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No. 3–09–0297

Order filed March 7, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of the 14th Judicial Circuit,
	)	Henry County, Illinois,
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08–CF–143
	)	
MICHAEL W. PORTER,	)	Honorable
	)	Charles H. Stengel,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice Carter and Justice Holdridge concurred in the judgement.

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**ORDER**

*Held:* Defense counsel complied with the directives of this court on remand by filing a Rule 604(d) certificate without filing a new postplea motion.

Defendant Michael W. Porter pled guilty to 14 counts of aggravated criminal sexual abuse (720 ILCS 5/12--16(d) (West 2004)) and one count of predatory criminal sexual assault of a child (720 ILCS 5/12--14.1(a)(1) (West 2006)). The trial court sentenced him to an aggregate term of imprisonment of 27 years. Defendant filed a motion to reconsider his sentence, which

the trial court denied. Defendant appealed, and this court remanded the cause for strict compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Porter*, No. 3–08–0997 (2009) (unpublished order under Supreme Court Rule 23). On remand, after defense counsel filed a Rule 604(d) affidavit, the trial court denied defendant's original motion to reconsider as filed before the appeal. Defendant appeals, contending that the cause should be remanded for a second time because defense counsel failed to carry out the directive of this court by strictly complying with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) by failing to file a new postplea motion after preparing and filing the required Rule 604(d) certificate. We affirm.

#### FACTS

In April 2008, the State charged defendant, born on July 10, 1954, with 28 counts of aggravated criminal sexual abuse, stemming from numerous separate instances of sexual conduct that occurred between defendant and three males all being under 15 years old. The State also charged defendant with predatory criminal sexual assault of a child for having sexual contact with one victim, M.S., while M.S. was under 13 years old.

At a hearing before Judge Vandersnick on August 1, 2008, defendant entered a partially negotiated plea of guilty to 14 counts of aggravated criminal sexual abuse and one count of predatory criminal sexual assault of a child, in exchange for the State's agreement to dismiss the remaining charges. The State presented a factual basis for the plea that generally indicated that defendant engaged in oral sex with the minors and in exchange gave them money, drugs, and alcohol. The State also indicated that defendant had threatened to kill two of the minors if they disclosed the abuse. Defendant agreed that the State's witnesses would testify consistently with

the factual basis, but he denied providing alcohol to the minors or threatening them. The court accepted defendant's guilty plea.

In preparation for the sentencing hearing, defendant participated in a presentence investigation (PSI) and a sex offender evaluation. James Ray, the counselor who performed defendant's sex offender evaluation, opined that defendant posed a high risk to reoffend.

At the October 30, 2008, sentencing hearing before Judge Vandersnick, defendant apologized to the minors, "especially [M.S.]" and their parents for committing the instant offenses. He also stated that M.S. was "doing real well in school," and in sports. Defendant further stated that he pled guilty because he "did not want to drag the boys through court, especially [M.S.]"

The court sentenced defendant to an aggregate term of imprisonment of 27 years, finding that consecutive sentences were necessary to protect the public. The court stated that in fashioning defendant's sentence, it had considered, among other things, the factual basis for the plea, the PSI report and the sex offender evaluation, the statutory factors in aggravation and mitigation, and defendant's allocutory statement. The court noted Ray's opinion that defendant posed a high risk of reoffending. The court also stated that it was "disturb[ed]" that defendant singled out M.S. during his allocutory statement because it believed defendant should not be "concerned about somebody \*\*\* that [he] sexually offended." The court further stated that he was sickened by certain details concerning defendant's conduct towards his victims including details of oral sex and the fact that defendant provided the victims with alcohol and drugs in exchange for the sexual acts.

Defendant subsequently filed a motion to reconsider his sentence which alleged that: (1)

he did not intend to show special affection or attention to M.S. during his allocutory statement, but only that he believed that M.S. had a positive future and he did not want to subject M.S. to embarrassment by having to testify at trial; (2) the court gave too much weight to Ray's conclusion that defendant posed a high risk of reoffending; (3) the court gave insufficient weight to the victims' voluntary participation in the offenses and that defendant did not coerce or force the victims' participation; and (4) the sentence was excessive in light of defendant's age and remorse. Counsel did not file a certificate pursuant to Rule 604(d) indicating that he reviewed defendant's claims of errors with him prior to the filing of the motion to reconsider.

After a hearing on defendant's motion to reconsider, the court denied the motion to reconsider the sentence. Defendant appealed, and this court remanded the cause for strict compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *Porter*, No. 3–08–0997, and "for further post-plea proceedings, including the filing of a new post-plea motion, the filing of a Rule 604(d) certificate, and a *de novo* hearing." *Porter*, No. 3–08–0997, slip op. at 1.

The hearing on remand occurred on March 26, 2009, before Judge Stengel following Judge Vandersnick's retirement. At the hearing, defense counsel filed his Rule 604(d) certificate in open court but did not file a new motion to reconsider after remand. Instead, defense counsel indicated to Judge Stengel that he "largely \*\*\* st[oo]d" on his previously filed motion to reconsider and emphasized that the court placed too great an emphasis on Ray's sex offender evaluation and the opinion that defendant posed a high risk to reoffend.

Defense counsel also stated that he had conversed with defendant that day. Defendant requested that counsel "emphasize the fact that at some point in [defendant's] recollection of what Judge Vandersnick said as part of the justification for the sentence" was that "doctor [Ray]

was a University of Illinois graduate, and \*\*\* the judge made comments about [Ray's University of Illinois background] as giving him more weight or authority." Defense counsel continued that "[he] trust[ed] the defendant's memory" better than his own. According to defense counsel, defendant was also concerned because he claimed Judge Vandersnick had made "some reference" that defendant's conduct "disgusted the judge[.]" Counsel also stated that "defendant fe[lt this comment] wasn't even a part of the transcript."

The court noted that the transcript of the sentencing hearing did not reference Ray's alleged connection with the University of Illinois. Consequently, the court inquired whether defendant would like an opportunity to supplement his motion to reconsider with an affidavit concerning these details. After conferring with defendant, counsel stated that he was not going to supplement the motion to reconsider with an affidavit.

Judge Stengel went on to conduct a hearing on the motion to reconsider and denied defendant's motion. In doing so, the court noted that it did not believe the sentencing court misunderstood defendant's allocutory statements concerning M.S., that Judge Vandersnick did not place too much weight on the sex offender evaluation, that the judge properly considered defendant's explanation that he did not coerce the victims, and that the sentence was not excessive, especially in light of the fact defendant provided marijuana and alcohol to the minors. Defendant appealed.

## ANALYSIS

On appeal, defendant argues that our last directive required strict compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), "including the filing of a new post-plea motion, the filing of a Rule 604(d) certificate, and a *de novo* hearing." *Porter*, No. 3–08–0997, slip op. at

1. Since the record does not contain a new postplea motion, defendant argues a second remand is in order for compliance with our last directive.

Since the last appeal, our supreme court has recently determined that when a reviewing court remands the cause for counsel to file a Rule 604(d) certificate of compliance, counsel is not required to file a new postplea motion if counsel concludes that the original postplea motion sufficiently raised defendant's claims of error. *People v. Lindsay*, No. 110089 (Ill. Jan. 21, 2011). When reaching this conclusion, the *Lindsay* court construed the mandate of *People v. Janes*, 158 Ill. 2d 27 (1994) which required a reviewing court to remand the cause to the trial court "to allow defendant to file a new [postplea motion] and for a hearing on that motion in full compliance with Rule 604(d)." *Janes*, 158 Ill. 2d at 36.

The *Lindsay* court concluded that the language in *Janes* regarding the filing of a new postplea motion was permissive, and that "[c]learly, nothing in [its] language mandate[d] or require[d] the filing of a new motion on remand." *Lindsay*, No. 110089, slip op. at 6. The court held that, when counsel failed to file the requisite Rule 604(d) certificate, the appropriate remedy was a remand that included: (1) the filing of a Rule 604(d) certificate; (2) the opportunity to file a new postplea motion if counsel concluded that the filing of a new motion was necessary; and (3) a new motion hearing. *Lindsay*, No. 110089.

In this case, our directive did require a new post plea motion, however, defense counsel indicated to the court that modifications to that motion by affidavit was unnecessary. In this case, the court allowed counsel an opportunity to confer with his client in court and following this conference, counsel declined to supplement the motion with an additional affidavit.

Since the record in this case shows that defense counsel filed the Rule 604(d) certificate

in open court and also indicated to Judge Stengel that counsel stood on defendant's original motion to reconsider his sentence while emphasizing certain contentions of error, we conclude these actions satisfy the mandates of the supreme court clarified by our supreme court in *Lindsay*.

In addition, Judge Stengel conducted a new hearing on the motion to reconsider as directed. This procedure properly complied with the mandate of Rule 604(d), the directives contained in *Lindsay*, No. 110089, and satisfies this court that following remand our concerns have been addressed by strict compliance with Rule 604(d). Therefore, a second remand is not necessary to insure strict compliance with Rule 604(d).

#### CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Henry County is affirmed.  
Affirmed.