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2020 IL App (3d) 180058-U

Order filed August 25, 2020

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2020

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois, |
| Plaintiff-Appellee, |) | |
| v. |) | Appeal No. 3-18-0058 |
| MITCHELL A. GAYER, |) | Circuit No. 13-CF-1088 |
| Defendant-Appellant. |) | Honorable Richard A. Zimmer, Judge, Presiding. |

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Lytton and Justice O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* Counsel's Rule 604(d) certificate was undermined by the record, requiring remand for new postplea proceedings.
- ¶ 2 Defendant, Mitchell A. Gayer, appeals following the denial of his alternative motions to withdraw his guilty plea or to reconsider his sentence. He argues that the record indicates postplea counsel failed to comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017). Due to postplea errors by counsel, we remand for new postplea proceedings after vacating the circuit court's denial of defendant's motions.

I. BACKGROUND

¶ 3

¶ 4

The State charged defendant via information with two counts of aggravated driving under the influence (DUI) (625 ILCS 5/11-501(a)(1), (d)(1)(F), (a)(2), (d)(1)(F) (West 2014)). Each count alleged that defendant proximately caused the deaths of Jamie Sedam and Clayton Carver while committing the offense of DUI on November 27, 2013.

¶ 5

On January 25, 2017, defendant pled guilty to an amended count II of the information. The amended charge alleged only that defendant caused the death of Sedam in the course of committing DUI. The State informed the court that “[t]here is no agreement with respect to sentencing as it relates to the amended count and we are going to have a full sentencing hearing.” Defendant’s plea was an *Alford* plea. See *North Carolina v. Alford*, 400 U.S. 25 (1970).

¶ 6

The matter proceeded to a full sentencing hearing on September 11, 2017, at which time the court imposed a sentence of eight years’ imprisonment.

¶ 7

On October 5, 2017, counsel—the same attorney who had represented defendant at his plea and his sentencing hearing—filed a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2017). In the certificate, counsel averred that she had, *inter alia*, “examined the trial court file and report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing.”

¶ 8

Five days later, counsel filed a “Motion to Withdraw Guilty Plea or in the Alternative Motion to Reconsider [*sic*] Sentence.” The motion initially noted that defendant had “entered an *Alford* plea to an amended count of aggravated [DUI].” From there, the motion was subdivided into two headings: “Motion to Withdraw Plea” and “Motion to Reconsider.” Under the first heading, which contained only three paragraphs, the motion stated: “A defendant who pleads guilty in exchange for a cap on the length of the sentence may not file a motion to

reconsider the sentence imposed within the range of the cap without first moving to withdraw the guilty plea.” In the next paragraph, the motion reads: “[T]he defendant hereby moves to withdraw his plea of guilty.”

¶ 9 Under the “Motion to Reconsider” heading, counsel argued at length that the circuit court had misapplied the law at sentencing when it declined to consider the sentencing rulings of other trial courts in similar cases. The circuit court denied the motion.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant concedes that counsel’s Rule 604(d) certificate was facially compliant with that rule. However, he argues that the subsequent postplea motion indicates that counsel was under the misapprehension that defendant entered a negotiated plea, rather than an open plea. Defendant contends that this casts doubt upon counsel’s certificate, specifically on the averment that she reviewed the report of proceedings on the guilty plea. Defendant therefore requests that we vacate the court’s order denying his postplea motion and remand the matter for new postplea proceedings.

¶ 12 The State argues that the postplea motion does not imply any misapprehension on the part of postplea counsel and that the compliant Rule 604(d) certificate is therefore unimpeached. Notably, this represents the entirety of the State’s argument on appeal. The State does not refute defendant’s assertions that, if there was such a misapprehension, (1) it undermines confidence in counsel’s Rule 604(d) certificate, and (2) the unreliability of the certificate thus requires remand for new postplea proceedings.

¶ 13 Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) sets forth a framework of rules concerning appeals from a plea of guilty. The rule generally mandates that where a defendant who has pled guilty wishes to challenge his sentence on appeal, he must first file a motion to

reconsider sentence; where he wishes to challenge the plea itself on appeal, he must first file a motion to withdraw that plea. Rule 604(d) provides a more specific rule pertaining to negotiated pleas:

“No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant *** files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending.” *Id.*

Finally, the rule dictates that postplea counsel file a certificate indicating that he or she has consulted with the defendant, “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 the necessary amendments to the required postplea motion. *Id.*

¶ 14 The filing of a Rule 604(d) certificate is a condition precedent to an appeal, and strict compliance with the rule is required. *People v. Dismuke*, 355 Ill. App. 3d 606, 608 (2005). Moreover, the rule provides substantive meaning to the appeal, as “any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived.” Ill. S. Ct. R. 604(d) (eff. July 1, 2017); *People v. Neal*, 403 Ill. App. 3d 757, 760-61 (2010).

¶ 15 Where no Rule 604(d) certificate, or a noncompliant certificate, is filed, a reviewing court must remand for new postplea proceedings and compliance with the rule. *E.g., People v.*

Hagerstrom, 2016 IL App (3d) 140559, ¶ 9. The same relief may be warranted where the record refutes counsel’s certifications. *People v. Love*, 385 Ill. App. 3d 736, 739 (2008).

¶ 16 In the present case, the legal premise for counsel’s postplea motion to withdraw the guilty plea states: “A defendant who pleads guilty in exchange for a cap on the length of the sentence may not file a motion to reconsider the sentence imposed within the range of the cap without first moving to withdraw the guilty plea.” Obviously, this legal premise was wholly irrelevant and inapplicable to defendant, who entered an open plea, or a plea that did not contemplate any sentencing considerations. See Ill. S. Ct. R. 604(d) (eff. July 1, 2017). Counsel’s postplea motion illustrates defense counsel’s underlying but mistaken theory that defendant entered into a negotiated agreement imposing a sentencing cap on the court. Furthermore, the postplea motion submitted by defense counsel was limited to a substantive argument challenging defendant’s sentence. However, according to Rule 604(d), that challenge could be raised without the requirement that defendant move to withdraw his plea. Thus, the motion to withdraw the plea itself is indicative of counsel’s misapprehension.

¶ 17 The State maintains that the postplea motion does not indicate any such misapprehension on the part of counsel. Its primary support for this argument, however, is as follows: “Despite defendant’s contention that defense counsel ‘thought’ defendant entered into a negotiated plea, defendant’s post-plea motion clearly demonstrates otherwise as it states defendant entered into an *Alford* plea.” An *Alford* plea is merely a guilty plea in which the defendant continues to proclaim his innocence. *People v. Church*, 334 Ill. App. 3d 607, 614 (2002); *Alford*, 400 U.S. at 37-38. Nothing in the nature of an *Alford* plea is indicative of whether the plea is negotiated or open. The State’s argument is therefore inapposite.

¶ 18 In her Rule 604(d) certificate, counsel averred that she had examined the report of proceedings of defendant’s plea. However, counsel’s incorrect belief that defendant had entered a negotiated plea casts serious doubt on that particular certification. The certification requirement of Rule 604(d) is intended to provide proof of counsel’s compliance with the substantive requirements of that rule. *Love*, 385 Ill. App. 3d at 738. In *Love*, the court wrote: “Being unable to rely on the Rule 604(d) certificate under the unusual circumstances of this case, we cannot comfortably say that defendant had a fair opportunity on remand to challenge his guilty plea.” *Id.* at 739. The same is true in the instant case. While counsel filed a compliant Rule 604(d) certificate, we are unable to rely on that certificate given the patent mistake on the face of defendant’s postplea motion. We therefore vacate the circuit court’s denial of defendant’s postplea motion and remand the matter for new postplea proceedings compliant with Rule 604(d).

¶ 19 III. CONCLUSION

¶ 20 The judgment of the circuit court of Rock Island County is vacated and the matter is remanded for further proceedings.

¶ 21 Vacated and remanded.