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2012 IL App (3d) 100164-U

Order filed February 22, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-10-0164
v.)	Circuit No. 08-CF-936
)	
ERNEST COFFEY,)	Honorable
)	Michael E. Brandt,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's conviction for first degree murder was affirmed because the trial court made an adequate inquiry into the defendant's posttrial claims of ineffective assistance of counsel and concluded that they lacked merit. The trial court did not abuse its discretion in proceeding to sentencing with the defendant appointed by counsel because the defendant did not clearly and unequivocally waive his right to counsel at sentencing. Also, the defendant's 60-year prison sentence was not an abuse of discretion, considering that it was within the statutory range, the defendant was on probation for prior criminal activity, and the murder was remarkably violent.

¶ 2 Following a bench trial, defendant Ernest Coffey was convicted of first degree murder

(720 ILCS 5/9-1(a)(1) (West 2008)) and sentenced to 60 years' imprisonment. The defendant appealed, contending that the trial court failed to follow the proper procedures in addressing his posttrial claims of ineffective assistance of counsel, the trial court erred by refusing to allow him to proceed *pro se* at sentencing, and his sentence was excessive. We affirm.

¶ 3

FACTS

¶ 4 On August 19, 2008, the defendant was charged with one count of first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) for the stabbing and strangulation death of Jessica Wesson. On September 9, 2008, the defendant was charged with a second count of first degree murder (720 ILCS 5/9-1(a)(2) (West 2008)), also for the death of Wesson. Although Mark Rose, an assistant public defender, was appointed to represent the defendant, the defendant inundated the court with *pro se* filings, beginning in October 2008. The trial court struck most of the initial dozen filings, but it held a hearing to address the defendant's complaints regarding Rose's performance; complaints primarily about Rose's failure to file the defendant's motions. The defendant asked to proceed *pro se* to file motions, but eventually agreed to continue with Rose at the end of the hearing. The public defender of Peoria County, Thomas Penn, later met with the defendant to discuss an alternative public defender.

¶ 5 In July 2009, the defendant again asked to proceed *pro se*, making a number of allegations against Rose and contending that Rose was working for the State. The trial court allowed Rose's motion to withdraw. The defendant represented himself on a motion to suppress, but on the second day of the hearing on the motion, the defendant asked that counsel be reappointed. The trial court granted the request, but it pointed out the defendant's prior history regarding counsel and indicated that it "would look with disfavor in the future as to a change in

position again since we've been back and forth a couple of times.” The trial court noted, however, that the case was still in the pretrial stages, and not at the day before trial, so it granted the defendant's request and appointed assistant public defender Thomas Sheets to represent the defendant.

¶ 6 However, two months later, at review hearing, the defendant complained about Sheets. The trial court again noted the defendant's history of unhappiness with his appointed counsel and told the defendant to put his complaints in writing. The defendant responded by sending an *ex parte* letter to the court, which contained threats against Sheets, and again raised the issue of ineffective assistance of counsel. The trial court declined to substitute counsel, and it denied the defendant's motion to suppress.

¶ 7 On the day of *voir dire*, Sheets informed the court that the defendant refused to meet with him the day before. The defendant was present in court, but was mumbling and would not respond to any of the court's questions. However, after the jury was chosen, but before it was impaneled, the defendant waived his right to a jury trial and asked for a bench trial. The next day, the defendant made an oral request to proceed *pro se*, complaining that Sheets had not been to see him. The trial court denied the motion, finding that it was untimely and would cause delay. The trial court noted that the defendant had exercised his right to represent himself, but he waived it and gave up that right when he asked for counsel to again be appointed. Sheets represented to the court that he had met with the defendant prior to the day when the defendant refused to see him, and Sheets continued to be available to the defendant. The trial court found that the defendant's disruptions were an effort to impede the matter from proceeding to trial.

¶ 8 The defendant does not challenge the sufficiency of the evidence. The testimony

established that Wesson was strangled and stabbed behind Sterling School around midnight on July 29, 2008. Her body was found by the school custodian shortly after 5:30 a.m. on July 30, 2008. Cheryl Reed, who lived behind the school, testified that she heard screams behind the school between 11 p.m. and 12 a.m. on July 29. The defendant's ex-girlfriend, Daquasha Robertson testified, that she argued with Wesson, and then she saw Wesson get into the defendant's car. Robertson walked to Sterling School and saw the defendant choking Wesson and stabbing Wesson more than 10 times. Robertson did not initially tell the police because the defendant had threatened her and her family.

¶ 9 The defendant's roommates testified that the defendant left their home sometime after 9 p.m. on July 29 and returned at 3:25 a.m. on July 30. One of the defendant's roommates, Kiley Simmers, testified that on July 30, she drove with the defendant in the defendant's car to the car wash. She noticed a blanket, boots, and a knife in the car. She also noticed that the blanket was thrown in the garbage at the car wash.

¶ 10 Dr. Scott Denton, a forensic pathologist, conducted the autopsy on Wesson and found that she had 11 stab wounds. He also observed a number of contusions, abrasions, and lacerations on Wesson's body. Wesson had also been strangled. Denton opined that Wesson's causes of death were the multiple stab wounds and the strangulation. The DNA profile of Wesson's blood matched that of blood found on the driver's seat of the defendant's car.

¶ 11 The defendant's motion for a directed verdict was denied, and he did not testify. The trial court found the defendant guilty. The defendant filed a posttrial motion, again seeking to proceed *pro se*, and contending that he had fired Sheets and that Sheets did not submit any of the defendant's evidence or testimony. The trial court held a hearing on the motion. The trial court

also ordered that all of the remainder of the defendant's prolific posttrial motions be placed in an envelope in the record. The trial court allowed the defendant to argue his motion. The defendant argued that Sheets was ineffective because, for example: 1) Sheets subpoenaed the State's DNA witnesses; 2) the detectives had committed perjury so they could not testify against the defendant if he took the stand; 3) the defendant had a right to abort the case under *Roe v. Wade*; and 4) Sheets should have objected to the charges because they were outside some 30-day period. The defendant also argued a number of factual issues, and he contended that Sheets did not submit the defendant's evidence or testimony (which must refer to the defendant's affidavit, because he did not testify). Ultimately, the defendant argued that he wanted to proceed on his own so that he could present his motions to the trial court. In response, Sheets stated that the issue of ineffective assistance of counsel had already been addressed, and he continued to have no problem representing the defendant.

¶ 12 The trial court denied the motion, finding that the claims were not detailed enough to state a true claim of ineffective assistance of counsel. The matters brought forth by the defendant were either trial strategy or the refusal to offer inadmissible evidence. At the end of its inquiry, the trial court noted that there was a suggestion that the defendant was entitled to substitute counsel. The trial court cited *People v. Wanke*, 303 Ill. App. 3d 772 (1999), for the proposition that dissatisfaction with appointed counsel or a deterioration of the relationship between counsel and client were not good causes for a substitution of counsel. The trial court recognized that there had been a deterioration of that relationship, but the stage was now posttrial, and the defendant's claims were simply claims that did not warrant substitute counsel. At that point, the defendant interrupted the trial court to add that Sheets was a racist and had

called the defendant a "nigger," a claim that the defendant made in his letter threatening Sheets.

¶ 13 At the hearing on Sheets' motion for a new trial, the defendant again asked to present his own motions and asked to charge Sheets with official misconduct. The trial court noted that the defendant was using the same obstruction techniques as he had throughout the litigation. After allowing the defendant to speak, the trial court reiterated that Sheets was the defendant's counsel and the trial court was not going to readdress the defendant's allegations of ineffective assistance. The trial court again noted that, given the entire history of the case, appointing new counsel was not warranted by the defendant's allegations nor the law. The trial court proceeded to argument on the motion for a new trial, which it denied.

¶ 14 The case proceeded directly to sentencing. The defendant did not object nor ask to represent himself at sentencing. The State argued that the maximum of 60 years was appropriate because of the violent nature of the crime. It also noted the defendant's two prior offenses: domestic battery as a juvenile and robbery and aggravated battery (for which he was on probation when he committed the instant offense). The defense argued that the defendant was a young man, with a psychiatric history, and not an extensive criminal history. The trial court considered the evidence in aggravation and mitigation, the presentence investigation report, the arguments of counsel, and the defendant's statements in allocution. The trial court sentenced the defendant to 60 years' imprisonment, based on the brutal nature of the crime and the overwhelming evidence of guilt. The defendant filed a motion to reconsider his sentence, but he refused to come into court for the hearing on the motion. The motion was denied. The defendant appealed.

¶ 15

ANALYSIS

¶ 16 The defendant contends that the trial court failed to follow the proper procedures in addressing his posttrial claims of ineffective assistance of counsel. The defendant asks for a remand for a new hearing on his claims of ineffective assistance of counsel. The defendant contends that the trial court should have questioned Sheets to determine if the defendant told him about some of his claimed evidence prior to trial. The defendant also contends that the trial court should have explored the defendant's claims that the State paid the prosecution witnesses and that Sheets called the defendant a "nigger." The defendant claims that the trial court applied the wrong standard when it cited to *People v. Wanke*, 303 Ill. App. 3d 772 (1999), and that delay was not a reason to deny the defendant's posttrial motion to proceed *pro se*. The State responds that there was no error. The trial court made an adequate inquiry into the defendant's claims and concluded that they lacked merit.

¶ 17 Appointment of new counsel is not automatically required when a defendant presents a posttrial motion alleging ineffective assistance of counsel. *People v. Krankel*, 102 Ill. 2d 181 (1984). The trial court must first conduct an adequate inquiry into the factual basis for the defendant's *pro se* claim, and, if it finds the claim to be nonmeritorious or pertaining only to matters of trial strategy, it may deny the motion without appointing new counsel. *People v. Taylor*, 237 Ill. 2d 68 (2010). The operative concern for a court of review is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations. *People v. Moore*, 207 Ill. 2d 68 (2003). The trial court may converse with counsel regarding the facts or hold a brief discussion with the defendant; the trial court may also base its evaluation of defendant's claims on its knowledge of counsel's performance during trial. *Moore*, 207 Ill. 2d at 78-79. A trial court's finding on the merits that it is unnecessary to appoint new counsel to present a

defendant's claims of ineffective assistance will not be disturbed on appeal unless the court's ruling is manifestly erroneous. *People v. Eggleston*, 363 Ill. App. 3d 220 (2006).

¶ 18 Our examination of the trial court's inquiry into the defendant's allegations of ineffective assistance of counsel, read in light of the entire record of proceedings, leads us to conclude the trial court's decision not to appoint new counsel was not manifestly erroneous. The trial court gave the defendant an opportunity to explain his assertions, and it specifically found that the claims had already been addressed and were not detailed enough to state a claim of ineffective assistance of counsel. In addition, the trial court asked defense counsel for his input, and defense counsel indicated that he had no personal problems with the defendant nor the case, and he continued to be available to represent the defendant. The trial court was aided by its knowledge of the defendant's actions at trial, including the finding that the defendant's prior allegations of ineffective assistance of counsel were part of an effort to impede the matter from proceeding to trial. There is no requirement that the trial court ask defense counsel to respond to each individual claim made by the defendant. See *Moore*, 207 Ill. 2d at 78-79 (While some interchange between the trial court and defense counsel is often necessary, a trial court can conduct an adequate inquiry into a defendant's allegations of ineffective assistance by relying on its knowledge of defense counsel's performance at trial and the insufficiency of the allegations on their face).

¶ 19 Furthermore, the trial court was familiar with the defendant's multiple, repetitive filings, many of which were not admissible or not supported by any factual basis. The trial court concluded that the defendant had been granted the right to represent himself, but that he was not trained in the law and had asked for counsel to be reappointed. The defendant's difficulties with

his two appointed counsel largely stemmed from the defendant's wish to make allegations and filings that were not allowed under the rules of the court. In view of the totality of the circumstances, we are unpersuaded that the trial court erred in its handling of the defendant's posttrial motion.

¶ 20 The trial court's reference to *People v. Wanke*, 303 Ill. App. 3d 772 (1999), which dealt with pretrial ineffective assistance of counsel claims, does not change our conclusion. In light of the history of the case, and the overlap between the defendant's pretrial and posttrial claims of ineffective assistance, it was reasonable for the trial court to address the potential argument that the defendant was still asking for substitute appointed counsel due to a deteriorated relationship between the defendant and his defense counsel. The trial court specified that it was finding that the defendant's ineffective assistance claims, at the posttrial stage, were not detailed enough to state a claim of ineffective assistance of counsel.

¶ 21 The defendant also contends that his request to proceed *pro se* at sentencing was clear and unequivocal, and timely, so the trial court erred by refusing to allow him to proceed *pro se* at sentencing. He seeks to have his sentence vacated, and a remand for resentencing, allowing him to proceed *pro se*. The State contends that the defendant did not unequivocally assert his right to represent himself, and that the denial needs to be looked at in the overall context of the case.

¶ 22 A defendant has a sixth amendment right to represent himself. *People v. Burton*, 184 Ill. 2d 1 (1998). In order to represent himself, a defendant must knowingly and intelligently relinquish his right to counsel, and that waiver must be clear, unequivocal, and unambiguous. *Burton*, 184 Ill. 2d 1. In determining whether a defendant's statement is clear and unequivocal, courts look at the overall context of the proceedings. *Burton*, 184 Ill. 2d 1. A court must

determine whether the defendant truly desires to represent himself and has definitively invoked his right of self-representation. A defendant waives his right to self-representation unless he " 'articulately and unmistakably demands to proceed *pro se*.' " *Burton*, 184 Ill. 2d at 22. One purpose in requiring that a criminal defendant make an unequivocal request to waive counsel is to prevent the defendant from manipulating the system by going back and forth between counsel and self-representation. *People v. Mayo*, 198 Ill. 2d 530 (2002). We review the denial of a request to proceed *pro se* for an abuse of discretion. *Burton*, 184 Ill. 2d at 25.

¶ 23 The sentencing hearing directly followed the denial of the posttrial motions and the defendant's argument to substitute counsel or proceed *pro se* to present his motions. After the posttrial motions were denied, the defendant did not raise the issue of proceeding *pro se* at sentencing. Although the defendant was clearly not happy with Sheets, there is no indication that the defendant unequivocally sought to proceed *pro se* at sentencing. The defendant wanted to have his prolific *pro se* motions heard by the trial court, but he never indicated that he was prepared to represent himself at sentencing. We find that the trial court did not abuse its discretion in proceeding to sentencing with the defendant appointed by counsel.

¶ 24 Finally, the defendant contends that his 60-year sentence was excessive, arguing that the trial court erred in describing the defendant's prior offenses as violent and in finding that the evidence against the defendant was overwhelming. The defendant argues that mitigating factors suggested that the maximum sentence was not warranted. The State responds that the trial court acted within its discretion.

¶ 25 It is well-established that the trial court has broad discretionary powers in choosing the appropriate sentence a defendant should receive. *People v. Alexander*, 239 Ill. 2d 205 (2010).

The trial court is in the superior position to assess the credibility of the witnesses and to weigh the evidence presented at the sentencing hearing. *Alexander*, 239 Ill. 2d 205. Therefore, a trial court's sentencing decision will not be reversed on appeal absent an abuse of discretion. *People v. Jackson*, 375 Ill. App. 3d 796 (2007). Where it is claimed that a sentence within the statutory limits is excessive, we will not disturb the sentence unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Finley*, 312 Ill. App. 3d 892, 898. The seriousness of the crime is the most important factor to be considered in imposing sentence. *People v. Quintana*, 332 Ill. App. 3d 96 (2002).

¶ 26 In the instant case, there is no dispute that the sentence the trial court imposed was within the statutory sentencing range. The defendant was found guilty of first degree murder, a felony punishable by a sentence of 20 to 60 years' imprisonment (730 ILCS 5/5-8-1(a)(1)(A) (West 2008)). The defendant's prior criminal history included domestic battery (as a juvenile), robbery, and aggravated battery. The defendant was on probation for the last two offenses when the current crime occurred. Although the defendant takes issue with the trial court's characterization of the defendant's two prior offenses as "violent" offenses, in the hierarchy of criminal offenses, the trial court did not mischaracterize the defendant's prior offenses. Also, the murder of Wesson was remarkably violent. We cannot conclude the trial court abused its discretion in imposing the sentence.

¶ 27

CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 29 Affirmed.