FILED
August 24, 2015
Carla Bender
4th District Appellate
Court, IL

NO. 4-13-0820

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JORGE L. OCHOA, Defendant-Appellant.	)))))))))	Appeal from Circuit Court of Macon County No. 91CF80 Honorable Thomas E. Griffith, Jr. Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant received the threefold remedy for defense counsel's failure to file a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013): (1) the filing of the certificate; (2) the opportunity to file a new motion to withdraw the guilty plea, to reconsider the sentence, or to do both, if defense counsel concluded a new motion was necessary; and (3) an opportunity to have a new motion hearing if such a motion was filed. Therefore, we have no reason to remand this case a third time for compliance with Rule 604(d).

¶ 2 Defendant, Jorge L. Ochoa, stipulated, in a bench trial, that the evidence was sufficient to convict him of counts I and II of the information, which charged him with unlawful possession of a controlled substance (Ill. Rev. Stat. 1989, ch. 56 1/2, ¶ 1402(a)(2)(A)) and violation of bail bond (720 ILCS 5/32-10 (West 2000)). The trial court sentenced him to consecutive prison terms of five years and three years. A Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013)) certificate was filed after two summary remands.

¶ 3 Defendant appeals because, in his view, the record affirmatively refutes the Rule 604(d) certificate. According to defendant, the refutation consists in the following discrepancy, which is apparent from the face of the record. On the one hand, it is apparent from the record that he wanted to appeal. On the other hand, it is equally apparent from the record that his appointed defense counsel filed no postplea motion, even though there could be no appeal without a postplea motion.

¶ 4 Defendant does not attempt to convince us, however, that a postplea motion would have been arguable. Unless defense counsel had objectively reasonable grounds for a postplea motion, he had no duty to file one, despite defendant's expressed desire to appeal. Because we are unaware of any reasonable basis for a postplea motion, we decline to second-guess the Rule 604(d) certificate, and we affirm the trial court's judgment.

¶ 5 I. BACKGROUND

¶ 6 In February 1991, the State charged defendant with count I of the information, unlawful possession of a controlled substance (Ill. Rev. Stat. 1989, ch. 56 1/2, ¶ 1402(a)(2)(A)).

¶ 7 In March 1991, defendant filed a motion for suppression of evidence. Before that motion was heard, however, he failed to appear. The trial court issued a bench warrant for his arrest.

¶ 8 The case lay dormant for 10 years. In 2001, when defendant reappeared, a new bond was set. In September 2001, however, he failed to appear again, and the State filed count II of the information, charging him with violation of bail bond (720 ILCS 5/32-10 (West 2000)). His bail was forfeited, and the trial court issued another bench warrant for his arrest.

¶ 9 The case went dormant again. In 2007, defendant was taken into custody.

¶ 10 In April 2009, the trial court held a hearing on the motion to suppress evidence. Defendant testified the police had no reason to pull him over in 1991. The police officer, Greg Lindemuller, testified substantially as follows. He pulled defendant over because he was missing a front license plate, and initially, he intended to let defendant off with a warning. Defendant, however, consented to a search of his car, and as Lindemuller was attempting to pat him down before searching the car, defendant kept making furtive movements into his pockets, which, Lindemuller discovered, contained cocaine. The court denied defendant's motion to suppress the evidence.

¶ 11 In June 2009, the trial court granted the State permission to file count III of the information, which charged defendant with unlawful possession of a controlled substance with the intent to deliver it (Ill. Rev. Stat. 1989, ch. 56 1/2, ¶ 1402(a)(2)(A)). Like count I, this count was based on the events of 1991.

¶ 12 In September 2009, defendant signed a waiver of a jury trial.

¶ 13 In a hearing on December 2, 2009, defendant, who was present with his privately retained attorney, David Massey, personally stipulated that the evidence was sufficient to convict him of counts I and II. On the State's motion, the trial court dismissed count III.

¶ 14 In May 2010, the trial court sentenced defendant to consecutive prison terms of five years and three years. The court admonished him that if he wished to appeal, he had to file, within 30 days, a motion to reconsider the sentence or a motion to withdraw the guilty pleas and that any issue he omitted from the motion to withdraw the guilty pleas would be regarded as forfeited on appeal.

¶ 15 Through Massey, defendant moved for a reduction of the sentences. The trial court denied the motion. Massey filed no certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 16 Defendant appealed, and the case was docketed as *People v. Ochoa*, No. 4-11-0617. On October 6, 2011, in response to a motion by defendant, with which the State agreed, we summarily remanded the case "for the filing of a [Rule] 604(d) certificate, the opportunity to file a new post-plea motion, if counsel conclude[d] that a new motion [was] necessary, a hearing on the motion, and strict compliance with requirements of Supreme Court Rule 604(d)."

¶ 17 On October 26, 2011, while still represented by Massey, defendant filed a *pro se* supplement to Massey's motion for reconsideration of the sentences. Therein, defendant argued that the alleged cocaine, seized in February 1991, had not been forensically tested; that the police had illegally detained his vehicle; and that the prosecutor had committed misconduct by filing the additional charge. The supplement requested the trial court to reduce the sentences, to grant defendant permission to withdraw his guilty pleas, and to file an appeal on his behalf. The supplement explained it was being filed because Massey had refused to answer defendant's letters and telephone calls for the past year.

¶ 18 In a status hearing in January 2012, Massey and the prosecutor questioned whether a Rule 604(d) certificate was necessary, considering that Massey had been the counsel of record during the stipulated bench trial as well as during sentencing. Even so, on that date, the trial court ordered Massey to comply with the appellate court's summary remand order in case No. 4-11-0617.

¶ 19 In April 2012, before Massey filed a Rule 604(d) certificate, the trial court granted him permission to withdraw from representing defendant, because defendant had filed a complaint against him with the Illinois Attorney Registration and Disciplinary Commission.

¶ 20 The trial court then appointed the public defender to replace Massey. An assistant public defender, Thomas Wheeler, filed a motion to withdraw defendant's *pro se* supplement to Massey's motion for reconsideration. Wheeler explained that the motion to withdraw the *pro se* supplement was at defendant's own request. He even attached a copy of the letter defendant had written him on April 23, 2012. In the letter, defendant told Wheeler:

> "So I have concluded that pursuing that motion further in Judge White's court is going to be futile since the two legal issues I'm challenging (motion to suppress evidence and leave to file extra charges—statute of limitation) in both cases the Judge ruled in favor of the prosecution. Therefore, it's highly unlikely that she would reverse her own ruling now. It could only delay further from my objective. At this time it's in my best interest to withdraw that motion to reconsider and ask the court to send the case back to the appellate court where I have a better chance to prevail."

The prosecutor reminded the court that even though the appellate court had remanded the case for compliance with Rule 604(d), he and Massey had previously agreed that a Rule 604(d) certificate actually was unnecessary. On that understanding, the trial court ordered the filing of a notice of appeal on defendant's behalf.

¶ 21 On August 6, 2012, in *People v. Ochoa*, No. 4-12-0433, we again granted defendant's agreed-upon motion for summary remand. Again we ordered: "This cause is

remanded to the circuit court for the filing of a Rule 604(d) certificate because the conviction was tantamount to a guilty plea due to the stipulation that the facts were sufficient for a finding of guilt, the opportunity to file a new post-plea motion, if counsel concludes that a new motion is necessary, a hearing on the motion, and strict compliance with requirements of Supreme Court Rule 604(d)."

¶ 22 On September 4, 2013, after the second remand, Wheeler filed a Rule 604(d) certificate, which stated as follows:

> "1. That after being appointed in these causes, he obtained and reviewed copies of Defendant's Motion to Withdraw Plea of Guilty and Vacate Judgment and Motion to Reconsider Sentence filed by Defendant.
>
> 2. That after reviewing the aforesaid Motions, he obtained and reviewed the Reports of Proceedings at the Defendant's plea and sentencing.
>
> 3. That he has conferred with Defendant regarding facts and information concerning the basis for said Motions.
>
> 4. That based upon all of the foregoing, counsel has made no amendments to the Defendant's *pro se* Motions which he believed were necessary regarding the form and content required in said Motion by Supreme Court Rule 604, *et. seq.* for the adequate presentation of Defendant's contentions."

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 A. The Law of the Case and the Applicability of Rule 604(d)

¶ 26 This direct appeal has been before us on two previous occasions.

¶ 27 On October 6, 2011, in *People v. Ochoa*, No. 4-11-0617, we granted an agreed-upon motion by defendant to summarily remand the case for compliance with the certificate requirements of Rule 604(d).

¶ 28 The certificate did not get filed. Therefore, defendant appealed a second time, and on August 6, 2012, in *People v. Ochoa*, No. 4-12-0433, we again granted an agreed-upon motion to summarily remand the case for compliance with the certificate requirements of Rule 604(d). This time, a certificate was filed.

¶ 29 Nevertheless, defendant appeals a third time. In this third appeal, he reasons that we first must decide whether the underlying proceedings were a stipulated bench trial or a guilty plea because our answer to that question will determine what law we should apply. If we view the underlying proceedings as a stipulated bench trial (which defendant regards as the better view), he argues a failure to comply with *People v. Krankel*, 102 Ill. 2d 181 (1984). Alternatively, if we view the underlying proceedings as a guilty plea, he argues that defense counsel failed to perform his obligations under Rule 604(d) and that the record refutes the certificate he filed pursuant to that rule.

¶ 30 Considering that, in our two previous decisions in this case, we remanded the case for compliance with Rule 604(d) on the stated rationale that defendant effectively pleaded guilty to counts I and II by stipulating the evidence was sufficient to convict him on those counts, does the law of the case preclude us from regarding the underlying proceedings as anything other than proceedings on guilty pleas? Generally, unless the case is before the supreme court (*People v. Sutton*, 233 Ill. 2d 89, 100 (2009)), the law of the case bars the relitigation of an issue the

appellate court previously decided in the same case. *Bjork v. Draper*, 404 Ill. App. 3d 493, 501 (2010). "Questions of law that are decided on a previous appeal are binding on the trial court on remand as well as on the appellate court in subsequent appeals." *Id.* In the second appeal (case No. 4-12-0433), we held that "the conviction was tantamount to a guilty plea due to the stipulation that the facts were sufficient for a finding of guilt." We were echoing *People v. Horton*, 143 Ill. 2d 11, 27 (1991), which held that if a defendant stipulated in a bench trial that the evidence was sufficient to convict him or her of the charged offenses, that stipulation was "tantamount to a guilty plea." The phrase "tantamount to a guilty plea" has caused confusion. *Is* the stipulation a guilty plea for purposes of Rule 604(d), or is it merely *comparable to* a guilty plea (but not really a guilty plea)? "Tantamount" means "equivalent in value, significance, or effect." Merriam-Webster's Collegiate Dictionary 1201 (10th ed. 2000). By entering into a stipulation that has the significance or effect of a guilty plea, does the defendant actually plead guilty, thereby triggering Rule 604(d)? We impliedly answered yes in the second appeal. Otherwise, we would not have remanded for compliance with Rule 604(d), which, by its terms, applies only to "a judgment entered upon a plea of guilty." Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). The applicability of Rule 604(d)—and hence, by necessary implication, the existence of guilty pleas—is an issue of law we previously decided in this case. Does the law of the case bind us to our decision on that issue?

¶ 31 The parties point out some possible avenues of escape from the law of the case. Defendant invokes what he characterizes as two exceptions to the law of the case: (1) the facts before the reviewing court have changed, and (2) the earlier decision was "palpably erroneous." *Deprizio v. MacNeal Memorial Hospital Ass'n*, 2014 IL App (1st) 123206, ¶ 19.

¶ 32 The State disagrees that our earlier decisions in this case were erroneous, let alone palpably so, but in any event, the State questions the applicability of the law-of-the-case doctrine because, according to *People v. Patterson*, 154 Ill. 2d 414, 469 (1992), "a finding of a final judgment is required to sustain application of the doctrine," and the State doubts that either of the agreed-upon summary remands qualifies as a final judgment.

¶ 33 Let us see if any of those suggested avenues of escape are passable.

¶ 34 1. *A Material Change in the Facts*

¶ 35 If the facts before the reviewing court have materially changed, there will be no occasion for any *exception* to the law of the case. Instead, the law of the case simply will be inapplicable. The issue the reviewing court previously decided presupposed a certain set of facts, and if those facts have materially changed, a different issue will be presented. *Martin v. Federal Life Insurance Co.*, 164 Ill. App. 3d 820, 825 (1987) ("When there is such an [identity] of particular issues, facts, and evidence from the first to the second appeal, the decision of the prior appeal is binding upon us on the second appeal, regardless of whether our prior decision was right or wrong." (Internal quotation marks omitted.)). We are unclear what facts have changed, let alone how the change renders inapposite our earlier decisions that a Rule 604(d) certificate was required. Defendant offers no explanation.

¶ 36 2. *Palpable Error*

¶ 37 As for the other exception that defendant invokes—palpable error—it is indeed a true exception to the law of the case. A reviewing court may depart from the law of the case if "[the] reviewing court finds that its prior decision was palpably erroneous." *Radwill v. Manor Care of Westmont, IL, LLC*, 2013 IL (2d) App 120957, ¶ 10. This exception arises, however, "only in the very rarest of situations," "when a court's prior decision was obviously or plainly

wrong." *Id.* ¶ 12. If the prior decision is "arguable," it will stand (*id.* ¶ 13), regardless of whether it is ultimately correct (*Martin*, 164 Ill. App. 3d at 825).

¶ 38 At first, it might seem obvious that Rule 604(d) is inapplicable to this case since Rule 604(d) has the heading "Appeal by Defendant From a Judgment Entered Upon a Plea of Guilty" and all one has to do is look at the docket entry of February 14, 1991, to see that defendant entered a "plea of not guilty" during his arraignment. At no point has he told the trial court, in these words: "I want to change my plea to guilty." So, one might assume this is a clear-cut case in which the plea remained not guilty.

¶ 39 But the matter is not so simple when we consider what the supreme court said in *Horton*. Discussing one of its previous decisions, *People v. Smith*, 59 Ill. 2d 236 (1974), the supreme court said:

> "The natural and ordinary meaning of the stipulation in *Smith*, *i.e.*, that 'the facts as presented are sufficient under the law to find the defendant guilty of the crime charged beyond a reasonable doubt' (*Smith*, 59 Ill. 2d at 239), *constituted a guilty plea*. Thus, the defendant was entitled to Rule 402 admonishments." (Emphasis added.) *Horton*, 143 Ill. 2d at 21.

Significantly, when the supreme court decided *Horton*, Rule 402 said nothing about stipulations that the evidence was sufficient for a conviction. Instead, Rule 402—like Rule 604(d) today—spoke only of "pleas of guilty." Ill. Rev. Stat. 1985, ch. 110A, ¶ 402. (It was not until seven years after *Horton* that Rule 402 was amended so as to explicitly refer to "Stipulations Sufficient to Convict." Ill. S. Ct. R. 402 (eff. July 1, 1997).) Therefore, arguably, the applicability of Rule 604(d) does not depend on whether it explicitly refers to stipulations that the evidence is

sufficient for a conviction, any more than the applicability of Rule 402 depended on such language, because "[a stipulation] that the facts as presented are sufficient under the law to find the defendant guilty of the crime charged beyond a reasonable doubt [citation], *constitute*[*s*] *a guilty plea*." (Emphasis added.) (Internal quotation marks omitted.) *Horton*, 143 Ill. 2d at 21.

¶ 40 We note that, even under the current version of Rule 402, a stipulation that the evidence is sufficient to convict appears to be a guilty plea by a different name. "[I]n any case in which the defense offers to stipulate that the evidence is sufficient to convict," the trial court must "determin[e] [whether] *the plea* is voluntary" (Ill. S. Ct. R. 402(b) (eff. July 1, 2012)) and whether "there is a factual basis for *the plea*" (Ill. S. Ct. R. 402(c) (eff. July 1, 2012))—as if a "stipulation that the evidence is sufficient to convict" were itself "a plea of guilty" (Ill. S. Ct. R. 402(a) (eff. July 1, 2012)). (Emphases added.) For purposes of Rule 604(d), then, we do not see how we were *obviously* mistaken by regarding a stipulation that the evidence was sufficient to convict as equivalent to a guilty plea.

¶ 41 In *People v. Thompson*, 404 Ill. App. 3d 265, 270 (2010), the Third District opined, in *dicta*, that such a stipulation in a bench trial would trigger Rule 604(d). Later, the Third District changed its mind in *People v. Weaver*, 2013 IL App (3d) 130054, ¶ 22 ("The question we must determine is whether categorizing the proceeding as a stipulated bench trial 'tantamount to a guilty plea' for purposes of Rule 402 renders [the] defendant's trial a 'guilty plea' subject to Supreme Court Rule 604(d). We conclude that it does not."). Given the vacillation of the Third District and, more important, the passage we have quoted from *Horton* and the apparent interchangeability of the terms in the current version of Rule 402, we are unconvinced that our previous remand orders in this case are *palpably* erroneous.

¶ 42 3. *A Final Judgment*

¶ 43 When the supreme court said, in *Patterson*, 154 Ill. 2d at 469, that "a finding of a final judgment is required to sustain application of the [law-of-the-case] doctrine," we should understand that statement in the context of the argument to which the supreme court was responding. According to the defendant in *Patterson*, a judge in the trial court, Judge Cieslik, had established the law of the case by "rul[ing]," in a suppression hearing, "that he would declare a mistrial if there was any allusion to or questioning concerning a polygraph examination." *Id.* at 468. Subsequently, in the jury trial, over which a different judge, Judge Morrissey, presided, defense counsel "unintentionally elicited" a mention of the polygraph examination. *Id.* Finding the error to be harmless, Judge Morrissey denied defense counsel's motion for a mistrial. *Id.* The defendant argued to the supreme court that Judge Morrissey's denial of his motion for a mistrial violated the law of the case that Judge Cieslik established earlier, in the suppression hearing. *Id.* The supreme court disagreed because "Judge Cieslik's ruling was not a final judgment." *Id.* at 469. His ruling was merely interlocutory, and as long as the trial court still had jurisdiction over the case, it was free to modify or revoke its own interlocutory order, through the same judge or a succeeding judge.

¶ 44 Similarly, in another case the State cites, *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 368 Ill. App. 3d 734, 743 (2006), the First District rejected the utilities' argument that the law-of-the-case doctrine "preclude[d] the appellate court from revisiting its own interlocutory order[s]." The orders in question, instead of terminating the appeals, had merely transferred them from the First District to the Second and Fourth Districts. *Id.* at 741.

¶ 45 In the present case, by contrast, our summary remands terminated the appeals in case Nos. 4-11-0617 and 4-12-0433 and hence were not interlocutory. "Under the law of the case doctrine, issues presented and disposed of in a prior appeal are binding and will control in

the circuit court upon remand as well as in the appellate court in a subsequent appeal." *Zabinsky v. Gelber Group, Inc.*, 347 Ill. App. 3d 243, 248 (2004). In case Nos. 4-11-0617 and 4-12-0433, we ended those two appeals by agreeing with the parties that the case had to be remanded for compliance with Rule 604(d). That is the law of the case, " 'right or wrong.' " *Martin*, 164 Ill. App. 3d at 825.

¶ 46 B. Defendant's Argument That the Record Refutes the Rule 604(d) Certificate

¶ 47 "[T]he appropriate remedy for the failure to file a Rule 604(d) certificate is to grant[] the defendant[] therein *the right* to file a new motion to withdraw [the] guilty plea and *the right* to have a hearing on the new motion." (Emphases in original and internal quotation marks omitted.) *People v. Lindsay*, 239 Ill. 2d 522, 529 (2011). After we remanded the case the second time, the trial court granted defendant those rights, and defendant personally chose not to exercise them. It was "entirely up to him" whether to file a motion to withdraw his guilty pleas. *Id.* Even though, in the sentencing hearing, the trial court had given him all the admonitions that Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001) required, including the admonition that, on appeal, "any issue or claim of error not raised in the motion to reconsider the sentence or to vacate the judgment and to withdraw the plea of guilty [should] be deemed waived," defendant chose, after the second remand, to withdraw his postplea motion and to file no substitute. That was fine as far as Rule 604(d) was concerned. All the rule required was an *opportunity* to file a postplea motion and, if such a motion was filed, the *opportunity* to have a hearing on it. *Lindsay*, 239 Ill. 2d at 529. The court gave defendant those opportunities and received from Wheeler a Rule 604(d) certificate, which said all the things such a certificate was supposed to say. Therefore, "the appropriate remedy" has been provided. *Id.*

¶ 48 Nevertheless, defendant is dissatisfied with this remedy because, according to him, the record "affirmatively refute[s]" Wheeler's Rule 604(d) certificate. Defendant argues:

> "This Court is thus confronted with this inherent conflict: on the one hand, the Rule 604(d) certificate would indicate that the case is ready for appeal, with [defendant's] claims perfected for review; on the other hand, there is no motion to withdraw the plea, an absolute prerequisite to review, despite [defendant's] expressed desire to challenge his plea and desire to appeal. That conflict was held to be ineffectiveness in *Wilk*: 'an attorney who stands with his client in a criminal proceeding, hears the admonishments of the court required by Rule 605(b), and fails to adhere to Rule 604(d) by moving to withdraw the plea prior to filing a notice of appeal has fallen short of providing competent representation.' [*People v. Wilk*, 124 Ill. 2d 93, 105-06 (1988).]"

¶ 49 Here is what the supreme court meant in *Wilk*. If a defense counsel files a notice of appeal on the defendant's behalf without previously filing, and obtaining a ruling on, a Rule 604(b) motion, the defense counsel is in an untenable position—the defense counsel seemingly is condemned by his or her own conduct—because if, in the defense counsel's judgment, the defendant's case had enough merit to justify the filing of an appeal, it must have had enough merit to justifying the filing of a Rule 604(b) motion, which was "a condition precedent to the appeal of a plea of guilty." *Wilke*, 124 Ill. 2d at 107. But Wheeler did not file an appeal on defendant's behalf (the circuit clerk did), and therefore Wheeler is not in such a contradiction.

¶ 50 Just because defendant wanted to appeal, did Wheeler *have* to file a Rule 604(d) motion, regardless of whether any reasonable argument could have been made in support of such a motion? "Neither paid nor appointed counsel may deliberately mislead the court with respect to either the facts or the law, or consume the time and the energies of the court or the opposing party by advancing frivolous arguments." (Internal quotation marks omitted.) *People v. Greer*, 212 Ill. 2d 192, 207 (2004). We are aware of no case holding that, to sign a Rule 604(d) certificate, the attorney must have perfected the defendant's *pro se* claims for review even at the cost of descending to frivolity. If, from an objective point of view, a postplea motion would have been frivolous, Wheeler surely would have been justified in refraining from filing one. See *id.* Defendant cites no authority when he says: "[T]he Rule 604(d) certificate would indicate that the case is ready for appeal, with [defendant's] claims perfected for review." That would be true only if defense counsel had a duty to perfect the defendant's claims regardless of their quality. Rule 604(d) does not seem to lay such a duty on defense counsel. Under Rule 604(d), defense counsel must certify (among other things) that he or she "has made any amendments to the motion necessary for adequate presentation of *any* defects in those proceedings." (Emphasis added.) Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). If, objectively, there were no "defects" in the guilty-plea proceedings, no "amendments to the [postplea] motion" would be "necessary." *Cf. Greer*, 212 Ill. 2d at 205 ("If amendments to a *pro se* postconviction petition would only further a frivolous or patently nonmeritorious claim, they are not 'necessary' within the meaning of [Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984)]."). Wheeler's job was to look for defects in the guilty pleas and if there were any such defects, to raise them in a postplea motion, not to make up defects just for the purpose of "perfecting" claims for appeal.

¶ 51 This is not the forum in which to assess Wheeler's performance as postplea counsel. If defendant believes he has a reasonable basis to challenge his guilty pleas and is he is still in some form of custody, he should seek relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2014)), as *Wilk* says (*Wilk*, 124 Ill. 2d at 107). In a postconviction petition, "the defendant *pro se* [would] need[] only allege a violation of his sixth amendment right to effective assistance of counsel, due to the attorney's failure to preserve appeal rights, and allege whatever grounds he or she would have had to withdraw his or her plea of guilty had a proper motion to withdraw been filed by [the] defendant's counsel prior to the filing of a notice of appeal." *Id.* at 107-08.

¶ 52 In the guise of obtaining compliance with Rule 604(d), defendant is trying to prosecute a claim of ineffective assistance without having to make the showing he would have to make in a postconviction proceeding. *Wilk* and *Lindsay* foreclose such a gambit. Suffice it to say, for purposes of the present appeal, that defendant has received "the appropriate remedy for the failure to file a Rule 604(d) certificate" (*Lindsay*, 239 Ill. 2d at 529), namely, "(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" (emphases added) (*id.* at 531). Thus, we have "no cause to once again reverse and remand." *Id.*

¶ 53 III. CONCLUSION

¶ 54 For foregoing reasons, we affirm the trial court's judgment, and we award the State $50 in costs against defendant. See 55 ILCS 5/4-2002(a) (West 2014).

¶ 55 Affirmed.