

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).

2012 IL App (3d) 110696-U

Order filed June 19, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 14th Judicial Circuit,
Plaintiff-Appellee,) Rock Island County, Illinois,
)
v.) Appeal No. 3-11-0696
) Circuit No. 09-CF-577
)
DARRIN E. RHODES,) Honorable
) Walter D. Braud,
Defendant-Appellant.) Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice O'Brien concurred in the judgement.
Presiding Justice Schmidt specially concurred.

ORDER

¶ 1 *Held:* Defense counsel's certificate did not comply with Supreme Court Rule 604(d).

¶ 2 Pursuant to a fully negotiated plea agreement, defendant Darrin E. Rhodes pled guilty to residential burglary (720 ILCS 5/19-3(a) (West 2008)) and was sentenced to nine years of imprisonment. Defendant filed a *pro se* motion to withdraw guilty plea, which the trial court denied. On appeal, this court remanded the case for strict compliance with Illinois Supreme

Court Rule 604(d) (eff. July 1, 2006) and a *de novo* hearing on defendant's motion due to the failure of defendant's attorney to file a Rule 604(d) certificate. *People v. Rhodes*, No. 3-11-0241 (2011) (unpublished order under Supreme Court Rule 23).

¶ 3 On remand, defendant's attorney filed a Supreme Court Rule 604(d) certificate, and the case proceeded on defendant's original *pro se* motion to withdraw guilty plea. The trial court denied defendant's motion to withdraw the plea. Defendant appealed. We, again, reverse and remand for strict compliance with Rule 604(d).

¶ 4 FACTS

¶ 5 Defendant was charged with one count of residential burglary. He was represented by attorney Daniel Dalton. Pursuant to a fully negotiated plea agreement, defendant pled guilty in exchange for a nine-year term of imprisonment. After a factual basis for defendant's guilty plea was presented, the trial court accepted defendant's guilty plea and sentenced him to the agreed upon nine years of imprisonment.

¶ 6 Defendant filed a *pro se* motion to withdraw guilty plea that, *inter alia*, contained allegations of ineffective assistance of counsel. At the hearing on defendant's motion to withdraw guilty plea, defendant was again represented by Dalton. After reviewing the record of the guilty plea hearing and conducting a preliminary investigation into defendant's ineffective assistance claims, the trial court denied defendant's motion to withdraw guilty plea. On appeal, defendant argued that the case should be remanded for new proceedings in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) due to the absence of a Rule 604(d) certification indicating his attorney attested to compliance with Rule 604(d). This court remanded the case for strict compliance with Supreme Court Rule 604(d) and further post-plea

proceedings, including the filing of a new post-plea motion, Rule 604(d) certificate, and *de novo* hearing on the post-plea motion. *Rhodes*, No. 3-11-0241.

¶ 7 On remand, Dalton filed a Supreme Court Rule 604(d) certificate. The certificate indicated that Dalton: (1) consulted with "Bruce Pugh" by mail to "ascertain his contentions of error that he alleges occurred during sentencing" and reviewed letters from defendant in which defendant outlined what he believed to be "errors that occurred during sentencing"; (2) examined the trial court's file and report of proceedings; and (3) "made any amendments to Defendant's motion(s) necessary for adequate presentation of Defendant's contentions."

¶ 8 Neither defendant nor counsel filed a new motion to withdraw guilty plea or amended defendant's original *pro se* motion to withdraw guilty plea. Instead, the case proceeded to a hearing on defendant's original *pro se* motion to withdraw guilty plea, at which defendant was again represented by Dalton. Dalton indicated he did not feel defendant had any meritorious arguments, which mainly consisted of allegations of ineffective assistance of counsel. The trial court reviewed the record of the guilty plea hearing and made a preliminary investigation into defendant's ineffective assistance claims by questioning defendant and Dalton. The trial court's questioning of defendant confirmed that the only allegations from his *pro se* motion to withdraw guilty plea he was pursuing were two allegations of Dalton's ineffectiveness. The trial court found defendant's allegations of Dalton's ineffectiveness lacked merit and denied the motion to withdraw guilty plea. Defendant appealed.

¶ 9 ANALYSIS

¶ 10 On appeal, we find that Dalton's compliance in filing a Rule 604(d) certificate on remand was wholly insufficient. A defendant's attorney shall file with the trial court a certificate stating

that he has: (1) consulted with 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; (2) examined the court file; (3) examined the report of proceedings of the plea of guilty; and (4) made any amendments to the motion necessary for adequate presentation of the defects in those proceedings. *People v. Grice*, 371 Ill. App. 3d 813 (2007). Strict compliance with Rule 604(d) is required. *People v. Janes*, 158 Ill. 2d 27 (1994). Although a reviewing court need not take strict compliance with Rule 604(d) to unreasonable extremes, compliance with Rule 604(d) cannot be assumed or inferred. *People v. Prather*, 379 Ill. App. 3d 763 (2008).

¶ 11 To determine whether defense counsel complied with Rule 604(d), this court may not examine the record to determine whether counsel's conduct satisfied the rule's requirements. *Grice*, 371 Ill. App. 3d 813. Only the certificate itself will be considered when determining compliance with Rule 604(d). *Id.* A reviewing court must remand in any case where counsel failed to strictly comply. *Janes*, 158 Ill. 2d 27. When defense counsel fails to strictly comply with Rule 604(d), the appropriate remedy is a remand for: (1) the filing of a proper Rule 604(d) certificate; (2) the opportunity to file a new motion to withdraw guilty plea or reconsider sentence, or both, if counsel concludes a new motion is necessary; and (3) a new motion hearing. *People v. Lindsay*, 239 Ill. 2d 522 (2011). In determining whether defense counsel complied with Rule 604(d), the standard of review is *de novo*. *Prather*, 379 Ill. App. 3d 763.

¶ 12 In the last appeal of this case, we gave specific directions for defendant's counsel to strictly comply with Supreme Court Rule 604(d) on remand. Dalton's Rule 604(d) certificate on remand contains such glaring errors that it cannot be said to be in strict compliance with the rule. As both parties note, the certificate referred to Dalton consulting with a different client.

Additionally, the certificate indicated that Dalton consulted with defendant to discuss errors during sentencing, but defendant did not have a sentencing hearing. Nowhere in the certificate did Dalton attest he consulted with defendant to ascertain defendant's contentions of errors in regard to the entry of his guilty plea. Also, the certificate indicated Dalton made any necessary amendments to defendant's *pro se* motion to withdraw guilty plea for the adequate presentation of defendant's contentions, but it is not clear Dalton ever ascertained defendant's contentions and no amendments to defendant's *pro se* motion were made.

¶ 13 As a result, we cannot be sure Dalton provided effective assistance of counsel in consulting with defendant and ascertaining all of defendant's contentions of errors regarding his guilty plea hearing. Because Dalton's Rule 604 certificate failed to strictly comply with Rule 604(d), we reverse the denial of defendant's motion to withdraw guilty plea and remand for: (1) the filing of a new Rule 604(d) certificate; (2) the opportunity to file a new motion to withdraw guilty plea, if counsel concludes a new motion is necessary; and (3) a new motion hearing. In light of the history of this case, we direct the circuit court on remand to appoint new counsel to represent defendant and specifically instruct new counsel to file a properly executed 604(d) certificate.

¶ 14 CONCLUSION

¶ 15 For the foregoing reasons, we reverse and remand this case to the circuit court of Rock Island County for further proceedings in accordance with this order, and direct the circuit court to appoint new counsel for defendant on remand.

¶ 16 Reversed and remanded with directions.

¶ 17 PRESIDING JUSTICE SCHMIDT, specially concurring.

¶ 18 I agree with the majority's assessment that defendant failed to strictly comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) and, as such, concur in the decision to reverse and remand. The Rule 604(d) certificate, which indicates defense counsel consulted with Bruce Pugh instead of the defendant, undoubtedly violates the letter and spirit of our July 18, 2011, order directing "defense counsel and the trial court [to] start anew and strictly comply with the requirements of Supreme Court Rule 604(d)."

¶ 19 I write separately to clarify my thoughts concerning one specific statement in the Rule 604(d) certificate. The majority notes that no amendments to defendant's *pro se* motion were ever made (*supra* ¶ 12) even though the certificate states that counsel "has made any amendments to Defendant's motion(s) necessary for adequate presentation of Defendant's contentions." I do not find this statement at odds with the fact that counsel failed to amend defendant's motion. Obviously, the statement and the rule contemplates that counsel will make "necessary" amendments. Having found compliance lacking in other areas, namely averring that counsel consulted with Bruce Pugh, it is unnecessary for us to determine whether, in fact, amendments should have been made to defendant's motion.