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2015 IL App (3d) 130114-U

Order filed May 15, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0114
DAVID BINION,)	Circuit No. 12-CF-72
Defendant-Appellant.)	Honorable Walter D. Braud, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* Cause remanded for further proceedings for failure to comply with Illinois Supreme Court Rules 604(d) and 605(b).
- ¶ 2 Defendant, David Binion, pled guilty to criminal sexual assault (720 ILCS 5/11-1.20(a)(2) (West 2010)) and residential burglary (720 ILCS 5/19-3(a) (West 2010)) through an open plea. The trial court sentenced him to consecutive 12-year sentences of incarceration. Defendant filed a motion to withdraw his guilty plea and vacate the judgment, which the court denied. Defendant appeals, arguing that postplea proceedings failed to comply with Illinois

Supreme Court Rules 604(d) (eff. July 1, 2006) and 605(b) (eff. Oct. 1, 2001). We remand for new postplea proceedings under Rules 604(d) and 605(b).

¶ 3

FACTS

¶ 4

Defendant was charged with home invasion (720 ILCS 5/12-11(a)(6) (West 2010)), criminal sexual assault (720 ILCS 5/11-1.20(a)(2) (West 2010)), and two counts of residential burglary (720 ILCS 5/19-3(a) (West 2010)). The information alleged that he entered the home of the victim, stole personal items and money, and digitally penetrated the sleeping victim's vagina, as the victim's daughter slept in another room. Defendant and the State entered a plea agreement, whereby defendant would plead guilty to criminal sexual assault and one count of residential burglary, while the State dismissed the other two charges. The plea agreement was left open as to sentencing.

¶ 5

At the guilty plea hearing, the State explained that the sentencing range for each count was 4 to 15 years. Defendant would be required to serve at least 85% of whatever sentences he received, and the two sentences were required to run consecutively. The court accepted the plea. On the written plea, "4-15 85%" was notated next to the charge of criminal sexual assault, and "day for day" was next to the charge of residential burglary. The word "consecutive" was written just underneath the two notes.

¶ 6

The cause proceeded to a sentencing hearing. The State recommended a sentence of the maximum on both counts, or if not the maximum, at least 10 years' incarceration on each count. The court sentenced defendant to 12 years' incarceration on each count, to be served consecutively.

¶ 7

After sentencing defendant, the court began to admonish him of his appeal rights under section (b) of Illinois Supreme Court Rule 605 (eff. Oct. 1, 2001). Defense counsel informed the

court that admonishments were proper under section (c) of Rule 605, not section (b), because the plea agreement was partially negotiated, in that it required the State to dismiss two charges. The court gave complete admonishments under section (c).

¶ 8 Defendant, through counsel, filed a motion to withdraw his guilty plea, arguing that his sentence was excessive and that counsel failed to advise him of the applicable sentencing range. Defense counsel filed a motion to withdraw as counsel, citing the potential conflict of interest should he be called as a witness during the hearing on the motion to withdraw guilty plea. No certificate was filed under Rule 604(d). Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 9 At a hearing on the two motions, defense counsel recommended that new counsel be appointed to represent the defendant. The State responded that both motions should be denied, describing defendant's arguments as "buyer's remorse." The court found that defendant was properly admonished before entering his plea. Defense counsel argued that defendant's motion addressed matters outside the report of proceedings. The court seemingly agreed, stating, "I don't know what was said between [defense counsel] and [defendant]," but found that the admonishments in court were numerous and clear. The court denied defendant's motion to withdraw his plea. Defendant appeals.

¶ 10 ANALYSIS

¶ 11 On appeal, defendant raises three claims of error concerning the postplea proceedings: (1) the trial court erred by admonishing defendant under section (c) of Rule 605 rather than section (b); (2) the court and parties failed to comply with Rule 604(d), as no certificate was filed, and new counsel was not appointed; and (3) the court erred by not holding an evidentiary hearing on defendant's claims of ineffective assistance of counsel. Defendant requests that we remand the cause for *de novo* postplea proceedings, including Rule 605(b) admonishments, appointment of

new counsel, compliance with Rule 604(d), and an evidentiary hearing on defendant's postplea claims of error.

¶ 12 The State concedes that the failure to comply with Rule 604(d) requires remand for further proceedings. See *People v. Janes*, 158 Ill. 2d 27, 33 (1994). The State also agrees that defendant should have been admonished under Rule 605(b).

¶ 13 We agree that the cause must be remanded for admonishments under Rule 605(b) and compliance with Rule 604(d), including the appointment of counsel if defendant is indigent and desires counsel. See Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). The trial court's decision denying defendant's motion to withdraw his guilty plea is vacated.

¶ 14 CONCLUSION

¶ 15 The judgment of the circuit court of Rock Island County is affirmed in part and vacated in part, and the cause is remanded for further postplea proceedings.

¶ 16 Affirmed in part and vacated in part; cause remanded.