2012 IL App (4th) 120231-U

NO. 4-12-0231

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 12, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
CHIBUISI N. ENYIA,	)	No. 10DT306
Defendant-Appellant.	)	
	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion by denying defendant's motion to withdraw his guilty plea.

Defendant, Chibuisi N. Enyia, appeals from the trial court's denial of his motion to withdraw his plea of guilty to driving under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2010)). Because we find no abuse of discretion in this ruling, we affirm the trial court's judgment.

¶ 2 I. BACKGROUND

¶ 3 A. The Traffic Citation and the Summary Suspension

¶ 4 On June 11, 2010, at 3:12 a.m., a Champaign police officer pulled defendant over for traffic violations. After administering field sobriety tests to defendant and subsequently having him undergo chemical testing at Carle Hospital, the police officer issued him a citation for driving under the influence (DUI). The chemical testing revealed that defendant had an alcohol concentration of

0.084, which, under section 11-501.2(b)(3) of the Illinois Vehicle Code (625 ILCS 5/11-501.2(b)(3) (West 2010)), gave rise to a presumption that he was under the influence of alcohol.

¶ 5 The police officer issued defendant a written notice that his driving privileges were summarily suspended. In one of the paragraphs of the notice, the preprinted language of the form reads: "I have complied with Section 11-501.1 of the Illinois Vehicle Code [(625 ILCS 5/11-501.1 (West 2010))] by having reasonable grounds to believe the arrestee was in violation of Section 11-501 [(625 ILCS 5/11-501 (West 2010))] or a similar provision of a local ordinance: (Explain)." Then, on the blank lines, the police officer wrote: "failing to stop before stop line at 2 different intersections; Drifting in lane of traffic; delayed stop after emergency lights activated; watery eyes; sleepy appearance; strong smell of alcoholic beverage coming from person; multiple indicators of impairment from standardized field sobriety tests."

¶ 6 B. Defendant's Motion *in Limine*

¶ 7 On August 10, 2010, defense counsel, Scott Lerner, filed a motion *in limine* to bar portions of the video recording that the police officer had made of the traffic stop. Paragraph 4 of the motion states: "[A]t 2:58 the defendant talks about his suspended license. That would be a prior bad act and in fact his license was not suspended."

¶ 8 C. The Guilty Plea Hearing

¶ 9 In a hearing on August 19, 2010, Lerner, told the trial court: "[W]e are agreeing to enter into an open sentence [*sic*] today," by which he obviously meant "an open plea of guilty."

¶ 10 The trial court proceeded to admonish defendant. The court told him, among other things:

"THE COURT: Sir, in this case, the State claims that you

were driving under the influence of alcohol. It's a Class A misdemeanor. It's maximum penalty of 364 days in jail and a maximum fine of 25 hundred dollars.

You understand that, sir?

THE DEFENDANT: Yes, I do.

THE COURT: Sir, anyone forced, threatened, or pressured you in any way to make you plead guilty?

THE DEFENDANT: No."

¶ 11 After defendant signed a waiver of his right to a jury trial, the trial court requested the assistant State's Attorney, Christopher Kanis, to provide a factual basis for the proposed guilty plea. Kanis responded:

"MR. KANIS: Judge, on June 11th, 2010, Defendant was driving at University at Wright. He was stopped for a traffic violation. The officer noted signs of impairment, including an odor of alcoholic beverage.

He conducted a DUI investigation. Defendant showed some additional signs of impairment from field sobriety tests. He ultimately submitted to chemical testing, being a blood test at Carle Hospital, DUI kit. Results of that showed a BAC of just over .08. The exact number was .084.

THE COURT: Mr. Lerner, do you agree the State has witnesses who would testify substantially as indicated?

MR. LERNER: Substantially.

THE COURT: Any promises from the State, Mr. Kanis?

MR. KANIS: There have been none.

THE COURT: Mr. Enyia, you understand, sir, that the State is making no promises to you in return for your guilty plea?

THE DEFENDANT: Yes.

MR. LERNER: Your Honor, I believe the State, though, is agreeing that they're not going to refile this as a felony if they were able to do so—

MR. KANIS: And, Judge, obviously, I believe after a plea, we wouldn't have any ability to do that.

THE COURT: Okay. I agree, Mr. Kanis, that should a plea be entered in this case and accepted by the Court, your ability to file a felony at that juncture would be curtailed.

Is there something I need to know—

MR. KANIS: Judge, there was a question as to the status of a license. There was—

THE COURT: Well, I assumed that based upon the motion *in limine* regarding the tape.

MR. KANIS: Right. As it turns out, there was a probationary license. Based on our investigation, it's not such that would trigger the lack of license felony charge."

At the conclusion of the admonitions, the trial court found the proposed plea of guilty to be knowing and voluntary, and the court accepted it.

¶ 12 D. The Sentencing Hearing

¶ 13 In the sentencing hearing on October 5, 2010, a different assistant State's Attorney, Andrea Bergstrom, appeared. She presented no evidence other than the abstract of defendant's driving record.

¶ 14 Lerner called two witnesses: defendant and Gabriel Neal, who was defendant's supervisor at High Dive, where defendant was employed as a bartender.

¶ 15 On cross-examination, Bergstrom asked defendant:

"Q. Sir, the night of—or early morning hours of June 11th, you were coming from work; is that right?

A. Yes.

Q. And you were driving your friends home?

A. Yes.

Q. And you were aware that that's outside your driving permit?

* * *

A. No, I was not aware that it was outside of my driving permit.

Q. But were you aware that your driving permit allows you to drive from home to work only?

A. That's not what is stated on my driving permit.

* * *

Q. What is your understanding of the allowances through your permit?

A. That I have full driving privileges."

¶ 16 On redirect examination, Lerner asked defendant:

"Q. As far as you—your license was restricted based on the three speeding tickets listed in the probation report; is that correct?

A. Yes.

Q. And there was nothing that you saw on your driving permit that restricted you from doing what you were doing; isn't that correct?

A. Yes, my driving—my driving—my driving permit said nothing about that."

¶ 17 The defense then presented defendant's exhibit No. 2, defendant's probationary driver's license, which stated: "Unrestricted time and mile radius."

¶ 18 During the concluding arguments, Bergstrom told the trial court:

"Your Honor, quite frankly, we wouldn't be here if that piece of paper [(defendant's exhibit No. 2)] had been tendered to the State, and 20 minutes of the Court's time and State's time wouldn't have been wasted if we'd known that he had a probationary license that allowed him to drive unrestricted. But since we didn't know that, we are here.

* * *

And despite my irritation with the proceedings, I will say that, at this point, the State is not gonna [*sic*] argue strongly for a conviction. I'm gonna [*sic*] leave it up to Your Honor.

Thank you.

THE COURT: It's always up to me, Ms. Bergstrom.

Mr. Lerner.

MR. LERNER: May it please the Court? Counsel?

I will say as to this licensing thing, we talked about it last time we were in court. Ms. Bergstrom was not here, but that—this is not surprising—

THE COURT: We've taken a severe left turn over off of the issues I really care about, Mr. Lerner. ***

I have grave concerns about the request for an order of court supervision for someone who's on a probationary license for having three safety violations in a period of 1 year. That's your problem."

¶ 19 After hearing the arguments and after ascertaining that defendant did not wish to make a statement in allocution, the trial court concluded that "deferment of the judgment in this matter would deprecate the seriousness of the offense." So, the court sentenced defendant to 18 months' conditional discharge and ordered him to pay a fine of $1,000 along with other assessments, to perform 125 hours of public service, and to "attend the next scheduled victim impact panel presented by Court Services."

¶ 20 E. The Motions To Withdraw the Guilty Pleas and To Rescind the Summary Suspension

¶ 21 On November 1, 2010, defendant, now represented by Maureen Williams, filed a motion to withdraw his guilty plea and to vacate the judgment. The motion challenged the guilty plea on the following grounds:

> "1. The plea was not entered voluntarily, as Defendant did not have the available information to make an informed decision to plead guilty;
>
> 2. Defendant was denied effective assistance of counsel.
>
> 3. The plea was not entered voluntarily, as Defendant was wrongly threatened with a felony aggravated DUI due to the belief that he held a restricted license, when in reality Defendant held a probationary license. This fact was first brought to the state's attorney's attention at the sentencing hearing, after the guilty plea had already been entered."

¶ 22 In addition, on November 1, 2010, defendant filed a petition to rescind the statutory suspension of his driver's license. The grounds of this petition were that the arresting officer had no reason to pull defendant over in the first place, let alone to arrest him, and that the chemical test was "not conducted in accordance with Illinois Police Standards."

¶ 23 F. The Summary Dismissal and the Appeal Therefrom

¶ 24 On November 4, 2010, the trial court made the following docket entry:

> "The motion to withdraw guilty plea filed on November 1,

2010 is stricken for failure to comply with Rule 604(d). The petition to rescind filed on November 1, 2010 is denied. The claims in the petition to rescind are precluded by the guilty plea. Res judicata applies to bar the petition."

¶ 25 Defendant appealed, and on August 29, 2011, we issued the following summary order:

"Pursuant to our opinion in *People v. Cooper*, No. 4-10-0972, slip op. at 5-6 (Ill. App. Aug. 24, 2011), we remand this case with directions to conduct further proceedings in accordance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), that is, the appointment of counsel; the opportunity to file a new postplea motion if counsel deems that a new postplea motion is necessary; and strict compliance with Rule 604(d) in the filing of any certificate under the rule." *People v. Enyia*, No. 4-10-0953, (Aug. 29, 2011) (unpublished summary order under Supreme Court Rule 23(c)).

¶ 26 G. The Hearing on the Motion To Withdraw the Guilty Plea

¶ 27 On September 28, 2011, Williams filed a Rule 604(d) certificate in trial court.

¶ 28 On February 8, 2012, the trial court held a hearing on the motion to withdraw the guilty plea. Williams said she wished to stand on the motion to withdraw the guilty plea that she filed on November 1, 2010. In support of this motion, she called one witness: defendant.

¶ 29 Defendant testified that, before the State charged him with misdemeanor DUI in this case, he accumulated three speeding tickets. According to defendant, Lerner advised him to plead

guilty and warned him that if he chose to go to trial, the State could decide to charge him with felony DUI instead of misdemeanor DUI. When defendant first consulted with Lerner, he gave Lerner the document from the Secretary of State indicating that his driving privileges were unrestricted. It was not until the sentencing hearing that the State learned that defendant's driving privileges were unrestricted (so defendant claimed). Defendant did not understand on what basis he could have been convicted of a felony, but he took Lerner's word for it.

¶ 30 Williams asked defendant:

> "Q. When did you first hear that they were not going to—they could not bump it up to a felony because of this—your license was not restricted?
>
> A. I—I first heard it—like, I first understood in the sentencing hearing that—that they wouldn't bump it up to a felony, so that's—that's when I understood that.
>
> Q. And that was the first time there's no chance it—of it becoming a felony?
>
> A. Yeah. That's when I first heard there was no chance it—of it becoming a felony.
>
> Q. So you were thinking, why didn't I go to trial?
>
> A. Yes. I—I wouldn't have even been in this situation if I had known, like, I just didn't—I wish he had told me."

¶ 31 After hearing this evidence and a concluding argument by the defense, the trial court ruled as follows:

"THE COURT: Okay. Ms. Williams, I understand your argument. I would say this, which is, I have reviewed and read the transcript of the guilty plea. I would suggest that your client, as is referenced from the transcript of the plea of guilty, understood very well what was going on. And in fact, because I knew nothing about the license issue because there's no charge in this case, there was a colloquy between myself, Mr. Lerner and Mr. Kanis, in the Defendant's presence, regarding the fact that he was not going to be charged with a felony or could not be charged because of his license privileges.

At any rate, even were I to assume your argument was correct, which I do not, any ineffective assistance of counsel analysis is two pronged. And the second prong of *Strickland* is prejudice. Mr. Lerner stipulated in open court to the fact that your client had a BAC of .084 from a blood test at Carle Hospital pursuant to a ISP-DUI kit. He was driving. That was also stipulated to.

That is, or those are, the only two elements to an offense for driving with a BAC in excess of .08. There's no prejudice. There's no defense. The motion is denied."

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 When a defendant moves to withdraw his or her guilty plea, the trial court "shall

evaluate whether the guilty plea was entered through a misapprehension of the facts or of the law, or if there is doubt of the guilt of the accused and the ends of justice would better be served by submitting the case to a trial." *People v. Pullen*, 192 Ill. 2d 36, 40 (2000). We do not perform this evaluation. Instead, we decide whether the trial court's evaluation was an abuse of discretion. *Id.* The trial court abused its discretion only if its evaluation is arbitrary, clearly illogical, or outside the range of reasonableness. *People v. Fisher*, 407 Ill. App. 3d 585, 589 (2011).

¶ 35 None of these adjectives accurately describes the trial court's decision in this case. Considering that defendant never called Lerner to testify in the hearing to withdraw the guilty plea, the court could have reasonably found that defendant simply had failed to make a convincing case for withdrawing the guilty plea. Arguably, it makes no sense to move to withdraw the guilty plea on the basis of something that Lerner allegedly said and then omit to call Lerner to give his side of the story. This omission might be construed as self-serving.

¶ 36 The trial court could have been unconvinced for the additional reason that Kanis said, in the guilty-plea hearing: "As it turns out, there was a probationary license. Based on our investigation, *it's not such that would trigger the lack of a license felony charge*." (Emphasis added.) Even if defendant subjectively was under the erroneous impression that the State could charge him with felony DUI if he went to trial, he had the burden of proving that this erroneous impression "was objectively reasonable under the circumstances existing at the time of the plea." (Emphasis omitted.) *People v. Spriggle*, 358 Ill. App. 3d 447, 451 (2005). The court could have found it was objectively unreasonable of defendant to think that the State could turn the misdemeanor charge to a felony charge, considering that Kanis stated, in defendant's presence, that there was no basis for a felony charge.

¶ 37 Other than a misapprehension of law or fact, the alternative ground for withdrawing a guilty plea is that "there is doubt of the guilt of the accused and the ends of justice would better be served by submitting the case to a trial." *Pullen*, 192 Ill. 2d at 40. The record appears to offer no basis for doubting defendant's guilt.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the trial court's judgment, and we award the State $75 against defendant in costs.

¶ 40 Affirmed.