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2017 IL App (3d) 150846-U

Order filed March 20, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

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. 3-15-0846
	)	Circuit No. 11-CF-1860
WILLIAM K. FREUND,	)	
Defendant-Appellant.	)	Honorable Edward A. Burmila, Jr., Judge, Presiding.

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

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**ORDER**

- ¶ 1 *Held:* The cause is remanded for *de novo* postplea proceedings held in strict compliance with Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016).
- ¶ 2 Defendant, William K. Freund, appeals from the denial of his motion to withdraw guilty plea. Defendant argues the cause must be remanded because defense counsel filed a deficient Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016) certificate. We reverse and remand.

¶ 3 **FACTS**

¶ 4 Defendant entered an open plea agreement in which he pled guilty to four counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2008)). The court sentenced defendant to four consecutive terms of 40 years' imprisonment. Defendant was represented at the plea and sentencing hearings by attorney Jack Friedlander. After sentencing, Friedlander filed a motion to reconsider sentence. Friedlander did not file a Rule 604(d) certificate. The court denied the motion. Defendant filed a *pro se* notice of appeal. While the appeal was pending, defendant filed in the circuit court a *pro se* motion to withdraw guilty plea. We remanded the cause for *de novo* postplea proceedings held in strict compliance with Rule 604(d). *People v. Freund*, No. 3-15-0147 (July 29, 2015).

¶ 5 On remand, the court appointed attorney Gabriel Guzman to represent defendant. Guzman filed a motion to withdraw guilty plea. The court construed Guzman's motion as superseding defendant's *pro se* motion. On December 8, 2015, the cause was called for a hearing on the amended motion to withdraw guilty plea. During the hearing, Guzman sought leave to file his Rule 604(d) certificate. Guzman stated that he had reviewed the transcripts and he was present during the plea and sentencing hearings. The court granted Guzman leave to file the certificate. In his certificate, Guzman attested:

“1. Counsel was appointed to represent [d]efendant for the above listed case after the [d]efendant filed a *pro se* motion to withdraw his plea of guilty.

2. Counsel consulted with [d]efendant in person to ascertain [d]efendant's contentions of error in the sentence or the entry of his plea of guilty.

3. Counsel has examined the trial court file and the transcripts of the proceedings of the plea of guilty.

4. Counsel has made the necessary amendments to the motion for adequate presentation of any defect in those proceedings.”

¶ 6 The court denied defendant’s motion to withdraw guilty plea. Defendant appeals.

¶ 7 ANALYSIS

¶ 8 Defendant argues the cause must be remanded for new postplea proceedings held in strict compliance with Rule 604(d) because Guzman’s certificate did not comply with the rule. Specifically, Guzman did not attest that he examined the transcript of the sentencing proceeding. We find that Guzman’s certificate did not comply with Rule 604(d) and remand for *de novo* postplea proceedings.

¶ 9 It is well-settled that defense counsel must strictly comply with the certification requirements of Rule 604(d). *People v. Tousignant*, 2014 IL 115329, ¶ 23. At the time of Guzman’s motion, Rule 604(d) required that he:

“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 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.” (Emphasis added.) Ill. S. Ct. R. 604(d) (eff. Dec. 3, 2015).

¶ 10 Guzman’s certificate did not attest that he had examined the report of proceedings in the sentencing hearing. During proceedings on remand, Guzman stated that he had reviewed the transcripts, but he did not specify which transcripts. Guzman also said that he was present for defendant’s sentencing hearing. Guzman’s generic statement and presence at the sentencing

hearing is not a substitute for strict compliance with Rule 604(d) as they do not serve the purpose of the rule. The rule is intended to ensure 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.” (Emphasis omitted.) *Tousignant*, 2014 IL 115329, ¶ 16. The bases for the motion evolve out of counsel’s reconsideration of the events that transpired during the plea and sentencing hearings. Without reflection on these events, counsel lacks a complete grasp of the potential bases that support a motion to withdraw guilty plea or reconsider sentence. Therefore, we find that Guzman’s certificate did not strictly comply with Rule 604(d).

¶ 11

#### CONCLUSION

¶ 12

The judgment of the circuit court of Will County is reversed and remanded.

¶ 13

Reversed and remanded.