

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).

2020 IL App (4th) 180540-U

NO. 4-18-0540

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

TRAVIS CRANE,

Defendant-Appellant.

) Appeal from the

) Circuit Court of

) Livingston County

) No. 17CF364

)

) Honorable

) Jennifer Hartmann Bauknecht,

) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.

Presiding Justice Steigmann and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Where defense counsel's Rule 604(d) certificate failed to strictly comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017), we reverse the trial court's order denying defendant's motion to reconsider sentence and remand for further proceedings.

¶ 2 After entering an open guilty plea to two counts of aggravated driving under the influence and one count of driving while license revoked, the trial court sentenced defendant, Travis Crane, to an eight-year extended term of imprisonment in the Illinois Department of Corrections. Subsequently, defense counsel filed a motion to reconsider defendant's sentence and the court denied defendant's motion. On appeal, defendant contends that (1) defense counsel's Rule 604(d) certificate failed to comply with the certification requirements of Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) and (2) the court erred by considering certain factors in aggravation that were inherent in the offense. We reverse and remand for further proceedings.

FILED

August 6, 2020

Carla Bender

4th District Appellate Court, IL

¶ 3

I. BACKGROUND

¶ 4 In April 2018, defendant pleaded guilty to two counts of aggravated driving under the influence of alcohol (DUI), Class 2 felonies after having been convicted twice before of DUI (625 ILCS 5/11-501(d)(2)(B) (West 2016)) and one misdemeanor citation of driving while license revoked (625 ILCS 5/6-303(a) (West 2016)). This was an open plea, as there was no agreement as to defendant's sentence. At a June 2018 sentencing hearing, the trial court entered a conviction on count I, noting count II merged therewith for the purposes of sentencing. The court sentenced defendant to an extended term (based upon his prior convictions) of eight years in prison. The court admonished defendant of his right to appeal and the associated requirements.

¶ 5 In July 2018, defendant's counsel filed a motion to reconsider sentence, claiming it was excessive and that the trial court had not properly considered various factors. On August 7, 2018, the court conducted a hearing on defendant's motion to reconsider. After the parties' arguments, the court addressed counsel, stating: "I don't think I see a [Rule] 604(d) certificate." Counsel advised he "thought it was filed with [the motion.]" The court denied defendant's motion to reconsider. On August 7, 2018, counsel filed a certificate purportedly in compliance with Rule 604(d). Of note, the record indicates the transcripts of defendant's sentencing hearing were prepared and filed on August 22, 2018.

¶ 6 This appeal followed.

¶ 7

II. ANALYSIS

¶ 8 In order to properly challenge guilty plea proceedings, Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) requires counsel to file a certificate showing that he or she:
"has consulted with the defendant either by phone, mail, electronic means or in person to ascertain defendant's contentions of error in the sentence and the entry of

the plea of guilty, 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, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings.”

¶ 9 Illinois courts no longer approach cases challenging a certificate in terms of whether the error in failing to comply with Rule 604(d) was harmless or prejudicial. *People v. Janes*, 158 Ill. 2d 27, 33 (1994) (citing *People v. Hayes*, 195 Ill. App. 3d 957, 960-61 (1990)). Instead, failure to strictly adhere to the requirements of Rule 604(d) is considered to create error. *Id.* at 33. Strict compliance with Rule 604(d) is necessary as the rule is designed to ensure that counsel has fulfilled his or her obligations and that defendant’s due process rights have been protected. *People v. Dickerson*, 212 Ill. App. 3d 168, 171 (1991). Failure to strictly comply with Rule 604(d) necessitates remand to permit compliance. *Janes*, 158 Ill. 2d at 33.

¶ 10 Counsel’s certificate filed on August 7, 2018, reported that he had “consulted with the defendant in person or by mail to ascertain the defendant’s contentions of error in the sentence imposed and in the entry of the plea of guilty.” Counsel also averred he had “examined the trial court file and report of proceedings of the plea of guilty and the sentencing.” Defendant claims his counsel failed to comply with the requirements of Rule 604(d) by certifying on August 7, 2018, that he had reviewed transcripts that were not prepared or filed until August 22, 2018. Thus, defendant argues, counsel could not have reviewed the transcripts as he claimed. The State concedes the error.

¶ 11 The certificate itself is all that is considered to determine compliance with Rule 604(d). *People v. Neal*, 403 Ill. App. 3d 757, 760 (2010). Whether defense counsel strictly

complied with the provisions of Rule 604(d) is subject to *de novo* review. *People v. Grice*, 371 Ill. App. 3d 813, 815 (2007).

¶ 12 Rule 604(d) is designed to ensure defendants are provided their due process rights and to eliminate unnecessary appeals. *People v. Shirley*, 181 Ill. 2d 359, 362 (1998). Thus, “strict compliance with Rule 604(d) is required.” *People v. Prather*, 379 Ill. App. 3d 763, 768 (2008). The proper remedy for counsel’s failure to comply strictly with Rule 604(d)’s affidavit requirement is to remand the cause to the trial court for the opportunity to file a new motion to withdraw the guilty plea or challenge the sentence and a new hearing on the motions. See *People v. Bridges*, 2017 IL App (2d) 150718, ¶¶ 6, 12.

¶ 13 Here, all parties concede it appears counsel filed his certificate before examining the transcripts. That is, the record impeaches counsel’s certificate with respect to one of his basic duties under Rule 604(d)—the duty to examine the report of proceedings of the guilty plea and the sentencing hearing. Because we are unable to rely on the Rule 604(d) certificate under the circumstances of this case, we cannot comfortably say defendant had a fair opportunity to challenge his guilty plea and/or sentence. Thus, we must remand for strict compliance. See *Grice*, 371 Ill. App. 3d at 815.

¶ 14 As the Second District has stated:

“In summary, we hold that a Rule 604(d) certificate filed before counsel has actually complied with the substantive requirements of Rule 604(d) is ineffective. Where, as here, the record impeaches the Rule 604(d) certificate, a remand for further proceedings is necessary. Moreover, where compliance with the substantive requirements of Rule 604(d) is doubtful, so is the fairness of the proceedings.”
People v. Love, 385 Ill. App. 3d 736, 739 (2008).

¶ 15 For the foregoing reasons, we reverse the denial of defendant's motion to reconsider sentence, and we remand the matter for defendant's counsel to file a new motion under Rule 604(d) and otherwise to comply fully with the requirements of that rule.

¶ 16 III. CONCLUSION

¶ 17 For the foregoing reasons, we reverse the trial court's judgment and remand for further proceedings.

¶ 18 Reversed and remanded.