

No. 1-17-3180

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).

<i>In re</i> TYREC H., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State Of Illinois,)	Cook County
)	
Petitioner-Appellee,)	
)	No. 2017 JD 01442
v.)	
)	
Tyrec H.,)	Honorable
)	Kristal Royce Rivers,
Respondent-Appellant).)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* We remand this matter for strict compliance with Illinois Supreme Court Rule 604(d).

¶ 2 Respondent-appellant, Tyrec H., a minor, appeals from his adjudication of delinquency and dispositional order of commitment after his plea of guilty. Because respondent did not first move in the circuit court to withdraw his plea or move to reconsider his sentence prior to filing his notice of appeal, we remand this case for strict compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017).

¶ 3 On August 1, 2017, the State filed a juvenile delinquency petition (circuit court case

number 17 JD 1442), which charged respondent with aggravated robbery, theft from a person, and aggravated unlawful restraint, for the alleged July 1, 2017, forceful taking of the wallet and cell phone of Neil Patel while indicating that defendant had a firearm. On that date, respondent appeared in court for arraignment. Following the State's proffer, the circuit court made a finding of probable cause, respondent was placed into custody, and the office of the Cook County Public Defender was appointed to represent him.

¶ 4 On October 13, 2017, with respondent and his appointed counsel present in court, the State informed the circuit court that the parties had reached an agreement in which respondent would enter a blind plea of guilty to count one, the aggravated robbery charge, and to a separate aggravated robbery charge in circuit court case number 17 JD 1322. In exchange for those pleas, the State would *nolle pros* two other robbery cases—circuit court case numbers 17 JD 1319 and 17 JD 1323—as well as counts 2 and 3 in this case (circuit court case number 17 JD 1442). The circuit court then proceeded to take respondent's pleas of guilty.

¶ 5 The circuit court informed respondent of the charges to which he was to plead guilty and admonished him as to the possible penalties if he was found guilty of those charges. Additionally, the circuit court admonished respondent as to all of his trial rights and that, if he pled guilty, he would be giving up those rights. Respondent indicated that he understood the admonishments, that no one had threatened him to plead guilty or promised him anything in return for his guilty pleas, and that he was pleading guilty of his own free will.

¶ 6 After the factual basis for the charges was provided by the State and stipulated to by respondent's counsel, the court accepted the pleas and found respondent delinquent. The record contains a written order only with respect to the plea of guilty and the finding of delinquency entered in circuit court case number 17 JD 1442. That written order states that respondent's plea

of guilty as to count 1 was accepted, counts 2 and 3 were *nolle prossed*, and the case was continued for sentencing to November 12, 2017.

¶ 7 After a hearing on November 12, 2017, the circuit court stated that, with respect to circuit court case number 17 JD 1442, respondent was adjudicated a ward of the court and was committed to the Department of Juvenile Justice (DJJ) for an indeterminate period, or until his 21st birthday, with credit for the 117 days he had served at the DJJ prior to the disposition of circuit court case number 17 JD 1442. As to the “other matters,” the court stated that the finding of delinquency was to stand and the case was closed. The written disposition order contained in the record was entered in this case (circuit court case number 17 JD 1442) only, and reflected the court’s announcements pertaining solely to this case.

¶ 8 The circuit court then admonished respondent with respect to his appellate rights, including the fact that he would have to first file either a motion to withdraw his guilty plea or to reconsider his sentence within 30 days of the disposition before he could file an appeal. Respondent indicated that he understood these admonishments.

¶ 9 On November 28, 2017, respondent’s counsel filed a notice of appeal from the finding of delinquency, adjudication of wardship, and dispositional order entered in circuit court case number 17 JD 1442, without a prior motion to withdraw the guilty plea or to reconsider the sentence with regard to that case. We now address that appeal.¹

¶ 10 Respondent and the State agree on appeal that, because his counsel did not file a postplea

¹ Respondent was granted until February 9, 2018, to file a supplemental record, including an exhibit introduced at sentencing but, to date, he has failed to do so. Because it would be irrelevant to the issue decided in this order, we need not wait for the filing of any such supplemental record to resolve this appeal. We also proceed despite respondent’s failure to file a reply brief prior to the May 22, 2018, deadline.

motion before filing the notice of appeal and pursuant to *In re William M.*, 206 Ill. 2d 595 (2003), we are required to remand the case to the circuit court for proceedings that strictly comply with Rule 604(d). However, the State also maintains that the finding of delinquency with respect to respondent's plea in circuit court case number 17 JD 1332 is not properly before this court, and any remand should apply only to circuit court case number 17 JD 1442.

¶ 11 Rule 604(d) provides, in pertinent part:

“No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.” Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

¶ 12 Strict compliance with Rule 604(d) is required in both the juvenile and the adult context. *William M.*, 206 Ill. 2d at 605. We review *de novo* questions of compliance with the rule. *People v. Gabrys*, 2013 IL App (3d) 110912, ¶ 26.

¶ 13 Where there have been proper admonishments by the circuit court, a defendant's failure to file the appropriate Rule 604(d) postplea motion ordinarily results in the dismissal of a direct appeal after a plea of guilty, with the Post-Conviction Hearing Act (725 ILCS 5/122 (West 2014)) (Act), as the defendant's only recourse. *People v. Braden*, 2018 IL App (1st) 152295, ¶ 25; *People v. Dominguez*, 2012 IL 111336, ¶ 11; *People v. Linder*, 186 Ill. 2d 67, 74 (1999). However, in *William M.*, our supreme court recognized that, because the Act had not been found to apply to juvenile proceedings, dismissing a juvenile respondent's appeal following a guilty plea for failure to comply with Rule 604(d) would leave the respondent without a remedy for his claims. *William M.*, 206 Ill. 2d at 604. Our supreme court therefore held that, when a juvenile

respondent fails to comply with the postplea motion requirements of Rule 604(d) prior to filing an appeal, the appeal is not to be dismissed by the appellate court; rather, this court has no discretion and must remand the cause to the circuit court for strict compliance with Rule 604(d). *Id.* at 605.

¶ 14 Here, respondent failed to file a motion to withdraw his plea or a motion to reconsider his dispositional order before taking his appeal. Accordingly, we must remand the cause for strict compliance with Rule 604(d). *William M.*, 206 Ill. 2d at 605.

¶ 15 As we discussed above, the State argues that respondent's notice of appeal did not refer to his plea of guilty and the oral finding of delinquency in circuit court case number 17 JD 1322 and, therefore, we have no jurisdiction to remand that matter for strict compliance with Rule 604(d). We agree that circuit court case number 17 JD 1322 is not before this court, but for other reasons.

¶ 16 Although respondent entered a plea of guilty in circuit court case numbers 17 JD 1322 and 17 JD 1442, the record shows only a dispositional order as to circuit court case number 17 JD 1442. The circuit court did not enter an order as to wardship or disposition in circuit court case number 17 JD 1322. "The final judgment in a juvenile delinquency case is the dispositional order." *In re Michael D.*, 2015 IL 119178, ¶ 13 (citing *In re J.N.*, 91 Ill. 2d 122, 127 (1982)). Thus, there was no final judgment from which respondent could appeal in circuit court case number 17 JD 1322. See Ill. S. Ct. R. 660(a) (eff. October 1, 2001). Further, while a juvenile respondent may also appeal from an adjudication order if, after 90 days of its entry, a dispositional order has not been entered (see Ill. S. Ct. R. 662(a) (eff. Oct. 1, 1975)), that option also was not available to respondent as there was no adjudication order entered in circuit court case number 17 JD 1322. Respondent therefore did not have any right to an appeal from the

interlocutory finding of delinquency after his plea of guilty in circuit court case number 17 JD 1322. Thus, he could not have included his plea of guilty and finding of delinquency with regard to that case in his notice of appeal.

¶ 17 Having no jurisdiction over circuit court case number 17 JD 1322, we express no opinion as to that plea, nor with respect to the impact of our order remanding circuit court case number 17 JD 1442 on the outcome of that case.

¶ 18 For the reasons stated, we do not consider the merits of this appeal. Rather, we remand this cause to the circuit court for further proceedings in compliance with Rule 604(d).

¶ 19 Remanded, with directions.