

2014 IL App (2d) 140487-U
No. 2-14-0487
Order filed October 10, 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

<i>In re</i> ALEX V., a minor)	Appeal from the Circuit Court
)	of De Kalb County.
)	
)	No. 10-JD-156
)	
)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Alex V., Respondent-Appellant.))	William P. Brady, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Burke and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court proceedings on remand were not in accord with appellate court mandate and were of such a confused nature as to require another remand for strict compliance with Supreme Court Rule 604(d).

¶ 2 Respondent minor, Alex V., appeals from the trial court's order denying his motion to reconsider sentence. We vacate the trial court's orders and remand the cause for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On March 15, 2012, Alex was adjudicated a delinquent minor and placed under 12 months of court supervision after he pleaded guilty to one count of criminal trespass to property

(720 ILCS 5/ 21-3(a)(2) (West 2010)). Amongst the conditions of his supervision was the requirement that he pay restitution in an amount to be determined. Sometime later that day, the court held a restitution hearing. On June 5, 2012, the trial court ordered Alex to pay restitution of \$5000. The restitution was joint and several with his parents.¹ Alex moved the trial court to reconsider the restitution order, but his motion was denied on August 21, 2012. Alex appealed to this court on September 20, 2012.

¶ 5 On March 7, 2013, during the pendency of the appeal, the State filed a motion to revoke court supervision, alleging that Alex had failed to make any payments toward restitution. On August 8, 2013, this court, in an order of summary remand in *In re Alex V, a Minor*, Case No. 2-12-1035, vacated the trial court's ruling on the motion to reconsider and remanded the cause "to afford the respondent-appellant the opportunity to file a new motion and have it heard in compliance with Supreme Court Rule 604(d)."

¶ 6 On September 5, 2013, a new attorney, Riley Oncken, filed his appearance on Alex's behalf, as the case was scheduled in the trial court for status. The State informed the court that there was "an agreement that [Alex] will be placed on one-year conditional discharge for payment of restitution only." Further, the assistant State's Attorney had spoken to Oncken about the "pending appeal that has been sent for the 604D [*sic*] certificates" and that she and Oncken "will be working on those possibly together to make sure that those are done correctly and get those resubmitted so that the merits of the case can be decided." The State asked for a three month date for status.

¹ Other respondent minors were also ordered to pay restitution of \$5000 jointly and severally with their parents but jointly among the minors.

¶ 7 Oncken concurred, saying, “That sounds good to me, Judge,” and asked that restitution payments be stayed pending the outcome of the appeal. The trial court disagreed, stating that any stay should come from this court. The trial court then entered an order placing Alex on one year of conditional discharge, until September 4, 2014, and continuing the case until December 19, 2013, for status on the appeal.

¶ 8 On March 19, 2014, after two status dates and continuances, Alex filed a motion to reconsider the initial restitution order of June 5, 2012. The trial court denied the motion on May 8, 2014. A week later, on May 14, Oncken filed an attorney certification pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013) stating that he had filed a motion to reconsider on March 19, 2014, and had spoken with Alex “in person on May 8, 2014 with reference to the Motion to Reconsider which was presented to the [Trial] Court.” On that same date, Alex filed a notice of appeal from the June 5, 2012, restitution order.

¶ 9 **II. ANALYSIS**

¶ 10 Our review of the proceedings in the trial court reveal a convergence of errors that requires us to vacate the trial court’s actions and remand this case again. We initially vacated the trial court’s ruling on Alex’s motion to reconsider and remanded the cause “to afford the respondent-appellant the opportunity to file a new motion and have it heard in compliance with Supreme Court Rule 604(d).” A reviewing court’s mandate vests the trial court with jurisdiction only to take action that complies with the mandate. *McDonald v. Lipov*, 2014 IL App (2d) 130401, ¶ 44. A trial court lacks the authority to exceed the scope of the mandate and must obey unambiguous and precise directions on remand. *Id.* “Any other order issued by the trial court is outside the scope of its authority and void for lack of jurisdiction.” *Id.*

¶ 11 Here, the trial court's first action on remand, done with the agreement of defense counsel and the State, was to place Alex on a year of conditional discharge based on his alleged failure to pay restitution in violation of the very order that was the basis of Alex's post-sentencing motion. The order placing Alex on conditional discharge was outside the scope of the remand, and, thus, void for lack of jurisdiction. Further, this court had vacated the trial court's order denying Alex's motion to reconsider sentence. A judgment that is vacated is nullified, cancelled, and void. *In re K.S.*, 365 Ill. App. 3d 566, 577 (2006). Thus, by placing Alex on conditional discharge, the trial court determined that Alex had violated the sentencing order before it ruled on Alex's motion to reconsider that order.

¶ 12 A new motion to reconsider was not filed for more than seven months after this court's summary remand, and a new Rule 604(d) certificate was not filed for almost another month, on the same day that the motion to reconsider was denied. Defense counsel was incongruously arguing the error of the trial court's 2012 restitution order well after he agreed that Alex had violated it and should be placed on conditional discharge. The trial court held a hearing on a motion to reconsider a sentence that it (and the parties) had already concluded had been violated by the minor.

¶ 13 We also note that, while Oncken filed a new motion to reconsider sentence on March 19, 2014, it was not until May 14, 2014, almost one week after the trial court had denied the motion, that he filed a Rule 604(d) certificate. The filing of a Rule 604(d) attorney certificate "should precede or be simultaneous with the hearing in the trial court." *People v. Shirley*, 181 Ill. 2d 359, 371 (1998). As our supreme court explained:

"Such a procedure will insure that the trial court, in considering a defendant's motion to withdraw his or her guilty plea or to reduce sentence, will be apprised that defense

counsel has reviewed the proceedings with the defendant and prepared any necessary amendments to the motion. If this standard of strict compliance is not met, the remedy is a remand to afford defendant another opportunity to be heard on his Rule 604(d) motion.”

Id.

We do not hold here that the late filing itself would require another vacature and remand; *Shirley* clearly held that such is not the case. See *id.* However, we wish to point out that, in his Rule 604(d) certificate, Oncken certified that he had spoken to Alex on the day of the hearing, May 8, 2014, which was seven weeks *after* he filed the motion to reconsider. If the Rule 604(d) procedure is to insure that the trial court “will be apprised that defense counsel has reviewed the proceedings with the defendant and prepared any necessary amendments to the motion” (*id.*), the certificate should at least demonstrate that counsel reviewed the proceedings with his client *before* the motion was filed and hearing was held on the motion.

¶ 14 Finally, we note that the court services officer who filed the violation report recommended that Alex “be placed on Conditional Discharge for restitution purposes only and that his Court Supervision be terminated successfully.” We are unaware of any statutory authority for such a disposition. If Alex’s supervision was terminated successfully, there can be no conditional discharge “for restitution purposes only.” “Conditional discharge” is a sentence or disposition applied to a finding of guilt, not to a condition of a sentence. See 730 ILCS 5/5-1-4, 5/5-4.5-15(a)(3); 705 ILCS 405/5-710 (1)(a)(i) (West 2012). In addition, we cannot determine what the trial court actually did in response to the petition to revoke. The trial court’s September 5, 2013, order stated only, “Minor placed on one year conditional discharge. End date of 9-4-14.” No mention is made of Alex’s court supervision, successful termination, revocation, or

restitution. The entire revocation procedure (which, in any event, was void as outside the scope of our remand (see *supra* ¶ 11)) was flawed.

¶ 15 We have no confidence in the outcome of procedures as convoluted and haphazard as those held on remand in this case. The trial court's orders of September 5, 2013, and May 8, 2014, are hereby vacated, and the cause is remanded for the filing of a new motion to reconsider, the filing of an attorney certification that strictly complies with Supreme Court Rule 604(d), and a proper hearing on the new motion.

¶ 16 Trial court orders vacated; the cause is remanded for further proceedings consistent with this order.