

No. 126464

IN THE  
SUPREME COURT OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Illinois
	)	Appellate Court, Second
Plaintiff-Appellee,	)	Judicial District,
	)	No. 2-18-0646
	)	
v.	)	There on appeal from the
	)	Circuit Court for the
	)	Eighteenth Judicial Circuit,
	)	DuPage County, Illinois,
ROBERT J. GORSS,	)	No. 16-CF-2007
	)	
	)	The Honorable
Defendant-Appellant.	)	Liam Brennan,
	)	Judge Presiding.

---

**BRIEF AND APPENDIX OF PLAINTIFF-APPELLEE  
PEOPLE OF THE STATE OF ILLINOIS**

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Solicitor General

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ORAL ARGUMENT REQUESTED

## TABLE OF CONTENTS

<b>NATURE OF THE ACTION</b> .....	1
<b>ISSUE PRESENTED FOR REVIEW</b> .....	1
<b>STATEMENT OF JURISDICTION</b> .....	1
<b>STATEMENT OF FACTS</b> .....	2
<b>ARGUMENT</b> .....	4

### POINT AND AUTHORITIES

<b>Counsel Strictly Complied with Rule 604(d) by Certifying that Defendant Did Not Desire to Withdraw His Plea</b> .....	4
<i>People v. Tousignant</i> , 2014 IL 115329 .....	<i>passim</i>
Ill. S. Ct. R. 604(d) .....	<i>passim</i>
<i>People v. Shirley</i> , 181 Ill. 2d 359 (1998) .....	5-6, 8, 10
<i>People v. Janes</i> , 158 Ill. 2d 27 (1994) .....	8
<i>People v. Evans</i> , 174 Ill. 2d 320 (1996).....	8
<i>People v. Fitzgibbon</i> , 184 Ill. 2d 320 (1998) .....	8
<i>People v. Edwards</i> , 197 Ill. 2d 239 (2001) .....	8
<i>People v. Lindsay</i> , 231 Ill. 2d 522 (2011) .....	8
<i>In re H.L.</i> , 2015 IL 118529 (2015) .....	8
<i>People v. Easton</i> , 2018 IL 122187 (2018) .....	8, 12-13
<i>People v. Peltz</i> , 2019 IL App (2d) 170465 .....	9, 14
<i>People v. Grice</i> , 371 Ill. App. 3d 813 (4th Dist. 2007) .....	13
<i>People v. Dismuke</i> , 355 Ill. App. 3d 606 (2nd Dist. 2005).....	13
<i>People v. Dickerson</i> , 212 Ill. App. 3d 168 (2nd Dist. 1991).....	13

*People v. Jackson*, 2018 IL App (3d) 170125 .....14

**CONCLUSION** .....15

**RULE 341(C) CERTIFICATE OF COMPLIANCE**

**CERTIFICATE OF FILING AND SERVICE**

**APPENDIX**

## NATURE OF THE ACTION

Defendant-Appellant Robert Gorss pleaded guilty to aggravated driving while under the influence of drugs, in violation of 625 ILCS 5/11-501(a). C154.<sup>1</sup> Defendant subsequently filed a motion to reconsider his 11-year sentence that the circuit court denied. The appellate court affirmed, holding that counsel's Supreme Court Rule 604(d) certificate strictly complied with the rule, and the trial court did not abuse its discretion by imposing the 11-year sentence. Defendant now appeals the appellate court's judgment.

## ISSUE PRESENTED FOR REVIEW

Whether counsel complies with the certification requirement of Supreme Court Rule 604(d) when his certificate states that defendant does not desire to withdraw his guilty plea but does not also expressly state that he consulted with defendant about defendant's contentions of error in the plea.

## JURISDICTION

This Court has jurisdiction under Supreme Court Rules 315 and 612(b). The Court granted defendant's petition for leave to appeal on January 27, 2021.

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<sup>1</sup> "C\_\_," "R\_\_," "SC\_\_," "A\_\_," "Def. Br. \_\_," and "DA\_\_," refer to the common law record, report of proceedings, the secured record, this brief's appendix, defendant's brief on appeal, and defendant's appendix, respectively.

## STATEMENT OF FACTS

In September 2016, while he was on probation for possession of a controlled substance, defendant ingested heroin, morphine, cocaine, and codeine; he then drove a large box truck, lost consciousness, ran a red light, and crashed the truck into a car driven by Dawn Nickeas. R184-86, 210, 214, 216-17; SC6. Nickeas was unconscious when taken from the scene and did not regain consciousness before she died on November 28, 2016. SC6; R210.

Defendant was charged with eight counts of aggravated driving while under the influence of drugs. R19; C68, 85-90. In May 2018, the People dismissed seven of the charges in exchange for defendant's agreement to plead guilty to count one, driving while under the influence of heroin, without an agreement as to his sentence. C85; C149; C154; R179. Defendant stipulated to the following factual basis: on September 7, 2016, he admitted to police that he drove a truck, fell asleep, and ran a red light, striking Nickeas's vehicle and proximately causing her death. R183-186. Testing of defendant's urine sample revealed heroin metabolite, morphine, codeine, methadone, methadone metabolite, cocaine, and cocaine metabolites. R185.

Following a June 2018 hearing, the court sentenced defendant to 11 years in prison, to be served at 85 percent, followed by three years of mandatory supervised release. C154; R229. Defendant's crime was punished as a Class X felony due to his extensive criminal history. R179, 227. Defendant had prior convictions for negligent driving, SC9, leaving the scene

of an accident, SC10, fleeing and eluding police, SC9, unlawful possession of a controlled substance (three times), SC10-11, and driving while license suspended (six times), SC9-11.

Defendant unsuccessfully moved to reconsider his sentence, arguing that the circuit court had not given appropriate consideration to his drug addiction and methadone treatment as mitigating factors. C166-70.

Defendant then filed a notice of appeal, C172, which the circuit court dismissed pursuant to Supreme Court Rule 309, C176, to permit plea counsel to review the transcripts of the sentencing and plea hearings and file a Rule 604(d) certificate. Counsel reviewed both transcripts, R255, then filed a Rule 604(d) certificate, which stated:

- (1) The below-signed attorney has consulted with the defendant in person to ascertain the Defendant's claim of error in the entry of the sentence.
- (2) The below-signed attorney has examined the guilty plea transcript and sentencing transcript and the trial court file herein.
- (3) The below-signed attorney has considered any amended motion to Reconsider the Sentence necessary for adequate presentation of any claim or error about the sentence.
- (4) The Defendant does not desire to withdraw the guilty plea.
- (5) The Defendant does desire to reconsider the sentence.

A3. At a subsequent hearing, counsel informed the court that after reviewing the transcripts and consulting with defendant, he had no amendments to defendant's earlier-filed motion to reconsider sentence, R256, which counsel renewed and the court denied, C183.

Defendant appealed, arguing that new post-plea proceedings were necessary because counsel's Rule 604(d) certificate did not strictly comply with that rule, and because the court had abused its discretion in sentencing him to 11 years in prison. DA14-16. The appellate court rejected defendant's arguments and affirmed his conviction and sentence. It reasoned that counsel's certificate complied with Rule 604(d) because it was identical to the certificate filed in *People v. Peltz*, 2019 IL App (2d) 170465, where the court held that counsel strictly complied with Rule 604(d) by stating that the defendant did not want to withdraw his guilty plea. DA14. The appellate court further found that the circuit court did not abuse its discretion by sentencing defendant to 11 years in prison. DA14-16.

### ARGUMENT

#### **Counsel Strictly Complied with Rule 604(d) by Certifying that Defendant Did Not Desire to Withdraw His Plea.**

This Court should affirm defendant's conviction and sentence because counsel's 604(d) certificate strictly complies with the requirements of that rule and satisfies its purposes.

When interpreting Supreme Court rules, the same principles that govern the interpretation of statutes apply. *People v. Tousignant*, 2014 IL 115329, ¶ 8. As with statutes, the interpretation of a rule presents a question of law, which this Court reviews de novo. *Id.* The Court's goal is to ascertain and give effect to the intention of the drafters of the rule. *Id.* "The most reliable indicator of that intent is the language used, which must be

given its plain and ordinary meaning.” *Id.* (citations omitted). Words and phrases should not be considered separately, but in relation to “other relevant provisions and the statute as a whole.” *Id.* (citation omitted).

Rule 604(d) requires counsel to certify that counsel “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,” “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 “made any amendments to the motion [to withdraw the plea or reconsider the sentence] necessary for adequate presentation of any defects in those proceedings.” Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

This Court has explained Rule 604(d)’s purpose and that strict compliance with its requirements is necessary:

Compliance with the motion requirement of Rule 604 permits the trial judge who accepted the plea and imposed sentence to consider any allegations of impropriety that took place dehors the record and correct any error that may have led to the guilty plea. Requiring the defendant’s counsel to file the requisite certificate enables the trial court to insure that counsel has reviewed the defendant’s claim and considered all relevant bases for the motion to withdraw the guilty plea or to reconsider the sentence. The attorney certificate thereby encourages the preservation of a clear record, both in the trial court and on appeal, of the reasons why a defendant is moving to withdraw his plea or to reduce sentence. Because Rule 604(d) is designed both to protect defendant’s due process rights and to eliminate unnecessary appeals, this court requires strict compliance with its requirements.

*People v. Shirley*, 181 Ill. 2d 359, 361-62 (1998) (internal citations omitted);



*see also Tousignant*, 2014 IL 115329, ¶ 16 (“a main purpose of Rule 604(d) is to ensure that any improper conduct or other alleged improprieties that may have produced a guilty plea are brought to the trial court’s attention before an appeal is taken, thus enabling the trial court to address them at a time when witnesses are still available and memories are fresh”; “the rule’s certificate requirement is meant to enable the trial court to ensure that counsel has reviewed the defendant’s claim and considered all relevant bases for the motion to withdraw the guilty plea or to reconsider the sentence”).

While strict compliance is required, a 2017 amendment to Rule 604(d) made clear that counsel’s certification need not include a rote recitation of the rule, so long as counsel complies with the rule’s substantive requirements. That amendment provides that counsel’s certificate “shall be prepared by utilizing, or *substantially adopting* the appearance and content of” the form provided in the Article VI Forms Appendix. *See* A7 (emphasis added); *see also* A1-2 (form).

Here, counsel’s certificate complied with Rule 604(d)’s substantive requirements. Counsel certified that he “examined the guilty plea transcript and sentencing transcript and the trial court file”; he consulted with defendant, who “[did] not desire to withdraw the guilty plea,” but only “to reconsider the sentence”; and he “consulted with the defendant in person to ascertain the Defendant’s claim of error in the entry of the sentence.” A3; C182. Counsel further assured the court that he considered amendments to

the motion to reconsider sentence and determined that no amendments were necessary. A3; C182; R256.

There is no dispute that counsel's certificate satisfied Rule 604(d)'s requirements that counsel certify that he consulted with defendant in person to ascertain defendant's contentions of error in the sentence, examined the trial court file and the report of proceedings of the guilty plea and the sentencing hearings, and considered and made any amendments to the motion to reconsider the sentence necessary for adequate presentation of defendant's contentions of error. And there was no need for counsel to additionally certify that he consulted with defendant to ascertain defendant's contentions of error in the entry of the plea of guilty, because counsel's certification that defendant "does not desire to withdraw the guilty plea" *necessarily* meant that defendant had no contentions of error regarding the entry of the guilty plea. In other words, counsel's certification made clear that counsel spoke with defendant about the entry of the guilty plea and defendant stated that he did not wish to withdraw his plea — that is, that he had no contentions of error on that front (or elected to forgo raising them because he wanted to retain the benefit of his plea agreement).

Rule 604(d) requires nothing more. The rule itself imposes no affirmative duty on counsel to formulate contentions of error for a defendant, requiring only that counsel consult with the defendant about the plea and sentence and ascertain the *defendant's* contentions of error. Ill. S. Ct. R.

604(d) (counsel must file a certificate stating that the attorney has “consulted with defendant . . . to ascertain defendant’s contentions of error”); A1 (same). And although this Court has considered the requirements of Rule 604(d) in a number of cases, the Court has never addressed, much less held, that the rule imposes a duty on counsel to generate contentions of error for a defendant. *See People v. Janes*, 158 Ill. 2d 27 (1994) (addressing whether counsel strictly complies with Rule 604(d) when counsel fails to file a certificate); *People v. Evans*, 174 Ill. 2d 320 (1996) (addressing whether Rule 604(d) applies to negotiated plea agreements); *Shirley*, 181 Ill. 2d at 369-73 (addressing whether counsel must file a Rule 604(d) certificate before a second hearing to reduce sentence); *People v. Fitzgibbon*, 184 Ill. 2d 320 (1998) (addressing whether counsel must submit certificate before hearing on a motion to reconsider sentence); *People v. Edwards*, 197 Ill. 2d 239 (2001) (addressing whether Rule 604(d)’s requirements apply to pro se defendants); *People v. Lindsay*, 231 Ill. 2d 522 (2011) (addressing whether counsel must file a post plea motion after remand for failing to file a certificate); *In re H.L.*, 2015 IL 118529 (2015) (addressing whether counsel must file a certificate before, or at, the hearing on defendant’s post plea motion); *Tousignant*, 2014 IL 115329, ¶¶ 7-21 (addressing whether consultation with defendant about defendant’s contentions of error in the guilty plea *and* sentence is required); *People v. Easton*, 2018 IL 122187 (2018), ¶¶ 24-37 (addressing application of *Tousignant*). Thus, the Court has never mandated, by rule or its decisions

interpreting the rule, that counsel must formulate contentions of error for a defendant.

Consistent with the above, the appellate court below correctly followed *People v. Peltz*, 2019 IL App (2d) 170465, ¶¶ 26, 28, which had rejected arguments that verbatim recitation of the rule was required, and, separately, that counsel must generate contentions of error for a defendant. In *Peltz*, as here, counsel certified that the defendant did not want to withdraw his guilty plea and did not explicitly state that counsel spoke with the defendant about his contentions of error in the plea. *Id.* at ¶ 18. The appellate court first determined that counsel strictly complied with Rule 604(d) because her deviation from the court form was not “ambiguous” and logically “substitute[d] for” explicit certification that she consulted with defendant about his guilty plea. *Id.* at ¶¶ 22, 26, 28. The court also rejected any attempt to read into the rule a requirement “to explore with defendant the potential success of a motion to withdraw his . . . plea,” despite defendant’s expressed desire not to withdraw his plea. *Id.* at ¶ 28. Reasoning that “[t]he rule imposes no such duty,” the court “conclude[d] that counsel’s certificate strictly complied with Rule 604(d)” and satisfied its purposes. *Id.* at ¶¶ 26, 28.

Counsel’s certificate here similarly complied with Rule 604(d)’s text and satisfied its purposes. The certificate strictly complied with the rule’s text because counsel substantially adopted both the appearance and content

of the Court's form, incorporated a considerable amount of its language, addressed all of its requisite elements, and emulated its appearance. *Compare A1 with A3.* And the certificate satisfied the rule's purposes because counsel certified that he consulted with defendant, ascertained defendant's contentions of error as to the sentence and plea, learned that defendant did not wish to withdraw his plea, considered possible bases to reconsider the sentence, and adequately presented defendant's contentions of error in the sentence to the trial court. *See Shirley*, 181 Ill. 2d at 361-62 (describing purposes of Rule 604(d)). Counsel's certificate thus promoted the twin goals of Rule 604(d) by giving the trial court ample opportunity to consider the alleged sentencing errors and to make a clear record for the appellate court to consider on review. *See id.*

Defendant's contrary arguments are meritless. He first contends that "to find [counsel's certificate in this case] sufficient under Rule 604(d) requires an unreasonable assumption that the defendant's decision could only have been the result of a consultation." Def. Br. at 9-10 (citing *Tousignant*, 2014 IL 115329, ¶¶ 27-29 (Thomas, J., concurring)).

However, this case does not require the same assumption that Justice Thomas, concurring in *Tousignant*, was unwilling to make. In *Tousignant*, the Court construed a prior version of Rule 604(d), which provided that "defendant's attorney shall file . . . a certificate stating that the attorney has consulted with defendant . . . to ascertain defendant's contentions of error in

the sentence *or* the entry of the plea of guilty,” Ill. S. Ct. R. 604(d) (eff. July 1, 2006) (emphasis added). *See Tousignant*, 2014 IL 115329, ¶ 7. Counsel’s certificate affirmed that he consulted with the defendant about his contentions of error in his sentence, but in no manner indicated that he consulted with the defendant about his contentions of error in the plea. *Id.* at ¶ 4. The People maintained that, given the rule’s use of “or” (emphasized above), counsel’s consultation duties should be read disjunctively, and thus required only consultation about the defendant’s contentions of error in either the guilty plea *or* the sentence. *Id.* at ¶ 9. This Court rejected the People’s construction and determined that Rule 604(d)’s use of “or” must be read as “and,” and required counsel to consult with the defendant about his contentions of error in *both* the sentence and the guilty plea. *Id.* at ¶¶ 21, 23. The Court reasoned that reading “or” disjunctively defeated Rule 604(d)’s purpose of “allowing the trial court to address, *before* an appeal is taken, any alleged improprieties that may have produced the guilty plea.” *Id.* at ¶ 18 (emphasis in original).

Here, by contrast, counsel expressly stated that he consulted with defendant about defendant’s contentions of error in his sentence and provided an adequate substitute for an express statement that he consulted with defendant about defendant’s contentions of error in the plea. A3. As explained above, counsel’s affirmation that defendant did not wish to withdraw his guilty plea *necessarily* meant that counsel consulted with

defendant about defendant's contentions of error in the plea and learned that defendant had none. *Tousignant* is distinguishable on this basis, since there one was left to guess whether appropriate consultation occurred because counsel provided absolutely *no* indication whether he spoke with the defendant about his contentions of error in his guilty plea. 2014 IL 115329, ¶ 7. The same cannot be said about counsel's certificate in this case.

Contrary to defendant's suggestion, Def. Br. 11, the Court's most recent opinion interpreting Rule 604(d), *Easton*, 2018 IL 122187, ¶¶ 24-37, also resolved a distinct issue from that presented here and does not support defendant's argument. *Easton* addressed whether counsel's certificate, which tracked the text of the former version of the rule verbatim, satisfied *Tousignant* and strictly complied with Rule 604(d). *Easton*, 2018 IL 122187, ¶¶ 36-37. The Court determined that the certificate failed in both respects. *Id.* "[I]n essence," the Court explained, *Tousignant* held that "tracking the 'text' of [former Rule 604(d)] is inadequate, and a certificate that uses the word 'or' to describe the consultation with defendant is deficient." *Id.* at ¶ 35. Such an affirmation did not strictly comply with the rule, the Court reasoned, because "use of the word 'or' does not confirm that counsel discussed both types of errors with the defendant." *Id.* at ¶ 36. Here, counsel's certificate does not mimic the prior version of Rule 604(d), the source of the dispute in *Easton*, nor does it frame counsel's consultation with defendant about defendant's contentions of error in a disjunctive manner, but, rather, in a

fashion that confirms that counsel spoke with defendant about his contentions of error in *both* the plea and sentence. *Easton* is thus inapposite.

And contrary to defendant’s final argument — that accepting counsel’s certificate would increase litigation because it is “ambiguous,” *see* Def. Br. 9 (citing *Peltz*, 2019 IL App (2d) 170465, ¶ 54) (McLaren, J., dissenting)) — the People’s construction would actually *reduce* litigation surrounding Rule 604(d) certificates. Although the appellate court frequently remands cases for strict compliance with Rule 604(d), *see e.g.*, *People v. Grice*, 371 Ill. App. 3d 813, 815 (4th Dist. 2007) (recognizing “the terrible waste of judicial recourses that now occurs . . . due to defective Rule 604(d) certificates”); *People v. Dismuke*, 355 Ill. App. 3d 606, 609 (2nd Dist. 2005) (same); *People v. Dickerson*, 212 Ill. App. 3d 168, 171 (2nd Dist. 1991) (noting that remands for defective Rule 604(d) certificates occur at a “relatively high frequency”), the necessary result of accepting defendant’s inflexible approach, whereby certificates are deemed deficient whenever counsel does not parrot the precise language of the rule or form, can only result in even more litigation, including unnecessary remands, when an attorney inadvertently omits a word or phrase from the certificate. Requiring courts to scrutinize every certificate that contains minor deviations from the rule’s language, but otherwise complies with the rule, would elevate form over substance, and defeat the rule’s goal of judicial economy. The People’s construction, by contrast, empowers courts to ensure strict compliance with the rule while



circumventing time-consuming disputes about imprecise recitations of the rule or reproductions of the form certificate.

Defendant's interpretation would also require this Court to depart from appellate court precedent permitting immaterial deviations from the precise terms of the rule. Consistent with the 2017 amendment to the rule, appellate court districts have accorded counsel a degree of flexibility in drafting the certificate, so long as the rule's substantive requirements are met. *Peltz*, 2019 IL App (2d) 170465, ¶ 26 (noting that “strict compliance’ [with Rule 604(d)] does not require a verbatim recitation of the language of the form”); *People v. Jackson*, 2018 IL App (3d) 170125, ¶ 45 (“The current version of the rule explicitly gives counsel the option to ‘substantially adopt[ ]’ the preprinted certificate, which indicates that counsel is not required to copy it verbatim[.]”). Further narrowing the range of acceptable Rule 604(d) certificates will undoubtedly tax already limited judicial resources as any deviation from the rule or form, however logical and effective a substitute, would be a basis for additional litigation.

**CONCLUSION**

For these reasons, the People of the State of Illinois respectfully request this Court to affirm the appellate court's judgment.

June 10, 2021

Respectfully submitted,

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People of the State of Illinois*

**RULE 341(c) CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Illinois Supreme Court Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the appendix, and the certificate of filing and service, is 15 pages.

/s/ Eaghan Davis

EAGHAN DAVIS

Assistant Attorney General

**CERTIFICATE OF FILING AND SERVICE**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. The undersigned certifies that on June 10, 2021, the foregoing **Brief and Appendix of Plaintiff-Appellee** was filed with the Clerk of the Illinois Supreme Court, using the court's electronic filing system, which provided notice to the following registered email address:

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# APPENDIX

**Table of Contents to the Appendix**

Illinois Supreme Court Rule 604(d) Sample Certificate ..... A1-2  
Counsel’s 604(d) Certificate ..... A3  
M.R. 3140 (2017) .....A4-8

**New Article VI Forms Appendix**

**Rule 604. Appeals from Certain Judgments and Orders**

**(d) Appeal by Defendant From a Judgment Entered Upon a Plea of Guilty.**

**STATE OF ILLINOIS**  
**IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT**  
**COUNTY OF \_\_\_\_\_**  
**(Or, IN THE CIRCUIT COURT OF COOK COUNTY)**

THE PEOPLE OF THE STATE  
OF ILLINOIS,  
Plaintiff

v. CASE NO. \_\_\_\_\_

\_\_\_\_\_  
Defendant

**CERTIFICATE OF COUNSEL**  
**PURSUANT TO ILLINOIS SUPREME COURT RULE 604(d)**

I, \_\_\_\_\_, attorney for Defendant, certify pursuant to Supreme Court Rule 604(d) that:

1. I have consulted with the Defendant in person, by mail, by phone, or by electronic means to ascertain the defendant's contentions of error in the entry of the plea of guilty and in the sentence;

2. I have examined the trial court file and report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing; and

3. I have made any amendments to the motion necessary for the adequate presentation of any defects in those proceedings.

Respectfully submitted,

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney for the Defendant



IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DU PAGE COUNTY, ILLINOIS

**e-FILED**  
AUG 13, 2018 03:37 PM  
*Chus Kachurabas*  
CLERK OF THE  
18TH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, )  
Plaintiff, )  
V ) NO: 2016 CF 2007  
ROBERT GORSS, )  
Defendant. )

**SCR 604(d) CERTIFICATE**  
**APPEAL OF SENTENCE**

Now comes Ernest A. DiBenedetto , of the Law Office of DiBenedetto & Kendall, P.C. pursuant to Defendant's Motion to Reconsider Sentence, CERTIFIES AS FOLLOWS:

- 1) The below-signed attorney has consulted with the defendant in person to ascertain the Defendant's claim of error in the entry of the sentence.
- 2) The below-signed attorney has examined the guilty plea transcript and sentencing transcript and the trial court file herein;
- 3) The below-signed attorney has considered any amended motion to Reconsider the Sentence necessary for adequate presentation of any claim or error about the sentence.
- 4) The Defendant does not desire to withdraw the guilty plea.
- 5) The Defendant does desire to reconsider the sentence.

Respectfully submitted,



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Attorney for Defendant

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M.R. 3140

**IN THE  
SUPREME COURT  
OF  
THE STATE OF ILLINOIS**

Order entered June 22, 2017.

(Deleted material is struck through, and new material is underscored.)

Effective July 1, 2017, Illinois Supreme Court Rules 2, 3, 10, 11, 12, 13, 15, 22, 30, 90, 94, 95, 100.1, 303, 303A, 305, 306, 307, 308, 309, 311, 312, 313, 315, 316, 317, 318, 323, 324, 325, 326, 327, 328, 329, 330, 331, 335, 341, 342, 352, 361, 362, 364, 365, 367, 372, 373, 374, 381, 382, 383, 384, 604, 606, 607, 608, 610, 612, 651, 706, 707, 711, 712, 713, 721, 759, 762, 763, 768, 773, 776, 777, and 793 are amended; Administrative Order MR No. 10549 and the Administrative Order to Illinois Supreme Court Rule 68 are amended; Illinois Supreme Court Rule 9 is adopted; and Appendices for Article I, Article III, and Article VI are adopted, as follows.

**Amended Rule 2**

**Rule 2. Construction**

(a) **Standards.** These rules are to be construed in accordance with the appropriate provisions of the Statute on Statutes (5 ILCS 70/0.01 *et seq.*), and in accordance with the standards stated in section 1-106 of the Code of Civil Procedure (735 ILCS 5/1-106).

(b) **Definitions.** The following meanings are to be given terms used in these rules:

(1) "Judge" also includes associate judge and justice.

(2) "Judgment" also includes decree, determination, decision, order, or portion thereof.

(3) "Document" means a pleading, motion, notice, affidavit, memorandum, brief, petition, or other document or combination of documents photograph, recording, or other record of information or data required or permitted to be filed, either on paper or in an electronic format.

(4) "Written" or "in writing" means in the form of a document, whether electronic or on paper.

(5) "Signed" or "signature" also includes the execution of any court-approved digital signature.

(6) "Original" is the first authentic instrument of a document, recording, or photograph; however, if the transmission is by approved electronic means, the transmission received by the clerk of the court shall serve as the original.

Amended effective July 1, 1971; amended May 28, 1982, effective July 1, 1982 ; amended May 30, 2008, effective immediately; amended Jan. 4, 2013; eff. immediately; amended June 22, 2017, eff. July 1, 2017.

**FILED**

JUN 22 2017

A0004  
SUPREME COURT  
CLERK

Other personal identifiers as defined in Rule 364(b), to the extent applicable:

2. Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 SSN: \_\_\_\_\_

Other personal identifier information as defined in Rule 364(b), to the extent applicable:

(Attach additional pages, if necessary.)

Adopted June 22, 2017, eff. July 1, 2017.

### **Amended Rule 604**

#### **Rule 604. Appeals from Certain Judgments and Orders**

##### **(a) Appeals by the State.**

(1) *When State May Appeal.* In criminal cases the State may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; or suppressing evidence.

(2) *Leave to Appeal by State.* The State may petition for leave to appeal under Rule 315(a).

(3) *Release of Defendant Pending Appeal.* A defendant shall not be held in jail or to bail

during the pendency of an appeal by the State, or of a petition or appeal by the State under Rule 315(a), unless there are compelling reasons for his or her continued detention or being held to bail.

(4) *Time Appeal Pending Not Counted.* The time during which an appeal by the State is pending is not counted for the purpose of determining whether an accused is entitled to discharge under section 103-5 of the Code of Criminal Procedure of 1963.

**(b) Appeals When Defendant Placed Under Supervision or Sentenced to Probation, Conditional Discharge or Periodic Imprisonment.** A defendant who has been placed under supervision or found guilty and sentenced to probation or conditional discharge (see 730 ILCS 5/5-6-1 through 5-6-4), or to periodic imprisonment (see 730 ILCS 5/5-7-1 through 5-7-8), may appeal from the judgment and may seek review of the conditions of supervision, or of the finding of guilt or the conditions of the sentence, or both. He or she may also appeal from an order modifying the conditions of or revoking such an order or sentence.

**(c) Appeals From Bail Orders by Defendant Before Conviction.**

(1) *Appealability of Order With Respect to Bail.* Before conviction a defendant may appeal to the Appellate Court from an order setting, modifying, revoking, denying, or refusing to modify bail or the conditions thereof. As a prerequisite to appeal the defendant shall first present to the trial court a written motion for the relief to be sought on appeal. The motion shall be verified by the defendant and shall state the following:

- (i) the defendant's financial condition;
- (ii) his or her residence addresses and employment history for the past 10 years;
- (iii) his or her occupation and the name and address of his or her employer, if he or she is employed, or his or her school, if he or she is in school;
- (iv) his or her family situation; and
- (v) any prior criminal record and any other relevant facts.

If the order is entered upon motion of the prosecution, the defendant's verified answer to the motion shall contain the foregoing information.

(2) *Procedure.* The appeal may be taken at any time before conviction by filing a verified motion for review in the Appellate Court. The motion for review shall be accompanied by a verified copy of the motion or answer filed in the trial court and shall state the following:

- (i) the court that entered the order;
- (ii) the date of the order;
- (iii) the crime or crimes charged;
- (iv) the amount and condition of bail;
- (v) the arguments supporting the motion; and
- (vi) the relief sought.

No brief shall be filed. ~~A copy of the~~ The motion shall be served upon the opposing party. The State may promptly file an answer.

(3) *Disposition.* Upon receipt of the motion, the clerk shall immediately notify the opposing party by telephone of the filing of the motion, entering the date and time of the

notification on the docket, and promptly thereafter present the motion to the court.

(4) *Report of Proceedings.* The court, on its own motion or on the motion of any party, may order court reporting personnel as defined in Rule 46 to file in the Appellate Court a report of all proceedings had in the trial court on the question of bail.

(5) *No Oral Argument.* No oral argument shall be permitted except when ordered on the court's own motion.

**(d) Appeal by Defendant From a Judgment Entered Upon a Plea of Guilty.** 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 a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.

No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, 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.

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 motion shall be presented promptly to the trial judge by whom the defendant was sentenced, and if that judge is then not sitting in the court in which the judgment was entered, then to the chief judge of the circuit, or to such other judge as the chief judge shall designate. 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 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.

The motion shall be heard promptly, and if allowed, the trial court shall modify the sentence or vacate the judgment and permit the defendant to withdraw the plea of guilty and plead anew. If the motion is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, measured from the date of entry of the order denying the motion. Upon appeal 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.

The certificate of counsel shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article VI Forms Appendix.~~in the following form:~~

**STATE OF ILLINOIS**  
**IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT**  
**COUNTY OF \_\_\_\_\_**  
**(Or, IN THE CIRCUIT COURT OF COOK COUNTY)**

PEOPLE OF THE STATE  
OF ILLINOIS,  
Plaintiff

vs. \_\_\_\_\_ CASE NO. \_\_\_\_\_

\_\_\_\_\_  
Defendant

**~~CERTIFICATE OF COUNSEL~~**  
**~~PURSUANT TO ILLINOIS SUPREME COURT RULE 604(d)~~**

I, \_\_\_\_\_, attorney for Defendant, certify pursuant to  
Supreme Court Rule 604(d) that:

— 1. I have consulted with the Defendant in person, by mail, by phone or by  
electronic means to ascertain the defendant’s contentions of error in the entry of  
the plea of guilty and in the sentence;

— 2. I have examined the trial court file and report of proceedings of the plea of  
guilty and the report of proceedings in the sentencing hearing; and

— 3. I have made any amendments to the motion necessary for the adequate  
presentation of any defects in those proceedings.

\_\_\_\_\_ Respectfully submitted,

\_\_\_\_\_  
Date \_\_\_\_\_ Attorney for the Defendant

**(e) Appeal From an Order Finding Defendant Unfit to Stand Trial or Be Sentenced.**  
The defendant or the State may appeal to the Appellate Court from an order holding the  
defendant unfit to stand trial or be sentenced.

**(f) Appeal by Defendant on Grounds of Former Jeopardy.** The defendant may appeal to