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2012 IL App (3d) 110469-U

Order filed November 29, 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 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-11-0469
)	Circuit No. 10-CF-2161
WILLIAM HINTON,)	
)	Honorable
Defendant-Appellant.)	Edward A. Burmila, Jr.,
)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred in sentencing defendant without receiving or considering a presentence investigation report.
- ¶ 2 Defendant, William Hinton, was convicted of two counts of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2010)) and one count of resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2010)). The circuit court sentenced defendant to two concurrent terms of five years' imprisonment for the aggravated battery convictions and a concurrent term of three years' imprisonment for

resisting a peace officer. Defendant appeals his sentence, arguing that the court erred in pronouncing a sentence without having received and reviewed a presentence investigation report (PSI). We vacate defendant's sentences and remand the cause to the trial court for a new sentencing hearing.

¶ 3

FACTS

¶ 4 The State charged defendant with two counts of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2010)) and one count of resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2010)). At trial, evidence established that police officers confronted defendant after being called to his mother's residence pursuant to a domestic disturbance. The officers asked defendant that he leave the residence for the night in order to avoid a further altercation. Defendant became belligerent and bit Officer James O'Halloran. He also struck Officer Thomas Hannon in the face and chest. At the conclusion of the trial, the jury found defendant guilty of the charges.

¶ 5 After being found guilty, defendant requested that the court sentence him immediately. The circuit judge stated that he was required by law to order a PSI before sentencing. Defendant later refused to participate in the preparation of a PSI, and when the court reconvened to sentence defendant, a PSI was not presented to or considered by the court. In an effort to compensate for the absence of a PSI, the State presented defendant's criminal history. At the conclusion of the hearing, the court sentenced defendant to concurrent terms of five years' imprisonment for each aggravated battery conviction and three years for resisting a peace officer. Defendant appeals.

¶ 6

ANALYSIS

¶ 7 Defendant argues that the circuit court erred in sentencing him without receiving or considering a PSI. Section 5-3-1 of the Unified Code of Corrections states that a defendant shall not be sentenced for a felony before a written PSI is presented to and considered by the court. 730 ILCS

5/5-3-1 (West 2010). This requirement is only excused where the defendant and the State agree to the imposition of a specific sentence. *Id.* While the PSI is a benefit to the defendant, its purpose is for the enlightenment of the court. *People v. Youngbey*, 82 Ill. 2d 556 (1980). Therefore, section 5-3-1 sets forth a mandatory, reasonable legislative requirement which, not being a personal right of the defendant, cannot be waived. *Id.*

¶ 8 Here, it is undisputed that defendant was convicted of three felonies. It is also undisputed that the parties did not agree on a punishment prior to the sentencing hearing. Therefore, pursuant to the legislative requirements of section 5-3-1, the trial court was required to receive and consider a PSI prior to sentencing defendant. As noted above, this requirement is for the benefit of the court, and cannot be waived by defendant. Therefore, contrary to the State's argument, defendant's refusal to participate in the completion of the PSI does not prohibit defendant from bringing this issue on appeal. Because the court did not receive or consider a PSI, we must vacate defendant's sentences and remand the cause back to the trial court for a new sentencing hearing consistent with the requirements of section 5-3-1.

¶ 9

CONCLUSION

¶ 10 The judgment of the circuit court of Will County is vacated, and the cause is remanded for a new sentencing hearing.

¶ 11 Vacated and remanded.