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2014 IL App (3d) 130284-U

Order filed October 10, 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 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0284
ANDREW ADDLER,)	Circuit No. 10-CM-1158
Defendant-Appellant.)	The Honorable Timothy M. Lucas, Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* In a case involving a defendant who pled guilty to battery and criminal trespass to real property, then later filed a postconviction petition that sought a withdrawal of that guilty plea based on ineffective assistance of counsel, the circuit court denied the defendant's petition after a third-stage evidentiary hearing. The appellate court affirmed the circuit court's judgment.
- ¶ 2 The defendant, Andrew Addler, pled guilty to battery (720 ILCS 5/12-3(a)(2) (West 2010)) and criminal trespass to real property (720 ILCS 5/21-3(a)(2) (West 2010)), and the circuit court sentenced the defendant to 12 months of conditional discharge. Over five months

later, the defendant filed a petition for postconviction relief, alleging ineffective assistance of counsel and requesting that he be allowed to withdraw his guilty plea. The circuit court denied the petition after a third-stage evidentiary hearing, and the defendant appealed. On appeal, the defendant argues that the circuit court erred in denying his postconviction petition. We affirm.

¶ 3

FACTS

¶ 4

On June 17, 2010, the defendant was charged by information with battery (720 ILCS 5/12-3(a)(2) (West 2010)) for allegedly making physical contact of an insulting or provoking nature with Jessamee Hundley, and criminal trespass to real property (720 ILCS 5/21-3(a)(2) (West 2010)) for allegedly entering on the land of Goodwill Industries with prior knowledge of him being prohibited from doing so. At the time of these alleged crimes, the defendant was on probation in Tazewell County. On June 23, 2010, after the circuit court went through guilty plea admonishments, the defendant pled guilty to both charges, and the defendant was sentenced to 12 months of conditional discharge.

¶ 5

On December 1, 2010, the defendant filed a petition for postconviction relief, alleging that he was denied the effective assistance of counsel, and, as such, he should be allowed to withdraw his guilty plea. The petition alleged that trial counsel failed to adequately investigate the case and to inform the defendant of the consequences of pleading guilty in this case while on probation in another county. The State did not contest the timeliness of the defendant's postconviction petition.

¶ 6

The circuit court held a third-stage evidentiary hearing on the defendant's petition on April 8, 2011. The defendant testified that after he was appointed a public defender (Caryn Kamp) at the initial appearance, he sat down at her desk. She asked him exactly what happened, and he told her. He told her that he did not commit either crime. He testified that she was on her

computer at the time, and he did not feel she was paying attention to him. She did not have any materials on the case in front of her, and she did not discuss any discovery materials with her. He told her that he was on probation in Tazewell County, but she did not respond verbally to his comment. He also told her about a surveillance camera at Goodwill that he knew about because he used to work there. He testified that the meeting lasted between five and ten minutes.

¶ 7 The defendant also testified that Kamp reviewed the State's offer with him during the interview. She told him that he had two choices: (1) plead guilty, receive probation, pay a fine, and avoid jail time; or (2) go to trial, lose, and go to jail. The defendant stated that he decided to plead guilty because he did not want to go to jail, which would have meant he would have missed time with his children. He also testified that he interpreted Kamp's statement in option one about avoiding jail time as including no jail time in Tazewell County.

¶ 8 Kamp testified as to her version of the meeting she had with the defendant at the courthouse. She stated that she would have done her typical preparation before meeting with the defendant, which would have included reviewing the discovery materials, police reports, victim statements, any admissions made by the accused, and anything related to independent witnesses. Additionally, she would review any information the State included on the defendant's criminal history in Peoria County, as well as any LEADS report included in the file, which the State occasionally ran when an accused had a significant criminal history. She then met with the defendant for 15 to 20 minutes, which was considerably longer than the typical five-minute meetings she had with defendants to whom she had been assigned. Generally, she did recall discussing the facts of the case with the defendant during their meeting.

¶ 9 Kamp explained to the defendant why he was there and the details of the State's offer. She stated that she did not recall asking him for his version of the events surrounding the alleged

crimes, nor could she recall whether he gave her an unsolicited version. She also could not recall if he told her about any criminal history he had outside of Peoria County, including whether he was on probation in another county. Kamp stated that if he did mention that he was on probation in another county, she would have told him her typical response that any offer the State was making in the case could not include any agreement that would preclude a probation violation from another county. Further, she had no recollection of whether the defendant told her about a surveillance camera at Goodwill or whether he tried proclaiming his innocence to her. She stated that if he had claimed he was innocent, she would have set him for trial. She testified that she recalled telling him that his case was not a good one to take to trial, although she could not recall what caused her to advise him as such.

¶ 10 Kamp testified that the defendant accepted the State's offer without negotiation, but that he had some trepidation in pleading guilty. She could not recall if the defendant indicated to her why he wanted to plead guilty.

¶ 11 On April 1, 2013, the circuit court issued its written decision. The court found that the defendant failed to establish both prongs of the test for ineffective assistance of counsel, as set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). First, the court stated that counsel assessed the case, presented the defendant with his options, and was ultimately able to fulfill the defendant's request for no jail time. The court also found that the defendant was not prejudiced by counsel's representation, as Tazewell County could have brought probation revocation proceedings against the defendant based on the same facts that comprised the two criminal charges in this case. The court ultimately ruled that the defendant's guilty plea was valid and that his postconviction petition was denied. The defendant appealed.

¶ 12

ANALYSIS

¶ 13 On appeal, the defendant argues that the circuit court erred when it denied his postconviction petition. Specifically, the defendant contends that his trial counsel was ineffective and that his guilty plea was not knowingly and intelligently made.

¶ 14 Pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)), a defendant may collaterally attack his or her conviction or sentence based on alleged violations of constitutional rights. *People v. Pendleton*, 223 Ill. 2d 458, 471 (2006). If a postconviction petition advances to third-stage proceedings under the Act, the circuit court conducts an evidentiary hearing. 725 ILCS 5/122-6 (West 2010). At that hearing, the circuit court assesses witness credibility, determines evidentiary weight, and resolves any evidentiary conflicts. *People v. Domagala*, 2013 IL 113688, ¶ 34. "When a petition is advanced to a third-stage, evidentiary hearing, where fact-finding and credibility determinations are involved, we will not reverse a circuit court's decision unless it is manifestly erroneous." *Pendleton*, 223 Ill. 2d at 473.

¶ 15 To prevail on a claim of ineffective assistance of counsel, a defendant must establish that: (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness; and (2) counsel's deficient performance prejudiced the defendant such that a reasonable probability exists that the outcome of the proceeding would have been different. *People v. Ramsey*, 239 Ill. 2d 342, 433 (2010); *Strickland*, 466 U.S. at 687-88. If the defendant fails to establish both prongs of the *Strickland* test, the defendant's ineffective assistance claim fails. *People v. Henderson*, 2013 IL 114040, ¶ 11.

¶ 16 With regard to *Strickland's* first prong, counsel on appeal argues that Kamp's performance was deficient because: (1) she did not inquire into the defendant's version of the facts; (2) she did not "take the time" to determine the strength of the defendant's case if it would have gone to trial; (3) she gave misleading advice because she failed to address the potential

revocation of the defendant's probation in Tazewell County; (4) she prematurely advised the defendant to plead guilty, as she did not know all of the facts or about any potentially exonerating facts; (5) she "threatened" the defendant by telling him he would lose at trial and go to jail; (6) she failed to inform him that a battery conviction could never be expunged; and (7) variously, she did not present a counteroffer or otherwise adequately investigate the case. These allegations are insufficient to establish that Kamp's performance was deficient under *Strickland*. See *People v. Dobbs*, 353 Ill. App. 3d 817, 827 (2004) ("[n]either mistakes in strategy nor the fact that another attorney with the benefit of hindsight would have proceeded differently is sufficient to establish ineffective assistance of counsel").

¶ 17 Further, a defendant need not be informed of the collateral consequences of his or her guilty plea in order to comport with due process requirements. *People v. Delvillar*, 235 Ill. 2d 507, 520-21 (2009). Probation revocation is a collateral consequence of a guilty plea. *People v. Warship*, 59 Ill. 2d 125, 128 (1974); see also *Delvillar*, 235 Ill. 2d at 520 (noting that collateral consequences are those that the circuit court has no authority to impose and those that the precipitating action is one over which the circuit court has no control). As such, there was no legal requirement for Kamp to inform the defendant of the potential consequences the Peoria County case would have on his probation in Tazewell County.

¶ 18 Here, the circuit court noted in its order that Kamp "assessed the defendant's case, discussed his options between trial and negotiated plea and fulfilled defendant's intention to avoid jail time." The record reflects that the defendant chose to plead guilty and did so knowingly and voluntarily. Under the circumstances of this case, we agree with the circuit court's assessment of Kamp's representation, as the defendant has failed to establish that trial counsel's performance was deficient. See *Ramsey*, 239 Ill. 2d at 433. Accordingly, we hold that

the court's denial of the defendant's petition was not manifestly erroneous. See *Henderson*, 2013 IL 114040, ¶ 11.

¶ 19

CONCLUSION

¶ 20

The judgment of the circuit court of Peoria County is affirmed.

¶ 21

Affirmed.