

No. 1-24-2282

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
	)	Cook County
	)	
v.	)	22 CR 13560
	)	22 CR 1854
	)	
RASHAWN SMITH,	)	Honorable
	)	Angela Munari Petrone,
Defendant-Appellant.	)	Judge Presiding.
	)	

PRESIDING JUSTICE ELLIS delivered the judgment of the court, with opinion.
Justices Fitzgerald Smith and Howse concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Rashawn Smith pleaded guilty to two counts of unlawful possession of a weapon by a felon in two separate cases. As part of the deal, the sentences on those charges would run consecutively; that is, he would not start serving the second sentence until the first was finished. Based on an agreement between Smith and the State, the court sentenced him to a total of 10 years in prison.

¶ 2 But Smith claims he thought he would receive pre-sentencing credit on *each* sentence and was surprised when his sentence included credit only on the first. Confused, he sent a letter to the circuit court asking for credit on each sentence, telling the court, in effect, that he would not have pleaded guilty had he known his credit only applied to his first sentence.

¶ 3 After that letter went unaddressed by the court, Smith sent a few more to the same effect. The trial court ultimately reviewed the correspondence and, on the record but without defendant present, determined that Smith was *not* entitled to the additional credit and denied his request.

¶ 4 Smith now appeals, arguing that the first letter he sent sufficiently indicated a desire to withdraw his guilty plea, such that the court was obligated to ask Smith whether he wanted counsel appointed to help him move to withdraw his plea. Though we are sympathetic to trial judges faced with rather ambiguous correspondence, the law compels trial judges to liberally construe these submissions and err on the side of caution. We thus agree with Smith that the court had a duty to inquire whether Smith wanted to withdraw his plea and have counsel appointed. We reverse the court's judgment and remand the cause to give Smith that opportunity.

¶ 5 BACKGROUND

¶ 6 Smith entered guilty pleas in two separate cases. In each, the State indicted Smith, among other things, on charges of being an armed habitual criminal (AHC) and unlawful use of a weapon by a felon (UUWF). The State agreed to drop the AHC charges (Class X felonies), and Smith pleaded guilty to UUWF in each case. He would receive sentences of 6 and 4 years to run consecutively.

¶ 7 Smith entered those pleas on October 31, 2023. The court admonished Smith that the sentencing range on each offense was between 3 and 14 years, that he would serve the sentences consecutively, and that by pleading guilty, he was waiving his right to a jury trial and a pre-sentence investigation. The court sentenced Smith to 6 years in the first case, awarding him 652 days of presentence custody credit, before imposing a consecutive 4-year sentence in the second case, noting that Smith would “be given *an aggregate credit of 652 days on that case as well.*”

¶ 8 Next, the court admonished Smith of his rights under Illinois Supreme Court Rule 605(c)

(eff. Sept. 18, 2023), including that, if he wanted to withdraw his guilty plea, he had to file a written motion within 30 days of sentencing. Smith indicated that he understood his rights.

¶ 9 About a month later, via counsel, Smith asked the court to award him 11 more days of presentence credit, as he had completed a work program while in jail in Cook County. The court issued a new sentencing order adding the 11 days of credit, giving Smith a total of 663 days.

¶ 10 Meanwhile, the letter at the center of this appeal was making its way to the trial court. On November 20, 2023—20 days after his sentencing—Smith sent a letter to the clerk of the circuit court’s office at the criminal court building at 26th Street and California Avenue. The letter was dated “11-18-23,” while the envelope was postmarked “20 NOV 2023.” (The State does not challenge the timeliness of this letter, so we will leave it there.)

¶ 11 In that letter, Smith wrote that he was “very upset” with how the “system” had messed up his time calculation. He calculated that he should have a total of 1,304 days of credit, not 652. Smith asked that “we please have this issue fixed” at his next court appearance. At the end of the letter, Smith wrote, verbatim: “i would of never accepted time if i knew i wasn’t being credit all my time.”

¶ 12 Initially, Smith received no response. The record does not indicate that the court received the letter or addressed it in the month that followed. So Smith peppered the court with more letters asking for credit—all addressed to the clerk, who stamped and filed them in the court file. In letters dated January 24 and February 7, 2024, Smith again wrote—again, verbatim—that he “would have never accepted no time if i would have none [sic],” referring to the credit to which he claimed entitlement. Although all these letters were marked “received” and “filed” by the clerk, there is no indication in the record that the trial court ever addressed or answered them.

¶ 13 Then, on July 30, 2024, Smith filed a *pro se* petition for “mandamus,” requesting that the

court grant him 1,956 days of presentence credit. The case was called about a week later. The court began by acknowledging the letters Smith had sent, dating back to the original letter in November 2023. The court treated these letters as a request “to correct [the] mittimus” (that is, the sentencing order) and award him more credit—credit to which the court said he was not entitled. The court denied the petition and ordered the clerk to notify Smith.

¶ 14 That did not deter Smith; he penned two more letters, in August and October 2024, again reiterating that he believed he should have received 652 days of credit on *each* sentence for a total of 1,304 days of credit. Then, at the end of October, he filed a “Motion to *** Correct/Time-Mittimus” with no specific claims. With yet another filing in hand, the trial court addressed the situation a week later.

¶ 15 This time, Smith’s brother was in the courtroom. The court asked the public defender in the courtroom, as a courtesy, to review Smith’s sentence credit but did not appoint counsel to represent Smith. (As it happened, this was the same lawyer who represented Smith at his guilty plea.) The next day, counsel told the court that he believed Smith had received the correct amount of credit. The court then turned to Smith’s brother, who said that Smith believed he would get 652 days of credit against each sentence. The court replied, “That’s not what I meant, and that’s not what I said.” The court reaffirmed that Smith would only receive 652 days of credit on one of the sentences and denied Smith’s motion to correct the mittimus.

¶ 16 ANALYSIS

¶ 17 On appeal, Smith abandons his claim for additional sentencing credit. But he argues that his first letter to the court on November 20, 2023, sufficiently manifested an intent to withdraw his guilty plea that the court should have inquired whether he wanted counsel appointed to file that motion.

¶ 18 The question turns on Illinois Supreme Court Rule 604(d) (eff. Sept. 18, 2023).

Generally, Rule 604(d) provides that a defendant may not appeal his sentence after a negotiated guilty plea unless he files a written motion to withdraw his plea within 30 days of sentencing.

¶ 19 The purpose of this rule 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.” *People v. Tousignant*, 2014 IL 115329, ¶ 16 (emphasis in original).

¶ 20 The rule seeks to “eliminate needless trips to the appellate court” and “give the trial court an opportunity to consider the alleged errors and to make a record for the appellate court to consider on review” if need be. *People v. Wilk*, 124 Ill. 2d 93, 106 (1988).

¶ 21 Our supreme court has consistently held that the appellate court must “dismiss[] the appeals of those defendants who had not filed motions to withdraw their guilty pleas in accordance with Rule 604(d) prior to filing the appeals” challenging their sentences. *In re William M.*, 206 Ill. 2d 595, 599 (2003); *Wilk*, 124 Ill. 2d at 107 (“compliance with Rule 604(d) is a condition precedent to an appeal” challenging sentence after negotiated guilty plea).

¶ 22 The rule requires that the motion to withdraw or vacate the guilty plea “be in writing.” Ill. S. Ct. R. 604(d) (eff. Sept. 18, 2023). “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” to assist the defendant. *Id.*

¶ 23 Read literally, the rule suggests that the motion must come first, *then* the court decides whether the defendant requires the appointment of counsel. But our supreme court has been clear that the right to counsel precedes the required written motion. “Once a *pro se* defendant notifies

the circuit court that he wishes to withdraw his guilty plea and appeal, the protections offered by Rule 604(d) *** are automatically triggered.” *People v. Edwards*, 197 Ill. 2d 239, 256 (2001).

That stands to reason, “as the entire point of the appointment is to assist the defendant in preparing the motion itself.” *People v. Owens*, 2021 IL App (2d) 190153, ¶ 20.

¶ 24 Obviously, some *pro se* defendants will have the wherewithal to present a coherent written motion to withdraw their guilty plea, at which point the trial court is clearly on notice of the defendant’s intentions, and the duty to appoint counsel to supplement or amend that motion will attach. But that is not every case.

¶ 25 Nor is it our case. Smith did not file a motion to withdraw his guilty plea within 30 days of his sentence. He did, however, write a letter to the court within 30 days that complained of his sentence, requested that the issue be “fixed,” and stated that he would not have negotiated that guilty plea had he known that he would not receive pre-sentencing credit on each of his two sentences. So our question is whether that letter was sufficient to “notif[y] the circuit court that he wishe[d] to withdraw his guilty plea” (*Edwards*, 197 Ill. 2d at 256) to trigger the trial court’s duty to inquire about the appointment of counsel.

¶ 26 We have instructed trial courts to take a “liberal view of what constitutes a motion to withdraw the plea of guilty.” *Owens*, 2021 IL App (2d) 190153, ¶ 22; see *People v. Barnes*, 291 Ill. App. 3d 545, 551 (1997) (“trial judges are under a duty to liberally consider the nature of a *pro se* defendant’s postplea motion”). Thus, “where a *pro se* defendant files a written submission from which an intent to withdraw his plea may be *reasonably inferred*, that submission is taken as a ‘motion to withdraw the plea of guilty’ under Rule 604(d).” *Owens*, 2021 IL App (2d) 190153, ¶ 22 (emphasis added).

¶ 27 The reason for this liberal view is that a defendant, often *pro se*, has only a tight window

in which to move to withdraw his guilty plea. But at the same time, rules of forfeiture loom large; issues not raised in the motion to withdraw and vacate may not be raised on appeal. *Id.* Fundamental fairness thus demands that, if a defendant sufficiently manifests an intent to withdraw his plea within the first 30 days, that defendant should then be given the option of counsel to assist him in fully and competently presenting that motion to the court. *Id.*

¶ 28 Not surprisingly, “[t]here is no set manner in which a defendant must manifest[] an interest in withdrawing his guilty plea.” *Id.* ¶ 21 (internal quotation marks omitted). Such manifestations can take the form of oral remarks after sentencing, a bare notice of motion to withdraw the plea, or, like Smith here, a letter to the court. See *People v. Griffin*, 305 Ill. App. 3d 326, 329-30 (1999) (oral remarks); *People v. Perry*, 2014 IL App (1st) 122584, ¶ 6 (notice of motion to withdraw plea); *People v. Trussel*, 397 Ill. App. 3d 913, 914-15 (2010) (letter to court); *People v. Brooks*, 377 Ill. App. 3d 836, 837 (2007) (letter to court).

¶ 29 For example, our supreme court held that a defendant’s letter, telling the court he wanted “to appeal [his] case, on the grounds of inadequate defence [*sic*]” and that he was “psychologicly coerce [*sic*] into pleading guilty,” was sufficient to invoke the court’s duty to inquire. *People v. Gibson*, 96 Ill. 2d 544 (1983). A defendant’s letter to the court, complaining about her sentence and claiming she “was having bad withdrawals” from drugs and “wasn’t thinking very clearly at the time” of her plea triggered the duty to inquire. *Barnes*, 291 Ill. App. 3d at 547.

¶ 30 In *People v. Gonzalez*, 375 Ill. App. 3d 377, 377 (2007), the defendant wrote to the court that she “would like to appeal an injustice,” that she had been “threatend [*sic*] with [her] freedom” before pleading guilty and that she “did not want to plead guilty.” We held that the trial court should have construed the letter as a motion to withdraw her guilty plea and thus given her the option of counsel. *Id.* at 378-79.

¶ 31 Smith's letter to the court here was of a similar kind. After complaining of the lack of sentencing credit to which he believed he was entitled, Smith told the court that he would not have pleaded guilty had he known that he would not receive that credit for each sentence. The underlying premise of his guilty plea, in other words, had proven to be incorrect. The circuit court read the letter as a request to correct the mittimus. That is not an unreasonable take, but it could likewise be reasonably interpreted as a statement that, if the mittimus was *not* erroneous—if this was truly the deal to which he had agreed—then Smith had understood differently at the time of the plea, and he wanted his guilty plea back. The court had a duty to inquire of defendant.

¶ 32 We again urge trial courts to err on the side of caution and liberally construe submissions from defendants. Maybe, after inquiring, the defendant will clarify that he does *not* wish to withdraw his plea (as the State speculates is true here). But one potentially unnecessary court appearance is preferable to what occurred here, where Smith's submissions languished for a year in the trial court, followed by an appeal whose briefing spanned more than a year. At this point, Smith is weeks away from completing his sentence, so any relief would be on paper only.

¶ 33 We express no opinion on whether Smith would ultimately be entitled to any relief, as that question is not before us. Our only point is that, as noted earlier, the purpose of Rule 604(d) is to avoid this delay and get to the question immediately, while memories remain fresh and relief, if any, would be meaningful. Though a remand will likely be inconsequential, it remains the proper remedy in this instance.

¶ 34 CONCLUSION

¶ 35 The judgment of the circuit court is reversed. The cause is remanded for further proceedings.

¶ 36 Reversed and remanded.

People v. Smith, 2026 IL App (1st) 242282

Decision Under Review: Appeal from the Circuit Court of Cook County, Nos. 22-CR-13560, 22-CR-1854; the Hon. Angela Munari Petrone, Judge, presiding.

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