2016 IL App (5th) 140061-U

NO. 5-14-0061

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | St. Clair County. |
| | ) | |
| v. | ) | No. 12-CF-139 |
| | ) | |
| JULIAN GATES, | ) | Honorable |
| | ) | John Baricevic, |
| Defendant-Appellant. | ) | Judge, presiding. |

PRESIDING JUSTICE MOORE delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

**ORDER**

¶ 1 *Held*: Defendant's conviction and sentence are affirmed because defendant's plea of guilty was knowing and voluntary.

¶ 2 The defendant, Julian Gates, appeals the denial, by the circuit court of St. Clair County, of his motion to withdraw his guilty plea and his motion to reduce his sentence. For the following reasons, we affirm.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal follow. On January 30, 2012, the defendant was charged by criminal complaint with first degree murder. The charge resulted from the beating death of three-year-old Mia Caito, who was the daughter of the

defendant's roommate. On February 17, 2012, the defendant was indicted on the same charge. On March 30, 2012, the trial court entered an order in which it found that the defendant's appointed counsel entertained "a bona fide doubt as to defendant's ability to understand the nature of the proceedings against him and to assist in his own defense." Accordingly, the order appointed Dr. Cuneo to evaluate the defendant and determine the defendant's fitness to stand trial. The defendant was subsequently found to be fit to stand trial. On December 12, 2012, the State, pursuant to 730 ILCS 5/5-8-1(a)(1)(b) (West 2012), filed a notice of intent to seek an enhanced sentence of natural life imprisonment, based upon the aggravating factor found in "720 ILCS 5/9-1(a)[1](7)" (West 2012): the fact that the victim "was under 12 years of age," and that "the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty." On December 21, 2012, at the request of the defendant, the previously-set trial date of January 7, 2013, was vacated, with trial reset for May 6, 2013.

¶ 5 On May 6, 2013, the date the trial was to begin, the State filed an amended notice of intent to seek an enhanced sentence of natural life imprisonment, this time based upon the aggravating factor found in 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2012): the fact that the defendant was "17 or more" years of age and that the victim was "under 12 years of age." That same day, the defendant entered a plea of guilty to first degree murder. During the guilty plea proceedings, the State informed the court that the parties wished to

[1]The parties agree that the section in question is actually found at 720 ILCS 5/9-1(b)(7) (West 2012).

enter into a negotiated plea agreement, wherein the defendant would plead guilty to first degree murder, the State would argue for a 60-year sentence, and the defendant would be permitted to argue for the statutory minimum of 20 years. Counsel for the State said that "[a]s part of these plea negotiations, the [State] would agree not to seek a natural life sentence pursuant to 730 ILCS 5/5-8-1(a)(1)(c)(ii)."

¶ 6 As part of the process of ensuring that the defendant entered a knowing and voluntary guilty plea, the trial judge asked the defendant multiple questions, then stated that "[i]f there had not been negotiations *** and you had been found guilty, I could have sentenced you to prison for a determinate period of time between twenty years and natural life. That would be served at one hundred percent. So natural life means exactly that, you would never get out of prison." Immediately thereafter, the trial judge told the defendant that "[i]f the period of the sentence is for a particular number of years, between twenty and sixty, then when you got out, you would do three years of mandatory supervised release at the conclusion of your incarceration." When asked if he had any questions about what his sentences could have been, the defendant responded, "No, sir, I'm fully aware." Subsequently, the trial judge accepted the plea of guilty.

¶ 7 A sentencing hearing was held on August 16, 2013. Following the testimony of witnesses, the State put forth its argument, stating that as part of the May 6, 2013, plea agreement, the State "agreed not to seek a sentence of natural life," and that instead, "the sentencing range is twenty years to sixty years." The State requested a sentence of 60 years. The defendant, in argument, requested a sentence of 20 years. Noting factors both in aggravation, and in mitigation, the trial judge sentenced the defendant to 47 years in

prison, followed by three years of mandatory supervised release. On August 19, 2013, the defendant filed a *pro se* "motion to rescind plea of guilt," wherein he claimed, *inter alia*, that he was not effectively represented by counsel. New counsel was appointed to represent the defendant.

¶ 8 On January 13, 2014, that counsel filed a motion to reduce sentence and a supplemental motion to withdraw plea of guilty. A hearing on the two motions was held that same day. Therein, the defendant testified that when discussing his case with defense counsel, Cathy MacElroy, the defendant believed, based upon what MacElroy told him, that he would "be getting anywhere between twenty and twenty-five years" imprisonment on his first degree murder charge. He testified that he did not have adequate time to speak with MacElroy in preparation for trial, and was not allowed "to go through" the discovery materials in his case. He was allowed to view the DVDs in his discovery materials, but not to review any paper reports. He testified that he filed a *pro se* motion wherein he asked the trial court to dismiss MacElroy for ineffective assistance. He testified that because he didn't "really have a criminal history other than" the present case, he relied upon MacElroy to explain "absolutely everything" to him about what was going on. He repeatedly sought continuances, because he felt he "wasn't ready or prepared for trial."

¶ 9 On cross-examination, he conceded that at the time he entered his plea of guilty, he was 24 years old and had his GED. He testified that the reason he believed he would receive a sentence of between 20 and 25 years for first degree murder was that MacElroy told him that if he took the plea deal, she would "make sure" he got such a sentence. He

conceded that in addition to viewing the DVDs, he received written transcripts of the interviews on the DVDs. He conceded that when he entered his plea, he was admonished by the trial judge that the "sentencing range was twenty to sixty years."

¶ 10 MacElroy then testified. She testified that she had been a public defender since November 2006, and had handled approximately 1000 adult criminal matters, including serving as first-chair on approximately 10 to 15 murder cases. She testified that in preparation for a trial in this case, she and her investigator both discussed the case with the defendant, and that she personally reviewed all the discovery materials in the case. She testified that she tried to negotiate a charge other than first degree murder in this case, but that the State was unwilling to do so. She therefore explained to the defendant that "there was no offer and that life was on the table." She testified that she reviewed all the evidence, filed motions, and explained to the defendant that she could not give him his discovery, because she was informed by other public defenders in her office that there were other inmates at the jail who "wanted to turn State's evidence," and that if the defendant had his discovery with him in the jail, those inmates "would see more intimate details and that they would have better facts to try to use against" him. She also worried that because the victim was a three-year-old child, the defendant's "life would be at risk if he had copies of" his discovery.

¶ 11 MacElroy testified that she "[a]bsolutely" informed the defendant that he did not have to plead guilty. She testified that the defendant told her that he wanted "to plead to something," and that she responded that because "the only offer from the State [was] life in prison," they "might as well set it for trial." MacElroy then testified about her

knowledge of the facts of this case, including the fact that she was aware that the defendant had made admissions to authorities about striking the victim "with his fists and with his hands as well as with the belt." She testified that with regard to a plea of guilty, she told the defendant that she had discussed the matter with the State and that the discussion was "a sentence range of twenty to sixty." She testified that because it was her opinion that the evidence was "overwhelmingly against" the defendant, and the defendant "couldn't account for discrepancies in parts of the evidence," she told him "that the odds were very much against him, that it was [her] belief that [they] likely [would] lose at trial, that he had a right to go to trial[,] but that he would be facing life if he went to trial and lost." She testified that she told the defendant the sentencing range and "predicted" a sentence of "forty to fifty" years if he entered a plea of guilty. She testified that she told the defendant that she "did not expect a twenty-year sentence," although she would argue for one. She testified that she told the defendant that the decision was his to make, but that because she "anticipated a sentence that was over double the minimum," she "wanted to make sure that he was fully aware with his eyes wide open when he decided whether or not to plead." When asked if she had ever assured the defendant that he would get a sentence of 20 to 25 years, MacElroy testified that she had "[a]bsolutely not," and had instead specifically told the defendant 40 to 50 years. With regard to continuances sought by the defendant, MacElroy testified that the defendant "had previously lots of times wanted to continue the case," because the defendant "did not want to go to trial and he did not want to plead guilty." She testified that she had thoroughly reviewed everything, and was prepared to go to trial. On cross-examination, MacElroy testified

that with regard to discovery materials, she "opened the file and read every page to" the defendant, as well as thoroughly going through everything else with him, including what would happen in the courtroom at each appearance.

¶ 12 No other witnesses were presented at the hearing. Following argument, the trial judge addressed the defendant, stating that he did not believe anyone promised the defendant 20 to 25 years, and that even if someone did promise that, he had personally admonished the defendant that "you were going to get up to sixty" years, and that the defendant had acknowledged that admonishment. In terms of credibility, the trial judge stated that he "absolutely" believed MacElroy's testimony, and that even if she had told the defendant 25 years, the trial judge "corrected it and said twenty to sixty." The trial judge also noted that he had asked the defendant if he had any questions, to which the defendant had responded, "no." With regard to discovery materials, he noted that he had the final say on the matter of whether inmates could keep their discovery materials with them at the jail, and that even if MacElroy had requested that the defendant do so, the trial judge would have refused that request, for "many of the reasons" MacElroy had mentioned. He pointed out that on the day the defendant entered his plea of guilty, "we had a jury waiting to come into the courtroom," and that the defendant could have gone to trial, but "chose to plead." The trial judge concluded that there was "absolutely no question" in his mind that the defendant's plea was knowing and voluntary. Accordingly, he denied the motion to set aside the guilty plea. He then requested arguments on the motion to reduce sentence, which he subsequently denied as well.

¶ 13 As the hearing neared completion, the defendant requested permission to file a *pro se* motion to vacate and void the judgment in this case. Subsequently, the trial judge allowed the defendant to file the *pro se* motion, despite the fact that the defendant was represented by counsel, and the trial judge ordered the State to respond within 90 days. No additional information about the defendant's *pro se* motion is found in the record on appeal prepared by the defendant in this case, although appellate counsel for the defendant suggests that the trial judge stayed the *pro se* motion until the completion of this timely appeal, which followed.

¶ 14 ANALYSIS

¶ 15 On appeal, the defendant contends his guilty plea was not knowing and voluntary because, according to the defendant, the trial judge relied upon a statute that had been held unconstitutional, and incorrectly admonished the defendant, pursuant to the statute, that the maximum potential sentence the defendant faced was a term of natural life imprisonment. Specifically, the defendant frames his claim as whether the trial judge complied with the admonishment requirements of Illinois Supreme Court Rule 402 (eff. July 1, 1997), which is an issue of law that this court reviews *de novo*. See, *e.g.*, *People v. Hall*, 198 Ill. 2d 173, 177 (2001). The State responds that the issue raised on appeal by the defendant has been forfeited, because it was never raised in the court below. Therefore, the State contends, the claim is reviewable only for plain error.

¶ 16 We begin with some general principles of law relevant to a defendant's request to withdraw his or her guilty plea. As courts of review in this state and elsewhere have repeatedly held, the entry of a plea of guilty is a grave and solemn act. See, *e.g.*, *People*

*v. Evans*, 174 Ill. 2d 320, 326 (1996). The act of entering a plea of guilty "is *not* a 'temporary and meaningless formality reversible at the defendant's whim.' " (Emphasis in original.) *Id*. (quoting *United States v. Barker*, 514 F.2d 208, 221 (D.C. Cir. 1975)). Therefore, one may not withdraw a guilty plea simply as a matter of right; instead, leave to withdraw a guilty plea is granted "as required to correct a manifest injustice." *Id*. That is because " 'plea bargaining, when properly administered, is to be encouraged.' " *Id*. at 325 (quoting *People v. Boyt*, 109 Ill. 2d 403, 416 (1985)). To ensure the proper administration of plea bargains, and that the entry of a plea of guilty is knowing and voluntary, the Illinois Supreme Court adopted Rule 402. See, *e.g.*, *People v. Pace*, 2015 IL App (1st) 110415, ¶ 51, *vacated on other grounds*, No. 120097 (Ill. Nov. 23, 2016) (supervisory order). Rule 402 requires that, before accepting a plea of guilty, a trial judge must, *inter alia*, admonish a defendant about the minimum and maximum sentences prescribed by law. *Id*.; see also Ill. S. Ct. R. 402(a)(2) (eff. July 1, 1997). Our courts have determined that literal compliance with the Rule 402 admonishments is not necessary to satisfy due process; instead, substantial compliance is sufficient. See, *e.g.*, *Pace*, 2015 IL App (1st) 110415, ¶ 52. Substantial compliance is shown if−despite a trial judge's failure to recite to a defendant, and ask a defendant if he or she understood, all the components of Rule 402(a)−the record affirmatively and specifically shows that the defendant understood them. *People v. Dougherty*, 394 Ill. App. 3d 134, 138 (2009). Each Rule 402 case "must be determined on its own peculiar circumstances," and when this court reviews the admonishments given pursuant to Rule 402, we therefore "consider the entire record in determining whether the accused voluntarily pled guilty." *Id*. at 139.

We are mindful of the fact that improper admonishments do not automatically establish grounds for the withdrawal of a guilty plea; the question is whether real justice has been denied or whether the defendant has been prejudiced by the inadequate admonishments. *Id*. The defendant bears the burden of showing prejudice. *Id*.

¶ 17 In the case at bar, the defendant posits that when the trial judge admonished the defendant regarding a maximum sentence of natural life in prison, the judge "was relying on 730 ILCS 5/5-8-1(a)(1)(c)(ii)," a provision which, according to the defendant, has been found to be unconstitutional and has not subsequently been reenacted. The defendant reasons that therefore he "was never subject to a term of natural life, and the [trial judge] erred in admonishing him as such." The defendant contends that his trial counsel also misinformed him that he faced the possibility of life in prison as a sentence if he went to trial. According to the defendant, because he was not correctly informed of the actual sentencing range he faced, "he could not possibly have knowingly pled guilty." The defendant further posits that had he "been properly admonished with respect to the sentencing range, he would not have pled guilty."

¶ 18 The State responds that, principles of forfeiture notwithstanding, the defendant cannot show that any error in admonishments occurred, or that if it did, he was prejudiced in any way. We agree with the State. We begin by reiterating key facts of this case: from December 12, 2012−the date on which the State filed a notice of intent to seek an enhanced sentence of natural life imprisonment, based upon the aggravating factor found

in "720 ILCS 5/9-1(a)[2](7)" (West 2012): the fact that the victim "was under 12 years of age," and that "the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty"−until May 6, 2013, the date the trial was to begin, the defendant was on notice that he faced life imprisonment as the result of a statute that was undeniably constitutional and undeniably an appropriate method by which the State was entitled to seek life imprisonment. This was a period of almost five months, and included the time during which the defendant alleges that his trial counsel told him, incorrectly, that he faced life imprisonment if he went to trial. In fact, trial counsel correctly informed the defendant that he faced life imprisonment if he went to trial. Only on May 6, 2013−the morning of the scheduled trial, and the date upon which the defendant ultimately entered his plea of guilty as a jury waited to be brought in for the trial−did the State file its amended notice of intent to seek an enhanced sentence of natural life imprisonment, this time based upon the aggravating factor found in 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2012): the fact that the defendant was "17 or more" years of age and that the victim was "under 12 years of age." Accordingly, the defendant's assertion on appeal that he "was never subject to a term of natural life" is simply incorrect as a factual matter, and the arguments flowing therefrom are without merit. Moreover, there is nothing in the record to indicate that the State, had the defendant objected to section 5-8-1(a)(1)(c)(ii) because of its purported constitutional infirmity, would not have simply refiled its previous notice

[2]As noted above, the parties agree that the section in question is actually found at 720 ILCS 5/9-1(b)(7) (West 2012).

of intent based upon sections 5-8-1(a)(1)(b) and 9-1(b)(7). We therefore find that the defendant has not met his burden of showing that he was prejudiced by the admonishments he received pursuant to Rule 402 with regard to the sentence he faced, and we do not believe real justice has been denied in this case. See *People v. Dougherty*, 394 Ill. App. 3d 134, 139 (2009).

¶ 19 We note as well that although the State substituted its proposed enhancement theory at the last minute, it is not clear that the trial judge was aware of the significance of the substitution, for the admonishment he gave the defendant−that if the defendant had gone to trial rather than pleading guilty, and had been found guilty at trial, the judge then "could have sentenced [the defendant] to prison for a determinate period of time between twenty years and natural life"−is congruent with the discretionary life term available under sections 5-8-1(a)(1)(b) and 9-1(b)(7), rather than the mandatory life term under section 5-8-1(a)(1)(c)(ii). Although the defendant contends in his reply brief on appeal that at the time he entered his plea of guilty, he believed he faced a mandatory life sentence if he lost at trial, this is another assertion of the defendant that simply is not supported by anything in the record on appeal. Moreover, this lack of factual support notwithstanding, the defendant has framed his argument on appeal on the basis of the admonishments he received, not on the basis of what he might or might not have believed subjectively in the absence of those admonishments, and the stark and simple fact remains, as explained above, that the defendant was admonished by the trial judge that he faced "between twenty years and natural life," not that he faced a mandatory life sentence. Based upon all of the foregoing, we again conclude that the defendant has not

met his burden of showing that he was prejudiced by the admonishments he received, and we again do not believe real justice has been denied in this case. See *People v. Dougherty*, 394 Ill. App. 3d 134, 139 (2009).

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 22 Affirmed.