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2016 IL App (3d) 140202-U

Order filed January 6, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 14th Judicial Circuit,
)	Rock Island County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-14-0202
v.)	Circuit No. 10-CF-1119
)	
JONATHAN L. LANKFORD,)	Honorable
)	Walter D. Braud,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* Counsel's failure to strictly comply with Supreme Court Rule 604(d) warranted remand for further posttrial proceedings.
- ¶ 2 Defendant, Jonathan L. Lankford, pled guilty to attempted first degree murder (720 ILCS 5/8-4(a), (c)(1)(C), 9-1(a)(1) (West 2010)). On appeal, defendant argues that defense counsel failed to comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). We agree, and remand for strict compliance with that rule.

¶ 3

FACTS

¶ 4

The State charged defendant by indictment with, *inter alia*, attempted first degree murder (720 ILCS 5/8-4(a), (c)(1)(C), 9-1(a)(1) (West 2010)). On March 15, 2012, defendant entered a partially negotiated guilty plea. The trial court accepted the plea.

¶ 5

Sentencing was held on December 12, 2012. A presentence investigation report was filed by the Rock Island County adult probation department. The court sentenced defendant to a term of 35 years' imprisonment. The written order issued upon sentencing provided that defendant would pay a \$250 DNA analysis fee. The order further stated "the defendant is ordered to pay the costs of prosecution herein. These fees, costs, and restitution (if applicable) are reduced to judgement [*sic*] against the defendant and are declared a lien upon the defendant's property." One week later, the circuit clerk recorded a judgment in the amount of \$597. An itemized breakdown of that total was filed 16 months later.

¶ 6

Defendant subsequently filed a motion to withdraw the guilty plea. Along with that motion, defendant's attorney filed a Rule 604(d) certificate, which read as follows:

"Now comes Defendant's attorney, Jack Schwartz, pursuant to Illinois Supreme Court Rule 604 (d) hereby certify:

1. That attorney Jack Schwartz has been assigned to the above numbered case.

2. That I have discussed with Defendant prior to his departure to the Illinois Department of Corrections the errors in the plea and sentence.

3. That I have examined the court file and all documents submitted by the defendant.

4. That I have made amendments to the motion necessary for adequate presentation for the hearing."

After a hearing, defendant's motion to withdraw his guilty plea was denied.

¶ 7

ANALYSIS

¶ 8

Defendant argues on appeal that counsel's Rule 604(d) certificate was not in strict compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). Defendant maintains this failure mandates a remand to the trial court for strict compliance with the rule and a new hearing on his motion to withdraw guilty plea. In the alternative, defendant contends the circuit clerk imposed fines against him without authority, arguing the matter should thus be remanded for the proper entry of an order of enumerated costs.

¶ 9

I. Rule 604(d) Certificate

¶ 10

Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) mandates that a defendant seeking to appeal from a judgment entered upon a guilty plea must first file a motion to withdraw the guilty plea and vacate the judgment. The rule further provides that, upon the filing of such a motion:

"[t]he 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." *Id.*

It is well-settled that defense counsel must strictly comply with the provision of the rule. See, e.g., *People v. Tousignant*, 2014 IL 115329, ¶¶ 5, 23. The remedy for failure to comply with the

rule is remand for the filing of a new postplea motion (if defendant so wishes), a hearing on that motion, and strict compliance with the rule. *Id.*

¶ 11 Defense counsel in the present case did not strictly comply with Rule 604(d). In his certificate, counsel averred that he had examined the court file, while making no reference to the report of proceedings. The State concedes that counsel did not meet the strict compliance standard with respect to his Rule 604(d) certificate. However, the State contends that where, as here, the report of proceedings can be found within the court file, the strict compliance standard may be relaxed. In support, the State cites *People v. Wilson*, 295 Ill. App. 3d 228 (1998).

¶ 12 In *Wilson*, defense counsel's Rule 604(d) certificate did not expressly state that he had examined the report of proceedings. Instead, the certificate stated only that he had examined the court file. *Id.* at 238. The "usual procedure" in the courtroom was for the transcripts of all hearing to be placed in the court file, and the file was "likely" to contain the report of proceedings. *Id.* at 238-39. Consequently, the Fourth District found that counsel's certificate was sufficient. The State now urges that *Wilson* "is directly on point" and creates "an exception to the general rule" of strict compliance. We disagree.

¶ 13 In *People v. Janes*, 158 Ill. 2d 27 (1994), our supreme court expressly rejected the proposal that a deficient Rule 604(d) certificate could be salvaged where a review of the record demonstrated substantial compliance. The court reasoned that such a rule would "generate[] disputes on review *** over whether the record shows that there has been substantial compliance with the provisions of Rule 604(d)." *Id.* at 35. The Second District Appellate Court applied that same reasoning in rejecting the Fourth District's position in *Wilson*. *People v. Dismuke*, 355 Ill. App. 3d 606, 609-10 (2005). The *Dismuke* court did not explicitly reference *Wilson*, but instead a second Fourth District decision, *People v. Starks*, 344 Ill. App. 3d 766 (2003), which stands for

the same general proposition. The Second District pointed out that "a waste of judicial resources occurs when, as a result of an attorney's deficient certificate, an appellate court must scour through the record to determine whether that attorney actually complied with Rule 604(d), even though strict compliance with that rule's certification requirements would prevent such waste." *Dismuke*, 355 Ill. App. 3d at 609.

¶ 14 The Fourth District itself has since backed away from the position taken in *Wilson* and *Starks*. See *People v. Grice*, 371 Ill. App. 3d 813, 815 (2007). In *Grice*, the court recognized that it had previously held "that where the record demonstrates that the purpose of Rule 604(d) has been satisfied, remand is not required." *Id.* Nevertheless, the court concluded that "in light of the Second District's decision in [*Dismuke*] and this court's decision in *People v. Pressey*, 357 Ill. App. 3d 887 (2005), we decline to follow *Starks*." *Id.* In summary, contrary to the State's position in the case at bar, a review of case law prior to and in the wake of *Wilson* leads us to conclude that decision is an anomaly, rather than an exception.

¶ 15 Strict compliance with Rule 604(d) must be determined from within the four corners of the Rule 604(d) certificate. See also *People v. Willis*, 2015 IL App (5th) 130020 (refusing to look beyond the four corners of a Rule 604(d) certificate). Accordingly, we will not delve into the record to determine whether a court file also contains the report of proceedings. Because counsel's Rule 604(d) certificate was noncompliant on its face, we vacate the trial court's denial of defendant's motion to withdraw his guilty plea and remand for the filing of a new postplea motion (if defendant so wishes), a hearing on that motion, and strict compliance with the rule.

¶ 16

CONCLUSION

¶ 17

The judgment of the circuit court of Rock Island County is vacated in part and remanded to allow defendant an opportunity to file a new postplea motion and for strict compliance with Rule 604(d).

¶ 18

Vacated in part.

¶ 19

Cause remanded.