2023 IL App (4th) 230076

NO. 4-23-0076

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 1, 2023
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANTONIO VINCENT GRAY, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Rock Island County No. 22CF470 Honorable Peter W. Church, Judge Presiding.

PRESIDING JUSTICE DeARMOND delivered the judgment of the court, with opinion.

Justices Harris and Steigmann concurred in the judgment and opinion.

OPINION

¶ 1 In August 2022, by way of a fully negotiated plea agreement, defendant, Antonio Vincent Gray, pleaded guilty to possession with the intent to deliver methamphetamine. Per the agreement, the circuit court sentenced him to 10 years in prison. Defendant filed a motion to withdraw his guilty plea in September 2022, and he later filed an amended version in December. The court eventually denied the motion.

¶ 2 On appeal, defendant raises multiple arguments, including (1) defense counsel rendered ineffective assistance because she labored under a conflict of interest during the postplea proceedings and should have withdrawn or, alternatively, the circuit court should have inquired into defense counsel's effectiveness under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), (2) defense counsel failed to strictly comply with the requirements of Illinois Supreme Court Rule 604(d) (eff. July 1, 2017), and (3) the court denied him due process by failing to

substantially comply with Illinois Supreme Court Rule 45 (eff. Jan. 1, 2023). Because we agree with the second argument, we vacate and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 In June 2022, the State charged defendant by information with four counts relating to dealings in March and June of that year: two counts of possession with the intent to deliver methamphetamine, Class X felonies (720 ILCS 646/55(a)(1), (2)(C) (West 2020)); one count of unlawful delivery of a controlled substance, a Class 1 felony (720 ILCS 570/401(c)(2) (West 2020)); and one count of possession with intent to deliver a controlled substance, a Class 1 felony (720 ILCS 570/401(c)(2) (West 2020)). At his initial appearance, defendant informed the circuit court, "I also would like the record to reflect that I'm on parole in Iowa for drug charges as well." While the court was appointing the public defender to represent defendant, he interjected, "I have no intention of going to trial." The court tried to explain the process to defendant when he interrupted again, saying, "I want to plead guilty." The public defender informed defendant he would visit him in the jail the next day, and defendant acquiesced.

¶ 5 When defendant appeared for a pretrial conference on August 25, 2022, the circuit court handled two different matters. First, defense counsel informed the court defendant "has a Waiver of Extradition to sign for Iowa," and this colloquy followed:

> "THE COURT: All right. I understand that's what you want to do, [defendant], is waive the extradition hearing; is that right?
>
> DEFENDANT: Yes, sir. Yes, Your Honor.
>
> THE COURT: All right. Okay. Go ahead and sign the document. That just says that Scott County, or Iowa, can come

pick you up.

DEFENDANT: (Complies.)"

Defense counsel pivoted immediately, informing the court, "And then in 22-CF-470 he is going to be pleading guilty to Count 1." Counsel explained the fully negotiated plea bargain as, "He will be sentenced to 10 years in the Department of Corrections. Fines, fee, and costs at the minimums and reduced to judgment, and Counts 2 through 4 will be dismissed." The State confirmed the deal's details, and the court addressed defendant:

"THE COURT: Okay. So then, [defendant], did you hear

the agreement your attorney explained to the Court?

DEFENDANT: Yes.

THE COURT: Do you understand the agreement?

DEFENDANT: Yes."

The court then explained to defendant that he would be pleading guilty to one count of possession with the intent to deliver methamphetamine, specifically possessing with the intent to deliver 15 or more but less than 100 grams of methamphetamine. The court outlined the potential penalty for this Class X felony—6 to 30 years in the Illinois Department of Corrections (DOC), followed by 18 months' mandatory supervised release (MSR) and a fine of up to $250,000. When the court asked, "So do you understand the charge and the possible penalties?", defendant answered, "Yes, sir." The court went on to advise defendant of his rights, including the presumption of innocence, the right to a trial before a judge or a jury, the State's burden of proof, and the right to confront witnesses. This colloquy followed:

"THE COURT: When you plead guilty you're giving up all

the rights I just explained, [defendant]; do you understand that?

DEFENDANT: Yes, Your Honor, I understand.

THE COURT: Is anybody forcing you or threatening you in any way to get you to plead guilty?

DEFENDANT: No, sir.

THE COURT: All right."

The State provided a factual basis, the defense conceded it was sufficient, and the court accepted it. The court found "the plea is knowing[ly] and voluntar[il]y made" and decided "to accept the plea, [and] agree to be bound by the agreement."

¶ 6 As the circuit court proceeded to sentencing, defendant asked, "What time will the sentencing take place?" The court answered, "Right now." Defendant did not object. The court sentenced him pursuant to the fully negotiated agreement—10 years in DOC followed by 18 months' MSR. As the court explained the remaining terms, defendant interrupted, and this exchanged occurred:

"THE COURT: You have a question?

DEFENDANT: The time that I'm taking right now, is there any way possible that this time that I just got sentenced to can run concurrent with Iowa?

THE COURT: There's nothing in the agreement that I was presented that that's how that would work.

DEFENDANT: Yeah, because no matter what I do over there, am I still going to have to come back here? I'm being sentenced today, but I probably won't start this time for two years.

THE COURT: Well, [defendant], that's the way this is

working. That was the agreement. That was what was presented to the Court. That's what we have done. All right. So that's where we are at.

DEFENDANT: All right. Fine."

The court then admonished defendant of his appellate rights. It asked defendant if he had any questions, and defendant said, "No, sir."

¶ 7 At the 30-day deadline, defense counsel filed a motion to withdraw the guilty plea and vacate the sentence. The motion asserted counsel received a letter from defendant on September 23, 2022, stating he wanted to withdraw his guilty plea. Counsel's motion noted she had not communicated with defendant and did not have a specific reason for withdrawing the plea. Defendant, meanwhile, filed a *pro se* "Motion to Withdraw Plea" on October 11, 2022. Defendant's motion gave two reasons for withdrawing the plea, alleging:

"#1) on Aug. 25th, 2022, when accepting the plea, I believed and was under the impression that by signing (my)/a waiver to Iowa that I would be *immediately* sent back to Iowa to serve my prison time there. I unfortunately *did not* understand the plea (and its stipulations) at the time I accepted it.

#2) During my time in Rock Island County Jail, and because of the situation(s) and circumstances pertaining to my case (22 CF 470), I did not feel safe and was also under extreme duress up unto *and* at the time of sentencing." (Emphases in Original.)

Defense counsel filed an amended motion to withdraw the plea of guilty and vacate the judgment on December 6, 2022. Absent the emphases, this motion recited defendant's *pro se* motion almost

verbatim. Defense counsel also filed a standard certificate, stating her compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017).

¶ 8 The circuit court was scheduled to hear arguments on defendant's amended motion on January 6, 2023, but the hearing was continued by the agreement of the parties. The same day, defendant mailed a letter to the court, asking, "I was hoping to be informed of the status of my current (criminal) case; #22CF470 please and thank you." The next day, defendant mailed another letter saying he wanted to appeal. The court filed defendant's two letters on January 11 and 12, 2023, respectively.

¶ 9 The circuit court held a hearing on defendant's motion to withdraw the guilty plea a few weeks later, on January 25, 2023. At the outset, defense counsel informed the court she filed the proper writ to secure defendant's appearance, but, due to inclement weather, the DOC could not transport defendant to the hearing. She said she issued "a Zoom writ" to have defendant appear remotely. The court took over from there.

> "THE COURT: Okay. Any objection from the State?
>
> MS. LEE: No, Your Honor.
>
> THE COURT: Okay. [Defendant], then are you agreeable to proceeding with your hearing via Zoom, as opposed to continuing the hearing so you can come back at a later date, and we wouldn't be able to do the hearing today? Is that all right with you?
>
> THE DEFENDANT: Well, I would like to do whatever the Court is pleased with. Zoom or in person is fine with me.
>
> THE COURT: All right. Well, we're all here in terms of

> present either personally or via Zoom. With that said, then I'm inclined to go ahead and proceed with the hearing today and do it by Zoom, and I don't think that will negatively impact in any way my ability to make the correct decision. So, with that said, I've signed that order regarding the *habeas corpus* being an order for the writ to be a Zoom hearing."

Before reaching defendant's motion to withdraw the guilty plea, the court addressed defendant's letters to the court, informing defendant the court had stricken the notice of appeal. Defendant asked to speak, but after the court granted him permission, reminding him of the presence of counsel, defense counsel asked to speak first, suggesting defendant supplement anything she said. Defendant began talking instead. He expressed confusion about why he did not appear at the January 6, 2023, hearing. Since no one communicated with him, he thought the court had denied his motion and believed he needed to file an appeal. Defendant repeatedly said no one spoke to him or told him what was happening in his case. At one point he got specific, saying, "I haven't spoken to my attorney. No one has spoken to me." He stated he did not want to appeal, and he wanted to pursue his motion to withdraw the guilty plea.

¶ 10 With that, the circuit court turned its attention to defendant's motion to withdraw his guilty plea. Defense counsel recounted she reviewed defendant's reasons for wanting to withdraw his plea "very carefully." She said she outlined those reasons in the amended motion and asked to explain them. Counsel then read the three reasons she listed in the amended motion, which were taken nearly verbatim from defendant's *pro se* motion. When reading that defendant "did not understand the plea and stipulations at the time he accepted the plea agreement," defense counsel paused to say, "I'm sure [defendant] can enumerate in more detail if the Court wishes [to know]

what he means by that statement." Counsel did not expand upon the motion or offer any argument. She capped her presentation by saying, "Those were the three bases that were laid in his reasons why he wishes to withdraw his plea." The State opposed the motion, calling defendant's situation "simply a matter of buyer's remorse." It argued defendant "was begging this prosecutor through his defense attorney to give him the 10 years so he could get out of Rock Island County." The State had not contemplated offering 10 years until defendant asked for it.

¶ 11 Defense counsel then asked defendant if he had "anything to add" to what she already read into the record. Defendant then spoke about why he wanted to withdraw his guilty plea. He said he had not planned on signing the extradition waiver or guilty plea when he arrived at the pretrial hearing on August 25, 2022. He explained, "I literally just signed the plea because I set up a guy for 2000 grams, $26,000 or more, and two pounds of something of, you know, high grade marijuana." Defendant went on to say:

> "I was in protective custody[.] I'm still receiving threats about this, you know, and I want to plead out and I want to get out of Rock Island County Jail because you guys said that you wouldn't change my bed or put me anywhere safer. So I sign a guilty plea and when I waived my extradition I truly thought I was going to be sent to Iowa because I'm on parole in Iowa and I have time in Iowa."

Defendant recalled how there was a "big fiasco" in determining whether he was on parole in Iowa. He remembered the attorneys left the courtroom and returned with the plea deal and extradition waiver. He acknowledged he did not read the plea deal but simply signed it and the extradition waiver when presented with them. He concluded his statement by saying:

> "I'm hoping that the judge will allow me to withdraw the

> guilty plea. Just so I can, you know, I want to go to trial, you know, or I want to work out a better deal because I would have never taken this deal if I had known it would turn out this way. And no one has spoken to me right before then. *No one has spoken to me right now even up to this point*. No one explained to me that if you sign these papers, your time just doesn't count for Iowa ***." (Emphasis added.)

Defense counsel then interrupted by directing the circuit court to, and reading from, the guilty plea transcript where defendant asked if there was " 'any way possible that this time I just got sentenced to can run concurrent with Iowa?' " In an effort to refresh the court's recollection, counsel then read the court's response, saying, " 'There's nothing in the agreement that I was presented that that's how that would work.' " The court recalled the exchange. Defendant ended his statement by reiterating his confusion about why he signed an extradition waiver if he would not be moved to Iowa.

¶ 12 In giving its decision on the record, the circuit court recounted the requirements of Illinois Supreme Court Rule 402 (eff. July 1, 2012) for admonishing a defendant before a guilty plea. The court found the record showed no flaw in the Rule 402 admonishments nor the guilty plea. It noted "there was an actual colloquy on the record regarding the time in Iowa being run concurrently with the time in Illinois. And the response, which I think clearly was the correct one, [was] that there's no guarantee that will happen and, in fact, that's not what happened." The court said it was "convinced" that defendant's guilty plea was "knowingly and voluntarily and intelligently entered into," and, consequently, it denied the motion to withdraw the guilty plea.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant raises three issues on appeal: (1) defense counsel labored under a conflict of interest, and, therefore, she rendered ineffective assistance of counsel by failing to withdraw; by extension, the circuit court erred by failing to conduct an inquiry into counsel's performance, pursuant to *Krankel*, (2) defense counsel failed to strictly comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) because counsel failed to put defendant's *pro se* allegations into the proper legal framework, and (3) the court denied defendant due process by failing to admonish him pursuant to Illinois Supreme Court Rule 45 (eff. Jan. 1, 2023) before defendant waived his right to be physically present for the hearing on his motion to withdraw the guilty plea. Because we find defense counsel did not strictly comply with Rule 604(d), we vacate the judgment and remand with instructions.

¶ 16 A. Defendant's *Pro Se* Allegations Did Not Create a Conflict of Interest for Defense Counsel, nor Did They Require the Circuit Court to Conduct a *Krankel* Inquiry

¶ 17 Defendant's argument rests on the premise that his *pro se* motion to withdraw his guilty plea implicated ineffective assistance of counsel, which created a conflict of interest for defense counsel and necessitated her withdrawal from the case. He then reasons that since counsel did not withdraw her appearance, the circuit court should have probed defendant's ineffective assistance claim through an inquiry under *Krankel*. Defendant's labyrinthine argument notwithstanding, we can easily navigate this issue.

¶ 18 Defendant rightly invokes his constitutional right to effective, conflict-free representation from counsel, but he wrongly concludes a violation occurred here. See *People v. Taylor*, 237 Ill. 2d 356, 374, 930 N.E.2d 959, 970 (2010). To be sure, "[t]he sixth and fourteenth

amendments to the United States Constitution guarantee the right to effective assistance of counsel." *Taylor*, 237 Ill. 2d at 374 (citing *Cuyler v. Sullivan*, 446 U.S. 335, 343-44 (1980)). Our supreme court has expounded about how the right to effective assistance "includes the right to conflict-free representation" (*Taylor*, 237 Ill. 2d at 374 (citing *People v. Hernandez*, 231 Ill. 2d 134, 142, 896 N.E.2d 297, 303 (2008))), meaning defendants are entitled to representation from attorneys with undivided loyalties. *People v. Lawson*, 163 Ill. 2d 187, 208-09, 644 N.E.2d 1172, 1182 (1994). Attorneys who represent defendants while having inconsistent loyalties to other clients, to the State, or to themselves labor under a conflict of interest, which can amount to ineffective assistance of counsel. See *Taylor*, 237 Ill. 2d at 374-75 (explaining the substantive differences between *per se* and actual conflicts of interest, how each are established, and the results from conflicts of interest). As it relates to the fact pattern before us, this court has said an attorney should withdraw when a defendant challenges the attorney's effectiveness in a motion to withdraw a guilty plea. See *People v. Norris*, 46 Ill. App. 3d 536, 541-42, 361 N.E.2d 105, 110 (1977); see also *People v. Friend*, 341 Ill. App. 3d 139, 140-41, 793 N.E.2d 927, 928 (2003). We based this rule on two long-standing principles: attorneys cannot argue their own ineffectiveness, nor can they be a witness for or against the defendant when their representation is a contested issue. See *Norris*, 46 Ill. App. 3d at 541-42; Ill. R. Prof'l Conduct (2010) R. 3.7 (eff. Jan. 1, 2010).

¶ 19 We must digress briefly to recognize our colleagues in the Second District have taken a different view of *Norris*. In *People v. Salamie*, 2023 IL App (2d) 220312, ¶ 61, the court concluded *Norris* "is no longer good law and has not been for decades." *Salamie*'s conclusion rested on the fact that *People v. Smith*, 37 Ill. 2d 622, 230 N.E.2d 169 (1967), and *People v. Terry*, 46 Ill. 2d 75, 262 N.E.2d 923 (1970)—two cases cited by *Norris*—had been overruled by the supreme court's opinion in *People v. Banks*, 121 Ill. 2d 36, 520 N.E.2d 617 (1987). We do not

agree that *Banks* made *Norris* bad law.

¶ 20 *Banks* addressed the narrow issue of "whether a defendant is entitled to appointment of counsel other than the public defender where the defendant challenges the effectiveness of assistance rendered by an attorney from the same public defender's office." *Banks*, 121 Ill. 2d at 39. In deciding this issue, the court discussed *Smith* and *Terry*, which held, as a *per se* rule, a conflict of interest arises when an assistant public defender argues the ineffectiveness of another assistant public defender in the same office. *Banks*, 121 Ill. 2d at 40-41. Consequently, they held the trial court should appoint a non-public defender to represent the defendant, rather than have counsel argue his own ineffectiveness. *Smith*, 37 Ill. 2d at 624; *Terry*, 46 Ill. 2d at 78-79. *Banks* then juxtaposed those cases with *People v. Robinson*, 79 Ill. 2d 147, 158-59, 402 N.E.2d 157, 162 (1979), where the supreme court held that when one public defender must withdraw with a conflict of interest, the conflict will not automatically disqualify the other public defenders in the same office. Besides rejecting the *per se* rule of *Smith* and *Terry*, *Robinson* "prescribed a case-by-case inquiry designed to determine whether the facts of a particular case indicate an actual conflict and therefore preclude representation." *Banks*, 121 Ill. 2d at 41. The *Banks* court adopted *Robinson*'s approach and ultimately held

> "that where an assistant public defender asserts that another assistant from the same office has rendered ineffective assistance, a case-by-case inquiry should be conducted to determine whether any circumstances peculiar to the case indicate the presence of an actual conflict of interest; accordingly, we overrule this court's prior holding in *Smith* and *Terry*." *Banks*, 121 Ill. 2d at 44.

Not only did *Banks* not overrule *Norris* explicitly, but we do not find it overruled *Norris* implicitly.

¶ 21 *Norris* did not directly rely upon *Smith* and *Terry* for its rule that attorneys should withdraw from a case rather than argue their own ineffectiveness in a motion to withdraw a guilty plea. It found those cases analogous, but not directly on point. *Norris*, 46 Ill. App. 3d at 541. Unlike *Smith* and *Terry*, *Norris* occurs outside the postconviction-relief context. But more importantly, in *Norris*, the attorney representing the defendant at the Rule 604(d) stage was one of two attorneys who represented the defendant at the guilty plea phase and, therefore, would have had to argue his own incompetence *and* the incompetence of his co-counsel. So *Norris* is a variation on *Smith* and *Terry*'s theme—not a derivation of them. The variance is best evidenced in *Norris*'s rationale. For the proposition attorneys should withdraw rather than argue their own ineffectiveness or that of another attorney in their office, it cites a law review article and the Illinois Rules of Professional Responsibility, not *Smith* or *Terry*. *Norris*, 46 Ill. App. 3d at 541-42 (citing David N. Webster, *The Public Defender, The Sixth Amendment, and the Code of Professional Responsibility: The Resolution of a Conflict of Interest*, 12 Am. Crim. L. Rev. 739 (1975)). As we understand these cases, particularly *Banks*'s narrow issue and resulting narrow holding, the overruling of *Smith* and *Terry* does not necessarily trickle down to *Norris* and render it bad law.

¶ 22 As a result, we believe *Salamie* painted with too broad a brush when it concluded *Norris* "is no longer good law and has not been for decades." *Salamie*, 2023 IL App (2d) 220312, ¶ 61. That statement is true only as it relates to public defenders being placed in the position of having to argue the ineffectiveness of another public defender in the same office. In our view, *Norris* is still good law for its fact pattern—attorneys put in positions of having to argue their own ineffectiveness in a Rule 604(d) motion should withdraw from the case, such as in the case before us. *Salamie* likewise cast too wide a net when it concluded *People v. Willis*, 134 Ill. App. 3d 123, 479 N.E.2d 1184 (1985), and *People v. Williams*, 176 Ill. App. 3d 73, 530 N.E.2d 1049 (1988),

are not good law, owing to their reliance upon *Norris*. *Salamie*, 2023 IL App (2d) 220312, ¶ 61. Both of those cases, which are cited below, are factually distinct from *Smith*, *Terry*, and *Banks* because neither considered one public defender arguing the incompetence of another public defender in the same office. In both *Willis* and *Williams*, the same attorney was arguing his own ineffectiveness in a motion to withdraw a guilty plea. *Willis*, 134 Ill. App. 3d at 126-29; *Williams*, 176 Ill. App. 3d at 77-79. This important difference pulls these cases out from the orbit around *Smith*, *Terry*, and *Banks*, meaning the Second District overreached in declaring *Norris* and its progeny overruled by way of *Banks*. Thus ends the digression. Having addressed *Salamie*, we return to the case before us.

¶ 23 Defendant directs our attention to a handful of cases where reviewing courts found defense counsel had a conflict of interest and should have withdrawn from the case rather than represent the defendants in motion-to-withdraw-guilty-plea hearings. In each of those cases, however, the defendants either clearly raised an ineffective assistance of counsel claim or expressly alleged facts outlining their attorneys' mistakes. See *Norris*, 46 Ill. App. 3d at 538 (noting the defendant's *pro se* motion alleged defense counsel failed to explore an alibi defense and alleged defendant did not have a good relationship with counsel); *Willis*, 134 Ill. App. 3d 123 (noting how defendant alleged counsel's incompetence in a motion to withdraw the guilty plea); *Williams*, 176 Ill. App. 3d 73 (noting defendant's motion to withdraw the guilty plea alleged counsel participated in fraud and misrepresentation to coerce him to plead guilty); *Friend*, 341 Ill. App. 3d 139 (noting defendant expressly complained about counsel's representation). These cases are plainly distinguishable from the facts before us now.

¶ 24 Defendant's *pro se* motion to withdraw his guilty plea alleged that, at the time he pleaded guilty, he "did not understand the plea (and its stipulations)," and he was "under extreme

duress." In support of his claim, he alleged he misunderstood the plea, being "under the impression that by signing (my)/a waiver to Iowa that I would be *immediately* sent back to Iowa to serve my prison time there." (Emphasis in original.) As for his duress claim, he alleged he did not feel safe in the county jail. Defendant's *pro se* motion did not mention his attorney's performance at all, nor did it mention the attorney-client relationship. He did not claim defense counsel led him to believe he would receive a concurrent sentence or that counsel misled him in any way. He did not allege an ineffective-assistance-of-counsel claim. Now, on appeal, he would have us believe he was challenging his attorney's representation. More than that, on appeal, he contends his counsel and the circuit court should have understood the motion to be alleging ineffective assistance of counsel. But reading only what defendant wrote in the motion, not reading into it what he might have meant in hindsight, we cannot say defendant's motion created a conflict of interest for his attorney. There was no reason for counsel to infer she would need to argue her own ineffectiveness or testify in a hearing on defendant's motion. See *Norris*, 46 Ill. App. 3d at 541-42. Consequently, counsel was under no obligation to withdraw from the case. *Cf. Friend*, 341 Ill. App. 3d at 140-41. When counsel drafted and filed an amended motion to withdraw the guilty plea that incorporated defendant's allegations, she did not labor under a conflict of interest and did not have divided loyalties. On the contrary, she repeated defendant's claims almost verbatim.

¶ 25 Likewise, the circuit court was not under any obligation to conduct a *Krankel* inquiry based on defendant's *pro se* allegations. "Courts have found a defendant is entitled to a *Krankel* inquiry when the defendant makes an explicit or 'clear' complaint of trial counsel's performance or ineffective assistance of counsel." *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 26, 93 N.E.3d 664. By contrast, "where the defendant's claim is implicit and could be subject to different interpretations, a *Krankel* inquiry is not required." *Thomas*, 2017 IL App (4th) 150815,

¶ 26.

¶ 26 We liken this case to *Thomas*. There, the defendant sent a letter to the trial court, asking for a reduced sentence, complaining he did not know or was not told of all his sentencing options before he pleaded guilty. *Thomas*, 2017 IL App (4th) 150815, ¶ 25. On appeal, defendant argued "he made an implicit claim of ineffective assistance of counsel in his letter to the court." *Thomas*, 2017 IL App (4th) 150815, ¶ 25. Noting defendant's letter "made no mention of his attorney, or any assertion of ineffective assistance, [and] the letter was subject to many interpretations," we rejected defendant's argument. *Thomas*, 2017 IL App (4th) 150815, ¶ 28. We observed defendants carry light burdens when raising a claim to trigger *Krankel*, but we also observed that we do not "require trial courts to somehow glean an ineffective-assistance-of-counsel claim from every obscure complaint or comment made by a defendant." *Thomas*, 2017 IL App (4th) 150815, ¶ 30. Like in *Thomas*, defendant's *pro se* motion did not mention his attorney whatsoever and made no clear claim of ineffective assistance of counsel. We arrive at the same conclusion we did in *Thomas*—defendant's *pro se* motion did not trigger a *Krankel* inquiry.

¶ 27 B. Defense Counsel Did Not Strictly Comply With Rule 604(d)

¶ 28 "Rule 604(d) governs the procedure to be followed when a defendant wishes to appeal from a judgment entered upon a guilty plea." *In re H.L.*, 2015 IL 118529, ¶ 7, 48 N.E.3d 1071. The purpose of the rule

> " 'is to ensure that before a criminal appeal can be taken from a guilty plea, the trial judge who accepted the plea and imposed sentence be given the opportunity to hear the allegations of improprieties that took place outside the official proceedings and *dehors* the record, but nevertheless were unwittingly given sanction in the courtroom.' " *H.L.*, 2015 IL 118529, ¶ 9 (quoting *People v. Wilk*, 124 Ill. 2d 93,

104, 529 N.E.2d 218, 221-22 (1988)).

Moreover, the rule " '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.' " *H.L.*, 2015 IL 118529, ¶ 10 (quoting *People v. Shirley*, 181 Ill. 2d 359, 361, 692 N.E.2d 1189, 1191 (1998)).

¶ 29 Among the basic requirements that "[t]he motion shall be in writing and shall state the grounds" for withdrawing the plea, a Rule 604(d) motion "shall be supported by affidavit" if "the motion is based on facts that do not appear of record." Ill. S. Ct. R. 604(d) (eff. July 1, 2017). Rule 604(d) imposes some additional requirements on counsel, specifically:

> "The defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by phone, mail, electronic means or in person to ascertain defendant's contentions of error in the sentence and the entry of the plea of guilty, has examined the trial court file and both the report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings." Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

¶ 30 Our supreme court has held strict compliance with Rule 604(d) is required, and counsel's failure to strictly comply requires remand to the circuit court. *People v. Janes*, 158 Ill. 2d 27, 33, 630 N.E.2d 790, 792 (1994). Even where counsel has filed a facially valid certificate, courts "may consult the record to determine whether she actually fulfilled her obligations under Rule 604(d)." *People v. Bridges*, 2017 IL App (2d) 150718, ¶ 8, 87 N.E.3d 441. We review

de novo whether defense counsel's certificate complied with Rule 604(d). *People v. Grice*, 371 Ill. App. 3d 813, 815, 867 N.E.2d 1143, 1145 (2007).

¶ 31 Although we disagree with defendant's reasoning, we agree with the conclusion his counsel did not strictly comply with Rule 604(d).

¶ 32 Defense counsel filed her certificate of compliance with Rule 604(d) on December 6, 2022, when she also filed the amended motion to withdraw the guilty plea. In averring that she complied with the rule requirements, counsel's certificate quoted the above language. The certificate is facially valid, no doubt. The record, however, casts doubt on whether counsel actually consulted with defendant or made any amendments to adequately present defendant's *pro se* claim.

¶ 33 Here, the record confirms defense counsel reviewed defendant's *pro se* filing with the circuit court "very carefully." She said so, plus the amended motion to withdraw the guilty plea quotes from defendant's *pro se* motion. Under a generous interpretation, this could mean she consulted with defendant by mail. And perhaps we would find as much, had the record not strongly suggested counsel did not directly communicate with defendant about why he wanted to withdraw his guilty plea. During the hearing on January 25, 2023, defendant said some variation of, "No one has talked to me" no less than 10 times. The lack of communication between defendant and defense counsel is borne out by their on-the-fly planning during the hearing. When defendant asked the court if he could speak, defense counsel said, "I have an idea. Can I first speak, and then if you feel that anything needs to be added in then you can add it in?" Defendant spoke anyway. Defense counsel's "argument" included reading the amended motion to withdraw the guilty plea to the court, which quoted but did not expand upon defendant's *pro se* filing. In fact, after reading the second allegation, "That at the time of the guilty plea he did not understand the plea and stipulations at the time he accepted the plea agreement," defense counsel went off-script and said,

"I'm sure [defendant] can enumerate in more detail if the Court wishes [to know] what he means by that statement." Defense counsel did not appear to know why defendant did not understand the plea. If she did, she made no effort to articulate it on defendant's behalf. Recall, when counsel filed the initial motion to withdraw the plea in September 2022, she noted she did not know "a specific reason for wanting to withdraw the plea of guilty." Five months and an amended motion later, she still did not know specifics. This indicates she did not consult with defendant "to ascertain [his] contentions of error in the entry of the plea of guilty and in the sentence." But the record did not stop there in refuting the Rule 604(d) certificate.

¶ 34 Later in the hearing, after the State responded to her motion, defense counsel asked defendant, "[D]o you have anything to add to what I said about the specifics of why you want to withdraw your plea?" Defendant explained he decided to plead guilty because he thought he would be immediately extradited to Iowa. He said he pleaded guilty because he "set a guy up for 2000 grams, $26,000 or more, and two pounds or something of, you know, high grade marijuana." He said he received, and is still receiving, threats about that set-up and he did not feel safe. Defendant said he was told he would not be moved anywhere safer. Defendant repeatedly told the court that he would not have signed the plea if he knew he would not be sent back to Iowa immediately. When he said no one talked to him "right before" the plea or explained it to him, defense counsel interjected and read a portion of the guilty plea/sentencing transcript, where defendant asked if the 10-year sentence he just received could run concurrently with his time in Iowa and the court told him that such a condition was not included in the terms of the plea agreement. It is unclear from this cold record if defense counsel was supporting or refuting defendant's claim that no one explained the plea to him.

¶ 35 We note, however, if defense counsel was trying to help defendant, then she quoted

the wrong part from defendant's dialogue with the circuit court. The more helpful portion she could have read was defendant's statement responding to the court's answer that the plea did not say the Illinois term would run concurrent to the Iowa term. Defendant said, "Yeah, because no matter what I do over there, *am I still going to have to come back here*? I'm being sentenced today, *but I probably won't start this time for two years*." (Emphases added.) This quote would have more clearly supported defendant's claim he believed he would first go "over there" to Iowa to serve two years and then "come back here" to Illinois for his 10-year term. If he was, in fact, mistaken, the sequence of events, as described, is supportive of his misunderstanding. Recall defendant said the extradition waiver and plea offer were presented at a pretrial hearing, and it was only after counsel and the State conferred outside the courtroom that he then signed the extradition waiver and plea at the same time.

¶ 36 The lack of consultation between defendant and defense counsel is further evidenced by counsel's failure to recognize that defendant's duress claim depended upon facts outside the record and, therefore, needed to be supported with an affidavit. See Ill. S. Ct. R. 604(d) (eff. July 1, 2017) ("When the motion is based on facts that do not appear of record it shall be supported by affidavit ***."); see also *Bridges*, 2017 IL App (2d) 150718, ¶ 9 (stating counsel failed to support facts appearing outside of the record with an affidavit substantiating the allegations). Defendant's *pro se* motion alleged he "did not feel safe and was also under extreme duress up unto and at the time of sentencing" while he was in the Rock Island County jail. On its face, this allegation implicates facts that do not appear in the record; yet defense counsel did not secure an affidavit to substantiate defendant's claim. Tellingly, she could not elaborate on those facts during the hearing and asked defendant to do it. From defendant, who was not under oath at the time and was essentially acting as his own advocate, we learned his alleged duress stemmed

from threats he received for "setting-up" someone for a drug deal while in the jail. The purpose of Rule 604(d) is to give the " 'judge who accepted the plea *** [an] opportunity, at a time when witnesses are still available and memories are fresh, to hear the allegations of improprieties that took place outside the official proceedings and *dehors* the record but nevertheless were unwittingly given sanction in the courtroom.' " *Bridges*, 2017 IL App (2d) 150718, ¶ 10 (quoting *People v. Keele*, 210 Ill. App. 3d 898, 902, 569 N.E.2d 301, 303 (1991)). Fact-finding is best done in the circuit court. Yet, defense counsel offered nothing, not even defendant's sworn testimony, to substantiate defendant's duress claim. Although counsel filed a facially valid Rule 604(d) certificate, the record strongly indicates she did not meaningfully consult with defendant to determine the bases for his motion.

¶ 37 Though not on all-fours fact-wise, we find *Bridges* instructive here. There, the defendant filed a *pro se* motion to withdraw his guilty plea, supported by an affidavit, alleging he " 'had inadequate representation by counsel' and 'was not mentally compentent [*sic*] to enter a plea.' " *Bridges*, 2017 IL App (2d) 150718, ¶ 2. Defense counsel amended the motion, elaborating on the defendant's claims and adding factual allegations. Counsel did not support the motion with an affidavit, but counsel did file a Rule 604(d) certificate. When the matter proceeded to hearings on the amended motion, the defendant was not present. Defense counsel presented no evidence or argument but claimed "the amended motion 'laid [the substantive issues] out.' " *Bridges*, 2017 IL App (2d) 150718, ¶ 3. The trial court denied the motion.

¶ 38 On appeal, the defendant argued the proceedings did not comply with Rule 604(d). This court agreed, holding, "the record refutes counsel's certification that she made any amendments to the motion necessary for adequate presentation of any defects in the plea proceedings." *Bridges*, 2017 IL App (2d) 150718, ¶ 9. The court found "[c]ounsel not only failed

to attach an affidavit but also failed to present defendant's testimony or any other evidence in support of defendant's motion." *Bridges*, 2017 IL App (2d) 150718, ¶ 9. The court also held "the hearing on the motion was inadequate to satisfy Rule 604(d)'s strict-compliance standard," concluding "[a] hearing on a motion to withdraw a defendant's guilty plea must be more than a charade performed only to allow an appeal to proceed." *Bridges*, 2017 IL App (2d) 150718, ¶ 10. Noting "counsel's failure to offer any argument or evidence in support of the motion," the court determined counsel essentially conceded the motion was meritless, which made the hearing perfunctory since it "served little purpose other than to clear a procedural hurdle to [the] appeal." *Bridges*, 2017 IL App (2d) 150718, ¶ 11. The court observed, " 'Rule 604(d) does not contemplate the perfunctory type of motion and hearing that occurred in this instance.' " *Bridges*, 2017 IL App (2d) 150718, ¶ 11 (quoting *Keele*, 210 Ill. App. 3d at 903).

¶ 39 As in *Bridges*, one of only two reasons defendant raised in seeking to withdraw his guilty plea was based on facts outside the record, so counsel should have provided an affidavit or other evidentiary support to sustain those factual allegations. See *Bridges*, 2017 IL App (2d) 150718, ¶ 9. Counsel, therefore, did not adequately present defendant's claims to the circuit court. And like the *Bridges* court, we see defense counsel's failure to offer argument or evidence in support of the motion as a concession she believed the motion was meritless, which, in turn, rendered the proceedings a charade performed to pave the way for this appeal.

¶ 40 The record refutes defense counsel's Rule 604(d) certificate, which averred she had consulted with defendant "to ascertain [his] contentions of error in the entry of the plea of guilty" and "made any amendments to the motion necessary for the adequate presentation of any defects" in the guilty plea. Even though counsel filed a facially valid certificate, the record shows she did not "actually fulfill[ ] her obligations under Rule 604(d)." *Bridges*, 2017 IL App (2d) 150718, ¶ 8.

¶ 41 Despite all this, counsel's failure did not occur in vacuum. Defendant said some version of "nobody talked to me" 10 times during a brief hearing, yet the circuit court did not pause to inquire about counsel's performance. We agree defendant's *pro se* claims *on their face* did not warrant a *Krankel* inquiry. But defendant's statements in the hearing, coupled with counsel's approach to the hearing, should have merited at least a question from the court about counsel's compliance with Rule 604(d). " '[A]lthough this rule is one to be complied with by defense counsel, the [circuit] courts can help ensure that compliance is met.' " *People v. Starks*, 344 Ill. App. 3d 766, 770, 800 N.E.2d 1239, 1242 (2003) (quoting *People v. Edwards*, 228 Ill. App. 3d 492, 499, 592 N.E.2d 591, 595 (1992)). We have even said "it is also in the interest of the State to ensure that strict compliance is observed as the State also has an interest in avoiding a failure to comply with Rule 604(d)." *Starks*, 344 Ill. App. 3d at 770. Counsel's failure to consult with defendant was obvious from the record. It should have been obvious in the moment. No one said anything, and the hearing proceeded to a predictable conclusion and to an even more predictable appeal.

¶ 42 C. The Parties Agree There Was No Strict Compliance With Rule 45

¶ 43 Defendant finally argues the circuit court failed to obtain a valid waiver of his right to an in-person proceeding because it failed to admonish him properly under Illinois Supreme Court Rule 45(d)(3)(iii) (eff. Jan. 1, 2023). The State concedes the court did not strictly comply with the rule but argues the error was harmless and did not prejudice defendant's case. Since we found the hearing did not comply with Rule 604(d) and remand on that basis, we need not address this issue. Suffice it to say, Rule 45 is a new rule, taking effect just a few weeks before the hearing to withdraw his guilty plea on January 25, 2023. It appears this hearing is one where the court needed to admonish defendant under Rule 45(d)(3)(iii) because the hearing involved a negotiated

guilty plea and, ideally, should have been an evidentiary hearing. See Ill. S. Ct. R. 45(d)(2)(i), (ii), (v) (eff. Jan. 1, 2023). Ever "mindful that supreme court rules 'are not suggestions; rather, they have the force of law, and the presumption must be that they will be obeyed and enforced as written' " (*People v. Willis*, 2015 IL App (5th) 130020, ¶ 18, 28 N.E.3d 981 (quoting *People v. Campbell*, 224 Ill. 2d 80, 87, 862 N.E.2d 933, 938 (2006))), we think it is not unreasonable for the court to take Rule 45's language under consideration.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we vacate the circuit court's judgment regarding Rule 604(d) compliance and remand for (1) the opportunity to file a new motion to withdraw the guilty plea, if counsel concludes a new motion is necessary, (2) a new hearing on defendant's postplea motion, and (3) the filing of a new certificate in compliance with Rule 604(d).

¶ 46 Vacated; cause remanded with directions.

Decision Under Review:	Appeal from the Circuit Court of Rock Island County, No. 22-CF-470; the Hon. Peter W. Church, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Douglas R. Hoff, and Bryon M. Reina, of State Appellate Defender's Office, of Chicago, for appellant.
Attorneys for Appellee:	Dora Villarreal, State's Attorney, of Rock Island (Patrick Delfino, David J. Robinson, and Courtney M. O'Connor, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.