

NOTICE
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2015 IL App (5th) 120516-U

NO. 5-12-0516

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jackson County.
)	
v.)	No. 11-CF-500
)	
MATTHEW J. JONES,)	Honorable
)	William G. Schwartz,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Schwarm and Moore¹ concurred in the judgment.

ORDER

¶ 1 *Held:* Defense counsel's failure to comply with the certification requirement of Rule 604(d) required remand to the trial court to allow for postplea proceedings in full compliance with the rule. Because remand is the proper remedy, appeals court need not address the merits of the defendant's other arguments under the plain error doctrine. Defendant did not prove judicial bias so as to be entitled to have the matter assigned to a different judge on remand.

¹Justice Spomer was originally assigned to participate in this case. Justice Moore was substituted on the panel subsequent to Justice Spomer's retirement, and has read the briefs and listened to the tape of oral argument.

¶ 2 The defendant, Matthew J. Jones, pled guilty to murder. He subsequently filed a motion to withdraw his plea prior to sentencing. After sentencing, the defendant filed a second motion to withdraw his plea and a motion to reconsider his sentence, both of which were denied by the trial court. The defendant appeals the court's orders denying both motions, arguing that (1) the court failed to fully admonish the defendant in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 1997); (2) the court abused its discretion in denying his second motion to withdraw his plea without holding a hearing; (3) the court improperly considered a factor extrinsic to the record in sentencing him; (4) he received ineffective assistance of plea counsel; (5) defense counsel failed to comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006); and (6) the cause should be assigned to a different judge on remand due to judicial bias. We vacate the court's orders and remand to the trial court to allow counsel to comply with 604(d).

¶ 3 On September 14, 2011, the defendant, Matthew J. Jones, shot Deaunta Spencer to death. The defendant turned himself in to the police that day. He alleged that he shot Spencer in self-defense. According to the defendant, Spencer previously shot at him and attempted to run him over with his car. Spencer and the defendant got into an argument on the morning of the shooting. During the argument, Spencer reached behind his back. According to the defendant, he believed that Spencer was reaching for a gun, but he later realized that Spencer was not armed and was just reaching back to throw a punch. The defendant was 18 years old at the time of the shooting, and Spencer was 20 years old.

¶ 4 The defendant was charged with first degree murder (720 ILCS 5/9-1(a) (West 2010)). Testimony presented at a preliminary hearing showed that Spencer was shot in

the back and the gun used to shoot him was stolen. The State subsequently gave the defendant notice of its intent to seek a sentence enhancement for use of a firearm. See 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010).

¶ 5 On May 21, 2012, the defendant pled guilty. At the outset of the hearing, the attorneys for both parties informed the court that the State would be filing an amended information and the defendant would be pleading guilty to the amended charge. The amended information alleged that the defendant "performed an act toward Deaunta Spencer" knowing his action created a strong possibility of death or great bodily harm to Spencer. The information did not allege that the defendant used a firearm.

¶ 6 The court advised the defendant that he could be sentenced to 20 to 60 years in prison followed by a 3-year period of mandatory supervised release. The court further advised the defendant that by pleading guilty, he was giving up the right to a trial, the right to present evidence in his defense and subpoena witnesses, and the right to "confront [his] accusers." The defendant indicated that he understood all this. The court asked if anyone had made any promises or threats to induce the defendant to plead guilty, and the defendant said, "No." The court found the defendant's plea to be knowing and voluntary and found the evidence presented at the preliminary hearing sufficient to form a factual basis for the plea.

¶ 7 On June 20, 2012, prior to sentencing, the defendant filed a motion to withdraw his guilty plea. The motion alleged that the defendant informed counsel that he felt pressured to plead guilty and did not fully understand the ramifications of doing so. Subsequently, defense counsel filed a certificate of compliance with Rule 604(d).

Counsel certified that he (1) consulted with the defendant to ascertain his reasons for wanting to withdraw his plea, (2) reviewed the trial court file, and (3) obtained a transcript from the plea hearing. He did not certify that he reviewed the hearing transcript.

¶ 8 On August 3, 2012, the court held a hearing on the motion to withdraw the plea and a sentencing hearing. Defense counsel opted to stand on the written motion to withdraw the plea, adding only that the defendant indicated that he did not understand the ramifications of pleading guilty and was in "kind of in a state of shock." The court noted that "no doubt" there was "some discussion" that led to the filing of the amended information. The court then emphasized that the defendant was advised of the rights he was giving up and the possible penalties and indicated that he understood. The court found no basis to withdraw the plea, denied the motion, and moved on to sentencing.

¶ 9 The State's attorney recommended a sentence of 30 years. He acknowledged that the defendant had no previous criminal history, including juvenile delinquency. However, he argued that the need to deter others was a factor in aggravation. Defense counsel argued that the defendant's lack of criminal history and the fact that he showed remorse by turning himself in to police were factors in mitigation. He further argued that the crime occurred under circumstances unlikely to recur and that the defendant acted on a strong provocation, his sense of fear. In elaborating on the defendant's fear, counsel noted that the defendant came from the town of Jacksonville, which counsel called "quiet" and "pretty boring actually." He further noted that there had not been a homicide in Jacksonville in three years. He then argued that after living in Jacksonville, the

defendant "was not prepared for life in Carbondale." Finally, defense counsel addressed the State's sentence recommendation. Counsel stated: "I'm glad [the State's attorney] has limited himself to 30 years. But I believe justice can also be served by sentencing Matthew Jones to a period of incarceration of 20 years." He noted that even the minimum sentence of 20 years is "a very long time."

¶ 10 Before pronouncing sentence, the court stated: "Since the defendant brings up Jacksonville and has presented the Jacksonville Police Department report [that] showed that there's no homicide in over three years. Yet somebody who's living in Jacksonville decides they're going to come to Carbondale, get themselves a stolen weapon and shoot somebody." These facts, the court went on to state, illustrate "how commonplace gun violence has become in Carbondale." The court went on to state that it had "no choice but to enter a lengthy jail sentence" and sentenced the defendant to 35 years in prison.

¶ 11 On August 31, 2012, the defendant filed a second motion to withdraw his guilty plea and a motion to reconsider his sentence. In the motion to withdraw his plea, the defendant alleged that (1) his guilty plea was the result of negotiations in which the State agreed to cap its sentence recommendation at 32 years; and (2) he was "under the misapprehension that he could receive a sentence of no more than 32 years." He argued in his motion to reconsider sentence that a sentence of 35 years was excessive in light of the defendant's lack of previous criminal history and the circumstances of the case. Counsel did not file a certificate of compliance with Rule 604(d). On October 5, 2012, the court entered written orders denying both motions. The defendant timely filed this appeal from both of those rulings.

¶ 12 In this appeal, the defendant argues that the court's admonishments were insufficient to comply with Rule 402. Much of his argument is based on his assertion that the State agreed to cap its sentence recommendation at 32 years, while the court treated the plea as an open plea. He argues that the court did not advise him that the 32-year cap was not binding on the court. In addition, the defendant argues that (1) the court abused its discretion in denying his second motion to withdraw his plea without holding a hearing; (2) he received ineffective assistance of plea counsel; (3) counsel failed to strictly comply with the certification requirement of Rule 604(d); (4) his sentence must be vacated because the court considered information about crime in the community of Carbondale, a matter extrinsic to the record; and (5) this cause must be assigned to a different judge on remand because the court demonstrated judicial bias. The State concedes that counsel's failure to strictly comply with Rule 604(d) requires us to remand for postplea proceedings that comply with Rule 604(d), and argues that, as such, we may not reach the merits of the defendant's other contentions. We agree with the State.

¶ 13 Interpretation of supreme court rules is a question of law which we review *de novo*. *People v. Lindsay*, 239 Ill. 2d 522, 525 (2011). Rule 604(d) governs postplea proceedings and contains several requirements. The rule provides that a defendant who wishes to challenge his guilty plea or the sentence imposed pursuant to a negotiated plea agreement must first file a motion to withdraw his plea. A defendant wishing only to challenge the sentence imposed after an open plea must file a motion to reconsider that sentence. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Counsel filing postplea motions on behalf of a defendant must file a certificate of compliance stating that counsel has (1)

consulted with the defendant to ascertain his contentions of error in the plea proceedings and/or sentence; (2) examined the court file and transcripts; and (3) made any amendments to the defendant's motions necessary to adequately present the defendant's claims to the trial court. Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 14 Strict compliance with all of the requirements of Rule 604(d) is mandatory. *People v. Shirley*, 181 Ill. 2d 359, 368 (1998). However, failure to comply with the motion requirements is treated differently from failure to comply with the certification requirement. *People v. DeRosa*, 396 Ill. App. 3d 769, 774 (2009). Rule 604(d) expressly provides that filing a motion to withdraw a guilty plea is a condition precedent to filing an appeal challenging the validity of the plea. *People v. Janes*, 158 Ill. 2d 27, 34 (1994). As such, failure to file such a motion will ordinarily result in dismissal of the appeal. *DeRosa*, 396 Ill. App. 3d at 774. By contrast, our supreme court has held that the appropriate remedy for failure to strictly comply with the certification requirement "is a remand to the circuit court for the filing of a new motion to withdraw guilty plea or to reconsider sentence and a new hearing on the motion." *Janes*, 158 Ill. 2d at 33.

¶ 15 The defendant, however, argues that we may reach the merits of the other claims he raises in this appeal under the plain error doctrine. In support of this contention, the defendant cites *People v. Hayes*, 336 Ill. App. 3d 145 (2002). He contends that in *Hayes*, a panel of the First District carved out an exception to the rule our supreme court announced in *Janes*. We disagree.

¶ 16 In *Hayes*, the defendant pled guilty in an open plea to a drug charge. *Hayes*, 336 Ill. App. 3d at 147. Defense counsel filed a motion to reconsider sentence challenging

the propriety of the court's decision to impose consecutive sentences. *Hayes*, 336 Ill. App. 3d at 147. Counsel did not file either a motion to withdraw the defendant's plea (*Hayes*, 336 Ill. App. 3d at 151) or a certificate of compliance with Rule 604(d) (*Hayes*, 336 Ill. App. 3d at 147). The trial court denied the motion, and the defendant appealed. *Hayes*, 336 Ill. App. 3d at 147.

¶ 17 On appeal, the defendant challenged not only the propriety of the consecutive sentences, but the validity of the plea itself. *Hayes*, 336 Ill. App. 3d at 147. The *Hayes* court first noted that the proper remedy for counsel's failure to file a certificate of compliance was to remand the case to the trial court for postplea proceedings that complied with this requirement. *Hayes*, 336 Ill. App. 3d at 147 (citing *Janes*, 158 Ill. 2d at 33-36). However, the court then went on to consider the defendant's arguments related to the trial court's failure to properly admonish him under Rule 605(b) and Rule 402. *Hayes*, 336 Ill. App. 3d at 147-53.

¶ 18 Prior to addressing the defendant's contention that his plea was not knowing and voluntary due to the trial court's failure to give adequate admonishments under Rule 402, the appeals court acknowledged that failure to file a motion to withdraw the plea would ordinarily result in forfeiture of this argument on appeal. *Hayes*, 336 Ill. App. 3d at 151 (citing Ill. S. Ct. R. 604(d) (eff. Nov. 1, 2000)). The court stated, however, that "if the trial court fails to give a defendant the admonitions required by Rule 402, it may constitute plain error, an exception to the [forfeiture] rule." *Hayes*, 336 Ill. App. 3d at 151. The defendant argues that the same result is warranted here. We are not persuaded.

¶ 19 The *Hayes* court explained why it was relaxing the forfeiture rule in the context of Rule 604's motion requirement, but did not explain why the *Janes* rule was inapplicable where counsel also failed to strictly comply with the certification requirement of the rule. Contrary to the defendant's arguments, the *Hayes* court did not explicitly state that it was carving out an exception to the rule announced by our supreme court in *Janes*. We recognize that the strict forfeiture requirements of Rule 604(d) are one of the reasons the certification requirement must be strictly enforced. See *Shirley*, 181 Ill. 2d at 368 (citing *People v. Wilk*, 124 Ill. 2d 93, 106 (1988)). Implicit in the defendant's argument is the notion that this purpose is satisfied if we reach the merits of his appeal under the plain error doctrine, as the *Hayes* court did. Nevertheless, we believe strict compliance with the certification requirement of the rule is necessary to be sure defense counsel brings before the trial court all issues related to the plea so that the trial court can rule on each of those issues. See *Shirley*, 181 Ill. 2d at 368 (citing *Wilk*, 124 Ill. 2d at 106).

¶ 20 Moreover, although this court is bound by the supreme court's holding in *Janes*, we are not obliged to follow the decisions of other districts of the appellate court. *People v. Pruitt*, 239 Ill. App. 3d 200, 209 (1992). To the extent the *Hayes* decision can be interpreted as creating an exception to the rule in *Janes*, we decline to follow it. We thus conclude that the instant case must be remanded to the trial court for postplea proceedings that strictly comply with Rule 604(d). As such, we need not consider the defendant's arguments related to the court's admonishments.

¶ 21 The defendant also argues that the court demonstrated judicial bias and considered matters outside of the record at the sentencing hearing. Because we must remand this

matter to allow counsel to fully comply with Rule 604(d), we need not consider the defendant's argument that reversal is warranted on this basis. He further contends, however, that this matter should be assigned to a different judge on remand due to judicial bias. We will briefly address this claim.

¶ 22 A trial judge is presumed to be fair and impartial. To overcome this bias, a party must point to specific conduct on the part of the judge that demonstrates a bias. *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Here, the defendant points to the court's statements regarding the prevalence of gun violence in Carbondale. We discussed those comments earlier. Because we do not reach the merits of the defendant's argument that the court improperly considered this factor in sentencing him, we express no opinion on the propriety of the comments at a sentencing hearing. Nevertheless, we find nothing in the comments to indicate any animus towards the defendant.

¶ 23 The defendant also points to questions the court asked of the defendant during his statement in allocution. In his statement, the defendant reiterated his claim that he believed Deaunta Spencer was reaching behind his back for a gun. He discussed his fear of Spencer, and stated that he felt that he, too, was a victim and that he had a right to act in self-defense. The court asked the defendant, "So you had a gun that was stolen and you pulled it out and shot him?" The defendant replied, "Yeah." The court then asked, "But he was going away from you, wasn't he?" The defendant answered, "No." The defendant argues that this questioning demonstrated a bias against the defendant and showed that the court had reached a conclusion about the facts surrounding the shooting that were not supported by the record. As discussed previously, the evidence presented at

the preliminary hearing showed that Spencer was shot in the back and the gun was stolen. Thus, these were reasonable questions based on the evidence in the record. We do not find the court's questioning sufficient to overcome the presumption of judicial impartiality. As such, we will not direct the court to assign the matter to a different judge on remand.

¶ 24 For the foregoing reasons, we vacate the court's orders denying the defendant's motions to withdraw his plea and reconsider his sentence. We remand to the trial court for postplea proceedings that fully comply with Rule 604(d).

¶ 25 Orders vacated; cause remanded.