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2017 IL App (3d) 160127-U

Order filed February 23, 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, Tazewell County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-16-0127
DANIEL CARL MINOR,)	Circuit No. 13-CF-51
Defendant-Appellant.)	Honorable Timothy J. Cusack, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appointed counsel was required to certify that he consulted with defendant to ascertain his contention of error in both the sentence and the guilty plea under the version of Illinois Supreme Court Rule 604(d) in effect at the time defendant's motion was filed.
- ¶ 2 Defendant, Daniel Carl Minor, pled guilty to aggravated driving under the influence of drugs (DUI) (625 ILCS 5/11-501(d)(1)(F); (2)(G)(i) (West 2012)) and driving while license suspended (625 ILCS 5/6-303(a) (West 2012)) and was sentenced to 12 years in prison.

Defendant appeals, claiming that his postplea attorney's certificate failed to strictly comply with Illinois Supreme Court Rule 604(d). We reverse and remand for new postplea proceedings.

¶ 3 On December 11, 2012, defendant was driving a motor vehicle and William Delius was riding in the passenger seat. Defendant swerved and lost control of the vehicle. Delius died as a result of the accident. Defendant's blood and urine tests from the Illinois State Police showed that he had THC in his system, and he admitted to smoking cannabis.

¶ 4 Defendant pled guilty to aggravated DUI and driving while license suspended, and the cause proceeded to sentencing. At the sentencing hearing, the trial court reviewed the presentence investigation report. The report showed that defendant was 34 years old and was receiving substance abuse treatment. It also stated that defendant had pending charges in McLean County for resisting a police officer and possession of cannabis for an incident that occurred on February 23, 2013.

¶ 5 The trial court imposed a 12-year prison sentence for aggravated DUI and a judgment of conviction and costs for driving while license suspended. The court found in aggravation that defendant's conduct caused serious physical harm, defendant had a criminal record, and there was a need for deterrence.

¶ 6 Defendant filed a motion to reconsider through counsel on July 8, 2013. The motion argued that the trial court failed to adequately consider several factors in mitigation, including that defendant pled guilty and accepted full responsibility, that he flagged another motorist down to help after the accident, and that he was attending two addiction recovery programs in an attempt to make substantial changes in his life.

¶ 7 Several months later, the trial court appointed a public defender to represent defendant. New defense counsel filed a Rule 604(d) certificate on January 30, 2014, stating that he had

personally met with the defendant to ascertain “any and all contentions of error in the sentence,” and that he had “examined the court file and report of proceedings to determine if any additional amendments needed to be added for the adequate representation of any defects in the proceedings.”

¶ 8 At the motion to reconsider hearing, defense counsel stated that he was adopting the motion to reconsider that was originally filed by private counsel. In addition, he was adding the argument that the trial court improperly considered the victim’s death, an inherent element of aggravated DUI, in aggravation. He also stated that the McLean County charges had been dismissed. The prosecutor agreed that the victim’s death was a factor that should not have been considered.

¶ 9 The trial court acknowledged that it should not have considered the victim’s death as an aggravating factor and stated that the sentence imposed was based on other factors in aggravation. The court also noted that the McLean County case had been dismissed. It then denied the motion and directed the clerk to file a notice of appeal on defendant’s behalf.

¶ 10 ANALYSIS

¶ 11 Defendant argues that his postplea attorney failed to comply with the dictates of Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). He maintains that the rule requires appointed counsel to certify that he consulted with the defendant regarding defendant’s contentions of error in the sentence *and* the guilty plea, citing *People v. Tousignant*, 2014 IL 115329, ¶ 20, and asks us to remand for new postplea proceedings.

¶ 12 Illinois Supreme Court Rule 604(d) requires a defendant seeking to appeal from a judgment entered upon a guilty plea to first file a motion to withdraw the guilty plea and vacate the judgment. Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). The version of Rule 604(d) in effect at the

time defendant moved to reconsider his sentence required that upon the filing of such a motion “the defendant’s attorney shall file a certificate stating that the attorney has consulted with the defendant to ascertain defendant’s contentions of error in the sentence or the entry of the plea of guilty, has examined the trial court file and report of proceedings of the plea of guilty, and had made any necessary amendments to the motion.” Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013).

¶ 13 Here, postplea counsel only certified that he consulted with defendant to ascertain his contentions of error in the sentence. Counsel did not certify that he consulted with defendant to ascertain his contentions of error in the guilty plea. Although the version of Rule 604(d) in effect at the time used the term “or,” our supreme court has interpreted the same version and has concluded that regardless of the alternative language counsel is required to certify that he has consulted with the defendant “to ascertain defendant’s contentions of error in the sentence *and* the entry of the plea of guilty.” (Emphasis in original.) *Tousignant*, 2014 IL 115329, ¶ 20. Because counsel’s certificate presented at the motion to reconsider hearing only certified that he consulted with defendant regarding defendant’s contentions of error in the sentence, we find that he did not strictly comply with the rule. See *Id.* ¶ 23. The remedy for failure to strictly comply with the rule is remand for the filing of a new postplea motion if defendant so chooses, a hearing on the motion, and strict compliance with Rule 604(d). See *People v. Jordan*, 2016 IL App (3d) 140262, ¶ 11. Accordingly, we remand this case for new postplea proceedings.

¶ 14 CONCLUSION

¶ 15 The judgment of the circuit court of Tazewell County is reversed and remanded for new postplea proceedings.

¶ 16 Reversed and remanded.