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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. 11-CF-1583
)	
MYRANCE L. THOMAS,)	Honorable
)	Susan Clancy Boles,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court violated Rule 604(d) by denying defendant's motion to withdraw his guilty plea before providing him with a transcript of the guilty-plea hearing: thus, we vacated the denial and remanded the cause for new postplea proceedings.

¶ 2 Defendant, Myrance L. Thomas, appeals from the judgment of the circuit court of Kane County denying his *pro se* motion to withdraw his guilty plea. Because the trial court failed to provide defendant with the transcript of the guilty-plea hearing before ruling on his motion to withdraw his guilty plea, we vacate and remand.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on one count of unlawful delivery of cocaine (count I) (720 ILCS 570/401(a)(2)(A) (West 2010)) and one count of unlawful possession with the intent to deliver cocaine (count II) (720 ILCS 570/401(a)(2)(A) (West 2010)).

¶ 5 In August 2011, a private attorney, Reginald Campbell, who represented defendant in a separate case (No. 10-CF-1248), filed his appearance for defendant in this case. On May 9, 2013, defendant pled guilty to count II, and count I was dismissed by agreement.

¶ 6 On July 26, 2013, the trial court sentenced defendant to 10 years' imprisonment. Before sentencing defendant, the court advised him that he had the right to an appeal. The court explained that before filing any appeal he must file a motion to reconsider his sentence or a motion "to have the judgment vacated and for leave to withdraw [his] plea of guilty." The court added that, if defendant were deemed indigent and could not afford an attorney, one would be appointed and a "copy of the transcript of the proceedings [would] also be provided to [him] without cost." Defendant acknowledged that he understood his "appeal rights."

¶ 7 On August 9, 2013, defendant, who was still represented by Campbell, filed a *pro se* motion to withdraw his guilty plea, in which he contended that Campbell had been ineffective for allowing him to plead guilty when he knew that defendant's speedy-trial rights had been violated.

¶ 8 On September 11, 2013, Campbell moved to withdraw as counsel, contending that he had a conflict of interest based on defendant's assertion of his ineffectiveness in the motion to withdraw the guilty plea. Campbell stated to the trial court that he believed that defendant would be seeking appointed counsel from the MDD¹ unit, as defendant was also claiming in his motion

¹ MDD refers to the Multiple Defendants Division of the Kane County public defender's office. See *People v. Stanford*, 2011 IL App (2d) 090420, ¶ 5.

to withdraw his guilty plea that the public defender who “previously represented [defendant]” was ineffective. Defendant told the court that he did not object to Campbell withdrawing, and the court granted Campbell’s motion to withdraw. The court entered a written order appointing the MDD to represent defendant.

¶ 9 After his motion to withdraw as counsel was granted, Campbell asked the trial court if it needed “the transcripts from the date that [defendant] entered into [his guilty plea].” The court responded that it was going to take a break “to go ahead and read this.” It added that it “[did not] know what it allege[d]” and that it would “have to take a look and see.” The court then asked Campbell if he would be around that morning, and Campbell said that he would be on the second floor. The court stated that “[d]epending on what [it saw there it] might need [Campbell’s] presence [that] morning” and that it would contact Campbell if it needed him.

¶ 10 Defendant then stated that he was not prepared to proceed on his motion to withdraw his guilty plea, and the trial court granted him a one-week continuance. The court stated that it “need[ed] to take a look to see if [it] need[ed] anything with regard to this.” The court explained to defendant that if it “need[ed] some additional transcripts or something, then [it was] going to vacate [its] order and give it enough time so that [it could] get the transcripts.” The court told defendant that he would be given “copies and notice with regard to that.”

¶ 11 On September 18, 2013, the trial court conducted a hearing on defendant’s motion to withdraw his guilty plea. Initially, Greg Brown of the MDD reminded the court that the MDD had been appointed. Brown stated that he had received a copy of defendant’s motion to withdraw his guilty plea but that he had not yet reviewed the case file. He added that he had “to order the plea transcript at [that] point as well.” In discussing scheduling, the court stated to

Brown that it might take six to eight weeks “[t]o get the transcripts that [Brown] would like to look at.”

¶ 12 Defendant then stated that he did not want Brown to represent him and that he was prepared at that time to proceed *pro se* on his motion to withdraw his guilty plea. Therefore, the trial court discharged Brown. After discharging Brown, the court proceeded on defendant’s motion to withdraw his guilty plea. The court found that there was no speedy-trial violation and therefore counsel was not ineffective for not raising such a claim and for allowing defendant to plead guilty. Thus, the court denied the motion to withdraw the guilty plea, and defendant filed a timely notice of appeal.

¶ 13

II. ANALYSIS

¶ 14 On appeal, defendant contends the following: (1) that the trial court failed to comply with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before it discharged counsel and allowed him to represent himself at the hearing on his motion to withdraw his guilty plea; (2) that the trial court failed to comply with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013) when it allowed defendant to proceed *pro se* at the hearing on his motion to withdraw his guilty plea; (3) that the trial court failed to comply with Rule 604(d) when it denied the motion to withdraw the guilty plea without first providing a free transcript of the guilty-plea hearing; and (4) that the trial court failed to comply with Illinois Supreme Court Rule 605(b)(5) (eff. Oct. 1, 2001) when it did not admonish defendant of his right to a free transcript of the guilty-plea hearing.

¶ 15 Because it is dispositive of this appeal, we need address only defendant’s contention that the trial court violated Rule 604(d) by failing to provide him with a free transcript before proceeding on his *pro se* motion to withdraw his guilty plea. Rule 604(d) is a rule of procedure, not a suggestion, and it is to be strictly followed. *People v. Holliday*, 313 Ill. App. 3d 1046,

1060 (2000) (citing *People v. Wilk*, 124 Ill. 2d 93, 103 (1988)); *People v. Denson*, 243 Ill. App. 3d 55, 59-60 (1993). Rule 604(d) provides, in pertinent part, that if a defendant is indigent the court shall order a copy of the transcript of the guilty-plea hearing and provide it to the defendant at no cost. Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). More importantly, a failure to provide a transcript before a hearing on a motion to withdraw a guilty plea entitles the defendant to file a new motion to withdraw his guilty plea and to have a new hearing on his motion. *Holliday*, 313 Ill. App. 3d at 1060; *Denson*, 243 Ill. App. 3d at 62.

¶ 16 In this case, the State contends that defendant was not indigent and therefore was not entitled to a free copy of the transcript of the guilty-plea hearing. Alternatively, the State maintains that Rule 604(d) was not violated as defendant's private counsel had a copy of the transcript. For the following reasons, both of those assertions fail.

¶ 17 As to defendant's indigency, the record shows that, although defendant had been represented by private counsel up to the time that he filed his motion to withdraw his guilty plea, Campbell was allowed to withdraw after defendant filed his motion. During that proceeding, Campbell expressed his belief that defendant would be seeking appointed counsel from the MDD. Indeed, on that date, the court entered an order appointing the MDD to represent defendant.

¶ 18 Although there was no express determination regarding defendant's indigency, it is apparent that the trial court would not have appointed the MDD as counsel absent a determination that defendant was indigent. Therefore, that requirement of Rule 604(d) was satisfied.

¶ 19 As to whether a transcript was actually provided to defendant, we disagree with the State that the record "unequivocally" shows that the transcript had been prepared and that defendant's

former counsel (Campbell) possessed it. Instead of simply offering to provide the transcript to the court, Campbell asked the court if it would need a transcript. That suggests that Campbell did not yet have a transcript. Additionally, the court responded that it would contact Campbell if it needed a transcript. That likewise implies that a transcript had not yet been prepared. Our conclusion is reinforced by Brown's comments that he did not have a transcript and that he would need time to order it. At the very least, the record does not establish that the transcript had been prepared or that it was possessed by defendant's former counsel.

¶ 20 More importantly, even if Campbell had a copy of the transcript, there is no indication that defendant had a copy. As a *pro se* defendant, he needed to have the transcript to effectively prepare and present his motion to withdraw his guilty plea. See *Denson*, 243 Ill. App. 3d at 61-62. Therefore, the failure to provide a copy to defendant violated Rule 604(d). Thus, defendant is entitled to file a new motion to withdraw his guilty plea and to a new hearing. See *Holliday*, 313 Ill. App. 3d at 1060; *Denson*, 243 Ill. App. 3d at 62. On remand, the trial court shall comply with Rule 604(d) and, if necessary, Rule 401(a).

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we vacate the judgment of the circuit court of Kane County denying defendant's motion to withdraw his guilty plea, and we remand this cause.

¶ 23 Vacated and remanded.