

NOTICE
Decision filed 01/28/25. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2025 IL App (5th) 240384-U
NO. 5-24-0384
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jefferson County.
)	
v.)	No. 22-CF-367
)	
RETHA McINTIRE,)	Honorable
)	Jerry E. Crisel,
Defendant-Appellant.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Boie and Vaughan concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly denied defendant’s motion to withdraw her guilty plea where her claims that she was confused at the guilty plea hearing and that her attorney was ineffective were contradicted by the record. As any argument to the contrary would lack merit, we grant defendant’s appointed counsel on appeal leave to withdraw and affirm the circuit court’s judgment.

¶ 2 Defendant, Retha McIntire, appeals the circuit court’s order denying her motion to withdraw her guilty plea. Her appointed appellate counsel, the Office of the State Appellate Defender (OSAD), concludes that there is no reasonably meritorious argument that the court erred in doing so. Accordingly, it has filed a motion for leave to withdraw as counsel on appeal and a supporting memorandum. See *Anders v. California*, 386 U.S. 738 (1967). OSAD has notified defendant of its motion. This court has provided her with ample opportunity to respond. However, she has not done so. After considering the record on appeal and OSAD’s motion and supporting

memorandum, we agree that there is no issue that could support an appeal. Accordingly, we grant OSAD leave to withdraw and affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 A three-count indictment charged defendant with first degree murder by accountability in the death of Cadius Jackson. Shortly before her trial was to begin, on May 4, 2023, the parties announced a plea agreement by which defendant would plead guilty to a new count IV (which removed any reference to a firearm being involved in the offense) in exchange for a 25-year sentence.

¶ 5 The court asked defendant whether she understood that (1) she had been charged with first degree murder in that she, or one for whose conduct she was accountable, without lawful justification and while committing intimidation, a forcible felony, attacked Jackson with a dangerous weapon causing his death; (2) she faced a minimum of 20 and maximum of 60 years in prison to be served at 100%; (3) she had a right to plead guilty or not guilty; (4) by pleading guilty she would give up certain rights, including the presumption of innocence, the right to a jury trial, the right to counsel, the right to cross-examine witnesses, the right to see the trial evidence, the right to testify, and the right to remain silent; and (5) she faced several collateral consequences, including increased sentencing for any future convictions and an impact on her ability to obtain housing, employment, and a firearm.

¶ 6 Defendant confirmed that she understood the admonishments. She also acknowledged that she signed a guilty plea document and that no one had forced, threatened, nor made promises to induce her to sign. She told the court that she had had sufficient time to discuss the plea with her counsel and was satisfied with his services.

¶ 7 The court asked defendant if she was taking any medications. She responded that she was taking Prozac for depression. The court then asked if she understood what was happening during the proceedings, to which she replied, “Certain things, I do.” The court asked counsel about defendant’s ability to comprehend the proceedings. Counsel responded that defendant was able to communicate with him, ask intelligent questions, and form intelligent responses. The court asked defendant if she was in touch with reality and pleading of her own free will, to which she responded “yes.”

¶ 8 At the State’s request, the court allowed defendant to speak with counsel. After their discussion, defendant stated she understood everything about the proceeding.

¶ 9 The State presented the factual basis for the plea. The State would call representatives of the Jefferson County Sheriff’s Department, who would testify that defendant and Jackson, her ex-boyfriend, were to meet to attempt to resolve a dispute over various items of personal property. Defendant was to bring Jackson a dog and the latter was to return personal belongings to defendant.

¶ 10 On or about September 29, defendant and her daughter’s boyfriend, Treyaveon Massie, had a discussion at their home in Indiana during which defendant provided Massie with a weapon. Defendant and Massie agreed that if Jackson refused to return her personal belongings, they would threaten him to make him give them up. Defendant drove her daughter, Massie, and her grandchildren with the weapon to Jackson’s house in Jefferson County, Illinois. After they arrived, Jackson received fatal injuries from the use of the weapon. Defendant then drove off with the same individuals and was later stopped by the police after a neighbor, who had witnessed the incident, called 9-1-1 and gave a description of the vehicle. During her police interview, defendant admitted that the situation occurred because she was attempting to get her belongings back.

¶ 11 Plea counsel agreed that the State would be able to present such evidence at trial. The court found defendant's plea knowing and voluntary. The court thus accepted it and imposed the agreed 25-year sentence.

¶ 12 Defendant filed a *pro se* motion to withdraw the plea. The court appointed the public defender who filed an amended motion alleging that defendant's plea was involuntary due to the ineffective assistance of plea counsel and because defendant suffered from several "mental deficits" that caused her to be confused during the plea hearing. The motion was accompanied by a certificate of compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017).

¶ 13 At a hearing on the motion, defendant testified that plea counsel did not show her all the discovery before she pled guilty. She saw only her and Massie's videotaped police interviews.

¶ 14 Defendant had information that she believed would prove her innocence, including that she did not know that Massie took her gun, which she kept in a locked safe, and that she was afraid of Massie. Massie had threatened to kill defendant and her daughter and was "very violent."

¶ 15 Defendant stated that she had a hard time understanding her attorney when she accepted the plea and did not understand the charges or the plea deal. She had a "hard time comprehending people." When asked to elaborate, she said that it was "just a thing I've had for a long time." She believed she was charged with attempted murder but was told it was first degree murder. However, by the time she pleaded guilty, she understood that she would serve 25 years.

¶ 16 Defendant had sought medical treatment for Tourette's, panic attacks, and depression in the past, and these conditions contributed to her lack of understanding during the plea proceeding. Defendant only said that she was pleading guilty freely and voluntarily because "I just wanted to get it over with. I was scared."

¶ 17 The court denied the motion, recalling that it had admonished defendant “very carefully” at the plea hearing and finding that defendant’s testimony was not credible. Defendant timely appeals.

¶ 18 ANALYSIS

¶ 19 OSAD suggests three possible issues but concludes that none has even arguable merit. We agree.

¶ 20 OSAD first concludes that there is no meritorious argument that postplea counsel failed to comply with Rule 604(d). Rule 604(d) requires, as a prerequisite to appeal from a judgment entered following a guilty plea, that counsel 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).

¶ 21 The purpose of the rule is to ensure that before a defendant appeals a guilty plea, the trial court is “ ‘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.’ ” *In re H.L.*, 2015 IL 118529, ¶ 9 (quoting *People v. Wilk*, 124 Ill. 2d 93, 104 (1988)). Counsel’s certificate must strictly comply with Rule 604(d). *People v. Curtis*, 2021 IL App (4th) 190658, ¶ 30. Whether counsel complied with the rule is a legal question that we review *de novo*. *People v. Gorss*, 2022 IL 126464, ¶ 10.

¶ 22 Here, postplea counsel filed a certificate stating:

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

2. I have 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.

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

¶ 23 Counsel’s certificate closely tracks the rule’s language. OSAD points out that the third paragraph refers to a motion to reconsider the sentence rather than a motion to withdraw the plea. OSAD concludes, however, that, in the context of this case, the reference to a motion to reconsider is clearly a scrivener’s error and that the certificate as a whole comports with the spirit and purpose of the rule. We agree.

¶ 24 We note that defendant’s plea was fully negotiated so a motion to reconsider the sentence would not have preserved her right to appeal (see Ill. S. Ct. R. 604(d) (eff. July 1, 2017)) and, when admonishing defendant about her appeal rights, the trial court admonished her that if she wanted to appeal, she would first have to file a motion to withdraw her plea. Defendant in fact filed a *pro se* motion to withdraw the plea, so there was no motion to reconsider the sentence for counsel to amend. Counsel’s amended motion is clearly labeled as one to withdraw the plea. The motion’s allegations and the evidence at the hearing all related to the voluntariness of the plea, an appropriate subject for a motion to withdraw the plea. Thus, we agree that the reference to a motion to reconsider the sentence was a scrivener’s error that in no way suggests that postplea counsel failed to fulfil his duties under Rule 604(d).

¶ 25 OSAD further concludes that there is no good-faith argument that the court failed to admonish defendant properly prior to the plea. Illinois Supreme Court Rule 402(a) requires trial courts to admonish defendants about the nature of the charge, the minimum and maximum penalties, the right to plead not guilty and proceed to trial, and the waiver of trial rights engendered by a guilty plea. Ill. S. Ct. R. 402(a) (eff July 1, 2012). Courts must also decide on the record whether the plea is voluntary and hear a factual basis sufficient to support the charge. Ill. S. Ct. R. 402(b), (c) (eff July 1, 2012). Whether the trial court substantially complied with Rule 402 is a question of law, reviewed *de novo*. *People v. Chavez*, 2013 IL App (4th) 120259, ¶ 14.

¶ 26 Here, the trial court informed defendant about the charge and the possible penalties. It had the prosecutor recite the terms of the plea agreement. The court questioned defendant to ensure that no other promises had been made and that she had not been threatened or coerced. She assured the court that her plea was knowing and voluntary, that she had had sufficient time to consult with her attorney, and that she was satisfied with his services. The State provided a detailed factual basis. Thus, the court complied with Rule 402.

¶ 27 OSAD's third potential issue is whether the court erred in refusing to allow defendant to withdraw her plea. It concludes that this issue, too, lacks even arguable merit.

¶ 28 A defendant does not have an absolute right to withdraw her plea. *People v. Burge*, 2021 IL 125642, ¶ 37. Instead, she must establish a legally recognized basis for withdrawal. *People v. Millsap*, 2022 IL App (4th) 210192, ¶ 17. A defendant should be allowed to withdraw her plea if she pleaded guilty due to a misapprehension of the facts or the law or where there is doubt of her guilt and justice would be better served by allowing her to withdraw the plea and proceed to trial. *Id.* (citing *People v. Hughes*, 2012 IL 112817, ¶ 32).

¶ 29 The trial court reasonably rejected defendant's postplea claims that she was confused during the proceedings, was afraid of codefendant Massie, and that her plea was involuntary because she was unable to view all the discovery.

¶ 30 Initially, all these claims are refuted by the record. Defendant told the court in response to each admonishment that she understood the charges and potential sentences. She said that no one had coerced her into pleading guilty, and that she was satisfied with her attorney's representation.

¶ 31 The court's "exhaustive admonitions" were not merely a "perfunctory or ritualistic formality." *People v. Jones*, 144 Ill. 2d 242, 263 (1991). As noted, defendant repeatedly told the court that she understood the admonishments. When she briefly expressed some confusion, the court provided additional explanation. She was allowed to consult with her attorney and afterward said that she understood everything.

¶ 32 When the court asked defendant whether she was taking any medication, she said only that she was taking Prozac for depression. She never mentioned any other maladies that would affect her ability to understand the proceedings.

¶ 33 Moreover, defendant failed to explain how her inability to view all of the discovery affected her decision to plead guilty. She did not allege that, had she seen the additional discovery materials, she would likely have rejected the plea offer and insisted on going to trial. See *People v. Hall*, 217 Ill. 2d 324, 335 (2005) (to establish the prejudice prong of an ineffective-assistance-of-counsel claim in connection with the entry of a guilty plea, the defendant must show a reasonable probability that, absent counsel's errors, the defendant would have pleaded not guilty and insisted on going to trial).

¶ 34 A defendant does not have a constitutional right to read the discovery materials provided to his attorney. *People v. Walker*, 2019 IL App (3d) 170374, ¶ 16. An attorney's decision to share

discovery materials with a defendant is “afforded a strong presumption that it was the product of sound trial strategy rather than incompetence.” *Id.* ¶ 18. The presumption is rebuttable and may be overcome where the decision appeared irrational, and no reasonable effective attorney would pursue that strategy. *Id.*

¶ 35 There is absolutely no indication that had defendant been able to view additional discovery materials she would have foregone the plea bargain and insisted on a trial.

¶ 36 Defendant’s claim that she did not give Massie the weapon contradicts the factual basis to which she stipulated. Even if she did not give him the weapon, however, the factual basis showed that she and Massie had a preconceived plan to intimidate Jackson into returning her property and that she drove Massie to Illinois for that purpose. She could thus be accountable for Massie’s actions pursuant to that plan in any event.

¶ 37 CONCLUSION

¶ 38 As this appeal presents no issue of arguable merit, we grant OSAD leave to withdraw and affirm the circuit court’s judgment.

¶ 39 Motion granted; judgment affirmed.