

No. 1-13-0067

**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  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. 09 CR 3119
	)	09 CR 3320
	)	
MAZEN JUBEH,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE REYES delivered the judgment of the court.  
Presiding Justice Palmer and Justice Gordon concurred in the judgment.

**O R D E R**

¶ 1 *Held:* This case must be remanded for further proceedings on defendant's motion to withdraw his guilty plea where defense counsel failed to strictly comply with her obligations under Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 2 Pursuant to a negotiated plea, defendant Mazen Jubeh pled guilty to home invasion with a firearm (720 ILCS 5/12-11(a)(3) (West 2008)) and stalking (720 ILCS 5/12-7.3(a)(1) (West 2008)). Jubeh was sentenced to consecutive terms of 21 years' incarceration for home invasion

with a firearm and 1 year for stalking. Jubeh subsequently filed a *pro se* petition to withdraw his guilty plea, and later retained postplea counsel to present an amended motion to withdraw the plea. Following a hearing on the matter, the circuit court denied Jubeh's amended motion to withdraw the guilty plea. On appeal, Jubeh contends his postplea counsel failed to strictly comply with her obligations under Supreme Court Rule 604(d) (eff. July 1, 2006), when counsel did not include specific language in her certificate that she examined the full trial court file and the report of proceedings regarding the guilty plea. For the following reasons, we reverse and remand the matter for further proceedings consistent with this order.

¶ 3 BACKGROUND

¶ 4 On January 18, 2009, at approximately 8 or 9 p.m., Amanda Collier was at her home at 4453 West Cortez in Chicago with her sister Angelica Rios, Walton Garcia, and her son. Jubeh, wearing a mask and brandishing a handgun, forcibly entered Collier's apartment. Garcia shot Jubeh, who then fled the scene. Collier telephoned 911 and police responded to that location. Collier had known Jubeh for two years, but she did not give him permission or authority to enter her residence. Jubeh had previously telephoned Collier on December 28, 2008, and January 28, 2009, and threatened Collier with future bodily harm on both occasions.<sup>1</sup> On August 10, 2011, Jubeh returned to Collier's residence and pounded on her door.

¶ 5 Jubeh was charged with two counts of home invasion, one count of armed violence, one count of residential burglary, and one count of stalking. On May 3, 2012, Jubeh pled guilty to one count of home invasion with a firearm and one count of stalking. The circuit court found Jubeh's plea to be knowing and voluntary. The circuit court entered judgment on the plea and

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<sup>1</sup> Defendant was incarcerated in the Cook County jail on the later date.

sentenced Jubeh to the minimum term of imprisonment of 21 years for the home invasion with a firearm, and to the minimum term of imprisonment of 1 year sentence for the stalking, with the sentences to run consecutively.<sup>2</sup>

¶ 6 Jubeh subsequently filed a *pro se* petition to withdraw his guilty plea and vacate sentence. Jubeh alleged that his trial counsel was "very inadequate" and the plea was involuntary and a result of "coercion." Jubeh's petition included a notarized affidavit indicating the statements contained in his petition were accurate. Jubeh's petition also included a proof of service stating that he had "served a copy" of his petition by depositing it in the United States mail at the Danville Correctional Center on May 27, 2012. The proof of service was not notarized, but it was verified pursuant to section 1-109 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/1-109 (West 2010)). The petition was stamped as filed on July 2 and July 11, 2012, by the clerk of the court.

¶ 7 On June 25, 2012, during the first hearing on the motion, the circuit court stated, "I did receive a letter for Mr. Jubeh, it was postmarked May 30<sup>th</sup> of 2012, requesting that he withdraw his pleas of guilty. I will consider that as a motion, and it is timely filed." The circuit court also discussed the possible appointment of postplea counsel, but Jubeh indicated he might retain private counsel.

¶ 8 On August 23, 2012, Jubeh, through retained postplea counsel, filed an amended motion to withdraw his guilty plea. The amended motion alleged that Jubeh was coerced into pleading guilty by his trial attorney. Specifically, Jubeh contended that "he was misled into thinking that he ha[d] no chance at trial and that he would get the maximum of 45 years at 85% if he went to

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<sup>2</sup> The transcript indicates that the minimum sentence for stalking was the condition of Jubeh's plea.

trial." He also alleged that he wanted his trial counsel to "hire an expert to examine the trajectory of his bullet wounds to show the vantage point of the shooter victim in this matter."

Additionally, Jubeh wanted his trial counsel "to have the firearm found at the scene, that is allegedly to be the Defendant's, examined for finger print [sic] of the victims." All of these requests, however, "went unanswered."

¶ 9 As required by Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), postplea counsel attached a certificate to the amended petition. Postplea counsel's certificate stated:

"(1) I have consulted with the Defendant by phone to ascertain his contentions of error in the entry of the plea of guilty; (2) I have examined all discovery and transcripts for the hearing on the motion to suppress statements; and (3) I have made such amendments to the motion as are necessary for an adequate presentation of any defects in those proceedings."

¶ 10 On October 1, 2012, the State filed a response to Jubeh's motion, asserting in part that Jubeh's initial petition to withdraw the guilty plea was not timely filed. The State also contended that Jubeh's trial counsel "properly took into consideration all of the defendant's wishes for pre-trial investigation, and only after their investigation was complete did they determine that all avenues had been exhausted."

¶ 11 On November 1, 2012, the circuit court conducted a hearing on Jubeh's amended motion to withdraw the guilty plea, at which time defense counsel clarified the motion only involved the home invasion charge. During the hearing, the circuit court indicated that the issue of whether the initial petition was timely filed was "moot" and "had already been decided."

¶ 12 Jubeah testified it was his belief that if trial counsel conducted his requested investigations, the evidence would have shown that he did not have a handgun with him, and that he was shot from the third floor while he stood outside. Jubeah also testified that he only pled guilty because counsel claimed she had nothing to argue in his defense, and he would most likely be found guilty and be sentenced to 45 years' incarceration if he went to trial.

¶ 13 The State presented testimony from Jubeah's trial counsel, who denied Jubeah's allegations, maintained that she never forced Jubeah to plead guilty, and testified that he decided to plead guilty on his own accord. She also testified she advised Jubeah that, given the facts of his case, he would most likely be found guilty and that he would face a higher sentence than what he was being offered through the plea agreement. Counsel further testified that she had spoken with two doctors who informed her it would not be possible for them to establish the trajectory of the bullets that struck Jubeah. She additionally explained that she prefers not to have guns checked for fingerprints as a matter of trial strategy.

¶ 14 Following arguments from counsel, the circuit court denied Jubeah's motion, finding "no basis in fact or law to be allowed to withdraw this guilty plea." On November 30, 2012, Jubeah filed a timely notice of appeal to this court. While this matter was pending on appeal, Jubeah filed a motion in the Illinois Supreme Court pursuant to Supreme Court Rule 383 (eff. Dec. 29, 2009), requesting that the court issue a supervisory order to direct this court to treat the appeal as properly perfected.<sup>3</sup> Our supreme court subsequently entered a supervisory order directing this court to treat Jubeah's motion to withdraw his guilty plea, date-stamped on July 11, 2012, as

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<sup>3</sup> This court's copy of the motion is not date-stamped.

timely filed when considering Jubeh's appeal in this matter. *Jubeh v. Hall*, No. 117115 (Jan. 13, 2014).

¶ 15

#### ANALYSIS

¶ 16 On appeal, Jubeh contends his postplea counsel failed to strictly comply with her obligations under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), when counsel did not include specific language in her certificate that she examined the full trial court file and the report of proceedings regarding the guilty plea. The State initially responded that the circuit court lacked jurisdiction to address Jubeh's postplea motion because it was untimely, and thus this court must dismiss defendant's appeal for lack of jurisdiction. The supervisory order from our supreme court, however, directs us to treat Jubeh's postplea motion as timely filed. *Jubeh v. Hall*, No. 117115 (Jan. 13, 2014). We therefore turn to address the merits of Jubeh's contention that his postplea counsel failed to strictly comply with her obligations under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 24 The main purpose of Rule 604(d) is to ensure that any improper conduct or other alleged improprieties during the guilty plea proceedings are brought to the attention of the trial court before an appeal is taken. *People v. Tousignant*, 2014 IL 115329, ¶ 16. Rule 604(d) provides:

"The 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).

"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. Dryden*, 2012 IL App (2d) 110646, ¶ 4 (quoting *People v. Love*, 385 Ill. App. 3d 736, 737 (2008)). "The certificate itself is all this court will consider to determine compliance with Rule 604(d)." *People v. Neal*, 403 Ill. App. 3d 757, 760 (2010). "While strict compliance does not require that the language of the rule be recited verbatim in the certificate, some indication must be presented that counsel performed the duties required under the rule." *People v. Richard*, 2012 IL App (5th) 100302, ¶ 10. "The question of whether defense counsel complied with Rule 604(d) is subject to *de novo* review." *People v. Grice*, 371 Ill. App. 3d 813, 815 (2007); see *People v. Hayes*, 336 Ill. App. 3d 145, 147 (2002).

¶ 25 In this case, defense counsel filed a certificate that complied with only two of the three requirements of Rule 604(d). Specifically, postplea counsel failed to include a statement that she had "examined the trial court file and report of proceedings of the plea of guilty." Counsel did include a statement that she had "examined all discovery and transcripts for the hearing on the motion to suppress." The State suggests that the transcripts from the suppression hearing necessarily included the report of proceedings on defendant's plea of guilty because he abandoned his motion and pled guilty on the date that was initially scheduled for the completion of his suppression hearings. In other words, when postplea counsel wrote that she examined the "transcripts for the hearing on the motion to suppress" she also meant that she examined the report of proceedings of defendant's guilty plea because the suppression hearing ultimately

became defendant's guilty plea hearing. Therefore, postplea counsel examined the record as required under Rule 604(d).

¶ 26 It is not clear from the record, however, whether counsel actually examined the entire record as required under Rule 604(d). Because the certificate, on its face, does not state whether counsel examined the entire trial court file and report of proceedings of the plea of guilty, we cannot simply assume that this was done. See *Neal*, 403 Ill. App. 3d at 760. Thus, we conclude that counsel failed to strictly comply with her obligations under Rule 604(d). The remedy for failing to strictly comply with Rule 604(d) is to remand the matter to the circuit court for: (1) the filing of a proper Rule 604(d) certificate; (2) the opportunity to file a new motion to withdraw the defendant's guilty plea and/or reconsider sentence, if counsel determines that new motion is necessary; and (3) a new motion hearing. *People v. Lindsay*, 239 Ill. 2d 522, 531 (2011).

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the circuit court of Cook County is reversed and the cause is remanded to the circuit court for: (1) the filing of a proper Rule 604(d) certificate; (2) the opportunity to file a new motion to withdraw the defendant's guilty plea and/or reconsider sentence, if counsel determines that new motion is necessary; and (3) a new motion hearing.

¶ 29 Reversed and remanded with directions.