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2018 IL App (3d) 150882-U

Order filed February 27, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

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. 3-15-0882
	)	Circuit No. 15-CF-1708
QUINTON L. PERRY,	)	
Defendant-Appellant.	)	Honorable David Martin Carlson, Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justice Holdridge concurred in the judgment.  
Justice Schmidt specially concurred.

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**ORDER**

¶ 1 *Held:* Defense counsel’s Rule 604(d) certificate failed to strictly comply with Illinois Supreme Court Rule 604(d).

¶ 2 After entering into a blind plea of guilty to the charge of residential burglary, the trial court sentenced defendant to a four-year term of imprisonment in the Illinois Department of Corrections. Subsequently, defense counsel filed a motion to reconsider sentence along with a Rule 604(d) certificate. The trial court reconsidered defendant’s sentence, in part, by finding that

defendant met the eligibility requirements for possible placement in the “Impact Incarceration Program.” On appeal, defendant contends that counsel’s Rule 604(d) certificate failed to comply with the certification requirements of Illinois Supreme Court Rule 604(d).

¶ 3

### FACTS

¶ 4

On September 3, 2015, the State charged Quinton L. Perry (defendant) with residential burglary (720 ILCS 5/19-3(a) and (b) (West 2014)), felony theft (720 ILCS 5/16-1(a)(1)(A) (West 2014)), and misdemeanor theft (720 ILCS 5/16-1(b)(4) (West 2014)). On September 28, 2015, the court ordered a Treatment Alternatives for Safe Communities (TASC) evaluation and a Pre-sentence Investigation (PSI). On December 2, 2015, the State dismissed the theft charges and defendant entered into a blind plea of guilty to the residential burglary charge.

¶ 5

According to the factual basis provided to the court during defendant’s guilty plea proceeding, sometime during the early morning hours of August 16, 2015, officers observed two individuals, defendant and his companion, walking with a pillow case and a handbag on a bike path. There had been a recent string of burglaries in the area. Officers followed the defendant and his companion to their vehicle where they placed the items in the trunk. Officers questioned defendant and his companion about the items the men were carrying.

¶ 6

During the search of the trunk, the officers recovered two laptops, a wedding ring, and a briefcase. Simultaneously, officers received information that a nearby home had just been burglarized, and that the items found in the trunk were taken from this home.

¶ 7

The trial court accepted defendant’s guilty plea to the residential burglary charge and immediately conducted a sentencing hearing. The court sentenced defendant to serve a four-year term of imprisonment in the Illinois Department of Corrections.

¶ 8 On December 9, 2015, counsel for defendant filed a motion to reconsider this sentence and a Supreme Court Rule 604(d) certificate. Defendant requested the court to sentence him to TASC probation or, alternatively, to recommend defendant for the Impact Incarceration Program. Defense counsel’s Supreme Court Rule 604(d) certificate averred that defense counsel had:

- “1. Consulted with the Defendant in person to ascertain Defendant’s contentions of error in the sentence or the plea of guilty;
2. Examined the trial court file and report of proceedings of the plea of guilty, and
3. Has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings.”

¶ 9 On December 18, 2015, the trial court modified defendant’s sentence and found that defendant met the eligibility requirements for possible placement in the “Impact Incarceration Program.” Defendant filed a timely notice of appeal on December 23, 2015.

¶ 10 ANALYSIS

¶ 11 On appeal, defendant argues that this matter should be remanded for further proceedings in the trial court because defense counsel’s Rule 604(d) certificate did not strictly comply with Illinois Supreme Court Rule 604(d). The State argues that whether counsel strictly complied with Supreme Court Rule 604(d) is irrelevant because defendant successfully received the relief requested in his motion to reconsider. Alternatively, the State contends that defense counsel’s Rule 604(d) certificate strictly complied with the rule.

¶ 12 In order to properly challenge guilty plea proceedings, Illinois Supreme Court Rule 604(d) requires counsel to file a certificate showing that he or she:

“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.”

Ill. S. Ct. R. 604(d) (eff. Dec 3, 2015).

¶ 13 Illinois courts no longer approach these cases in terms of whether the error in failing to comply with Rule 604(d) was harmless or prejudicial. *People v. Janes*, 158 Ill. 2d 27, 33 (1994) (citing *People v. Hayes*, 195 Ill. App. 3d 957, 960-61 (1990)). Instead, failure to strictly adhere to the requirements of Rule 604(d) is considered to create error. *Id.* at 33. Strict compliance with Rule 604(d) is necessary as the rule is designed to ensure that counsel has fulfilled his or her obligations, and that defendant’s due process rights have been protected. *People v. Dickerson*, 212 Ill. App. 3d 168, 171 (1991). Failure to strictly comply with Rule 604(d) necessitates remand to permit compliance. *Janes*, 158 Ill. 2d at 33.

¶ 14 The certificate itself is all that is considered to determine compliance with Rule 604(d). *People v. Neal*, 403 Ill. App. 3d 757, 760 (2010). It is not the duty of the appellate court to determine whether, because of counsel’s use of ambiguous language, an argument could be made that the certificate strictly complied with Rule 604(d). *People v. Richard*, 2012 IL App (5th) 100302, ¶ 15. Whether defense counsel strictly complied with the provisions of Rule 604(d) is subject to *de novo* review. *Neal*, 403 Ill. App. 3d at 760.

¶ 15 We agree with defendant that counsel’s Rule 604(d) certificate failed to certify that counsel examined the report of proceedings of the sentencing hearing. However, the State first

argues counsel's compliance with Rule 604(d) was irrelevant because the trial court granted the relief requested in defendant's motion to reconsider by modifying defendant's sentence to recommend that defendant be permitted to participate in the Impact Incarceration Program. We disagree.

¶ 16 The record reveals that the court granted the alternative relief defendant requested in his motion to reconsider. Defendant's motion to reconsider primarily requested that defendant be sentenced to a term of TASC probation. Defendant's request for a recommendation for participation in the Impact Incarceration Program, which the trial court granted, was secondary and contingent on the court's decision regarding a sentence of TASC Probation. Additionally, the case law provides that reviewing courts do not approach Rule 604(d) compliance cases on the basis of prejudice or harmless error. *Janes*, 158 Ill. 2d at 33. Accordingly, counsel's lack of compliance with Rule 604(d) was not irrelevant as the State asserts.

¶ 17 The State also argues that counsel's Rule 604(d) certificate strictly complied with the rule because the plea of guilty and the sentencing were held during the same hearing. Therefore, the report of proceedings of the plea of guilty necessarily included the report of proceedings of the sentencing hearing. We disagree.

¶ 18 Defense counsel fails to strictly comply with Rule 604(d) when the certificate fails to indicate that counsel examined the transcript of the sentencing hearing. *People v. Evans*, 2017 IL App (3d) 160019, ¶ 21; *People v. Easton*, 2017 IL App (2d) 141180, ¶ 18. The State's argument requires this court to look outside of the four corners of the certificate and engage in speculation regarding whether defense counsel examined the report of proceedings of the sentencing hearing. We refuse to do so.

¶ 19 To ensure defendant receives due process of law, and thus a full and fair hearing on his motion to reconsider sentence, we remand this matter to the trial court for new postplea proceedings in compliance with Rule 604(d).

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Will County is vacated and remanded with directions.

¶ 22 Vacated and remanded with directions.

¶ 23 JUSTICE SCHMIDT, specially concurring:

¶ 24 I concur in the judgment.