

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).

2018 IL App (4th) 180163-U

NO. 4-18-0163

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 21, 2018
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Logan County
PHILLIP L. CASON,)	No. 14CF154
Defendant-Appellant.)	
)	Honorable
)	William G. Workman,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Cavanagh concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant was denied the opportunity to proceed *pro se* on his postplea motion, and thus remand for new postplea proceedings in strict compliance with Illinois Supreme Court Rule 604(d) is required.
- ¶ 2 In December 2014, the State charged defendant, Phillip L. Cason, by information with one count of driving while license revoked (625 ILCS 5/6-303(a) (West 2014)). At a January 19, 2016, hearing, defendant pleaded guilty to the charge pursuant to a fully negotiated plea agreement, and the Logan County circuit court sentenced him to 18 months of conditional discharge with 180 days in jail. On February 18, 2016, defendant filed a *pro se* document indicating his desire to appeal his guilty plea, which the court treated as a motion to withdraw his plea. In July 2016, the court entered an order disposing of the postplea pleadings. Defendant appealed, and this court allowed defendant's agreed motion for summary remand. *People v. Cason*, No. 4-16-0543 (Nov. 16, 2017) (nonprecedential order remanding for strict compliance with

Illinois Supreme Court Rule 604(d)).

¶ 3 On remand, defense counsel filed the certificate required by Illinois Supreme Court Rule 604(d) (eff. July 1, 2017). After a March 6, 2018, hearing, the circuit court again entered an order, disposing of the postplea proceedings.

¶ 4 Defendant appeals again, asserting the circuit court erred by refusing to (1) entertain defendant's request to represent himself and (2) conduct an inquiry into defendant's allegations of defense counsel's ineffectiveness. He also raises a challenge to the lump-sum surcharge imposed on him. We reverse and remand for further proceedings.

¶ 5 I. BACKGROUND

¶ 6 This appeal solely concerns the postplea proceedings in this case, which are convoluted. As stated, the circuit court sentenced defendant on January 19, 2016. On February 18, 2016, the circuit clerk filed defendant's letter, which indicated defendant wanted to appeal his plea and noted defendant had been unable to contact trial counsel to secure the proper procedure. The circuit court held a March 1, 2016, status hearing, at which defendant and his trial counsel were present. Trial counsel and defendant discussed with the circuit court defendant's claim trial counsel's other clients got lesser sentences than defendant. That was the only complaint of defendant's discussed. Additionally, trial counsel noted defendant had not given him "any direction" to file a legally valid motion to withdraw defendant's guilty plea. The court stated it accepted defendant's letter as his motion to withdraw his guilty plea but explained to defendant his motion did not give any reasons for a withdrawal. The court then gave defendant 14 days to file an appropriate motion to withdraw. Trial counsel noted defendant had a pleading he wished to file but the pleading contained no prayer for relief. He further stated he believed defendant intended to file something else. The court directed the clerk to file defendant's document, which

was entitled “common law vehicular judicial notice.” The court also gave defendant 14 days to file any supplemental materials along with it. The prosecutor then questioned if trial counsel had been reappointed. Trial counsel asked to wait and see what pleading defendant filed. The court indicated defendant was entitled to an attorney because his motion was filed within the 30 days of sentencing. It then asked trial counsel to take a copy of defendant’s “common law vehicular judicial notice.” The court further told trial counsel that, “for any motion that he’s wanting to file, that he give it to you so that you can file it for him within 14 days if there’s any change or correction that you think needs to be done.”

¶ 7 On March 3, 2016, defendant again filed *pro se* a document entitled “common law vehicular judicial notice.” On March 15, 2016, defendant filed *pro se* a motion to dismiss the charges, again referring to the common law vehicular judicial notice. In April 2016, the circuit court struck defendant’s *pro se* motion to dismiss because defendant was represented by counsel. Defendant then sent the court a letter (filed on April 21, 2016), stating he had tried to contact trial counsel on three occasions and had not received a response. Thereafter, defendant sent the court letters, which were filed on the following dates: May 2, 2016; May 5, 2016; May 10, 2016; June 3, 2016; and June 22, 2016. The May 2 letter complained about trial counsel’s performance and asserted defendant had a mitigating factor that would provide him relief. In his May 5 letter, defendant asked the court to have trial counsel meet with him. The May 10 letter declared defendant had fired trial counsel. Defendant also filed a letter he sent to trial counsel, stating he was firing trial counsel. The June 3 letter concerned his motion to dismiss and asserted he never requested counsel. In the June 22 letter, defendant complained about his sentence by noting the sentences of several other individuals and contended the traffic stop that led to the charge was improper. On June 28, 2016, defendant sent a letter indicating he wanted to appeal

because the court never ruled on his June 3 “motion.” Two days later, the court struck defendant’s *pro se* motions and set a status hearing for July 12, 2016. At the status hearing, the court entered a docket entry that stated the following: “Defendant’s motion to withdraw plea is not filed timely and is dismissed.”

¶ 8 Defendant appealed the circuit court’s July 12, 2016, order. On November 16, 2017, this court allowed defendant’s agreed motion for summary remand. *Cason*, No. 4-16-0543. The order stated the following: “This cause is remanded to the circuit court for the filing of a 604(d) certificate, the opportunity to file a new post-plea motion, if counsel concludes a new motion is necessary, a new hearing and ruling on the motion, and strict compliance with the requirements of Rule 604(d).” *Cason*, No. 4-16-0543.

¶ 9 On remand, the circuit court first held a December 13, 2017, status hearing. The court indicated it was unsure of what was to take place on remand. Trial counsel offered to file a Rule 604(d) certificate based on his communications with defendant until March 1, 2016. Defendant indicated he did not want to be represented by trial counsel. The court granted trial counsel 14 days to file a Rule 604(d) certificate. On December 20, 2017, trial counsel filed a Rule 604(d) certificate.

¶ 10 On March 6, 2018, the circuit court held another status hearing. The court indicated no postplea motion had been filed in this case. After a discussion with trial counsel, the court ruled “there has been no proper legal basis filed on a motion in this case, and the case is, therefore, dismissed.”

¶ 11 On March 12, 2018, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. July 1, 2017) appealing only the denial of his postplea motions. On March 26, 2018, defendant filed a timely amended notice of appeal under

Illinois Supreme Court Rules 606(d) (eff. July 1, 2017) and 303(b)(5) (eff. July 1, 2017) that appealed defendant's conviction and sentence as well as the denial of his postplea motions. Thus, defendant perfected his appeal from the court's March 2018 judgment. The State challenges our jurisdiction of this appeal based on our jurisdiction of defendant's prior appeal, which we will address in the analysis section.

¶ 12

II. ANALYSIS

¶ 13

A. Jurisdiction

¶ 14 The State challenges our jurisdiction of this appeal, contending our November 2017 summary remand order was void because this court lacked subject-matter jurisdiction when we entered the order. Specifically, the State claims defendant failed to file a Rule 604(d) motion to withdraw his guilty plea at any point after sentencing. Defendant asserts, *inter alia*, his letter that was filed on February 18, 2016, was a motion to withdraw his guilty plea. The record on appeal supports defendant's assertion. At the March 1, 2016, hearing, the circuit court indicated it was treating the letter as a motion to withdraw defendant's guilty plea and gave defendant 14 days to amend the motion. The court never ruled on the original February 2016 motion until it dismissed the postplea proceedings on July 12, 2016.

¶ 15

Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) provides that, when a defendant desires to appeal from a judgment entered upon a guilty plea, the defendant must first file a postplea motion with the circuit court within 30 days of sentencing. See *People v. Kibbons*, 2016 IL App (3d) 150090, ¶ 11, 51 N.E.3d 1127. If the circuit court denies the postplea motion, the defendant must file a notice of appeal from the judgment and sentence within the time set forth in Illinois Supreme Court Rule 606 (eff. July 1, 2017), "measured from the date of entry of the order denying the motion." Ill. S. Ct. R. 604(d) (eff. July 1, 2017); see also

People v. Haldorson, 395 Ill. App. 3d 980, 982, 918 N.E.2d 1280, 1282 (2009). Illinois Supreme Court Rule 606(b) (eff. July 1, 2017) provides “the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from or if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion.”

¶ 16 In this case, the circuit court sentenced defendant on January 19, 2016. Thus, under Rule 604(d), the time for filing a postplea motion expired on February 18, 2016. Defendant timely filed his letter, which the court treated as a postplea motion, on February 18, 2016. The court ruled on the postplea motion by dismissing the postplea proceedings on July 12, 2016. Under Rule 606(b), defendant’s notice of appeal had to be filed on or before August 11, 2016. Defendant filed his notice of appeal on July 12, 2016, which was timely filed. He also filed an amended notice of appeal on August 8, 2016. Illinois Supreme Court Rule 606(d) (eff. July 1, 2017) provides a notice of appeal may be amended in accordance with Illinois Supreme Court Rule 303(b)(5) (eff. July 1, 2017), which allows amendments without leave of court within the original 30-day period to file the notice of appeal. Accordingly, defendant’s amended notice of appeal was also timely filed. Thus, we find this court did have subject-matter jurisdiction when we entered the summary remand order and does not lack jurisdiction of this appeal due to any issues with the prior appeal.

¶ 17 B. Self-Representation

¶ 18 Defendant contends the circuit court violated his right to self-representation on remand. The State contends, *inter alia*, the agreed summary remand order required respondent to be represented by counsel and the circuit court could not have allowed him to represent himself.

¶ 19 After a defendant moves to withdraw a guilty plea, the circuit court “must appoint counsel if the defendant is indigent and ‘desires counsel.’ ” *People v. Griffin*, 305 Ill. App. 3d 326, 330, 713 N.E.2d 662, 664 (1999) (quoting *People v. Cunningham*, 294 Ill. App. 3d 702, 704, 690 N.E.2d 1389, 1390 (1997)). Even if the defendant does not request counsel, the court must ascertain whether the defendant desires counsel. *Griffin*, 305 Ill. App. 3d at 330, 713 N.E.2d at 664. However, the court “need not appoint counsel if the defendant responds to the inquiry with a knowing waiver of his right to counsel.” *Griffin*, 305 Ill. App. 3d at 330, 713 N.E.2d at 664. Accordingly, a defendant does have the right to not be represented by counsel during postplea proceedings.

¶ 20 During the initial postplea proceedings, defendant voiced many complaints against trial counsel; noted he had fired trial counsel; and filed numerous *pro se* documents, which the circuit court struck because defendant was represented by counsel. Defendant appealed the court’s dismissal of his postplea proceedings, and this court allowed the parties’ agreed motion for summary remand for strict compliance with Rule 604(d). *Cason*, No. 4-16-0543. Our order used unhelpful generic language and did not address the specific facts of this case. On remand, defendant clearly stated he did not want trial counsel representing him, and the court found the language of the remand required defendant to be represented by counsel. Moreover, the court expressed confusion as to what motion or motions were being addressed on remand. In light of the foregoing, we find remand is again warranted.

¶ 21 Since we are again remanding the case, the circuit court should first conduct an inquiry into defendant’s allegations of trial counsel’s ineffectiveness under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). If defendant was not denied effective assistance of counsel, then the court should hold postplea proceedings in compliance with Rule 604(d). Here,

defendant filed a timely letter on February 18, 2016, which the circuit court clearly considered as a motion to withdraw defendant's guilty plea. However, the court struck all of defendant's other *pro se* motions because he was represented by counsel. On remand, the circuit court should allow defendant to proceed *pro se* and give him time to file an amendment or amendments to his initial motion. Once that time has expired, the court shall hold a hearing and deny or grant the initial postplea motion as amended by any subsequent filing by defendant.

¶ 22 Additionally, defendant concedes that, under the current state of the law (see *People v. Vara*, 2018 IL 121823, ¶ 23), this court lacks jurisdiction to entertain defendant's challenge to the lump-sum surcharge, and thus we do not address defendant's last issue.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we reverse the Logan County circuit court's dismissal of defendant's motion to withdraw his guilty plea and remand the cause with directions.

¶ 25 Reversed; cause remanded with directions.