

2018 IL App (2d) 160774-U  
No. 2-16-0774  
Order filed November 5, 2018

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Winnebago County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14-CF-2766
	)	
ROMAN ESPARZA-MARTINEZ,	)	Honorable
	)	John S. Lowry,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Justices McLaren and Hutchinson concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defense counsel’s Rule 604(d) certificate was invalid, as it twice referred to a “trial” rather than the guilty plea that actually occurred.
- ¶ 2 Defendant, Roman Esparza-Martinez, entered a nonnegotiated plea of guilty of aggravated battery (720 ILCS 5/12-3.05(b)(1) (West 2014)) and was sentenced to a 14½-year prison term. Defendant moved to reconsider his sentence, but the trial court denied the motion and defendant brought this appeal. Defendant argues that his attorney filed a defective certificate of compliance with Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016). We agree and we

therefore vacate the denial of defendant's motion and remand the case for proceedings in compliance with that rule.

¶ 3 Rule 604(d) provides, in pertinent part, that when a defendant who has entered a guilty plea moves to withdraw the plea or to reconsider his or her sentence, “[t]he defendant’s attorney shall 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.” *Id.* As we have recently noted, “[i]t is well established that the attorney’s certificate must strictly comply with the requirements of Rule 604(d).” *People v. Calleros*, 2018 IL App (2d) 151256, ¶ 3. “If the certificate does not satisfy this standard, a reviewing court must remand the case to the trial court for proceedings that strictly comply with Rule 604(d), including ‘a new hearing on the motion.’ ” *Id.* (quoting *People v. Janes*, 158 Ill. 2d 27, 33 (1994)).

¶ 4 In his Rule 604(d) certificate, defendant’s attorney stated:

“(1) I have consulted with the Defendant in person to determine his contentions of error in the imposition of the sentence and *trial*.

(2) I have examined the trial court file and report of proceedings of the Sentencing and *Trial*; and

(3) I have made such amendments to the motion as are necessary for an adequate presentation of any defects and [*sic*] those proceedings.” (Emphases added.)

¶ 5 Defendant argues that the certificate is defective because his attorney failed to certify that he (1) consulted with defendant to determine his contentions of error in the entry of the plea of guilty and (2) examined the report of proceedings of the plea of guilty. Instead, the certificate states that defendant’s attorney consulted about trial errors and that he reviewed the report of proceedings at trial. Defendant argues that this case is similar to *People v. Dismuke*, 355 Ill. App. 3d 606 (2005), in which the Rule 604(d) certificate indicated that the defendant’s attorney consulted with the defendant and examined the report of proceedings of the defendant’s sentencing hearing. The certificate was deficient because it did not also state that the defendant’s attorney examined the report of proceedings of the guilty plea hearing. *Id.* at 608.

¶ 6 The State responds by noting case law holding that a Rule 604(d) certificate need not take a particular form or recite the language of Rule 604(d) verbatim. See *People v. Luna*, 2015 IL App (2d) 140983, ¶ 6. Although that is true, “the certificate must give some indication that counsel performed the duties required under Rule 604(d).” *Dismuke*, 355 Ill. App. 3d at 609. Whereas Rule 604(d) requires reference to the defendant’s plea of guilty, the certificate here refers to a “trial.” The defect in the certificate is not that it fails to recite the language of Rule 604(d) verbatim. The defect is that the certificate uses a word with a different meaning than the words that Rule 604(d) uses: a trial is not a guilty plea.

¶ 7 The State cites *Luna* and *People v. Wyatt*, 305 Ill. App. 3d 291 (1999), in support of its argument that the Rule 604(d) certificate is sufficient. The State’s reliance on these cases is misplaced. The certificate in *Luna* stated that the defendant’s attorney had consulted with the defendant to ascertain his contentions of error. We held that the certificate complied with Rule 604(d) even though it did not specify that the contentions of error pertained to the sentence and the entry of the guilty plea. We reasoned that the unqualified reference to “contentions of error”

could be read broadly. *Luna*, 2015 IL App (2d) 140983, ¶ 6. Here, no matter how broadly we read the word “trial,” it does not mean “guilty plea.”

¶ 8 In *Wyatt*, the Rule 604(d) certificate stated in pertinent part, “ ‘I have examined the trial court file and report of proceedings of the plea of guilty and the sentencing for of [*sic*] making any amendments necessary for an adequate presentation of any defects in the proceedings; and that the defendant would offer no amendments *to either the court file or the report of proceedings.*’ (Emphasis added.)” *Wyatt*, 305 Ill. App. 3d at 296. We rejected the defendant’s argument that the certificate was defective because it did not state that the defendant’s attorney made any amendments necessary for adequate presentation of any defects in the guilty plea and sentencing proceedings. We reasoned that “[i]t is inappropriate to read counsel’s statement as saying that he examined the record for making any amendments necessary for an adequate presentation of the motion but then failed to make any necessary amendments.” *Id.* at 297. *Wyatt* teaches that, even where a certificate’s language is imperfect, in some cases the language might so clearly imply that counsel performed his or her duties that it would be unreasonable to remand for further proceedings.<sup>1</sup> Here, defendant’s argument is not based on any implication arising from the language of the certificate. Rather, the State asks us to read the certificate to mean something other than what it says.

¶ 9 The State suggests that, because there was no trial here, defendant’s attorney must have meant “guilty plea” when he wrote “trial.” According to the State, “it would be taking strict

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<sup>1</sup> There is some tension between *Wyatt* and our more recent opinion in *Dismuke*, where we refused to rely on implications from the language of a defective certificate. *Dismuke*, 355 Ill. App. 3d at 611. For purposes of our analysis, however, we may assume that *Wyatt*’s reasoning is still viable.

construction to illogical extremes in not reading counsel’s statements referring to the ‘sentence and trial’ to mean sentence and guilty plea.” We disagree. It is easy to comply with Rule 604(d)’s certificate requirement. Although some minor deviations may be permissible, it is reasonable to require precision and care in the use of language. That was wanting here. The rule of strict compliance should relieve courts of any burden of guessing what defense counsel intended his or her Rule 604(d) certificate to mean. To be sure, it is possible that defendant’s attorney meant “guilty plea” when he wrote “trial” and that the use of the wrong word was simply a drafting error. However, the error undermines our confidence that defendant’s attorney understood what Rule 604(d) requires. We therefore conclude that the certificate is deficient, and the case must be remanded for proceedings in compliance with Rule 604(d).

¶ 10 For the foregoing reasons, we vacate the denial of defendant’s motion to reconsider his sentence and we remand the cause to the circuit court of Winnebago County for “(1) the filing of a [valid] 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 (2011).

¶ 11 Vacated and remanded.