

**NOTICE**  
Decision filed 08/27/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 120198-U

NO. 5-12-0198

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Clinton County.
	)	
v.	)	No. 08-CF-87
	)	
ANTHONY S. WHITE,	)	Honorable
	)	Ericka A. Sanders,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE STEWART delivered the judgment of the court.  
Presiding Justice Welch and Justice Goldenhersh concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defense counsel's certification for motion to withdraw guilty plea did not strictly comply with Supreme Court Rule 604(d), and this court holds that the certification must strictly comply with supreme court rules.

¶ 2 On June 11, 2010, the defendant, Anthony White, pleaded guilty to theft in violation of section 16-1(a)(1)(A) of the Criminal Code of 1961 (720 ILCS 5/16-1(a)(1)(A) (West 2010)) in exchange for a sentence of nine years. The defendant filed an amended motion to withdraw his guilty plea on October 12, 2011, followed by the filing of an amended certificate on April 11, 2012, purportedly in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). At a hearing on April 26, 2012, the

defendant's motion to withdraw his guilty plea was denied. We reverse and remand for further proceedings.

¶ 3

### BACKGROUND

¶ 4 On June 11, 2010, the defendant, Anthony White, pleaded guilty to the offense of felony theft in exchange for a sentence of nine years' incarceration in the Department of Corrections.

¶ 5 On June 23, 2010, the defendant *pro se* wrote a letter to the court which was considered to be a motion to withdraw his guilty plea. Counsel for the defendant later filed a formal motion to withdraw guilty plea on September 15, 2010, and a certificate averring compliance with Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 6 On November 23, 2010, the State filed a motion to conduct hearings at Tamms Correctional Center based on the defendant's criminal record, prior attempts to escape, and threatening letters that were sent to various judges. Over the defendant's objection, the trial court granted the State's motion at a hearing on December 10, 2010.

¶ 7 Subsequently, on March 8, 2011, the trial court ordered a fitness evaluation of the defendant. After it was determined that the defendant was fit, his counsel filed an amended motion to withdraw guilty plea on October 12, 2011, accompanied by an affidavit in support thereof signed by the defendant. Thereafter, an amended Rule 604(d) certificate was filed on April 11, 2012, and is the subject of this appeal.

¶ 8 The certificate, purportedly in compliance with Supreme Court Rule 604(d), provided in pertinent part as follows:

"Pursuant to 604(d), the Defendant's attorney hereby states:

1. He has consulted with Defendant in person to ascertain his contention of error in the pleading.
2. He has examined the trial court file and report of the proceeding.
3. He has made amendments to the motion necessary for adequate presentation of any defects in these proceedings."

¶ 9 A hearing was held on the defendant's motion to withdraw guilty plea on April 26, 2012. The court found that the defendant did not meet his burden of proof and denied his motion to withdraw guilty plea. This appeal followed.

¶ 10 ANALYSIS

¶ 11 The defendant first argues on appeal that counsel failed to specifically declare that he "has examined the trial court file and report of proceedings *of the plea of guilty*," thus this case should be remanded for strict compliance with Supreme Court Rule 604(d). The question of whether defense counsel complied with Supreme Court Rule 604(d) is reviewed *de novo*. *People v. Grice*, 371 Ill. App. 3d 813, 815 (2007).

¶ 12 Supreme Court Rule 604(d) specifically sets forth the procedures to be followed after a defendant has filed a postplea motion to withdraw guilty plea and provides in pertinent part 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." Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 13 In *Janes*, our supreme court plainly provided instruction for failure to strictly comply with each of the provisions of Rule 604(d). *People v. Janes*, 158 Ill. 2d 27, 33 (1994). The failure to strictly comply with the requirements set forth by the supreme court rule compels "remand to the circuit court for the filing of a new motion to withdraw guilty plea or to reconsider sentence and new hearing on the motion." *Id.* We must be mindful that in interpreting the supreme court rules of Illinois, the rules "are not suggestions; rather, they have the force of law, and the presumption must be that they will be obeyed and enforced as written." *People v. Campbell*, 224 Ill. 2d 80, 87 (2006).

¶ 14 After *Janes*, the supreme court once again considered the issue of strict compliance with Rule 604(d) in *People v. Shirley*, 181 Ill. 2d 359 (1998). The court reaffirmed the reasoning and disposition of the cases that have followed the strict compliance standard. *Id.* at 371. Since these supreme court decisions, the vast majority of our courts have followed the strict standard of Rule 604(d) compliance.

¶ 15 Here, we find no reason to depart from the decisions of the majority of our courts. Defense counsel's Rule 604(d) certificate plainly failed to state that he examined the report of proceeding *of the guilty plea* in an instance that involved the withdrawal of a guilty plea. This failure in this case undermines the purpose of the Rule 604(d) certificate.

¶ 16 While conceding the strict compliance principle, the State requests that this court look beyond the four corners of the Rule 604(d) certificate, and into the court record to ascertain whether counsel complied with the duties of Rule 604(d). The State's reasoning

for this argument is derived from *People v. Starks*, 344 Ill. App. 3d 766 (2003). In *Starks*, the appellate court found that though counsel's certificate lacked a statement that counsel had examined the transcripts of the guilty plea, a review of the record in total, including the transcript of proceeding and the Rule 604(d) certificate, demonstrated compliance with the requirements of Rule 604(d). *Id.* at 770. This court declines the State's invitation to adopt the reasoning in *Starks*.

¶ 17 Following the *Starks* decision, our courts addressed the issue of whether scouring through the record to find compliance with Rule 604(d) is proper. In *People v. Dismuke*, 355 Ill. App. 3d 606 (2005), the court rejected this argument, deciding instead to follow the policy made clear by the supreme court: that strict compliance with each of the provisions set forth in Rule 604(d) is required. *Id.* at 610-11. The court acknowledged that, "Although the broad language of the certificate can be read to imply that defense counsel did consult with the defendant to ascertain defendant's contentions of error and did examine the report of proceedings of the guilty plea, we refuse to make such implications, in light of the need for strict compliance with the rule." *Id.* at 611. We agree with this analysis, requiring strict compliance with Rule 604(d).

¶ 18 In *Grice*, the court declined to follow *Starks* and held that the certificate's contents itself, without regard to the record as a whole, must strictly comply with Rule 604(d). *Grice*, 371 Ill. App. 3d at 816. The court held that the certificate itself is all the court should consider in determining compliance with Rule 604(d). *Id.* The certificate must show the defendant's "attorney has examined the report of proceedings of the plea of guilty." *Id.* at 817.

¶ 19 This court has followed these simple principles closely and persistently. "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. Rule 604(d) requires that counsel determine the defendant's contentions of error in the sentence or the plea of guilty. *Id.* In *Richard*, defense counsel's Rule 604(d) certification stated that he consulted with the defendant to ascertain the defendant's " 'contentions of deprivation of constitutional rights.' " *Id.* ¶ 11. This court held that the Rule 604(d) certificate did not make clear whether counsel ascertained the defendant's nonconstitutionally based contentions of error in the sentence or the entry of the plea of guilty. *Id.* ¶ 14. "Counsel must make clear to the court that he ascertained the defendant's contentions of error in sentence or the entry of the plea of guilty; it is not this court's duty to determine whether, because of counsel's poor terminology, an argument could be made that a certificate is sufficient." *Id.* ¶ 15; see also *People v. Prather*, 379 Ill. App. 3d 763, 768 (2010) (Rule 604(d) certificate failed to satisfy the consultation requirement where it stated counsel ascertained the defendant's "contentions of error and sentence" because one could not tell from this language whether counsel ascertained the defendant's contentions of error in the guilty plea hearing as well as in the sentence).

¶ 20 In light of the decision in *Grice*, and this court's recent decision in *Richards*, we decline to follow *Starks*. Our supreme court was clear in *Janes*, holding that strict compliance is required, not requested.

¶ 21 In the instant case, defense counsel stated in his Supreme Court Rule 604(d)

certificate that he "examined the trial court file and report of the proceedings." There is nothing in the certificate to indicate he ascertained the defendant's contentions of error in the guilty plea or examined the proceedings of the guilty plea. A broad reading of counsel's Rule 604(d) certificate could imply that actions were taken by the defendant's counsel to ascertain the contentions of error in the defendant's plea of guilty and that he examined the proceedings of the guilty plea. However, in light of the need for strict compliance, this court refuses to make such inferences. The omissions in the current case cause this court to be uncertain whether defense counsel considered all of the relevant bases for defendant's motion to withdraw his guilty plea.

¶ 22 The State further argues that this court should look to the record for instances that "mimic the language in Rule 604(d)." Specifically, the State points out that, in a separate pleading, the defendant's counsel alleged that he "examined the trial court file and transcript of the guilty plea," and that he "has consulted with the defendant, in person, to ascertain his contentions of error with respect to the motion to withdraw guilty plea." To accept this argument would be contrary to the purpose of strict compliance. In *People v. Mast*, 305 Ill. App. 3d 727, 734-35 (1999), a similar argument was made. In *Mast*, the court held that an attorney's certification was deficient because it failed to include a statement showing that the attorney had examined the transcript of the guilty plea hearing, as required by the rule. *Id.* The certificate in that case stated that the attorney had " 'examined the trial court file and report of proceedings of the sentencing hearing.' " *Id.* at 734. The State asserted that strict compliance " 'does not necessarily mean literalistic compliance which ignores the reality of the situation at bar,' " and that

satisfying the purpose of Rule 604(d) is sufficient. *Id.* at 735. That court held that the attorney's certification was deficient because it failed to include a statement showing that the attorney had examined the transcript of the guilty plea hearing. *Id.* We must remember, the rule is in place to assure that the defendant's counsel has reviewed the defendant's claim, and not to assure that this court can piece together instances that seem as if this review has occurred.

¶ 23 This court recognizes that courts have held that the attorney's "certificate need not recite word for word the verbiage of the rule," but the certificate must indicate that counsel performed the duties required under Rule 604(d). *People v. Wyatt*, 305 Ill. App. 3d 291, 297 (1999). In this case, the omission of the words "in the entry of the guilty plea" and "of the guilty plea" violated the clear language and provisions of Rule 604(d).

¶ 24 In *Starks* the argument was made that "if the record demonstrates that the purpose of Rule 604(d) is satisfied, remand for a word change when no specific form has been mandated by opinion, order, or rule is a waste of judicial resources." *Starks*, 344 Ill. App. 3d at 769. However, this court finds this argument flawed in the current circumstances, and the reverse to be true. "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), even though strict compliance with that rule's certification requirements would prevent such waste." *Dismuke*, 355 Ill. App. 3d at 609. In *Richard*, this court restated the principle that it was a waste of judicial resources to require the appellate court to search through the record when the simple solution is to enforce strict compliance. *Richard*, 2012 IL App (5th)

100302, ¶ 10. Rule 604(d) sets forth the duties of a defense counsel and provides a simple, straightforward, and mandatory procedure designed to insure that those duties are performed. *Dismuke*, 355 Ill. App. 3d at 609.

¶ 25 In coming to this conclusion, we again find it necessary to reiterate that the supreme court rules are not suggestions, but rather, rules of procedure, and it is incumbent upon counsel and the court to follow them. *People v. Wilk*, 124 Ill. 2d 93, 103 (1988). Following this method of strict compliance with Rule 604(d) does not place a difficult burden on defense counsel. This court believes that strict compliance with Rule 604(d) will eliminate tedious controversies concerning whether the record demonstrates compliance with the supreme court rule. Therefore, the judicial system will be best served by demanding strict compliance with the simple certification requirements of Rule 604(d). Trial courts can aid in this compliance and avoid the necessity of an appeal on that issue.

¶ 26 This cause must be reversed and remanded on the ground that the Supreme Court Rule 604(d) certification was deficient on its face. Upon remand, the circuit court is directed to allow the defendant the opportunity to file a new motion to withdraw guilty plea, to conduct a hearing on the motion, and to require strict compliance with Rule 604(d).

¶ 27 We note that the defendant has also asserted in this appeal that the circuit court erred by conducting hearings in this case at Tamms Correctional Center. The court may take judicial notice of Department of Corrections records because they are public documents. *People v. Steward*, 406 Ill. App. 3d 82, 93 (2010). In the exercise of our

discretion, we take judicial notice that Tamms Correctional Center has been closed.<sup>1</sup> Since this case is reversed on other grounds, and any error in conducting proceedings at Tamms Correctional Center cannot be repeated, we decline to address this issue.

¶ 28

### III. CONCLUSION

¶ 29 For the reasons stated, the order of the circuit court of Clinton County is reversed, and this cause is remanded for further proceedings.

¶ 30 Reversed and remanded with directions.

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<sup>1</sup> Tamms Correctional Center is no longer in operation. See <http://www2.illinois.gov/idoc/facilities/Pages/tammsworkcamp.aspx>.