

NOTICE

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2026 IL App (5th) 241136-U

NOS. 5-24-1136, 5-24-1137, 5-24-1138 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Macon County.
	)	
v.	)	Nos. 18-CF-1708, 18-CF-1709,
	)	18-CF-1715
BYRON D. THEUS JR.,	)	
	)	Honorable Jeffrey S. Geisler,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HACKETT delivered the judgment of the court.
Justices Vaughan and Bollinger concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm defendant's convictions and sentence where postplea counsel filed certificates of compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) which are not refuted by the record.
- ¶ 2 Following the entry of a guilty plea, defendant, Byron D. Theus Jr., was convicted of one count of home invasion (720 ILCS 5/19-6(a)(3) (West 2016)) and two counts of aggravated kidnapping (*id.* §§ 10-1(a)(2), 10-2(a)(6)) and was sentenced to 33 years in the Illinois Department of Corrections, to be followed by 3 years of mandatory supervised release. On appeal, defendant argues that this court must remand for new postplea proceedings where his postplea counsel failed to comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017). For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 This case concerns three home invasions which took place on or about November 20, 2018, in Macon County, Illinois. On November 30, 2018, the charges for each incident were issued via information in three separate cases.

¶ 5 In case No. 18-CF-1708, in connection with an incident at the North Summit Avenue dwelling of Willie Green, defendant was charged with three counts of aggravated kidnapping, two counts of home invasion, and one count each of armed violence, armed robbery, residential burglary, unlawful possession of a stolen/converted firearm, and aggravated battery.

¶ 6 In case No. 18-CF-1709, in connection with an incident at the North 33rd Street dwelling of Peter D. Vercellino, defendant was charged with four counts of home invasion, four counts of aggravated battery, two counts of armed robbery, two counts of armed violence, and one count each of residential burglary and unlawful possession of a stolen/converted firearm.

¶ 7 In case No. 18-CF-1715, in connection with an incident at the Shadow Lane dwelling of Jeffrey Viccone, defendant was charged with two counts of home invasion, two counts of aggravated kidnapping, and one count each of armed violence, armed robbery, residential burglary, and aggravated battery.

¶ 8 On May 28, 2019, the trial court joined all three cases for trial. On June 4, 2021, defendant pled not guilty and requested a jury trial in all three cases. On September 30, 2021, defendant filed a motion to suppress statements in all three cases, arguing that his statements in interrogations after his arrest were involuntarily given. Defendant contended that, due to his condition at the time, he was unable to appreciate and understand the full meaning of his *Miranda*¹ rights, and that questioning continued even after he asked for an attorney.

¹See *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶ 9 During a January 3, 2022, pretrial motion hearing, defendant stipulated to the following facts. The first home invasion occurred at 7:40 p.m. at the Viccone residence, 474 Shadow Lane. The second one occurred at 7:58 p.m. at the Green residence, 1865 North Summit Avenue. The final home invasion occurred at 9:59 p.m. at the Vercellino residence, 484 North 33rd Street. On May 23, 2022, defendant waived his right to a jury trial and requested bench trials on all three cases.

¶ 10 On June 21, 2022, the trial court held a hearing. The case centering on the Vercellino home invasion (18-CF-1709) was set for bench trial. At the outset, the State dismissed two aggravated battery counts. The trial court then went over the remaining charges in the case set for trial, as well as their applicable sentencing ranges. Defendant indicated that he understood the range of penalties. The trial court asked the State if an offer had ever been tendered to the defense. The State answered that an offer had been sent to defense counsel on June 22, 2021. The offer was for defendant to plead guilty to home invasion in 18-CF-1709, to aggravated kidnapping in 18-CF-1715, and to aggravated kidnapping in 18-CF-1708. The pleas would all be open. In exchange, the State would not proceed on the other charges and would not ask for permissive consecutive sentencing. Defendant indicated that he understood the State's offer, and that the ultimate decision to accept or reject the offer was up to him. Defense counsel confirmed to the trial court that defendant had rejected the offer. However, defendant had also asked for a brief recess so that he could speak to his mother. The trial court granted the recess.

¶ 11 After the recess, defense counsel told the trial court that defendant had changed his mind and now elected to accept the State's open guilty plea offer. The State proffered evidence on the element of great bodily harm in the home invasion count in 18-CF-1709, and the court found great bodily harm. The court asked defendant if he understood "that an open plea means the [c]ourt is

the one who is going to determine what your sentence will be.” Defendant indicated that he understood. The trial court then went through the range of sentences on each of the three counts to which the defendant was pleading guilty. Defendant indicated that he understood the possible range of penalties on each count.

¶ 12 The trial court then explained to defendant that if he pled guilty, there would not be a trial, and he would be giving up several constitutional rights, which the trial court listed. Defendant indicated that he understood, and that he was pleading guilty knowingly and voluntarily. Defendant confirmed that he had not been forced or threatened to plead guilty, and that no promises other than the plea terms had been made to him. Defendant confirmed that the trial court had not initiated the plea negotiations, that defense counsel had answered his questions to his satisfaction, and that he had enough time to speak with defense counsel about his decision.

¶ 13 The State offered extensive factual bases for the counts to which the defendant was pleading guilty. The trial court then accepted defendant’s open guilty pleas to the home invasion count in 18-CF-1709 and the aggravated kidnapping counts in 18-CF-1708 and 18-CF-1715. The court reiterated the sentencing range for the offenses and ordered presentence investigations. Defendant confirmed that the court had gone through the range of penalties and rights he had regarding the counts to which he was pleading guilty, and that defendant understood them. Defendant confirmed that he was knowingly and voluntarily pleading guilty to all three counts.

¶ 14 On August 11, 2022, the trial court held the sentencing hearing. Several victims read impact statements for the court describing the trauma they and their families had endured, and the ongoing severe psychological repercussions of defendant’s crimes. Defendant’s mother, Corey Mackins, then testified that she believed defendant’s actions were due to substance abuse and his friendship with “the wrong people.” Letters from three of defendant’s other family members were also

admitted into evidence. Defendant then made a statement expressing dismay and remorse for his actions, stating that he had matured in jail, and asked for a second chance. Defendant told the court that his “life just took a turn for the worst, being around the wrong people,” and vowed to “never ever take another drug again.”

¶ 15 In recommending a sentence, the State argued that the only applicable mitigating factor was that defendant had no prior criminal history. In aggravation, the State stressed that defendant’s conduct caused serious harm to the victims and their families, including severe ongoing psychological symptoms. The State also posited that since the defendant and his codefendants went on a “spree” of home invasions, defendant was not “unlikely to commit this crime again.” The State recommended a sentence of 45 years, arguing that a lower sentence would “deprecate the seriousness of the offense” and be “inconsistent with the ends of justice.” The State also opined that such a sentence was “necessary to deter others.”

¶ 16 Defense counsel emphasized defendant’s remorse and involvement with drugs at the time of the incidents. Counsel argued that defendant “was impaired, was under the influence, and he committed crimes that nobody could have ever expected would have happened.” While this did not excuse defendant’s behavior, counsel posited that it tempered the type of sentence that should be imposed. Counsel asked the court to consider that defendant’s conduct was facilitated by someone other than himself. Counsel described defendant as “a follower” who was “with a gang of people that night,” and who simply lacked “the brains, the wherewithal, the character to extricate himself from this.” Counsel argued that defendant “was not a ringleader, and he was not somebody who was actively involved with this until these other folks put this in play.” Counsel also believed that defendant’s behavior was unlikely to reoccur. Finally, defense counsel stressed that defendant had “no history of prior delinquency, no criminal activity,” and had lived a law-abiding life before

the charged crimes. Counsel asked the court to consider a sentence between 25 to 30 years. Counsel asserted that, unlike a sentence of 45 years, a sentence of 25 years would consider the seriousness of the crimes and protect the victims while still acknowledging that defendant was “not beyond redemption.”

¶ 17 The trial court stated that it had considered aggravating and mitigating factors, the arguments of counsel, the statement of defendant, the victim impact statements, the evidence presented, and the presentence reports in all three cases. In mitigation, the court acknowledged that defendant pled guilty and had no prior record. The court declined to find as a mitigating factor that defendant’s conduct was facilitated by others. In aggravation, the court found that harm had been caused, and a deterrent was “obviously” needed. The court emphasized its awareness that “the victims’ lives [would] never be the same as a result” of defendant’s “senseless acts of violence.” The court found the “spree” to be “extremely disturbing,” and concluded that a minimum sentence would deprecate the seriousness of defendant’s offenses. The court sentenced defendant to concurrent sentences of 33 years on each of the three cases. Specifically, on each case, the defendant was sentenced to 18 years with a 15-year firearm enhancement. Additionally, there was a three-year mandatory supervised release term. The court then addressed defendant’s appeal rights and procedures. In part, the court told the defendant: “Prior to taking an appeal, you must file in the trial court within 30 days of today’s date a written motion asking to have the trial court reconsider the sentence or to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth grounds for the motion.” The court also explained that, “[i]n any appeal taken from the judgment on the plea of guilty, any issue or claim of error not raised in the motion to reconsider the sentence or to vacate the judgment and to withdraw the plea of guilty shall be deemed waived.” Defendant indicated that he understood his appeal rights.

¶ 18 On August 23, 2022, defendant filed a motion to reconsider his sentence in each of the three cases, arguing that the trial court had erred by not granting defendant's motion to suppress his statement and by failing to properly consider mitigating factors in sentencing. For a time, no proceedings on this motion took place, and the motion remained pending before the trial court.

¶ 19 Approximately two years later, on October 15, 2024, defendant filed a motion to withdraw guilty plea and vacate the judgment in each of the three cases. The motions explained that, "after reflecting on the quality and quantity of [the] evidence," defendant believed "that the evidence [could not] be connected to him[,] nor [could] he be convicted based on the evidence presently available to the State." Defendant also asserted that "he did not understand the full ramifications or consequences of his [g]uilty [p]lea," and that his sentence was excessive. That same day, defense counsel filed certificates pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) in all three cases.

¶ 20 On October 16, 2024, the trial court held a hearing on the defendant's motions to withdraw guilty plea in all three cases. The court first noted that defense counsel had filed Rule 604(d) certificates in each case. The State asked the court whether the hearing would be on the motion to reconsider, which had been filed on August 23, 2022, as well as on the motion to withdraw guilty plea, which had been filed the day before. The court confirmed that it would be proceeding on both. Defense counsel began to explain the filing times, but before he could finish, the court interjected. The court stated: "We'll proceed on the Motion to Withdraw the Guilty Plea and Vacate the Judgment and the Motion to Reconsider." The court explained that, since defense counsel had included an excessive sentence claim in the motion to withdraw guilty plea, the court believed the motion to withdraw guilty plea "basically [took] in the Motion to Reconsider." The State made no objection to the court proceeding in this way.

¶ 21 In argument, defense counsel made the following statement: “My client, despite going over things pretty thoroughly I thought, instructed me to file this and therefore I have.” Counsel explained that defendant believed his sentence was excessive. Counsel emphasized that defendant was young at the time of the offenses and argued that defendant was not actively involved with his codefendants in committing the crimes. Counsel asked the court to review those factors and reconsider defendant’s sentence.

¶ 22 The State countered that defendant had been “fully apprised by the [c]ourt of the consequences of the plea” and indicated to the court that he understood the implications of taking the plea. The State contended that nothing indicated that defendant’s plea was not knowing, intelligent, and voluntary. The State emphasized that “not liking the sentence you get is not a reason to withdraw your guilty plea.” The State asked the court to deny the defendant’s motion to withdraw the guilty plea. Addressing defendant’s argument that his sentence was excessive, the State opined that “a sentence of 33 years, quite frankly in the People’s opinion, [was] a gift considering what occurred on that evening to three separate families.” The State again asked the court to deny defendant’s motion.

¶ 23 The trial court recalled that it “did go through thoroughly with the defendant his rights,” and was “sure that [defense counsel] did go through a long review of the evidence with the defendant.” The court concluded from its recollections that “this was a knowing and voluntary plea in this case,” and that “defendant did know the ramifications and consequences of his guilty plea.” The court denied defendant’s motion to withdraw the guilty plea. The court then considered whether defendant’s sentence was excessive. The court recalled that, in fashioning defendant’s sentence, it “did consider statutory factors in aggravation and mitigation[,] *** including all of [defendant’s] age ramifications.” The court commented that it believed the sentence “was a very

fair resolution of the case,” and that some people may have even believed “the sentence was overly easy given the facts and circumstances” of the case. The court declined to find that defendant’s sentence was excessive. The court ruled that “the Motion to Reconsider [was] denied along with the Motion to Withdraw the Guilty Plea in all three of the cases.” Defendant appeals.

¶ 24

II. ANALYSIS

¶ 25 On appeal, defendant argues that this court must remand for new postplea proceedings where counsel failed to adequately present the claims in his postplea motions as required by Illinois Supreme Court Rule 604(d) (eff. July 1, 2017).

¶ 26

A. Jurisdiction

¶ 27 The State argues that we cannot consider defendant’s Rule 604(d) claim regarding the motion to withdraw the guilty plea, since that motion was untimely filed more than 30 days after sentencing. Defendant counters that the motion to withdraw guilty plea functioned as an amendment to defendant’s earlier, timely filed motion to reconsider, and thus, his Rule 604(d) claim regarding his motion to withdraw can be considered by this court. We agree with defendant.

¶ 28 Defendant filed a timely motion to reconsider his sentence in each of the three cases, but no proceedings on the motions took place, and the motions remained pending before the trial court. Approximately two years after defendant had filed his motions to reconsider, defendant filed motions to withdraw his guilty plea and vacate the judgment in each case. At the hearing the next day, the trial court clarified that the hearing would concern both the earlier motion to reconsider as well as the later motion to withdraw. The court stated its intent to accept the motion to withdraw as an amendment of the earlier motion to reconsider, as the motion to withdraw “basically [took] in the [m]otion to [r]econsider.” The State made no objection to the court’s characterization of the motions or to conducting the hearing in this manner.

¶ 29 Where the record makes clear that the trial court treated defendant’s motion to withdraw his guilty plea as an amendment of his earlier motion to reconsider, we find that we have jurisdiction to consider defendant’s appeal in full. See *People v. Cook*, 2023 IL App (4th) 210621, ¶¶ 15, 47. Additionally, by failing to object in the trial court to the motion to withdraw as untimely filed, or to the court’s characterization of the motion to withdraw as an amendment of the motion to reconsider, the State has forfeited its argument on appeal. See *In re H.S.*, 2025 IL App (1st) 250254, ¶ 56 (“Where a party fails to make an appropriate objection in the court below, he or she has failed to preserve the issue for review, and the issue is forfeited.”).

¶ 30 B. Rule 604(d) Compliance

¶ 31 On appeal, defendant argues that his postplea counsel failed to comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) where counsel inadequately presented the claims in defendant’s postplea motions. While defendant’s motion to reconsider claimed that the trial court had failed to properly consider mitigating factors, defendant contends that postplea counsel failed to sufficiently specify which factors. Defendant also contends that, although postplea counsel filed a motion to withdraw guilty plea on defendant’s behalf, counsel failed to make sufficient argument in support of that motion.

¶ 32 Rule 604(d) governs appeals from judgments entered upon guilty pleas. Ill. S. Ct. R. 604(d) (eff. July 1, 2017). Postplea counsel must strictly comply with the requirements of Rule 604(d). *People v. Janes*, 158 Ill. 2d 27, 33 (1994). “[T]he remedy for failure to strictly comply with each of the provisions of Rule 604(d) is a remand to the circuit court for the filing of a new motion to withdraw guilty plea or to reconsider sentence and a new hearing on the motion.” *Id.* The section of Rule 604(d) relevant to this appeal reads as follows:

“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).

¶ 33 Ordinarily, the entry of a Rule 604(d) certificate is enough to demonstrate postplea counsel's strict compliance with the rule. *People v. Neal*, 403 Ill. App. 3d 757, 760 (2010). However, "we may consider the record where it undermines the certificate filed." *Id.* Where the record refutes the certificate and indicates that counsel failed to fulfill one or more of his duties under Rule 604(d), we must remand for further postplea proceedings. *People v. Winston*, 2020 IL App (2d) 180289, ¶ 14; *People v. Bridges*, 2017 IL App (2d) 150718, ¶ 8. Here, defendant argues that, despite postplea counsel's facially valid Rule 604(d) certificates, the record clearly shows that counsel failed to fulfill his duties under the rule. Specifically, defendant denies that counsel "ascertain[ed] defendant's contentions of error in the sentence and the entry of the plea of guilty" or "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). We review postplea counsel's compliance with Rule 604(d) *de novo*. *People v. Easton*, 2018 IL 122187, ¶ 25.

¶ 34 1. *Counsel's Argument on the Motion to Reconsider*

¶ 35 Defendant first argues that postplea counsel failed to adequately present defendant's excessive sentence claim in the motion to reconsider. While postplea counsel argued that defendant's sentence was excessive, where the trial court failed to properly consider mitigating factors, defendant contends that this argument was deficient where counsel failed to more specifically identify *which* mitigating factors had not been properly considered. We find that the record refutes defendant's assertion.

¶ 36 Defendant's written motion to reconsider his sentence argued, in relevant part, that the trial court erred in sentencing defendant to 33 years because it failed to properly consider mitigating factors. Defendant's written motion to withdraw his guilty plea, treated as an amendment of the former motion by the trial court, reiterated this excessive sentence argument. However, at the hearing on the motions, postplea counsel's oral argument clearly identified two mitigating factors he believed supported defendant's excessive sentence claim. Counsel emphasized defendant's youth at the time of the offenses and defendant's relative lack of involvement in the commission of the offenses. Counsel explicitly asked the court to review those factors and thereby also reconsider defendant's sentence.

¶ 37 In response to the motion and argument, the trial court declined to find defendant's sentence excessive and stated that it had considered "statutory factors in aggravation and mitigation[,] *** including all of [defendant's] age ramifications." Therefore, although defendant's excessive sentence argument was ultimately unsuccessful, we do not find that postplea counsel inadequately presented defendant's claim.

¶ 38 *2. Counsel's Argument on the Motion to Withdraw*

¶ 39 Defendant next argues that postplea counsel neglected to ascertain defendant's contentions of error in the entry of his guilty plea and therefore failed to make any satisfactory argument in support of defendant's motion to withdraw his guilty plea. Defendant asserts that, although postplea counsel filed a motion to withdraw on defendant's behalf, the arguments offered in the written motion were too general to adequately support defendant's motion.

¶ 40 In *People v. Delvillar*, 235 Ill. 2d 507, 520 (2009), our supreme court stated that, to be successful on a motion to withdraw a guilty plea, a defendant "must show a manifest injustice under the facts involved." Qualifying unjust situations may include if "the plea was entered

through a misapprehension of the facts or of the law, or if there is doubt as to the guilt of the accused and justice would be better served by conducting a trial.” *Id.*; see *People v. Wilson*, 295 Ill. App. 3d 228, 236 (1998). Such language suggests that a contention that the evidence is insufficient to convict a defendant who has pled guilty constitutes a viable argument that may very well result in the granting of a motion to withdraw a guilty plea.

¶ 41 Defendant’s written motion to withdraw guilty plea explained defendant’s belief that the State’s evidence would have been insufficient to convict him at trial. The motion also alleged that defendant had not understood the consequences of making his guilty plea. Further, postplea counsel wrote that, “after reflecting on the quality and quantity of [the] evidence,” defendant believed “that the evidence [could not] be connected to him[,] nor [could] he be convicted based on the evidence presently available to the State.” Under Illinois Supreme Court Rule 604(d), defendant is not entitled to perfect representation from postplea counsel, but “adequate” representation. See Ill. S. Ct. R. 604(d) (eff. July 1, 2017); also see *People v. Jackson*, 2018 IL App (5th) 150274, ¶ 122 (clarifying that defendants are entitled to competent, not perfect, representation from trial counsel). Therefore, while we acknowledge that postplea counsel’s arguments on defendant’s motion to withdraw were brief, we do not find that postplea counsel failed to provide an adequate level of representation to defendant, as required by Rule 604(d). We also note that adequate or sufficient representation under Rule 604(d) does not require counsel to include frivolous or factually unsupported claims in a defendant’s postplea motion. See *People v. Curtis*, 2021 IL App (4th) 190658, ¶¶ 37-38. Consequently, we decline to find that the record refutes postplea counsel’s compliance with Rule 604(d).

¶ 42

III. CONCLUSION

¶ 43 We affirm defendant's conviction and sentence where the record does not refute postplea counsel's certificates of compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017).

¶ 44 Affirmed.