

**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 31, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2018 IL App (4th) 160584-U

NO. 4-16-0584

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
NOLAN D. BOLDEN,	)	No. 15CF778
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.  
Presiding Justice Harris and Justice Holder White concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant’s postsentencing attorney failed to comply with the requirements of Illinois Supreme Court Rule 604(d).
- ¶ 2 In April 2016, defendant, Nolan C. Bolden, entered a guilty plea for the offense of armed robbery. In May 2016, the trial court sentenced defendant to 18 years in prison with credit for 349 days previously served. In June 2016, defendant sent a handwritten *pro se* letter to the circuit clerk asking to vacate his guilty plea. In August 2016, the court denied defendant’s motion to withdraw his plea. Defendant appeals, raising the following issues: (1) defendant’s appointed trial counsel failed to comply with Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016) by not amending defendant’s *pro se* letter to include defendant’s arguments why his plea was not knowingly made and why his sentence was improper; (2) the court failed to consider an applicable statutory mitigating factor and nonstatutory mitigating evidence when sentencing

defendant; (3) the court failed to provide defendant with monetary credit for time defendant spent in custody; and (4) the court improperly delegated the calculation of the amount of the traffic/criminal surcharge assessment (also known as the lump-sum surcharge) to the circuit clerk. We remand this case for postsentencing proceedings in compliance with Rule 604(d).

¶ 3

### I. BACKGROUND

¶ 4 In May 2015, the State charged defendant by information with armed robbery (720 ILCS 5/18-2(a)(1) (West 2014)). On April 12, 2016, defendant entered into a partially negotiated guilty plea with the State. The State agreed not to seek a sentence in excess of 18 years. The trial court accepted defendant's guilty plea.

¶ 5 On May 13, 2016, the trial court sentenced defendant to 18 years in prison with credit for 349 days served. The court also entered an order for fines, in part directing the circuit clerk to calculate the traffic/criminal surcharge. The court stated the amount calculated by the circuit clerk was "incorporated and imposed by reference herein."

¶ 6 On June 6, 2016, defendant filed a letter with the circuit clerk, stating he wanted to withdraw his plea and appeal his sentence. He also asked for a lawyer to be appointed to represent him.

¶ 7 On August 8, 2016, defendant's appointed counsel filed a certificate pursuant to Rule 604(d) (eff. Mar. 8, 2016). Counsel stated he had consulted with defendant to ascertain his contentions of error with regard to the guilty plea and sentence, examined the court file and the report of proceedings for both the plea and sentencing hearing, and made any amendments to defendant's motion necessary to adequately present any defects in those proceedings. However, counsel did not file any motions on defendant's behalf or amend defendant's *pro se* letter. At a hearing on August 9, 2016, defendant testified he did not understand the charge to which he was

pleading guilty and believed the 18-year sentence imposed on him was excessive for a first offense. The court denied defendant's motion to withdraw his guilty plea.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 A. Illinois Supreme Court Rule 604(d)

¶ 11 Defendant first argues the attorney who was appointed to represent him after he sent his *pro se* letter to the circuit clerk asking to withdraw his guilty plea and appeal his sentence failed to comply with the requirements established in Rule 604(d). Defendant's appointed counsel did file a Rule 604(d) certificate, which defendant concedes facially complied with the rule. However, defendant argues the record rebuts counsel's assertions in the certificate. While ordinarily a certificate which states the attorney complied with the requirements of Rule 604 will satisfy the rule, an appellate court should vacate the trial court's ruling on a postplea motion and remand for new postplea proceedings if the record shows counsel did not actually comply with the rule's requirements. *People v. Herrera*, 2012 IL App (2d) 110009, ¶ 13, 970 N.E.2d 1219.

¶ 12 Defendant points out his court-appointed counsel did not file a motion to withdraw defendant's guilty plea or amend defendant's letter to the circuit clerk. Instead, defense counsel simply proceeded on defendant's *pro se* letter. Counsel had defendant testify at the hearing why he believed he should be allowed to withdraw his guilty plea. Defendant testified he did not understand the nature of the charge and believed his sentence was excessive.

¶ 13 The State concedes appointed counsel did not comply with the requirements of Rule 604(d). Citing *People v. Love*, 385 Ill. App. 3d 736, 739, 896 N.E.2d 1062, 1066 (2008), the State also concedes remanding this case for further proceedings is necessary. We accept the

State's concession and remand this case for proper compliance with Rule 604(d).

¶ 14 B. Sentence

¶ 15 Defendant next argues the trial court failed to consider a statutory mitigating factor and evidence related to a nonstatutory mitigating factor. Defendant recognizes he entered into a partially negotiated plea where the State agreed to a sentencing cap of 18 years. When a plea arrangement includes a sentencing concession by the State, a defendant is precluded from challenging the sentence as excessive without moving to withdraw his guilty plea. *People v. Palmer-Smith*, 2015 IL App (4th) 130451, ¶ 28, 29 N.E.3d 95.

¶ 16 However, defendant claims he is not arguing his sentence is excessive but is instead arguing the sentence is improper, which is not barred by Rule 604(d). *Palmer-Smith*, 2015 IL App (4th) 130451, ¶ 28. Defendant points to the trial court's statement no statutory mitigating factors applied in this case. According to defendant, the trial court was wrong because defendant's imprisonment would entail excessive hardship to his dependents. With regard to mitigating evidence regarding a nonstatutory factor, defendant argues the trial court did not mention defendant's mental health problems or defendant's explanation he had not been taking his medication at the time of the offense.

¶ 17 Defendant recognizes he did not preserve these sentencing arguments for appellate review. "Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived." Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016). Regardless of forfeiture, defendant argues we should consider his argument based on the ineffective assistance of his counsel or pursuant to the plain-error doctrine. Because we are remanding this case for defendant to be provided counsel to strictly comply with Rule 604(d), defendant can make these sentencing arguments to the trial

court if he so desires. We need not determine whether we should consider these issues under an exception to appellate forfeiture.

¶ 18

#### C. Credit

¶ 19

Defendant next argues he is entitled to monetary credit against his eligible fines pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2014)) for time he spent in custody. In this case, the trial court awarded defendant credit for 349 days of presentence custody credit. However, defendant notes he was never awarded his monetary credit for time he spent in custody. Defendant argues this credit should apply to \$95 in eligible fines, including the \$50 court finance assessment, the \$15 State Police operations assessment, and the \$30 juvenile expungement fund assessment, which is split out on the clerk's sheet into the \$10 for "st police services," \$10 for "clerk op & admin f" charges, and \$10 of the \$40 "States Attorney" charge. The State concedes defendant may apply for this credit and has sufficient credit to not only satisfy the fines noted above but also the \$5 drug court assessment. We direct the trial court to address this issue on remand.

¶ 20

#### D. Lump-Sum Surcharge Fine

¶ 21

Defendant also argues the trial court erred in delegating to the circuit clerk the court's authority to determine the amount of the traffic/criminal surcharge, which is commonly known as the lump-sum surcharge (730 ILCS 5/5-9-1(c) (West 2014)). This assessment is a fine.

¶ 22

The trial court directed the circuit clerk to calculate the amount of the traffic/criminal surcharge and noted the amount the clerk determined was incorporated and imposed by reference in the court's order for fines. Pursuant to the fines and fees sheet, which was included in the record provided to this court, the clerk determined defendant owed \$10 for this assessment.

