

2014 IL App (2d) 121033-U  
Nos. 2-12-1033 & 2-12-1034 cons.  
Order filed May 30, 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	No. 10-CF-4079
v.	)	
	)	
JERRELL L. JOHNSON,	)	Honorable
	)	Raymond D. Collins,
Defendant-Appellant.	)	Judge, Presiding.

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	No. 11-CF-1337
v.	)	
	)	
JERRELL L. JOHNSON,	)	Honorable
	)	Raymond D. Collins,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Justices Hudson and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defense counsel’s Rule 604(d) certificate was invalid: counsel certified that he had examined the report of proceedings of the “trial,” and we would not speculate

that counsel actually examined, per the rule, the report of proceedings of the guilty plea.

¶ 2 Defendant, Jerrell L. Johnson, appeals the trial court's order denying his motion to withdraw his guilty plea. He contends that (1) his counsel's certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) was deficient, necessitating a remand for further proceedings; and (2) the mittimus should be amended to reflect a two-year term of mandatory supervised release (MSR) rather than the three-year term the court imposed. We vacate and remand.

¶ 3 Defendant pleaded guilty to two counts of residential burglary (720 ILCS 5/19-3(a) (West 2010)). Per agreement, the trial court sentenced him to concurrent 10-year prison terms. The court also sentenced him to a three-year term of MSR.

¶ 4 Defendant moved to withdraw the guilty plea, contending that counsel was ineffective. The trial court appointed new counsel, who filed an amended motion. The motion included a Rule 604(d) certificate stating that counsel had "examined the trial court file and the report of proceedings of the trial." The trial court denied the motion and defendant appealed.

¶ 5 This court initially dismissed the appeal, finding jurisdiction lacking. However, we granted defendant's motion to reconsider and reinstated the appeal. Defendant then moved for a summary remand. The State objected. We denied the motion and gave the parties time to brief any issue except that of defense counsel's Rule 604(d) certificate, which we deemed sufficient. On defendant's motion to reconsider, we vacated that portion of our order and allowed defendant to brief the issue of the sufficiency of the Rule 604(d) certificate. With the benefit of full briefing, we agree with defendant that the certificate was insufficient. We therefore vacate the order denying defendant's motion to withdraw his plea and remand for new proceedings under Rule 604(d).

¶ 6 Defendant contends that the Rule 604(d) certificate was insufficient because defense counsel certified that he reviewed the transcript of “the trial” rather than of the guilty plea proceedings. Rule 604(d) requires that, when a defendant has moved to withdraw a guilty plea or to reconsider a sentence imposed after a guilty plea:

“[t]he 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.” Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 7 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). In *People v. Tousignant*, 2014 IL 115329, the supreme court recently reaffirmed that strict compliance with the rule is required. The court noted that a primary purpose of Rule 604(d) is to ensure that any improprieties in the guilty-plea process are brought to the trial court’s attention before an appeal is taken. *Id.* ¶ 16. Accordingly, the court held that, consistent with the rule’s language, counsel must consult with a defendant about his contentions of error both in the guilty plea itself and in the sentence, and the certificate must state that he consulted with the defendant about both the guilty plea process and sentencing. *Id.* ¶ 20. By analogy, to comply with the rule, counsel must read the appropriate transcripts, and the certificate must state, not only that counsel read transcripts, but which particular transcript he read.

¶ 8 Defendant relies on *People v. Dismuke*, 355 Ill. App. 3d 606 (2005), and *People v. Mast*, 305 Ill. App. 3d 727 (1999). In *Dismuke*, defense counsel certified that he had “reviewed the report of proceedings.” *Dismuke*, 355 Ill. App. 3d at 607-08. This court held the certificate insufficient because, *inter alia*, it did not state specifically that counsel had reviewed the report of proceedings of the guilty plea. We found no assurance that the report of proceedings that counsel reviewed was in fact that of the guilty plea hearing. *Id.* at 611.

¶ 9 In *Mast*, counsel certified that he had “‘examined the trial court file and report of proceedings of the sentencing hearing.’ ” *Mast*, 305 Ill. App. 3d at 729. We found the certificate insufficient, rejecting the State’s argument that counsel could not have failed to review the transcripts of the guilty plea, which were included in the trial court file. *Id.* at 734.

¶ 10 Here, as in *Dismuke* and *Mast*, counsel did not specifically state that he reviewed the transcript of the guilty plea proceedings. Because there was no trial, the certificate is essentially the same as that in *Dismuke*. While we could speculate that counsel read the transcript of the guilty plea, rather than that of a nonexistent trial, it is equally possible that counsel was referring to the transcript of some other proceeding. The purpose of Rule 604(d) is to eliminate the need for such speculation.

¶ 11 We therefore vacate the denial of defendant’s motion to withdraw his plea and remand to the trial court for a new proceedings under Rule 604(d). See *People v. Lindsay*, 239 Ill. 2d 522, 531 (2011).

¶ 12 Defendant further contends that the trial court improperly imposed a three-year MSR term rather than a two-year term. The State confesses error. Defendant was convicted of a Class 1 felony, which carries a two-year MSR term. 730 ILCS 5/5-4.5-30(1) (West 2012). On remand, if defendant’s convictions stand, the trial court shall reduce his MSR term.

¶ 13 Vacated and remanded.