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2016 IL App (3d) 140463-U

Order filed June 30, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0463
)	Circuit No. 11-CF-1008
ROBERT A. CLAYTON,)	
Defendant-Appellant.)	Honorable Robert P. Livas, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* On remand, the failure to conduct a *de novo* hearing on the merits of defendant's postplea motion constituted error.
- ¶ 2 Defendant, Robert A. Clayton, entered a guilty plea to two counts of unlawful delivery of a controlled substance. In this appeal, defendant argues the matter should be remanded once again to the trial court since defense counsel failed to file a revised postplea motion following remand from this court. Next, defendant argues the trial court committed error by failing to conduct a *de novo* hearing on remand as required by this court's directive. Further, defendant

challenges the propriety of his sentence that includes \$2,400 in restitution for alleged prior bad acts that are unrelated to these convictions. We vacate in part and remand for *de novo* postplea proceedings.

¶ 3

FACTS

¶ 4

Defendant entered an open guilty plea to two counts of unlawful delivery of a controlled substance (720 ILCS 570/401(d) (West 2012)). Following a sentencing hearing, the court ordered defendant to serve two concurrent terms of 18 years in prison. In addition, the trial court ordered that defendant pay \$2,400 in restitution to the victims of a purported scam involving defendant's sale of fake sporting event tickets. The State did not prosecute defendant for the purported prior bad acts involving the sporting event tickets. Defense counsel filed a motion to reconsider sentence in December 2013, but did not file a certificate as required by Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). The trial court denied the 2013 motion to reconsider sentence on January 22, 2014, and defendant filed a timely notice of appeal the next day. Without objection by the State, on May 12, 2014, this court granted defendant's motion to remand the matter to the trial court for compliance with Rule 604(d). Our 2014 order states as follows:

"The appellant's motion to remand this cause to the circuit court for further post-plea proceedings, including the filing of a new post-plea motion, the filing of a Rule 604(d) certificate, and a *de novo* hearing on the post-plea motion is allowed. The court notes that under *People v. Porter*, 258 Ill. App. 3d 200 (1994), all prior proceedings on the post-plea motion are a nullity. Accordingly, defense counsel and the trial court must start anew and strictly comply with the

requirements of Supreme Court Rule 604(d)." *People v. Clayton*, No. 3-14-0096 (May 12, 2014) (dispositional order).

¶ 5 After remand, on May 20, 2014, defense counsel asked for a date to file a Rule 604(d) certificate, stating:

"I guess it's necessary for me to file a certificate on [defendant's case] for the Appellate Defender's Office. I prepared one, sent it down to make sure it's proper. I don't want to have to do it twice.

Can I suggest Tuesday, May 27th, for the filing of that certificate? I think I just need a reaffirmation of the ruling denying the motion to reconsider."

¶ 6 On June 4, 2014, defense counsel appeared before the trial court for the purported *de novo* hearing and filed a Rule 604(d) certificate. The Rule 604(d) certificate is signed but undated. Other than the Rule 604(d) certificate, defense counsel did not file any other pleading or amended pleading after June 4, 2014.

¶ 7 Further, at the June 4 hearing, defense counsel advised the court as follows:

"Judge, this is up pursuant to mandate for hearing *de novo* on a motion to reconsider. I'm not gonna make any other argument other than what was made before other than for me to file the certificate pursuant to 604(d) to perfect his right to appeal.

I would request you appoint the Appellate Defendant again."

The court asked if defense counsel wanted to file the certificate, accepted the Rule 604(d) certificate *instanter*, and reappointed the appellate defender.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant argues this matter should be remanded again since this court's directive was not honored by defense counsel or the trial court. We agree. As clearly stated in our prior 2014 order in this case, all prior proceedings on the 2013 postplea motion must be viewed as a nullity due to defense counsel's failure to comply with Rule 604(d) prior to the ruling denying the motion to reconsider defendant's sentence. See *Porter*, 258 Ill. App. 3d at 204.

¶ 10 Here, defense counsel's undated Rule 604(d) certificate bears a filing stamped date of June 4, 2014. The trial court's 2013 ruling on the motion to reconsider occurred several months before the June 4, 2014, date of certification submitted by defense counsel.

¶ 11 Since the absence of the Rule 604(d) certificate was not cured until June 4, 2014, we conclude the trial court's willingness to grant defense counsel's request for a "reaffirmation of the [2013] ruling denying the motion to reconsider" was erroneous and must be reversed. The State has not directed this court to any authority allowing the trial court to view an *undated* Rule 604(d) certificate, filed by defense counsel in 2014, to relate *back* to certify that in 2013 defense counsel consulted with his client, reviewed the trial court record and transcripts, and made the necessary amendments prior to filing the original 2013 postplea motion.

¶ 12 Once again, we remand for defense counsel to file a new postplea motion prepared close in time to or shortly after the preparation of the Rule 604(d) certificate. Since more than 2 years has now elapsed since the 2013 ruling nullified by our prior decision in this case, we caution the trial court to be mindful that a *de novo* hearing requires much more than a perfunctory "reaffirmation of the [2013] ruling."

¶ 13 In this appeal, defendant further argues the restitution order should be vacated because the restitution was not related to these convictions involving the unlawful delivery of controlled

substances. On remand, defense counsel will have an opportunity to raise this restitution issue and other issues, if desired, in the new postplea motion to be considered by the trial court.

¶ 14

CONCLUSION

¶ 15

The judgment of the circuit court of Will County is vacated and the cause is remanded for *de novo* postplea proceedings.

¶ 16

Vacated in part.

¶ 17

Cause remanded.