

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).

2015 IL App (4th) 130590-U

NO. 4-13-0590

IN THE APPELLATE COURT  
OF ILLINOIS

**FILED**

June 10, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
JOHNNY WILSON,	)	No. 10CF337
Defendant-Appellant.	)	
	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Knecht and Holder White concurred in the judgment.

**ORDER**

- ¶ 1     *Held:* The appellate court remanded with directions, concluding a new hearing on defendant's motion to withdraw his guilty plea was required.
- ¶ 2         In June 2012, defendant, Johnny Wilson, pleaded guilty to one count of home invasion and one count of aggravated criminal sexual abuse. Defendant thereafter filed a motion to withdraw his guilty plea, which the trial court denied after a full hearing on the matter. Defendant appealed, and in May 2013, we issued a summary order remanding to the trial court for strict compliance with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). In July 2013, defense counsel filed a corrected Rule 604(d) certificate. Defendant appeals, arguing the trial court violated this court's remand order and Rule 604(d), as interpreted by the Illinois Supreme Court in *People v. Lindsay*, 239 Ill. 2d 522, 942 N.E.2d 1268 (2011), when it failed to conduct a new hearing on his motion to withdraw his guilty plea. We remand with directions.

¶ 3

## I. BACKGROUND

¶ 4        In June 2012, defendant pleaded guilty to one count of home invasion (720 ILCS 5/12-11(a)(2) (West 2008)) and one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2008) (now codified at 720 ILCS 5/11-1.60(d) (West 2010)) based on an incident of June 28, 2010. In July 2012, prior to sentencing, defendant, through his plea counsel, filed a motion to withdraw his guilty plea. Plea counsel thereafter withdrew, and the trial court appointed new counsel, who filed an amended motion to withdraw defendant's guilty plea in October 2012. In November 2012, defendant's amended motion proceeded to an evidentiary hearing, where both defendant and his plea counsel testified. Following the hearing, the trial court denied defendant's motion to withdraw his guilty plea and sentenced defendant according to the plea agreement.

¶ 5

      In December 2012, defense counsel renewed his amended motion to withdraw defendant's guilty plea. In February 2013, defense counsel filed a Rule 604(d) certificate stating he had consulted with defendant "to ascertain his contentions of error." The trial court then conducted a new hearing and denied defendant's amended motion to withdraw his guilty plea. Defendant appealed and filed a motion for summary remand, arguing defense counsel's Rule 604(d) certificate failed to specify he had consulted with defendant about errors in both the plea proceedings and the sentence. We agreed, and in May 2013, we remanded to the trial court "for the filing of a corrected Rule 604(d) certificate indicating consultation about errors in both the plea and the sentence, the opportunity to file a new postplea motion, if counsel concludes that a new motion is necessary, a hearing on the motion, a new judgment, and strict compliance with requirements of Rule 604(d)." No. 4-13-0158 (dismissed by summary order under Supreme Court Rule 23(c)(2)).

¶ 6 In July 2013, defense counsel filed a "corrected" Rule 604(d) certificate and indicated he would not be filing a new motion to withdraw defendant's guilty plea. On July 9, 2013, during a proceeding referred to as a "status hearing" by the trial court, defense counsel stated,

"As I understand the remand there was also a suggestion that if counsel thought that a new motion was necessary I was to file such a motion. I would state at this point for the record I do not believe a new motion is necessary because, as I recall, \*\*\* you know, I had made amendments previously and we had very a [sic] extensive hearing at which Mr. Wilson had testified, I believe he— virtually everything he thought had been fraud about those proceedings, and so it is my opinion that there is nothing more to be added to this record other than the certificate."

¶ 7 The trial court responded, "Fair enough," accepted defense counsel's new Rule 604(d) certificate, and noted for the record it had denied defendant's original motion in February 2013.

¶ 8 This appeal followed.

## II. ANALYSIS

¶ 10 Defendant argues the proceedings on remand failed to comply with this court's mandate and the requirements of Rule 604(d) as interpreted by the Illinois Supreme Court in *Lindsay* (239 Ill. 2d 522, 942 N.E.2d 1268). Specifically, defendant claims he was entitled to a new hearing on his motion to withdraw his guilty plea. The State argues neither this court's order nor *Lindsay* requires a second hearing be held on the already argued and decided motion.

It further contends such an exercise would be "an empty and wasteful formality." See *People v. Shirley*, 181 Ill. 2d 359, 370, 692 N.E.2d 1189, 1195 (1998). For the following reasons, we agree with defendant.

¶ 11            Rule 604(d) provides 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."

Compliance with Rule 604(d) is a question of law, which we review *de novo*. *Lindsay*, 239 Ill. 2d at 525, 942 N.E.2d at 1270.

¶ 12        In *Lindsay*, the supreme court was tasked with clarifying its prior decision in *People v. Janes*, 158 Ill. 2d 27, 630 N.E.2d 790 (1994) (*Janes I*), and determining whether the filing of a new motion is always required upon remand for strict compliance with Rule 604(d). In *Janes I*, the court stated the appropriate remedy when defense counsel fails to file a Rule 604(d) certificate is "to allow defendant to file a new motion to withdraw his guilty plea and for a hearing on that motion in full compliance with Rule 604(d)." (Emphasis added.) *Janes I*, 158 Ill. 2d at 36, 630 N.E.2d at 794. The *Lindsay* court ultimately concluded this language from *Janes I* was permissive and the filing of a new motion upon remand for strict compliance with Rule 604(d) is optional. *Lindsay*, 239 Ill. 2d at 531, 942 N.E.2d at 1274.

¶ 13        Although the *Lindsay* court did not specifically address the issue of whether a new hearing is required, it looked to language from *People v. Janes*, 168 Ill. 2d 382, 386, 660 N.E.2d 980, 982 (1996) (*Janes II*), which clarified the court's earlier remand in *Janes I* was for a "new hearing on the motion to withdraw the guilty plea." The *Lindsay* court found this language from *Janes II* significant and stated:

"In other words, less than one year later and in the context of the very same case, this court described [*Janes I*] as requiring only a Rule 604(d) certificate and a new hearing. Nowhere did the court say that the filing of a new motion was likewise required."

*Lindsay*, 239 Ill. 2d at 530, 942 N.E.2d at 1273.

¶ 14        The supreme court then concluded the appropriate remedy when defense counsel fails to file a Rule 604(d) certificate is a remand for "(1) the filing of a 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."

(Emphasis added.) *Id.* at 531, 942 N.E.2d at 1274. Thus, it appears *Lindsay* supports a finding that, on remand for strict compliance with Rule 604(d), a new hearing is required.

¶ 15 Such a view is consistent with the proposition that the filing of a Rule 604(d) certificate is a condition precedent to a hearing on the motion. *Shirley*, 181 Ill. 2d at 371, 692 N.E.2d at 1195 ("The filing [of the Rule 604(d) certificate] should precede or be simultaneous with the hearing in the trial court."); *People v. McCaskill*, 298 Ill. App. 3d 260, 267, 698 N.E.2d 690, 695 (1998) ("Strict compliance with the requirements of Rule 604(d) is required and means filing of the attorney certificate must precede or be simultaneous with the hearing on the motion in the trial court.").

¶ 16 Moreover, in the context of a remand for strict compliance with the certification requirement of Rule 604(d), we have stated, "[a]fter the Rule 604(d) certificate has been filed, the trial court *must* hold a second hearing on the motion. This is because of the well-established rule that the filing of the Rule 604(d) certificate is a condition precedent to a hearing on the motion." (Emphasis in original.) *People v. Kerkerling*, 283 Ill. App. 3d 867, 871, 671 N.E.2d 368, 371 (1996); see also *People v. Morton*, 404 Ill. App. 3d 294, 296, 936 N.E.2d 179, 181 (2010) (agreeing with the interpretation of Rule 604(d) set forth in *Kerkerling*); *People v. Davis*, 298 Ill. App. 3d 630, 633, 699 N.E.2d 591, 594 (1998) ("[O]n remand, the defendant's counsel must file a certificate of compliance and may stand on the motion already filed or file a \* \* \* new motion \* \* \*, but the trial court must conduct a new hearing on the motion."); *People v. Porter*, 258 Ill. App. 3d 200, 203, 630 N.E.2d 1350, 1353 (1994) ("[I]t was error for defense counsel and the trial court merely to rely on matters determined in defendant's prior hearing on his Rule 604(d) motion \*\*\* [s]ince the well-established rule is that the filing of the certificate is a condition precedent to a hearing on the motion to withdraw the plea[.]").

¶ 17        We note, in each of the above-mentioned cases, remand was required because defense counsel failed to file a Rule 604(d) certificate prior to the hearing on the defendant's motion. See *Kerkering*, 283 Ill. App. 3d at 869, 671 N.E.2d at 370; *Davis*, 298 Ill. App. 3d at 631, 699 N.E.2d at 593; *Morton*, 404 Ill. App. 3d at 294, 936 N.E.2d at 180; *Porter*, 258 Ill. App. 3d at 201, 630 N.E.2d at 1351. The State argues the present case is distinguishable because defense counsel filed a Rule 604(d) certificate at the appropriate time; he simply failed to include the appropriate language. Such a distinction is immaterial however, since in both instances, defense counsel has failed to strictly comply with the certification requirement of Rule 604(d). As our supreme court explained in *People v. Wilk*, 124 Ill. 2d 93, 103, 529 N.E.2d 218, 221 (1988), "[T]he rules adopted by [the supreme] court concerning criminal defendants and guilty pleas are in fact rules of procedure and not suggestions."

¶ 18        Here, because defense counsel's original certificate was deficient, remand was ordered by this court for strict compliance with Rule 604(d). Although a new hearing was required, the record from the July 9, 2013, "status hearing" indicates the trial court merely noted its prior denial of the postplea motion after defense counsel filed his corrected certificate. This was insufficient to constitute a new hearing on the motion. See *People v. Johnson*, 206 Ill. 2d 348, 358, 794 N.E.2d 294, 301 (2002) ("Black's Law Dictionary defines 'hearing' as a 'judicial session usu[ally] open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying.' Black's Law Dictionary 725 (7th ed. 1999).").

¶ 19        Accordingly, we remand for a new hearing on defendant's postplea motion at which the parties shall have the opportunity to present additional evidence and argument. The trial court may consider any evidence and argument previously presented on the motion. At the conclusion of the hearing, the trial court shall decide the motion anew. We note our suggestion

that the trial court may consider previously presented evidence and argument is at odds with *Porter*, but we find it is consistent with the procedure implicitly endorsed by the supreme court in *Lindsay*. *Lindsay*, 239 Ill. 2d at 525-26, 531, 942 N.E.2d at 1270-71, 1274.

¶ 20

### III. CONCLUSION

¶ 21        For the reasons stated, we remand for further proceedings consistent with this disposition.

¶ 22        Remanded with directions.