

No. 1-13-2132

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> KENNETH M., a Minor	)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 13 JD 546
	)	
KENNETH M.,	)	Honorable
	)	Patricia Mendoza,
Respondent-Appellant).	)	Judge Presiding.

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Justice Reyes delivered the judgment of the court.  
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where respondent did not file a motion to withdraw his plea or a motion to reconsider sentence, the cause is remanded for strict compliance with Supreme Court Rule 604(d) (eff. Feb. 6, 2013).

¶ 2 Respondent Kenneth M., who pleaded guilty to possession of a stolen motor vehicle (PSMV), appeals from his adjudication of delinquency and dispositional order. On appeal, respondent challenges the order of restitution. He contends that the circuit court lacked authority to order restitution where (1) the damage to the subject vehicle was not caused by the crime to which he pleaded guilty; (2) there was no evidence that the damage was caused by respondent or

anyone for whom he was accountable; (3) there was insufficient evidence concerning the costs of the damage; and (4) there was no determination of respondent's ability to pay or establishment as to the manner of payment.

¶ 3 We do not consider the merits of defendant's arguments, as the case must be remanded to the trial court for compliance with the written motion requirements of Supreme Court Rule 604(d) (eff. Feb. 6, 2013).

¶ 4 In February 2013, the State filed a petition for adjudication of wardship, charging respondent with PSMV, criminal trespass to a motor vehicle, and two counts of criminal damage to property. On April 15, 2013, the prosecutor indicated to the circuit court that the parties had reached an agreement to resolve the case. In exchange for respondent's plea to the charge of PSMV, the State would strike with leave to reinstate the other counts in the February 2013 petition, as well as all the counts included in three separate, additional pending petitions. The prosecutor indicated the State would be recommending a sentence of one year of probation with conditions: a DNA swab, a restraining order, 30 hours of community service, "no gangs, guns or drugs," mandatory school, "and the State would be arguing for restitution."

¶ 5 The circuit court reviewed the charges and confirmed with respondent that he wished to plead guilty to the charge of PSMV. The parties stipulated to the factual basis of the plea. After finding that respondent's plea was freely, knowingly, and voluntarily made, and that there was a sufficient factual basis for the admission of guilt, the court made a finding of delinquency.

¶ 6 Immediately thereafter, the victim testified regarding the damage sustained to his vehicle and produced written documentation of the cost of repairs and repair estimates. After the victim was excused, the court indicated that it would "make my decision on restitution" at sentencing, after a social investigation was conducted.

¶ 7 On June 11, 2013, the parties reconvened for sentencing. After argument from the attorneys, the trial court ordered restitution in the amount of \$895. The court thereafter found respondent delinquent, adjudged him a ward of the court, and imposed the agreed-upon probationary sentence and conditions. The court also advised respondent of his appeal rights, informing him that if he wished to appeal his plea or sentence, he would have to file a written motion to withdraw the plea.

¶ 8 Respondent did not file a motion to withdraw his plea or a motion to reconsider his sentence. However, respondent did file a notice of appeal within 30 days, noting a "possible issue of restitution award on PSMV case, esp. amount of restitution ordered."

¶ 9 On appeal, respondent challenges the order of restitution. He contends that the circuit court lacked authority to order restitution where (1) the damage to the vehicle was not caused by the crime to which he pleaded guilty; (2) there was no evidence that the damage was caused by respondent or anyone for whom he was accountable; (3) there was insufficient evidence concerning the cost of the damage; and (4) there was no determination of respondent's ability to pay or establishment as to the manner of payment. Respondent asks that this court reverse and vacate the order of restitution or, in the alternative, reverse the order and remand for further proceedings to determine the proper amount of restitution.

¶ 10 Respondent acknowledges that he failed to file a motion to withdraw his plea or a motion to reconsider sentence. However, he argues that we should nevertheless reach the merits of his contentions because the restitution order was entered without statutory authority, is therefore void, and can be attacked at any time; defense counsel was ineffective for failing to challenge the restitution assessment and properly preserve it for appeal; and his challenge to the restitution order should be considered under the plain error doctrine.

¶ 11 Supreme Court Rule 604(d) (eff. Feb. 6, 2013) provides, in pertinent part, as follows:

"No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment. No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment."

Strict compliance with Rule 604(d) is required in both the juvenile and the adult context. *In re William M.*, 206 Ill. 2d 595, 605 (2003). A defendant's failure to file the appropriate Rule 604(d) motion ordinarily results in dismissal of the appeal, with the Post-Conviction Hearing Act as the defendant's only recourse. *People v. Linder*, 186 Ill. 2d 67, 74 (1999). However, because the Post-Conviction Hearing Act does not apply in juvenile proceedings, dismissing a juvenile respondent's appeal for failure to comply with Rule 604(d) would leave the respondent without a remedy for his claims. *William M.*, 206 Ill. 2d at 604. Therefore, when a juvenile respondent fails to comply with the written motion requirements of Rule 604(d) prior to filing an appeal, the case is not dismissed; rather, this court has no discretion and must remand the cause to the circuit court for strict compliance with Rule 604(d). *William M.*, 206 Ill. 2d at 605.

¶ 12 Here, respondent failed to file a motion to withdraw his plea or reconsider the sentence before taking his appeal. Accordingly, we remand the cause for strict compliance with Rule 604(d).

¶ 13 We are mindful of respondent's argument that his failure to comply with Rule 604(d) is of no import because the restitution order is void. While it is true that a void order may be attacked at any time, the issue of voidness must be raised in the context of a proceeding that is properly pending. *People v. Flowers*, 208 Ill. 2d 291, 308 (2003). The appellate court is not vested with authority to consider the merits of a case "merely because the dispute involves an order or judgment that is, or is alleged to be, void." *Flowers*, 208 Ill. 2d at 308. Our authority to consider the merits of a case attaches only upon compliance with the rules governing appeals. *Flowers*, 208 Ill. 2d at 308. As noted above, strict compliance with Rule 604(d) is a condition precedent to an appeal on the merits. *Flowers*, 208 Ill. 2d at 308-09. Here, the requirements of the rule were not met. Thus, we are without authority to consider the merits of respondent's arguments.

¶ 14 For the reasons explained above, we remand the cause to the circuit court of Cook County for further proceedings in strict compliance with Rule 604(d). In addition, we retain jurisdiction over this matter for respondent to file status reports regarding his case in motion form before this court. The first status report must be filed with the Clerk of the First District Appellate Court on January 22, 2014, and every 30 days thereafter.

¶ 15 Remanded with instructions.