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2012 IL App (3d) 110057-U

Order filed July 18, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellee,)	La Salle County, Illinois,
)	
v.)	Appeal No. 3-11-0057
)	Circuit No. 09-CF-217
)	
JOSEPH J. KELLY,)	Honorable
)	Cynthia M. Raccuglia,
Defendant-Appellant.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* Counsel was not ineffective for failing to move to suppress defendant's confession prior to his guilty plea.

¶ 2 Defendant, Joseph J. Kelly, pled guilty to burglary (720 ILCS 5/19-1(a) (West 2008)) in exchange for an eight-year sentence which would run concurrent to a sentence he had received in a Livingston County case. Thereafter, defendant filed a motion to withdraw his guilty plea which was denied by the trial court. Defendant appeals, arguing that the trial court erred in denying his

motion to withdraw his guilty plea. Defendant contends his plea was not knowing and voluntary because counsel was ineffective for failing to file a motion to suppress his confession. We affirm.

¶ 3

FACTS

¶ 4 Defendant was indicted on separate charges in La Salle and Livingston Counties. The La Salle County indictment charged defendant with two counts of burglary (720 ILCS 5/19-1(a) (West 2008)). Prior to his arrest, defendant was questioned simultaneously by La Salle and Livingston County authorities and confessed to crimes in both counties. Defendant's Livingston County case proceeded to trial, while the La Salle County case was put on hold. Prior to trial in Livingston County, defendant filed a motion to suppress his confession. The court denied the motion and ultimately convicted defendant of the charges.

¶ 5 Following defendant's conviction in Livingston County, defense counsel negotiated a plea deal in the La Salle County case. In exchange for a plea of guilty to one count of burglary, the State agreed to drop the other count and defendant would receive an eight-year sentence which would run concurrent to his Livingston County sentence. The trial court accepted the plea deal, and defendant was sentenced under its terms.

¶ 6 Thereafter, defendant filed a motion to withdraw his guilty plea, alleging, among other things, that trial counsel had failed to file a motion to suppress his confession. Trial counsel testified at a hearing on the motion. He stated that he and defendant had discussed the case, including the circumstances of his confession. Defendant had requested that counsel withhold any action with regards to the La Salle County case until the Livingston County case was resolved. Counsel was aware that the Livingston County circuit court had denied defendant's

motion to suppress his confession.

¶ 7 Following defendant's conviction in Livingston County, counsel asked defendant if he wished to move toward trial or attempt to negotiate a plea deal. Defendant made it clear to counsel that his biggest concern was that he did not receive a longer sentence than he had received in the Livingston County case and that his La Salle County sentence would run concurrent with the Livingston County sentence. Based on his sentence in Livingston County, defendant told counsel that he would accept a plea deal with a sentence of eight years. Counsel then negotiated such a deal with the State, and defendant accepted it and pled guilty.

¶ 8 At the conclusion of the hearing on defendant's motion to withdraw guilty plea, the trial court denied defendant's motion after finding that counsel was not ineffective. Defendant appeals.

¶ 9 ANALYSIS

¶ 10 Defendant argues that the trial court abused its discretion when it refused to allow him to withdraw his guilty plea. Specifically, defendant claims that his plea was not knowing and voluntary because trial counsel was ineffective for failing to file a motion to suppress his confession. A challenge to a guilty plea which alleges ineffective assistance of counsel is subject to the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Huante*, 143 Ill. 2d 61 (1991). A trial court's decision whether to allow a defendant to withdraw a guilty plea is within the sound discretion of the trial court and will not be disturbed unless it was an abuse of discretion. *People v. Davis*, 145 Ill. 2d 240 (1991).

¶ 11 Under the *Strickland* standard, a defendant can establish ineffective assistance of counsel only if he is able to show that: (1) counsel's representation fell below an objective standard of

reasonableness; and (2) there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Albanese*, 104 Ill. 2d 504 (1984). Defendant must satisfy both prongs in order to prevail on a claim of ineffective assistance of counsel. *Id.*

¶ 12 We first examine whether counsel's representation fell below an objective standard of reasonableness. Defendant claims that counsel's performance was deficient because he failed to file a motion to suppress defendant's confession prior to the guilty plea. In order to establish deficiency, a defendant must demonstrate that the alleged error was so serious that counsel was not functioning as the counsel guaranteed the defendant by the sixth amendment. *People v. Clendenin*, 238 Ill. 2d 302 (2010). In doing so, a defendant must overcome the strong presumption that the challenged action or inaction of counsel was the product of sound strategy and not of incompetence. *Id.*

¶ 13 In this case, we do not find that defendant has demonstrated that trial counsel's representation fell below an objective standard of reasonableness. Trial counsel and defendant had discussed the circumstances surrounding defendant's confession. Counsel did not immediately file a motion to suppress because defendant requested that he delay the case in La Salle County until the case in Livingston County was resolved. After defendant was convicted in Livingston County, defendant's main concern was to receive a plea deal that would guarantee a sentence that was concurrent with and not longer than the sentence he had received in the Livingston County case. Counsel negotiated such a deal. Based on defendant's request and counsel's knowledge that a motion to suppress defendant's confession had failed in Livingston County, we find that counsel's performance was not deficient. Having failed to meet the first

prong of the *Strickland* test, defendant cannot establish ineffective assistance of counsel.

¶ 14

CONCLUSION

¶ 15 The judgment of the circuit court of La Salle County is affirmed.

¶ 16 Affirmed.