2016 IL App (4th) 140753-U

NO. 4-14-0753

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 4, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
JARROD S. STILLWELL,	)	No. 13CF1791
Defendant-Appellant.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding defendant could not demonstrate his postplea counsel was ineffective for failing to raise a meritless issue in a motion to reconsider the sentence.

¶ 2 In March 2014, defendant, Jarrod S. Stillwell, entered a plea of guilty to the offense of domestic battery, and the State agreed to cap its sentencing recommendation at four years in the Department of Corrections (DOC). At sentencing, the State presented evidence in aggravation, including the testimony of the investigating officer and a victim-impact statement, and, consistent with the plea agreement, recommended the trial court sentence defendant to four years in DOC. However, in making that recommendation, the State noted the court was not bound by the State's sentencing recommendation. The court subsequently sentenced defendant to six years in DOC.

¶ 3 After filing *pro se* postplea motions, the trial court assigned defendant new postplea counsel. Postplea counsel filed a motion to reconsider defendant's sentence but did not allege as an issue that the State breached the plea agreement by insinuating the court should ignore its sentencing recommendation.

¶ 4 On appeal, defendant alleges postplea counsel was ineffective for failing to allege in a postsentencing motion that the State breached the plea agreement. For the following reasons, we affirm.

¶ 5 I. BACKGROUND

¶ 6 In October 2013, the State charged defendant by information with one count of domestic battery in the presence of a child with a prior domestic battery conviction, a Class 4 felony (720 ILCS 5/12-3.2(a)(1), (b), (c) (West 2012)). The alleged victim in this case was defendant's estranged wife, Meghann Hiser, and the battery purportedly occurred in the presence of their young child. The case was assigned to the docket of Judge Harry E. Clem.

¶ 7 A. Proceedings Before Judge Leonhard

¶ 8 In March 2014, the case was scheduled for a jury trial in front of Judge Clem. However, Judge Clem was unavailable, and Judge Chase M. Leonhard presided over Judge Clem's trial call. At that time, the parties indicated their desire to enter into a partially negotiated plea agreement. The parties agreed Judge Leonhard would preside over the plea agreement and Judge Clem would preside over the sentencing hearing.

¶ 9 Prior to accepting defendant's guilty plea, Judge Leonhard admonished defendant that he faced an extended-term sentencing range of one to six years in DOC, with a four-year period of mandatory supervised release (730 ILCS 5/5-4.5-45(a) (West 2012); 730 ILCS 5/5-8-1(d)(6) (West 2012)). Defendant could also receive a community-based sentence; however, he

would be required, at a minimum, to serve 10 days in jail or complete 300 hours of community service (720 ILCS 5/12-3.2(c) (West 2012)). Defendant indicated he understood the possible penalties. The judge also admonished defendant about the rights he would be giving up by pleading guilty.

¶ 10 When asked whether any promises had been made to defendant in exchange for his guilty plea, the State told the trial court that the State had agreed to cap its sentencing recommendation at four years in DOC. Defendant agreed that was his understanding of the plea agreement. The court also admonished defendant that Judge Clem would not be bound by the State's sentencing recommendation. Defendant indicated he understood. Judge Leonhard thereafter accepted defendant's guilty plea.

¶ 11 B. Sentencing Hearing Before Judge Clem

¶ 12 The following month, defendant's case proceeded to a sentencing hearing before Judge Clem. During the hearing, the State asked the trial court to take judicial notice of defendant's prior convictions for (1) misdemeanor domestic battery (Champaign County case No. 99-CM-1422); (2) misdemeanor battery (Champaign County case No. 99-CM-756); and (3) felony domestic battery (Champaign County case No. 08-CF-1239). The State also introduced additional evidence in aggravation.

¶ 13 1. *Officer Phillip McDonald*

¶ 14 The State presented the testimony of Officer Phillip McDonald. Officer McDonald testified, on October 26, 2013, he was on duty when he responded to a report of a domestic battery. When he arrived, he observed Hiser with blood on her face and hands, and she appeared extremely upset. She was also holding a small child in her arms.

¶ 15 According to Officer McDonald, Hiser told him she had been battered by defendant, who is the father of her child. Hiser told the officer she and defendant got into a verbal altercation that turned physical when defendant began battering her. Hiser had abrasions and swelling to the forehead and back of her neck, as well as a bloody nose. According to Hiser's description, the child was in her arms throughout the altercation, and the child sustained a small abrasion to her wrist during the scuffle. The child also had blood on her clothing. According to Officer McDonald, when he later questioned defendant about the incident, defendant admitted to striking Hiser in the face.

¶ 16 Officer McDonald also testified, after defendant had entered his March 2014 guilty plea, defendant contacted Hiser numerous times by phone and text messages, asking her to drop the charges against him.

¶ 17 2. *Victim-Impact Statement*

¶ 18 Meghann Hiser's victim-impact statement detailed defendant's attack. She stated she was dropping their daughter off at defendant's home when defendant became enraged over the text and call history on Hiser's phone. He then smashed her phone on the ground and chased Hiser when she began to run from him. When Hiser fell in the hallway, defendant punched her in the head and kicked her ribcage. At the time, their daughter was standing nearby, crying. Defendant's mother managed to pull defendant away, allowing Hiser an opportunity to stand up and move away.

¶ 19 Hiser's daughter then ran into her arms, at which time defendant broke free from his mother and began punching Hiser in the face and forehead. When Hiser attempted to run, defendant pushed her onto the couch and continued to batter her while she held the child. According to Hiser, defendant tried to lift her up by her nostrils, which caused her nose to gush

blood. Hiser again broke away and ran from the house, still holding the child. Defendant followed her to the sidewalk and began choking her. He also attempted to pull the child from Hiser's arms. When a car stopped in front of the house to observe the incident, defendant ran into the house. Hiser then drove herself and her daughter to the home of Hiser's mother, where she spoke with police regarding the incident.

¶ 20 As a result of the incident, Hiser stated she attended counseling, where she addressed her increasing difficulties with anxiety and depression. She said she had ongoing nightmares about the incident that would leave her in a state of panic. For three months, she was unable to drive down defendant's street because it would cause flashbacks. Hiser also explained her daughter was now apprehensive around father figures and would become quiet and serious whenever she saw an ambulance.

¶ 21 3. *Presentence Investigation Report*

¶ 22 The presentence investigation report (report) indicated defendant failed to appear for his interview with probation services for purposes of preparing the report. Rather, defendant told probation services he intended to withdraw his plea and therefore had no need to complete the interview.

¶ 23 Aside from the three battery convictions, of which the trial court took judicial notice, the report also outlined numerous other criminal offenses, including (1) unlawful possession of a controlled substance (Champaign County case No. 01-CF-351); (2) unlawful use of a weapon by a felon (Champaign County case No. 03-CF-2106); and (3) driving under the influence of drugs (Champaign County case No. 08-DT-891). Since his plea of guilty, defendant was also facing additional charges of harassing a witness and violation of bail bond due to his unauthorized contact with Hiser (Champaign County case No. 14-CF-447).

¶ 24 4. *The Parties' Sentencing Recommendations*

¶ 25 In making its recommendation, the State highlighted the "extremely violent, prolonged attack," as outlined in the victim-impact statement. The State also noted defendant's lengthy criminal history, particularly his prior domestic-battery convictions, and his inability to complete the five community-based sentences he had received in other cases. Additionally, the State pointed out, since his guilty plea, defendant failed to schedule an interview with probation services and had accrued new offenses after his unauthorized contact with Hiser. The State then said, "[t]he State agreed to cap its recommendation at four years[,] but when Judge Leonhard admonished [defendant] at his open plea[,] he was told that the [c]ourt may sentence him to more than the cap. That is left in the [c]ourt's discretion. Your Honor, it is the People's request today that the [d]efendant be sentenced to four years."

¶ 26 Defendant asked the trial court to consider his youth, that he had children to support, and the fact that he pleaded guilty and accepted responsibility for his actions. Defendant also made a statement in allocution, apologizing for his actions and emphasizing the importance of caring for his children.

¶ 27 5. *The Trial Court's Ruling*

¶ 28 In imposing its sentence, the trial court stated it considered (1) the factors in aggravation and mitigation, (2) the rehabilitative potential of defendant, (3) the need for deterrence, (4) the State's recommendation of a four-year sentence, and (5) the possibility of imposing a community-based sentence. The court then imposed a sentence of six years in DOC.

¶ 29 In support of its sentence, the trial court noted defendant was 34 years old, which was old enough to know his conduct would not be tolerated by the community. The court also found defendant impeded the court's ability to assess his health, employment history, and other

matters because he failed to cooperate with probation services in preparing its report. This and defendant's prior failures to complete probation led the court to determine defendant would be unlikely to cooperate with probation if he received a community-based sentence.

¶ 30 The trial court also considered defendant's present and past criminal conduct. The court found it "remarkable" that defendant sought a lower sentence because of his strong feelings for his child where he was being sentenced for committing a violent offense in the child's presence. Accordingly, the court determined defendant's "absolutely outrageous" conduct warranted a maximum sentence. The court further stated:

> "[T]he People, although I do understand their recommendation, were not in any way, shape[,] nor form required to follow through with their part of the plea agreement since the [d]efendant breached his part of it by a total failure to cooperate with the preparation of the presentence report and cooperate with the people who were conducting the presentence investigation which was a condition of the plea agreement."

In ordering a sentence in excess of the State's recommendation, the court pointed out that Judge Leonhard admonished defendant at the time of the plea that the court was "not obligated to honor such a recommendation other than to take it seriously." The court went on to say:

> "I did consider [the State's recommendation] seriously, and it's not at all in keeping with the nature of this offense, the [d]efendant's past record of criminality, the violence of this attack, the fact that it took place in the presence of a child and apparently albeit thankfully even injured the child in a minor way. It certainly

injured the child emotionally in ways that I'm sure are going to take years to have to deal with."

Additionally, the court took into account that, immediately after the attack, defendant ran into his home to hide rather than taking any action to help Hiser or the child.

¶ 31 C. Postsentencing Proceedings Before Judge Clem

¶ 32 After numerous postsentencing filings, in June 2014, defendant filed a *pro se* motion to reconsider his sentence. Therein, defendant asked the trial court to reduce his sentence to four years due to receiving ineffective assistance of counsel where his attorney failed to cross-examine the victim-impact statement. The court appointed new counsel and, the following month, defendant's newly appointed counsel filed a motion to reconsider the sentence, asserting the sentence was excessive in light of the factors in aggravation and mitigation. Postplea counsel also asserted trial counsel provided ineffective assistance by failing to cross-examine Officer McDonald, failing to call defendant's witnesses to testify in mitigation, and failing to call defendant to testify in mitigation.

¶ 33 Following an August 2014 hearing, the trial court denied defendant's motion to reconsider his sentence. In making its ruling, the court found defendant had been admonished at the time of his guilty plea that the court was not bound by the State's sentencing recommendation. The court stated part of the agreement was conditioned on defendant's cooperation with probation services regarding the completion of a report, which defendant failed to do. Further, the court stated it considered the factors in aggravation and mitigation, as well as the importance of deterrence, in fashioning defendant's sentence.

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 On appeal, defendant asserts his postplea counsel provided ineffective assistance for failing to argue the State breached the plea agreement. We disagree, concluding such an issue is meritless under the facts of this case.

¶ 37 A. Standard of Review

¶ 38 Postplea counsel failed to allege the State breached the plea agreement in a posttrial motion, which renders the argument forfeited. *People v. Thompson*, 238 Ill. 2d 598, 611, 939 N.E.2d 403, 412 (2010). Ordinarily, a defendant would ask us to engage in a plain-error analysis to determine whether reversal is necessary, notwithstanding forfeiture of the issue. See *Id.* at 613, 939 N.E.2d at 413.

¶ 39 In this case, however, defendant does not request our review under the plain-error doctrine but, rather, raises an ineffective-assistance-of-counsel claim. To demonstrate postplea counsel provided ineffective assistance of counsel, defendant must show (1) his counsel's actions fell below an objective standard of reasonableness; and (2) but for counsel's errors, the results of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). The failure to establish either prong defeats defendant's claim. *People v. Richardson*, 189 Ill. 2d 401, 411, 727 N.E.2d 362, 369 (2000).

¶ 40 Although we have no explanation from trial counsel regarding his conduct, we may address this issue on appeal where the allegations are clearly groundless. See *People v. Veach*, 2016 IL App (4th) 130888, ¶ 72, 50 N.E.3d 87. An example of a groundless allegation would be one in which the attorney failed to file a futile motion. See *People v. Ivy*, 313 Ill. App. 3d 1011, 1018, 730 N.E.2d 628, 636 (2000) ("An attorney is not required to make futile motions to avoid charges of ineffective assistance of counsel."). We therefore turn to whether it would have been futile for postplea counsel to allege the State breached the plea agreement.

¶ 41 B. Whether Defendant's Allegations Are Groundless

¶ 42 "[A] plea agreement has often been compared to an enforceable contract, and this court has applied contract law principles in appropriate circumstances." *People v. Donelson*, 2013 IL 113603, ¶ 18, 989 N.E.2d 1101. Where the parties have entered into a contract, the law implies a promise of good faith and fair dealing. *People v. Boyt*, 129 Ill. App. 3d 1, 15, 471 N.E.2d 897, 907 (1984). Where the defendant has acted in reliance on a plea agreement and surrendered a liberty interest, the failure of the State to fulfill its obligation results in a due-process violation. *People v. Whitfield*, 217 Ill. 2d 177, 189, 840 N.E.2d 658, 666 (2005).

¶ 43 In this case, defendant takes exception to the prosecutor's statement, "The State agreed to cap its recommendation at four years[,] but when Judge Leonhard admonished [defendant] at his open plea[,] he was told that the [c]ourt may sentence him to more than the cap. That is left in the [c]ourt's discretion. Your Honor, it is the People's request today that the [d]efendant be sentenced to four years." Defendant argues the State breached its duty to exercise good faith and fair dealing by insinuating the trial court should ignore the State's four-year recommendation in favor of a harsher sentence. We disagree.

¶ 44 "During a sentencing hearing[,] the prosecutor, as an officer of the court, has a duty to convey to the [trial] court information about the case and the defendant so long as no specific terms of the agreement are violated." *People v. Komeshak*, 42 Ill. App. 3d 775, 778, 356 N.E.2d 632, 635 (1976) (citing *People v. Martin*, 19 Ill. App. 3d 631, 634, 312 N.E.2d 24, 26 (1974). The prosecutor does not breach the plea agreement by apprising the court of the nature and circumstances of the offense. *People v. Jones*, 88 Ill. App. 3d 737, 741, 410 N.E.2d 1106, 1109 (1980). As long as the prosecutor complies with the plea agreement by making the agreed

sentencing recommendation, the State may present evidence in aggravation. See *Martin*, 19 Ill. App. 3d at 634, 312 N.E.2d at 26; *Jones*, 88 Ill. App. 3d at 741, 410 N.E.2d at 1109.

¶ 45 Here, the State did not relinquish its right to present evidence in aggravation, as the plea agreement only specified the State would recommend no more than four years in DOC. Despite presenting the victim-impact statement and officer testimony, the State maintained its commitment to the four-year sentencing recommendation. This presents a fairly common circumstance, where the judge who accepted the plea was different from the judge who sentenced defendant. Thus, it was reasonable for the State to inform the sentencing judge that defendant had been properly admonished about the trial court's sentencing discretion at the time he entered into the plea agreement.

¶ 46 Moreover, this case presents a situation in which the State was recommending an extended-term sentence. Thus, the State had the right to advocate for an extended-term sentence rather than a sentence of probation or a lesser DOC sentence by demonstrating the prolonged and violent nature of the offense.

¶ 47 Defendant also makes several arguments with respect to the appropriateness of the trial court's decision; however, the issue on appeal was whether counsel was ineffective, not whether the court erred in sentencing defendant. Defendant did not request a review of his sentence under any standard other than ineffective assistance of counsel.

¶ 48 Regardless, the trial court, in determining defendant's sentence, specifically stated it considered and rejected the State's recommendation of four years' imprisonment due to the nature of the offense and defendant's actions following the plea of guilty. Thus, the record directly refutes defendant's claim that the State's alleged insinuation led the court to disregard the four-year recommendation by the State. Here, the court clearly placed some weight on

defendant's postplea behavior, including his failure to cooperate with probation services in preparing the report. The court can properly consider defendant's actions after he entered into his plea, including his failure to participate in preparing the report, as evidence that he would be unlikely to cooperate with any community-based sentence. See *People v. Walton*, 357 Ill. App. 3d 819, 821, 829 N.E.2d 396, 399 (2005) (The purpose of the report "is to ensure that the trial court has all necessary information about the defendant, including the defendant's criminal history, before imposing a sentence."). Even though the court believed the State could have abandoned its recommendation based on defendant's postplea actions, the court noted the State did not do so, and instead continued with its recommendation of four years' imprisonment.

¶ 49 Defendant asserts this case similar to *People v. Mitchell*, 143 Ill. App. 3d 378, 380, 493 N.E.2d 623, 624 (1986), in which the defendant entered a plea of guilty to burglary in exchange for the State's agreement to recommend four years in DOC. The trial court rejected the plea agreement, and the parties proceeded to a sentencing hearing. *Id.* At the sentencing hearing, the State told the court it believed it was no longer bound by the four-year sentencing recommendation because the court rejected the agreement. *Id.* The State went on to ask the court to impose an "appropriate" sentence given the defendant's criminal history, noting the court may not find a four-year sentence was enough under the circumstances. *Id.* at 381, 493 N.E.2d at 625. The court sentenced the defendant to seven years in DOC. *Id.* at 380, 493 N.E.2d at 624. On appeal, the appellate court reversed and remanded the defendant's case, holding the State breached the plea agreement where it commented it was no longer bound by the agreement and asked the court to impose an "appropriate" sentence. *Id.* at 382, 493 N.E.2d at 625.

¶ 50 We find *Mitchell* distinguishable. In the present case, the State told the trial court it believed itself bound by the four-year sentencing recommendation, despite any postplea

actions taken by defendant. The court acknowledged the State upheld its end of the plea agreement by recommending the four-year sentence. Unlike in *Mitchell*, the State did not abandon its agreed sentencing recommendation, but rather, it persisted with the plea agreement.

¶ 51 Additionally, defendant directs us to *People v. Umfleet*, 190 Ill. App. 3d 804, 546 N.E.2d 1013 (1989), in support of his claim. In *Umfleet*, the defendant was charged in both Missouri and Illinois with several offenses relating to the kidnapping and robbery of the victim. *Id.* at 806, 546 N.E.2d at 1015. In Missouri, the defendant entered a negotiated plea of guilty in exchange for 17 years' imprisonment. When presenting the agreement to the trial court in Missouri, the prosecutor stated on the record that the Illinois prosecutor also intended to recommend 17 years' imprisonment, to run concurrently with the Missouri sentence. *Id.* However, when the defendant subsequently entered a guilty plea to the Illinois charges, it was pursuant to an agreed sentence of 21 years rather than 17 years. *Id.* at 807, 645 N.E.2d at 1015. The Fifth District ultimately reversed the trial court's judgment and vacated the defendant's Illinois plea agreement, concluding the prosecutor breached the plea agreement by failing to honor the 17-year sentencing agreement after the defendant had surrendered his liberty interests in the Missouri case in reliance on the Illinois agreement. *Id.* at 813, 546 N.E.2d at 1019. Accordingly, the appellate court found the defendant was entitled to specific performance of the agreement and remanded the case for a new sentencing hearing wherein the prosecutor was to recommend to the trial court a sentence of 17 years. *Id.* at 813-14, 546 N.E.2d at 1019-20.

¶ 52 We also find *Umfleet* distinguishable from the present case. In *Umfleet*, the State had agreed to make a 17-year recommendation, but it renegotiated with the defendant for a 21-year sentence *after* the defendant had relied on the 17-year agreement when entering his plea in the Missouri case. By contrast, in the present case, the record demonstrates the State complied

with the plea agreement and made no attempt to change the agreement after defendant's plea of guilty. Accordingly, we find defendant's reliance on *Umfleet* unpersuasive.

¶ 53 Finally, defendant points to *People v. Price*, 36 Ill. App. 3d 566, 344 N.E.2d 559 (1976), in support of his ineffective-assistance-of-counsel claim. In *Price*, the defendant entered a guilty plea to the offense of robbery in exchange for the State's agreement to make no sentencing recommendation. *Id*. at 567-68, 344 N.E.2d at 560-61. At sentencing, the State told the trial court, " 'Your Honor, the [S]tate did not make any recommendation, but I don't think it is in violation of either the word or spirit of the understanding for me to comment at this time that I think that based upon [the defendant's] record, that a period of incarceration is necessary or that he is not a suitable candidate for probation.' " *Id.* at 569, 344 N.E.2d at 561-62. To that end, the State recommended a period of incarceration. *Id*. The court psychologist and probation officer both recommended probation, but the State disagreed with those recommendations, arguing they took only the defendant's interests into consideration, not society's interests. *Id.* at 569, 344 N.E.2d at 562.

¶ 54 Because the evidence in mitigation supported the defendant's argument for probation, the appellate court determined the vigorous recommendation of the State could have unfairly impacted the trial court's sentencing decision. *Id.* at 573, 344 N.E.2d at 564-65. Accordingly, the Fifth District held the State breached the plea agreement by vehemently opposing probation and recommending an unspecified period of incarceration. *Id.* at 571-72, 344 N.E.2d at 563-64. The State's breach of the plea agreement rendered the defendant's plea involuntary, which led the appellate court to reverse and remand the defendant's case for a new sentencing hearing. *Id.* at 573, 344 N.E.2d at 565.

¶ 55 Clearly, in *Price*, the State violated its agreement to make no sentencing recommendation by subsequently advocating against probation and in favor of incarceration. Such is not the case here. Rather, in the present case, the State simply agreed to cap its recommendation at four years in DOC, which, unlike in *Price*, permitted the State the ability to argue against probation and in favor of a four-year extended-term sentence, which it did. Nothing in the State's actions violated the agreement. Moreover, as noted above, the record fails to demonstrate the State's alleged insinuation unfairly impacted the trial court's sentencing decision where the court specifically stated it considered and rejected the State's recommendation.

¶ 56 We therefore conclude defendant has failed to demonstrate ineffective assistance of counsel because alleging the State breached the plea agreement would have been futile.

¶ 57 III. CONCLUSION

¶ 58 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we grant the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 59 Affirmed.