

NOTICE
Decision filed 07/02/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 130463-U

NO. 5-13-0463

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-544
)	
JON HOUSTON,)	Honorable
)	William G. Schwartz,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE CATES delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* Because defense counsel's 604(d) certificate fully complied with Supreme Court Rule 604(d), denial of the defendant's motion to reduce sentence is affirmed. The judgment is amended, however, to reflect credit toward the defendant's fines.

¶ 2 The defendant, Jon Houston, pled guilty to the offense of residential burglary, and was sentenced by the circuit court of Jackson County to 20 years' imprisonment. The defendant appeals from the denial of his motion to reduce sentence.

¶ 3 The defendant pled guilty to one count of residential burglary. As part of the plea, two additional counts of residential burglary were dismissed. Following a sentencing hearing, the defendant was sentenced to 20 years' imprisonment with an additional 3-year

term of mandatory supervised release. The defendant subsequently filed a *pro se* motion to reconsider his sentence. The defendant asserted that his borderline mental retardation, his age, and troubled history should have been considered in fashioning a sentence. The court denied the defendant's motion which prompted defendant to file his first notice of appeal. This appeal was remanded to the trial court for appointment of an attorney for the defendant's postplea proceedings and the filing of a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Houston*, 2013 IL App (5th) 120443-4.

¶ 4 Following remand, counsel was appointed for the defendant. Counsel, however, had difficulty contacting the defendant via phone in order to discuss his contentions of error. Defense counsel ultimately filed a motion to reduce sentence on behalf of the defendant as well as a Rule 604(d) certificate. The certificate stated that the defendant had communicated with counsel by letter. The certificate also noted that counsel had reviewed the record and notes and files of the proceedings. Based upon that review and the defendant's letter, counsel filed a first amended motion to reduce sentence, listing each of the defendant's contentions of defect. The trial court again denied the motion to reduce sentence, and the defendant appeals once again. The defendant argues on appeal this time that defense counsel failed to comply with the certificate requirements of Rule 604(d) in that he failed to consult with the defendant and did not make any necessary amendments to the motion. The defendant therefore believes his cause should be remanded once again for new postplea proceedings. We disagree.

¶ 5 Under Rule 604(d), a defendant may not appeal from a judgment entered upon a guilty plea unless he or she files a written motion in the circuit court seeking to withdraw the plea or to reduce the sentence. When such a motion is filed, Rule 604(d) requires that counsel be appointed to represent the defendant with any postplea motion filed and represent the defendant at a hearing on the motion. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Rule 604(d) also requires that the defendant's attorney file a certificate confirming that he or she has complied with the Rule's requirements. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). When defense counsel fails to comply with Rule 604(d), the proper remedy is to remand the cause for the filing of a proper certificate of compliance, the filing of new motions if appropriate, and a new hearing on the motions. *People v. Lindsay*, 239 Ill. 2d 522, 531, 942 N.E.2d 1268, 1274 (2011). Neither harmless error nor substantial compliance can excuse the failure to comply with Rule 604(d)'s certificate requirement. *People v. Janes*, 158 Ill. 2d 27, 630 N.E.2d 790 (1994). Adequacy of a Rule 604(d) certificate is reviewed *de novo*. *People v. Richard*, 2012 IL App (5th) 100302, ¶ 9, 970 N.E.2d 35.

¶ 6 Rule 604(d) states in part: "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 ***." Ill. S. Ct. R. 604(d) (eff. July 1, 2006). In this instance, the defendant believes that counsel's statement that he communicated with counsel by letter is not sufficient to satisfy the requirements of Rule 604(d). The defendant asserts that defense counsel did not certify that he consulted with his client. Rather, defense counsel only

stated that the defendant communicated with counsel by letter, which, according to the defendant, is not the same as consultation. He believes consultation necessarily requires a two-way conversation between defense counsel and the defendant. He further points out that Rule 604(d) requires defense counsel to make necessary amendments to a defendant's motion, using his or her professional judgment, to present any defects in the proceedings. The defendant claims that defense counsel, in this instance, only filed a motion listing each of the defendant's contentions of defect. The defendant believes counsel's motion involved no professional judgment and was equivalent to the defendant proceeding *pro se*.

¶ 7 Defense counsel's 604(d) certificate states that the defendant communicated with counsel by letter and listed each of his contentions of error. This form of consultation, by letter, was necessary because the Department of Corrections twice failed to set up the phone calls defense counsel had attempted to arrange with his client. Defense counsel wrote the defendant explaining that he had the right to withdraw his guilty plea or contest his sentence but he needed to write defense counsel back regarding his intentions as well as setting forth any contentions of error he may have. Defense counsel's certificate also states that he reviewed the common law record, the record of the proceedings, as well as his own files and notes, and then filed an amended motion to reduce sentence. Specifically, defense counsel amended the *pro se* motion to reduce sentence by adding claims that the trial court failed to consider the nonviolent nature of the defendant's present offense and the nonviolent nature of the defendant's prior convictions, as well as

pointing out the defendant's age, neither of which were contained in the defendant's *pro se* motion to reduce sentence.

¶ 8 While Rule 604(d) requires strict compliance, strict compliance does not require that the language of the Rule be recited verbatim in the certificate. *People v. Mineau*, 2014 IL App (2d) 110666-B, ¶ 16, 19 N.E.3d 633. The purpose of the Rule is to ensure that counsel has communicated with the defendant to ascertain his or her contentions of error. A Rule 604(d) certificate functions as a basis upon which the trial court can determine that defense counsel has performed the duties under the Rule and gives a clear indication of the extent of counsel's performance. *People v. Wyatt*, 305 Ill. App. 3d 291, 297, 712 N.E.2d 343, 347 (1999). If there is some indication that counsel performed the duties required under the Rule, then the certificate is in full compliance. See *People v. Richard*, 2012 IL App (5th) 100302, ¶ 10, 970 N.E.2d 35. The certificate filed here establishes that defense counsel did fulfill his duty in preparing and presenting the motion to reduce sentence. Defense counsel complied with the requirements of 604(d) by referring to his communication with the defendant, by noting his review of the entire record, and by noting his filing of an amended motion to reduce sentence. The defendant had already decided he wanted to have his sentence reduced prior to the filing of the certificate. The only thing left was to determine what his contentions of error were. These errors were listed in the defendant's letter to counsel which, in turn, were included in the amended motion along with counsel's added contentions. We therefore conclude that the certificate filed in this cause was in full compliance with Rule 604(d) and does not require a remand for new filings.

¶ 9 The defendant also argues on appeal that he is entitled to a \$5-per-day credit against his fines. A defendant who is incarcerated on a bailable offense and who, upon conviction, is assessed a fine, is entitled to a \$5 credit toward that fine for every day spent in custody prior to sentencing. 725 ILCS 5/110-14(a) (West 2010). A defendant may raise a claim for monetary credit against a fine at any time and at any stage of court proceedings. *People v. Butler*, 2013 IL App (5th) 110282, ¶ 5, 983 N.E.2d 564, 566-67.

¶ 10 In this instance, the defendant was assessed two fines that may be offset by the credit, *i.e.*, a \$15 State Police operations fine and a \$4.75 drug court fine. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31, 979 N.E.2d 1030; *People v. Sulton*, 395 Ill. App. 3d 186, 193, 916 N.E.2d 642, 648 (2009). As the State concedes, the defendant is entitled to a credit of \$19.75 against his fines. In the interests of judicial economy, we exercise our inherent power on review and order the amendment of the defendant's judgment to reflect the credit against his fines. See Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994); R. 615(b) (eff. Jan. 1, 1967); *People v. Tally*, 2014 IL App (5th) 120349, ¶ 43, 10 N.E.3d 488.

¶ 11 Given that defense counsel's 604(d) certificate was in full compliance with Rule 604(d), we affirm the denial of the defendant's motion to reduce sentence. We further amend the judgment to reflect credit towards the defendant's fines as requested.

¶ 12 Affirmed in part; judgment amended in part.