

assault (720 ILCS 5/11-1.30(a)(1) (West 2010)) (count IV). In exchange for his plea, the State dismissed counts of armed robbery (720 ILCS 5/18-2(a)(1) (West 2010)) (count III), and aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(1) (West 2010)) (count V). The State previously dismissed a count of home invasion (720 ILCS 5/12-11(a)(2) (West 2010)) (count II). In August 2012, the trial court sentenced defendant to 20 years' imprisonment for home invasion and 30 years' imprisonment for aggravated criminal sexual assault, consecutive to the home invasion sentence (count I).

¶ 5 On September 10, 2012, defendant filed a motion to reconsider sentence. On November 14, 2012, defendant's trial counsel filed a certificate averring compliance with Rule 604(d). The certificate states as follows:

"counsel for Defendant, pursuant to Supreme Court Rule 604(d), hereby certify that I have consulted with Defendant both in person and by telephone to ascertain Defendant's contentions of error in the sentence; have examined the court file and the report of proceedings of the plea of guilty."

The trial court denied defendant's motion.

¶ 6 This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 Defendant contends that counsel's purported Rule 604(d) certificate is deficient for failing to certify that trial counsel (1) consulted with him to ascertain his contentions of error in the entry of the plea of guilty and (2) made amendments to the motion necessary for adequate presentation of any defects in the proceedings. Further, defendant notes "Rule 604(d) is the only

avenue for direct appeal of a conviction after a guilty plea" and asserts the purpose of Rule 604(d) leads toward the conclusion Rule 604(d) requires a statement counsel consulted with defendant about both the contentions of error in the entry of the plea of guilty and the sentence. The State disagrees and asserts that Rule 604(d) "is satisfied by conferring with defendant about either or both topics" because the consultation requirement is stated in the alternative. Further, the State contends that, "given the disjunctive language of Rule 604(d), when the postplea motion is limited to either the guilty plea or the sentence, defense counsel should not be faulted for only certifying he conferred with his client about the subject matter of the motion."

¶ 9 A. Rule 604(d)

¶ 10 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.*"

(Emphases added.) Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 11 "The question of whether defense counsel complied with Rule 604(d) is subject to *de novo* review." *People v. Grice*, 371 Ill. App. 3d 813, 815, 867 N.E.2d 1143, 1145 (2007).

"[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; see also *People v. Dryden*, 2012 IL App (2d) 110646, ¶ 11, 980 N.E.2d 203 (noting Rule 604(d)'s "purpose is to eliminate the need for guesswork about the 'core' of a defendant's contentions"). "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, 936 N.E.2d 726, 728 (2010).

¶ 12 In *Grice*, this court stated:

"Because Rule 604(d) is lengthy, we set forth the following key aspects of that rule with which defense counsel must comply. We do so to facilitate a trial court's scrutiny of any purported Rule 604(d) certificate it receives. Such a certificate *must* contain each of the following:

(1) A statement 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.

(2) A statement that the attorney has examined the trial court file.

(3) A statement that the attorney has examined the report of proceedings of the plea of guilty.

(4) A statement that the attorney has made any amendments

to the motion necessary for adequate presentation of any defects in those proceedings." (Emphasis in original.) *Grice*, 371 Ill. App. 3d at 816-17, 867 N.E.2d at 1146-47.

¶ 13 In *People v. Dismuke*, 355 Ill. App. 3d 606, 607-08, 823 N.E.2d 1131, 1132-33 (2005), the defense counsel's certificate omitted any mention of making amendments to the defendant's motion that was necessary to adequately present defects in the proceedings. The Second District held the certificate was deficient on its face and "in the absence of such a certification, the presumption must be that counsel failed to make the requisite amendments." *Dismuke*, 355 Ill. App. 3d at 608, 823 N.E.2d at 1133.

¶ 14 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 *Dismuke*, 355 Ill. App. 3d at 610, 823 N.E.2d at 1135 (certificate did not discuss subject matter of consultation).

¶ 15 B. The Certificate's Compliance With Rule 604(d)

¶ 16 Here, counsel's certificate provides three of the four statements required by Rule 604(d) and omits any mention of whether counsel made "amendments to the motion necessary for adequate presentation of any defects in those proceedings." We must presume counsel failed to make the requisite amendments after consulting with defendant. We will not speculate or

search the record to determine whether counsel complied with Rule 604(d). Therefore, the certificate is deficient on its face.

¶ 17 The certificate does not state defense counsel consulted with defendant to ascertain defendant's contentions of error in the entry of the plea of guilty. The State asserts such a statement is not required as the language of the rule uses the disjunctive "or" rather than "and." However, nothing on the face of counsel's certificate indicates he consulted with defendant as to the entry of the guilty plea, and we can only speculate whether counsel in fact consulted with defendant on this point of error. We note we will not fault counsel for following Rule 604(d) too closely or verbatim (*People v. Mineau*, 2012 IL App (2d) 110666, ¶ 16, ___ N.E.2d ___), but counsel's certificate must contain the four statements required by Rule 604(d). See also *People v. Herrera*, 2012 IL App (2d) 110009, ¶ 14, 970 N.E.2d 1219 (admonishing counsel a "'word or word'" recitation of Rule 604(d) is the best practice). Because the certificate, on its face, does not state counsel made amendments to the motion necessary for the adequate presentation of any defects and we cannot determine whether counsel consulted with defendant to ascertain his contentions of error in the plea of guilty, we conclude the certificate fails to strictly comply with Rule 604(d).

¶ 18 III. CONCLUSION

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

¶ 20 Reversed and remanded with directions.

¶ 21 JUSTICE TURNER, specially concurring.

¶ 22 I specially concur to emphasize this case could be remanded solely on the Rule 604(d) certificate's failure to address whether counsel made any amendments to the motion necessary for an adequate presentation of any issues. Since the amendment language is missing, the arguments regarding the "or" language contained in a different Rule 604(d) certificate requirement need not be addressed. Nonetheless, a majority of the Fourth District Appellate Court has adopted the view the word "or" should read as "and." Thus, I also concur in the majority analysis here, which requires counsel to consult with defendant about the plea and sentence.