2015 IL App (4th) 131094-U

NO. 4-13-1094

FILED
July 28, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
DONALD LOPEZ,	)	No. 12CM283
Defendant-Appellant.	)	
	)	Honorable
	)	John B. Huschen,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant's assertions made in support of his motion to withdraw guilty plea did not substantiate his ineffective-assistance-of-counsel claim on appeal, and therefore, a *Krankel* hearing was not required;

(2) Defense counsel failed to strictly comply with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013).

¶ 2 In May 2013, defendant, Donald Lopez, pleaded guilty to disorderly conduct (720 ILCS 5/26-1(a)(1) (West Supp. 2013)). In June 2013, the trial court sentenced him to 14 days in the Woodford County jail. In July 2013, defendant filed a motion to withdraw his guilty plea and vacate the judgment, asserting in part, that his plea was not knowing and voluntary. The trial court denied defendant's motion. Defendant appeals, arguing (1) the trial court failed to conduct an adequate inquiry into his ineffective-assistance-of-counsel claim pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and (2) remand is required for strict

compliance with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). We remand for strict compliance with Rule 604(d) but otherwise affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 On December 5, 2012, defendant was charged by information with disorderly conduct, a Class C misdemeanor (720 ILCS 5/26-1(a)(1), (b) (West Supp. 2013)). The State alleged that defendant "knowingly followed and yelled at Christy Dawson while in and around the Eureka BP gas station in such an unreasonable manner as to alarm and disturb Christy Dawson, and provoke a breach of the peace." On April 4, 2013, attorney Chris McCall was appointed to represent defendant in the matter.

¶ 5 On May 20, 2013, defendant pleaded guilty to disorderly conduct. In exchange for his guilty plea, the State dismissed a charge which alleged a violation of a civil no-contact order and agreed to recommend a public-service sentence. Prior to accepting defendant's guilty plea, the trial court informed defendant of the nature of the charge and the minimum and maximum sentences prescribed by law. The court thereafter fully admonished defendant to ensure he understood the rights he was giving up by pleading guilty.

¶ 6 As a factual basis in support of the guilty plea, the State represented that Christy Dawson would testify she was in the Eureka BP gas station on November 29, 2012, when defendant approached her and yelled at her. Defendant then exited the gas station but reentered and resumed yelling at her. Dawson felt "alarmed and disturbed" by defendant's conduct. Thereafter, the trial court admonished defendant that although the parties had agreed on a sentence recommendation, the court was not bound by the recommendation. Defendant stated he understood. The court asked defendant whether "there [had] been any other force, threats, or

promises *** made to you to get you to plead guilty?" Defendant responded, "[n]o, sir." The court then accepted defendant's guilty plea, noting it "[found] the plea to be voluntary."

¶ 7 On June 26, 2013, the trial court conducted defendant's sentencing hearing. According to a bystander's report (of hearings conducted by the trial court on June 26, August 12, and December 6, 2013) filed by the parties (see Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)), the State reminded the court of its recommendation that defendant be sentenced to public-service hours. Thereafter, the court sentenced defendant to 14 days in the Woodford County jail.

¶ 8 On July 15, 2013, defendant, through his attorney, McCall, filed a motion to withdraw his guilty plea and vacate the judgment. In his motion, defendant alleged he had "called Counsel numerous times to indicate he wishe[d] to withdraw his plea of guilty because he was not guilty of the alleged crime" and that he had "represented to Counsel his plea was not knowing and voluntarily tendered." According to the bystander's report, at the August 12, 2013, hearing on the motion to withdraw guilty plea,

> "the [d]efendant asked to withdraw his plea of guilty because his previous [a]ssistant [p]ublic [d]efenders coerced him into pleading guilty and he was innocent. He said under oath he did not feel physically threatened but they strongly suggested they would lose the case and not fight for him, due to Woodford County racism and networking. *** [The State's Attorney] asked if there were any threats or promises made to force the [d]efendant to plead guilty by current counsel. The [d]efendant stated no. *** The [c]ourt then denied the motion."

As indicated, the trial court denied the motion.

¶ 9 On August 28, 2013, defendant filed a notice of appeal. On October 25, 2013, this court, in an order of summary remand in *People v. Lopez*, case No. 4-13-0709, remanded the case back to the trial court "for the filing of a Supreme Court Rule 604(d) certificate, the opportunity to file a new post-plea motion, if counsel concludes that a new motion is necessary, a hearing on the motion, a new judgment, and strict compliance with requirements of Rule 604(d)."

¶ 10 On December 6, 2013, defense counsel filed a Rule 604(d) certificate of compliance indicating he had consulted with defendant "to ascertain defendant's contentions of error in the sentence or the entry of the plea of guilty." According to the bystander's report, at a hearing conducted that same day, attorney McCall "confirmed he (1) consulted with the defendant to ascertain defendant's claims regarding the guilty plea; (2) reviewed the record about the plea proceedings; and (3) amended the motion(s) if necessary."

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues (1) the trial court failed to conduct an adequate inquiry into his ineffective-assistance-of-counsel claim pursuant to *Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045, and (2) remand is required for strict compliance with Rule 604(d).

¶ 14 A. The Necessity for a *Krankel* Hearing

¶ 15 Defendant first asserts the trial court failed to conduct an adequate *Krankel* inquiry into his ineffective-assistance-of-counsel claim raised at the hearing on his motion to withdraw his guilty plea and vacate the judgment. Specifically, in his brief, defendant contends that at the hearing, "[he] alleged his defense attorney, Mr. McCall, was ineffective, because he coerced [defendant] into pleading guilty." The State responds that a *Krankel* hearing was not

required because defendant's claim of coercion was directed at statements allegedly made by defendant's prior assistant public defenders, which predated the guilty-plea hearing.

¶ 16 The purpose of a *Krankel* hearing is to determine whether a defendant was denied effective assistance of counsel. *Id*. at 189, 464 N.E.2d at 1049. "[W]hen a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim." *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003). If the court determines the claim lacks merit, it may deny the *pro se* motion without further inquiry. *Id*. at 78, 797 N.E.2d at 637. "The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Id*. at 78, 797 N.E.2d at 638.

¶ 17 Based on our review of the record, we find defendant's assertions made at the hearing on his motion to withdraw guilty plea do not support an ineffective-assistance-of-counsel claim, and therefore, a *Krankel* hearing was not implicated. Although defendant asserts throughout his brief that he was coerced to plead guilty by attorney McCall, his statements made at the hearing on the motion to withdraw guilty plea demonstrate otherwise. As set forth above, the bystander's report of that hearing reflects "[d]efendant asked to withdraw his plea of guilty because his *previous [a]ssistant [p]ublic [d]efenders* coerced him into pleading guilty and he was innocent." (Emphasis added.) Defendant stated "under oath he did not feel physically threatened but *they* strongly suggested *they* would lose the case and not fight for him, due to Woodford County racism and networking." (Emphases added.) Moreover, the bystander's report indicates defendant was specifically asked by the State's Attorney whether defendant's then current counsel, attorney McCall, made any threats or promises to force him to plead guilty, to which defendant responded, "no." This statement is consistent with defendant's

acknowledgement at his guilty-plea hearing, where he was represented by attorney McCall, that "there [had not] been any *** force, threats, or promises *** made to [him] to get [him] to plead guilty[.]"

¶ 18 It is apparent that while defendant now asserts it was attorney McCall who coerced him into pleading guilty, the only claim made by defendant in the trial court was that "his previous [a]ssistant [p]ublic [d]efenders coerced him into pleading guilty." Thus, defendant's assertions on appeal are not supported by the record. We find defendant did not raise an ineffective-assistance-of-counsel claim relating to attorney McCall and his *Krankel* argument is without merit.

¶ 19 B. Illinois Supreme Court Rule 604(d)

¶ 20 Next, defendant asserts remand is required for strict compliance with Rule 604(d). Specifically, defendant contends attorney McCall failed to certify that he consulted with defendant to ascertain his contentions of error in *both* the sentence *and* the guilty plea. The State concedes the certificate of compliance filed by defendant failed to strictly comply with Rule 604(d) and that remand is required. We accept the State's concession.

¶ 21 Rule 604(d) provides, in relevant part, as follows:

> "The 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." Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013).

¶ 22 A main purpose of Rule 604(d) is "to ensure that any improper conduct or other alleged improprieties that may have produced a guilty plea are brought to the trial court's attention *before* an appeal is taken, thus enabling the trial court to address them at a time when witnesses are still available and memories are fresh." (Emphasis in original.) *People v. Tousignant*, 2014 IL 115329, ¶ 16, 5 N.E.3d 176. To that end, our supreme court has interpreted Rule 604(d) to mean that counsel must consult with the defendant to ascertain any contentions of error in *both* the sentence *and* the entry of the guilty plea. *Id*. ¶ 20, 5 N.E.3d 176. Strict compliance with Rule 604(d) is required. *People v. Jane*s, 158 Ill. 2d 27, 33, 630 N.E.2d 790, 792 (1994).

¶ 23 Whether defense counsel complied with Rule 604(d) is reviewed *de novo*. *People v. Neal*, 403 Ill. App. 3d 757, 760, 936 N.E.2d 726, 728 (2010). "The certificate itself is all this court will consider to determine compliance with Rule 604(d)." *Id*.

¶ 24 In this case, the Rule 604(d) certificate filed by attorney McCall following summary remand states, in relevant part, as follows: "The undersigned 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." (Emphasis added.) Although the language of the certificate filed here mirrors the language provided in Rule 604(d), our supreme court has concluded this language in insufficient and that Rule 604(d) requires defense counsel to certify "he [or she] has consulted with the defendant 'to ascertain defendant's contentions of error in the sentence *and* the entry of the plea of guilty.' " *Tousignant*, 2014 IL 115329, ¶ 20, 5 N.E.3d 176.

Accordingly, we remand the matter for strict compliance with Rule 604(d) as explained in *Tousignant*.

¶ 25 II. CONCLUSION

¶ 26 For the reasons stated, we remand the matter for strict compliance with Rule 604(d). We otherwise affirm the trial court's judgment.

¶ 27 Affirmed; cause remanded with directions.