

**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).

NO. 4-10-0531

Filed 01/06/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Coles County
JERRY GERALD OSBORNE,	)	No. 09CF173
Defendant-Appellant.	)	
	)	Honorable
	)	Mitchell K. Shick,
	)	Judge Presiding.

---

JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Knecht and Justice Appleton concurred  
in the judgment.

**ORDER**

*Held:* Where the parties and the trial court did not strictly comply with the requirements of Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), remand for further proceedings was necessary.

This appeal comes to us on the motion of defendant Jerry Gerald Osborne's counsel, the office of the State Appellate Defender (OSAD), for remand for strict compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). The State concedes remand would be proper. We agree with the parties.

I. BACKGROUND

In July 2009, defendant pleaded guilty to methamphetamine possession (more than 100 grams), a Class X felony (720 ILCS 646/60(a), (b)(4) (West 2008)), pursuant to a negotiated plea. As part of his plea agreement, the State agreed to cap its

sentencing recommendation at 30 years.

In January 2010, the trial court sentenced defendant to 22 years in prison. In its admonishments pursuant to Illinois Supreme Court Rule 605 (eff. October 1, 2001), the court advised defendant, if he planned to appeal, he must first file a motion either to reconsider his sentence or to withdraw his guilty plea.

In February 2010, defendant filed a motion to reconsider sentence. On July 9, 2010, the trial court denied the motion and, on July 13, 2010, defendant filed his notice of appeal.

The record does not contain a Rule 604(d) certificate. See Ill. Sup. Ct. R. 604(d) (eff. July 1, 2006).

## II. ANALYSIS

OSAD asserts, and the State concedes, this case should be remanded for further proceedings in accordance with Rule 604(d). We agree.

Rule 604(d) sets forth requirements that must be satisfied before a defendant who pleads guilty can appeal. Two such requirements are relevant to this appeal. First, if a defendant who pleaded guilty pursuant to a negotiated plea--*i.e.*, one that binds the State to recommend a specific sentence or range of sentences less severe than the statutory maximum--seeks to challenge the sentence as excessive, the defendant must, within 30 days after sentencing, file a motion to withdraw his or

her guilty plea and vacate the judgment of conviction. Ill. Sup. Ct. R. 604(d) (eff. July 1, 2006); *People v. Diaz*, 192 Ill. 2d 211, 225, 735 N.E.2d 605, 612 (2000). Second, the defendant's attorney must file a certificate stating he or she has consulted with the defendant to ascertain the defendant's contentions of error, examined the trial court's file and the transcript of the plea hearing, and made any amendments to the postplea motion necessary for adequate presentation of any defects in the plea and sentencing proceedings. Ill. Sup. Ct. R. 604(d) (eff. July 1, 2006). "[T]he remedy for failure to strictly comply with each of the provisions of Rule 604(d) is a remand to the circuit court for the filing of a new motion to withdraw guilty plea or to reconsider sentence and a new hearing on the motion." *People v. Janes*, 158 Ill. 2d 27, 33, 630 N.E.2d 790, 792 (1994).

This appeal presents two defects in the attempted compliance with Rule 604(d). First, defendant improperly filed, and the trial court improperly ruled on, defendant's motion to reconsider sentence where, since defendant's plea was negotiated, the proper postplea motion would have been one to withdraw defendant's guilty plea and vacate the judgment against him. Second, defense counsel did not file the required Rule 604(d) certificate. Accordingly, we remand for further proceedings in accordance with Rule 604(d).

### III. CONCLUSION

Because the record does not show strict compliance with Rule 604(d), we conclude we must remand this cause for further proceedings with directions.

Accordingly, we remand this case to the circuit court of Coles County for further proceedings with directions to appoint counsel for defendant, allow defendant to file a new postplea motion, hold a hearing on the motion, and require defense counsel to submit a Rule 604(d) certificate.

Remanded with directions.