

2017 IL App (1st) 152641-U

No. 1-15-2641

Order filed: July 14, 2017

Sixth Division

**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 DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 10 C6 60091
	)	
JEREMY SALES,	)	Honorable
	)	Brian K. Flaherty,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Rochford and Delort concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Upon the defendant's motion to withdraw his guilty plea, he has failed to show a basis for remanding this cause for additional postplea proceedings.
- ¶ 2 Pursuant to a negotiated guilty plea, the defendant, Jeremy Sales, was convicted of armed robbery committed with a firearm and sentenced to 21 years' imprisonment. On appeal, he contends that postplea counsel failed to comply with Supreme Court Rule 604(d) (eff. Mar. 8, 2016) when she did not (1) certify that she consulted the defendant regarding any sentencing

claims he may have, (2) attach the defendant's affidavit to the amended motion, or (3) examine a volume of the record while certifying that she reviewed the record. The defendant also contends that postplea counsel failed to present evidence in support of allegations in the amended motion. As explained below, we affirm.

¶ 3 The defendant and codefendant, Terrence Beck, were charged with armed robbery and aggravated vehicular hijacking for, on or about December 28, 2009, allegedly taking a 2005 Chevrolet car and keys from Frankie Knox by force or threat of force while armed with a firearm. The defendant was also charged with weapons offenses, including unlawful use of a weapon by a felon, for possessing a handgun while having a prior conviction for armed robbery in case 05 CR 19604.

¶ 4 In June 2011, trial counsel and the State informed the court that the State had made no plea offer. A later proceeding referred to plea negotiations, but not an offer. In February 2012, the defendant complained to the court that he had not received a plea offer, and the court replied that it was not aware of any plea offer and had not itself been involved with plea negotiations. The record through the rest of 2012 makes no reference to plea negotiations or offers, except for a September 2012 assertion by the State that the "codefendant pled." On November 26, 2012, with other counsel "stepping up" for trial counsel, the case was continued to February 5, 2013.

¶ 5 On February 5, 2013, trial counsel told the court that the defendant "is contemplating taking the 21 years that the State offered." After a brief recess, the court asked the defendant if he wished to enter a guilty plea. He replied, "Yes, sir." The court admonished the defendant of the armed robbery charge against him, the sentencing range, and the rights he was waiving. The defendant stated that he understood. When asked if his plea was the result of threats or promises, he replied, "No, sir." The defendant waived his right to a jury trial after the court described a jury

trial. The factual basis for the plea was stated for the record and stipulated by the parties. The court accepted the plea as voluntary and found the defendant guilty of armed robbery. The defendant waived his right to a presentencing investigation. The court gave the defendant an opportunity to address the court, and he replied, "I'm sorry." The court then sentenced him, pursuant to the agreement, to 21 years' imprisonment for armed robbery committed with a firearm. The State nol-prossed all other charges, and the court admonished the defendant of his appeal rights.

¶ 6 The defendant timely filed a motion to withdraw his plea and vacate his sentence. He alleged that his plea was involuntary, he was not mentally competent to enter a plea, he was "under extreme mental duress" when he pled, and trial counsel's representation was inadequate and ineffective. Attached to the motion was the defendant's February 2013 affidavit, averring that he told trial counsel that he wanted a jury trial rather than to plead guilty, he had an alibi witness (his girlfriend) who was not contacted by trial counsel, trial counsel told him not to accept a 15-year plea offer from the State, he "was under extreme mental duress" when he pled guilty because counsel was pressuring him through his family to plead, he "was mentally incompetent" when he pled, and he "was simply told to say yes I understood to everything that the judge asked" when he pled.

¶ 7 The Public Defender was appointed on the motion in March 2013, but did not file an amended motion or a Rule 604(d) certificate. The court heard the motion in June 2013, examining the defendant regarding his claims. The defendant told the court that trial counsel "said my first offer was 15. And I came back and asked him for a two week continuance. He told me when I came back on my next court date, it was off the table." The defendant had wanted more time to consider the offer, but the State withdrew the offer. The defendant claimed that trial

counsel told him the case “was set for pretrial” rather than trial, and “if I don’t take it, I will be set for trial.” The State did not have its file and thus could not tell the court if it made such an offer. Noting that the defendant was alleging that the State withdrew its 15-year offer, the court asked him how trial counsel had erred. He replied that he would have accepted the 15-year offer immediately had he known it was a one-day offer. The defendant agreed with the court that trial counsel “told you if you didn’t accept it that day, they were going to set the matter for trial.” The court denied the motion to withdraw the plea, noting that the State controls its offer, not trial counsel, and finding that the defendant “knew that the offer was available that one time[,]” but did not accept it.

¶ 8 On appeal, we vacated the denial of the motion to withdraw the plea and remanded for a Rule 604(d) certificate, the opportunity to file a new motion, and a new hearing on the motion. *People v. Sales*, No. 1-13-2216 (2014).

¶ 9 In November 2014, following remand, the Public Defender was again appointed as postplea counsel. In February 2015, counsel filed an amended motion to withdraw the plea, arguing that the State made a plea offer of 15 years in November 2012, trial counsel told the defendant that the case would be set for trial if he did not accept the plea offer that day, and “it is not clear from the record whether” trial counsel explained that the plea offer would expire if not accepted that day. The amended motion also alleged that, when the defendant pled guilty in February 2013, “it was made clear to him” that the 15-year offer was revoked so that the “defendant was under extreme duress” and “any emotional distress caused to the defendant at the very thought of serving the increased term of years is understandable.” The amended motion concluded that the defendant “was denied the opportunity to benefit from the bargain” of the 15-year offer by trial counsel “neglecting to inform him that [said] offer was in fact a one-day offer

that would expire.” While no affidavit was attached to the amended motion, it referred to the record.

¶ 10 In February 2015, postplea counsel also filed her Rule 604(d) certificate, averring that she consulted the defendant in person and by telephone “and have ascertained his contentions of error in the entry of the plea of guilty,” examined the record in the trial court proceedings—including the guilty-plea proceedings—and may amend the motion to withdraw the plea “once [the d]efendant has had the opportunity to review” the amended motion.

¶ 11 In March and April 2015, the State told the court that it needed to review two relevant transcripts—the February 2013 guilty plea hearing and the June 2013 hearing on the motion to withdraw the plea—to be ready for a hearing on the motion to withdraw the plea as amended. In April, when the court noted that the amended motion included “certain allegations \*\*\* that I don’t think I can accept as true unless...,” postplea counsel replied that “some of the statements that were made in the motion were made to you directly on the record \*\*\* and they are directly from the transcripts.” The court replied that “I need to look at the transcripts then.” In June 2015, postplea counsel told the court “I need—I have reviewed one transcript. I need to review the other transcript. I’m going to need a date in July to do that.” The court granted a continuance to July 29, 2015.

¶ 12 On July 29, 2015, the court heard the motion to withdraw the plea as amended. The State responded that the defendant was duly apprised of the nature of the 15-year offer when trial counsel said “take the offer or we’re going to trial.” The court found that trial counsel advised the defendant to take the offer, and that telling the defendant to take the offer or go to trial properly notified him “that he needs to take the offer at that time.” The court found that trial

counsel did not improperly advise the defendant, and thus denied the motion to withdraw the plea.

¶ 13 On appeal, the defendant contends that postplea counsel on remand failed to comply with Rule 604(d) when she did not (1) certify that she consulted the defendant regarding any sentencing claims he may have, (2) attach the defendant's affidavit to the amended motion, or (3) examine a certain volume of the record while certifying that she reviewed the record. The defendant also contends that postplea counsel failed to present evidence in support of allegations in the amended motion. The State contends that a remand for compliance with Rule 604(d) is unnecessary.

¶ 14 Supreme Court Rule 604(d) governs appeals by defendants convicted upon a guilty plea. In relevant part, it provides that a defendant may appeal a negotiated guilty plea only after a timely but unsuccessful motion to withdraw his plea and vacate the judgment. "When the motion is based on facts that do not appear of record it shall be supported by affidavit unless the defendant is filing the motion *pro se* from a correctional institution." Ill. S. Ct. R. 604(d)(eff. Mar. 8, 2016). Counsel shall be appointed for indigent defendants, and counsel:

"shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by phone, mail, electronic means or in person to ascertain [the] defendant's contentions of error in the sentence and the entry of the plea of guilty, has examined the trial court file and both the report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing, 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. Mar. 8, 2016).

¶ 15 The purpose of Rule 604(d) “is to ensure that before a criminal appeal can be taken from a guilty plea, the trial judge who accepted the plea and imposed sentence be given the opportunity to hear the allegations of improprieties that took place outside the official proceedings and *dehors* the record, but nevertheless were unwittingly given sanction in the courtroom.” *In re H.L.*, 2015 IL 118529, ¶ 9. A defendant has no absolute right to withdraw his guilty plea, but must show a manifest injustice. *People v. Hughes*, 2012 IL 112817, ¶ 32. Withdrawal is appropriate when the plea was entered through a misapprehension of the facts or law, or when there is doubt as to the defendant’s guilt so that justice would be better served by a trial. *Id.* The decision to grant or deny a motion to withdraw a guilty plea is within the sound discretion of the circuit court and is thus reviewed for abuse of discretion. *Id.*

¶ 16 A Rule 604(d) 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 record, both in the trial court and on appeal, of the reasons why a defendant is moving to withdraw his plea or to reduce sentence.” *In re H.L.*, ¶ 10. Counsel must strictly comply with the Rule 604(d) certification requirement. *Id.*, ¶ 8; *People v. Shirley*, 181 Ill. 2d 359, 370 (1998).

¶ 17 In its brief, the State relies upon a remark by our supreme court in *Shirley*:

“We reject [the] defendant’s implicit premise that the strict compliance standard  
\*\*\* must be applied so mechanically as to require Illinois courts to grant multiple  
remands and new hearings following the initial remand hearing. Where, as here,  
the defendant was afforded a full and fair second opportunity to present a motion  
\*\*\* we see limited value in requiring a repeat of the exercise, absent a good  
reason to do so.” *Shirley*, 181 Ill. 2d at 369.

This court has “expressly held that *Shirley* does not stand for the blanket proposition that a matter may only be remanded one time for compliance with Rule 604(d)[,]” nor does it “create a bar on successive Rule 604(d) remands when appropriate.” *People v. Evans*, 2017 IL App (3d) 160019, ¶ 24. “Instead, *Shirley* stands for the proposition that where a defendant receives a full and fair hearing, technical noncompliance with Rule 604(d) need not give rise to multiple remands.” *Id.*

¶ 18 Here, we turn first to the claim that postplea counsel did not examine all the necessary transcripts as she certified. We note that the defendant places great weight on postplea counsel’s June 2015 remark: “I have reviewed one transcript. I need to review the other transcript.” However, we find that the remark does not directly contradict counsel’s certificate. It may be reasonably interpreted as her request for time to *re-read* the transcript in question, especially since several months had passed since she prepared for the February 2015 filing of her certificate and amended motion. The defendant’s interpretation of postplea counsel’s remark does not overcome counsel’s solemn averment.

¶ 19 The defendant also contends that postplea counsel did not certify that she consulted with him regarding any sentencing claims. However, as the defendant’s negotiated 21-year sentence is the minimum prison term for armed robbery committed with a firearm (720 ILCS 5/18-2(a)(2), (b); 730 ILCS 5/5-4.5-25(a) (West 2014)), the only sentencing claim that the defendant could possibly raise would have to rest upon a plea agreement or offer whereby the State would amend its charge to allow for a sentence of less than 21 years. The defendant raised such a claim in his motion to withdraw his plea—that trial counsel’s ineffectiveness deprived him of a 15-year plea offer—and postplea counsel reiterated that claim in the amended motion. While it would have been better for postplea counsel to certify that she consulted the defendant regarding any guilty



plea and sentencing claims, we find that counsel's oversight was technical noncompliance because, when she filed her certificate, she knew that the only sentencing claim the defendant could raise was already raised. For the reasons stated below, we conclude that the defendant had a full and fair hearing of his claim and thus, under the particular circumstances of this case, find no reason to remand again for postplea proceedings.

¶ 20 The defendant's remaining, and related, contentions are that postplea counsel did not support the amended motion with his affidavit and failed to present evidence in support of allegations in the amended motion. However, at the June 2013 hearing, although the defendant told the court that trial counsel conveyed the 15-year offer to him without telling him that it was a one-day offer, he admitted that trial counsel told him that he would go to trial if he did not accept the plea that day. From June 2013 onward, the substance of the defendant's claim was no longer *dehors* the record. Indeed, postplea counsel told the court that she was raising the claim upon the record, and thus implicitly asserted that an affidavit was not necessary to present the defendant's claim.

¶ 21 We agree. The defendant's affidavit *consistent* with his June 2013 account would not add to his claim. The court denied the motion as amended in July 2015 based on the defendant's account: the court took his account at face value insofar as what trial counsel had said to him, but found that trial counsel had adequately warned him of the time limit of the plea offer. In other words, the issue presented by the motion as amended was whether trial counsel's statement to the defendant—that he would go to trial if he did not accept the plea offer that day—adequately informed the defendant of the offer's time limit, and the court concluded that it did. Conversely, an affidavit *inconsistent* with the defendant's June 2013 account would substantially detract from his motion. We conclude that the court fully heard, and duly rejected, the defendant's claim

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regarding the 15-year plea offer so that “requiring another remand and hearing on the motion \*\*\* would be an empty and wasteful formality.” *Shirley*, 181 Ill. 2d at 370.

¶ 22 Accordingly, the judgment of the circuit court is affirmed.

¶ 23 Affirmed.