

NOTICE

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2019 IL App (4th) 180577-U

No. 4-18-0577

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 24, 2018

Carla Bender

4th District Appellate

Court, IL

<i>In re</i> C.M., a Minor)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Sangamon County
Petitioner-Appellee,)	No. 17JD12
v.)	
C.M.,)	Honorable
Respondent-Appellant).)	Karen S. Tharp,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court remanded the matter with directions for the trial court to properly admonish respondent under Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001) and to allow him the opportunity to file a new written motion to withdraw his guilty plea and/or reconsider his sentence and for the filing of a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017).

¶ 2 Respondent, C.M. (born November 25, 2004), appeals from the trial court's orders adjudicating him delinquent and imposing a term of probation and restitution. On appeal, respondent argues the trial court erred by (1) denying his motion to withdraw his guilty plea where the evidence showed he did not understand the admonishments when he pleaded guilty, (2) allowing evidence of an insurance deductible at the dispositional hearing where the evidence was hearsay and lacked a proper foundation, and (3) denying his posttrial motion to dismiss the

information where the information failed to allege any monetary damage.

¶ 3 We remand the matter with directions for the trial court to properly admonish respondent under Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001) and to allow him the opportunity to file a new written motion to withdraw his guilty plea and/or reconsider his sentence and for the filing of a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017).

¶ 4 I. BACKGROUND

¶ 5 A. Petition for Adjudication of Delinquency and Wardship

¶ 6 On September 29, 2017, the State filed a petition for adjudication of delinquency and wardship, alleging respondent committed the offenses of vehicular endangerment (720 ILCS 5/12-5.02 (West 2016) (counts I and III)), criminal damage to property under \$500 (720 ILCS 5/21-1(a) (West 2016) (counts II and IV)), and resisting a peace officer (720 ILCS 5/31-1 (West 2016) (count V)). Count I alleged as follows:

“[O]n or about July 27, 2017, in Sangamon County, Illinois, the said minor or one for whom he is legally responsible, with the intent to strike a Toyota Sienna driven by Stephanie Ruyle, threw rocks from an overpass located in the area of the 1700 Block of Sangamon Ave.[,] Springfield, Sangamon County, Illinois, and struck the Toyota Sienna driven by Stephan[i]e Ruyle as it traveled upon an Illinois roadway.”

¶ 7 B. Private Counsel

¶ 8 On January 4, 2018, private counsel filed a written appearance on respondent’s

behalf.

¶ 9 C. Guilty Plea

¶ 10 At a March 20, 2018, pretrial hearing, the parties indicated they had reached a plea agreement whereby respondent would plead guilty to count I in exchange for the State dismissing all other counts. After questioning respondent and hearing a factual basis, the trial court accepted respondent's plea and adjudicated him delinquent.

¶ 11 D. Motion to Withdraw the Guilty Plea

¶ 12 On May 1, 2018, respondent filed a motion to withdraw his guilty plea, alleging he was (1) "under stress, emotional and physical[,] and did not enter into a voluntary plea of guilty due to his physical and mental condition" and (2) innocent.

¶ 13 E. Rule 604(d) Certificate

¶ 14 On May 29, 2018, the trial court entered an order to continue the hearing on respondent's motion to withdraw his guilty plea. In that order, the court directed respondent's counsel to file a Rule 604(d) certificate.

¶ 15 That same day, respondent's counsel filed a certificate averring compliance with Rule 604(d). Counsel's certificate provides: (1) "Counsel has consulted with the Defendant in person to ascertain Defendant's contentions of error in the sentence in the entry of the plea of guilty;" (2) "Counsel has examined the trial court file and the report of proceeding of the plea of guilty and claims of the Defendant;" and (3) "Counsel has made any amendments to the motion necessary for the adequate presentation of any defects in those proceedings, limited to the plea."

¶ 16 F. Hearing on Motion to Withdraw the Guilty Plea

¶ 17 On July 13, 2018, the trial court held a hearing on respondent's motion to

withdraw his guilty plea. Prior to hearing evidence or argument, the court noted a Rule 604(d) certificate was on file.

¶ 18 On examination by his counsel, respondent testified he pleaded guilty “[b]ecause you told me to.” When asked if he was “upset” when he pleaded guilty, respondent testified, “No.” Respondent acknowledged he was present at the scene but asserted only one rock was thrown and another individual threw that rock. Respondent further asserted he was innocent, wanted to vacate his plea, and desired a trial on the merits. On cross-examination, respondent acknowledged being in court on March 20, 2018, and pleading guilty. Respondent asserted, however, he did not recall the judge asking him questions or responding to those questions, with the exception of the judge telling him it would be his decision if he wanted to testify.

¶ 19 Respondent’s mother, Natasha M., testified she was present in the courtroom on March 20, 2018, and her son appeared “[c]onfused and not able to comprehend the situation or what was being said.” She indicated respondent acted “[u]pset” and “confused” from the time she picked him up from the police station through the time he pleaded guilty. She also indicated her son had stated to her on multiple occasions he did not commit the offense. Natasha testified her son had an Individualized Education Plan (IEP) to assist him with “reading comprehension skills, math. Like, special needs.”

¶ 20 Respondent’s father, Thomas M., testified he was present in the courtroom on March 20, 2018, and his son appeared confused and as if “[h]e didn’t know which way to answer” the questions asked of him. Thomas also testified his son maintained his innocence throughout the proceedings.

¶ 21 The State introduced a copy of the March 20, 2018, transcripts, which were

admitted into evidence over no objection.

¶ 22 Respondent's counsel argued respondent's plea was involuntary. He asserted: "All I could present, which is true, he was anxious, confused, he has a limited problem of education which they're working through, and for all those reasons, I believe that in the interest of fairness, even though the State doesn't want to relitigate the matter, the State has a burden to try someone that is not guilty and make a decision."

¶ 23 The State argued the transcripts showed respondent was represented by counsel the entire time, understood all of the rights he was giving up if he pleaded guilty, and was not under duress or pressure at the time of the plea.

¶ 24 The trial court denied respondent's motion to withdraw his guilty plea. The court noted respondent indicated at the plea hearing nothing going on that day made it difficult for him to understand what was happening in court and stated he understood his rights. The court also noted defendant testified he was not upset at the time he pleaded guilty.

¶ 25 G. Dispositional Hearing

¶ 26 On August 3, 2018, the trial court held a dispositional hearing. In part, the State recommended the court order respondent to pay restitution, joint and several with the other individual involved, in the amount of \$100 for an insurance deductible the victim was required to pay. Respondent's counsel objected to the State's recommendation on the ground "estimates are not admissible in evidence" and the State must "put the party on the stand."

¶ 27 The trial court made respondent a ward of the court, placed him on one-year

probation with certain terms and conditions, and ordered him to pay \$100 in restitution joint and several with the other individual involved. The court allowed custody and guardianship to remain with respondent's parents and ordered the probation department to seek courtesy supervision in Florida where the parents indicated they planned to immediately move with respondent.

¶ 28 After the trial court rendered its sentence, respondent's counsel again commented on the restitution, stating in part: "It does not comport with the statute. So we've been charged illegally. *** \$500 is the statute, Your Honor. You know that. For damage. For restitution." The court rejected counsel's argument, finding the offense to which respondent pleaded guilty did not require a specific damage amount. Respondent's counsel then further suggested the court's ruling violated respondent's due process and equal protection rights. The court also rejected this argument.

¶ 29 The trial court proceeded to admonish respondent as to his appellate rights. The court gave the following admonitions:

"[Y]ou do have the right to an appeal. If you wish to appeal any of my rulings, though, you would first need to, again, either file—you would need at this stage to file a motion to reconsider the sentence. We've already addressed the motion with regard to vacating your guilty plea. So you would need to file a motion to reconsider your sentence. If you wish to do that, you'd have to do that in writing within 30 days of today's date. You would need to include all of the reasons of whatever errors you believe I made along the way. If you leave any reason out of that motion, they would be given up

for purpose of appeal. If I granted your motion with regard to the sentencing hearing, we would address those issues or have a new hearing. If I denied that, you would have 30 days from that date to file your written notice of appeal with the clerk of the court, or you could ask that I direct the clerk to do that for you. You do have the right to an attorney to assist you with all of those matters. If you can't afford one, I would appoint one to you at no charge and the transcripts which you would need would also be provided at no charge."

Immediately after the court issued its admonitions, respondent's counsel stated, "I will advise the court that I intend to take an appeal." Counsel also requested he be appointed as respondent's appellate counsel as respondent's parents were "strapped" with "the move and everything else." The court entered an order appointing respondent's counsel to represent respondent on appeal.

¶ 30 On August 17, 2018, respondent's counsel filed a notice of appeal, which was amended on August 20, 2018. In the amended notice of appeal, counsel alleged respondent was appealing from "the entry of the Judgment of Guilty of Misconduct entered on March 20, 2018[,] and denial of [his] Post[t]rial Motion on August 3, 2018," as well as "each and every one of his motions which were denied."

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 On appeal, respondent argues the trial court erred by (1) denying his motion to withdraw his guilty plea where the evidence showed he did not understand the admonishments

when he pleaded guilty, (2) allowing evidence of an insurance deductible at the dispositional hearing where the evidence was hearsay and lacked a proper foundation, and (3) denying his posttrial motion to dismiss the information where the information failed to allege any monetary damage. The State disagrees, addressing each of respondent's claims.

¶ 34 When reviewing respondent's claims, we discovered several substantial and readily apparent errors the parties have failed to address. These errors warrant a *sua sponte* remand for new post-sentencing proceedings. All interested parties—respondent's counsel, the State, and the trial court—are responsible for the errors.

¶ 35 Illinois Supreme Court Rule 660(a) (eff. Oct. 1, 2001) provides: "Appeals from final judgments in delinquent minor proceedings, except as otherwise specifically provided, shall be governed by the rules applicable to criminal cases." Under Rule 660(a), Rules 605(b) and 604(d) apply to juvenile delinquency proceedings. See *In re J.T.*, 221 Ill. 2d 338, 346, 851 N.E.2d 1, 6 (2006); *In re J.L.R.*, 301 Ill. App. 3d 498, 499, 703 N.E.2d 977, 978 (1998).

¶ 36 Where, as in this case, a non-negotiated guilty plea is entered, Rule 605(b) requires a trial court to admonish the juvenile respondent "at the time of sentencing" as follows:

“(1) that the defendant [(respondent)] has a right to appeal;

(2) that prior to taking an appeal the defendant [(respondent)] must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the trial court reconsider the sentence or to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;

(3) that if the motion is allowed, the sentence will be modified or the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;

(4) that upon the request of the State any charges that may have been dismissed as a part of a plea agreement will be reinstated and will also be set for trial;

(5) that if the defendant [(respondent)] is indigent, a copy of the transcript of the proceedings at the time of the defendant's [(respondent's)] plea of guilty and sentence will be provided without cost to the defendant [(respondent)] and counsel will be appointed to assist the defendant [(respondent)] with the preparation of the motions; and

(6) that in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to reconsider the sentence or to vacate the judgment and to withdraw the plea of guilty shall be deemed waived." Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001).

Rule 605(b) requires a respondent to be "substantially" advised of the actual content of the rule.

Id.; see also *People v. Dominguez*, 2012 IL 111336, ¶ 11, 976 N.E.2d 983.

¶ 37 The trial court's admonitions failed to substantially advise respondent of the actual content of Rule 605(b). The court failed to advise respondent of the need to file a written

motion to withdraw his guilty plea within 30 days of the date of his sentence and the implications if such a motion is filed, including the fact any charges dismissed as part of the plea agreement could be reinstated. On this ground alone, we must remand for the issuance of proper Rule 605(b) admonitions and an opportunity for respondent to file a new written motion to withdraw his guilty plea and/or reconsider his sentence. See *People v. Jamison*, 181 Ill. 2d 24, 29-30, 690 N.E.2d 995, 998 (1998) (finding remand was necessary where the trial court failed to substantially advise the defendant in accordance with Rule 605(b)); *People v. Foster*, 171 Ill. 2d 469, 473-74, 665 N.E.2d 823, 825-26 (1996) (finding remand was necessary where the trial court failed to give Rule 605(b) admonitions and the defendant submitted a motion to withdraw a guilty plea in an incorrect manner); *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 41, 944 N.E.2d 337, 342 (2011) (“Dismissal of an appeal based on a defendant’s failure to file the requisite motions in the circuit court would violate due process if the defendant did not know that filing such motions was necessary.”).

¶ 38 Even if the trial court’s admonishments had been proper, we would still be required to remand as the record shows respondent’s postplea motions fail to satisfy Rule 604(d). See *In re William M.*, 206 Ill. 2d 595, 605, 795 N.E.2d 269, 275 (2003) (holding “that when a juvenile defendant fails to comply with the written motion requirements of Rule 604(d) prior to filing an appeal, the appellate court has no discretion and must remand the cause to the circuit court for strict compliance with Rule 604(d)”).

¶ 39 Rule 604(d) provides:

“No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant [(respondent)], 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).

Strict compliance with Rule 604(d) is required in juvenile proceedings. *William M.*, 206 Ill. 2d at 605.

¶ 40 Respondent filed a written motion to withdraw his guilty plea prior to sentencing. The plain language of Rule 604(d) requires a motion to withdraw the guilty plea or reconsider the sentence be filed “within 30 days of the date on which sentence is imposed[.]” Ill. S. Ct. R. 604(d) (eff. July 1, 2017). “[A] motion filed prior to sentencing does not comply with Rule 604(d) and will not give rise to a right to appeal from the judgment.” *People v. Marquez*, 2012 IL App (2d) 110475, ¶ 4, 976 N.E.2d 1145; see also *People v. Ramage*, 229 Ill. App. 3d 1027, 1031, 595 N.E.2d 222, 225 (1992). Absent any attempt to renew his motion to withdraw his guilty plea following sentencing, respondent’s motion to withdraw his guilty plea is premature and fails to comply with Rule 604(d).

¶ 41 In his amended notice of appeal, respondent alleges he is appealing from the “denial of [his] Post[t]rial Motion on August 3, 2018.” To the extent he is suggesting his post-sentencing comments were in effect a motion to seek reconsideration of his sentence, any such motion was not in writing. An oral motion to reconsider the sentence does not comply with Rule 604(d). See *Foster*, 171 Ill. 2d at 472 (“[N]o agreement by the judge, prosecutor and defendant, or any combination thereof, can obviate the need for strict compliance with Rule 604(d)’s

written-motion requirement as a prerequisite to appeal.”). Respondent has failed to file a motion in compliance with Rule 604(d).

¶ 42 Finally, even if the trial court’s admonishments had been proper and respondent filed an appropriate Rule 604(d) motion, we would still be required to remand as the record shows the certificate filed by respondent’s counsel fails to satisfy Rule 604(d). See *In re A.G.*, 195 Ill. 2d 313, 322, 746 N.E.2d 732, 737-38 (2001) (affirming the appellate court’s decision to remand the cause where the respondent’s counsel did not file a Rule 604(d) certificate).

¶ 43 Rule 604(d) provides:

“The defendant’s [(respondent’s)] attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant [(respondent)] either by phone, mail, electronic means or in person to ascertain defendant’s [(respondent’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. July 1, 2017).

“[C]ompliance with the Rule 604(d) certificate requirement is required in juvenile proceedings.” *A.G.*, 195 Ill. 2d at 322.

¶ 44 Prior to conducting a hearing on respondent’s motion to withdraw his guilty plea but before sentencing, the trial court entered an order directing respondent’s counsel to file a

Rule 604(d) certificate. Counsel thereafter filed a certificate averring compliance with Rule 604(d). The plain language of Rule 604(d) requires the certificate be filed after the respondent has been sentenced. Ill. S. Ct. R. 604(d) (eff. July 1, 2017); see also *Marquez*, 2012 IL App (2d) 110475, ¶ 7. “A certificate filed before sentencing does not ensure that counsel has considered all relevant bases for relief.” *Marquez*, 2012 IL App (2d) 110475, ¶ 8. Counsel’s certificate is premature and fails to certify compliance with the requirements of Rule 604(d).

¶ 45 Respondent asked for oral argument. We dispensed with oral argument because the proceedings below were replete with errors and we are required to remand for proper admonishments under Rule 605(b) and compliance with the requirements of Rule 604(d). Oral argument could not change this required result.

¶ 46 As a final note before remanding, respondent’s mother testified respondent had an IEP to assist him with “reading comprehension skills, math. Like, special needs.” On remand, and in future proceedings involving juvenile respondents, it would behoove counsel to introduce any available IEP to assist the trial court in obtaining an understanding of the juvenile’s ability to comprehend the court’s admonishments.

¶ 47 III. CONCLUSION

¶ 48 We remand the matter with directions for the trial court to properly admonish respondent under Rule 605(b) and to allow him the opportunity to file a new written motion to withdraw his guilty plea and/or reconsider his sentence and for the filing of a certificate in compliance with 604(d).

¶ 49 Remanded with directions.