2016 IL App (5th) 140036-U

NO. 5-14-0036

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Marion County.
	)	
v.	)	No. 13-CF-183
	)	
JOSHUA M. SCHULTE,	)	Honorable
	)	Mark W. Stedelin,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The record does not contain sufficient evidence to allow the appellate court to resolve the defendant's claim of ineffective assistance of counsel based on defense counsel's decision to have a stipulated bench trial in order to preserve an argument for appeal where the record indicates that the parties engaged in plea negotiations, but does not reveal precisely what, if any, agreement was reached. Under the circumstances, the defendant's claim is more properly addressed in proceedings under the Post Conviction Hearing Act.

¶ 2 The defendant, Joshua M. Schulte, was charged with possession of methamphetamine and possession of drug paraphernalia. The items were found in a locked metal box during an inventory search of a vehicle in which he was a passenger. After the trial court denied the defendant's motion to suppress, the matter proceeded to a

stipulated bench trial. Defense counsel informed the court that he was choosing this course of action to preserve the defendant's right to appeal the court's ruling on the motion to suppress. The defendant appeals his conviction, arguing that he received ineffective assistance of counsel because counsel failed to subject the State's case to meaningful adversarial testing in order to preserve an argument for appeal that was not viable. We find that the defendant's claim would be more appropriately addressed in proceedings under the Post Conviction Hearing Act (725 ILCS 5/122-1 *et seq*. (West 2014)). We therefore affirm.

¶ 3 On May 19, 2013, the defendant was riding as a passenger in a vehicle driven by his girlfriend, Carolyn Pribble, when the vehicle was stopped because Pribble did not have current registration tags. A warrant check revealed an outstanding warrant for Pribble's arrest. Pribble was arrested and taken into custody. Because the defendant's driver's license was suspended, officers could not release Pribble's vehicle to him. Instead, they arranged for the car to be towed and conducted an inventory search of the vehicle. Under the passenger's seat, officers found a locked metal box, which contained baggies with residue, coffee filters, glass pipes, and other items used for smoking methamphetamine. The defendant admitted that the items belonged to him. The residue tested positive for methamphetamine. The following day, the State filed an information charging the defendant with one count each of possession of less than five grams of methamphetamine (720 ILCS 646/60(a) (West 2012)) and unlawful possession of drug paraphernalia (720 ILCS 600/3.5 (West 2012)).

¶ 4 On June 11, 2013, the court held a preliminary hearing. Defense counsel noted that there were two outstanding misdemeanor charges against the defendant for driving under the influence (DUI) and driving while his license was suspended. The defendant previously pled guilty in both cases, but had not yet been sentenced. Counsel asked that those matters be docketed with the instant case. He explained, "Ultimately, [the defendant] needs to be sentenced ***, but we can see if we can work out a joint agreement. If not, he'll be resentenced on them." The court set all three cases for a pretrial conference on July 9.

¶ 5 At the July 9 setting, defense counsel informed the judge that the parties were "in discussion with a possible plea in this case." He then stated, "I just asked the State for some additional discovery, which they sent to me but it hasn't reached my desk." The court noted that a final pretrial hearing was set for July 25 and asked counsel if plea negotiations could be completed by then. Counsel responded affirmatively.

¶ 6 On July 19, the defendant filed a motion to suppress. He argued that the Centralia police department's inventory search policy does not permit searches of locked containers. Because inventory searches must comply with an established departmental policy to be legal, he argued, the evidence found in the locked metal box was obtained illegally and must be suppressed. Attached to the motion was a copy of the Centralia police department's inventory search policy. It provides, in relevant part, that a "thorough inventory" of the vehicle "shall be conducted" prior to towing the vehicle. The policy provides that the required inventory encompasses "*any* area within the vehicle which may be a repository for personal property," including but not limited to "locked or unlocked

glove compartments and trunk areas." (Emphasis in original.) The policy further provides that if an officer conducting an inventory finds "some type of closed container," the container "shall be opened for the purpose of determining its contents." The policy also contains the following statement: "It is the policy of the Centralia Police Department to take reasonable steps in providing for the security and safe-keeping of all vehicles (and the contents thereof) towed by" the department.

¶ 7 The court held a hearing on the motion on August 13. Officer Shawn Richards testified. He was one of two officers involved in the stop of Pribble's vehicle. Officer Richards acknowledged that when they effectuated the stop, he and Officer Rizzo did not have any reason to believe that Pribble or the defendant had been involved in recent criminal activity. He testified that during the inventory search, Officer Rizzo found a small metal box under the passenger's seat, which is where the defendant was sitting. The box was locked. No keys to the box were found during the search of the car. Officer Richards testified that he asked the defendant if he had a key for the box. The defendant indicated that he did, and handed a key to Officer Richards. Officer Richards acknowledged that neither officer asked for permission to open the box. He testified that the key provided by the defendant opened the box.

¶ 8 In closing argument, defense counsel pointed out that the language in the department's policy addressing searches of closed containers does not specify that it applies to locked containers. He pointed out that this language stood in contrast to the policy language providing that an inventory search extends to both "locked and unlocked" glove compartments or trunks. Counsel argued that applying ordinary

principles of contract interpretation to the policy, this choice of different language for the two provisions indicates an intent to treat locked containers differently from locked trunks or glove compartments.

¶ 9 On August 16, the court entered a written order denying the defendant's motion to suppress. The court noted that the inventory search policy mandated that all closed containers were to be opened and searched. The court then explained, "What cannot be denied *** is that a locked container is in fact a closed container." The court also found that the rationale behind searching closed containers−safeguarding their contents−applies equally whether the container is locked or not. On August 23, the defendant filed a motion to reconsider this ruling, arguing that the purpose of conducting the search could have been satisfied through less intrusive means.

¶ 10 At the next pretrial conference, the court denied the defendant's motion to reconsider. The court also set the matter for a jury trial on October 7, and set additional pretrial conferences for September 10 and October 3. Defense counsel stated, "We're considering a couple of options; one might be a stipulated bench trial to preserve our issues for appeal." At the September 10 pretrial conference, defense counsel indicated to the court that the defendant had been referred to drug court. At the October 3 pretrial, both parties indicated that they were waiting to find out if he would be accepted. The defense therefore asked the court to continue the matter for a November trial setting. The court reset the trial and also set additional pretrial conferences.

¶ 11 At an October 29 pretrial conference, the defendant waived his right to a jury trial, opting instead for a bench trial. Defense counsel again informed the court that "it may

end up being a stipulated bench trial" because he was trying to preserve the defendant's arguments concerning his motion to suppress. In addition, counsel noted that the parties were still waiting to find out whether the defendant would be accepted into drug court.

¶ 12 The matter came for trial on November 26, 2013. Defense counsel indicated that the defendant intended to proceed with a stipulated bench trial. He stated that the defendant would stipulate to the preliminary hearing testimony of the arresting officer and the State Police crime lab report. The State's attorney informed the court that the State would drop the charge of unlawful possession of drug paraphernalia. The defendant argued again that the search was not legal. Asked if the State had any response, the State's attorney replied, "No. We understand that the defense is preserving their objections to the evidence." The court ordered a presentence investigation report (PSI) and set the matter for a sentencing hearing.

¶ 13 On December 31, 2013, the court held a sentencing hearing. The State's attorney noted that the defendant was being sentenced in three separate cases, the "most consequential" of which was the instant case. The State argued that the defendant had an extensive prior criminal history, which should be considered by the court as a factor in aggravation. The State recommended an extended term sentence of six years on the methamphetamine possession charge involved in this case. The State also recommended that the defendant be sentenced to 90 days in jail on the charge of driving while his license was suspended, to be served concurrently with the sentence in this case, and that the court impose only fees in the DUI case. The defense argued that the court should consider the following as factors in mitigation: (1) none of the defendant's prior

convictions involved violence; and (2) the defendant had an addiction which he had made efforts to address, even though those efforts were not successful.

¶ 14 The court found as a factor in mitigation the fact that no harm resulted from the defendant's conduct; however, the court found that the defendant's extensive prior criminal history was a factor in aggravation. The court sentenced the defendant to three years in prison on the instant charge, but followed the State's recommendations on the two outstanding misdemeanor charges. This appeal followed.

¶ 15 The defendant argues that he received ineffective assistance of counsel. We evaluate such claims under the familiar two-pronged test established by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). Under that test, a defendant must demonstrate both that counsel's performance was objectively deficient and that the defendant was prejudiced as a result. *People v. Makiel*, 358 Ill. App. 3d 102, 105-06 (2005) (citing *Strickland*, 466 U.S. at 694). As the defendant points out, the right to the assistance of counsel necessarily entails the right to have counsel "require the prosecution's case to survive the crucible of meaningful adversarial testing." *United States v. Cronic*, 466 U.S. 648, 656 (1984). Thus, "if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing," the adversarial process is rendered "presumptively unreliable." *Id*. at 659. Under such circumstances, "[n]o specific showing of prejudice" is necessary to support a claim of ineffective assistance because prejudice is presumed. *Id*. (citing *Davis v. Alaska*, 415 U.S. 308, 318 (1974)).

¶ 16 The defendant seeks to invoke the rule of *Cronic* and *Davis* here, pointing out that counsel "stipulated to evidence sufficient to convict" him. Alternatively, he urges this

court to find that he was prejudiced by counsel's performance for two reasons. He contends that by signaling his willingness to stipulate, counsel took away any incentive for the State to offer a better plea deal. In addition, he contends that because he did not actually plead guilty, he did not have the opportunity to argue that his plea was a factor in mitigation. We find neither argument persuasive.

¶ 17 We emphasize that "a stipulated bench trial is a legal fiction created solely to give the defendants the benefit and convenience of a guilty plea while avoiding the consequences of waiver and forfeiture." *People v. Glazier*, 2015 IL App (5th) 120401, ¶ 23. If counsel negotiates a benefit for the defendant in exchange for his agreement to proceed with a stipulated bench trial, this course of action generally constitutes sound trial strategy. *Id*. Thus, *Cronic* and *Davis*, which did not involve stipulated bench trials, are inapposite. Moreover, claims of ineffective assistance of counsel in plea proceedings are governed by the same two-part test that governs other claims of ineffective assistance of counsel. *People v. Hale*, 2013 IL 113140, ¶ 15. To satisfy the prejudice prong, a defendant must show that there is a reasonable probability that, absent counsel's deficient performance, he would have pled differently. *Id*. ¶ 18.

¶ 18 In the instant case, it is clear that counsel was involved in plea negotiations with the State throughout the proceedings. What is not clear is what benefit the defendant received in exchange for his agreement to proceed with a stipulated bench trial. At the sentencing hearing, the parties characterized it as an "open plea," and the State argued in favor of an extended sentence. However, as the State points out, the State dropped the charge of possession of drug paraphernalia and recommended minimal sentences on the

two outstanding charges of DUI and driving with a suspended license. It is also worth noting that the six-year sentence recommended by the State was at the lower end of the extended term sentencing range for a Class 3 felony (see 730 ILCS 5/5-4.5-40(a) (West 2012)). It appears likely that, at the very least, the State dropped the paraphernalia charge in exchange for the defendant's stipulation. However, we are unable to determine on the record before us whether this was the case. We are also unable to determine whether the defendant received any other benefits with respect to the sentences recommended in the older misdemeanor cases.

¶ 19 For similar reasons, we are unable to assess the defendant's arguments concerning prejudice. As noted previously, he argues that because he stipulated to the evidence rather than formally pleading guilty, he was deprived of an opportunity to argue that his plea was a mitigating factor in sentencing. We note that the court could have sentenced the defendant to anywhere from 2 to 10 years (see 730 ILCS 5/5-4.5-40(a) (West 2012) (providing that the sentencing range for a Class 3 felony is 2 to 5 years and the extended term sentencing range is 5 to 10 years)). The court sentenced the defendant to barely more than the minimum in spite of the fact that he had an extensive prior history. This indicates that it is at least possible that the court in fact did consider the defendant's stipulation in mitigation as if it were a formal guilty plea. However, the record is insufficient to allow us to reach any conclusion as to the effect of the stipulation on the defendant's sentence.

¶ 20 In addition, the defendant argues that defense counsel's statements early in the proceedings that he might proceed with a stipulated bench trial removed any incentive for

the prosecution to offer a better plea deal. However, the record contains no evidence concerning what, if any, better deal could have been negotiated if the defendant formally entered a guilty plea rather than agreeing to a stipulated bench trial.

¶ 21 Finally, the defendant also contends that, absent counsel's deficient performance, he may have pled not guilty and insisted on a trial where all of the evidence was contested. He argues that there were additional arguments counsel could have made in support of his motion to suppress (such as challenging the basis for the stop). However, he does not challenge the court's ruling on the motion to suppress, and he does not indicate what other defenses may have been available to him had he pled not guilty and insisted on a full trial. Because we cannot fully assess these claims on the record before us, they are better suited for consideration in postconviction proceedings in which the defendant can develop a complete record.

¶ 22 For the foregoing reasons, we decline to consider the defendant's claims of ineffective assistance of counsel. We note that he may pursue such claims in a petition under the Post Conviction Hearing Act. Thus, we affirm the trial court's judgment.

¶ 23 Affirmed.