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2012 IL App (3d) 100612-U

Order filed April 10, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF  
ILLINOIS,

Plaintiff-Appellee,

v.

LEDELL MIMS,

Defendant-Appellant.

) Appeal from the Circuit Court  
) of the 12th Judicial Circuit,  
) Will County, Illinois,  
)  
) Appeal No. 3-10-0612  
) Circuit No. 09-CF-1687  
)  
) Honorable  
) Daniel J. Rozak,  
) Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice Schmidt and Justice McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Defendant did not show that counsel was ineffective or that he failed to comply with the requirements of Illinois Supreme Court Rule 604(d).

¶ 2 Defendant, Ledell Mims, pled guilty to aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2008)) and was sentenced to eight years in prison. Defendant appeals the court's denial of his motion to withdraw his guilty plea on the grounds that trial counsel was ineffective and also failed to comply with the requirements of Illinois Supreme Court Rule 604(d) (eff. July

1, 2006). We affirm.

¶ 3

### FACTS

¶ 4 Defendant was charged with aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2008)) and two counts of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)). On February 8, 2010, the State agreed to a sentencing cap of 8½ years and agreed to dismiss all other pending charges in exchange for defendant's guilty plea to the offense of aggravated discharge of a firearm.

¶ 5 Before the trial court accepted defendant's guilty plea to the offense of aggravated discharge of a firearm in this case, the trial court asked defendant a series of questions. The court specifically asked defendant whether his decision to plead guilty had been induced by any promises other than the State's recommendations which were disclosed to the court. Defendant responded, "No, sir." The court subsequently accepted defendant's plea. Both the defense and the State made sentencing recommendations to the court. Defense counsel requested the court to sentence his client to probation. Ultimately, the court sentenced defendant to eight years' imprisonment as recommended by the State.

¶ 6 Following the sentencing hearing, on June 4, 2010, defendant filed a motion to withdraw his guilty plea. The court appointed new counsel to represent defendant, who filed an amended motion to withdraw defendant's guilty plea on July 30, 2010. The amended motion claimed, in part, that trial counsel made a promise he could secure probation for defendant if defendant pled guilty. The amended motion also alleged defendant had a meritorious defense. Newly appointed counsel did not present any new evidence for the court's consideration and relied on the contents of the motion for new trial when arguing the merits of the motion for new trial before the trial

court. Following the hearing on the motion, the trial court denied defendant's motion to withdraw the guilty plea. Defendant appeals.

¶ 7

#### ANALYSIS

¶ 8 On appeal, defendant argues his counsel was ineffective because counsel did not offer any evidence in support of defendant's claims set out in the amended motion to withdraw his guilty plea. To establish ineffective assistance of counsel, a defendant must show that: (1) counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Albanese*, 104 Ill. 2d 504 (1984). Defendant must satisfy both prongs in order to prevail on a claim of ineffective assistance of counsel; however, if defendant did not suffer prejudice, a court need not determine whether counsel's performance was deficient. *Id.*

¶ 9 We first examine whether the record supports the view that there is a reasonable probability that the outcome of the motion to withdraw the guilty plea in this case would have been different if counsel had offered evidence to the court during the hearing on defendant's amended motion to withdraw the guilty plea.

¶ 10 Our careful examination of the record reveals the trial court specifically asked defendant whether any other promises, other than those made by the State and expressly revealed to the court, caused or induced defendant to enter his guilty plea. Thus, even if counsel had introduced evidence to the trial court that defendant's trial counsel made a promise regarding probation, defendant's own statement negates the possibility that defendant relied on trial counsel's promise of probation at the time of his guilty plea. Based on this record, it is clear that defendant was not induced to plead guilty by any promise other than the State's recommendations which were

recited in open court. See *People v. Torres*, 228 Ill. 2d 382 (2008). In addition, even though defendant contends he had a meritorious defense, defendant knowingly waived any potential defenses when he pled guilty. See *People v. Thompson*, 404 Ill. App. 3d 265 (2010) (a guilty plea waives all nonjurisdictional defenses or defects).

¶ 11 In addition, defendant argues on appeal that defense counsel failed to comply with the requirements of Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). Rule 604(d) provides a simple, straightforward, and mandatory procedure designed to insure that defense counsel actually fulfilled those duties. *People v. Dickerson*, 212 Ill. App. 3d 168 (1991). Defendant's assertion is contradicted by the contents of the Rule 604(d) certificate prepared by counsel verifying that he complied with the duties and obligations as required by the rule. Therefore, we conclude this contention is without merit.

¶ 12 **CONCLUSION**

¶ 13 The judgment of the circuit court of Will County is affirmed.

¶ 14 Affirmed.