

2014 IL App (2d) 120999-U
No. 2-12-0999
Order filed July 7, 2014

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
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-2016
)	
ERIC A. CASIMIR,)	Honorable
)	George J. Bakalis,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

- ¶ 1 *Held:* Because defense counsel supported the Supreme Court Rule 604(d) motion to withdraw with a copy of the transcript of the plea hearing and argued that the facts therein showed defendant had been unwilling to plead and had asserted his innocence, she strictly complied with the rule; affirmed.
- ¶ 2 On July 11, 2012, defendant, Eric A. Casimir, negotiated a plea of guilty to aggravated robbery, and the trial court sentenced him to four years' probation. Defendant appeals, arguing that, by filing a *pro forma* motion to withdraw the plea, defense counsel did not strictly comply with Supreme Court Rule 604(d) (eff. July 1, 2006), and therefore the cause must be remanded for post-plea proceedings. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was arrested on August 29, 2011, and subsequently indicted for armed robbery, armed violence, and attempt first-degree murder.

¶ 5

A. Plea

¶ 6 On July 11, 2012, defendant and the State agreed upon a negotiated plea. Following a Supreme Court Rule 402 (eff. July 1, 2012) conference, the court explained the terms of defendant's plea as well as the consequences. The State amended count one, armed robbery, to aggravated robbery, and it dismissed the armed violence and attempt first-degree murder counts. Defendant subsequently pled guilty to one count of aggravated robbery, and the court sentenced him to four years' probation, and 180 days in the Du Page County jail.

¶ 7 As the plea was being entered, the following colloquy occurred between the trial court and defendant:

“THE COURT: The Court accepts the plea and enters the finding of guilty, accepts the agreement and places the defendant—

DEFENDANT: Excuse me, your Honor. I would just like to say I was innocent.

THE COURT: I'm sorry? What?

DEFENDANT: I would just like to say I was innocent, but I do accept what's been going on.

THE COURT: Well, you understand, sir, if you feel you're innocent, you have the right to proceed to trial. You can go to trial tomorrow if that's what you wish to do. You have to make a decision here.

DEFENDANT: I've made my decision. I'll accept the deal.

MS. PACIS [defense counsel]: Your Honor, I've tried to explain to the client while during the State's proffer that this is—while we don't agree with some of the proposed testimony, this is what these witnesses would testify to.

THE COURT: This is what the State is saying the witnesses would say, whether you agree with it or don't agree with it, this is what they would say. Do you understand that?

DEFENDANT: Okay.

THE COURT: Knowing that, do you want to proceed with this plea of guilty today?

DEFENDANT: Yes, I want to proceed today.”

The Court then sentenced defendant to four years' probation, 180 days in the Du Page County jail, and credit for time served.¹

¶ 8

B. Motion to Withdraw Plea

¶ 9 On August 2, 2012, defense counsel filed a motion to withdraw the plea, which only stated that defendant's plea was not knowingly and voluntarily entered, and because defendant did not knowingly and voluntarily enter his plea, the trial court should allow defendant to withdraw his plea of guilty. In court, defendant stated that he had pled guilty because he was

¹ The criminal sentence order states that defendant was sentenced on the charge of aggravated robbery in violation of “720 ILCS 5/18-3.” However, section 18-3 of the Criminal Code of 1961 is based on the offense of vehicular hijacking. The charging instrument and the remainder of the record indicate the trial court intended to sentence defendant on the charge of aggravated robbery, which is defined by section 18-5(a) of the Code (720 ILCS 5/18-5(a) (West 2010)). Accordingly, pursuant to Supreme Court Rule 366(a)(3) (eff. Feb. 4, 1994), we amend the order to reflect that defendant was sentenced on the charge of aggravated robbery in violation of section 18-5(a) of the Code (720 ILCS 5/18-5(a) (West 2010)).

threatened in jail. Defense counsel indicated that she would amend the motion, and the case was set over for hearing.

¶ 10 On the next date, defense counsel stated that she was unable to amend the motion because her investigator interviewed defendant on three occasions and defendant did not give the investigator any specific information on any threats. Counsel indicated that she would stand on the motion as supported by a copy of the transcript of the plea hearing, which she tendered to the court. Counsel argued that the transcript showed defendant's unwillingness to go along with the agreement by voicing his innocence.

¶ 11 Defendant was given several opportunities to make statements to the court concerning his reasons for moving to withdraw the plea. Defendant stated that he "wasn't in a perfectly right state of mind," at the time of the plea. He explained that the jail was "stressful" and "uncomfortable" and that a hip injury was aggravated by the "improper" padding on the beds. He added that he was "weak and scared."

¶ 12 The trial court reviewed the guilty plea proceeding, specifically the portion where defendant stated that he was innocent but agreed with the plea agreement. The court concluded that there was no basis to find the plea involuntary and denied the motion to withdraw the guilty plea.

¶ 13 Following the ruling, defendant expressed additional concerns about what his counsel had told him about the plea. He stated that counsel advised him that he could get a 30-year sentence if he was not successful at trial. The court then explained:

"So what your attorney did for you, basically, is she gave you her estimate of possibility of what might happen at trial, told you if you were convicted you could face 6 to 30 years in the Illinois Department of Corrections, and frankly, negotiated an

amendment to a Class 1 for probation and time you had already served in jail. I mean, it's not a bad disposition, in light of what you originally were charged with. Now, again, you had the option of saying no. You had the option of saying, I don't want to do that and we would go to trial. But we didn't do that.

* * *

[E]very defendant has got to weigh those odds and make a decision as to what they want, whether they want to take the risk or not take the risk. As far as I can see, you decided the better option was to take the disposition. I can't say it was not voluntarily done, sir.”

The court reiterated that the motion was denied.

¶ 14

II. ANALYSIS

¶ 15 Defendant asserts that defense counsel did not strictly comply with Rule 604(d) because she failed to include any grounds in support of the boilerplate motion. Whether defense counsel complied with the requirements of Rule 604(d) is a question subject to *de novo* review. *People v. Grice*, 371 Ill. App. 3d 813, 815 (2007).

¶ 16 Rule 604(d) provides in part:

“The motion shall be in writing and shall state the grounds therefor. When the motion is based on facts that do not appear of record it shall be supported by affidavit. The motion shall be presented promptly to the trial judge by whom the defendant was sentenced. The 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 his contentions of error in the sentence or the entry of the plea of guilty, has examined the trial court file and report of proceedings of the plea of guilty and has made any

amendments to the motion necessary for adequate presentation of any defects in those proceedings. Upon appeal any issue not raised by the defendant in the motion to withdraw the plea of guilty and vacate the judgment shall be deemed waived.” Ill. Sup. Ct. R. 604(d) (eff. July 1, 2006).

¶ 17 Rule 604(d) “contemplates more than the mere *pro forma* filing of a motion.” *People v. Keele*, 210 Ill. App. 3d 898, 902 (1991). The rule was designed to eliminate needless trips to the appellate court and to give the trial court an opportunity to consider alleged errors and to make a record for the appellate court to consider on review in cases where defendants’ claims are disallowed. *People v. Wilk*, 124 Ill. 2d 93, 106 (1988). The rule ensures that, before a criminal appeal can be taken from a guilty plea, the trial judge who accepted the plea and imposed the sentence be given the opportunity, at a time when witnesses are still available and memories are fresh, to hear the allegations of improprieties that took place outside the official proceedings and *dehors* the record, but nevertheless were unwittingly given sanction in the courtroom. *Id.* at 104. Such a hearing allows for the trial court to immediately correct any improper conduct or any errors which may have produced a guilty plea. *Id.* The trial court is the place for fact-finding to occur and for a record to be made concerning the factual basis upon which a defendant relies for the grounds to withdraw a guilty plea. *Id.* For these reasons, a relaxed standard of compliance with Rule 604(d) cannot be accepted. *People v. Hayes*, 195 Ill. App. 3d 957, 960 (1990). Strict adherence to the rule allows courts of review to ascertain the integrity of the parties’ assertions of fact and law, all of which is essential to the expeditious and accurate determination of appeals. *Keele*, 210 Ill. App. 3d at 903.

¶ 18 Defendant points out that the trial court correctly recognized that the motion did not specify any basis to withdraw the motion. When asked whether counsel had any further

elaboration on the motion to withdraw, defense counsel responded “no” but that she was relying on the transcripts. The trial court then turned to defendant to determine whether he had anything else he wanted to raise, and defendant “was forced to, off-the-cuff, grieve his guilty plea.” Defendant argues that he was put in the untenable position of having to argue his own motion to withdraw the guilty plea even though he was represented by counsel whose duty it was to state the grounds, support them with facts, and adequately present them to the trial court, “lest they be waived.”

¶ 19 Defendant relies on *People v. Little*, 337 Ill. App. 3d 619 (2003), and *Keele* as illustrative of *pro forma* Rule 604(d) motions. Defendant maintains that here defense counsel filed the same kind of boilerplate motion found to be deficient in *Little* and *Keele*. Because the motion did not give any specifics of why the guilty plea was not knowing and voluntary or state any reasons to support the request, the motion was not in strict compliance with Rule 604(d), where defendant was left without cognizable issues to appeal.

¶ 20 While defense counsel could have stated a more factually detailed basis for moving to withdraw the plea, she relied on the facts contained in the transcript of the plea hearing, which she had tendered to the trial court to supplement the motion. Counsel argued the transcripts showed that defendant had been unwilling to plead and that he had asserted his innocence. Defendant is correct that the transcript goes on to show that the trial court appropriately inquired of defendant regarding this comment, and the trial court ultimately determined that defendant’s plea was knowingly and voluntarily made. Although defense counsel’s argument on the motion to reconsider was not strong, she did not abandon defendant as the attorneys in *Keele* and *Little* had with their clients.

¶ 21 In *Keele*, defense counsel presented no argument and actually requested that the court deny the motions. *Keele*, 210 Ill. App. 3d at 901. Additionally, based on the reviewing court's examination of the record, there appeared to be a potentially viable Rule 402 issue. *Id.* at 903. In *Little*, defense counsel filed a *pro forma* motion with no exhibits and did not argue on behalf of the defendant. *Little*, 337 Ill. App. 3d at 620-21. Further, the Rule 604(d) certificate falsely stated that counsel examined the transcript of the guilty plea proceeding, but the transcript was not prepared until after the Rule 604(d) certificate had been filed. *Id.* at 622-23.

¶ 22 Here, defense counsel supplemented what could be categorized as a *pro forma* motion with the transcript of the guilty plea hearing and then argued based upon the facts contained therein to support the motion to withdraw. Counsel took a date to file an amended motion which would have contained a cognizable reason for withdrawing the plea, *i.e.* that defendant had been threatened in the jail, but defendant refused to cooperate with the investigator.

¶ 23 Defendant further maintains that his counsel failed to function as an advocate in support of his post-plea claims. Defendant asserts that, due to a strained attorney-client relationship, he was forced to argue his own motion. This argument lacks merit for two reasons. First, the trial court conducted a *Krankel* hearing (see *People v. Krankel*, 102 Ill. 2d 181 (1984)) and found no reason to appoint new counsel. Defendant does not contest this ruling on appeal. Second, defendant did not state any viable grounds for withdrawing his plea that counsel was compelled to raise on his behalf. Defendant's factual claims had to do with how jail was stressful and uncomfortable. Defense counsel is not obligated to argue claims that lack merit.

¶ 24

III. CONCLUSION

¶ 25 For the reasons stated, we affirm the judgment of the trial court denying defendant's motion to withdraw the guilty plea.

¶ 26 Affirmed.