2017 IL App (4th) 150553-U

NO. 4-15-0553

FILED
December 14, 2017
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.	)	Ford County
RODOLFO A. CERRITOS,	)	No. 14CF6
Defendant-Appellant.	)	
	)	Honorable
	)	Paul G. Lawrence,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Turner and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court vacated and remanded with directions, finding defense counsel failed to strictly comply with Illinois Supreme Court Rule 604(d) (eff. Dec. 3, 2015).

¶ 2 In October 2014, defendant, Rodolfo A. Cerritos, pleaded guilty to single counts of armed robbery and kidnapping. The trial court sentenced him to concurrent terms of 25 years in prison for armed robbery and 5 years for kidnapping. Defendant filed a motion to reconsider his sentence and a *pro se* motion to withdraw his guilty plea, which the court denied.

¶ 3 On appeal, defendant argues (1) defense counsel failed to strictly comply with the requirements of Illinois Supreme Court Rule 604(d) (eff. Dec. 3, 2015), (2) his 25-year sentence was excessive, and (3) his case should be remanded for a new preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). We vacate and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In January 2014, the State charged defendant by information with two counts of armed robbery (counts I and IV) (720 ILCS 5/18-2(a)(1), (a)(2) (West 2014)), two counts of kidnapping (counts II and V) (720 ILCS 5/10-1(a)(1), (a)(2) (West 2014)), and one count of aggravated battery (count III) (720 ILCS 5/12-3.05(f)(1) (West 2014)). In count I, the State alleged defendant committed the offense of armed robbery in that, while armed with a dangerous weapon, a baseball bat, he knowingly took the property of J. Hastings by the use of force. In count IV, the State alleged defendant committed armed robbery in that, while carrying a firearm on his person, he knowingly took Hastings' property by the use of force. In counts II and V, the State alleged defendant committed the offense of kidnapping when he (1) knowingly and secretly confined Hastings against his will (count II); and (2) knowingly, by force or threat of imminent force, carried Hastings from Paxton, Illinois, to rural Ford County, with the intent to secretly confine him against his will (count V). In count III, the State alleged defendant committed the offense of aggravated battery when, while using a deadly weapon, a pistol, other than by discharge of a firearm, he committed an act of battery when he knowingly struck Hastings with the gun.

¶ 6 In October 2014, defendant entered an open plea of guilty to one count of armed robbery (count I) and one count of kidnapping (count II). The State agreed to dismiss the other charges. Defendant indicated no one threatened or forced him to plead guilty and he understood the rights he was giving up by pleading guilty. The trial court stated the possible sentences ranged from 6 to 30 years in prison on count I and 3 to 7 years on count II, and defendant indicated he understood. In its factual basis, the State said the evidence would show defendant knowingly and secretly confined Hastings against his will and, while armed with a dangerous

weapon, *i.e.*, a baseball bat, he knowingly took by force Hastings' property, including $300 in United States currency, a cellular phone, profit-sharing checks, and two credit cards. The court found defendant's guilty pleas knowing and voluntary.

¶ 7 At the December 2014 sentencing hearing, the State presented evidence in aggravation. Paxton police officer Chad Johnson testified he received a phone call from Hastings on December 9, 2014, at approximately 8:40 p.m., and Hastings stated he had been kidnapped. Johnson went to Hastings' house and found him "a little bit hysterical and kind of in a panic mode." Hastings stated he was leaving work when he opened his car door and found a man in his backseat. Hastings backed up, and a male came up from behind him. The subjects forced him into the car, zip-tied his hands, and drove him around Ford and Iroquois Counties. Hastings was struck with a baseball bat and a gun. The subjects took cash, checks, credit cards, and his cellular phone, and they threatened his family. The subjects eventually released him.

¶ 8 Special Agent Andrew Huckstadt of the Federal Bureau of Investigation testified the subjects had arranged a time for Hastings to drop $50,000 at an agreed-upon location. On January 15, 2015, a controlled money drop took place, and defendant arrived to retrieve the money. Following his arrest, defendant indicated he and/or other men attempted to kidnap Hastings three times prior to their successful kidnapping, but they failed.

¶ 9 The trial court stated defendant was 26 years old, had a 1-year-old child, had a good employment history, and showed "appropriate remorse." As aggravating factors, the court noted defendant caused "serious harm" to Hastings, and he "minimized his role" in the offenses. The court stated defendant had a prior felony conviction for cannabis possession in 2009, along with convictions for driving under the influence (2012) and driving on a suspended license

(2013). Stating the need to deter others, the court sentenced defendant to 25 years in prison on count I and a concurrent term of 5 years on count II.

¶ 10 Defendant filed a motion to reconsider his sentence, arguing the trial court failed to give proper weight to mitigating evidence and gave too much weight to the State's evidence in aggravation. In May 2015, defendant filed a *pro se* motion to withdraw his guilty plea and to vacate the sentence, contending he "had inadequate representation by counsel." In a letter to the court, defendant stated his attorney promised him a six-year sentence.

¶ 11 In July 2015, defense counsel filed a certificate of compliance pursuant to Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). The trial court also conducted a hearing on the pending motions. First, the court held a *Krankel* hearing based on defendant's motion to withdraw his guilty plea. Defendant told the court his attorney promised him he would receive a six-year sentence if he "did everything [counsel] wanted." Defendant stated counsel never responded to his letters, did not provide him with discovery materials, and did not talk to him at the jail after he was sentenced. Defendant also mentioned an immunity agreement.

¶ 12 Defense counsel stated he drafted an immunity agreement and described its purpose to defendant. Counsel made "several visits to the jail." As to the promised six-year sentence alleged by defendant, counsel stated he does not promise clients "anything with respect to a sentence," although he would do his best to get the lowest sentence possible. While he felt an appropriate sentence would be eight or nine years, and made arguments in support of his recommendation, counsel was "surprised" and "disappointed" with the trial court's ultimate sentence.

¶ 13 The trial court did not find defendant's allegations worthy of appointing independent counsel. The court noted defendant was admonished during the plea hearing that he

could receive a maximum of 30 years in prison. The court denied defendant's motion to withdraw his guilty plea. Thereafter, the court also denied the motion to reconsider his sentence. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant argues defense counsel failed to strictly comply with Illinois Supreme Court Rule 604(d) (eff. Dec. 3, 2015) because counsel failed to certify whether he examined the report of proceedings of both the plea of guilty and the sentencing hearing. We agree.

¶ 16 "Rule 604(d) governs the procedure to be followed when a defendant wishes to appeal from a judgment entered upon a guilty plea." *In re H.L.*, 2015 IL 118529, ¶ 7, 48 N.E.3d 1071. The purpose of the rule " 'is to ensure that before a criminal appeal can be taken from a guilty plea, the trial judge who accepted the plea and imposed sentence be given the opportunity to hear the allegations of improprieties that took place outside the official proceedings and *dehors* the record, but nevertheless were unwittingly given sanction in the courtroom.' " *H.L.*, 2015 IL 118529, ¶ 9, 48 N.E.3d 1071 (quoting *People v. Wilk*, 124 Ill. 2d 93, 104, 529 N.E.2d 218, 221-22 (1988)). Moreover, the rule " 'enables the trial court to insure that counsel has reviewed the defendant's claim and considered all relevant bases for the motion to withdraw the guilty plea or to reconsider the sentence.' " *H.L.*, 2015 IL 118529, ¶ 10, 48 N.E.3d 1071 (quoting *People v. Shirley*, 181 Ill. 2d 359, 361, 692 N.E.2d 1189, 1191 (1998)).

¶ 17 Our supreme court has held strict compliance with Rule 604(d) is required, and counsel's failure to strictly comply requires remand to the trial court. *People v. Janes*, 158 Ill. 2d 27, 33, 630 N.E.2d 790, 792 (1994). We review *de novo* whether defense counsel's certificate complied with Rule 604(d). *People v. Grice*, 371 Ill. App. 3d 813, 815, 867 N.E.2d 1143, 1145 (2007).

¶ 18 In the case *sub judice*, defense counsel filed his certificate of compliance with Rule 604(d) in July 2015. At that time, Rule 604(d) provided, in pertinent part:

> "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." (Emphasis added.) Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014).

Defense counsel's Rule 604(d) certificate certified that he:

> "1. Consulted with the client in person or by mail to ascertain the defendant's contentions of error in entry of the plea, and;
>
> 2. Examined the court file *and transcript of the plea*, and has made any amendments to the motion necessary to adequately present any defects in the plea proceedings, and;
>
> 3. Consulted with Defendant regarding any contentions of error in the sentence." (Emphasis added.)

¶ 19 Rule 604(d) was amended on December 3, 2015, to require, for the first time, counsel to certify he or she has examined "the report of proceedings in the sentencing hearing," not just the report of the proceedings of the entry of the plea. Ill. S. Ct. R. 604(d) (eff. Dec. 3,

2015). The current version of the rule continues this requirement. Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

¶ 20 In light of the purpose of Rule 604(d), we find the certificate is deficient. While counsel indicated he examined the transcript of the plea hearing, he did not state he examined the report of proceedings of the sentencing hearing in this case. See *People v. Zendejas*, 2017 IL App (2d) 160565, ¶ 5, 82 N.E.3d 853 (finding the certificate defective because it "did not state that the attorney had examined the report of proceedings of the sentencing hearing (and not merely of the proceedings on the plea of guilty)"); *People v. Gonzalez*, 2017 IL App (3d) 160183, ¶ 15, 73 N.E.3d 599 (finding counsel failed to strictly comply with Rule 604(d) because the certificate did not state counsel examined the report of proceedings of the sentencing hearing).

¶ 21 The certificate here did not strictly comply with the amendment to Rule 604(d). Various appellate districts, including this one, have found the amendment to Rule 604(d) to be procedural and therefore subject to retroactive application. *People v. Scott*, 2017 IL App (4th) 150761, ¶ 18; *Zendejas*, 2017 IL App (2d) 160565, ¶ 4, 82 N.E.3d 853; *People v. Easton*, 2017 IL App (2d) 141180, ¶ 11, 74 N.E.3d 545; *Gonzalez*, 2017 IL App (3d) 160183, ¶ 11, 73 N.E.3d 599. As a result, remand is required. *Zendejas*, 2017 IL App (2d) 160565, ¶ 5, 82 N.E.3d 853. Since we are remanding, we need not address defendant's claims pertaining to his sentence and the need for another *Krankel* hearing.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we vacate the trial court's judgment regarding Rule 604(d) compliance and remand for (1) the opportunity to file a new motion to withdraw the guilty plea and/or reconsider the sentence, if counsel concludes a new motion is necessary; (2) a new

hearing on defendant's postplea motion; and (3) the filing of a new certificate in compliance with Rule 604(d).

¶ 24 Vacated; cause remanded with directions.