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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. 09-CF-373
)	
LADON MOORE,)	Honorable
)	John J. Kinsella,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice McLaren concurred in the judgment.

ORDER

Held: (1) Defendant's jury waiver was valid, as it was not implicated by the trial court's misstatement of a sentencing range and it applied to both charges that were joined for trial; (2) defendant was entitled to full credit against his drug assessment, his drug-court fines, and his child-advocacy-center fees (all of which were fines for purposes of the credit) to reflect the 583 days he spent in presentencing custody, and his fines for the Violent Crime Victims Assistance Fund would be modified to reflect the other fines imposed.

¶ 1 After a bench trial, defendant, Ladon Moore, was convicted of unlawful possession of a controlled substance with the intent to deliver (unlawful possession) (720 ILCS 570/401(c)(1) (West 2008)) and driving with a suspended license (DWLS) (625 ILCS 5/6-303(a) (West 2008)). The trial

court sentenced defendant to 14 years' imprisonment for unlawful possession and the payment of costs only for DWLS. The court also imposed various fines and fees. On appeal, defendant contends that (1) he did not knowingly and voluntarily waive his right to a jury trial on the unlawful-possession charge, because the trial court misled him about the possible sentence; (2) he did not at all waive his right to a jury trial on the DWLS charge; and (3) he is entitled to credit against his fines.

We affirm as modified.

¶ 2 Defendant was charged by information with unlawful possession and DWLS and was later indicted for unlawful possession. He pleaded not guilty. Later, he moved *in limine* to bar evidence of telephone conversations between a confidential informant (CI) and a person alleged to have been him. Defendant's motion alleged that police officers had listened in on the conversations, and it argued that, unless the State could establish that defendant was the person who had talked to the CI, any testimony about the calls' content would be inadmissible hearsay. On February 26, 2010, defendant moved to sever the charges; the trial court denied the motion.

¶ 3 On the morning of March 23, 2010, both parties answered ready for trial. However, the State had been unable to secure the CI's presence. Defendant's attorney noted that the court had yet to rule on his motion *in limine*. He added that, if the CI did not testify, defendant could not be identified as the other speaker in the telephone conversations, and thus the contents of the conversations would be inadmissible. The parties and the court discussed whether, without the CI testifying at trial, the State would be able to lay a proper foundation for any of the conversations. The judge stated that, without the proper foundation, the actual contents of the conversations (with some exceptions) would not be admitted. However, the judge would admit statements by the CI that provided "context" for

certain of defendant's admissions, and he would instruct the jury that these statements were being admitted for a limited purpose and should not be considered for their truth.

¶ 4 The judge asked defendant's attorney whether defendant still wanted to answer ready for the jury trial. Defendant's attorney responded, "I would prefer *** this is going to be a shorter trial without the informant. I want to talk to the defendant about his rights and jury versus a bench at this point." The court recessed until 1:30 p.m.

¶ 5 When the court reconvened at 1:30 p.m., defendant's attorney asked the trial judge to clarify his ruling on the motion *in limine*. The judge reiterated that statements by the CI that the State offered for context, and not their truth, would be admitted with a limiting instruction to the jury. Defendant's admissions would also come in if they had the proper foundation. The judge then asked whether the parties were ready to start choosing the jury. Defendant's attorney asked for time to talk to defendant. The court took a short recess. After the recess, the proceedings continued:

"THE COURT: It's just the one count indictment; right, Mr. Laude?"

MR. LAUDE [Assistant State's Attorney]: No. There's also a DWLS. There's a second count.

THE COURT: All right. That's a misdemeanor?

MR. LAUDE: It is.

(WHEREUPON, a discussion was held off the record.)

THE CLERK: Ladon Moore.

THE COURT: All right. We're back on the record on Moore. The defendant being present, both counsel—all counsel.

MR. NIEWOEHNER [Defendant's attorney]: Yes, your Honor.

Your Honor, I have discussed this matter with the defendant. In light of every previous ruling and in terms of the charges and the evidence as a whole, the defendant is waiving his right to a jury and is electing a bench trial.

THE COURT: All right.

You are Ladon Moore; correct?

THE DEFENDANT: Yes.

THE COURT: You understand that your attorney has provided to me a document which purports to have your signature and indicating a desire on your part to waive a right to trial by jury; is that correct?

THE DEFENDANT: Yes.

THE COURT: That is your signature?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand what a jury trial is?

THE DEFENDANT: Yes.

THE COURT: And you understand we would select—your attorney and the State, with the procedures prescribed by this Court—would participate in a process of selecting twelve citizens and one or two or more alternate jurors to listen to the evidence and follow the rules and instructions of this Court and ultimately determine whether, in fact, the State had sustained its burden of proof beyond a reasonable doubt or not. You understand that.

THE DEFENDANT: Yes.

THE COURT: You understand that you have a right to have such a trial, but you are telling me you wish to waive or give up that right and have the matter proceed to a same [sic] trial before myself sitting without a jury. You understand that.

THE DEFENDANT: Yes.

THE COURT: And you understand that I will be, as I would have been at a jury trial, the Judge of the law. But with this waiver, I will also be the Judge of the facts as well. You understand that.

THE DEFENDANT: Yes.

THE COURT: Okay. The Court finds the defendant has knowingly and voluntarily waived his right to trial by jury.”

¶ 6 The “document” to which the judge referred is a form signed by defendant. The body of the form states, in full, “Now comes the above defendant in his/her own proper person, and here states that he/she has fully been advised of his/her right to Trial by Jury; that he/she waives same and elects to be tried by the Court.”

¶ 7 After the judge made his finding, the proceeding continued:

“THE COURT: ***

And with that, we have a single count. There is a misdemeanor DWLS—

MR. LAUDE: There is.

THE COURT: (continuing) that’s still part of the charges?

MR. NIEWOEHNER: Your honor, I did have one question about that.

That’s not part of the indictment, as I see the indictment.

MR. LAUDE: It’s a misdemeanor count that’s attached.

THE COURT: It's a misdemeanor complaint. I should go back.

Mr. Moore, you understand I neglected to mention this or discuss with you that the charge that you are waiving your right to trial by jury on is a charge of unlawful possession of a controlled substance with intent to deliver. And, as charged, that is a Class One felony. You understand that.

THE DEFENDANT: Yes.

THE COURT: A Class One felony is an offense for which you could be punished with a sentence to the penitentiary of a term of not less than three nor more than seven years followed by two years of mandatory supervised release. You understand that.

THE DEFENDANT: Yes.

THE COURT: Is there a prior—Is it extended term?

MR. LAUDE: No. I don't think so, but it's nonprobationable.

THE COURT: All right. So it's a Class One within the range I've just described and it is nonprobationable.

In other words, upon a conviction the Court will be required to send you to the penitentiary within the term I just described. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: It's also subject to a fine of up to \$250,000. Understood?

THE DEFENDANT: Yes.

THE COURT: Any questions about the possible punishments?

THE DEFENDANT: No, sir.

THE COURT: Any question about your right to trial by jury beyond what we've already discussed?

THE DEFENDANT: No, sir.

THE COURT: All right. Then the Court will reiterate that I will find the defendant has knowingly and voluntarily waived.

But there is, according to the State, a misdemeanor complaint for DWLS. And technically that matter then will proceed to trial as well.”

¶ 8 Defendant did not respond further, and the cause proceeded to a bench trial. The court found defendant guilty of both charges. Defendant moved for a new trial, raising a variety of issues but not challenging his jury waiver. At the hearing on the motion, defendant's attorney argued in part that the court had erred in admitting the CI's hearsay statements, even though they were admitted only to explain the officers' actions and not as evidence of guilt. The judge rejected the argument but acknowledged that, had the trial been to a jury, it would have been difficult for the jury to understand and follow the limiting instruction that would have been needed. Defendant's attorney responded:

“And I did not think and the defendant did not think a jury could do that, could distinguish between all of this hearsay evidence that's coming in, which I would say took up more than half of the State's case, versus statements that were being admitted for the truth. And that is why we—that is part of the reason why we took a bench trial, your Honor.”

¶ 9 The court denied defendant's motion for a new trial. After a hearing, the court sentenced defendant to 14 years' imprisonment for unlawful possession, one year less than the statutory maximum (see 730 ILCS 5/5-8-1(a)(4) (West 2008)), plus 2 years of mandatory supervised release. For DWLS, the court sentenced defendant only to costs. Defendant was also ordered to pay various

finer and fees, including a drug assessment of \$2,000 (see 720 ILCS 570/411.2(a)(2) (West 2008)); two \$10 drug-court fines (see 55 ILCS 5/5-1101(d-5) (West 2008)), one for each conviction, and two \$30 child-advocacy fees (see 55 ILCS 5/5-1101(f-5) (West 2008)), one for each conviction. The court also imposed a \$20 fine on each offense, the money to go to the Violent Crime Victims Assistance Fund (725 ILCS 240/10 (West 2008)). After the court denied his motion to reconsider his sentence, defendant timely appealed.

¶ 10 Defendant's challenge to his jury waiver consists of two arguments: (1) the waiver was invalid because the trial court misinformed him of the sentencing range for unlawful possession; and (2) he never waived a jury on the charge of DWLS. Although defendant did not raise either argument at the trial level, we have recognized that, because the right to a jury trial is fundamental, a claim of a deprivation of that right will be reviewed for plain error. *People v. Hernandez*, 409 Ill. App. 3d 294, 301 (2011). Because the facts are not in dispute, the jury-waiver issues are reviewed *de novo*. See *People v. Bannister*, 232 Ill. 2d 52, 66 (2008).

¶ 11 We first address whether the trial court's erroneous admonition about the possible sentences for unlawful possession rendered defendant's jury waiver invalid. Our answer is no.

¶ 12 Whether a jury waiver is valid depends on the specific facts of the case. *Id.* The trial court must ensure that the defendant's jury waiver is knowing and voluntary, but the court need not provide any specific admonishment for the defendant to make an effective waiver. *Id.*

¶ 13 *Bannister* is the primary Illinois authority on whether and when a jury waiver is rendered involuntary by the trial court's erroneous admonishments about sentencing. There, the defendant was convicted at a bench trial of first-degree murder and several other offenses. On appeal, he contended that his jury waiver had been invalid because the trial court had misinformed him of the

minimum and maximum sentences for several charges. The supreme court rejected the claim. The court observed that, in contrast to the decision whether to plead guilty, for which the trial court must admonish the defendant about the possible sentences, the decision to waive a jury trial is unlikely to be affected by misinformation about the possible sentences. *Id.* at 68-69. This is because “[a] defendant who pleads not guilty receives a full and fair trial” at either a jury trial or a bench trial, and, either way, “the defendant’s possible sentences would be the same.” *Id.* at 69. The court observed that, in the case at hand, nothing suggested that, absent the incorrect admonishments, he would have decided not to forgo his right to a jury trial. *Id.* at 68. The defendant “knew the difference between a bench trial and a jury trial and voluntarily chose the former.” *Id.* at 71.

¶ 14 Defendant contends that *Bannister* is not controlling because there, the trial court’s error was relatively slight, whereas here the trial court erred seriously by informing defendant that the maximum sentence for unlawful possession was a mere 7 years, not the correct 15 years. Defendant urges us to adopt the reasoning of *Commonwealth v. Houck*, 948 A.2d 870 (Pa. 2008). We find that *Houck* is both consistent with *Bannister* and persuasive, and we adopt its reasoning. However, we conclude that *Houck* compels affirmance.

¶ 15 In *Houck*, the defendant, who had been charged with attempted rape and other felonies, signed a jury waiver and presented it to the trial court. The trial judge then conducted a colloquy in which he admonished the defendant about the rights that he would be waiving. The admonishments included a summary of the maximum sentence for each offense. The judge mistakenly told the defendant that he could receive consecutive sentences on all counts, with an aggregate sentence of 34½ to 69 years’ imprisonment. However, after the defendant was convicted on all counts at his

bench trial, the court sentenced him to consecutive prison terms totaling 37½ to 75 years, exceeding the range recited at the colloquy. *Id.* at 783-84.

¶ 16 On appeal, the defendant argued that his jury waiver had been rendered involuntary by the misinformation about sentencing. The Pennsylvania Supreme Court rejected the claim. The court did hold that, under some circumstances, a defendant's jury waiver can be rendered unknowing by such misinformation. However (as the *Bannister* court held a few months later), the court concluded that, because a jury waiver does not affect the possible sentences (*id.* at 787), a defendant may not rely on the misinformation alone to invalidate his waiver. Instead, he "must provide some corroborating evidence to demonstrate reliance" (*id.* at 788) to show that "his or her understanding of the length of the potential sentence was a material factor in making the decision to waive a jury trial" (*id.*).

¶ 17 Based on *Houck*, defendant's claim fails. In contending that the trial court's misstatement of the possible sentence for unlawful possession invalidated his jury waiver, defendant relies solely on the misinformation itself. He reasons that, because the misstatement here was greater than the relatively slight one in *Houck*, "it does not strain credibility to conclude that this affected the defendant's decision to waive [a] jury." However, defendant's burden is greater than merely not straining credibility; he must adduce proof, beyond the erroneous advice itself, that he relied on the misinformation. Here, he has not done so. Thus, his argument is facially insufficient.

¶ 18 Moreover, it *does* strain credibility to assert that the erroneous admonishment affected defendant's decision to forgo a jury trial. The record shows otherwise.

¶ 19 First, there is the matter of timing. The trial judge did not provide the misinformation until after defendant had signed a jury waiver, received proper admonishments, and stated that he

understood the difference between a jury trial and a bench trial; that he knew that he had the right to a jury trial; and that he was intentionally giving up his right to a jury trial. The judge then found that defendant had knowingly and voluntarily waived his right to a jury trial. Defendant does not, and cannot reasonably, contend that the proceedings to this point were insufficient to establish a valid waiver. Therefore, he must show that, but for the trial court's erroneous statements that followed, he would have changed his mind and elected a jury trial. We find that scenario unlikely at best and defendant points to nothing in the record that supports such a conclusion.

¶ 20 Second, the record proves that defendant decided to forgo a jury for reasons that he found compelling and that had nothing to do with the possible sentences. Defendant was ready to proceed to a jury trial until the trial court ruled on his motion *in limine* and held that certain of the CI's statements would be admitted for a purpose other than their truth and that the jury would be instructed to consider the statements solely for that limited purpose. After receiving this ruling, defendant and his attorney conferred and elected to switch from a jury trial to a bench trial. As the attorney's comments both before and after the trial show, the decision was prompted primarily by the perception that, at a jury trial (despite the limiting instruction), the CI's statements would improperly be considered as evidence of guilt. Defendant believed that this risk was intolerable—as the attorney said, he and defendant believed that the jury would inevitably view the statements, which “took up more than half of the State's case,” as evidence of guilt. This further bolsters the conclusion that defendant would have waived a jury no matter what he had been told about the sentence for unlawful possession.

¶ 21 We now turn to defendant's second challenge to his jury waiver. Defendant argues that, even if he validly waived a jury trial on unlawful possession, he did not waive a jury trial on DWLS. He

asserts that the trial judge did not admonish him about the DWLS charge and specifically mentioned the charge only after accepting his jury waiver. Defendant's argument fails, for two reasons.

¶ 22 First, defendant's claim presupposes that the charges were to be treated separately for purposes of the jury waiver. However, the law is otherwise: the charges were a "package deal," and the waiver applied to both of them. Controlling is *People v. Kneller*, 25 Ill. App. 3d 935 (1975). There, the defendant was charged with burglary and two alternative counts of aggravated battery. He never moved to sever the charges. On the day of trial, he moved for a bench trial on the burglary count only. The trial court denied the motion. The defendant then waived his right to a jury trial on all of the counts, and, after a bench trial, he was convicted of both offenses. On appeal, he argued that he had been denied his right to a jury trial on the aggravated battery counts. *Id.* at 937.

¶ 23 The appellate court disagreed, noting that the burglary count and the aggravated battery counts had not been severed and that the defendant had never contended that they should have been severed. The court held that, because the counts had been properly joined for trial, the defendant had had no right to separate trials; he had to "either elect or waive a jury trial as to the three charges together." *Id.* at 938. *Kneller* controls here. Having lost on his motion to sever the charges, defendant may not claim that the trial court erred in applying his jury waiver to both charges.

¶ 24 Second, even if *Kneller* did not compel us to reject defendant's argument, the record does not support it. When defendant signed the jury-waiver form and told the court that he was electing a bench trial, he knew that the two charges were going to be tried together. Neither the form nor defendant's responses to the trial court's admonishments made the slightest distinction between the unlawful possession charge and the DWLS charge. Moreover, the judge did mention the DWLS charge, albeit briefly, before initially accepting defendant's waiver. Also, immediately before

proceeding to the trial, the judge mentioned that the DWLS charge would “proceed to trial as well,” and defendant voiced no objection or confusion. Had defendant actually intended to request separate triers of fact for the two charges, the record would contain some hint of that intention. Defendant cannot claim that the trial court denied him a right that he never asserted—even if, contrary to *Kneller*, he had the right. Thus, the trial court did not deny defendant his right to a jury trial on either charge, as defendant validly chose a bench trial on both charges.

¶ 25 We turn to defendant’s second contention on appeal: that he is entitled to a monetary credit against the fines imposed on each charge, based on the time that he spent in custody before he was sentenced. The State confesses error, and we agree with the parties that the credits must be granted.

¶ 26 A defendant is entitled to a credit, against certain fines, of \$5 a day for each day that he is in custody before sentencing on a bailable offense, but the credit may not exceed the total fines. 725 ILCS 5/110-14(a) (West 2008). Here, the trial court imposed several fines that were subject to the statutory credit. These include the drug assessment of \$2,000 (see *People v. Jones*, 223 Ill. 2d 569, 592 (2006)); the two drug-court fees (\$10 for each offense) (see *People v. Maldonado*, 402 Ill. App. 3d 411, 435-36 (2010)); and the two child-advocacy fees (\$30 for each offense) (see *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009)). Defendant was in custody for 583 days before sentencing. Therefore, on count I, for unlawful possession, we award him a total credit of \$2,040, satisfying all three fines; on count II, for DWLS, we award him a credit of \$40, satisfying both fines.

¶ 27 The State notes that the Violent Crime Victims Assistance Fund fines are not subject to the statutory \$5-per-day credit (725 ILCS 240/10(c) (West 2008)) and that defendant is required to pay \$4 for each \$40 of other fines imposed (725 ILCS 240/10(b) (West 2008)). The trial court imposed a fine of \$20 for each offense, apparently relying erroneously on the provision that applies only if

no other fine has been imposed (see 725 ILCS 240/10(c)(2) (West 2008)). We agree with the State that the fines must be modified to \$204 for unlawful possession and \$4 for DWLS.

¶ 28 In sum, we affirm defendant's conviction and sentences, except that we modify the fines by (1) granting defendant credits in satisfaction of (a) his \$2,000 drug assessment; (b) his \$20 aggregate drug-court fees; and (c) his \$60 aggregate child-advocacy fees; (2) increasing the Violent Crime Victims Assistance Fund fine for count I from \$20 to \$204 and decreasing the corresponding fine for count II from \$20 to \$4.

¶ 29 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed as modified.

¶ 30 Affirmed as modified.