

2019 IL App (1st) 170572-U
No. 1-17-0572
Order filed September 12, 2019

Fourth Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 16601
)	
ALEXANDER EDWARDS-HINTON,)	Honorable
)	Anna H. Demacopoulos,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Reyes concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court's denial of defendant's *pro se* motion to vacate his guilty plea is reversed and the case is remanded for further postplea proceedings where the trial court failed to inquire whether defendant desired counsel to assist with his motion as required by Supreme Court Rule 604(d).
- ¶ 2 Defendant Alexander Edwards-Hinton appeals from an order of the circuit court of Cook County denying his *pro se* motion to vacate his guilty plea. On appeal, defendant contends that the trial court's ruling must be reversed and his case remanded for further postplea proceedings

because the court failed to either appoint counsel to assist him with his motion, or inquire whether he wished to waive counsel, as required by Supreme Court Rule 604(d) (eff. Dec. 11, 2014). We reverse and remand for further proceedings in compliance with Rule 604(d).

¶ 3 Defendant was charged with eight counts of first degree murder alleging that on August 5, 2010, he shot and killed Marcus Long while armed with a firearm or by personally discharging a firearm (720 ILCS 5/9-1(a) (West 2010)). On September 8, 2015, the State offered defendant a sentence of 35 years' imprisonment if he agreed to plead guilty to an amended charge of first degree murder with a deadly weapon. The trial court admonished defendant that, as charged in the indictment, he faced a minimum sentence of 45 years' imprisonment to be served at 100% and a maximum sentence of natural life imprisonment. The court allowed defendant to discuss the offer with his mother. Thereafter, defendant asked the court if it would reduce the offer from 35 to 30 years. The court denied defendant's request. Defendant agreed to accept the plea offer.

¶ 4 At the plea hearing, the State amended count I to allege that defendant intentionally or knowingly killed Long with a deadly weapon. Defendant pled guilty to the amended charge. The court admonished defendant of the possible penalties he faced and that he would be required to serve three years of mandatory supervised release (MSR). Defendant confirmed that he understood the nature of the charges and the possible penalties. The court verified that defendant understood that he was foregoing certain rights by pleading guilty, including the right to a trial. Defendant denied that anyone had forced or threatened him to plead guilty and testified that he was pleading guilty of his own free will.

¶ 5 The State provided the factual basis for the plea, stating that on August 5, 2010, in Hazel Crest, defendant and Long were engaged in a verbal argument which escalated. As a result,

defendant caused Long's death by using a deadly weapon. At trial, witnesses would identify defendant in court, and the medical examiner would confirm that the manner of death was homicide. The defense stipulated to the factual basis.

¶ 6 The trial court found that defendant was pleading guilty freely and voluntarily. The court accepted defendant's plea and entered a guilty finding on the amended count I. In aggravation, the State noted that defendant had a 2009 robbery conviction and a recent aggravated battery of a police officer conviction from earlier in the year in a 2013 case. In mitigation, defense counsel argued that defendant was taking responsibility for what had occurred, that he turned himself in when he learned that the police were looking for him, and that he was a young man. Defendant waived his right to a presentence investigation report. In allocution, defendant apologized to his mother and to Long's parents. Defendant again pleaded with the court to reduce the sentence by five years. The trial court declined and sentenced defendant to the agreed term of 35 years' imprisonment and 3 years of MSR. The court admonished defendant of his appeal rights pursuant to Supreme Court Rule 605(c) (eff. Oct. 1, 2001). In doing so, the court advised defendant that before he could file an appeal, within 30 days he must file a written motion to vacate his guilty plea stating all of the reasons why he wished to do so. The court further stated "If you cannot afford to hire an attorney or a copy of the transcript, I'll provide both of those for you free of charge."

¶ 7 On October 1, 2015, defendant filed a timely *pro se* motion to withdraw his guilty plea and vacate sentence pursuant to Rule 604(d). Defendant alleged that he was not mentally competent to enter a guilty plea because on the day of the plea hearing he did not receive his proper medications for his "mental health problems." Defendant further alleged that his plea was

“the result of coercion (force or threat)” because he did not understand what was happening during the plea hearing and was told by the trial court that if he did not accept the plea offer he would be sentenced to 45 years to natural life. Defendant also alleged that his plea was coerced because his attorney repeatedly told him that his odds of winning at trial were “zero to none,” that he should accept the plea offer, and if he did not, he would be found guilty at trial.

¶ 8 On December 18, 2015, the trial court held a hearing on defendant’s *pro se* motion. The court noted that trial counsel was present in the courtroom. The court stated to counsel “I know that you did not participate in the filing of the plea. However, I am going to ask that you just stand in with Mr. Hinton for purposes of the motion, and I’m going to handle this as a Krankel hearing pretty much.” Counsel joined defendant at counsel’s table, but did not speak during the hearing. The court told defendant that it had read his *pro se* motion and asked him if there was anything that he wanted to say regarding his motion. Defendant stated that he felt that he was coerced, forced and rushed to make the plea because he was given no time to think about it. He stated that on the day of the plea hearing, he was unsure about what he wanted to do, everyone kept asking him what he was going to do, and the court told him “[i]t’s either this or that.”

¶ 9 The court stated that defendant’s case had been pending for nearly five years, and that his plea was not rushed. It further stated that the parties had repeatedly indicated that they were in negotiations, and on the day of the plea, the case was set for trial with witnesses ready to testify. The court pointed out that it had allowed defendant to speak with his mother, and defendant then decided to accept the State’s offer. The court also noted that defendant asked the court to reduce the sentence to 30 years, which it had no authority to do. The court stated that it had read the transcript from the plea hearing which showed that defendant answered all of the court’s

questions appropriately and understood everything that occurred during the hearing. The court noted that defendant alleged in his motion that he had not taken his medications on the day of the plea. It found, however, that during the plea, defendant maintained eye contact with the court, listened to what the court said, and was responsive to its questions. The court found that defendant was well aware of the facts in the case, and there was no indication that he did not understand the nature of the proceedings.

¶ 10 In regards to defendant's claim of coercion by trial counsel, the court explained that counsel was responsible for advising defendant as to whether or not he should accept the plea offer and that the evidence against him was very strong. The court further explained that if counsel advised defendant to accept the State's offer, which was 10 years less than the mandatory sentence, and there was a possibility he could go to prison for life, that was what a good attorney is supposed to do. The court stated that for those reasons, it was not necessary for the court to appoint another attorney to review the record for purposes of a *Krankel* hearing.

¶ 11 The court concluded that defendant entered his guilty plea knowingly and voluntarily, and that all of his constitutional rights were protected. Accordingly, the trial court denied defendant's *pro se* motion to withdraw his guilty plea.

¶ 12 On appeal, defendant contends that the trial court's ruling must be reversed and his case remanded for further postplea proceedings because the court failed to either appoint counsel to assist him with his motion, or inquire whether he wished to waive counsel, as required by Rule 604(d). Defendant asserts that the trial court had an "automatic duty" to appoint him counsel, or ask if he was knowingly waiving his right to counsel. Defendant further argues that trial

counsel's presence at the hearing did not obviate the court's obligations under Rule 604(d), especially because he raised a claim of ineffective assistance of trial counsel in his motion.

¶ 13 The State responds that the trial court complied with Rule 604(d) where the record shows that defendant was represented by counsel at the hearing, which obviated the need for the court to make further inquiries under the rule's appointment-of-counsel provision. The State claims that nothing in the record suggests that counsel was no longer defendant's attorney after the plea hearing where there is no motion to withdraw as counsel. The State further asserts that the court's review of defendant's ineffective assistance of counsel claim under *Krankel* suggests that counsel's representation of defendant was ongoing. The State argues that if defendant was not represented by counsel at the postplea hearing, the court would not have had to determine if *Krankel* required the appointment of independent counsel. Alternatively, the State argues that if this court determines that the trial court violated Rule 604(d), counsel should be appointed to review defendant's voluntary plea claims, but not his claim of ineffective assistance of counsel because the trial court's disposition of that claim pursuant to *Krankel* was proper.

¶ 14 In reply, defendant argues that counsel was merely present in the courtroom, and that Rule 604(d) demands more than counsel's mere physical presence. Defendant argues that counsel was supposed to be appointed after defendant filed his motion. He further argues that if counsel had, in fact, been appointed to represent him, counsel would have filed a certificate as required by Rule 604(d). In addition, defendant argues that on remand, counsel's appointment should not be limited because, due to the court's failure to comply with the rule, its ruling on his claim of ineffective assistance of counsel cannot stand. Defendant asserts that to hold otherwise

would defeat the purpose of ensuring that defendants receive assistance of counsel when filing motions to withdraw their guilty pleas.

¶ 15 The trial court's compliance with a supreme court rule is a question of law which we review *de novo*. *People v. Dominguez*, 2012 IL 111336, ¶ 13. At the time that defendant filed his *pro se* motion to withdraw his guilty plea, Rule 604(d) provided, in relevant part:

“No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court *** if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.

* * *

The motion shall be in writing and shall state the grounds therefor. *** The motion shall be presented promptly to the trial judge by whom the defendant was sentenced[.] *** The trial court shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel.

If the defendant is indigent, the trial court shall order a copy of the transcript as provided in Rule 402(e) be furnished the defendant without cost. The defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by mail 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 report of proceedings of the plea of guilty, 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. Dec. 11, 2014).

¶ 16 Supreme Court Rule 605(c) (eff. Oct. 1, 2001) serves as a corollary to the requirements of Rule 604(d), and provides the admonishments the trial court must give a defendant after judgment is entered upon a negotiated guilty plea. *Dominguez*, 2012 IL 111336, ¶ 13. Pursuant to Rule 605(c), the trial court must admonish the defendant about how to perfect an appeal, including the requirement that he first file a written motion to withdraw his guilty plea stating the grounds for such motion. The court must also admonish the defendant “that if the defendant is indigent, *** counsel will be appointed to assist the defendant with the preparation of the motions.” Ill. S. Ct. R. 605(c).

¶ 17 Our supreme court has stated that “[o]nce a *pro se* defendant notifies the circuit court that he wishes to withdraw his guilty plea and appeal, the protections offered by Rule 604(d), *i.e.*, the appointment of counsel and the attorney certificate, are automatically triggered.” *People v. Edwards*, 197 Ill. 2d 239, 256 (2001). The court explained that due to the strict waiver requirements of Rule 604(d), fundamental fairness dictates that a defendant be given a full opportunity to explain his allegations and have the assistance of counsel in preparing his motion. *Id.* It would be contrary to the purpose of Rules 604(d) and 605(c) to draw a legal conclusion about a defendant’s motion to withdraw his plea before he has had an opportunity to consult with an attorney to ensure that there is “legally ‘adequate presentation of any defects’ in his guilty plea proceedings.” *People v. Smith*, 365 Ill. App. 3d 356, 361 (2006) (quoting *People v. Barnes*, 291 Ill. App. 3d 545, 551 (1997)).

¶ 18 “ ‘A defendant is entitled to representation at every critical stage of any trial proceeding, and this right to counsel attaches when a defendant files a motion to withdraw his guilty plea.’ ” *People v. Young*, 355 Ill. App. 3d 317, 324 (2005) (quoting *People v. Cabrales*, 325 Ill. App. 3d 1, 6 (2001)). Accordingly, the trial court is obligated to appoint counsel to represent the defendant in his postplea proceedings, even without a specific request from the defendant, unless the court determines that the defendant knowingly waived his right to appointed counsel. *Smith*, 365 Ill. App. 3d at 359; *People v. Hinton*, 362 Ill. App. 3d 229, 233 (2005).

¶ 19 Here, the record reveals that the trial court did not appoint counsel to represent defendant when he filed his *pro se* motion to withdraw his guilty plea, nor did the court inquire whether defendant wished to waive counsel for his postplea proceedings. Consequently, the trial court failed to comply with the requirements of Rule 604(d).

¶ 20 On October 1, 2015, defendant filed a timely *pro se* motion to withdraw his guilty plea and vacate his sentence pursuant to Rule 604(d). On December 18, 2015, the trial court held a hearing on defendant’s motion. At the hearing, the court noted that trial counsel was present in the courtroom. The court stated to counsel “I know that you did not participate in the filing of the plea. However, I am going to ask that you just stand in with Mr. Hinton for purposes of the motion, and I’m going to handle this as a Krankel hearing pretty much.” Counsel joined defendant at counsel’s table. However, counsel never spoke throughout the entire hearing. There is no indication in the record that counsel ever read defendant’s motion, and counsel did not present any argument on defendant’s behalf. Counsel did not consult with defendant, but instead, was merely present at counsel’s table during the hearing. Consequently, counsel was not functioning as the counsel required by Rule 604(d). The trial court asked defendant if there was

anything he wanted to say regarding his motion. Defendant made a few brief statements asserting that he was coerced, forced and rushed to make the plea. The trial court found no merit in defendant's claims and stated that for those reasons, it was not going to appoint another attorney to review the record for purposes of a *Krankel* hearing. Accordingly, the court denied defendant's motion.

¶ 21 The record thereby shows that defendant was denied his right to counsel. When the trial court received defendant's *pro se* motion, its obligation to appoint counsel to represent defendant in his postplea proceedings was automatically triggered. *Edwards*, 197 Ill. 2d at 256. Once appointed, counsel would have been responsible for consulting with defendant to ascertain his contentions of error, examining the trial court file and report of proceedings of the guilty plea, and amending the motion as necessary to adequately present any defects in the plea proceedings. Ill. S. Ct. R. 604(d). Here, defendant was deprived of his opportunity to consult with counsel and amend his motion to ensure that his claims of error were adequately presented. *Smith*, 365 Ill. App. 3d at 361. Because the trial court denied defendant this opportunity, this case must be remanded for further postplea proceedings in compliance with the requirements of Rule 604(d).

¶ 22 For these reasons, we reverse the judgment of the circuit court of Cook County denying defendant's motion to withdraw his guilty plea and remand the cause for further proceedings.

¶ 23 Reversed and remanded.