

No. 126464

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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TABLE OF CONTENTS

	Page
Nature of the Case	1
Issue Presented for Review	1
Jurisdiction	1
Rule Involved	2
Statement of Facts	3
Argument	5
 Point and Authorities	
Defense counsel failed to strictly comply with the requirements of Supreme Court Rule 604(d) where the certificate filed did not state that the necessary consultation took place, only that the defendant did not wish to withdraw his guilty plea.....	5
Illinois Supreme Court Rule 604(d)	5, 7, 8
<i>People v. Easton</i> , 2018 IL 122187	5, 6, 7, 11
<i>People v. Peltz</i> , 2019 IL App (2d) 170465	5, 8, 9, 12
<i>People v. Young</i> , 387 Ill. App. 3d 1126 (4th Dist. 2009).....	5
<i>People v. Dickerson</i> , 212 Ill. App. 3d 168 (2d Dist. 1991).....	6
<i>People v. Tousignant</i> , 2014 IL 115329	6, 7, 10, 11
<i>People v. Wilk</i> , 124 Ill. 2d 93 (1988)	6
<i>People v. Mason</i> , 2015 IL App (4th) 130946	6
<i>People v. Gillespie</i> , 2017 IL App (1st) 152351.....	11
<i>People v. Hobbs</i> , 2015 IL App (4th) 130990	12
Conclusion	14
Appendix to the Brief.	A-1

NATURE OF THE CASE

Robert Gorss pled guilty to the offense of aggravated driving under the influence causing death and was sentenced to 11 years in prison.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether defense counsel's bare assertion that the defendant did not wish to withdraw his guilty plea was sufficient to strictly comply with the consultation requirement of Supreme Court Rule 604(d).

JURISDICTION

Robert Gorss appeals from a final judgment of conviction in a criminal case. Appellant pled guilty on May 1, 2018 and was sentenced to 11 years in DOC on June 29, 2018. (C. 154). A motion to reconsider sentence was filed and denied on July 6, 2018. (C. 166; 170). Notice of appeal was timely filed on July 9, 2018. (C. 172). That appeal was withdrawn to allow counsel to file a 604(d) certificate. (C. 176). The motion to reconsider sentence was again denied on August 13, 2018. (C. 183). Notice of appeal was timely filed on August 14, 2018. (C. 185). The Second District Appellate Court affirmed the judgment of the circuit court on July 30, 2020. *People v. Robert J. Gorss*, Summary Order (Appellate Court Number 2-18-0646). This Court granted the petition for leave to appeal from that judgment on January 27, 2021.

RULE INVOLVED

Illinois Supreme Court Rule 604(d) (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 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.

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.

STATEMENT OF FACTS

Robert Gorss was charged with aggravated driving under the influence (“DUI”) causing death, for allegedly driving with a drug, substance, or intoxicating compound in his breath, blood or urine. (C. 68).

On May 1, 2018, Mr. Gorss entered an open guilty plea to the charge. (C. 146; R. 186). At the time of the accident, Mr. Gorss was working, driving a box truck for Best Price Moving Company. (R. 72). After picking up his load, he stopped at the methadone clinic for his prescribed dose, which he was required to do each day as a part of his court-ordered TASC program. After dropping the shipment off in Carol Stream, he came to an intersection in Lombard feeling dizzy. He saw the light turn yellow as he blacked out and collided with a car driven by Dawn Nickeas. He awoke from the impact of the accident, immediately drove to the side of the road and ran to see if anyone was injured or if he could help. (R. 75-76). He cooperated with the police, performing the field sobriety tests that the police requested at the scene of the crime and providing a urine sample. (R. 96). Upon testing, the chemist located heroin metabolite, morphine, codeine, methadone, methadone metabolite, cocaine, and cocaine metabolite. The death certificate for Ms. Nickeas stated that the accident was the proximate cause of her death. (R. 185-86).

After a sentencing hearing, the judge sentenced Mr. Gorss to 11 years in prison, to be served at 85%, followed by a period of 3 years of mandatory supervised release. (R. 229). After the motion to reconsider his sentence was denied, (R. 170), notice of appeal was filed on July 9, 2018. (C. 172). That appeal was withdrawn in order to allow counsel to file a 604(d) certificate. (C. 176). Defense counsel filed

the 604(d) certificate, which stated 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. (C. 182).

The motion to reconsider sentence was again denied on August 13, 2018, and a notice of appeal was filed the following day. (C. 183; 185).

The Second District Appellate Court affirmed Mr. Gorss' conviction on July 30, 2020. *People v. Robert J. Gorss*, Summary Order (Appellate Court Number 2-18-0646). The court found that because the certificate in this case stated that the defendant did not desire to withdraw his guilty plea, counsel's failure to state that he had consulted with the defendant about his contentions of error in the guilty plea did not violate Rule 604(d). The court followed its previous, published decision in *People v. Peltz*, 2019 IL App (2d) 170465, and declined to reconsider its holding in that case. *Gorss*, Summary Order (Appellate Court Number 2-18-0646), at ¶4.

ARGUMENT

Defense counsel failed to strictly comply with the requirements of Supreme Court Rule 604(d) where the certificate filed did not state that the necessary consultation took place, only that the defendant did not wish to withdraw his guilty plea.

After Robert Gorss’ motion to reconsider his sentence was denied, trial counsel filed a Rule 604(d) certificate along with his notice of appeal. (C. 181-82). Counsel’s certificate was deficient because he did not certify that he had consulted with Mr. Gorss about any claim of error in the entry of the guilty plea. *People v. Easton*, 2018 IL 122187, ¶ 35 (counsel is required to certify that he has consulted with the defendant as to errors both in the sentence and the guilty plea). Instead, counsel stated that “[t]he Defendant does not desire to withdraw the guilty plea.” (C. 182). The Second District found in this case, as it did in *People v. Peltz*, 2019 IL App (2d) 170465, that the certificate complied with Rule 604(d). *Gorss*, Summary Order (Appellate Court Number 2-18-0646), at ¶4. This holding is at odds with the purpose and the plain language of Rule 604(d), as it is based merely on an assumption that the required consultation occurred. Ill. S. Ct. R. 604(d).

To challenge the judgment on a guilty plea, a defendant may file either a motion to vacate his plea and/or a motion to reconsider his sentence, depending on the nature of the plea. *People v. Young*, 387 Ill. App. 3d 1126, 1128-29 (4th Dist. 2009). Regardless of the type of post-plea motion filed, it must be accompanied by a certificate from defense counsel stating that:

[T]he 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.

Supreme Court Rule 604(d) (2018).

Rule 604(d) provides a mandatory procedure to protect the defendant's interests through appropriate consultation. *Easton*, 2018 IL 122187 at ¶ 32; *People v. Dickerson*, 212 Ill. App. 3d 168, 171 (2d Dist. 1991). The purpose of Rule 604(d) is to ensure that any issue with a guilty plea or sentence can be addressed at the trial court level, before an appeal is taken. *People v. Tousignant*, 2014 IL 115329, ¶ 7. The rule was designed to eliminate needless trips to the appellate court and to give the trial court the opportunity to provide any correction, if necessary. *Tousignant*, 2014 IL 115329, at ¶ 13, citing *People v. Wilk*, 124 Ill. 2d 93, 106 (1988). Strict compliance with the Rule is required and failure to do so requires a reversal of judgment and a remand to the trial court for filing a new motion and a hearing on the motion. *Easton*, 2018 IL 122187 at ¶ 26 ("It is firmly established that the certificate filed by counsel must strictly comply with the requirements of Rule 604(d).").

Whether an attorney's certificate complies with Supreme Court Rule 604(d) is a legal question subject to *de novo* review. *People v. Mason*, 2015 IL App (4th) 130946, ¶ 8.

In *People v. Tousignant*, 2014 IL 115329, this Court considered whether Rule 604(d) required the attorney to certify that he had consulted with his client regarding his client's contentions of error in both the sentence and the guilty plea, or only regarding contentions of error relevant to the particular post-plea motion that was filed. This Court explained that Rule 604(d)'s consultation requirement was "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.” *Tousignant*, 2014 IL 115329, at ¶ 16 (emphasis in original). Accordingly, the Court held that counsel is required to certify that he has consulted with the defendant to ascertain the defendant’s contentions of error in both the sentence *and* the entry of the guilty plea, even in instances where only a motion to reconsider sentence has been filed. *Tousignant*, 2014 IL 115329, at ¶ 20.

Following *Tousignant*, this Court amended Rule 604(d), by striking the word “or” and inserting the word “and” in the phrase, “consulted with the defendant . . . to ascertain defendant’s contentions of error in the sentence *and* the entry of the plea of guilty.” Ill. S. Ct. R. 604(d) (effective March 8, 2016) (emphasis added). In addition, for the first time, Rule 604(d) included a form certificate. Among other things, the new form requires that counsel certify that he has “consulted with the Defendant . . . to ascertain the defendant’s contentions of error in the entry of the plea of guilty and in the sentence.” Ill. S. Ct. Rule 604(d) Art. VI Forms Appendix.

More recently, in *People v. Easton*, this Court reaffirmed that, “the goal of Rule 604(d) is to ensure that counsel’s consultation with defendant encompasses any contentions of error in *both* the entry of the guilty plea and the imposition of sentence.” 2018 IL 122187, at ¶ 32 (emphasis added). This Court stated that, “[t]he clarity of our statement that ‘counsel *is required* to certify’ that he or she has consulted with the defendant as to both types of error cannot be challenged.” *Easton*, 2018 IL 122187, at ¶ 35 (emphasis in original).

In this case, counsel did certify that he consulted with the defendant as to any errors in his sentence. (C. 182). However, instead of also certifying that

he consulted with the defendant about his contentions of error with regard to the entry of the guilty plea, defense counsel instead stated that “the defendant does not desire to withdraw the guilty plea.” (C. 182). This is inadequate. The plain language of the rule requires counsel to certify his own actions—that he has consulted with his client—not to certify a decision that the client has made. Ill. S. Ct. R. 604(d).

Despite this Court's clear directive, Mr. Gorss' case once again presents a issue regarding Rule 604(d)'s consultation requirement. Counsel never stated that he consulted with Mr. Gorss regarding any claim of error in the entry of his guilty plea. (C. 182). Counsel's statement that “[t]he Defendant does not desire to withdraw the guilty plea” did not cure this omission.

In *People v. Peltz*, 2019 IL App (2d) 170465, a certificate nearly identical to the one filed in this case was found to be sufficient by the Second District. However, that decision should be overruled. In *Peltz*, counsel certified that she consulted with the defendant about contentions of error in his sentence, but she did not certify that she consulted with him about contentions of error in his plea. She stated that “[t]he Defendant does not desire to withdraw his guilty plea.” *Peltz*, 2019 IL App (2d) 170465, at ¶¶ 18, 22. A majority of the appellate court held that this certificate was sufficient to comply with Rule 604(d), finding that “[c]ounsel cannot certify that defendant does not desire to withdraw his plea unless counsel has consulted with the defendant and determined that he or she has no contention of error in the entry of the plea.” *Peltz*, 2019 IL App (2d) 170465, at ¶ 22. The majority reasoned that it was the defendant's decision whether to seek to withdraw his guilty plea, and that Rule 604(d) “merely requires counsel to certify

that he or she consulted with defendant to ascertain ‘the defendant’s’ contentions of error.” *Peltz*, 2019 IL App (2d) 170465, at ¶¶ 26-27.

Justice McLaren dissented, finding that the language in counsel’s certificate was ambiguous and left the court to “speculate as to what occurred between counsel’s examination of the report of proceedings of the plea of guilty and defendant’s stated desire not to withdraw the plea.” *Peltz*, 2019 IL App (2d) 170465, at ¶ 49. He disagreed with the majority’s interpretation of the rule and found that the “substandard certification” left open a possible post-conviction claim of ineffective assistance of counsel for failing to consult with the defendant about an error in the guilty plea proceedings. *Peltz*, 2019 IL App (2d) 170465, at ¶¶ 51, 54. And he warned that “[a]pproving such an ambiguous certificate as that filed here only creates more work in the future for this court, the trial courts, and the State.” *Peltz*, 2019 IL App (2d) 170465, ¶ 54.

The dissent’s warning was apropos. The facts in this case are almost identical to *Peltz*, and they involve an almost identically-worded substandard certification requiring the same speculation, uncertainty as to the basis for the defendant’s decision to withdraw his plea, and additional burden on the judicial system. Just as in *Peltz*, the certificate in this case does not certify that counsel consulted about errors that could give rise to both types of post-plea motions. As to the guilty plea, it merely states that “[t]he Defendant does not desire to withdraw the guilty plea.” (C. 182). To find that statement sufficient under Rule 604(d) requires an unreasonable assumption that the defendant’s decision could only have been the result of a consultation.

Justice Thomas’ concurring opinion in *Tousignant* directly addresses that

assumption. The *Tousignant* dissent argued that the fact that a defendant chose not to file a motion to withdraw his guilty plea implied that there must have been some consultation between attorney and client regarding the guilty plea. Otherwise, the attorney would have been ethically obligated to follow his client's wishes and move to withdraw the plea. *Tousignant*, 2014 IL 115329, at ¶ 40-44 (Karmeier, J., dissenting). In response to this argument, Justice Thomas' concurrence correctly points out that logically, it cannot follow that a lack of certification regarding the guilty plea consultation may be used to prove that the guilty plea consultation took place. "The dissent's answer to the problem is simply to assume that the other necessary consultation took place. But if the Court is willing to engage in such assumptions, then why have Rule 604(d) at all?" *Tousignant*, 2014 IL 115329, at ¶ 28-29 (Thomas, J., concurring).

If a reviewing court can assume that a defendant's decision to file or not file a motion to withdraw his plea means he has adequately consulted with his attorney, then there truly is no reason for a 604(d) certification in the first place. A reviewing court could simply rely on the premise suggested by the *Tousignant* dissent—that because attorneys are ethically obligated to follow their clients' wishes, the lack of a motion to withdraw the plea would be sufficient. All the court would need to do would be to review the record and note the type of post-plea motion filed. The lack of a particular type of post-plea motion, not anything in the certificate, would then serve as "proof" that counsel fulfilled their consultation obligations under Rule 604(d). Yet, this exact argument was rejected by this Court in *Tousignant*, 2014 IL 115329, at ¶ 20.

The purpose of the certificate is to ensure that the actual consultation took

place, not to state the ultimate decision by the defendant, which may or may not have been based on a consultation with counsel at all. The Second District's interpretation in *Peltz* and the case at hand leaves open the possibility that a defendant may have had concerns about his guilty plea that were never discussed with counsel, and his decision on the issue made out of ignorance rather than a consultation regarding his contentions of error.

Other appellate courts have recognized the purpose of the Rule. In holding that Rule 604(d) applies to all pleas, not just open pleas, the First District noted that “the rule focuses on the attorney’s duty to consult with his or her client, and that consultation has value even if it does not ultimately affect the content of the motion.” *People v. Gillespie*, 2017 IL App (1st) 152351, ¶12. Correspondingly, even if the consultation does not ultimately affect a defendant’s decision to withdraw his guilty plea, the underlying goal of the rule is to ensure the consultation, not to recite the resulting decision.

The majority decision in *Tousignant*, the concurrence in *Tousignant*, the decision in *Easton*, and Justice McLaren’s dissent in *Peltz*, are all in line with the plain language and underlying goal of the 604(d) certificate. The majority ruling in *Peltz* and Mr. Gorss’ case are not. In *Easton*, this Court explained that when examining the certificate, a reviewing court’s task is to determine whether counsel has *actually* satisfied the 604(d) directive for a consultation. As this Court stated, “The certificate relates the details of counsel’s consultation with the defendant. Its objective is to describe past conduct—*i.e.*, the factual circumstances of an interaction with defendant that has already taken place. ...The focus is to ascertain *what counsel actually did* to achieve compliance with the rule.” *Easton*,

2018 IL 122187, at ¶ 34 (emphasis added). In accordance with that holding, the bare assertion in this case that the defendant did not wish to file a motion to withdraw his plea did not provide any factual circumstances whatsoever surrounding that decision and does not satisfy this directive. The certificate provides no clue as to what counsel actually did or what role he played, if any, in his client's decision not to withdraw his plea.

The requirement for consultation not only protects the defendant's interests by avoiding the forfeiture of any potential issue on appeal, it furthers the interests of judicial economy. The certificate in the case at hand showed an examination of the record and a decision not to file a motion to withdraw the plea, but made no mention of the certificate's primary goal—the demonstration of a factual basis from which the Court could ascertain that an actual consultation occurred. The majority in *Peltz* “invites assumptions and permits ambiguity that may ultimately provide the basis for postconviction proceedings.” *Peltz*, 2019 IL App (2d) 170465, at ¶ 47 (McLaren, J., dissenting). Allowing an assumption of this magnitude results in a Rule 604(d) certificate that acts “as a mere procedural checkpoint rather than as a tool to protect a defendant's constitutional rights and eliminate needless trips to the appellate court.” *People v. Hobbs*, 2015 IL App (4th) 130990, ¶ 35. This is yet another case in which an ambiguous certification leaves the door open for further proceedings raising allegations of ineffective assistance of counsel, jeopardizing finality in this case and any future cases that present this issue.

Because the 604(d) certification filed in this case failed to strictly comply with the Supreme Court Rule, Mr. Gorss asks that this Court remand his case for new post-plea proceedings including: (1) compliance with Rule 604(d); (2) the

opportunity to file a new post-plea motion, should he so choose, and (3) a hearing on that motion.

CONCLUSION

For the foregoing reasons, Robert Gorss, defendant-appellant, respectfully requests that this Court reverse the appellate court's decision and remand his case for new post-plea proceedings including: (1) compliance with Rule 604(d); (2) the opportunity to file a new post-plea motion, should he so choose, and (3) a hearing on that motion.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in 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 certificate of service, and those matters to be appended to the brief under Rule 342, is 14 pages.

/s/Amaris Danak
AMARIS DANAK
Assistant Appellate Defender

APPENDIX TO THE BRIEF**Robert Gorss No. 126464**

Index to the Record	1
Judgment Order	9
Notice of Appeal	12
Appellate Court Decision	13

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 2-18-0646Circuit Court No: 2016CF002007Trial Judge: LIAM C BRENNAN

v.

ROBERT GORSS

Defendant/Respondent

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 4

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
	<u>RECORD SHEET</u>	C 6-C 67
11/03/2016	<u>COMPLAINT FILED</u>	C 68-C 70
11/03/2016	<u>WARRANT - ARREST</u>	C 71
11/22/2016	<u>WARRANT-BODY WRIT SERVED</u>	C 72-C 73
11/23/2016	<u>WARRANT-BODY WRIT SERVED</u>	C 74
11/23/2016	<u>MITTIMUS</u>	C 75
11/23/2016	<u>BOND ACTION</u>	C 76
11/23/2016	<u>SCRAM</u>	C 77
11/23/2016	<u>APPEARANCE FILED</u>	C 78
11/30/2016	<u>CRIMINAL ACTION ORDER</u>	C 79
12/06/2016	<u>PEOPLE'S VERIFIED PETITION TO INCREASE BAIL</u>	C 80-C 82
12/06/2016	<u>CRIMINAL ACTION ORDER</u>	C 83
12/06/2016	<u>INMATE COURT DISPOSITION</u>	C 84
12/20/2016	<u>SUPERSEDING INDICTMENT 1</u>	C 85
12/20/2016	<u>SUPERSEDING INDICTMENT 2</u>	C 86
12/20/2016	<u>INDICTMENT 5</u>	C 87
12/20/2016	<u>INDICTMENT 6</u>	C 88
12/20/2016	<u>INDICTMENT 7</u>	C 89
12/20/2016	<u>INDICTMENT 8</u>	C 90-C 91
01/09/2017	<u>DISCOVERY ORDER</u>	C 92
01/09/2017	<u>INMATE COURT DISPOSITION</u>	C 93

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C 2

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

Page 2 of 4

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
01/17/2017	<u>SUPPLEMENTAL DISCLOSURE TO DEFENSE COUNSEL GRAND JURY TRANSCRIPT</u>	C 94-C 95
02/17/2017	<u>SUPPLEMENTAL DISCLOSURE TO DEFENSE COUNSEL NO 1</u>	C 96
02/17/2017	<u>CRIMINAL ACTION ORDER</u>	C 97
02/17/2017	<u>INMATE COURT DISPOSITION</u>	C 98
04/05/2017	<u>CRIMINAL ACTION ORDER</u>	C 99
04/05/2017	<u>INMATE COURT DISPOSITION</u>	C 100
04/27/2017	<u>SUPPLEMENTAL DISCLOSURE TO DEFENSE COUNSEL NO 1</u>	C 101-C 102
05/18/2017	<u>CRIMINAL ACTION ORDER</u>	C 103
05/18/2017	<u>INMATE COURT DISPOSITION</u>	C 104
05/26/2017	<u>NOTICE FILED</u>	C 105
06/28/2017	<u>CRIMINAL ACTION ORDER</u>	C 106
06/28/2017	<u>INMATE COURT DISPOSITION</u>	C 107
08/10/2017	<u>NOTICE FILED</u>	C 108
08/16/2017	<u>SUPPLEMENTAL DISCLOSURE TO DEFENSE COUNSEL NO 3</u>	C 109-C 110
08/16/2017	<u>CRIMINAL ACTION ORDER</u>	C 111
08/16/2017	<u>INMATE COURT DISPOSITION</u>	C 112
08/23/2017	<u>SUPPLEMENTAL DISCLOSURE TO DEFENSE COUNSEL NO 4</u>	C 113-C 115
09/20/2017	<u>CRIMINAL ACTION ORDER</u>	C 116
09/20/2017	<u>INMATE COURT DISPOSITION</u>	C 117
10/05/2017	<u>SUPPLEMENTAL DISCLOSURE TO DEFENSE COUNSEL NO 5</u>	C 118-C 119
10/17/2017	<u>CRIMINAL ACTION ORDER</u>	C 120
10/17/2017	<u>INMATE COURT DISPOSITION</u>	C 121
11/09/2017	<u>CRIMINAL ACTION ORDER</u>	C 122
11/09/2017	<u>INMATE COURT DISPOSITION</u>	C 123
12/19/2017	<u>CRIMINAL ACTION ORDER</u>	C 124
12/19/2017	<u>INMATE COURT DISPOSITION</u>	C 125
01/08/2018	<u>MOTION TO QUASH ARREST AND SUPPRESS EVIDENCE</u>	C 126-C 128
01/08/2018	<u>CRIMINAL ACTION ORDER</u>	C 129

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

Page 3 of 4

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
01/08/2018	<u>INMATE COURT DISPOSITION</u>	C 130
02/08/2018	<u>DOCUMENT SERVED - SUBPOENA - OFFICER UCHO</u>	C 131-C 132
02/14/2018	<u>CRIMINAL ACTION ORDER</u>	C 133
02/28/2018	<u>DOCUMENT SERVED - SUBPOENA - OFFICER UCHO</u>	C 134-C 135
04/02/2018	<u>SUPPLEMENTAL DISCLOSURE TO DEFENDANT NO VI</u>	C 136-C 137
04/05/2018	<u>SUPPLEMENTAL DISCLOSURE TO DEFENDANT NO VII</u>	C 138-C 139
04/09/2018	<u>SUPPLEMENTAL DISCLOSURE TO DEFENDANT NO VIII</u>	C 140-C 141
04/10/2018	<u>CRIMINAL ACTION ORDER</u>	C 142
04/10/2018	<u>CRIMINAL ACTION ORDER</u>	C 143
04/10/2018	<u>EVIDENCE RECEIPT</u>	C 144
04/10/2018	<u>INMATE COURT DISPOSITION</u>	C 145
05/01/2018	<u>WAIVER OF JURY TRIAL</u>	C 146-C 147
05/01/2018	<u>PRESENTENCE REPORT ORDER</u>	C 148
05/01/2018	<u>CRIMINAL ACTION ORDER</u>	C 149
05/01/2018	<u>INMATE COURT DISPOSITION</u>	C 150
06/06/2018	<u>PRE-PLEA OR PRE-SENTENCE REPORT (Secured)</u>	C 151
06/12/2018	<u>CRIMINAL ACTION ORDER</u>	C 152
06/12/2018	<u>INMATE COURT DISPOSITION</u>	C 153
06/29/2018	<u>IDOC ORDER</u>	C 154-C 156
06/29/2018	<u>LETTER</u>	C 157
06/29/2018	<u>LETTER</u>	C 158
06/29/2018	<u>MISCELLANEOUS - VICTIM IMPACT STATEMENT</u>	C 159-C 162
06/29/2018	<u>EVIDENCE RECEIPT</u>	C 163
06/29/2018	<u>CRIMINAL ORDER</u>	C 164
06/29/2018	<u>INMATE COURT DISPOSITION</u>	C 165
07/06/2018	<u>MOTION TO RECONSIDER SENTENCE</u>	C 166-C 168
07/06/2018	<u>APPOINTMENT OF COUNSEL ON APPEAL</u>	C 169
07/06/2018	<u>CRIMINAL ACTION ORDER</u>	C 170

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

Page 4 of 4

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
07/06/2018	<u>INMATE COURT DISPOSITION</u>	C 171
07/09/2018	<u>NOTICE OF APPEAL</u>	C 172
07/09/2018	<u>CRIMINAL ACTION ORDER</u>	C 173
07/09/2018	<u>INMATE COURT DISPOSITION</u>	C 174
07/12/2018	<u>RECEIPT DOC TO COURT REPORTER</u>	C 175
07/12/2018	<u>CRIMINAL ACTION ORDER</u>	C 176
07/12/2018	<u>INMATE COURT DISPOSITION</u>	C 177
07/13/2018	<u>CERTIFICATE OR STATEMENT OF MAILING BY CLERK</u>	C 178
07/17/2018	<u>APPEAL DISMISS CLK NOTIFY REVIEW CT</u>	C 179
07/19/2018	<u>RECEIPT DOC TO ST APP DEFENDER</u>	C 180
08/13/2018	<u>APPOINTMENT OF COUNSEL ON APPEAL</u>	C 181
08/13/2018	<u>CERTIFICATE OR STATEMENT FILED</u>	C 182
08/13/2018	<u>CRIMINAL ACTION ORDER</u>	C 183
08/13/2018	<u>INMATE COURT DISPOSITION</u>	C 184
08/14/2018	<u>NOTICE OF APPEAL</u>	C 185

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 2-18-0646Circuit Court No: 2016CF002007Trial Judge: LIAM C BRENNAN

v.

ROBERT GORSS

Defendant/Respondent

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 1

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
06/06/2018	<u>PRE-PLEA OR PRE-SENTENCE REPORT</u>	SEC C 4-SEC C 22

2-18-0646

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
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PEOPLE OF THE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 2-18-0646Circuit Court No: 2016CF002007Trial Judge: LIAM C BRENNAN

v.

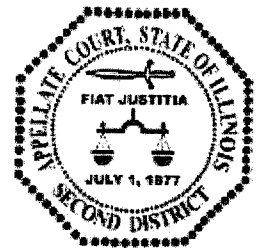
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ROBERT GORSS

Defendant/Respondent

E-FILED
Transaction ID: 2-18-0646
File Date: 10/3/2018 9:56 AM
Robert J. Mangan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

Page 1 of 1

<u>Date of</u>		
<u>Proceeding</u>	<u>Title/Description</u>	<u>Page No.</u>
11/30/2016	<u>CONTINUANCE</u>	R 2-R 5
12/06/2016	<u>STATUS</u>	R 6-R 17
01/09/2017	<u>STATUS</u>	R 18-R 21
02/17/2017	<u>CONTINUANCE</u>	R 22-R 25
04/05/2017	<u>STATUS</u>	R 26-R 28
05/18/2017	<u>STATUS</u>	R 29-R 33
06/28/2017	<u>STATUS</u>	R 34-R 38
08/16/2017	<u>DISCOVERY</u>	R 39-R 43
10/17/2017	<u>STATUS</u>	R 44-R 46
11/09/2017	<u>STATUS</u>	R 47-R 51
12/19/2017	<u>STATUS</u>	R 52-R 54
01/08/2018	<u>STATUS</u>	R 55-R 58
02/14/2018	<u>STATUS</u>	R 59-R 63
04/10/2018	<u>HEARING</u>	R 64-R 177
05/01/2018	<u>PLEA</u>	R 178-R 191
06/12/2018	<u>STATUS</u>	R 192-R 194
06/29/2018	<u>SENTENCING</u>	R 195-R 232
07/06/2018	<u>MOTION TO RECONSIDER SENTENCE</u>	R 233-R 239
07/09/2018	<u>STATUS</u>	R 240-R 247
07/12/2018	<u>STATUS</u>	R 248-R 253
08/13/2018	<u>MOTION</u>	R 254-R 258
09/20/2018	<u>DISCOVERY</u>	R 259-R 262

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WHEATON, ILLINOIS 60187

R 1

INDEX TO THE RECORD

People v. Robert Gorss,
 DuPage County Case No.: 16 CF 2007
 Second Judicial District Appellate Court No.: 2-18-0646
 Illinois Supreme Court No. 126464

Report of Proceedings ("R")

	<u>Direct</u>	<u>Cross</u>	<u>Redir.</u>	<u>Recr.</u>
April 10, 2018 - Hearing on Defense Motion to Quash Arrest				64
Defense Witness				
Robert Joseph Gorss	67	88	106	
State Witness				
Ofcr. Scott Frieling	114	129		
Sgt. Michael Chudzinski	144	154		
June 29, 2018 - Sentencing Hearing				195
Witness in Aggravation				
Lt. Joseph Grage	201			

Exhibits:: One exhibit envelope containing Defense Exhibit No. 1
 and one exhibit envelope containing Defense Group Exhibit No.
 1, State Exhibit Nos. 1, 2, 3, 4, 5.

2-18-0646

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 2-18-0646Circuit Court No: 2016CF002007Trial Judge: LIAM C BRENNAN

v.

10

ROBERT GORSS

Defendant/Respondent

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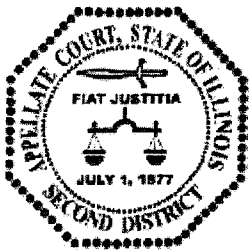
Robert J. Mangan, Clerk of the Court

APPELLATE COURT 2ND DISTRICT

EXHIBITS - TABLE OF CONTENTS

Page 1 of 1

<u>Party</u>	<u>Exhibit #</u>	<u>Description/Possession</u>	<u>Page No.</u>
DEFENDANT	1	<u>WARNING TO MOTORIST</u>	E 2
DEFENDANT	1	<u>GROUP (REPORT AND LETTERS)</u>	E 3-E 26
PLAINTIFF	1	<u>PHOTO - CAR</u>	E 27
PLAINTIFF	2	<u>PHOTO - CAR</u>	E 28
PLAINTIFF	3	<u>PHOTO - TRUCK</u>	E 29
PLAINTIFF	4	<u>LAB REPORT ISP</u>	E 30-E 31
PLAINTIFF	5	<u>VIS - AARON MICKEAS</u>	E 32



**IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS
EIGHTEENTH JUDICIAL CIRCUIT**

PEOPLE OF THE STATE OF ILLINOIS

2016CF002007
CASE NUMBER

-VS-

Date of Sentence 06/29/2018

Date of Birth 01/19/1969
(Defendant)

Year of Birth 05/22/1968
(Victim)

ROBERT J GORSS
Defendant

FILED

18 Jun 29 PM 12: 18

Chris Kachirobas
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

JUDGMENT - SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above named defendant has been adjudged guilty of the offenses enumerated below.

IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	DATE OF OFFENSE CITATION	CLASS SENTENCE	MANDATORY SUPERVISED RELEASE
0001	625 ILCS 5/11-501(a) AGGRAVATED DUI - ACCIDENT CAUSING DEATH	2 11yr(s)	3yr(s)

The Court finds that the defendant is:

- [X] Convicted of a class 2 offense but sentenced as a Class X offender pursuant to 730 ILCS 5/5-5-3(c)(8).
 [X] The Court further finds that the defendant is entitled to receive credit for time actually served in custody from 11/22/2016-06/29/2018.
 [X] The Court further finds that the conduct leading to conviction for the offenses enumerated in count(s) 0001 resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(iii)).
 [] The Court further finds that the defendant meets the eligibility requirements and is approved for placement in the "impact incarceration" program. If the Department accepts the defendant and determines that the defendant has successfully completed the program, the sentence shall be reduced to time considered served upon certification to the Court by the Department that the defendant has successfully completed the program. Written consent is attached.
 [] The court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance.
 [] IT IS FURTHER ORDERED that the sentence(s) imposed on count(s) _____ be (concurrent with) (consecutive to) the sentence imposed in case number _____ in the Circuit Court of _____ County.
 [X] IT IS FURTHER ORDERED that the defendant serve 85% for counts 0001 of said sentence.
 [] IT IS FURTHER ORDERED that the Clerk of the Court deliver a certified copy of this order to the Sheriff.
 [X] IT IS FURTHER ORDERED that the Sheriff take the defendant into custody and deliver him to the Department of Corrections which shall confine said defendant until expiration of his sentence or until he is otherwise released by operation of law.
 NOLLE PROS: COUNT(S) 0002,0003,0004,0005,0006,0007,0008. THE REASON STATED IS - PER PLEA AGREEMENT.
 DEF. PRESENT IN CUSTODY, MR DIBENEDETTO PRESENT FOR DEF. COURT PREVIOUSLY ACCEPTED DEF.'S GUILTY PLEA AS KNOWING AND VOLUNTARY; SUFFICIENT FACTUAL BASIS. DEF.S TRANSPORT TO IDOC IS TO BE STAYED TO 07/06/2018. 07/06/2018 AT 9AM COURTROOM 4012 FOR STATUS

- [X] IT IS FURTHER ORDERED THAT
 FOR COUNT 0001 The total amount of your costs, not including any probation, community service or restitution amounts, is \$1,958.00. This includes the case level assessments shown on the order addendum. The amount you have been credited is \$70.00, a credit of \$5.00 for the following date(s): 11/22/2016-06/29/2018. Pay the amount remaining of \$1,888.00. This includes all fines, fees, costs, penalties and assessments.
 STATES ATTORNEY FEES \$30.00 (55 ILCS 5/4-2002, 625 ILCS 5/16-105).
 SA RECORDS AUTOMATION FEE \$2.00 (55 ILCS 5/4-2002(a)).
 DRUG COURT-MENTAL HEALTH COURT FUND \$10.00 (Credit Amount \$10.00) (55 ILCS 5/5-1101, County Codes 9-21 and 9-25).
 CHILD ADVOCACY CENTER FEE \$30.00 (Credit Amount \$30.00) (55 ILCS 5/5-110(f-5)).
 DUI TECH FUND \$750.00 (625 ILCS 5/11-501.01(f), 625 ILCS 40/5-7(e-3), 625 ILCS 45/5-16(A)5.3).
 SPINAL CORD FUND \$5.00 (705 ILCS 105/27.6(b-1), 705 ILCS 105/27.6(c-1), 730 ILCS 5-9-1.1(c)).

EXPUNGEMENT FINE \$30.00 (Credit Amount \$30.00) (730 ILCS 5/5-9-1.17).
VIOLENT CRIME VICTIMS ASSISTANCE FUND \$100.00 (725 ILCS 240/10).
SURCHARGE \$264.00 (730 ILCS 5/5-9-1c, 50 ILCS 705/9.1).
CAMERA GRANT FUND \$72.00 (730 ILCS 5/5-9-1c, 50 ILCS 705/9.1).
LEADS MAINTENANCE FUND \$24.00 (730 ILCS 5/5-9-1c, 50 ILCS 705/9.1).
DRIVERS EDUCATION \$96.00 (625 ILCS 5/16-104a).
SERIOUS TRAFFIC VIOLATION FEE \$35.00 (625 ILCS 5/16-104d).
TRAUMA CENTER FEE \$100.00 (625 ILCS 5/16-104b, 730 ILCS 5/5-9-1.10, 730 ILCS 5/5-9-1.1(b)).
COURT FUND FEE \$30.00 (55 ILCS 5/5-1101, County Codes 9-21 and 9-25).
COUNTY JAIL MEDICAL COSTS FUND FEE \$10.00 (730 ILCS 125/17).
CRIME LABORATORY DUI FUND \$150.00 (730 ILCS 5/5-9-1.9).
STATE POLICE MERIT BOARD PUBLIC SAFETY FUND \$15.00 (705 ILCS 105/27.6(n)).

THIS ORDER IS EFFECTIVE IMMEDIATELY.

[X] IT IS FURTHER ORDERED THAT EVIDENCE SHALL BE disposed after 45 days unless there are further court filings.

DATE: 06/29/2018

JUDGE

 06/29/2018

PREPARED BY: JAMES SCALIATINE

BRENNAN LIAM

Email :sao4012@dupageco.org

Validation ID : DP-06292018-1220-26583

CHRIS KACHIROUBAS, CLERK OF THE 18TH JUDICIAL CIRCUIT COURT, WHEATON, ILLINOIS 60187-0707
Page : 2 of 3

STATE OF ILLINOIS

UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS

COUNTY OF DU PAGE

PEOPLE OF THE STATE OF ILLINOIS

-VS-

2016CF002007
CASE NUMBER

Addendum to Count 0001

ROBERT J GORSS

DEFENDANT

FILED

18 Jun 29 PM 12: 18

*Chris Kachiroubas*CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS
File Stamp Here**CASE LEVEL ASSESSMENT SHEET**

COURT AUTOMATION FEE \$15.00 (705 ILCS 105/27.3, County Code 9-30).
 DOCUMENT STORAGE FEE \$15.00 (705 ILCS 105/27.3(c), County Code 9-10).
 CLERKS FEES \$125.00 (705 ILCS 105/27.2(w)).
 PROBATION OPERATIONS FEE \$10.00.
 COURT SECURITY FEE \$25.00 (55 ILCS 5/3-6023, 55 ILCS 5/5-1103, County Code 20-30, OJPS-001B-89).
 STATE POLICE FEE \$15.00 (705 ILCS 105/27.3a(1.5)).

CHRIS KACHIROUBAS, CLERK OF THE 18TH JUDICIAL CIRCUIT COURT, WHEATON, ILLINOIS 60187-0707
 Page : 3 of 3

7280

NOTICE OF APPEAL - CRIMINAL

3174 (Rev. 11/10)

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS

vs

2016CF2007

CASE NUMBER

ROBERT J GORSS

DEFENDANT

e-FILED

AUG 14, 2018 03:00 PM

*Chris Kachirobas*CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

File Stamp Here

**NOTICE OF APPEAL
(CRIMINAL)****AN APPEAL IS TAKEN FROM THE ORDER OR JUDGMENT DESCRIBED BELOW**

1. Court to which appeal it taken: 2nd District Appellate Court of Illinois

2. Name of appellant and address to which notices shall be sent:

Name ROBERT J GORSS #121378Telephone N/AAddress P O BOX 957, WHEATON, IL 60187

3. Name and address of appellant's attorney on appeal:

Name STATE APPELLATE DEFENDERTelephone (847) 695-8822Address ONE DOUGLAS AVE., SECOND FLOOR, ELGIN, IL 60120If the appellant is indigent and has no attorney, does he want one appointed? ☐ yes ☐ no ☒ n/a4. Date of Judgment or Order: 08/13/185. Offense of which convicted: AGGRAVATED DUI - ACCIDENT CAUSING DEATH6. Sentence: 11 YEARS IDOC7. If appeal is not from a conviction, nature of order appealed from: MOTION TO RECONSIDER DENIED*Chris Kachirobas*
may be signed by appellant, attorney for appellant or by the Clerk of the Circuit Court

8. If the appeal is from a judgment of a circuit court holding unconstitutional a statute of the United States or of this state, a copy of the court's findings made in compliance with Rule 18 shall be appended to the notice of appeal.

PROOF OF MAILINGI, **CHRIS KACHIROUBAS**, Clerk of the Eighteenth Judicial Circuit Court of DuPage County, Illinois do hereby certify that on 08/14/2018 I mailed copies of the above and foregoing Notice of Appeal to:State's Attorney of
DuPage County
Wheaton, Illinois 60187Attorney General of the
State of Illinois
Chicago, Illinois 60601Clerk of the 2nd District
Appellate Court
Elgin, Illinois 60123Court Reporters
505 N. County Farm Rd.
Wheaton, Illinois 60187State Appellate Defender
Second Judicial District
One Douglas Ave., 2nd Fl.
Elgin, Illinois 60120-5599DuPage County Judicial Center
505 N. County Farm Rd.
Wheaton, Illinois 60187
Judge LIAM C BRENNAN554
BY*Chris Kachirobas*
DEPUTY CLERKCHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60189-0707

C 185

No. 2-18-0646
Summary Order filed July 30, 2020

NOTICE: This order was filed under Supreme Court Rule 23(c)(2) 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
SECOND DISTRICT

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.	)	No. 16-CF-2007
)	
ROBERT J. GORSS,	)	Honorable
	)	Liam C. Brennan,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

SUMMARY ORDER

¶ 1 Defendant, Robert J. Gorss, pled guilty in the circuit court of Du Page County to one count of aggravated driving under the influence causing death (625 ILCS 5/11-501(a)(6), (d)(1)(F), (d)(2)(G) (West 2016)) and was sentenced to 11 years in prison. Defendant's motion to reconsider his sentence was denied, and he filed this timely appeal. On appeal, he contends that his trial counsel failed to strictly comply with Rule 604(d) (eff. Mar. 8, 2016) and that the trial court failed to consider the mitigating evidence and his rehabilitative potential when imposing the sentence. We affirm.

¶ 2 Defendant asserts that his trial counsel failed to strictly comply with Rule 604(d)'s certificate requirement, because he did not state in the certificate that he consulted with defendant to ascertain any contentions of error with the guilty plea. That assertion lacks merit.

No. 2-18-0646

¶ 3 Rule 604(d) requires, in pertinent part, that trial counsel file a certificate stating that he consulted with the defendant to ascertain the defendant's contentions of error in the guilty plea and the sentence, that he has examined the trial court file and report of proceedings of the guilty plea and sentence, and that he has made any amendments to the motion necessary for the adequate presentation of any defects in those proceedings. Ill. S. Ct. Rule 604(d) (eff. Mar. 8, 2016). It is well established that an attorney's certificate must strictly comply with Rule 604(d). *People v. Calleros*, 2018 IL App (2d) 151256, ¶ 3. If the certificate does not strictly comply, a reviewing court must remand the case to the trial court for proceedings that strictly comply with Rule 604(d), including a new hearing on the motion. *Calleros*, 2018 IL App (2d) 151256, ¶ 3.

¶ 4 Here, defendant's attorney did not state in the certificate that he consulted with defendant about any contentions of error in the guilty plea. However, he did state in the certificate that defendant did not desire to withdraw his guilty plea. In a nearly identical situation, this court recently held that, where the Rule 604(d) certificate fails to state that counsel consulted with the defendant to ascertain any contentions of error in the guilty plea, but states that the defendant does not desire to withdraw his guilty plea, the certificate strictly complied with Rule 604(d). *People v. Peltz*, 2019 IL App (2d) 170465, ¶¶ 22-28 [leave to appeal denied, 140 N.E. 2d 249 (Table)]. Although defendant asks us to reconsider our holding in *Peltz*, we decline to do so. Because the certificate in this case stated that defendant did not desire to withdraw his guilty plea, the failure to state that counsel consulted with defendant about his contentions of error in the guilty plea did not violate Rule 604(d).

¶ 5 We next address defendant's contention that the trial court, in imposing the sentence, failed to consider mitigating evidence. It did not.

No. 2-18-0646

¶ 6 A trial court has broad discretion in imposing a sentence, and its sentencing decisions are entitled to great deference on appeal. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). Absent some indication to the contrary, other than the sentence itself, we presume that the trial court properly considered all relevant mitigating factors presented. *People v. Branch*, 2018 IL App (1st) 150026, ¶ 34. To rebut that presumption, a defendant must make an affirmative showing that the trial court did not consider the relevant factors. *Branch*, 2018 IL App (1st) 150026, ¶ 37. In reviewing a sentence, the reviewing court will not reweigh the sentencing factors and substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *Branch*, 2018 IL App (1st) 150026, ¶ 34. A reviewing court will not alter a defendant's sentence absent an abuse of discretion. *Branch*, 2018 IL App (1st) 150026, ¶ 34. A sentence that falls within the statutory range is presumed to be proper and will not be deemed excessive unless it greatly varies from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Branch*, 2018 IL App (1st) 150026, ¶ 34.

¶ 7 Here, the applicable sentencing range was 6-30 years in prison, and defendant was sentenced to 11 years. We presume that the trial court properly considered all mitigating evidence. Defendant has not affirmatively shown otherwise. Indeed, the trial court stated that it considered the presentence investigation report and the "packet of mitigation that was provided by the defense." The court later reiterated that it "reviewed all the letters and other documents contained" in the mitigation packet. When the court asked defendant if there was any other mitigating evidence, defendant answered no. The court also stated that it considered all statutory and non-statutory mitigating factors along with defendant's allocution. Undoubtedly, the court properly considered the mitigating evidence.

No. 2-18-0646

¶ 8 Finally, defendant asserts that the trial court did not properly consider his rehabilitative potential. A sentencing court is not required to give more weight to a defendant's rehabilitative potential than to the seriousness of the offense. *Branch*, 2018 IL App (1st) 150026, ¶ 39. In fashioning a sentence, the most important factor is the seriousness of the offense. *Branch*, 2018 IL App (1st) 150026, ¶ 39.

¶ 9 Here, the trial court noted that defendant posed a risk to the community and needed to be punished. Clearly, the court considered the seriousness of the offense in fashioning the sentence. However, that does not show that the court did not also consider defendant's rehabilitative potential, as reflected in the mitigation evidence. The 11-year prison sentence, which was well below the midpoint of the applicable range, reflected proper consideration of defendant's rehabilitative potential. More importantly, it did not vary greatly from the spirit and purpose of the law and was not manifestly disproportionate to the nature of the offense.

¶ 10 The judgment of the circuit court of Du Page County is affirmed.

¶ 11 Affirmed.

No. 126464

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

Mr. Robert Berlin, DuPage County State's Attorney, Ms. Lisa Ann Hoffman, Supervisor of Appeals, 503 North County Farm Road, Wheaton, IL 60187, SAO.Appeals@dupageco.org;

Mr. Robert Gorss, Register No. B19947, East Moline Correctional Center, 100 Hillcrest Road, East Moline, IL 61244

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. On February 26, 2021, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Vinette Mistretta
 LEGAL SECRETARY
 Office of the State Appellate Defender
 One Douglas Avenue, Second Floor
 Elgin, IL 60120
 (847) 695-8822
 Service via email will be accepted at
2nddistrict.eserve@osad.state.il.us