

**NOTICE**  
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 230880-U

NO. 4-23-0880

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
July 23, 2024  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Winnebago County
MARC W. BLAIR,	)	No. 19CF3304
Defendant-Appellant.	)	
	)	Honorable
	)	Debra D. Schafer,
	)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.  
Justices Lannerd and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, finding defendant’s attorney filed a compliant Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) certificate because she made such amendments to defendant’s postplea motion as were necessary for an adequate presentation of the alleged defects in the court proceedings.

¶ 2 Defendant, Marc Blair, pleaded guilty to one count of child pornography (720 ILCS 5/11-20.1(a)(1)(vii) (West 2018)) and two counts of predatory criminal sexual assault (*id.* § 11-1.40(a)(1)). Later, he filed a *pro se* motion to withdraw his guilty plea, claiming his attorney was ineffective because he failed to move to suppress photographs police recovered from his phone. A new attorney was assigned to represent defendant and that postplea attorney filed an amended motion to withdraw the guilty plea. She also filed a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2017), stating she amended defendant’s motion as was “necessary for the adequate presentation of any defects” in the court proceedings. After a hearing, the trial court

denied defendant's motion, finding there was an insufficient basis to conclude the photographs would have been suppressed, so his prior attorney had not been ineffective.

¶ 3 Defendant appeals, arguing his postplea attorney failed to sufficiently amend his motion to withdraw the guilty plea, so her Rule 604(d) certificate stating she had done so was invalid. Defendant asks us to vacate the trial court's judgment and remand with instructions that he be allowed to file a new motion to withdraw his guilty plea and that the trial court conduct a hearing on the new motion.

¶ 4 We affirm.

¶ 5 I. BACKGROUND

¶ 6 In 2019, 13-year-old S.W. told his mother defendant molested him and photographed him with his cell phone. Police interviewed S.W., spoke to defendant, and took possession of defendant's cell phone. Defendant was indicted, and in March 2021, he pleaded guilty to two counts of predatory criminal sexual assault and one count of child pornography. The trial court sentenced defendant to nine years' incarceration for each count of sexual assault and seven years for the child pornography count, with the sentences to be served consecutively.

¶ 7 Soon after sentencing, defendant filed *pro se* a motion for his counsel to withdraw, a motion to reconsider his sentence, and a motion to withdraw his guilty plea. Defendant claimed his trial attorney had been dishonest and ineffective. In his motion and a supporting affidavit, he claimed his attorney was ineffective because he failed to move to suppress photographs police recovered from his phone. The trial court conducted a *Krankel* hearing (see *People v. Krankel*, 192 Ill. 2d 181 (1984)), but it found no neglect.

¶ 8 A new assistant public defender was appointed for defendant. This postplea attorney filed an amended motion to withdraw the guilty plea and vacate the sentence. The

amended motion reiterated defendant's claim his prior attorney was ineffective for failing to move to suppress evidence recovered from defendant's phone. In the amended motion, defendant claimed he had refused to consent to a search of his phone, but police took his phone and placed it in a Faraday box. Defendant further claimed police lied to his girlfriend to trick her into telling them the passcode to his phone. Finally, defendant claimed police unlocked his phone and changed the phone's settings before they obtained a warrant to search the phone the following day. Defendant argued police illegally searched his phone when they took it without a warrant and when they obtained the passcode under false pretenses and accessed the phone without a warrant. Defendant argued his previous attorney was ineffective in failing to move to suppress photographs recovered from the phone, so he sought to vacate his sentence and guilty plea based on ineffective assistance of counsel.

¶ 9 Postplea counsel also filed a Rule 604(d) certificate. In the certificate, postplea counsel certified she "consulted with the Defendant" to "ascertain the defendant's contentions of errors," she "examined the trial court file and report of proceedings," and she "made any amendments to the motion necessary for the adequate presentation of any defects in those proceedings."

¶ 10 The trial court conducted a hearing on defendant's amended motion to withdraw his guilty plea. Defense counsel submitted a police report into evidence. Defendant testified he told police they could not search his phone without a warrant. Later, his girlfriend told him police told her they lost or forgot the passcode to the phone, so she gave them the passcode. He testified she did not have his permission to give police the passcode to his phone. He testified he had reviewed the police report and noticed police accessed the phone before obtaining a warrant and

he had asked his first attorney to move to suppress the photographs, but his attorney had refused to do so.

¶ 11 The trial court heard arguments from defense counsel and the State. Defendant's postplea attorney argued police improperly seized the phone without a warrant and illegally searched the phone before obtaining a warrant by using the passcode they improperly obtained from defendant's girlfriend. The State argued defendant waived all constitutional defects by pleading guilty, police had sufficient reason to seize the phone, police acted properly in learning defendant's passcode, and exigent circumstances justified altering the phone's settings and putting it in a Faraday box to prevent the phone's memory from being wiped remotely.

¶ 12 The trial court denied defendant's amended motion. It found defendant had not shown anything "irregular" about the affidavit supporting the police officers' request for the search warrant. The court found even if police acted improperly in obtaining the passcode, the search warrant did not rely on those improper actions, so the warrant was valid. Later, the court added S.W. had told police defendant took pictures of him naked on his cell phone and showed the minor pornography on his phone. Citing *U.S. v. Place*, 462 U.S. 696 (1983), and *U.S. v. Burgard*, 675 F.3d 1029 (7th Cir. 2012), the court found police could seize property temporarily without a warrant. The court found the police report did not state precisely when the officers searched the phone, but the paragraph in the report detailing the officers' findings comes after the paragraph that says the police obtained a search warrant, so the court thought it reasonable to assume the search was executed after the warrant. After the court issued its ruling, defendant's attorney said, "I believe that if we were to have had a hearing, we would have been able to establish that the search occurred beforehand."

¶ 13 Defendant filed a motion to reconsider, which the trial court denied. The court also reduced defendant's sentences for both counts of predatory criminal sexual abuse to seven years each.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant argues his postplea attorney did not file a valid Rule 604(d) certificate. Rule 604 governs postplea motions, and it states as follows:

“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 unless the defendant is filing the motion *pro se* from a correctional institution, in which case the defendant may submit, in lieu of an affidavit, a certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109) \*\*\*.

\*\*\* 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).

Strict compliance with Rule 604(d) is required. *People v. Neal*, 403 Ill. App. 3d 757, 760 (2010). Whether counsel complied with Rule 604(d) is a question of law, which we review *de novo*. *People v. Gorss*, 2022 IL 126464, ¶ 10.

¶ 17 Defendant argues his postplea attorney's Rule 604(d) certificate was invalid. Although he admits it was facially compliant, he contends his attorney did not, in fact, make "any amendments to the motion necessary for adequate presentation of any defects" in the court proceedings. Ill. S. Ct. R. 604(d) (eff. July 1, 2017). In defendant's *pro se* motion to withdraw his guilty plea, he claimed his trial attorney had been ineffective in failing to move to suppress photographs recovered from his phone. Defendant claims his postplea attorney should have amended his motion to show police searched his phone before obtaining a warrant. At the end of the hearing on defendant's motion, defendant's attorney said, "I believe that if we were to have had a hearing, we would have been able to establish that the search occurred beforehand." Based on this statement, defendant argues his attorney could have amended the motion to show police illegally searched his phone before obtaining a warrant, but she did not, so her certification that she had made necessary amendments to defendant's motion was false and the Rule 604(d) certification was not compliant.

¶ 18 Defendant cites *People v. Suaste-Gonzalez*, 2023 IL App (2d) 220323, *People v. Love*, 385 Ill. App. 3d 736 (2008), and *People v. Bridges*, 2017 IL App (2d) 150718. In *Suaste-Gonzalez*, the defendant pled guilty to sexual assault. *Suaste-Gonzalez*, 2023 IL App (2d) 220323, ¶ 5. After his plea, his attorney filed a facially valid Rule 604(d) certificate. *Id.* ¶ 13. In doing so, the attorney certified she had " '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.' " *Id.* ¶ 23 (quoting Ill. S. Ct. R. 604(d) (eff. July 1, 2017)). The attorney later acknowledged she had not

yet received and reviewed any transcripts from the case. *Id.* ¶ 14. The appellate court found the attorney had not complied with Rule 604(d) because she had not read the transcripts. *Id.* ¶ 28. Similarly, in *Love*, the defendant moved to withdraw his plea of guilty to a single count of aggravated discharge of a firearm. *Love*, 385 Ill. App. 3d at 736. His attorney filed a Rule 604(d) certificate stating she had examined the report of proceedings, but the attorney later commented she had not yet reviewed the court transcripts. *Id.* at 737. The appellate court found the attorney's certificate did not satisfy the requirements of Rule 604(d) because she had not actually reviewed the transcripts. *Id.* at 738.

¶ 19 Finally, in *Bridges*, the defendant moved to withdraw his plea of guilty to one count of aggravated battery with a firearm. *Bridges*, 2017 IL App (2d) 150718, ¶ 1. The court appointed an attorney, who filed an amended motion and Rule 604(d) certificate. *Id.* ¶ 2. The amended motion alleged defendant had pleaded guilty because he was not properly medicated and because someone had threatened his family. *Id.* The attorney did not support the amended motion with any affidavits, and at the hearing on the motion, the attorney offered no exhibits or testimony. *Id.* ¶ 9. The trial court denied the amended motion, but the appellate court vacated the order and remanded, finding the record demonstrated the defendant's attorney had not made amendments to the defendant's motion that were necessary for an adequate presentation of the defects in the proceedings. *Id.* ¶¶ 9, 12.

¶ 20 We do not find defendant's argument persuasive, and we affirm the trial court's judgment. First, no evidence in the record nor any argument from defendant shows specifically what his attorney should have added to the motion to withdraw the plea. Although postplea counsel said she believed she could have shown police searched the phone before they obtained a warrant, defendant has not demonstrated this statement is true, nor has he offered any argument or basis to

support this claim. If there are facts or arguments the attorney should have included, defendant does not indicate what they are. We are not persuaded by purported information or arguments we do not know about.

¶ 21 Second, the trial court found defendant's trial attorney was not ineffective for failing to move to suppress because it would have denied the motion to suppress even if police acted improperly before obtaining the warrant. S.W. had told police defendant used his phone to take photographs of him naked and show him pornography. The court found police had probable cause to seize and search the phone and their basis for probable cause did not depend on any information obtained from the phone itself. Defendant did not refute the basis for the search warrant, so the warrant was valid. Even if defendant had shown police accessed the phone before obtaining the warrant, the court's reasoning still would have applied. Further elaboration of defendant's argument in the amended motion would not have changed the court's ruling, so additional amendment was not "necessary for adequate presentation" of defendant's argument. Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

¶ 22 Finally, even if postplea counsel had additional evidence to confirm when the officers searched the phone, she could have introduced this evidence at the hearing on the amended motion. The amended motion clearly presented defendant's argument. Defendant has not claimed the trial court prevented postplea counsel from calling any other witnesses or introducing additional evidence to support his claim. If postplea counsel did, in fact, have further evidence to prove an illegal search occurred, her failure to introduce that evidence at the motion hearing does not demonstrate the amended motion was defective. Any potential defect was with postplea counsel's performance at the hearing, not with the arguments made in the amended motion. Therefore, defendant's attorney did not fail to make amendments to the motion that were



“necessary for adequate presentation” of defendant’s claim and her Rule 604(d) certification was sufficient. Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

¶ 23 *Bridges* is easily distinguishable. There, postplea counsel’s amended motion introduced new allegations that the existing record did not substantiate. *Bridges*, 2017 IL App (2d) 150718, ¶ 9. The attorney provided no affidavits, introduced no exhibits, and called no witnesses to testify. *Id.* Here, defendant had already filed an affidavit, and the trial court had already conducted a *Krankel* hearing involving the same subject as defendant’s motion to withdraw his guilty plea—the allegation that his prior attorney failed to move to suppress photographs police recovered from his phone after an allegedly illegal search. Moreover, at the hearing on the amended motion to withdraw the guilty plea, defendant’s postplea attorney provided the police report and defendant testified in support of his allegations. Unlike in *Bridges*, where the amended motion asserted entirely new factual claims with no evidentiary support, here, defendant’s postplea counsel elaborated on his existing claim and supported the allegations with evidence.

¶ 24 Similarly, we find both *Suaste-Gonzalez* and *Love* inapplicable. Both of those cases involved a simple factual question. In each case, the defendant’s attorney certified she had received and reviewed the court transcripts, but she had not, so she failed to comply with Rule 604(d). *Suaste-Gonzales*, 2023 IL App (2d) 220323, ¶ 28; *Love*, 385 Ill. App. 3d at 738. But here, defendant argues his attorney did not make changes to the motion that were “necessary for adequate presentation” of his claim. Ill. S. Ct. R. 604(d) (eff. July 1, 2017). This requires us to evaluate what changes were “necessary” and what presentation was “adequate.” Defendant has not shown he was prevented from making his argument because of defects in his motion, and he has not shown any further amendment to his motion would have affected the trial court’s ruling. We therefore find no deficiency in his attorney’s Rule 604(d) certificate.

¶ 25

### III. CONCLUSION

¶ 26

For the reasons stated, we affirm the trial court's judgment.

¶ 27

Affirmed.