

NOTICE
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2018 IL App (5th) 150012-U

NO. 5-15-0012

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,)	Marion County.
)	
v.)	No. 14-CF-246
)	
DAMARCUS JONES,)	Honorable
)	Mark W. Stedelin,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE BARBERIS delivered the judgment of the court.
Justices Goldenhersh and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* We grant the State Appellate Defender's motion to withdraw. And, we affirm the defendant's conviction because there were no reversible errors in the circuit court's denial of the defendant's motion to vacate his guilty plea.

¶ 2 The defendant, Damarcus Jones, appeals the denial of his motion to withdraw his plea of guilty to aggravated unlawful use of a weapon. The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant. OSAD filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Anders v. California*, 386 U.S. 738 (1967). The defendant was given proper notice and granted an extension of time to file briefs, objections, or any other documents supporting his appeal.

The defendant did not file a response. We considered OSAD's motion to withdraw as counsel on appeal. We examined the entire record on appeal and found no error or potential grounds for appeal. For the following reasons, we grant OSAD's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court of Marion County.

¶ 3

BACKGROUND

¶ 4 On September 18, 2014, the State filed an information charging the defendant with two counts of aggravated unlawful use of a weapon. The charges were predicated upon allegations involving the defendant carrying a revolver in public. On October 14, 2014, while represented by attorney Matthew Chancey, the defendant pleaded guilty in a negotiated plea to one of the two counts, and the State dismissed the other. The circuit court sentenced the defendant during the same proceeding.

¶ 5 Before accepting the defendant's guilty plea, the circuit court advised the defendant of the nature of the charge to which he was pleading guilty, the range of potential sentences, that he had the right to persist in a plea of not guilty and to have a trial by jury, and that if he pleaded guilty he was giving up the right to a trial. The court then informed the defendant of the negotiated sentence he was going to receive. Additionally, the court explained the rights associated with a jury trial that the defendant was giving up. The defendant indicated he understood and voluntarily waived his right to a jury trial.

¶ 6 The State presented the following information as a factual basis for the plea. In response to a call of suspicious activity, an officer encountered the defendant and another

individual. As the officer approached, the defendant walked away around the back of a home. The officer followed the defendant. At the time there was heavy dew on the ground. It was the officer's opinion that the disturbances in the dew indicated the path of a single person heading around the side of the home to a garden and then to the back porch where the officer found the defendant. Near the defendant, the officer found ammunition and a firearm. As there was no dew on the revolver or ammunition, it appeared to the officer that the items were recently placed where he found them. The next day, the officer spoke with the owner of the home who told him he did not know the defendant or why there would be a firearm and ammunition in his backyard.

¶ 7 The court then stated: "Based on the plea I'll find the defendant guilty, and pursuant to the terms of the negotiated plea I'll sentence him to 30 months probation, 15 days in the Marion county jail, credit for time served."

¶ 8 On October 20, 2014, the defendant filed a *pro se* motion to vacate his guilty plea. He asserted five grounds upon which to vacate his plea: (1) he received ineffective assistance of counsel because attorney Chancey did not assert the legal grounds that defendant believed Chancey should have asserted, and that he was generally dissatisfied with Chancey's representation; (2) the information included allegations that he was in a vehicle but no mention of his being in a vehicle was made in court;¹ (3) he was racially profiled and overcharged because he was eligible for a FOID card; (4) Marion County had a racist history, which the defendant believed would prevent him from receiving a

¹The information did not include any allegation that the defendant was in a vehicle.

fair trial; and (5) he was terrified and in constant torment in jail, so he signed anything to get out, planning on filing the motion to vacate.

¶ 9 On November 14, 2014, attorney Craig W. Griffin entered his appearance on behalf of the defendant. On December 12, 2014, Griffin filed an amended motion to withdraw the defendant's guilty plea. The amended motion made three allegations: (1) the "[d]efendant felt pressured to take a guilty plea" because his plea counsel did not adequately and effectively communicate with him; (2) the defendant maintains his innocence and the factual basis did not include any direct evidence of guilt; therefore "the ends of justice would be better-served by submitting the case to a jury"; and (3) the evidence was circumstantial.

¶ 10 Griffin filed an Illinois Supreme Court Rule 604(d) certificate. Ill. S. Ct. R. 604(d) (eff. Dec. 3, 2015). Among other things, Griffin certified: "I have examined the trial court file and report of proceedings of the plea of guilty."

¶ 11 On December 30, 2015, the court held a hearing on the defendant's motion to withdraw his guilty plea. Both Chancey and the defendant testified. The defendant testified to the following. He had only spoken with Chancey one time for three or four minutes before pleading guilty. This was because the jail would not let him contact Chancey. In the brief time he spoke with Chancey, Chancey did not explain what a jury trial was. The defendant testified that he recently learned what a jury trial was, but at the time he pleaded guilty, his understanding of a jury was that they were a group predisposed to findings of guilt. He also did not understand that he would have the opportunity to help select the jury through things like strikes, challenges, and

questionnaires. The defendant stated that had he known those things, he would not have pleaded guilty. Further, the defendant admitted that his only real argument for withdrawing his guilty plea was that he did not understand what a jury trial was.

¶ 12 Chancey then testified to the following. He visited with the defendant at least twice in jail. Among the things discussed with the defendant were the plea offers made by the State. The defendant had no questions regarding the jury process. The defendant was a client who felt he knew the law and could explain it to Chancey. The defendant was eager to accept the State's offer, and Chancey had to interrupt him to make sure he understood.

¶ 13 The circuit court denied the defendant's motion to withdraw his guilty plea. In its order, the circuit court stated that it found Chancey more credible than the defendant.

¶ 14 ANALYSIS

¶ 15 In its motion to withdraw, OSAD presents three potential arguments: (1) did the circuit court abuse its discretion by denying the defendant's motion to vacate his plea; (2) did postplea counsel comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017); and (3) whether the statute which created the crime to which the defendant pleaded guilty is constitutional. We agree with OSAD that these arguments are meritless.

¶ 16 Denial of Motion to Vacate Plea

¶ 17 "The foundations of a valid guilty plea are the defendant's voluntary admission in open court that he committed the acts with which he is charged and his knowing consent that judgment may be entered without trial." *People v. Huante*, 143 Ill. 2d 61, 69 (1991) (citing *Brady v. United States*, 397 U.S. 742, 748 (1970)), *abrogated on other grounds by*

Padilla v. Kentucky, 559 U.S. 356 (2010). As a waiver of constitutional rights, a guilty plea must be made voluntarily and intelligently. *People v. Stroud*, 208 Ill. 2d 398, 403 (2004).

¶ 18 The decision to enter a guilty plea is a " 'grave and solemn act.' " *People v. Evans*, 174 Ill. 2d 320, 326 (1996) (quoting *Brady*, 397 U.S. at 748). "It is not a 'temporary and meaningless formality reversible at the defendant's whim.' " (Emphasis omitted.) *Id.* (quoting *United States v. Barker*, 514 F.2d 208, 221 (D.C. Cir. 1975)). "A defendant does not have an absolute right to withdraw his guilty plea ***." *People v. Manning*, 227 Ill. 2d 403, 412 (2008). Courts should only grant motions to vacate pleas to "correct a manifest injustice under the facts involved" (*People v. Hillenbrand*, 121 Ill. 2d 537, 545 (1988)), or where the plea "was not constitutionally entered" (*Manning*, 227 Ill. 2d at 412). In *Boykin v. Alabama*, the United States Supreme Court held that a court cannot, consistent with due process, accept a guilty plea unless there has been an affirmative showing that the defendant's decision to plead guilty was made " 'intelligently and understandingly.' " *Boykin v. Alabama*, 395 U.S. 238, 242 (1969) (quoting *Carnley v. Cochran*, 369 U.S. 506, 516 (1962)); see *People v. Shamlodhiya*, 2013 IL App (2d) 120065, ¶ 17 ("Due process requires that a guilty plea be knowing and voluntary.").

¶ 19 In response to *Boykin*, the Illinois Supreme Court adopted Rule 402. *People v. Whitfield*, 217 Ill. 2d 177, 188 n.3 (2005); see Ill. S. Ct. R. 402 (eff. July 1, 1997). Rule 402 contains several admonishments which a trial court must give to a defendant in open court prior to accepting a guilty plea. The purpose of these admonishments "is to ensure

that a defendant understands his plea, the rights he has waived by pleading guilty and the consequences of his action." *People v. Dougherty*, 394 Ill. App. 3d 134, 138 (2009).

¶ 20 Literal compliance with the Rule 402 admonishments is not necessary to satisfy the requirements of due process. *People v. Burt*, 168 Ill. 2d 49, 64 (1995); *Dougherty*, 394 Ill. App. 3d at 138. Instead, "substantial compliance" is sufficient. *Dougherty*, 394 Ill. App. 3d at 138. " 'Substantial compliance' means that although the trial court did not recite to the defendant, and ask defendant if he understood, all the components of Rule 402(a), the record nevertheless affirmatively and specifically shows that the defendant understood them." *Id.*

¶ 21 Illinois courts have repeatedly held that a defendant must demonstrate prejudice as a result of an improper Rule 402 admonishment in order to obtain reversal of a trial court order denying a motion to vacate a guilty plea. For example, in *People v. Davis*, decided two years after *People v. Kidd*, 129 Ill. 2d 432 (1989), the Illinois Supreme Court explained that "[t]he failure to properly admonish a defendant, alone, does not automatically establish grounds for reversing the judgment or vacating the plea. *** Whether reversal is required depends on whether real justice has been denied or whether defendant has been prejudiced by the inadequate admonishment." *People v. Davis*, 145 Ill. 2d 240, 250 (1991); see also *People v. Grant*, 2015 IL App (4th) 140971, ¶ 29 ("[A]n imperfect admonishment does not violate due process where real justice has not been denied or defendant has not shown prejudice."); *People v. Reid*, 2014 IL App (3d) 130296, ¶ 17 (finding that defendant's waiver of right to pursue appellate and postconviction relief was knowing, intelligent, and voluntary where defendant could not

show he was prejudiced by inadequate admonishments); *cf. People v. Holloway*, 2014 IL App (1st) 131117, ¶ 29 (reversing trial court's denial of motion to vacate guilty plea because defendant was prejudiced by trial court's failure to properly admonish defendant in compliance with Rule 402).

¶ 22 A review of the record in the present case demonstrates that the circuit court properly admonished the defendant in accordance with Rule 402(a), determined that the plea was voluntary, and found that there was a sufficient factual basis to support the charge.

¶ 23 An allegation of a violation of the constitutional right to effective assistance of counsel is evaluated under the standard set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted in Illinois by *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984). The standard has two prongs, both of which must be satisfied for a defendant to prevail on an ineffective-assistance-of-counsel claim. First, the defendant must show that his "counsel's representation fell below an objective standard of reasonableness and that counsel's shortcomings were so serious as to deprive the defendant of a fair trial." (Internal quotation marks omitted.) *Albanese*, 104 Ill. 2d at 525. Second, the defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (Internal quotation marks omitted.) *Id.* In *People v. Tate*, 2012 IL 112214, the Illinois Supreme Court stated that at the second stage of postconviction proceedings the petitioner must " 'demonstrate' or 'prove' ineffective assistance by 'showing' that counsel's performance was deficient and that it prejudiced the defense." *Id.* ¶ 19. The reviewing

court can address these requirements in either order. *Albanese*, 104 Ill. 2d at 527. A failure to satisfy either prong of the *Strickland* standard causes the allegation of ineffective assistance of counsel to fail; the court need not address both prongs. See *Strickland*, 466 U.S. at 670. It is objectively unreasonable if an "attorney fail[s] to ensure that [a] defendant enter[s] [a] plea voluntarily and intelligently." *Huante*, 143 Ill. 2d at 69. The question here is whether the defendant's counsel ensured that the defendant entered his plea intelligently.

¶ 24 Here, the circuit court found Chancey more credible than the defendant. We find no abuse of discretion in the circuit court's finding of fact and credibility. The facts from the record and Chancey indicate that the defendant had ample opportunity to discuss his case with his attorney and that he knew what rights he gave up when pleading guilty and he received effective assistance of counsel. Therefore, the circuit court properly denied the defendant's motion to withdraw his guilty plea.

¶ 25 Illinois Supreme Court Rule 604(d)

¶ 26 At the time counsel filed his certificate of compliance, Illinois Supreme Court Rule 604(d) required appointed counsel to file a certificate stating, *inter alia*, that counsel "has examined the trial court file and both the report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing." Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016). Strict compliance with Rule 604(d) is required, and where the certificate itself fails to state that counsel fulfilled each of the duties required by the rule, the cause must be remanded for the filing of a proper certificate, the opportunity to file a new postplea

motion if the defendant so wishes or counsel concludes that a new motion is necessary, and a hearing on any new motion. *People v. Willis*, 2015 IL App (5th) 130020.

¶ 27 At first glance, it seems that Griffin did not strictly comply with this rule because his certificate does not include a statement that he reviewed the report of the proceedings in the sentencing hearing. Here, however, there was no separate proceeding for sentencing. In fact, the entirety of the circuit court's sentencing of the defendant was one sentence. Where Griffin's Rule 604(d) certificate states that he read the proceedings of the only proceeding, he strictly complied with the requirements of Rule 604(d). He could not certify to have read something that did not exist.

¶ 28 Constitutionalality of Statute

¶ 29 The defendant was convicted under section 24-1.6(a)(3)(C) of the Criminal Code of 2012 (720 ILCS 5/24-1.6(a)(3)(C) (West 2014)). The supreme court held that this section was constitutional. *People v. Mosley*, 2015 IL 115872, ¶ 36. See also *People v. Taylor*, 2013 IL App (1st) 110166, ¶ 32. No meritorious argument can be made that the defendant's conviction rests on an unconstitutional statute.

¶ 30 CONCLUSION

¶ 31 There are no viable claims that the defendant can raise on appeal. OSAD's motion is granted.

¶ 32 Motion granted; affirmed.