

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).

FILED

October 23, 2015
Carla Bender
4th District Appellate
Court, IL

2015 IL App (4th) 140231-U

NO. 4-14-0231

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
TINA L. COX,)	No. 12CF204
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defense counsel failed to strictly comply with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013).
- ¶ 2 In April 2013, defendant, Tina L. Cox, entered an open guilty plea to two counts of unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2010)). In August 2013, the trial court sentenced defendant to concurrent terms of five years' imprisonment, with credit for time served in custody, and ordered her to pay certain assessments. In September 2013, defendant filed a motion to reconsider her sentence, which the court denied. Defendant appeals, asserting (1) she is entitled to a remand for new postplea proceedings under Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013); or (2) in the alternative, she is entitled to a remand for a new sentencing hearing as defense counsel rendered ineffective assistance. We

remand for compliance according to the supreme court's interpretation of Rule 604(d) in *People v. Tousignant*, 2014 IL 115329, 5 N.E.3d 176.

¶ 3

I. BACKGROUND

¶ 4 In July 2012, the State charged defendant by information with two counts of unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2010)). In April 2013, defendant entered an open plea of guilty.

¶ 5 In August 2013, the trial court sentenced defendant to two concurrent terms of five years' imprisonment, with credit for time served in custody, and ordered her to pay certain assessments.

¶ 6 In September 2013, defendant filed a motion to reconsider her sentence. Defense counsel filed a certificate averring compliance with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). The certificate indicated counsel consulted with defendant in person to ascertain contentions of error in the sentence, examined the trial court file and report of proceedings of the plea of guilty, and made such amendments to the motion as were necessary for an adequate presentation of any defects in those proceedings. Following an October 2013 hearing, the trial court denied defendant's motion and defendant appealed.

¶ 7 In January 2014, this court granted defendant's motion for summary remand for the filing of a corrected Rule 604(d) certificate. Specifically, the order remanded the cause for the filing of a Rule 604(d) certificate indicating defense counsel consulted with defendant "about errors in both the plea *and* the sentence, the opportunity to file a new post-plea motion, if counsel concludes that a new motion is necessary, a hearing on the motion, a new judgment, a new notice of appeal, and strict compliance with requirements of Rule 604(d)." (Emphasis added.) *People*

v. *Cox*, No. 4-13-0959 (Jan. 28, 2014) (unpublished order under Supreme Court Rule 23).

¶ 8 In March 2014, defense counsel filed a corrected Rule 604(d) certificate. The certificate indicated defense counsel: (1) "consulted with the [d]efendant in person to ascertain defendant's contentions of error in the sentence *or* the entry of the plea of guilty" (emphasis added); (2) "examined the trial court file and report of proceedings of the plea of guilty"; and (3) "made such amendments to the motion as are necessary for an adequate presentation of any defects in those proceedings." (Emphasis added.) Defendant stood on her previously filed motion to reconsider her sentence, which the trial court again denied.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant asserts she is entitled to a remand for new postplea proceedings under Rule 604(d), as defense counsel's Rule 604(d) certificate is unclear as to whether counsel consulted with defendant regarding any errors with *both* the sentence *and* the plea, or just the plea or sentence. In the alternative, defendant argues, defense counsel rendered ineffective assistance by failing to argue the trial court improperly (1) considered a factor inherent in the offense, compensation; and (2) relied on an erroneous fact, that defendant had no other visible means of support, to aggravate her sentence.

¶ 12 Rule 604(d) provides, in relevant part:

"The defendant's attorney shall file with the trial court a certificate stating that the attorney [(1)] has consulted with the defendant [(a)] either by mail or in person [(b)] to ascertain defendant's contentions of error in the sentence or the entry of the plea of

guilty, [(2)] has examined [(a)] the trial court file and [(b)] report of proceedings of the plea of guilty, and [(3)] 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).

¶ 13 A main purpose of Rule 604(d) is "to ensure that any improper conduct or other alleged improprieties that may have produced a guilty plea are brought to the trial court's attention *before* an appeal is taken, thus enabling the trial court to address them at a time when witnesses are still available and memories are fresh. Toward that end, the rule's certificate requirement is meant to enable the trial court to ensure that counsel has reviewed the defendant's claim and considered *all* relevant bases for the motion to withdraw the guilty plea or to reconsider the sentence." (Emphases in original.) *Tousignant*, 2014 IL 115329, ¶ 16, 5 N.E.3d 176. In *Tousignant* our supreme court found interpreting "or" in the clause of the rule as "and" would further the rule's purpose. *Tousignant*, 2014 IL 115329, ¶ 18, 5 N.E.3d 176. The court concluded as follows:

"We hold that in order to effectuate the intent of Rule 604(d), specifically the language requiring counsel to certify that he has consulted with the defendant 'to ascertain defendant's contentions of error in the sentence *or* the entry of the plea of guilty,' the word 'or' is considered to mean 'and.' Under this reading, counsel is required to certify that he has consulted with the defendant 'to ascertain defendant's contentions of error in the sentence *and* the

entry of the plea of guilty.' " (Emphases in original.) *Tousignant*,
2014 IL 115329, ¶ 20, 5 N.E.3d 176.

¶ 14 Here, defense counsel's Rule 604(d) certificate states, in relevant part, counsel "consulted with the [d]efendant in person to ascertain defendant's contentions of error in the sentence *or* the entry of the plea of guilty." (Emphasis added.) We find, in light of the supreme court's decision in *Tousignant*, 2014 IL 115329, ¶ 19, 5 N.E.3d 176, our decisions in *People v. Hobbs*, 2015 IL App (4th) 130990, ___ N.E.3d ___, and *People v. Mason*, 2015 IL App (4th) 130946, 37 N.E.3d 927, and the purpose of Rule 604(d), defense counsel's Rule 604(d) certificate is deficient. Accordingly, we remand the matter for compliance with the supreme court's interpretation of Rule 604(d) in *Tousignant*.

¶ 15 As a remand is necessary, we need not address defendant's ineffective-assistance-of-counsel claim.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we remand the matter for (1) 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; (2) a new hearing on defendant's postplea motion; and (3) the filing of a corrected Rule 604(d) certificate.

¶ 18 Cause remanded with directions.