

No. 1-14-1895

**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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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 MC5 003815
	)	
DEXTER SAFFOLD,	)	Honorable
	)	Maureen Feerick,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAVIN delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Where defendant's plea was based on a sufficient factual basis and the complaint to which he pled adequately set forth the offense of deceptive practices, we deny defendant's request to vacate his plea outright; however, where his defense counsel failed to file a certificate of compliance as required by Supreme Court Rule 604(d), we vacate his plea and remand for further proceedings.

¶ 2 Defendant Dexter Saffold pled guilty to the misdemeanor offense of deceptive practices and was sentenced to 30 days in the Cook County Department of Corrections. He subsequently filed a motion to vacate his guilty plea, which the circuit court denied. On appeal from that

denial, defendant contends that his plea should be vacated without remand as it violated Illinois Supreme Court Rule 402 (eff. July 1, 1997), where it was based on an inadequate factual basis and the complaint to which he pled failed to even state an offense. Alternatively, defendant contends that because plea counsel did not file a certificate of compliance as required under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), we should vacate the order denying his motion to vacate his guilty plea and remand the cause for compliance with the requirements of Rule 604(d). We reverse and remand.

¶ 3 The Evergreen Park Police Department drafted a complaint charging defendant with committing the misdemeanor offense of deceptive practices. 720 ILCS 5/17-1(B)(2) (West 2012). The complaint alleged that on February 6, 2012, defendant delivered a \$60 bank check drawn on a Credit Union One account to the Village of Evergreen Park (Village) for payment of a fine knowing the check would not be paid by the Credit Union One account. The complaint also alleged that defendant failed to pay the fine within seven days from the day the Village notified him that the check had not been honored.

¶ 4 On July 10, 2013, the State asked the court for leave to file the complaint and that a warrant be issued for defendant's arrest. The court held a hearing during which Detective Signorelli testified that he learned from the "traffic compliance administrator" that defendant submitted a check for payment of a fine that, when it was deposited by the Village, was returned because there was a stop payment order. Signorelli spoke to defendant numerous times about paying the fine, giving him extensions to pay it. Defendant responded that he would try to make the payment, but, when Signorelli last spoke to defendant on July 9, 2013, defendant told him to

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get an arrest warrant because he would not pay the fine. When the assistant State's Attorney asked Signorelli if defendant had paid for the "ticket," he responded negatively. Following this hearing, the court granted the State's request for leave to file the complaint and for an arrest warrant to be issued.

¶ 5 Defendant was arrested and the Public Defender's Office was appointed to represent him. On December 4, 2013, defense counsel informed the court that the parties had reached an agreement whereby defendant would plead guilty to the charge of deceptive practices in exchange for a sentence of 30 days in the Cook County Department of Corrections, with credit for 15 days time served. The trial court admonished defendant of the rights he was waiving by pleading guilty, the possible penalties, and stated the facts of the case. The court specifically told defendant that he was charged with the offense of deceptive practices in that he delivered a \$60 bank check dated February 3, 2012, to the Village in order to satisfy a fine, knowing that the check would not be paid as there were insufficient funds in his Credit Union One account. Defendant acknowledged that he understood the charge, and the facts upon which the charge was based, and then pled guilty. In pleading guilty, defendant stated that he was doing so of his own free will, and that nobody threatened or promised him anything in order to get him to plead guilty. The court found that defendant understood the nature of the charge against him, the possible penalties, and that his plea was entered freely and voluntarily. The court accepted the plea and sentenced defendant to the agreed upon sentence of 30 days in the Cook County Department of Corrections with credit for 15 days time served.

¶ 6 Defendant filed a *pro se* motion to withdraw his guilty plea on December 6, 2013, claiming that he accepted the plea because he was threatened by a police officer. Defendant stated he did not tell the court about this threat because he was afraid. The trial court subsequently granted counsel leave to file an amended motion to vacate the plea, which he did on April 23, 2014. In the motion to vacate defendant's plea of guilty, defendant asserted that his plea was not voluntary and that his "conduct was not an offense of deceptive practice." In the affidavit attached to the motion to vacate, defendant, who swore to the truthfulness of the assertions in his affidavit in open court, attested that police threatened him during the course of his arrest and detention, and he felt coerced to plead guilty. He further attested that his course of conduct in stopping payment of the subject check was "not an offense of deceptive practice." The trial court denied defendant's motion to vacate his plea and this appeal followed.

¶ 7 On appeal, defendant contends that we should vacate his plea because the record contains an inadequate factual basis to support his conviction for deceptive practices as it failed to show that he wrote a check in excess of \$150 for property, labor, or services, as required by statute. Defendant further maintains that the complaint to which he pled did not even allege these elements, and thus the record reveals that he did not violate the statute at issue. According to defendant, as the trial court accepted a plea to a nonexistent offense without having an adequate factual basis, his plea violated Illinois Supreme Court Rule 402 (eff. July 1, 1997), and is involuntary. Defendant requests that we vacate the plea without remand.

¶ 8 We initially observe that defendant preserved these claims by filing a motion to withdraw his plea, which argued the grounds upon which his motion was based, *i.e.*, that his plea was

involuntary and that his "conduct was not an offense of deceptive practice." See Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) (stating that no appeal may be taken from a judgment entered upon a plea of guilty unless the defendant first filed a motion to withdraw that included the grounds upon which it is based); *People v. Williams*, 299 Ill. App. 3d 791, 795 (1998).

¶ 9 Nevertheless, the State maintains that we should not consider defendant's arguments as he waived them by pleading guilty. The State, citing to *People v. Townsell*, 209 Ill. 2d 543, 545 (2004), states that a voluntary guilty plea waives all nonjurisdictional errors that occurred prior to the entry of a guilty plea, including constitutional ones, and that a defendant may only attack the voluntary and knowing nature of the guilty plea. Therefore, according to the State, because defendant attacks the sufficiency of the complaint and the factual basis presented at the plea hearing, and not the voluntary and knowing nature of the plea, his arguments should not be considered.

¶ 10 Defendant responds in his reply brief that the State does not dispute that this court and our supreme court have considered appeals from guilty pleas addressing whether a factual basis was sufficient. See, e.g., *People v. Barker*, 83 Ill. 2d 319, 327-29 (1980) (considering the defendant's argument that his guilty pleas for attempted murder were improperly accepted since there was no factual support regarding an essential element of the offense intent to kill); *People v. Calva*, 256 Ill. App. 3d 865, 871-73 (1993) (addressing the defendant's contention that there was no factual basis for the guilty pleas entered on three counts of aggravated criminal sexual assault because the evidence presented did not establish the use of force, the threat of force, or the defendant's transmission of a sexually transmitted disease to the victim). In addition,

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defendant asserts that he did argue in his original brief that the plea was neither knowing nor voluntary as the parties acted under a misapprehension of the law that the complaint stated an offense when it did not.

¶ 11 The parties do not cite, and we have not found, any Illinois cases that directly address the issue of whether an alleged insufficient factual basis is a nonjurisdictional defect that can be waived by a defendant's plea of guilty. We agree with defendant, however, that, as shown above, Illinois courts have considered on appeal the issue of whether a factual basis sufficiently supported a guilty plea. We also find it persuasive that the supreme court of Minnesota has held that a claim that a factual basis for a plea was insufficient cannot be waived by pleading guilty. The supreme court of Minnesota acknowledged that although a guilty plea entered into with the assistance of counsel operates as a waiver of all nonjurisdictional defects, including constitutional violations and potential defenses to the charged offense, "[a] claim that the factual basis for the plea was insufficient \*\*\* is a challenge to the validity of the plea itself. Thus, by pleading guilty, a defendant does not waive the argument that the factual basis of his guilt was not established." *State of Minnesota v. Iverson*, 664 N.W. 2d 346, 350 (2003). We thus address defendant's claim that there was an insufficient factual basis to support his plea of guilty to the offense of deceptive practices.

¶ 12 Turning to the merits, a defendant does not have an automatic right to withdraw his guilty plea. *People v. Delvillar*, 235 Ill. 2d 507, 520 (2009). Instead, leave to withdraw a guilty plea is granted in order to correct a manifest injustice under the facts involved. *People v. Hillenbrand*, 121 Ill. 2d 537, 545 (1988). As such, leave should be granted where it appears that the plea was

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entered on a misapprehension of the facts or law, there is doubt as to the defendant's guilt, the defendant has a meritorious defense, or justice will be better served by submitting the case to a jury. *People v. Davis*, 145 Ill. 2d 240, 244 (1991). The ultimate question is thus whether the plea was entered knowingly and voluntarily. *People v. Manning*, 371 Ill. App. 3d 457, 459 (2007). The decision regarding whether to allow a defendant to withdraw his guilty plea is within the sound discretion of the trial court. *Davis*, 145 Ill. 2d at 244. This decision will not be disturbed on appeal unless the trial court abused its discretion. *Id.*

¶ 13 Illinois Supreme Court Rule 402(c) (eff. July 1, 1997) mandates that a court "shall not enter final judgment on a plea of guilty without first determining that there is a factual basis for the plea." The factual basis will be established if there is a foundation anywhere in the record from which the court could reasonably reach the conclusion that the defendant committed the elements of the offense to which he is pleading guilty. *People v. Jackson*, 199 Ill. 2d 286, 298-99 (2002) (quoting *Barker*, 83 Ill. 2d at 327-28). The quantum of proof necessary to establish a factual basis for the plea is thus less than that necessary to sustain a conviction following a trial. *Id.*

¶ 14 As relevant to this appeal, a defendant commits the offense of deceptive practices when he:

"issues or delivers a check \*\*\* in an amount exceeding \$150 in payment of an amount owed on any credit transaction for property, labor or services, or in payment of the entire amount owed on any credit transaction for property, labor or services, knowing that it will not be paid by the depository, and thereafter fails to provide funds or credit

with the depository in the face amount of the check \*\*\* within 7 days of receiving actual notice from the depository or payee of the dishonor of the check \*\*\*." 720 ILCS 5/17-1(B)(2) (West 2012).

¶ 15 Here, we find that the record contains a factual basis to support defendant's plea of guilty to the offense of deceptive practices. At the probable cause hearing, Detective Signorelli testified that defendant submitted a check for payment of a fine to the Village, which could not be deposited due to a stop payment order. Signorelli spoke to defendant about paying the fine, and gave him extensions to pay it. Ultimately, defendant told Signorelli that he refused to pay the fine. In addition, the trial court recounted the factual basis for the offense at the plea hearing. The court stated that defendant delivered a \$60 bank check dated February 3, 2012, to the Village in order to satisfy a fine, but knew that the check would not be paid. When the court asked defendant if he understood the charge and the facts upon which the charge was based, defendant responded affirmatively. The trial court accepted defendant's plea of guilty. We find that the testimony of Signorelli combined with the court's recitation of the facts at the plea hearing constituted an adequate factual basis for defendant's plea of guilty. Relatedly, the factual basis supporting defendant's guilty plea comported with the complaint, which accurately set out the elements of the subject statute, *i.e.*, that defendant delivered a check to the Village knowing it would not be paid, and then failed to provide the funds within seven days from the day he was notified that the check had not been honored.

¶ 16 Nevertheless, defendant contends that his plea was neither knowing nor voluntary as he pled guilty under a misapprehension of the law. Defendant maintains that the statute at issue is



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only applicable when a check is written "in an amount exceeding \$150" for "property, labor, or services." Therefore, according to defendant, the trial court improperly accepted the plea because there were no facts in the record showing that he issued a check in excess of \$150, or that the check was issued in payment for property, labor, or services. We disagree.

¶ 17 In discussing the amount of money necessary to trigger the relevant statute, defendant omits the part that specifically applies to this case. In addition to providing that the offense of deceptive practices is committed when the amount of the unpaid check exceeds \$150, the statute states that the offense is also committed when the amount of the unpaid check is for "payment of the entire amount owed." 720 ILCS 5/17-1(B)(2) (West 2012). No minimum amount is listed in conjunction with the portion of the statute addressing the situation where a check is written for the payment of the entire amount owed.

¶ 18 Here, the facts showed that defendant wrote the \$60 check in payment of the entire amount owed. In presenting the facts of the case at the probable cause hearing, Detective Signorelli testified that defendant submitted a check in order to pay a fine, but stopped payment on it so that the funds could not be deposited. Signorelli never testified that the amount of the check was issued only to satisfy a portion of the total fine. Similarly, in discussing the facts at the plea hearing, the trial court never indicated that the \$60 check was written to only fulfill a portion of the fine. Instead, the court stated "you have been charged with the offense of deceptive practice in that you delivered a certain bank check \*\*\* payable to the Village of Evergreen Park in the amount of \$60 \*\*\* for payment of a fine owed to the Village." The statements made by

Signorelli and the court show that defendant wrote out the \$60 check to pay off the entire amount of the fine, and thus his conduct fell within the purview of the statute.

¶ 19 Moreover, defendant's argument that the factual basis for the plea was inadequate because the \$60 check was written to pay off a fine, not for "property, labor, or services," is unpersuasive. Here, the facts show that defendant wrote the check for payment of a fine he received via a traffic ticket he received from the Village. As defendant pled guilty to the charge, the State did not need to prove beyond a reasonable doubt that the \$60 check was for payment of an amount owed on any credit transaction for property, labor, or services. Instead, the record only had to show that it was reasonable for the court to determine that defendant wrote the check for property, labor, or services. *Jackson*, 199 Ill. 2d at 298-99; see also *Calva*, 256 Ill. App. 3d at 872 (stating that the proof necessary to establish a factual basis for the plea does not even need to reach a preponderance of the evidence). We see nothing in the record to show such a finding was unreasonable, and defendant's unsupported argument in his brief that a fine is clearly not property, labor, or a service, does not persuade us otherwise where defendant pled guilty, obviating the need for the State to prove that, or any other, element of the offense. *People v. Peeples*, 155 Ill. 2d 422, 494 (1993).

¶ 20 Defendant cites to *People v. Williams*, 299 Ill. App. 3d 791 (1998), and *People v. Vinson*, 287 Ill. App. 3d 819 (1997), in support of his claim that his plea should be vacated as the factual basis for it was inadequate. In *Williams*, the only discussion regarding the factual basis that appeared in the record was when the trial court asked defense counsel if there was a factual basis for the plea, and counsel responded that he would stipulate to the factual basis. *Williams*, 299 Ill.

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App. 3d at 793. This court held that a factual basis could not be based on stipulations, absent other evidence in the record. *Id.* at 794. In *Vinson*, this court found no factual basis for the defendant's plea and remanded the cause to allow him to withdraw it where the State did not recite any facts, and no evidence of the defendant's guilt was provided on the record except for the defendant's affirmative response to the trial court's question "Did you do it." *Vinson*, 287 Ill. App. 3d at 821-22. Unlike *Williams* and *Vinson*, the factual basis for defendant's plea was not based on a stipulation between the parties or a simple question by the trial court to defendant regarding whether or not he committed the charged offense. Instead, the trial court held a hearing where Detective Signorelli testified to the facts, and the trial court later recounted the factual basis for the plea at the plea hearing. Therefore, the factual basis for the plea in this case was sufficiently made. See *People v. Bassette*, 391 Ill. App. 3d 453, 457 (2009) (stating that a factual basis in support of a guilty plea exists if there is evidence anywhere in the record from which the trial court could reasonably conclude that the defendant committed the crime).

¶ 21 Accordingly, defendant cannot show that the trial court abused its discretion when it denied his motion to vacate his plea. *Davis*, 145 Ill. 2d at 244. The record established a factual basis for his guilty plea for the offense of deceptive practices, the elements of which were sufficiently articulated in the subject complaint.

¶ 22 In reaching this conclusion, we reject defendant's related argument that counsel was ineffective for allowing him to plead guilty to a charge that failed to state an offense and was unsupported by a factual basis.

¶ 23 Ineffective assistance of counsel claims are judged under the two-pronged standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *People v. Albanese*, 104 Ill. 2d 504, 525 (1984). Under this standard, a defendant must show counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, a reasonable probability exists that the results of the proceeding would have been different. *Id.* If it is easier to dispose of such a claim on lack of prejudice, then we may proceed directly to the second prong and need not address whether counsel's performance was deficient. *People v. Givens*, 237 Ill. 2d 311, 331 (2010). Here, for the reasons set forth above, we need not address the deficiency prong of *Strickland* as defendant cannot show he suffered prejudice from pleading guilty. The complaint properly charged defendant with the offense of deceptive practices, the record shows a sufficient factual basis for the plea, and defendant pled guilty to the charge voluntarily and knowingly.

¶ 24 However, we will grant defendant's alternative request to vacate his plea and remand his cause. Defendant contends, and the State correctly concedes, that this court must vacate the dismissal of his motion to withdraw his guilty plea and remand the cause to afford him the opportunity to file a new postplea motion because his attorney failed to file a certificate of compliance as required by Supreme Court Rule 604(d).

¶ 25 Rule 604(d) (eff. July 1, 2006) requires the defendant's attorney to file a certificate with the trial court which states that the attorney has reviewed the court file and plea proceedings, discussed with the defendant his contentions of error in the entry of his plea, and made any necessary amendments to the motion in order to adequately present defects in the plea or

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sentencing proceedings. *People v. Linder*, 186 Ill. 2d 67, 69 (1999). Strict compliance with Rule 604(d) is required (*People v. Janes*, 158 Ill. 2d 27, 33 (1994)), and controlling precedent dictates that this court must remand the matter so that counsel can formally document his compliance with the Rule by filing a certification (*People v. Lindsay*, 239 Ill. 2d 522, 530-31 (2011)). We thus vacate the trial court's dismissal of defendant's motion to withdraw his plea and remand this cause to the trial court for the filing of a new motion to withdraw the guilty plea, a new hearing on the motion, and full compliance with all the requirements of Rule 604(d).

¶ 26 For the foregoing reasons, we reverse the circuit court's order and remand the cause for further proceedings in accordance with Rule 604(d).

¶ 27 Reversed and remanded with directions.