

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) 130567-U

NO. 4-13-0567

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 25, 2014

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
GEORGE R. McCANEY, JR.,)	No. 12CF1800
Defendant-Appellant.)	
)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Appleton and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Where defense counsel failed to strictly comply with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013), the trial court's order denying defendant's motion to reconsider sentence is reversed and the cause remanded with directions.

¶ 2 In March 2013, defendant, George R. McCaney, Jr., entered into an open plea to aggravated driving under the influence of alcohol. In April 2013, the trial court sentenced defendant to 63 months of incarceration. In June 2013, the court denied defendant's motion to reconsider sentence. Defendant appeals, arguing the attorney who represented him at the hearing on his motion to reconsider sentence failed to file a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). The State concedes. We vacate the trial court's order denying defendant's motion and remand the cause for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 In November 2012, defendant was charged by information with aggravated driving under the influence of alcohol. 625 ILCS 5/11-501(d)(1)(H) (West 2012). In March 2013, defendant entered into an open plea of guilty. In April 2013, the trial court sentenced defendant to 63 months' incarceration.

¶ 5 In April 2013, the assistant public defender, Katie Jessup, filed a motion for reconsideration of sentence. In June 2013, Jessup filed a Rule 604(d) certificate, stating as follows:

"I, Katie L. Jessup, Public Defender, appointed counsel for the defendant, hereby certify that I have consulted with the defendant by mail and in person to ascertain contentions of error in the entry of the plea and contentions of error in the sentence, and have examined the trial court file and the report of proceedings of the plea of guilty and sentencing. I have made any amendments to the motion necessary for adequate presentation of any defects in those proceedings."

¶ 6 At the June 2013 hearing on the motion to reconsider sentence, Jessup did not appear. Instead, defendant was represented by another assistant public defender, George Vargas. Vargas advised the trial court he was aware Jessup had filed a Rule 604(d) certificate. Vargas further advised the court he had talked to defendant and had reviewed the transcripts. Vargas offered to file his own Rule 604(d) certificate. The court told Vargas the certificate filed by Jessup would suffice since she was the person who had filed the motion to reconsider sentence. After hearing arguments, the court denied the motion.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues this case must be remanded because the attorney who represented him at the hearing on his motion to reconsider sentence failed to file a Rule 604(d) certificate. The State concedes.

¶ 10 In *People v. Ritchie*, 258 Ill. App. 3d 164, 164-65, 630 N.E.2d 171, 172 (1994), the defendant entered into a negotiated plea and was sentenced to 14 years of imprisonment. The assistant public defender who represented the defendant at the guilty plea proceedings filed a motion to withdraw the defendant's guilty plea. *Id.* at 165, 630 N.E.2d at 172. Thereafter, a different assistant public defender entered his appearance and filed a Rule 604(d) certificate. *Id.* At the time of the hearing on the motion to withdraw plea, a third assistant public defender appeared to represent the defendant and the motion was denied. *Id.*

¶ 11 On appeal, the appellate court noted:

"This court has repeatedly insisted on strict compliance with [Rule 604(d)]. [Citation.] The filing of a certificate is a condition precedent to a hearing on a motion to withdraw a guilty plea and the failure to file a certificate may be deemed reversible error. [Citation.] The supreme court has recently reaffirmed the requirement of strict compliance with Rule 604(d). [Citation.]" *Id.* at 166, 630 N.E.2d at 172-73.

The court held the "purpose of [Rule 604(d)] is frustrated if [a certificate] by an attorney who no longer represents [the] defendant is deemed adequate compliance with the rule." *Id.* at 167, 630

N.E.2d at 173. The court found the defendant's counsel had failed to strictly comply with the requirements of Rule 604(d). The court's order denying the motion to withdraw guilty plea was reversed and the case was remanded for a new hearing. *Id.*

¶ 12 In *People v. Herrera*, 2012 IL App (2d) 110009, ¶ 5, 970 N.E.2d 1219, the public defender who represented the defendant and filed the Rule 604(d) certificate became a judge before the hearing on the motion. A new assistant public defender informed the trial court she had met with the defendant the morning of the hearing, had discussed the issues with him, and had reviewed the file and transcripts. She advised the court she did not intend to amend the motion and had filed her own Rule 604(d) certificate. *Id.* However, her certificate was deficient. *Id.* ¶ 10, 970 N.E.2d 1219. The reviewing court held the assistant public defender who represented the defendant at the hearing on the motion to reconsider sentence was obligated to file her own certificate in compliance with Rule 604(d) to assure "the attorney *presenting* the motion has a grasp of the record and the defendant's contentions of error." (Emphasis in original.) *Id.* ¶ 11, 970 N.E.2d 1219. Further, the court held the assistant public defender's statements on the record could not rescue her deficient certificate as "[t]he only thing we consider in determining compliance with Rule 604(d) is the certificate itself." *Id.* ¶ 13, 970 N.E.2d 1219.

¶ 13 The case *sub judice* is basically indistinguishable from *Ritchie* and *Herrera*. Vargas did not file his own Rule 604(d) certificate and his verbal representations cannot substitute for a certificate.

¶ 14 III. CONCLUSION

¶ 15 For the reasons stated, we reverse the trial court's judgment regarding Rule 604(d)

compliance and remand for (1) appointment of counsel (if unrepresented), (2) the filing of new postplea motions (if defendant so desires), (3) a new hearing on defendant's postplea motions, and (4) strict compliance with the Rule 604(d) requirements.

¶ 16 Reversed; cause remanded with directions.