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2014 IL App (3d) 130131-U

Order filed December 2, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Whiteside County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0131
DAVID J. ANDREWS,)	Circuit No. 11-CF-72
Defendant-Appellant.)	Honorable John L. Hauptman, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices O'Brien and Carter concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Counsel's postplea certificate complied with Illinois Supreme Court Rule 604(d); and (2) certain of defendant's fines must be reduced or satisfied by credit.

¶ 2 Defendant, David J. Andrews, pled guilty to aggravated battery (720 ILCS 5/12-4(a) (West 2010)), and the trial court sentenced him to an extended term of 10 years' incarceration. Defendant filed a *pro se* motion to reconsider sentence. The court appointed counsel. Appointed counsel filed a certificate under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) and an amended motion to reconsider sentence. The court denied the motion. Defendant appeals,

arguing that counsel's certificate failed to comply with Rule 604(d) and that defendant's fines must be reduced. We affirm as modified.

¶ 3

FACTS

¶ 4

Defendant was charged with one count of armed violence (720 ILCS 5/33A-2(a) (West 2010)) and two counts of aggravated battery (720 ILCS 5/12-4(a), (b)(1) (West 2010)) after allegedly stabbing the victim with a knife in the upper torso multiple times. He hired private counsel¹ and pled guilty to one count of aggravated battery (720 ILCS 5/12-4(a) (West 2010)) by way of an open plea. The court sentenced him to an extended term of 10 years' incarceration, along with various costs, including \$39,865.30 reimbursement for the victim's medical bills.

¶ 5

Within 30 days of the court's judgment, defendant filed a *pro se* motion for reduction of sentence. The court appointed counsel. The court ordered the clerk to prepare a report of proceedings pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001) and send a copy to appointed counsel.

¶ 6

Counsel filed an amended motion to reconsider sentence, along with a certificate of compliance pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). The certificate stated that counsel had "consulted with the Defendant *** to ascertain the Defendant's contentions of error in the sentence or the entry of the plea of guilty, and *** examined the trial court file and report of proceedings of the plea of guilty, and *** made any amendments *** necessary." About a month later, counsel filed a second certificate of compliance, which included the same language as the first certificate but added that counsel had examined the report of proceedings of both the plea of guilty *and the sentencing hearing* and had made any

¹ Defendant's private counsel, Al Henry Williams, was disbarred in 2012 as a result of an unrelated matter.

amendments necessary for adequate presentation of any defects "in *those* proceedings."
(Emphasis added.)

¶ 7 The court held a hearing on the amended motion to reconsider sentence. It denied the motion. Defendant appeals.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant raises two issues: (1) that the cause must be remanded for new post-plea proceedings because trial counsel failed to file a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006); and (2) that defendant's fines must be reduced.

¶ 10 I. 604(d) Certificate

¶ 11 Rule 604(d) requires postplea counsel to consult with defendant concerning defendant's potential contentions of error in both the guilty plea proceedings and the sentencing proceedings. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Counsel must then examine the report of proceedings of the guilty plea. Finally, counsel must make any necessary amendments to defendant's postplea motion in order to adequately present to the court any defects that occurred during the guilty plea proceedings or the sentencing proceedings. *People v. Tousignant*, 2014 IL 115329, held that the word "or" is conjunctive rather than disjunctive in the context of Rule 604(d). Hence, Rule 604(d) requires postplea counsel to address both the guilty plea proceedings and the sentencing proceedings in every case and make any necessary corresponding amendments to the defendant's motion.

¶ 12 In the present case, counsel's second certificate established that he complied with the mandates of Rule 604(d). The certificate stated that counsel had "examined the trial court file and report of proceedings of the plea of guilty and sentencing hearing, and *** made any amendments to the motion necessary for adequate presentation of any defects in *those*

proceedings." (Emphasis added.) It is clear from counsel's second certificate that he took efforts to examine and present defects relating to both the guilty plea proceedings and the sentencing proceedings, in compliance with Rule 604(d) and *Tousignant*, 2014 IL 115329. There is no need to remand for new postplea proceedings.

¶ 13 II. Reduction of Fines

¶ 14 Defendant argues that his \$100 Violent Crime Victims Assistance (VCVA) Fund fine (725 ILCS 240/10 (West 2010)) must be reduced to \$8 and that he must be credited \$5-per-day sentencing credit (725 ILCS 5/110-14 (West 2010)) against the \$15 State Police Operations Assistance Fund fine and the \$50 court fund fine. The State concedes. We order the circuit clerk to reduce the VCVA Fund fine to \$8, and apply the \$5-per-day credit to wholly satisfy the \$15 State Police Operations Assistance Fund fine and the \$50 court fund fine.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of Whiteside County is modified in part and otherwise affirmed.

¶ 17 Affirmed as modified.