



possession with intent to deliver controlled substance (720 ILCS 570/401(c)(1) (West 2010)) (count II). The trial court merged count I with count II and entered a conviction on count II. In April 2012, the court sentenced defendant to 12 years' imprisonment.

¶ 5 In May 2012, defendant filed a motion to reconsider sentence. On the same day, 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 "NOW COMES [defense counsel], attorney for Defendant herein and states that he has consulted with the Defendant in person to ascertain Defendant's contentions of error in the sentence imposed herein, has examined the trial court file and the Court proceedings of the plea of guilty, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings."

¶ 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 entry of the plea of guilty. Specifically, defendant asserts while Rule 604(d) uses the conjunction "or," the rule requires trial counsel to state he has consulted with defendant about both his contentions of error in the sentence *and* entry of the plea of guilty. The State responds "[b]y stating the requirement in the disjunctive, the rule is satisfied by conferring with defendant about either or both topics."

¶ 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 (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. "The certificate itself is all this court will consider to determine compliance with Rule 604(d)." *People v. Neal*, 403 Ill. App. 3d 757, 760 (2010).

¶ 11 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. 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 (2005) (certificate did not discuss subject matter of consultation).

¶ 12 Recently, in *People v. Herrera*, 2012 IL App (2d) 110009, ¶ 6, 970 N.E.2d 1219, 1222, the Second District considered a purported certificate that stated the attorney had consulted with the defendant " 'to ascertain his claim of error in the entry of his sentence.' " The court stated

it was concerned the purpose of Rule 604(d) might not have been fulfilled because there was nothing to show the attorney had consulted with the defendant to determine his reasons for only filing a motion to reconsider sentence. *Herrera*, 2012 IL App (2d) 110009, ¶ 12, 970 N.E.2d at 1223. In *Herrea*, the Second District admonished attorneys "a 'word for word' recitation [of Rule 604(d)] is the better practice." *Herrera*, 2012 IL App (2d) 110009, ¶ 14, 970 N.E.2d at 1224.

¶ 13 Here, counsel's certificate stated he "consulted with the Defendant in person to ascertain Defendant's contentions of error in the sentence." The State correctly points out Rule 604(d) uses the word "or" rather than "and." However, we cannot agree this indicates the Rule 604(d) certificate need only state the attorney conferred with defendant about either errors in his sentence or his guilty plea. Such a statement thus fails to show counsel consulted with defendant about possible errors in his guilty plea. As in *Herrea*, nothing shows counsel consulted with defendant to determine contentions of error outside of the motion to reconsider sentence. On its face, counsel's certificate does not state whether he consulted with defendant to ascertain his contentions of error in the entry of the plea of guilty. As the certificate provides no indication whether he consulted with defendant as to the entry of the guilty plea, we can only speculate whether counsel in fact consulted with defendant on this point of error. Because we cannot determine whether counsel consulted with defendant to ascertain his contentions of error in the entry of the plea of guilty, the certificate fails to strictly comply with Rule 604(d).

¶ 14 III. CONCLUSION

¶ 15 For the reasons stated, 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.

¶ 16 Reversed and remanded with directions.

¶ 17 PRESIDING JUSTICE TURNER, dissenting.

¶ 18 I respectfully dissent and would find defense counsel's certificate complied with the language of Rule 604(d). As the State notes, Rule 604(d) uses the term "or" in referring to what contentions of error counsel must ascertain from the defendant. See Ill. S. Ct. R. 604(d) (eff. July 1, 2006). "The word 'or' is disjunctive" and thus "connotes two different alternatives." *Elementary School District 159 v. Schiller*, 221 Ill. 2d 130, 145, 849 N.E.2d 349, 359 (2006). Accordingly, Rule 604(d)'s plain language does not require defense counsel to state it ascertained defendant's contentions from both the entry of the plea and sentencing but, rather, requires counsel to state he or she ascertained contentions from only one of them. Here, defense counsel expressly stated he ascertained defendant's contentions of error as to defendant's sentence. The rule uses the disjunctive "or," and defense counsel strictly complied with the plain language of Rule 604(d). Additionally, if defense counsel follows the Second District's admonishment in *Herrera*, 2012 IL App (2d) 110009, ¶ 14, 970 N.E.2d at 1224, on remand, his certificate will contain the disjunctive language, and thus it will be unclear as to whether defense counsel discussed with defendant possible contentions of error in the guilty-plea proceeding, making remand worthless.

¶ 19 Accordingly, I find defense counsel strictly complied with Rule 604(d)'s certificate requirement and remand is unwarranted.