

NOTICE
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2012 IL App (4th) 120632-U

Filed 10/4/12

NO. 4-12-0632

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
TAMARUS ALVIN YOUNG,)	No. 11CF1142
Defendant-Appellant.)	
)	Honorable
)	Rebecca Simmons Foley,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted defendant's motion for summary remand as counsel's Rule 604(d) certificate did not strictly comply with the rule.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to remand defendant's case to the trial court because defendant's trial counsel's certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) does not strictly comply with the rule. We agree defense counsel's purported certificate does not comply with Rule 604(d) and grant OSAD's motion to remand.

¶ 3 **I. BACKGROUND**

¶ 4 In February 2012, defendant, Tamarus Alvin Young, pleaded guilty to aggravated driving under the influence (625 ILCS 5/11-501(a), (d)(1)(G) (West 2010)), driving while license revoked (625 ILCS 5/6-303(a) (West 2010)), criminal trespass to a vehicle (720 ILCS 5/21-2

(West 2010)), and domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2010)). In April 2012, the trial court sentenced defendant to four years' imprisonment.

¶ 5 In April 2012, defendant filed a *pro se* motion to withdraw plea or in the alternative to reconsider sentence. In June 2012, on the same day as the hearing on the motion, defendant's trial counsel filed a certificate averring compliance with Rule 604(d). The trial court denied the motion. This appeal followed.

¶ 6 Counsel's certificate stated "I have personally consulted with the [d]efendant regarding this motion." The certificate stated counsel had reviewed the transcripts of the guilty plea and sentencing hearings, and had examined the trial court file. Further, the certificate stated "I have elected to make no modifications to the motion."

¶ 7 II. ANALYSIS

¶ 8 Defendant contends counsel's certificate is deficient for failing to certify that trial counsel consulted with the defendant to ascertain defendant's contentions of error in the sentence or the entry of the plea of guilty. The State responds because the certificate stated (1) counsel personally consulted with defendant regarding the motion and (2) elected not to make any modifications "[i]t would defy commonsense to conclude that defense counsel may have failed to discuss defendant's contentions of error during the consultation."

¶ 9 Supreme Court Rule 604(d) provides, in relevant 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." Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 10 "[S]trict compliance with Rule 604(d) is required and a reviewing court must remand in any case where counsel failed to strictly comply." *People v. Prather*, 379 Ill. App. 3d 763, 768, 887 N.E.2d 44, 47 (2008). "While strict compliance does not require that the language of the rule be recited verbatim in the certificate, some indication must be presented that counsel performed the duties required under the rule." *People v. Richard*, 2012 IL App (5th) 100302, ¶ 10, 970 N.E.2d 35, 39.

¶ 11 In *Richard*, the Fifth District recently held defense counsel's purported Rule 604(d) certificate did not strictly comply with the rule's consultation requirement. There, counsel's certificate stated counsel had ascertained defendant's " 'contentions of deprivation of constitutional rights.' " *Richard*, 2012 IL App (5th) 100302, ¶ 5, 970 N.E.2d 35, 38. The Fifth District held the certificate failed to satisfy Rule 604(d) because there was no evidence counsel ascertained the defendant's nonconstitutionally based contentions of error on the face of the certification or in the record. *Richard*, 2012 IL App (5th) 100302, ¶¶ 14-15, 970 N.E.2d 35, 39-40. In *Prather*, this court held the purported Rule 604(d) certificate failed to satisfy the consultation requirement where it stated counsel ascertained the defendant's " 'contentions of error and sentence.' " *Prather*, 379 Ill. App. 3d at 768, 887 N.E.2d at 47. There, we stated we need not take strict compliance with Rule 604(d) to "unreasonable extremes" but rejected the State's argument defense counsel "probably did ascertain all of defendant's errors" because "we

do not know with certainty because counsel failed to strictly comply with Rule 604(d)." *Id.* See also *People v. Dismuke*, 355 Ill. App. 3d 606, 610, 823 N.E.2d 1131, 1135 (2005) (certificate did not discuss subject matter of consultation).

¶ 12 Here, counsel's certificate stated "I have consulted with the [d]efendant regarding this motion." On its face, counsel's certificate does not state whether she consulted with defendant to ascertain his contentions of error in the sentence or entry of the plea of guilty. The certificate and record provides no indication of the subject matter of the consultation. We will not speculate whether counsel in fact consulted with defendant on these points of error. We cannot determine whether counsel consulted with defendant to ascertain his contentions of error in the sentence or the entry of the plea of guilty. The certificate fails to strictly comply with Rule 604(d).

¶ 13 III. CONCLUSION

¶ 14 We reverse the trial court's judgment regarding Rule 604(d) compliance and remand for (1) the filing of a new postplea motion (if defendant so wishes), (2) a new hearing on defendant's postplea motion, and (3) strict compliance with Rule 604(d) requirements.

¶ 15 Reversed and remanded with directions.