

NOTICE

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FILED

April 11, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150851-U
NO. 4-15-0851

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Mason County
ZACHARY S. RICHARDSON,)	No. 12CF96
Defendant-Appellant.)	
)	Honorable
)	Alan D. Tucker,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* Cause remanded for strict compliance with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014).

¶ 2 Defendant, Zachary S. Richardson, pleaded guilty to the offense of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2010)), and the trial court sentenced him to 48 months' probation. Ultimately, defendant admitted a violation of his probation, and the court re-sentenced him to five years in prison. Defendant appeals, arguing (1) his counsel failed to file a proper certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014), (2) he received ineffective assistance of counsel during resentencing proceedings, and (3) his five-year prison sentence was excessive. We remand for strict compliance with Rule 604(d).

¶ 3 I. BACKGROUND

¶ 4 On September 19, 2012, the State charged defendant with aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2010)), alleging he strangled the victim, a family member, choking her with his hands and causing her to pass out. Pursuant to a negotiated plea agreement with the State, on June 6, 2013, defendant pleaded guilty to that offense and was sentenced to 48 months' probation.

¶ 5 On December 5, 2014, the State filed a petition to revoke defendant's probation, alleging he violated its terms by committing the offense of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2012)). Specifically, it asserted that, in August 2014, defendant intentionally made physical contact of an insulting nature with a woman he was dating by striking her in the face.

¶ 6 The record reflects that, during the proceedings on the State's petition to revoke, defendant was represented by attorney John Sharp. On April 2, 2015, defendant and Sharp appeared before the trial court, and defendant admitted the allegations in the State's petition. On September 3, 2015, the court conducted defendant's sentencing hearing and resented him to five years in prison. On September 14, 2015, defendant, with Sharp's aid, filed a motion to reconsider his sentence, asserting it was "overly harsh." He asked the court to reconsider his sentence in light of mitigating factors and impose a term of probation. On October 7, 2015, defendant also filed a *pro se* motion to reconsider, in which he simply asked the court to reconsider his sentence.

¶ 7 On October 22, 2015, the trial court conducted a hearing and denied defendant's motions to reconsider. At the conclusion of the hearing, the court discharged Sharp from his representation of defendant and appointed attorney Denise Barr "for purposes of filing the notice of

appeal and *** the appropriate certificate." On October 29, 2015, Barr filed a certificate of compliance pursuant to Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). In the certificate, Barr asserted she (1) consulted with defendant by telephone, in writing, or in person to ascertain his contentions of error with respect to his plea and sentencing, "particularly his sentence hearing on September 3, 2015"; (2) examined the transcript of the resentencing proceedings; and (3) examined the trial court file.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant first argues a proper Rule 604(d) certificate was not filed by his attorney. Specifically, he contends the certificate was filed by the wrong attorney and failed to strictly comply with Rule 604(d). Defendant asks that we reverse the trial court's denial of his motion to reconsider and remand for the filing of a new motion and a new hearing on that motion. The State concedes this issue and agrees that the case should be remanded to the trial court for further proceedings consistent with Rule 604(d).

¶ 11 "Rule 604(d) governs the procedure to be followed when a defendant wishes to appeal from a judgment entered upon a guilty plea." *In re H.L.*, 2015 IL 118529, ¶ 7, 48 N.E.3d 1071. At the time of the underlying proceedings, it provided as follows:

"The defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by mail or in person 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 has made any amendments to the motion necessary for adequate

presentation of any defects in those proceedings." Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014).

¶ 12 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.' " *H.L.*, 2015 IL 118529, ¶ 9, 48 N.E.3d 1071 (quoting *People v. Wilk*, 124 Ill. 2d 93, 104, 529 N.E.2d 218, 221-22 (1988)). Also, it " '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.' " *Id.* ¶ 10 (quoting *People v. Shirley*, 181 Ill. 2d 359, 361, 692 N.E.2d 1189, 1191 (1998)).

¶ 13 A defendant's counsel must strictly comply with the Rule 604(d) certification requirement. *Id.* ¶ 8. Whether compliance with Rule 604(d) has occurred is subject to *de novo* review. *People v. Grice*, 371 Ill. App. 3d 813, 815, 867 N.E.2d 1143, 1145 (2007). Further, "when defense counsel neglects to file a Rule 604(d) certificate, the appropriate remedy is a remand for (1) the filing of a Rule 604(d) certificate; (2) the opportunity to file a new motion to withdraw the guilty plea and/or reconsider the sentence, if counsel concludes that a new motion is necessary; and (3) a new motion hearing." *People v. Lindsay*, 239 Ill. 2d 522, 531, 942 N.E.2d 1268, 1274 (2011).

¶ 14 Here, we agree with the parties and find defendant's counsel failed to strictly comply with Rule 604(d). First, as stated by the parties, the certificate that appears in the appellate record was not in strict compliance with Rule 604(d), in that it failed to state counsel "made

any amendments to the [defendant's] motion necessary for adequate presentation of any defects in" the relevant proceedings. Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014). Moreover, the record shows the certificate was not filed by defendant's attorney of record. In this instance, Sharp represented defendant at the time he admitted his probation violation and during his resentencing hearing. Additionally, Sharp filed a motion to reconsider on defendant's behalf and argued that motion before the trial court. However, despite his representation of defendant, Sharp never filed a certificate in compliance with Rule 604(d). Rather, the certificate was filed by Barr, whose representation of defendant did not begin until after the trial court's denial of defendant's motion to reconsider his sentence.

¶ 15 Under the circumstances, we agree that remand is necessary for strict compliance with Rule 604(d). Because we must remand this case for new postplea proceedings, we do not reach the merits of the remaining issues defendant raises on appeal.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we remand the matter to the trial court for the filing of a Rule 604(d) certificate; (2) the opportunity to file a new postplea motion; and (3) a new motion hearing.

¶ 18 Cause remanded with directions.