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2017 IL App (3d) 150109-U

Order filed June 27, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0109
)	Circuit No. 10-CF-310
ANTHONY WOODARD, JR.,)	Honorable
Defendant-Appellant.)	Clark E. Erickson, Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Justice Wright, specially concurred.

ORDER

- ¶ 1 *Held:* The court erroneously relied on the facts of a codefendant's case in resentencing defendant.
- ¶ 2 Defendant, Anthony Woodard, Jr., appeals from the revocation of his probation and resentencing. Defendant argues that (1) resentencing is required because the court considered the factual basis of a codefendant's case in resentencing defendant, and (2) his fines must be vacated

because they were imposed after the court lost jurisdiction by the filing of the notice of appeal. We reverse and remand for resentencing.

¶ 3

FACTS

¶ 4

In July 2010, defendant was charged by indictment with residential burglary (720 ILCS 5/19-3 (West 2010)). On December 16, 2010, the case was called for the entry of a plea agreement. Defendant agreed to plead guilty in exchange for the State's recommendation of a five-year sentence cap. The court admonished defendant of his rights, and explained the charge and nature of the plea agreement. Defendant said that he understood his rights and was voluntarily entering the plea. The court gave defendant a written plea of guilty and waiver of rights form. The court temporarily continued the proceedings to allow defense counsel to review the forms with defendant. When the proceedings resumed, the State revised its plea offer to a recommendation for Treatment Alternatives for Safe Communities (TASC) probation. In response, defendant said that he still wanted to plead guilty in exchange for the State's revised recommendation.

¶ 5

Defendant explained to the court that he had entered the victim's apartment to look for money. Defendant said he did not take anything from the apartment, and that he was under the influence of drugs at the time of the burglary. Defendant did not remember the incident.

¶ 6

Following defendant's explanation of the facts of the case, the court expressed concern that defendant's case was not suitable for TASC probation. The court then reviewed the police report provided by the State. The report stated that an 85-year-old woman awoke at 12:20 a.m. to find that a male had entered her apartment through a window. The male had used a ladder to access the window. The male walked past the victim and let a second male into the apartment. One of the men held the victim while the other demanded money. Defendant claimed that the

police report was inaccurate. The court ultimately rejected the proposed plea agreement. The court said it would only accept a blind plea.

¶ 7 On January 14, 2011, the case was recalled for presentation of the plea agreement. Defense counsel said that in exchange for defendant's plea of guilty to the residential burglary, the State would recommend TASC probation. Defense counsel said defendant had "been found acceptable to TASC in this matter." The court advised defendant of the terms of the plea agreement and admonished defendant of his rights. Defendant said that he understood the charges and his rights, and he wanted to plead guilty. Defendant said that his aunt resided in the same apartment building where the burglary occurred. On the date of the incident, defendant went to his aunt's apartment while another individual went to a third-floor apartment. Defendant then went to locate the other individual in the upstairs apartment. The police arrived shortly after defendant entered the third-floor apartment.

¶ 8 During defendant's explanation of the facts, the court recalled that, in this case, one of the perpetrators entered the victim's apartment with a ladder. As the court reviewed the police report, it noted that an eyewitness saw two men enter the apartment with a ladder at 12:40 a.m. Defendant said that he did not know where the ladder accusation came from because he entered the apartment building through the front door and tried to locate his friend in the upstairs apartment. The court explained that the first intruder walked past the victim and opened the apartment door for defendant. The first intruder restrained the victim and repeatedly asked "[w]here's the money? Give me the money." Defendant then searched the apartment for money. The court found a factual basis for the plea and sentenced defendant to 60 months' TASC probation.

¶ 9 On April 25, 2014, the State filed the petition to revoke probation that is the subject of this appeal. The petition alleged that defendant had been charged with two counts of domestic battery. After a bench trial, the court found defendant guilty of the two counts of domestic battery and granted the State’s petition to revoke probation.

¶ 10 On January 28, 2015, the court conducted a resentencing hearing. The court asked the State to “remind” it of the facts in the underlying residential burglary. The State said:

“Actually, Judge, the victim was present at the house at the time this defendant entered the room. Basically, according to the victim, grabbed her and had her—either had her open the front door or he opened the front door, the co-defendant entered—”

The court then asked the State to read the victim’s statement, and the State said:

“Judge, basically she stated that she was this morning—and I’m not sure exactly what time it happened—she was lying on her couch watching T.V., fell asleep, she woke up and discovered a subject crawling through the living room window. I believe that was observed by people outside who did call the police at that time. She’s on the third floor and the guy has his entire body in the window and came in. She asked what he was doing, he opened the front door, and another individual came in. According to the report the guy that came into the window, which would be this defendant, had ahold of me, or being the victim, by the arm so I could move around, the statement states. As the guy was holding her, he was asking where the money was, give me the money. She stated she did not have any. And eventually the first person, which would be the [d]efendant, took some keys and an envelope with \$26 in it. And then while leaving the residence soon thereafter

the police caught them in close proximity to the residence. As stated, Judge, the [d]efendant basically admitted to his involvement in this offense.

*** He stated—he initially denied involvement. He went on to say that he intended to go inside and take some money from the lady who was living there. He admitted climbing up the ladder and crawling in the window, allowing Mr. Adams the co-defendant in the front door. He did state that he held the victim while Adams searched for money. He admitted that he asked the victim where the money was. And he denied taking the envelope and the keys, but the police found those items in his possession. That’s basically it, Judge.”

The court resentenced defendant to 10 years’ imprisonment for residential burglary. In pronouncing the sentence, the court noted that defendant had “committed a residential burglary by crawling into an occupied apartment and holding down an 85 year old woman.” The court further noted that “[n]obody at the age of 85 needs to be man-handled in their own apartment by a young person drunk or otherwise.”

¶ 11 Defendant filed a motion to reconsider sentence in which he argued that his sentence was excessive. During the hearing on the motion, the court recalled that the underlying offense “was that [defendant] went into an elderly woman’s apartment, committed a burglary late at night.” The court also read the following portion of the victim’s statement:

“This morning I was lying on my cot in my living room watching TV and fell asleep.

Sometime after I had fallen asleep, I woke and discovered a subject crawling into my living room window. I am on the third floor. And the guy had his entire upper body in the window and finally all the way in. I asked him what he was doing, and he walked passed me and opened my front door and another black male walked in. The guy that came in the window had ahold of me by my arms, so I could move around. All the guy holding me said was where is the money, give me the money. I said I did not have any. I got a good look at the first person that was holding me but never got a very good look at the second that came through the door. The second was rummaging through my apartment. He went into my two bedrooms, ransacked them, looking for money. The first person took an envelope and some keys. I know this because I had \$54.88. The subject holding me saw the police outside and told the second person. They ran out of the apartment. The police later came and showed me two black males. I was able to identify the first person who came in.”

The court further said: “[y]ou said I didn’t know the age of the victim. Well, you sure knew it after you came through the window and immediately before you grabbed her. And as you were holding her, you knew her age, sir.” Defendant responded that he had not touched the victim, and the court said “this isn’t a trial. You already pled guilty.” The court denied defendant’s motion to reconsider sentence.

¶ 12

ANALYSIS

¶ 13

Defendant argues that the State failed to produce evidence of the underlying offense at the sentencing hearing, which caused the court to sentence defendant based on the actions of the codefendant. That is, the court relied on the facts of the codefendant’s case, who, according to

the factual basis for the plea in this case, entered the victim's apartment through a third-story window, allowed defendant into the apartment, and restrained the victim. With regard to the instant defendant, the factual basis alleged that he entered the apartment through the door and searched the apartment for money. Defendant acknowledges that he has forfeited this issue, but he argues that it is reviewable as second prong plain error. We find that the facts the court relied on in resentencing defendant were erroneously derived from the acts of a codefendant, and this error, which impugned the integrity of the sentencing hearing, is plain error.

¶ 14 An error that is otherwise forfeited may only be reviewed under the plain-error doctrine. The first step of plain-error review is to determine whether error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). We begin our analysis by determining whether the court considered the correct facts when it resentenced defendant.

¶ 15 The Illinois Constitution provides that “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, § 11. “A reasoned judgment as to the proper penalty to be imposed must therefore be based upon the particular circumstances of each individual case.” *People v. Saldivar*, 113 Ill. 2d 256, 268 (1986). The court’s sentencing judgment incorporates “ ‘ ‘the nature and circumstances of the offense, including the nature and extent of each element of the offense as committed by the defendant.’ ’ ” *Id.* at 268-69 (quoting *People v. Hunter*, 101 Ill. App. 3d 692, 694 (1981), quoting *People v. Tolliver*, 98 Ill. App. 3d 116, 117-18 (1981)). Public policy requires that a defendant’s sentence be varied in accordance with the circumstances of the offense committed, as certain criminal conduct may warrant a harsher penalty than other conduct even though both are punishable under the same statute. *Id.* at 269.

¶ 16 The factual basis at the plea hearing established that defendant entered the victim’s apartment through the front door. According to the police report read by the court, the codefendant entered the apartment through a window and opened the apartment door for defendant. The codefendant restrained the victim while defendant searched the apartment. At the resentencing hearing, the State transposed the roles of defendant and the codefendant. The State told the court that defendant had entered the apartment through a window, opened the door for the codefendant, and restrained the victim. The State also said that defendant had admitted these facts to the police after his arrest. While determining defendant’s sentence, the court expressly relied on the State’s erroneous recitation of the facts. Therefore, we find that the court erred in basing its sentence on the erroneous facts presented by the State. This error was particularly detrimental to defendant as the court cited the facts in support of defendant’s sentence and discussed the facts during the hearing on defendant’s motion to reconsider sentence. *Supra* ¶¶ 7-8, 10.

¶ 17 Defendant argues that this otherwise forfeited error is reversible under the second prong of the plain-error doctrine because it affected the integrity of the judicial process. The supreme court has equated the second prong of plain-error review with structural error such that “automatic reversal is only required where an error is deemed ‘structural,’ *i.e.*, a systemic error which serves to ‘erode the integrity of the judicial process and undermine the fairness of the defendant’s trial.’ ” *People v. Glasper*, 234 Ill. 2d 173, 197-98 (2009) (quoting *People v. Herron*, 215 Ill. 2d 167, 186 (2005)).

¶ 18 We find that the court’s sentencing error undermined the fairness of the sentencing hearing. It is clear from the record that defendant was not sentenced on the particular facts of his case. The erroneous facts provided by the State portrayed defendant as the more violent offender,

which influenced the court's sentencing calculus as it believed that defendant had entered the victim's apartment through a window, allowed a second individual into the apartment, and physically restrained the elderly victim. Logically, these erroneous facts subjected defendant to a greater sentence. As a result, the erroneous facts prevented the court from tailoring defendant's sentence to the seriousness of the offense and the particular circumstances of the case. Ill. Const. 1970, art. I, § 11; *Saldivar*, 113 Ill. 2d at 268. We find that this error is of a constitutional magnitude and impugned the integrity of defendant's sentencing hearing. Accordingly, defendant's sentence is subject to reversal under the second prong of the plain-error doctrine.

¶ 19 In coming to this conclusion, we note that defendant raises a second issue on appeal that contests the validity of certain fines imposed by the circuit court. As defendant's fines are part of his criminal sentence (*People v. Johnson*, 2011 IL 111817, ¶ 16 (a fine is part of a sentence imposed on a person convicted of a criminal offense)), our resolution of the first issue has also reversed the fines imposed. Therefore, on remand, we direct the court to: (1) expressly impose any and all fines in a written order that bears the court's signature; (2) include the amount of each fine in the written order; (3) provide statutory authority for each fine; and (4) impose any fines before defendant files a notice of appeal.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Kankakee County is reversed and remanded.

¶ 22 Reversed and remanded.

¶ 23 JUSTICE WRIGHT, specially concurring.

¶ 24 I agree that defendant is entitled to a new sentencing hearing because the State mistakenly recited a factual basis for the 2015 proceeding that clearly contradicts the facts presented by the State to the trial court in 2011. Both versions cannot be true. The only remedy

to correct this unintentional misstatement is to remand for a new sentencing hearing. I agree plain error is present with respect to the sentencing hearing following the revocation of the order placing defendant on TASC probation.

¶ 25 I write separately on the issue related to fines and costs. First, I note the fines and costs were arguably imposed solely as a condition of probation. In this case, the trial court revoked the order of probation on October 3, 2014. This court has held that once a trial court revokes a defendant's probation, the prior financial conditions of probation, such as the payment of restitution, lapse unless the financial consequences are included in the new sentencing order. *People v Moore*, 2013 IL App (3d) 110474.

¶ 26 Since the trial court will be conducting a new sentencing hearing on remand, I would direct the trial court to consider whether the 2011 monetary judgment should be vacated, rather than amended, as indicated by the 2015 order addressing monetary issues. However, I agree the fines and costs, if any, imposed by the trial court on remand should be subject to a written order that provides the statutory authorization of each monetary consequence imposed by the court.