

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).

2014 IL App (4th) 130280-U

NO. 4-13-0280

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 21, 2014

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

PAUL T. UNDERWOOD,

Defendant-Appellant.

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Appeal from

Circuit Court of

Macon County

No. 11CF774

Honorable

Thomas E. Griffith, Jr.,

Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's denial of the defendant's motion to reconsider sentence.

¶ 2 In March 2012, defendant, Paul T. Underwood, entered a negotiated guilty plea to one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2010)). Following a June 2012 hearing, the trial court sentenced defendant to five years in prison. In July 2012, defendant, through counsel, filed a motion to reconsider sentence, which the court later denied.

¶ 3 Defendant appealed, and this court remanded with instructions that the trial court allow defendant the opportunity to file a new postplea motion because trial counsel failed to file a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Underwood*, No. 4-12-1037 (Jan. 28, 2013) (disposition on agreed motion for summary remand). On remand, defense counsel filed an amended certificate in compliance with Rule 604(d) but declined to file a new postplea motion or request a new hearing on the previously filed motion to

reconsider sentence. The trial court affirmed its earlier denial of defendant's motion to reconsider sentence.

¶ 4 Defendant appeals, arguing that, on remand, the trial court was required to hold a new hearing on his motion to reconsider sentence. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 Defendant's July 2012 motion to reconsider sentence alleged that the trial court abused its discretion by "giving a sentence of 5 years, which was excessive and too lengthy." Defense counsel's certificate accompanying the motion stated, in pertinent part, as follows:

"I have consulted with the defendant in person to ascertain the defendant's contentions of error in the sentence, I have examined the trial court file and report of proceedings, and have made any amendments to the motion necessary for adequate presentation of any defects in those proceedings."

¶ 7 At an October 2012 hearing on defendant's motion to reconsider sentence, defendant presented the testimony of his daughter (the victim of his crime) and his estranged wife (the victim's mother). Defendant's daughter testified that she wanted to reestablish a relationship with defendant. Defendant's estranged wife testified that she supported her daughter's wishes. After considering this evidence, the trial court denied defendant's motion to reconsider sentence.

¶ 8 On appeal, this court allowed defendant's motion for summary remand. Our January 2013 order read as follows:

"Defendant-appellant's motion for summary remand is hereby allowed. The cause is remanded to the circuit court for the filing of a Supreme Court Rule 604(d) certificate, the opportunity

to file a new post-plea motion, if counsel concludes that a new motion is necessary, a hearing on the motion, a new judgment, and strict compliance with [the] requirements of Rule 604(d)."

¶ 9 Later in January 2013, on remand, defense counsel filed an amended Rule 604(d) certificate that stated, in pertinent part, as follows:

"I have consulted with the defendant in person to ascertain the defendant's contentions of error in the sentence, or the entry of the plea of guilty. I have examined the trial court file and report of proceedings of the plea of guilty, and I have made any amendments to the motion necessary for adequate presentation of any defects in those proceedings."

¶ 10 In February 2013, defense counsel and the State appeared before the trial court to discuss whether defense counsel's amended Rule 604(d) certificate satisfied this court's mandate. (The parties appeared before a new judge because the judge who denied defendant's motion to reconsider sentence in October 2012 was no longer serving as a circuit judge.) The following exchange took place between the court and the parties:

"[DEFENSE COUNSEL]: Judge, this is the one sent back by the Appellate Court for me to correct the certificate that I had filed. I have filed an amended certificate at this time at this point.

THE COURT: You had also filed a motion to reconsider sentence, correct?

[DEFENSE COUNSEL]: Which we'd heard with [the previous judge] and everything prior to it going and filing the notice

of appeal and it being sent back. Nothing has changed substantively in the case except for the fact I was missing 3 words in my certificate originally. I don't know whether we're required to do another hearing or not.

[THE STATE]: My evaluation is, because nothing has changed other than [defense counsel] being required to amend his [Rule 604(d)] certification, we should not have to proceed through the entire motion hearing again. I would ask the court to note the amended certificate is on file and approved and that the appeal process can continue.

THE COURT: Okay. Do you think it would help if I confirmed [the previous judge's] denial of the motion to reconsider?

[DEFENSE COUNSEL]: Did they give us any guidance on that?

[THE STATE]: No, no.

[DEFENSE COUNSEL]: I'm not sure, Judge.

THE COURT: Here's what I'm going to do. Show the appearances. The amended corrected certificate pursuant to Supreme Court Rule 604(d) on file. This court confirms the prior Judge's denial of the Defendant's motion to reconsider sentence. Appeal process to continue.

[DEFENSE COUNSEL]: He does not need to refile a Notice of Appeal at this point, correct?

[THE STATE]: That's already done. The transcripts are done and forwarded. Everything is done."

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Defendant argues that, on remand, the trial court was required to hold a new hearing on his motion to reconsider sentence. We disagree.

¶ 14 Rule 604(d) requires that, before taking an appeal from a judgment entered upon a guilty plea, a defendant must file "in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment." Ill. S. Ct. R. 604(d) (eff. July 1, 2006). The rule further provides, as follows:

"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." *Id.*

¶ 15 In *People v. Lindsay*, 239 Ill. 2d 522, 531, 942 N.E.2d 1268, 1274 (2011), the supreme court held as follows:

"[W]hen defense counsel neglects to file a Rule 604(d) certificate, the appropriate remedy is a remand for (1) the filing of a Rule 604(d) certificate; (2) the opportunity to file a new motion to with-

draw the guilty plea and/or reconsider the sentence, if counsel concludes that a new motion is necessary; and (3) a new motion hearing."

¶ 16 In this case, defendant argues that *Lindsay* required a new hearing on remand, even though defense counsel chose not to file a new postplea motion. Here, however, remand was required under *Lindsay* only because the initial Rule 604(d) certificate failed to state that defense counsel had (1) consulted with defendant to ascertain his contentions of error in the *guilty plea* and (2) examined the trial court file and report of proceedings of the *plea of guilty*. Even assuming that defense counsel failed in the first instance to consult with defendant to ascertain his contentions of error in the guilty plea, or examine the trial court file and report of proceedings of the plea of guilty, his failure to do so would have had no bearing on his preparation or presentation of the motion *to reconsider sentence*. On remand, after complying with the Rule 604(d) certification requirement as it pertained to the guilty plea, defense counsel declined to file a new motion of any kind or request a new hearing. It would make no sense for Rule 604(d) to require the trial court in such an instance to *sua sponte* hold a second hearing on the already argued and decided motion to reconsider sentence.

¶ 17 The supreme court has explained the purpose of the Rule 604(d) certification requirement, as follows:

"Requiring the defendant's counsel to file the requisite certificate enables the trial court to insure 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. The attorney certificate thereby encourages the preservation of a clear rec-

ord, both in the trial court and on appeal, of the reasons why a defendant is moving to withdraw his plea or to reduce sentence."

People v. Shirley, 181 Ill. 2d 359, 361, 692 N.E.2d 1189, 1191 (1998).

In this case, defense counsel's original certificate fulfilled the purposes of Rule 604(d) *as it pertained to the motion to reconsider sentence*. Specifically, defense counsel certified that he consulted with defendant to ascertain his contentions of error in the sentence. However, it was necessary to remand the case so that defense counsel could certify that his decision *not* to file a motion to withdraw guilty plea was an informed one, based upon his consultation with defendant and his review of the trial court file and the report of proceedings of the plea of guilty. On remand, once defense counsel so certified, the requirements of Rule 604(d) were met. Defendant concedes in this appeal that defense counsel on remand was not required to file a new motion of any kind.

¶ 18 In terms of preparing and presenting the motion to reconsider sentence, defense counsel certified *before* the original hearing that he had done everything Rule 604(d) required him to do regarding the challenge to the sentence. His original Rule 604(d) certificate was deficient only as it pertained to the guilty plea, which ultimately went unchallenged. In other words, the original Rule 604(d) certificate—although deficient as a whole—was fully effective to "enable[] the trial court to insure that counsel ha[d] reviewed the defendant's claim and considered all relevant bases for the motion[.]" *Shirley*, 181 Ill. 2d at 361, 692 N.E.2d at 1191. The initial deficiencies did nothing to cast doubt on the adequacy of defense counsel's representation of defendant as it pertained to the challenge to the sentence. Accordingly, on remand, a new hearing

on the motion to reconsider sentence would have done nothing to advance the purposes of Rule 604(d).

¶ 19

III. CONCLUSION

¶ 20 For the reasons stated, we affirm the trial court's denial of defendant's motion to reconsider sentence. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 21

Affirmed.