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2017 IL App (3d) 150251-U

Order filed June 27, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0251
)	Circuit No. 13-CF-894
DARCY LEE MORRIS,)	
Defendant-Appellant.)	Honorable Kevin W. Lyons, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Schmidt specially concurred.

ORDER

¶ 1 *Held:* Defense counsel's Rule 604(d) certificate did not strictly comply with the rule in effect at the time of defendant's postplea hearing or with the rule as subsequently amended in both December 2015 and March 2016.

¶ 2 Following a plea of guilty to first degree murder in case No. 13-CF-394, defendant requested to be allowed to withdraw his guilty plea. Following a hearing on April 10, 2015, the trial court denied defendant's request to withdraw his guilty plea. Defendant appeals and requests a new hearing based on the insufficiency of defense counsel's Rule 604(d) certificate.

FACTS

¶ 3

¶ 4

On September 24, 2013, a Peoria County grand jury indicted Darcy Lee Morris (defendant) on two counts of first degree murder and one count of mob action. 720 ILCS 5/9-1(a)(2) (West 2012); 720 ILCS 5/9-1(a)(3) (West 2012); 720 ILCS 5/25-1(a)(1) (West 2012). The factual basis established that during a fight involving many people, defendant struck the victim multiple times with a board causing the victim to lose consciousness. The victim did not regain consciousness and died from his injuries several months later.

¶ 5

On September 30, 2014, immediately following jury selection, defendant decided to plead guilty to one count of first degree murder. After admonishing defendant and accepting defendant's guilty plea as knowingly, voluntarily, and understandingly made, the trial court sentenced defendant to a term of 25 years in the Illinois Department of Corrections.

¶ 6

On October 2, 2014, defendant filed a *pro se* motion to withdraw his guilty plea. On October 31, 2014, defense counsel filed a separate motion to withdraw defendant's guilty plea. Later, newly-appointed defense counsel filed a supplemental motion to withdraw defendant's guilty plea on April 6, 2015. The supplemental motion incorporated the two pending motions to withdraw defendant's guilty plea by reference. The 2015 supplemental motion to withdraw defendant's guilty plea alleged defendant misunderstood the nature of his guilty plea, was subject to coercion, and received ineffective assistance of original defense counsel.

¶ 7

Newly-appointed defense counsel filed a Rule 604(d) certificate on April 6, 2015, stating:

“That I consulted with the Defendant in-person to ascertain the his [sic] contentions of error in the sentence and the entry of the plea of guilty, examined the trial court file and report of proceedings, and made any amendments to the motion necessary for adequate presentation of any defects in those proceedings.”

¶ 8 The trial court conducted a hearing on the pending supplemental motion to withdraw guilty plea on April 10, 2015. Following the hearing on the merits of the supplemental motion, the trial court denied defendant’s motion to withdraw his guilty plea. Defendant filed a timely notice of appeal on April 13, 2015.

¶ 9 ANALYSIS

¶ 10 On appeal, defendant contends new postplea proceedings are required because the Rule 604(d) certificate filed on April 6, 2015, failed to strictly comply with the current mandates of Rule 604(d) as amended in December 2015 and March 2016. The State argues the Rule 604(d) certificate filed on April 6, 2015, was compliant with the version of Rule 604(d) in effect at the time of defendant’s postplea hearing conducted by the trial court on April 10, 2015.

¶ 11 It is well settled that Illinois courts require strict compliance with each of the elements promulgated in the applicable version of Rule 604(d). *People v. Janes*, 158 Ill. 2d 27, 33, 35 (1994); *People v. Love*, 385 Ill. App. 3d 736, 737 (2008). Failure to strictly comply with Rule 604(d) calls for remand to the trial court for new postplea proceedings, including, for the filing of a new motion to withdraw guilty plea and a new hearing on the motion. *Janes*, 158 Ill. 2d at 33; *People v. Evans*, 2017 IL App (3d) 160019, ¶ 20. Questions concerning compliance with Rule 604(d) are reviewed *de novo*. *People v. Neal*, 403 Ill. App. 3d 757, 760 (2010); *People v. Jones*, 349 Ill. App. 3d 255, 259 (2004).

¶ 12 This court has previously held that the 2015 and the 2016 amendments to Rule 604(d) are procedural in nature and apply retroactively. *Evans*, 2017 IL App. 3d, ¶ 17. At this time, we conclude there is no reason to deviate from the holding in *Evans*. Therefore, we conclude the

December 2015 and March 2016 amendments to Rule 604(d) apply to the certificate at issue, making the affidavit insufficient.

¶ 13 Additionally, in the interest of conducting a thorough analysis, we also consider the State's contention that the Rule 604(d) certificate filed on April 6, 2015, met the requirements of Rule 604(d) in effect at the time of the postplea hearing on April 10, 2015. The Rule 604(d) certificate filed by defendant's newly-appointed counsel on April 6, 2015, states defense counsel examined "the trial court file and report of proceedings" while the version of the rule in effect on April 6, 2015, required defense counsel to certify the prior examination of "the trial court file and report of proceedings of the plea of guilty." Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014).

¶ 14 The State submits that since the sentencing immediately followed the guilty plea in this case, there is only one proceeding defense counsel could have intended to reference by using the generic term "report of proceedings." On this basis, the State contends the Rule 604(d) certificate at issue conclusively establishes defense counsel actually examined the report of proceedings of the guilty plea.

¶ 15 This court is not persuaded by the State's position. The affidavit at issue omitted language referencing the "guilty plea" which must be present to strictly comply with the language of Rule 604(d) before or after the 2015 and 2016 amendments. The case law requires strict compliance with the rule and strict compliance is not present in this case. Therefore, we remand the matter to the trial court for new postplea proceedings in accordance with Rule 604(d).

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Peoria County is reversed.

¶ 18 Reversed and remanded with directions.

¶ 19 JUSTICE SCHMIDT, specially concurring.

¶ 20 I concur in the judgment but do not concur in the discussion at paragraph 12 above.

While I generally disagree with this court's decision in *Evans*, I see no reason to go there in this case.

¶ 21 As the majority sets out in paragraph 13 above, the Rule 604(d) certificate filed on April 6, 2015, did not meet the requirements of Rule 604(d) in effect at the time. As set forth above in paragraph 11, our supreme court demands strict compliance with Rule 604(d). The lack of strict compliance mandates that we remand.