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2012 IL App (3d) 110499-U

Order filed December 19, 2012

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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. 3-11-0499
	)	Circuit No. 11-CF-61
	)	
MICHAEL MADDOX,	)	Honorable
	)	H. Chris Ryan, Jr.,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Presiding Justice Schmidt and Justice McDade concurred in judgment.

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**ORDER**

- ¶ 1 *Held:* Defendant's waiver of counsel was ineffective and constituted reversible error, where the trial court failed to substantially comply with Illinois Supreme Court Rule 401(a).
- ¶ 2 Defendant, Michael Maddox, was found guilty of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(2) (West 2010)) and was sentenced to 12 years' imprisonment. Defendant appeals, arguing that: (1) his waiver of counsel was ineffective because the trial court failed to properly admonish him pursuant to Illinois Supreme Court Rule

401(a) (eff. July 1, 1984); (2) the trial court erred when it failed to grant defendant's request for counsel during posttrial proceedings; and (3) his sentence was excessive. We vacate defendant's conviction and remand the cause for a new trial.

¶ 3

#### FACTS

¶ 4 On January 31, 2011, defendant was charged by information with unlawful possession of a controlled substance with intent to deliver. 720 ILCS 570/401(c)(2) (West 2010). The trial court appointed the public defender's office to represent defendant. On February 4, 2011, defendant acknowledged receipt of the information and waived a reading of the charges and possible penalties that could be imposed.

¶ 5 On February 15, 2011, defendant was charged by indictment with the same offense. Defendant was arraigned on February 18, 2011, where he acknowledged receipt of the indictment and again waived a reading of the charges and possible penalties.

¶ 6 At a final pretrial hearing on April 15, 2011, both defense counsel and defendant advised the trial court that defendant wished to represent himself. In response to questioning by the court, defendant indicated that he was 34 years old, that he was 12 credits short of his associate's degree, and that he had never been treated for mental illness. Defendant had been involved in approximately three to five court proceedings previously, but was represented by counsel each time. The trial court told defendant that if he waived his right to counsel, he could not "change [his] mind later and come back. Once you do it, you're done; you're going forward on your own." The court further explained that presenting a defense was going to be difficult due to defendant's incarceration and lack of familiarity with court procedures.

¶ 7 After discussing how to file motions and subpoena witnesses, defendant responded that

he understood what it meant to represent himself and confirmed that he wanted to proceed *pro se*. The court granted defendant's request without informing defendant of the nature of the charge, the minimum and maximum sentence, or that defendant was eligible for Class X sentencing due to his prior convictions.

¶ 8 Prior to jury selection on May 9, 2011, the State informed the trial court that defendant was subject to Class X sentencing. The court explained that defendant faced a mandatory minimum sentence of 6 to 30 years' imprisonment. Defendant acknowledged he understood. The court ruled on the State's motions *in limine* and then proceeded to jury selection.

¶ 9 On May 11, 2011, the jury found defendant guilty of unlawful possession of a controlled substance with intent to deliver. On May 18, 2011, defendant sent an *ex parte* letter to the court requesting a public defender to assist him in filing posttrial motions. On June 23, 2011, the court addressed defendant's letter. The court informed defendant that "as I told you, when you terminated [the public defender's] representation before, you were on your own[.]" Regarding the motions defendant referred to in his letter, he told the court:

"I got myself in over my head, obviously. And I admit that I \*\*\* should have had representation. However, it's done. It's over with.

I am, however considering on asking for a motion for new trial."

The court did not appoint counsel for defendant, but instead discussed posttrial motions and then continued the case so that defendant could file his motion.

¶ 10 On July 13, 2011, defendant filed a *pro se* motion for new trial. Defendant made numerous claims, but did not include any argument regarding his right to counsel. The trial court denied defendant's motion. On July 14, 2011, defendant was sentenced to 12 years'

imprisonment. Defendant appeals.

¶ 11

## ANALYSIS

¶ 12 Defendant argues that: (1) his waiver of counsel was ineffective because the trial court failed to properly admonish him pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984); (2) the trial court erred when it failed to grant defendant's request for counsel during posttrial proceedings; and (3) his sentence was excessive.

¶ 13 The first issue before the court is whether defendant's initial waiver of counsel was effective. Defendant admits that he did not raise this issue in his motion for new trial.

Ordinarily, a defendant who fails to raise an alleged error in a posttrial motion forfeits the issue for appellate review. *People v. Enoch*, 122 Ill. 2d 176 (1988). Nevertheless, the plain error doctrine allows a reviewing court to consider unpreserved errors when: (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against defendant; or (2) the error is so serious that it denied defendant a fair trial and challenged the integrity of the judicial process. *People v. Thompson*, 238 Ill. 2d 598 (2010). However, before addressing whether defendant's claim satisfies the plain error doctrine, we must first determine whether a clear or obvious error occurred. See *People v. Hillier*, 237 Ill. 2d 539 (2010).

¶ 14 The sixth amendment of the United States Constitution entitles a defendant to counsel. U.S. Const., amends. VI, XIV; see also *People v. Hughes*, 315 Ill. App. 3d 86 (2000). A defendant may waive this right and proceed without counsel only if he voluntarily and intelligently elects to do so. *People v. Campbell*, 224 Ill. 2d 80 (2006). Under Rule 401(a), a court shall not permit a waiver of counsel by a defendant accused of an offense punishable by imprisonment without first informing him of and determining he understands: (1) the nature of

the charge; (2) the minimum and maximum sentence prescribed by law, including the penalty to which defendant may be subjected because of prior convictions or consecutive sentences; and (3) that he has a right to counsel, and if he is indigent, to have counsel appointed for him. Ill. S. Ct. R. 401(a) (eff. July 1, 1984).

¶ 15 In the instant case, the trial court did not strictly comply with Rule 401(a), because it allowed defendant to waive his right to counsel without informing him of the nature of the charge or the range of penalties he faced, including being subject to Class X sentencing. See Ill. S. Ct. R. 401(a) (eff. July 1, 1984). These admonitions should have been given to defendant at the time of his waiver so that he could consider the ramifications of his decision. See *People v. Jiles*, 364 Ill. App. 3d 320 (2006). A court, however, need not strictly comply with Rule 401(a). *People v. Black*, 2011 IL App (5th) 080089. Substantial compliance will be sufficient to effectuate a valid waiver of counsel where: (1) the absence of a detail from the admonishments did not impede defendant from giving a knowing and intelligent waiver; or (2) defendant possessed a degree of knowledge or sophistication that excused the lack of admonition. *Id.*

¶ 16 Under the circumstances, we cannot say the trial court substantially complied with Rule 401(a). Defendant admits that he knew he had the right to counsel, and the record reflects that defendant acknowledged receipt of the indictment. However, defendant was not informed of the sentence he faced at the time he waived his right or anytime before that, as defendant waived a reading of the possible penalties at prior hearings. It was not until after defendant waived his right that he was informed he faced a minimum of 6 to 30 years' imprisonment. Defendant lacked a full understanding of the maximum prison term he faced when he waived counsel, which impeded his ability to make a knowing and intelligent waiver. See *People v. Koch*, 232

Ill. App. 3d 923 (1992) (holding that a waiver of counsel can never be valid when a defendant is given a sentence in excess of the maximum he was informed of at the time he waived counsel, even though defendant was admonished of the nature of the charge and the right to counsel).

Defendant himself acknowledged to the court, after having been informed of the penalties, that "I got myself in over my head, obviously. And I admit that I \*\*\* should have had representation."

¶ 17 Having found that the trial court committed error, we review defendant's case under the plain error doctrine. See *Black*, 2011 IL App (5th) 080089. The second prong of the doctrine has been satisfied because the right to counsel is a fundamental right. See *Black*, 2011 IL App (5th) 080089; *People v. Vernon*, 396 Ill. App. 3d 145 (2009). Accordingly, defendant's deprivation of this right due to an ineffective waiver is reversible error; therefore, we vacate defendant's conviction, and remand the cause for a new trial.

¶ 18 As for defendant's remaining issues on appeal, we note that the State concedes that the trial court erred when it failed to reappoint counsel for posttrial proceedings, thereby requiring remandment for a new sentencing hearing. See *People v. Palmer*, 382 Ill. App. 3d 1151 (2008) (holding that a waiver of counsel is valid through all subsequent proceedings, unless defendant later requests counsel). However, based on our vacation of defendant's conviction and remandment for a new trial, his posttrial and sentencing issues are rendered moot.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of La Salle County is vacated, and the cause is remanded for a new trial.

¶ 21 Vacated and remanded.