

No. 1-12-1613

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 16378
)	
ANTHONY TAGLE,)	Honorable
)	Jorge Luis Alonso,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justices McBride and Taylor concurred in the judgment.

O R D E R

¶ 1 *Held:* This case must be remanded for further proceedings on defendant's motion to withdraw his guilty plea where defense counsel failed to strictly comply with her obligations under Supreme Court Rule 604(d).

¶ 2 Pursuant to a negotiated guilty plea, defendant Anthony Tagle pled guilty to first degree murder in violation of section 9-1(a)(1) of the Criminal Code of 1961 (720 ILCS 5/9-1(a)(1) (West 2008)) and was sentenced to 20 years in prison. On appeal, defendant contends that his counsel failed to strictly comply with her obligations under Supreme Court Rule 604(d) (eff. July

1, 2006) when she did not include specific language that she “made any amendments to the motion she drafted necessary for adequate presentation of any defects in the plea proceedings.”

Therefore, defendant argues that the order denying his motion to withdraw his guilty plea should be vacated. We remand the case for compliance with Rule 604(d).

¶ 3 According to the State's factual basis for the plea, on July 31, 2008, defendant stabbed and beat his wife, Flordeliza Tagle, after a verbal altercation in their home located at 5300 North Luna in Chicago. Defendant’s daughter found Flordeliza unconscious and called police. Detective Kevin Bruno arrived at defendant’s home and observed Mrs. Tagle on the floor with numerous stab wounds. Defendant later turned himself in at the police station stating: “I couldn’t take it anymore. I snapped. I did it.” After defendant was interviewed by police, he was arrested.

¶ 4 Police processed defendant’s home, and recovered a knife from the drawer. The knife was examined by the Illinois State Police Forensic unit and the victim could not be excluded as the major female donor of DNA recovered from the knife. A swab of blood found on defendant’s leg after he was taken into custody was also tested and matched the victim’s profile.

¶ 5 Defendant pled guilty to first-degree murder. The court admonished defendant and asked if he understood that when he pled guilty he would be giving up his right to a bench or jury trial, and defendant stated that he understood. The State then offered the factual basis for the plea and defense counsel stipulated to the facts. The trial court found that defendant entered his plea freely and voluntarily, accepted the factual basis, and sentenced defendant to the agreed upon sentence of 20 years in prison.

¶ 6 At defendant's request, defense counsel filed a motion to withdraw defendant's guilty plea. Counsel filed the following Certificate Pursuant to Supreme Court Rule 604(d). It stated:

"I, SANDRA PARRISH, Assistant Public Defender, do hereby certify that I have, pursuant to my appointment in the above entitled cause, consulted with petitioner/defendant, ANTHONY TAGLE, in person, regarding his contentions of error in the entry of his pleas [sic] of guilty. I have examined the court file, reviewed the reports of proceedings of the plea hearing, and discussed that transcript with ANTHONY TAGLE.

In sum, I have in all respects complied with my obligations under Supreme Court Rule 604(d)."

¶ 7 The court found no reason to vacate the guilty plea. Defense counsel asked the court to reconsider his sentence, and the court denied.

¶ 8 On appeal, defendant contends that his counsel failed to strictly comply with her obligations under Supreme Court Rule 604(d) when she did not include specific language that she "made any amendments to the motion she drafted necessary for adequate presentation of any defects in the plea proceedings." Therefore, defendant argues that the order denying his motion to withdraw his guilty plea should be vacated.

¶ 9 "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 (2007). Rule 604(d) provides:

"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).

"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. "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). [T]he rule's certificate requirement is meant to enable the trial court to ensure that counsel has reviewed the defendant's claim and considered *all* relevant bases for the motion to withdraw the guilty plea or to reconsider the sentence. *People v. Tousignant*, 2014 IL 115329, ¶ 16.

¶ 10 Defense counsel must strictly comply with the requirements of Rule 604(d). *People v. Dryden*, 2012 IL App (2d) 110646, ¶ 4. Failure to comply with the requirements of Rule 604(d) results in a deficient certificate. *People v. Dismuke*, 355 Ill. App. 3d 606, 610 (2005). The remedy for failing to strictly comply with Rule 604(d) is to remand the matter to the circuit court for: (1) filing a proper Rule 604(d) certificate, (2) the opportunity to file a new motion to withdraw the defendant's guilty plea and/or reconsider sentence, if counsel determines that new motion is necessary, and (3) a new motion hearing. *People v. Lindsay*, 239 Ill. 2d 522, 531 (2011).

¶ 11 We find that counsel did not strictly comply with Rule 604(d). Defense counsel filed a certificate that complied with only two of the three requirements of Rule 604(d). Counsel failed to include the third requirement, which states that counsel "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). The State argues that defense counsel's statement that she had "in all respects complied with my obligations under Supreme Court Rule 604(d)" encompasses making any amendments to the motion. However, we decline the State's invitation to infer exactly what counsel intended to convey in writing that statement. Because the certificate, on its face, does not state whether counsel made any of the necessary amendments, we cannot simply assume that this was done. *Neal*, 403 Ill. App. 3d at 760. Thus, we find counsel failed to strictly comply with her obligations under Rule 604(d).

¶ 12 The State also argues that although the certificate does not state that counsel performed one of the tasks required by Rule 604(d), the record demonstrates counsel's compliance. Specifically, the State contends that "the record is clear that counsel considered all relevant bases for defendant's motion to withdraw," and makes reference to counsel's arguments and statements during the hearing on the motion to withdraw defendant's guilty plea which "firmly establish that she complied with Rule 604(d)." However, in *Dismuke*, 355 Ill. App. 3d 606 (2005), the reviewing court held that "a waste of judicial resources occurs when, as a result of an attorney's deficient certificate, an appellate court must scour through the record to determine whether that attorney actually complied with Rule 604(d)." *Id.* at 609. The State attempts to distinguish *Dismuke* by stating that in this case there is no need to scour through the record because "unlike *Dismuke*, the record is clear that counsel considered all relevant bases for defendant's motion to

withdraw, as defendant's remarks at the hearing on the motion to withdraw the plea attest." However, in light of the rule for strict compliance, we reject the State's suggestion to look outside the four corners of the certificate to determine whether counsel complied with the mandates of Rule 604(d). See *Id.* at 610. Accordingly, we will not consider defense counsel's actions at the hearing on the motion to withdraw defendant's plea. Instead, staying within the four corners of the certificate, we find it deficient to fulfill the requirements of Rule 604(d).

¶ 13 Finally, the State argues that filing a semantically imperfect Rule 604(d) certificate can be considered harmless error. For support, the State cites *People v. Gabala*, 211 Ill. App. 3d 351 (1991), in which this court held that "substantial compliance with the spirit of Rule 604(d)," is adequate when the failure to strictly comply does not significantly affect the outcome of the case. *Id.* at 358. However, our supreme court explicitly rejected the idea of "substantial compliance" in *People v. Janes*, 158 Ill. 2d 27 (1994), stating that "a rule that counsel need not strictly comply merely generates disputes on review *** over whether the record shows that there has been substantial compliance with the provisions of Rule 604(d)." *Id.* at 35. Thus, the remedy for failure to strictly comply with each provision of the rule is a remand for filing of a new motion to withdraw plea or reconsider sentence and a new hearing on the motion; harmless error or substantial compliance rule does not apply. See *Id.*; *People v. Hayes*, 195 Ill. App. 3d 957 (1990); *People v. Wilk*, 124 Ill. 2d 93 (1988). Therefore, we reject the State's argument that counsel's failure to strictly comply with the mandates of Rule 604(d) can be considered harmless error.

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¶ 14 For the reasons stated, we reverse the trial court's judgment 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)'s requirements.

¶ 15 Reversed and remanded with directions.