

2015 IL App (2d) 131272-U
No. 2-13-1272
Order filed November 24, 2015

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 Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-1366
)	
PAULINO LEDEZMA,)	Honorable
)	Thomas J. Stanfa,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defense counsel's Rule 604(d) certificate was deficient: counsel did not state that he had ascertained defendant's contentions of error; instead, he stated that he had ascertained only that no additional contentions should be included in his motion.
- ¶ 2 Defendant, Paulino Ledezma, pleaded guilty in the circuit court of Kane County to a single count each of failure to stop following an accident involving personal injury (failure to stop) (625 ILCS 5/11-401(a) (West (2010))), aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(d)(2)(A) (West 2010))), and driving while his license was revoked (DWLR) 625 ILCS 5/6-303(a) (West 2010))). In exchange for defendant's plea, the State

nol-prossed other charges. There was no agreement, however, as to defendant's sentence. The trial court sentenced defendant to concurrent prison terms of 10 years for aggravated DUI, 4 years for DWLR, and 2 years for failure to stop. Defendant unsuccessfully moved to withdraw his guilty plea, and this appeal followed. Defendant argues that the certificate filed by his attorney pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013) was deficient and that the case must be remanded for further proceedings relative to his motion to withdraw. We agree, and we therefore vacate the denial of defendant's motion and remand the case to the trial court for further proceedings.

¶ 3 When defendant entered his guilty plea, he was represented by Kim Bilbrey, an assistant Kane County public defender. Bilbrey filed the motion to withdraw defendant's guilty plea on defendant's behalf. The motion alleged, *inter alia*, that defendant "wishes to raise some form of an Ineffective Assistance of Counsel claim with respect to defense counsel's representation." Along with the motion to withdraw defendant's guilty plea, Bilbrey filed a notice stating that "the Kane County Public Defender's Office has determined that a conflict exists in representing [defendant] and has re-assigned the client to be represented by the Multiple Defendant's Division of the Kane County Public Defender's Office."

¶ 4 Thereafter, defendant's new attorney, Gregory Brown, filed an amended motion to withdraw defendant's guilty plea. Along with the motion, Brown filed a Rule 604(d) certificate stating, in pertinent part, as follows:

"1. That the defendant, through prior counsel, filed his motion to withdraw his plea of guilty ***.

2. That counsel has reviewed the motion filed by the defendant.

3. That counsel has reviewed the transcript of record of the plea hearing and entry of the sentence and sentence [*sic*] before the Honorable Judge Stanfa.

4. That counsel has reviewed the written record in this cause.

5. That counsel has consulted in writing with the defendant and has ascertained that there are no additional allegations of error which counsel believes should be raised, other than those which are included in the Amended Motion to Withdraw Plea of Guilty ***.”

¶ 5 Rule 604(d) provides, in pertinent part, as follows:

“No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment. *** The trial court shall *** determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel. *** 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. Feb. 6, 2013).

An attorney representing a criminal defendant in proceedings on a postplea motion must file a certificate that strictly complies with Rule 604(d). See *People v. Janes*, 158 Ill. 2d 27, 35 (1994). Where counsel fails to do so, the case must be remanded for further proceedings. *Id.* at 33. To

strictly comply with Rule 604(d) the certificate must indicate that counsel has consulted with the defendant to ascertain the defendant's contentions of error in *both* the sentence *and* the entry of the plea of guilty. *People v. Tousignant*, 2014 IL 115329, ¶ 20. This is true regardless of the type of postplea motion the defendant has filed. *Id.* ¶ 21. Hence, in *Tousignant*, even though the defendant had moved only to reconsider his sentence, counsel was required to certify that he consulted with the defendant to ascertain the defendant's contentions of error in both the sentence and the entry of the plea. *Id.* ¶ 22.

¶ 6 Here defendant argues that Brown's certificate is deficient because, although Brown certified that he consulted with defendant, he did not specify the subject matter of the consultation. Whereas Rule 604(d) provides that counsel must certify that he or she consulted with the defendant "to ascertain defendant's contentions of error in the sentence or the entry of the plea of guilty" (Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013)), Brown's certificate states that he "consulted *** with the defendant and has ascertained that there are no additional allegations of error which counsel believes should be raised, other than those which are included in the Amended Motion to Withdraw Plea of Guilty." The certificate does not indicate whether Brown ascertained *defendant's contentions of error*. Defendant contends that, in violation of the rule announced in *Tousignant*, Brown "failed to certify that he consulted with the defendant regarding the defendant's contentions of error in either the guilty plea or the sentence."

¶ 7 The State responds that strict compliance with Rule 604(d) does not require counsel to recite the language of the rule *verbatim*. See *People v. Mineau*, 2014 IL App (2d) 110666-B, ¶ 16 (citing *People v. Wyatt*, 305 Ill. App. 3d 291, 297 (1999)). The State notes that Brown certified that he had read the motion filed by Bilbrey to withdraw defendant's guilty plea and the transcripts of the plea and sentencing proceedings, and it concludes that, "[i]n the context of

having read those documents,” counsel certified that he consulted with defendant and ascertained that there were no other issues that should be raised. According to the State, “[i]n context, it is clear that defense counsel had consulted with defendant about any contentions of error in both the guilty plea and the sentencing hearings.”

¶ 8 Less clear, however, is whether, in the course of consulting with defendant by mail, Brown ever sought to ascertain *defendant’s* contentions of error. Brown stated that *he* ascertained that there were no “additional allegations of error that [*he*] believed should be raised.” Brown might very well have reached that conclusion after asking defendant to detail the errors that defendant thought had occurred. On the other hand, Brown’s certificate might signify only that, upon review of the plea and sentencing proceedings, Brown discovered no additional errors that would be grounds either for withdrawal of defendant’s plea or for reduction of defendant’s sentence. The problem with the certificate is not that it does not track Rule 604(d)’s language verbatim. Rather the problem is that it is not clear that the alternative language counsel chose has the same *meaning* as the language of the rule. “Context” is not a semantic panacea. Brown did not strictly comply with Rule 604(d).

¶ 9 *Wyatt* does not affect our conclusion that Brown’s certificate is deficient. In *Wyatt*, the defendant complained that counsel’s Rule 604(d) certificate did not indicate that counsel fulfilled his duty to make necessary amendments to the motion. The somewhat clumsily drafted Rule 604(d) certificate stated, in pertinent part, that counsel “ ‘examined the trial court file and report of proceedings of the plea of guilty and the sentencing for of [*sic*] making any amendments necessary for an adequate presentation of any defects in the proceedings; and that the defendant would offer no amendments *to either the court file or the report of proceedings.*’ (Emphasis added.)” *Wyatt*, 305 Ill. App. 3d at 296. We essentially ignored the emphasized language as

surplusage. *Id.* at 297. Noting that counsel had certified that he “reviewed the court file and the report of proceedings in order to make ‘any amendments necessary for an adequate presentation of any defects in the proceedings,’ ” we deemed it “inappropriate to read counsel’s statement as saying that he examined the record for making any amendments necessary for an adequate presentation of the motion but then failed to make any necessary amendments.” *Id.*

¶ 10 As we read *Wyatt*, the decision stands for the principle that the strict-compliance standard does not forbid a court from considering the natural implications of the language used in a Rule 604(d) certificate. Although we have no quarrel with that general principle, there is no meaningful parallel between the language at issue in *Wyatt* and that at issue here. Here, despite counsel’s Rule 604(d) certificate, the process by which counsel determined what issues to raise on defendant’s behalf—and defendant’s role in that process—remain unacceptably opaque.

¶ 11 This case is also unlike *People v. Luna*, 2015 IL App (2d) 140983, where we held that counsel satisfied Rule 604(d)’s consultation requirement by certifying that he consulted with the defendant to ascertain his “contentions of error,” even though counsel did not *expressly* state whether the consultation pertained to sentencing errors, errors in the entry of the plea, or both types of errors. We reasoned that, in the absence of language limiting the scope of consultation to a particular category of error, “[t]he natural import of the certificate’s unqualified language is that the consultation broadly encompassed both types of error that the postplea proceedings were designed to redress.” *Id.* ¶ 6. The result in *Luna* depended on counsel’s certification that he consulted with the defendant “to ascertain ‘his contentions of error.’ ” (Emphasis added.) *Id.* ¶ 3. It is in precisely this respect that the certificate in this case is deficient. Accordingly, we must vacate the denial of defendant’s motion to withdraw his guilty plea and remand for proceedings in strict compliance with Rule 604(d).

¶ 12 For the foregoing reasons, we vacate the denial of defendant's motion to withdraw his plea and remand the cause to the circuit court of Kane County for "(1) the filing of a [valid] Rule 604(d) certificate; (2) the opportunity to file a new motion to withdraw the guilty plea and/or reconsider the sentence, if counsel concludes that a new motion is necessary; and (3) a new motion hearing." *People v. Lindsay*, 239 Ill. 2d 522, 531 (2011).

¶ 13 Vacated and remanded.