

NOTICE
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2013 IL App (4th) 130007-U

NO. 4-13-0007

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 20, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
RADLEY MONSON,)	No. 12CF139
Defendant-Appellant.)	
)	Honorable
)	Paul G. Lawrence,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justice Harris and Justice Holder White concurred in the judgment.

ORDER

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

¶ 2 This case 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. Feb. 6, 2013) did not strictly comply with the rule. We agree that trial counsel's purported certificate did not comply with Rule 604(d) and grant OSAD's motion to remand.

¶ 3 I. BACKGROUND

¶ 4 In June 2012, defendant, Radley Monson, pleaded guilty to aggravated driving under the influence of alcohol (625 ILCS 5/11-501(a) (West 2010) (aggravated pursuant to 625 ILCS 5/11-

501(d)(1)(F) (West 2010) (proximate cause of an accident resulting in death)) and improper lane usage (625 ILCS 5/11-709(a) (West 2010)). In exchange for defendant's open guilty plea on those offenses, the State agreed to dismiss a misdemeanor charge for driving under the influence of alcohol (625 ILCS 5/11-501(a) (West 2010)). In August 2012, the trial court sentenced defendant to seven years in the Illinois Department of Corrections. In November 2012, defendant, through his trial counsel, filed with the trial court an amended motion to reconsider his sentence. Trial counsel's certificate, filed along with his motion to reconsider, read as follows:

"That I, Jason Cannell, hereby certify that I have, in accordance with Illinois Supreme Court Rule 604(d), have [*sic*] consulted with the Defendant by mail to ascertain Defendant's contentions of error at the sentencing hearing and in the sentence imposed by the trial court; that I have examined the trial court file and report of proceedings from the sentencing hearing; that I have made any amendments to the Motion to Reconsider Sentence necessary for the adequate presentation of any defects in those proceedings."

In February 2013, following a hearing, the trial court denied defendant's motion.

¶ 5 This appeal followed.

¶ 6 II. ANALYSIS

¶ 7 Defendant contends that trial counsel's certificate did not strictly comply with the requirements of Rule 604(d) because it failed to state that trial counsel (1) read the report of proceedings of the guilty plea and (2) consulted with defendant to ascertain his contentions of error in the entry of the guilty plea. The State concedes that Rule 604(d) required trial counsel to state in

his certificate that he read the report of proceedings of the guilty plea, but it disagrees that the rule required trial counsel to state that he had consulted with defendant to ascertain his contentions of error in the entry of the guilty plea.

¶ 8 Supreme Court Rule 604(d) provides, in pertinent part, that when filing a motion to reconsider a guilty plea, sentence, or both, the defense attorney must file a certificate of compliance stating the following:

"[T]hat 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. Feb. 6, 2013).

¶ 9 "[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. "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).

¶ 10 Defendant argues, and the State concedes, that trial counsel failed to strictly comply with Rule 604(d) because he did not state in his certificate that he read the report of proceedings of

defendant's guilty plea. We agree and accept the State's concession on this point. However, we disagree with the State that strict compliance with Rule 604(d) did not require trial counsel to also state he consulted with defendant and ascertained his contentions of error in the entry of the plea of guilty.

¶ 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, 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 In *People v. Herrera*, 2012 IL App (2d) 110009, ¶ 6, 970 N.E.2d 1219, 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 nothing showed 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 1219. In *Herrera*, 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 1219.

¶ 13 Here, counsel's certificate stated that he "consulted with the Defendant by mail to

ascertain Defendant's contentions of error at the sentencing hearing and in the sentence imposed by the trial court." 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 *Herrera*, 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.