

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).

2019 IL App (4th) 180244-U

NO. 4-18-0244

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 28, 2019

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
REGINALD SCOTT,)	No. 15CF179
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court vacated and remanded with directions where defense counsel failed to strictly comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017).

¶ 2 In May 2015, defendant, Reginald Scott, pleaded guilty to first degree murder. In July 2015, the trial court sentenced him to 55 years in prison. In September 2015, the court denied defendant’s motion to withdraw his guilty plea, and defendant appealed. In November 2017, this court remanded the case for a corrected certificate under Illinois Supreme Court Rule 604(d) (eff. July 1, 2017). In May 2018, counsel filed an amended motion to withdraw defendant’s guilty plea, which the trial court denied.

¶ 3 On appeal, defendant argues the proceedings on the amended motion did not comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017). We vacate and remand with directions.

¶ 4

I. BACKGROUND

¶ 5 In February 2015, the State charged defendant, Reginald Scott, by information with three counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (West 2014)) in connection with the death of Vicente Mundo. On May 12, 2015, defendant pleaded guilty to count II (720 ILCS 5/9-1(a)(2) (West 2014)), the State dismissed counts I and III, and the State agreed to cap its sentencing recommendation at 60 years in prison. On July 1, 2015, the court sentenced defendant to 55 years in prison with 149 days' credit for time served.

¶ 6 On July 24, 2015, defendant filed a timely motion to withdraw his guilty plea, asserting (1) he did not understand he could not appeal his sentence by entering into this type of plea agreement with the State, (2) he did not pull the trigger and kill Mr. Mundo, and (3) he wished to proceed to trial. On August 20, 2015, defense counsel filed a certificate as required by Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014).

¶ 7 On September 16, 2015, the trial court held a hearing on defendant's motion to withdraw his guilty plea. Defendant testified at length regarding a head injury he sustained while at a summer camp when he was 11 or 12 years old. Defendant testified this injury affected his memory and thus his ability to understand he could not appeal his sentence pursuant to the negotiated plea agreement. The court denied defendant's motion, stating, "[I]t doesn't appear that [defendant's head injury] has in any way, shape, or form deterred this defendant from completing high school, playing soccer on a collegiate level, and enrolling in college and taking college courses."

¶ 8 Defendant then filed a timely notice of appeal. On appeal, defendant argued, *inter alia*, defense counsel's August 2015 certificate did not strictly comply with Rule 604(d) because it did not state counsel reviewed the report of proceedings from defendant's sentencing

hearing. We agreed, vacated the trial court's decision, and remanded for further proceedings. *People v. Scott*, 2017 IL App (4th) 150761, ¶ 19, 88 N.E.3d 182.

¶ 9 On remand, defendant filed an amended motion to withdraw his guilty plea. The motion alleged the same three grounds for withdrawal as the initial motion and one new allegation: "That on or about August 2017, Defendant ran into co-defendant, Daniel Gonzalez, while at Menard Correctional Facility [(Menard)], and co-defendant stated he would be willing to submit an affidavit stating that he (co-defendant) was the one who fired the gun that killed Vicente Mundo." The amended motion was not supported by an affidavit. However, counsel filed a certificate of compliance with Rule 604(d).

¶ 10 On March 19, 2018, the trial court held a hearing on defendant's amended motion to withdraw his guilty plea. The court confirmed defense counsel filed a new certificate pursuant to Rule 604(d). When asked about the amended motion, defense counsel stated, "[T]he Court has previously heard testimony from my client who testified as to a head injury he suffered when he was a child." Defense counsel also indicated he amended the motion to add the allegation regarding defendant's encounter with Mr. Gonzalez at Menard. The trial court stated, "Either way the Defendant is guilty of first degree murder" and denied the amended motion.

¶ 11 This appeal followed.

¶ 12 **II. ANALYSIS**

¶ 13 Defendant contends his counsel on remand did not strictly comply with Rule 604(d) because he failed to attach an affidavit to the amended motion to support facts alleged that were not in the record. The State disagrees and contends defense counsel strictly complied with Rule 604(d). Alternatively, the State argues even if defense counsel did not strictly comply

with Rule 604(d), this court should not remand the cause for further proceedings “because doing so would be a waste of judicial resources.”

¶ 14 Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) requires a defendant to file a motion to withdraw his plea of guilty and to vacate the judgment within 30 days of sentencing.

“The motion shall be in writing and shall state the grounds therefor. When the motion is based on facts that do not appear of record it shall be supported by affidavit ***.

* * *

The 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.” Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

¶ 15 “A hearing on a motion to withdraw a defendant’s guilty plea must be more than a charade performed only to allow an appeal to proceed.” *People v. Bridges*, 2017 IL App (2d) 150718, ¶ 10, 87 N.E.3d 441. Defense counsel’s failure to offer any argument or evidence in support of a motion to withdraw a defendant’s guilty plea functions as a concession the motion is meritless. *Id.* ¶ 11. Under such circumstances, the hearing “serve[s] little purpose other than to clear a procedural hurdle to [an] appeal.” *Id.*

¶ 16 We review the question of whether defense counsel complied with Rule 604(d) *de novo*. *People v. Grice*, 371 Ill. App. 3d 813, 815, 867 N.E.2d 1143, 1145 (2007). “[S]trict compliance with Rule 604(d) is required, and a reviewing court must remand in any case where counsel failed to strictly comply.” *People v. Prather*, 379 Ill. App. 3d 763, 768, 887 N.E.2d 44, 47 (2008). We generally consider only the certificate itself to determine compliance with 604(d); however, “we may consider the record where it undermines the certificate filed.” *People v. Neal*, 403 Ill. App. 3d 757, 760, 936 N.E.2d 726, 728 (2010). The proper remedy for counsel’s failure to strictly comply with Rule 604(d)’s affidavit requirement is to remand the cause to the trial court for the opportunity to file a new motion to withdraw the guilty plea and a new hearing on the motion. See *Bridges*, 2017 IL App (2d) 150718, ¶¶ 6, 12; see also *People v. Janes*, 158 Ill. 2d 27, 33, 630 N.E.2d 790 (1994).

¶ 17 Here, the record refutes defense counsel’s certification he “made any amendments to the motion necessary for adequate presentation of any defects in the [postplea] proceedings” as required by Rule 604(d). Counsel’s allegation regarding Mr. Gonzalez’s August 2017 statement to defendant at Menard did not appear in the record. As noted *supra*, Rule 604(d) requires all facts that do not appear of record to be supported by affidavit. Here, counsel had to attach an affidavit substantiating the new allegation in order to strictly comply with Rule 604(d). Counsel not only failed to attach an affidavit but did not present any other evidence in support of defendant’s motion, merely noting “the Court has previously heard testimony from my client who testified as to a head injury he suffered when he was a child” and directing the trial court to the single amendment. Because counsel failed to attach an affidavit as required, he did not adequately present defendant’s new allegation on remand. Moreover, the hearing on the motion was inadequate to satisfy Rule 604(d)’s strict compliance standard because defense counsel

offered virtually no argument or evidence in support of the motion. The hearing in this case “served little purpose other than to clear a procedural hurdle to [an] appeal.” *Bridges*, 2017 IL App (2d) 150718, ¶ 11.

¶ 18 We briefly note the State contends we should not remand this case even if defense counsel failed to strictly comply with Rule 604(d) because it would be a waste of judicial resources, citing *People v. Shirley*, 181 Ill. 2d 359, 692 N.E.2d 1189 (1998) (holding a defendant is only entitled to one remand where defense counsel twice failed to file a 604(d) certificate prior to or simultaneously with the hearing in the trial court). Unlike the defendant in *Shirley*, defendant in this case was not afforded “a full and fair second opportunity” to present his amended motion to withdraw his guilty plea because it contained a new allegation that was not supported by affidavit and defense counsel offered virtually no evidence or argument in support of the motion as required by Rule 604(d). *Id.* at 369. While we are mindful of the interest in preserving judicial resources, we nonetheless conclude remand is required.

¶ 19 III. CONCLUSION

¶ 20 We vacate the denial of defendant’s amended motion to withdraw his plea and remand the cause to the circuit court of Champaign 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.’ ” *Bridges*, 2017 IL App (2d) 150718, ¶ 12 (quoting *People v. Lindsay*, 239 Ill. 2d 522, 531 942 N.E.2d 1268 (2011)).

¶ 21 Vacated; cause remanded with directions.