

FOURTH DIVISION
December 8, 2016

No. 1-13-3536

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 10 CR 5017
)	11 CR 18762
)	
DEION TURNER,)	Honorable
)	Steven Goebel,
Defendant-Appellant.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

O R D E R

¶ 1 *Held:* Cause remanded to the trial court for further proceedings where, upon defendant filing a motion to withdraw his guilty pleas, the court did not appoint him counsel or obtain a knowing waiver of his right to appointed counsel, and did not hold a hearing on his motion.

¶ 2 Following a negotiated guilty plea, defendant Deion Turner was convicted of one count of violating the Sex Offender Registration Act (Act) (730 ILCS 150/1 *et seq.* (West 2006)) in case number 10 CR 5017 and one count of violating the Act in case number 11 CR 18762. The

trial court sentenced him to two years' and three years' imprisonment, respectively, to be served consecutively. On appeal, defendant contends that: (1) his case must be remanded to the trial court because, after he filed a motion to withdraw his guilty pleas, the court did not comply with Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016) by appointing him counsel or holding a hearing; (2) the trial court improperly imposed various monetary assessments against him and failed to give him proper presentence incarceration credit toward his assessments which qualified as fines; and (3) his mittimus must be corrected. We remand the matter to the trial court for further proceedings, but do not address defendant's monetary assessments or mittimus issues for the reasons below.

¶ 3 In 1998, defendant was convicted of two counts of sexual relations within families (720 ILCS 5/11-11(a)(1), (a)(2)(iii) (West 1996)) and sentenced to consecutive terms of five years' imprisonment. Following his release from prison, he was required to register as a sex offender. See Pub. Act 92-828, § 5 (eff. Aug. 22, 2002) (amending 730 ILCS 150/2(A), (B)(1.8) (West 2002) (defining as a sex offender under the Act anyone who has been convicted of sexual relations within families and the offense was committed on or after June 1, 1997)).

¶ 4 In March 2010, under case number 10 CR 5017, the State charged defendant with two counts of violating the Act from November 2006 until February 2010. 730 ILCS 150/6 (West 2006). In November 2011, under case number 11 CR 18762, the State charged defendant with two additional counts of violating the Act from January 2011 until October 2011. 730 ILCS 150/6 (West 2010).

¶ 5 On September 4, 2013, defendant pled guilty to Count 1 in case number 10 CR 5017, a Class 3 offense, and Count 1 in case number 11 CR 18762, a Class 2 offense. The trial court subsequently sentenced him to agreed-upon terms of two years' and three years' imprisonment, respectively, to be served consecutively. In case number 11 CR 18762, the court also assessed \$904 worth of fines and fees against defendant.

¶ 6 Defendant subsequently filed a *pro se* motion to withdraw his guilty pleas, appearing to argue that he was not required to register as a sex offender. However, significant portions of the motion were illegible. At the end of the motion, defendant included a proof of service, though not labeled as such, stating he had placed the motion "in the mail system of Il. Dept. of Corrections *** for mailing in U.S. Postal Service, on this 16th Day of September, 2013." The circuit court's cover sheet stated that the motion was received on October 15, 2013, and docketed to be heard on December 10, 2013.¹

¶ 7 The parties agree, and the record reflects, that the trial court did not hear or rule on defendant's motion to withdraw his guilty pleas. On November 27, 2013, defendant received leave to file a late notice of appeal. He asserted his delay in filing the notice was because he had "not receive[d] stamped filed copies nor answer[s] to any" of his motions, including his motion to withdraw his guilty pleas and several other motions he had filed. This appeal followed.

¶ 8 Pursuant to Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016), when a defendant has timely filed a motion to withdraw his guilty plea, *i.e.*, within 30 days of the imposition of his

¹ Defendant appeared to have filed a second motion to withdraw his guilty pleas, which was included in a document with several other motions. It is unclear if the motion was timely filed. However, it is not at issue in this appeal.

sentence, the motion must “be presented promptly” to the trial court who then must “determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel.” The protections afforded by Rule 604(d) “are automatically triggered” upon the defendant filing the motion. *People v. Edwards*, 197 Ill. 2d 239, 256 (2001). This court has interpreted the trial court’s obligations under Rule 604(d) to require the appointment of counsel for a *pro se* defendant “even without a specific request from the defendant, unless the trial court finds that the defendant knowingly waived the right to appointed counsel.” *People v. Smith*, 365 Ill. App. 3d 356, 359 (2006). Consequently, upon the defendant timely filing a motion to withdraw his guilty plea, the trial court must either appoint counsel for the defendant or find that he has knowingly waived his right to appointed counsel. *Id.* at 360.

¶ 9 Rule 604(d) further requires that “[t]he motion [to withdraw a guilty plea] shall be heard promptly” by the trial court. Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016). Pursuant to this obligation, the court must hold a hearing on the defendant’s motion. *People v. Maxwell*, 2013 IL App (4th) 111042, ¶¶ 9-13. Rule 604(d) requires strict compliance. *People v. Janes*, 158 Ill. 2d 27, 33 (1994); see also *People v. Wilk*, 124 Ill. 2d 93, 103 (1988) (Rule 604(d) and other Illinois Supreme Court rules “concerning criminal defendants and guilty pleas are in fact rules of procedure and not suggestions. It is incumbent upon counsel and courts alike to follow them.”). We review the trial court’s compliance with Rule 604(d) *de novo*. *Smith*, 365 Ill. App. 3d at 358.

¶ 10 In this case, defendant contends, and the State concedes, that his case must be remanded to the trial court for further proceedings because, after he filed his motion to withdraw his guilty

pleas, the court did not comply with Rule 604(d). We agree. After defendant filed his motion to withdraw his guilty pleas on September 16, 2013, only 12 days after the imposition of his sentence, “the protections offered by Rule 604(d)” were “automatically triggered.” *Edwards*, 197 Ill. 2d at 256. However, the trial court neither appointed counsel for defendant nor obtained a knowing waiver of his right to appointed counsel, and did not hold a hearing on defendant’s motion. Therefore, the court did not strictly comply with Rule 604(d).

¶ 11 When the trial court fails to strictly comply with Rule 604(d), the proper remedy is to remand the matter to the trial court for strict compliance with the rule. See, e.g., *Maxwell*, 2013 IL App (4th) 111042, ¶¶ 13-16 (remand required for failing to hold a hearing); *Smith*, 365 Ill. App. 3d at 360-61 (remand required for failing to appoint counsel or obtain a knowing waiver of the right to appointed counsel). Accordingly, defendant’s case must be remanded for strict compliance with Rule 604(d), including the appointment of counsel unless knowingly waived by defendant and a hearing on his motion.

¶ 12 Defendant next contends that the trial court improperly imposed various monetary assessments against him and failed to give him proper presentence incarceration credit toward his assessments which qualified as fines. In his opening brief, citing to *People v. Thompson*, 209 Ill. 2d 19, 25 (2004), he argues he may challenge the judgment imposing the allegedly improper assessments because it is void. However, in light of our supreme court’s decision in *People v. Castleberry*, 2015 IL 116916, ¶ 19, which abrogated the void-sentencing rule, defendant can no longer rely on this rule.

¶ 13 Furthermore, as the State notes, the assessments issues may become moot upon remand, depending on the trial court's resolution of defendant's motion to withdraw his guilty pleas. If the court allows defendant to withdraw his guilty pleas, the assessments imposed against him would be vacated. See Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016) (stating if the motion to withdraw a guilty plea is allowed, the trial court must "vacate the judgment and permit the defendant to withdraw the plea of guilty and plead anew"). Consequently, as defendant's challenge to his assessments may become moot, ruling on these issues would be purely advisory. Accordingly, we decline to address them. See *People v. Dunmore*, 2013 IL App (1st) 121170, ¶ 12 (stating the appellate court will not "render advisory opinions").

¶ 14 Defendant lastly contends that his mittimus in case number 10 CR 5017 must be corrected to reflect his conviction of a Class 3 offense, not a Class 2 offense as the mittimus currently states. We decline to address this issue on the same basis that we declined to address defendant's arguments regarding the assessments. See *id.*

¶ 15 In sum, we remand the cause to the trial court for strict compliance with Rule 604(d). However, while we have declined to address defendant's monetary assessments or mittimus issues, we encourage the parties and the trial court to address and resolve these issues upon remand depending on the resolution of his motion to withdraw his guilty pleas.

¶ 16 For the foregoing reasons, we remand the matter to the circuit court of Cook County.

¶ 17 Remanded with directions.