposed a sentence of 35 years’ imprisonment: 15 years in case No. 08-CF-1267; 14 years in case No. 08-CF-1269, to be served consecutively to the 15-year term; and 6 years in each of the remaining

cases, to be served concurrently with each other but consecutively to the 15-year and 14-year terms.

¶ 4 On October 6, 2009, defendant filed, in each case, a “motion for new sentencing hearing before a different judge or as a less favored alternative motion to reconsider sentence.” The motion alleged that, in sentencing defendant, the trial court erroneously considered in aggravation that defendant received compensation for his crime, erroneously relied on information obtained at codefendants’ proceedings in violation of defendant’s constitutional rights, made a personal attack on defense counsel while praising previous counsel, and ignored mitigating evidence presented by defense counsel. Defense counsel Jed Stone filed a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), which provided that Stone:

“has consulted with [defendant] personally to ascertain [defendant’s] contentions of error in the sentence, has examined the trial court file and although he has not examined the record of proceedings was personally present at the hearing and has ordered the transcripts of record though not yet received same. Other than this motion filed, there are no additional amendments necessary for adequate presentation of the defects in those proceedings.”

¶ 5 On appeal, we vacated the denial of defendant’s motion and remanded for new postplea proceedings to be conducted in compliance with Rule 604(d), because Stone’s Rule 604(d) certificate failed to state “that [Stone] had ‘examined the trial court file and report of proceedings of the plea of guilty.’ ” See *People v. Carlisle*, Nos. 2-09-1096, 2-09-1097, 2-09-1098, 2-09-1099 cons., slip op. at 3 (2010) (unpublished order under Supreme Court Rule 23) (*Carlisle I*) (quoting Ill. S. Ct. R. 604(d) (eff. July 1, 2006)). We also noted that, on remand, defendant was not entitled to move to reconsider his sentence, because he had pleaded guilty in exchange for a sentencing cap. *Id.*

¶ 6 On May 6, 2010, Stone filed a new “motion for new sentencing hearing before a different judge or as a less favored alternative motion to reconsider sentence,” along with a new Rule 604(d) certificate. The motion was identical to the original motion filed on October 6, 2009. Stone’s Rule 604(d) certificate provided, in pertinent part, that Stone:

“has consulted with [defendant] personally to ascertain [defendant’s] contentions of error in the sentence, has examined the trial court file and has examined the record of proceedings. He was personally present at the hearing and has read transcripts of record. Other than this motion filed, there are no additional amendments necessary for adequate presentation of the defects in those proceedings.”

¶ 7 On May 21, 2010, the trial court, after addressing and refuting the allegations in the motion, denied the motion. Thereafter, Stone asked the court to direct the clerk to file a notice of appeal, to find defendant indigent, and to appoint the appellate defender. The court refused to do so, noting that defendant had not filed a motion to withdraw his plea (as required under Rule 604(d)). Defendant subsequently moved the court to vacate its order denying defendant’s right to appeal. Upon the denial of his motion to vacate, defendant appealed a second time. See *People v. Carlisle*, 2012 IL App (2d) 100820-U (*Carlisle II*).

¶ 8 In *Carlisle II*, defendant argued that (1) the trial court erred in refusing to allow him to appeal from the trial court’s denial of his motion; (2) the trial court’s error in refusing to allow him to appeal was not harmless, because the general rule precluding an appellate court from considering the merits of an appeal taken by a defendant who entered a negotiated plea but failed to file a motion to withdraw the plea does not apply here, where defendant alleged that his sentences were imposed without due process; and (3) the sentencing hearing violated defendant’s due process rights. *Id.* ¶ 7.

¶ 9 We agreed that the trial court erred in refusing to allow defendant to appeal from the trial court's denial of his motion, but we did not consider the propriety of the denial of the motion. *Id.* ¶ 13. Instead, we found that, because Stone again failed to comply with Rule 604(d), the matter must once again be remanded. *Id.* ¶¶ 9-12. We noted that, even though defendant again challenged only his sentence, Stone was still required to certify that he had consulted with defendant about any contentions of error in the entry of the plea. *Id.* ¶ 9. In determining whether a second remand for compliance with Rule 604(d) was warranted, we stated as follows:

“It is well established that ‘[d]efense counsel must strictly comply with Rule 604(d)’s certificate requirement, and, when counsel fails to do so, the case must be remanded to the trial court for proceedings in compliance with the rule.’ *People v. Love*, 385 Ill. App. 3d 736, 737 (2008). Nevertheless, our supreme court has rejected the proposition that the requirement of strict compliance ‘must be applied so mechanically as to require Illinois courts to grant multiple remands and new hearings following the initial remand hearing.’ *People v. Shirley*, 181 Ill. 2d 359, 369 (1998). In *Shirley*, the defendant’s attorney originally failed to file a Rule 604(d) certificate and the case was remanded to the trial court for compliance with that rule. On remand, the defendant’s attorney filed a certificate, but then withdrew as counsel. A new attorney was appointed to represent the defendant, and she filed a new Rule 604(d) motion. She also filed a Rule 604(d) certificate of her own, but not until four days after the motion was heard. The defendant argued that the Rule 604(d) certificate filed after the hearing was untimely and that a second remand was necessary. Our supreme court disagreed. The court noted that there was ‘nothing in the record, or in the two motions to reduce sentences, or in the two Rule 604(d) certificates filed by two different attorneys, which indicates any reason why this court should remand the cause for a third hearing on defendant’s claim that his

sentences were excessive.’ *Id.* at 370. The court stated, ‘Where, as here, the defendant was afforded a full and fair second opportunity to present a motion for reduced sentencing, we see limited value in requiring a repeat of the exercise, absent a good reason to do so.’ *Id.* at 369. In the court’s view, a second remand would have been ‘an empty and wasteful formality.’ *Id.* at 370.

In contrast, in *Love*, we held that a second remand—for additional proceedings on the defendant’s motion to withdraw his guilty plea—was appropriate where the record seemed to contradict counsel’s certification that she had examined the report of proceedings of the defendant’s guilty plea. We reasoned as follows:

‘In *Shirley*, there was no claim that either of the Rule 604(d) certificates filed on remand was defective. Here, in contrast, the record impeaches defense counsel’s certificate with respect to one of her basic duties under Rule 604(d)—the duty to examine the report of proceedings of the guilty plea. \*\*\* [W]e cannot comfortably say that defendant had a fair opportunity on remand to challenge his guilty plea. Thus, we do not believe that a second remand would be an empty and wasteful formality.’ *Love*, 385 Ill. App. 3d at 739.

Here, defendant’s attorney twice failed to certify compliance with his basic duties under Rule 604(d). Although defendant did not move to withdraw his guilty plea, consultation was required as to both the plea and the sentence. See *People v. Prather*, 379 Ill. App. 3d 763, 768-69 (2008). Moreover, we note that defendant’s failure to challenge his guilty plea may very well result in the foreclosure of the merits of his appeal. Under these circumstances, we cannot say that a second remand (so that we can comfortably say that trial counsel consulted with defendant to ascertain any contentions of error in the guilty plea) would be an empty and wasteful formality.” *Id.* ¶¶ 10-12.

We remanded for the filing of a valid Rule 604(d) certificate, the opportunity to file a new motion if counsel found that a new motion was necessary, and a new motion hearing. *Id.* ¶ 14. We again noted (as we did in our previous decision) that defendant may not move to reconsider his sentence. *Id.*

¶ 10 On May 10, 2012, Stone filed his third “Amended Motion for New Sentencing Hearing Before a Different Judge.” The amended motion raised no new arguments; indeed, it was substantively equivalent to the motion filed on May 6, 2010, argued by Stone on May 21, 2010, and ultimately denied by the trial court. In addition, Stone filed a new Rule 604(d) certificate, which provided, in pertinent part, that Stone:

“has consulted with [defendant] personally, by phone and by mail, to ascertain [defendant’s] contentions of error in the sentence and the entry of the plea of guilty, and has examined the trial court file and the record of proceedings of both the plea and sentencing hearings. Other than the amended motion filed with this certificate, there are no additional amendments necessary for adequate presentation of the defects in those proceedings.”

In response, the State filed a motion to dismiss or, in the alternative, to deny defendant’s amended motion.

¶ 11 Defendant’s amended motion was heard at two proceedings. The first took place on June 7, 2012. Stone appeared before the trial court and asked the trial judge to recuse himself and allow another judge to review the judicial-impropriety portion of the motion. The court denied the request.

¶ 12 On August 7, 2012, attorney Eric Shah appeared on defendant’s behalf. Parenthetically, we note that, although Shah did not state on the record that he was associated with Stone, there is an order in the record prepared by Shah, which lists “Stone & Associates, Ltd” as Shah’s law

firm. At the outset of the hearing, the trial court asked Shah whether a Rule 604(d) certificate had been filed. Shah responded: “It was filed.” Thereafter, the following took place:

“MR. SHAH: Judge, the issues in our motion and in the State’s response are well spread throughout the record. I’ll be brief when I address them.

The heart of our argument here is that at [defendant’s] sentencing on October 2nd, 2009, the record shows that the court utilized information that he gained from co-defendants, particularly Mr. Amos and Ms. Robinson, in the case at 402 conferences, particularly from Ms. Robinson, and then the sentencing for Mr. Amos, showing that the court had used information from those 402 conferences in sentencing [defendant] without proper opportunity for cross examination.

Particularly the sentencing Bates stamped Page 147, which is actually attached to the People’s motion, refers specifically to the 402 conference of Ms. Robinson and Mr. Amos.

It’s the defense’s position and [defendant’s] position that—well, first, it’s well settled that the defendant has the right to be present at any critical stage of the proceedings; the Sixth Amendment; the Illinois Supreme Court, and parallel positions of the Illinois Constitution.

It’s our assertion that [defendant] was not—well, first, that the 402 conference in this matter was a critical stage because information was gleaned about [defendant’s] history and the crime itself while counsel for [defendant] and [defendant] himself were not present at that 402 conference.

Because of his absence, the proceeding was unfair and the absence denied him a substantial right, that right being his rights under the confrontation clause to deal with the—to cross examine the evidence against him and adversarially test that evidence.

THE COURT: But specifically for the record, what did the court learn in that 402 conference? Actually, it should be pointed out, I don't believe there was a 402 conference with Mr. Amos. I think the only 402 conference there was had to do with Ms. Robinson.

So specifically for the record, what did the court learn in that—what are you alleging that the court learned in that which was not brought out in the PSI or any other facts about the—of your client's case?

MR. SHAH: I think it was particularly what the court did not learn: That [defendant] was a special education student; that MDMA played a role in the commission of the offenses; that [defendant] would deny he's a user of MDMA; that Mr. Amos had introduced [defendant] to MDMA; and other input from siblings and friends of [defendant's] that would present as mitigation evidence. Instead, [defendant] was unable to adversarially test the evidence.

Based upon that, [defendant] was denied his constitutional right to confront the evidence used against him at sentencing and denied his right to the Sixth Amendment and Fourteenth Amendment of the United States Constitution and parallel provisions of the Illinois State Constitution.”

¶ 13 Following the State's argument in response and defendant's argument in reply, the trial court made extensive comments in ruling on the motion. The court reviewed the procedural history of the case and noted that it had read the transcript of the sentencing proceedings. The court stated: “In whatever 402 conferences there were with the co-defendant, the court didn't learn anything there that wasn't set out in the record, whether it be in the 402 conference or any—I mean, whether it be in the presentence investigation or anything else.” Thereafter, the court went through all the factors that it considered in fashioning an appropriate sentence for

defendant and concluded: “[W]hen all the dust settles, at that point I believe I gave him a fair sentence under the parameters, and it was a proper sentence under the parameters, and it’s going to stand.”

¶ 14 Defendant timely appealed, and the case is now before us for a third time.

¶ 15 **II. ANALYSIS**

¶ 16 Defendant argues that the matter must be remanded a third time (for a fourth postplea hearing), because Shah did not certify his compliance with Rule 604(d). In response, the State counters: (1) defendant’s appeal should be dismissed, because he failed to file a motion to withdraw his guilty plea; (2) alternatively, Shah was not required to file a Rule 604(d) certificate; and (3) even if Shah was required to file a Rule 604(d) certificate, a remand so that Shah may do so would be an empty and wasteful formality. We agree with the State’s third contention. As it is dispositive, we need not consider the other two.

¶ 17 Assuming, *arguendo*, that Shah was required to file his own Rule 604(d) certificate, a remand so that he may do so is not required, as it would be “an empty and wasteful formality.” *Shirley*, 181 Ill. 2d at 370. In defendant’s first and second appeals, we remanded because Stone failed to certify that he had consulted with defendant as to his guilty plea. *Carlisle I*, slip op. at 3; *Carlisle II*, 2012 IL App (2d) 100820-U, ¶¶ 9-12. Without the requisite certification, we could not know that defendant’s decision not to challenge his guilty plea was based on proper consultation. See *People v. Jordan*, 2013 IL App (2d) 120106, ¶ 16 (“strict compliance enables us to *know* that a defendant’s postplea motion contained every postplea contention he had, that no postplea contention was lost[]” to forfeiture (emphasis in original)). Our concern over whether Stone consulted with defendant as to any contentions of error in the entry of defendant’s guilty plea was resolved on May 10, 2012, when Stone filed a certificate that was in full compliance with Rule 604(d). That certificate made clear that Stone did, in fact, consult with

defendant as to his guilty plea. After the requisite consultation, Stone filed an “amended” motion that was substantively identical to the two motions that he filed before the consultation. Thus, as the new motion, filed with a proper Rule 604(d) certificate, raised no allegations concerning the plea, it is equally clear that defendant did not wish to challenge his plea.

¶ 18 If the defendant has received a full and fair opportunity to raise his claim of error in the entry of the plea or the sentence, or both, another remand is not required, absent a good reason to do so. See *Shirley*, 181 Ill. 2d at 369. As noted, defendant had a full and fair opportunity to raise any claim of error in the entry of his plea. Moreover, defendant has had three opportunities to argue the merits of his postplea motion concerning whether the court improperly considered information gleaned in violation of defendant’s constitutional rights when fashioning an appropriate sentence. Contrary to defendant’s claim that Shah did not understand “the particulars of the post-plea allegations,” a review of the transcript of the hearing on the motion argued by Shah suggests otherwise. Shah argued that the “heart” of defendant’s argument was that the court improperly considered information obtained during codefendants’ proceedings, an argument presented by Stone and rejected by the trial court on two prior occasions. The court’s comments in denying the motion establish that it was fully cognizant of all of defendant’s claims.

¶ 19 Accordingly, based on the foregoing, we affirm the denial of defendant’s amended motion.

¶ 20

### III. CONCLUSION

¶ 21 For the reasons stated, we affirm the judgment of the Circuit Court of Lake County.

¶ 22 Affirmed.