NOTICE
Decision filed 08/27/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 120377-U

NO. 5-12-0377

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,	)	Williamson County.
	)	
v.	)	No. 11-CF-41
	)	
AARON SIWINSKI,	)	Honorable
	)	John Speroni,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Chapman and Spomer concurred in the judgment.

ORDER

¶ 1 *Held*: Because the attorney certificate failed to comply with Supreme Court Rule 604(d), this cause must be remanded to the circuit court for a new hearing on the defendant's motion to reconsider sentence.

¶ 2 The attorney certificate in this cause failed to comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) in two respects, namely: the attorney failed to certify that he (1) had consulted with the defendant in order to ascertain the defendant's contentions of error in the entry of the plea of guilty and (2) had examined the report of proceedings of the plea of guilty. Due to this failure to comply with Rule 604(d), the judgment of the

circuit court must be vacated, and this cause must be remanded for a new hearing on the defendant's motion to reconsider sentence.

¶ 3 BACKGROUND

¶ 4 The State charged the defendant, Aaron Siwinski, with three counts: (I) aggravated battery (720 ILCS 5/12-3.05(b)(2) (West 2010)), (II) aggravated battery of a child (720 ILCS 5/12-4.3(a-5) (West 2010)), and (III) domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2010)). Attorney L. E. Broeking was appointed to represent the defendant.

¶ 5 On March 5, 2012, the defendant appeared in court with attorney Broeking, as well as an assistant State's Attorney. Pursuant to an agreement, the defendant pleaded guilty to aggravated battery (count I), and the State moved to dismiss the two other counts, along with the charges the defendant was facing in a separate misdemeanor case, No. 11-CM-154. There was no agreement concerning the length of the sentence. The court accepted the guilty plea and scheduled a hearing in aggravation and mitigation.

¶ 6 On May 29, 2012, the court held the hearing in aggravation and mitigation. The court heard evidence and the arguments of counsel, and took the matter under advisement. On May 30, 2012, the court sentenced the defendant to imprisonment for four years and a fine of $1,000. On June 6, 2012, the court entered a written judgment and sentence.

¶ 7 On June 21, 2012, the defendant filed through attorney Alex M. Fine a motion to reconsider the sentence. The sole claim was that the sentence was excessive. (The defendant did not file a motion to withdraw his guilty plea.)

¶ 8 On August 13, 2012, the court held a hearing on the motion to reconsider sentence. At the start of that hearing, attorney Fine told the court:

> "Judge, just to make the record clear, Mr. Broeking was the attorney for the defendant. I have taken over in conjunction with the Motion to Reconsider. We have asked for transcripts. We have received transcripts on the Plea of Guilty, the Sentencing Hearing and the ruling on the Sentencing Hearing. I've had an opportunity to send copies of those to my client. He's reviewed them. I have reviewed them. We had a chance to correspond. He corresponded with me, and we met here today, and we discussed this. Judge, at this time, I am submitting an attorney certificate pursuant to 604(d)."

The "Attorney Certificate Pursuant to Supreme Court Rule 604(d)" is part of the record on appeal. In it, attorney Fine certified that he (1) "consulted with the defendant by mail and/or in person to ascertain defendant's contention of error in the sentence," (2) "examined the trial court file and the report of proceedings of the sentencing hearing," and (3) "made or will make if necessary any amendments to the motion necessary for adequate presentation of any defects in those proceedings." The two parties presented arguments for or against the motion to reconsider sentence, and the court denied the motion. The defendant filed a timely notice of appeal, thus perfecting the instant appeal.

¶ 9 ANALYSIS

¶ 10 On appeal, the defendant argues that attorney Fine's certificate failed to comply with Rule 604(d). Specifically, the defendant argues that the attorney failed to certify that he (1) consulted with the defendant in order to ascertain the defendant's contentions

of error in the entry of the plea of guilty and (2) examined the report of proceedings of the plea of guilty. The defendant seeks a remand for the filing of a valid attorney certificate and a new hearing in full compliance with Rule 604(d). The State counters that remand is unnecessary because attorney Fine complied with Rule 604(d), as evidenced by the attorney certificate when read "in conjunction with" the oral representations that attorney Fine made to the court at the August 13, 2012, hearing on the motion to reconsider sentence. This court concludes that the attorney certificate was deficient, and remand is necessary for that reason.

¶ 11 The pertinent portion of Rule 604(d)–that is, the sentence describing the attorney certificate–reads as follows:

> "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 defendant's 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." Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 12 Strict compliance with the certificate requirement of Rule 604(d) is required. *People v. Janes*, 158 Ill. 2d 27, 35 (1994).

¶ 13 The attorney certificate in the instant case obviously failed to comply with Rule 604(d) in two respects. First, the attorney failed to certify that he had consulted with the defendant in order to ascertain the defendant's contentions of error in the entry of the plea of guilty. Counsel did certify that he had consulted with the defendant to ascertain the

defendant's contentions of error *in the sentence*. However, this certification was not enough under Rule 604(d). Counsel needed to certify that he had consulted with the defendant to ascertain the defendant's contentions of error in *both* the sentence *and* the entry of the guilty plea. See *People v. Tousignant*, 2014 IL 115329, ¶ 20 (even though defendant filed only a motion to reconsider sentence, and no motion to withdraw guilty plea, Rule 604(d) required counsel to certify that he had consulted with defendant regarding contentions of error in both the sentence and the guilty plea). Second, the attorney failed to certify that he had examined the report of proceedings of the plea of guilty. Counsel did certify that he had examined the trial court file and the report of proceedings of *the sentencing hearing*. However, this certification was not enough under Rule 604(d), which explicitly requires counsel to certify that he "has examined the trial court file and report of proceedings of *the plea of guilty*." (Emphasis added.) Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 14 This court declines the State's invitation to read the attorney certificate "in conjunction with" counsel's representations at the hearing on the motion to reconsider sentence. "By promulgating Rule 604(d), the Supreme Court of Illinois has already determined the required content of the certificate, and it is the duty of this court–and the trial courts–to ensure that this supreme court mandate is followed." *People v. Grice*, 371 Ill. App. 3d 813, 816 (2007). "[T]he certificate itself is all that this court will consider to determine compliance with Rule 604(d)." *Id.* As previously indicated, the attorney certificate filed in this case obviously failed to comply with the certificate requirement of Rule 604(d).

¶ 15 Due to the deficient attorney certificate, the order denying the motion to reconsider the sentence is vacated and this cause is remanded. Upon remand, the defendant may file a new motion to reconsider sentence or may stand on his original motion, and he may file a motion to withdraw guilty plea. Regardless, a new hearing on the motion(s) must be held. See *People v. Lindsay*, 239 Ill. 2d 522, 531 (2011). Before allowing a hearing, the circuit court will need to insist on defense counsel's strict compliance with Rule 604(d). See *People v. Davis*, 255 Ill. App. 3d 647, 649 (1994).

¶ 16 Vacated and remanded with directions.