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2014 IL App (3d) 120983-U

Order filed July 28, 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, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-12-0983
MAURICE BROWN,)	Circuit No. 11-CF-1992
Defendant-Appellant.)	Honorable Carla Alessio-Policandriotes, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Lytton and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not admonish defendant as required by Illinois Supreme Court Rule 401(a) before defendant waived his right to counsel.

¶ 2 After a jury trial, defendant, Maurice Brown, was found guilty of burglary (720 ILCS 5/19-1(a) (West 2010)) and theft (720 ILCS 5/16-1(a)(4) (West 2010)). At the sentencing hearing, the trial court merged the theft conviction into the burglary conviction and sentenced defendant to nine years' imprisonment. On appeal, defendant argues: (1) his convictions should be reversed and the cause remanded for a new trial because the trial court failed to properly

admonish him before he waived his right to counsel; and (2) the drug court fee (55 ILCS 5/5-1101(d-5) (West 2010)), court systems fee (55 ILCS 5/5-1101(a) (West 2010)), and Children's Advocacy Center fee (55 ILCS 5/5-1101(f-5) (West 2010)) should be credited in full through application of his presentence incarceration credit. We reverse.

¶ 3

FACTS

¶ 4

On October 11, 2011, defendant was arraigned. During the hearing, the trial court stated defendant had been charged with burglary, a Class 2 felony punishable by three to seven years' imprisonment, and theft, a Class 4 felony punishable by one to three years' imprisonment. Defendant requested a public defender and the case was continued.

¶ 5

On April 12, 2012, defense counsel and defendant appeared before the court. Defense counsel informed the court defendant wanted to waive his right to counsel. The court responded defendant would "have enough time between now and May 3 to decide if that is a great idea or one that is not so good." The court continued the case.

¶ 6

On June 26, 2012, the case was called for a hearing on defense counsel's motion to suppress evidence. Instead of arguing the motion, defense counsel requested an agreed continuance. Defendant objected to the continuance, stating "I don't want [counsel] doing nothing [*sic*]. I want all the documents, all of it and do it myself." The court responded that "it appears that [defendant] wishes to represent his own interest" and asked defendant if he wished to proceed on the motion to suppress or to set the cause for trial. Defendant requested a trial date and withdrew the motion to suppress. The court set the case for trial, entered an order allowing the public defender to withdraw, and ordered discovery and the charging instrument handed over to defendant.

¶ 7 On September 17, 2012, the case was called for trial. Before jury selection, the court advised defendant that he was charged with burglary and theft. The State said if defendant were convicted of burglary, a Class 2 felony, he would be subject to Class X felony sentencing because of his prior convictions. The court admonished defendant that if he were found guilty, he was ineligible to receive probation and would be sentenced as a Class X offender to a term of 6 to 30 years' imprisonment. Defendant stated that he understood the sentencing possibilities. The court asked if he had selected a jury and defendant stated, he "had a jury trial with a public defender in 2010."

¶ 8 Prior to jury selection, the court informally advised defendant as to the jury selection process. Before bringing the jury pool into the courtroom, the court asked defendant if he still wanted to represent himself. Defendant agreed and the cause proceeded to jury selection. At the conclusion of the trial, the jury found defendant guilty of burglary and theft.

¶ 9 On September 27, 2012, defendant filed a letter with the court that was construed as a posttrial motion. In the motion, defendant argued that the evidence was insufficient to sustain the burglary conviction, the trial court did not issue a lesser included offense instruction, and defendant's conviction must be vacated under one-act, one-crime principles. On November 20, 2012, the case was called for a hearing on defendant's posttrial motion and sentencing. The trial court denied defendant's posttrial motion and proceeded to a sentencing hearing where the court merged the theft conviction into the burglary conviction and sentenced defendant to nine years' imprisonment.

¶ 10 At the conclusion of the sentencing hearing the court stated "[j]udgment enters for costs." The court also stated defendant was "entitled to certain credits which are reflected on the mittimus to be prepared by the State" and entered a judgment for costs alone. The clerk's

payment sheet, bearing the judge's signature, incorporates the drug court fund assessment of \$5, the \$50 court systems fund assessment, and the \$30 Children's Advocacy Center fund assessment as charges imposed by the clerk. Defendant made an oral motion to reconsider sentence, arguing his sentence was excessive. The court denied the motion and defendant appeals.

¶ 11

ANALYSIS

¶ 12

I. Rule 401(a) Admonishments

¶ 13

Defendant argues that his convictions should be reversed and the cause remanded for a new trial because the trial court did not admonish him pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before it allowed defendant to waive his right to counsel. The State argues defendant's waiver of counsel was valid because defendant made repeated requests to waive counsel and, after he had received all of the information required by Rule 401(a), persisted in his desire to proceed *pro se*.

¶ 14

The sixth amendment of the United States Constitution guarantees a defendant the right to effective assistance of counsel at all critical stages of criminal proceedings. U.S. Const., amends. VI, XIV; *People v. Hughes*, 2012 IL 112817. When a criminal defendant wishes to waive his right to counsel, a trial court may only permit a waiver after it first admonishes the defendant in accordance with Rule 401(a). *People v. Campbell*, 224 Ill. 2d 80 (2006). In accordance with Rule 401(a), a court must advise a defendant accused of an offense punishable by imprisonment in open court and determine that he understands: (1) the nature of the charge; (2) the minimum and maximum sentence prescribed by law; and (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). The purpose of Rule 401(a) is "to ensure that a waiver of counsel is knowingly and intelligently made." *People v. Haynes*, 174 Ill. 2d 204, 241 (1996). As a result, substantial

compliance with Rule 401(a) is required for an effective waiver of counsel. *Campbell*, 224 Ill. 2d 80.

¶ 15 At the June 26, 2012, hearing, defendant objected to defense counsel's request for a continuance, stated that he no longer wanted counsel to represent him, and demanded that the documents be handed over to him. The court immediately responded that "it appears that [defendant] wishes to represent his own interest" and asked defendant if he wanted a hearing on counsel's motion to suppress or a jury trial. Defendant requested a jury trial date and withdrew the motion to suppress. Without providing any of the Rule 401(a) admonishments, the trial court allowed the public defender to withdraw and set the case for a jury trial.

¶ 16 The State argues that defendant's persistent request to waive counsel combined with the piecemeal admonishments validated defendant's waiver. However, defendant's persistent desire to waive counsel was not emblematic of substantial compliance with Rule 401(a). To the contrary, full admonishment of the Rule 401(a) principles would cause a defendant to further contemplate the ramifications of his request to waive counsel. Consequently, defendant's waiver of counsel, made in the absence of Rule 401(a) admonishments, was invalid. We reverse defendant's convictions and remand the cause to the trial court for Rule 401(a) admonishments and a new trial.

¶ 17 **II. Presentence Incarceration Credit**

¶ 18 Defendant argues the drug court, court systems, and Children's Advocacy Center assessments should be credited in full through proper application of his presentence incarceration credit. However, our remand on the Rule 401(a) issue has rendered this issue moot.

¶ 19

CONCLUSION

¶ 20

The judgment of the circuit court of Will County is reversed and remanded for further proceedings.

¶ 21

Reversed and remanded.