

2011 IL App (1st) 092859-U
No. 1-09-2859

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 9836
)	
DARNELL McCONNELL,)	Honorable
)	John J. Moran,
Defendant-Appellant.)	Judge Presiding.	

Quinn, P.J., delivered the judgment of the court.
Neville and Steele, JJ., concurred in the judgment.

ORDER

HELD: Trial court's failure to advise defendant of his post-conviction rights or to appoint counsel to aid defendant in his motion to withdraw his guilty plea required reversal and remand for further proceedings, including either appointment of counsel or obtaining defendant's waiver of counsel.

¶ 1 Defendant Darnell McConnell was originally charged with possession of a controlled substance, 1 or more but less than 15 grams of a substance containing heroin, with intent to deliver, which was a Class 1 offense. He subsequently entered a negotiated guilty plea to a Class 4 felony of possession of a controlled substance and was sentenced to four years in prison. Defendant filed a timely *pro se* motion to withdraw his guilty plea and vacate his sentence. That

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motion was denied without benefit of counsel, and this appeal ensued. Defendant contends, and the State concedes, that the trial court erred by failing to advise defendant of his right to appeal and the need to first file a motion to withdraw his guilty plea and by failing to either appoint counsel to aid defendant on the latter motion, or obtain defendant's waiver of counsel. The State concedes that defendant is therefore entitled to a remand so that, with the assistance of counsel, he may file a new motion to withdraw his guilty plea. But the State contests defendant's claim that on the record before us the trial court failed to substantially comply with the requirements of Supreme Court Rule 402 (eff. July 1, 1997), which would require reversing the denial of defendant's motion to withdraw his guilty plea and remanding to allow defendant to plead anew.

¶ 2 At a hearing on June 9, 2009, defendant was informed by the court that he had been charged with one count of possession of a controlled substance with intent to deliver, and the public defender was appointed to represent him. The matter was continued to June 23, 2009, at which time defendant's attorney addressed the court and stated that pursuant to a Rule 402 conference the court had indicated that on a reduced charge of possession of a controlled substance, it would sentence defendant to four years in prison. That Rule 402 conference was held off the record. After a colloquy with defendant and defense counsel pursuant to Rule 402, the court accepted defendant's plea and entered judgment on the finding, sentencing defendant to four years in the Illinois Department of Corrections.

¶ 3 As we have noted, the trial court did not then comply with Supreme Court Rule 605(c) (eff. Oct. 1, 2001) by advising defendant of his right to appeal, the need to first file a motion to withdraw his plea, and all the steps necessary to preserve any error. Nonetheless defendant subsequently filed a *pro se* motion to withdraw his guilty plea and vacate his sentence. This was denied at a hearing at which defendant appeared *pro se* and his former trial counsel was called by the State to refute defendant's allegations. The trial court then denied defendant's motion

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without informing him of his right to an attorney, including appointed counsel if he was indigent. The defendant contends, and the State agrees, that this was a violation of Supreme Court Rule 604(d) (eff. July 1, 2006) which required that the trial court appoint counsel to assist an indigent defendant with his post-plea motions or obtain defendant's waiver of counsel. This was reversible error (*People v. Griffin*, 305 Ill. App. 3d 326, 330 (1999); *People v. Ledbetter*, 174 Ill. App. 3d 234, 237-38 (1988)) and requires remand for a new hearing on defendant's motion to withdraw his plea, as well as the appointment of counsel to represent him, should he so desire.

¶ 4 The remaining question is whether we must also reverse defendant's conviction and remand for defendant to plead anew based upon his allegations that the trial court also failed to substantially comply with the requirements of Rule 402. To rule upon this contention would be premature, because defendant was not afforded his right to have counsel who would assist him in reviewing the transcript and record to ascertain any possible error. In *People v. Janes*, 158 Ill. 2d 27, 34 (1994), our supreme court rejected the contention that if the record showed no prejudice to defendant, despite the denial of his right to counsel under Rule 604(d), then there was no basis for a remand for defendant to file a new motion with the advice of counsel. See *People v. Smith*, 365 Ill. App. 3d 356, 360-61 (2006). Here, it is defendant who is contending that he can show prejudice on the basis of his *pro se* motion to withdraw his guilty plea. To avoid repetitive appeals and a waste of judicial resources, it remains necessary that the requirements of Rule 604(d) be followed and a defendant be afforded the right to have counsel aid him in filing a motion to withdraw his guilty plea.

¶ 5 Accordingly, we reverse the judgment of the trial court denying defendant's motion to withdraw his guilty plea and remand this cause for further proceedings as required by this order.

¶ 6 Reversed and remanded.