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2014 IL App (3d) 120713-U

Order filed March 26, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

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. 3-12-0713
)	Circuit No. 10-CF-2449
)	
ERIC WALKER,)	Honorable
)	Carla Alessio-Policandriotes,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in summarily dismissing defendant's postconviction petition, which alleged that defendant was improperly shackled at pretrial hearings and the guilty plea hearing without a finding of a manifest need for the shackles, because: (1) defendant's voluntary guilty plea waived the alleged pretrial constitutional violation; (2) defendant forfeited review of the alleged error by failing to properly raise the issue in the trial court; and (3) the alleged error did not amount to plain error.

¶ 2 Pursuant to a negotiated guilty plea, defendant, Eric Walker, pled guilty to burglary (720 ILCS 5/19-1(a) (West 2010)) and was sentenced to four years of imprisonment. Defendant filed

a postconviction petition alleging his constitutional rights were violated when, *inter alia*, he was "embarrassed and humiliated while forced to where [*sic*] shackles during each proceeding in court, while he represented himself." The trial court summarily dismissed the postconviction petition. Defendant filed a motion to reconsider, which the trial court denied. We affirm.

¶ 3

FACTS

¶ 4 On November 29, 2010, defendant was charged with two counts of burglary. On April 21, 2011, Defendant proceeded *pro se* and filed a "Motion for Court Order." The motion contained multiple requests, including a request that defendant "be given one free hand so he may turn pages and write while in court, or have the chain taken off and the leg and hand cuff stay on." A hearing on the motion was scheduled for July 14, 2011.

¶ 5 In April of 2011, defendant also filed six *pro se* motions regarding discovery and evidence. He additionally filed *pro se* motions for: (1) a photo line-up; (2) grand jury transcripts; (3) substitution of judge; (4) preventing the use of his criminal history; (5) the reconsideration of his request for standby counsel; and (6) an objection to the denial of his request for standby counsel.

¶ 6 In May of 2011, defendant filed eight additional *pro se* motions. He also filed an amended motion for substitution of judges, memorandum in support thereof, and a supplement to the memorandum. On May 25, 2011, defendant sent correspondence to the trial judge requesting an order for use of the law library, a notary, permission to make copies of legal documents, unmonitored telephone calls to witnesses, subpoenas of witnesses and the victim, and permission to listen to the 911 telephone call on a compact disc (CD) received in discovery. On May 27, 2011, defendant filed three more *pro se* motions regarding discovery.

¶ 7 In June of 2011, defendant filed: (1) multiple motions regarding discovery; (2) two motions for reconsideration of his request to substitute judges; (3) a motion to quash the bill of indictment; (4) motions for sanctions for destruction of evidence favorable to the defense; and (5) a motion to suppress evidence beyond the scope of a *Terry* stop. Additionally, defendant filed a motion requesting use of the law library, copies of legal documents, a notary, unmonitored telephone calls to witnesses, copy of his medical records and jail records, a ream of paper, an ink pen, a highlighter, and permission to listen to the 911 CD. Defendant also filed a "Motion for Hearing to be Released from Shackles During Court Proceedings" and requested a hearing pursuant to *People v. Boose*, 66 Ill. 2d 261 (1977) for the court to determine whether he should remain in shackles.

¶ 8 On July 5, 2011, a status hearing on discovery took place. The court initially addressed defendant's discovery motions. Defendant indicated that he was not prepared to proceed with any motions other than those pertaining to discovery. In attempting to confirm the next court date, the court struck the hearing date of July 14, 2011, believing that the issue scheduled for hearing had previously been addressed by the court. Neither party informed the court that defendant's request to "be given one free hand" was scheduled for a hearing on that date, and defendant did not object to the date being stricken.

¶ 9 On July 13, 2011, following a discussion on defendant's subpoena requests, the court asked defendant, "Anything else *** that's up today?" Defendant discussed two motions but did not bring his request for a *Boose* hearing to the court's attention. On August 24, 2011, the trial judge asked defendant, "Is there any matters before the Court today that I can address or do I need to get a different date?" The parties indicated that the State extended a plea offer. Pursuant

to defendant's request for two weeks to consider the plea offer, the case was continued. He subsequently rejected the State's plea offer.

¶ 10 On September 22, 2011, the court held a status on discovery. After discussing discovery issues, the court asked, "Okay. We have other hearings dated—other motions filed by [defendant], correct?" The parties discussed many of defendant's motions but did not raise defendant's motion for a *Boose* hearing. At the conclusion of the hearing, the following colloquy took place:

THE COURT: No other pleadings in this file, am I correct? Anything that you filed?

THE DEFENDANT: I don't think so. I'll have to check if it is. I'll let you know.

* * *

THE COURT: Anything else that you wish to have the Court rule on?

THE DEFENDANT: No, ma'am.

THE COURT: Then that's it?

THE DEFENDANT: Yes, ma'am."

¶ 11 The same day, the case was recalled. The parties informed the court that they reached a plea agreement, wherein the charges would be reduced to one Class 3 felony charge for theft and defendant would serve four years of imprisonment. The court advised defendant, "You're giving up your rights to proceed to hearing on the motions that are pending before this Court."

Defendant indicated that he understood and pled guilty. On May 31, 2012, defendant was sentenced to four years of imprisonment.

¶ 12 On June 12, 2012, defendant filed a postconviction petition, alleging *inter alia* that his constitutional rights were violated because he remained in shackles during court proceedings.

On June 14, 2012, the trial court summarily dismissed the petition as patently without merit. Defendant filed a motion to reconsider. On July 23, 2012, the trial court denied defendant's motion to reconsider because "he pled guilty pursuant to an agreed disposition that resolved all matters." Defendant appealed.

¶ 13

ANALYSIS

¶ 14 On appeal, defendant alleges that the trial court erred in summarily dismissing his postconviction petition because he stated the gist of a constitutional claim by alleging that he was shackled at every court proceeding, including the guilty plea hearing, and the restraints "prevented him from raising his hands, accessing his legal papers, presenting arguments, and otherwise representing himself; and that the restraints embarrassed and humiliated him." We review the first-stage dismissal of a postconviction petition *de novo*. *People v. Morris*, 236 Ill. 2d 345 (2010).

¶ 15 The Post-Conviction Hearing Act (Act) provides a mechanism by which individuals under a criminal sentence can assert that they were convicted as a result of a substantial violation of their constitutional rights. 725 ILCS 5/122-1 *et seq.* (West 2010). The Act provides for a three-stage review process of the petition. *Id.*; *People v. Hodges*, 234 Ill. 2d 1 (2009). At the first stage, a postconviction petition may be summarily dismissed if the claims in the petition are frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2010). A petition is frivolous or patently without merit if its allegations, when taken as true, fail to present the gist of a constitutional claim. *People v. Brook*, 233 Ill. 2d 146 (2009).

¶ 16 In *Boose*, our supreme court held that shackling a defendant in a criminal case is to be avoided unless absolutely necessary because it tends to prejudice the jury against the defendant,

restricts the defendant's ability to assist in his own defense, and offends the dignity of the judicial process. *Boose*, 66 Ill. 2d 261. An accused should not be kept in restraints unless there is a manifest need for such restraints. *Id.* "[E]ven when there is no jury, any unnecessary restraint is impermissible because it hinders the defendant's ability to assist his counsel, runs afoul of the presumption of innocence, and demeans both the defendant and the proceedings." *People v. Allen*, 222 Ill. 2d 340, 346 (2006).

¶ 17 The determination of whether and how to restrain a defendant is within the discretion of the trial court. *Allen*, 222 Ill. 2d 340. Factors to be considered in determining whether to restrain a defendant may include: (1) the seriousness of the present charges; (2) defendant's temperament and character; (3) defendant's age and physical characteristics; (4) defendant's past record; (5) any past escapes or attempted escapes by defendant; (6) evidence of a present escape plan; (7) threats by defendant to harm others or create a disturbance; (8) evidence of defendant's self-destructive tendencies; (9) risk of mob violence or attempted revenge by others; (10) possible rescue attempts by others still at large; (11) size and mood of the audience; (12) nature and physical security of the courtroom; and (13) adequacy and availability of alternative remedies. *Boose*, 66 Ill. 2d 261. The record should clearly disclose the reasons for shackling and demonstrate that the accused's attorney was given an opportunity to oppose this decision. *Id.* The failure to hold a *Boose* hearing prior to restraining a defendant is a due process violation. *Boose*, 66 Ill. 2d 261; *Allen*, 222 Ill. 2d 340; *People v. Urdiales*, 225 Ill. 2d 354 (2007).

¶ 18

I. Waiver

¶ 19 In this case, defendant entered a voluntary plea of guilty, thereby waiving any nonjurisdictional errors of irregularities, including constitutional violations. *People v. Brown*, 41

Ill. 2d 503 (1969) (dismissal of defendant's postconviction petition was affirmed because alleged pretrial constitutional violations were waived by the entry of defendant's voluntary guilty plea). Here, defendant was admonished in open court as to the consequences of his guilty plea, and he was specifically admonished that he was giving up his right to proceed to hearing on any pending motions. Consequently, defendant waived any right to assert a postconviction claim of a due process violation based on the court's failure to conduct a *Boose* hearing.

¶ 20

II. Voluntariness of the Guilty Plea

¶ 21 In his reply brief, defendant argues that his postconviction petition "implicitly contended his plea was not voluntary" because he was shackled at every hearing, including his guilty plea hearing, which embarrassed and humiliated him and prevented him from representing himself adequately. Our review of the record indicates that defendant voluntarily pled guilty despite being shackled. The court fully advised defendant of his right to a trial by jury and admonished him as to the consequences of his plea. There is no indication that defendant's decision to plead guilty was related to the fact that he was shackled. Because he voluntarily pled guilty, defendant waived any objection to being shackled without a *Boose* hearing being conducted.

¶ 22

III. Plain Error

¶ 23 Even if defendant's guilty plea had not constituted a waiver of the shackling issue, defendant forfeited the issue by failing to object in the trial court and raise the issue in a postplea motion. See *People v. Enoch*, 122 Ill. 2d 176 (1988) (an issue is forfeited on appeal if it was not raised in the trial court through both a contemporaneous objection and a written posttrial motion). Although defendant filed motions raising the shackling issue, he abandoned those motions by failing to bring the motions to the court's attention and request a ruling. See *People*

v. Kelley, 237 Ill. App. 3d 829 (1992) (unless the party filing the motion brings the motion to the attention of the trial judge and requests a ruling, the motion is not effectively made). The record shows defendant was brought before the court numerous times without presenting a request for a *Boose* hearing, despite being specifically asked on many occasions whether he had any issues for the court to consider. Therefore, the issue has been forfeited.

¶ 24 Although defendant has forfeited review of the issue, forfeiture does not apply if plain error occurred.¹ Supreme Court Rule 615(a) provides:

"Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a).

The plain error doctrine allows a reviewing court to reach a forfeited error affecting substantial rights where: (1) the evidence was so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence; or (2) the trial court's error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *Allen*, 222 Ill. 2d 340 (citing *People v. Herron*, 215 Ill. 2d 167 (2005)). The plain error doctrine is not a general savings clause that preserves for review all errors that affect a substantial right whether or not they have been brought to the attention of the trial court. *Id.*

¶ 25 In this case, the trial court erred in allowing defendant to remain in shackles during the

¹Although defendant did not argue plain error in his opening brief, he has argued plain error in his reply brief, allowing a plain error review. See *People v. Ramsey*, 239 Ill. 2d 342 (2010) (defendant raising plain error for the first time in a reply brief is sufficient to review an issue for plain error).

court proceedings without a *Boose* hearing. See *People v. Rippatoe*, 408 Ill. App. 3d 1061 (2011) (a trial court errs when it orders or permits a defendant to be shackled during criminal proceedings without first finding a manifest need for the restraints). However, restraining a defendant without first conducting a *Boose* hearing does not automatically amount to reversible plain error. *Allen*, 222 Ill. 2d 340. Instead, under the second prong of the plain error test, the defendant bears the burden of showing that his presumption of innocence, his ability to assist counsel, or the dignity of the proceedings were compromised. *Id.* The fact the trial judge knows that a defendant was shackled, without more, is not enough to constitute plain error. *People v. Clark*, 406 Ill. App. 3d 622 (2010).

¶ 26 Here, defendant does not argue that the evidence was closely balanced under the first prong of plain error. Therefore, under the second prong of the plain error test, defendant must establish that being restrained in shackles during the pretrial and guilty plea hearings compromised his presumption of innocence, his ability to assist counsel, or the dignity of the proceedings. However, there is no indication in the record that his ability to act as his own counsel, his presumption of innocence, or the integrity of the proceedings was diminished. Defendant did not have to testify, question witnesses, or present arguments while shackled. See *Rippatoe*, 408 Ill. App. 3d 1061 (finding plain error where the shackled *pro se* defendant testified, questioned witnesses, and presented arguments on his posttrial motion without the court having conducted a *Boose* hearing). Defendant has failed to meet his burden under the second prong of the plain error test and, as a result, the forfeited issue cannot be addressed. Consequently, defendant's postconviction petition failed to state the gist of a constitutional claim, and we affirm the trial court's dismissal.

¶ 27

CONCLUSION

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

¶ 29 Affirmed.