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2017 IL App (3d) 160373-U

Order filed July 20, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-16-0373
DAUGHLTON L. CALVIN,)	Circuit Nos. 12-CF-351 and 12-CF-366
Defendant-Appellant.)	Honorable Paul P. Gilfillan, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err by sentencing defendant to serve consecutive sentences following defendant's conviction for two counts of drug-induced homicide.
- ¶ 2 Defendant, Daughlton L. Calvin, appeals from his resentencing following his conviction of two counts of drug-induced homicide. He argues that the circuit court abused its discretion by imposing consecutive sentences. We affirm.

FACTS

¶ 3

¶ 4 Defendant was charged in separate cases with two counts of drug-induced homicide (720 ILCS 5/9-3.3(a) (West 2010)). The two cases were subsequently consolidated for a bench trial. Following a trial on the merits, the court found the State's evidence established, beyond a reasonable doubt, defendant knowingly delivered methadone to Travis Whiteman and Cody Schillinger and that Whiteman and Schillinger both died after ingesting the methadone defendant provided.¹

¶ 5 The evidence adduced at trial established that on May 29, 2011, defendant and three of his friends stole a purse belonging to Heather Wise. The stolen purse contained five bottles of methadone, 20 Xanax pills, and some cash. When defendant and his friends divided the contents of the purse, defendant received a portion of the stolen methadone and some cash. Defendant took his share of the methadone to Danielle Martin's house, where defendant shared some of the methadone with a number of people, including Schillinger. At approximately 7 a.m. on May 30, 2011, defendant and Schillinger hid the methadone that had not been consumed.

¶ 6 At approximately 1 p.m., defendant was arrested at Martin's house for stealing Wise's purse. Defendant spent the night of May 30 in jail.

¶ 7 When defendant was released from jail on the morning of May 31, he and Schillinger retrieved the hidden methadone. Defendant and Schillinger met up with Whiteman. During this encounter, defendant provided Whiteman with 30 milliliters of methadone. Whiteman consumed the entire amount while he was with defendant. Whiteman died of a methadone overdose that night. Defendant and Schillinger also consumed methadone on May 31, before picking up Martin. At some point after joining defendant and Schillinger, Martin noticed defendant "[k]ind

¹This court previously summarized the facts and procedural history of this case in great detail on defendant's original direct appeal. *People v. Calvin*, 2015 IL App (3d) 130505-U. Only those details relevant to the present disposition need be repeated here.

of half asleep in the passenger seat of the car.” Defendant began to make “funny gurgling noises.” Martin could tell that defendant “was in very bad condition.” Based on these observations, Schillinger drove immediately to the hospital. Defendant was hospitalized for over-consumption of methadone, but survived.

¶ 8 At the hospital, Schillinger told Martin that he had not taken any drugs. Schillinger also told his father and stepmother that he had not taken anything. However, Schillinger told police that he had ingested some tramadol. Later in the night, once he was home, Schillinger admitted to his father and stepmother that he had taken tramadol, but denied consuming methadone. Schillinger died the next morning from the combined effects of methadone and a gastrointestinal hemorrhage.

¶ 9 When originally imposing defendant’s sentence, the trial court found that defendant’s conduct caused or threatened serious harm to both Whiteman and Schillinger before sentencing defendant to serve terms of 12 and 15 years’ imprisonment for both convictions. While the court found the sentences were not mandatorily consecutive, the court exercised its discretion by ordering the sentences to run consecutively. Defendant appealed.

¶ 10 In the first appeal, this court vacated defendant’s sentences because the circuit court considered a number of improper aggravating factors, including the threat of serious harm. *People v. Calvin*, 2015 IL App (3d) 130505-U, ¶¶ 23-42. Noting that serious harm was implicit in the offense of drug-induced homicide, this court remanded the matter for a new sentencing hearing.

¶ 11 On remand, the State advised the circuit court that the statute mandated defendant serve his two sentences consecutively. Mindful of the outcome of the first appeal, the court rejected the State’s assertion that consecutive sentences were mandated by stating:

“The fact that two people died in these incidents cannot be *** a factor to be used in aggravation since it’s built in already to the Class X sentencing scheme, so similarly, to use the fact that severe bodily injury or death was inflicted in this case, it seems incongruent then to use it as an aggravating factor per se to make these sentences mandatorily consecutive ***.”

¶ 12 On remand, the trial court ordered defendant to serve two 10-year terms of imprisonment consecutively on a permissive basis. Later, when denying defendant’s motion to reconsider the sentences imposed, the court declared: “[I]t is the opinion and finding of the Court that consecutive sentences are required to protect the public from further criminal conduct by yourself even today.”

¶ 13 ANALYSIS

¶ 14 In this appeal, defendant does not challenge the trial court’s determination that consecutive sentences were not required as a matter of law. However, defendant asserts the permissive consecutive sentences the court imposed were the result of an abuse of judicial discretion. In essence, defendant challenges the trial court’s finding of fact that consecutive sentences were necessary to protect the public in this case.

¶ 15 Further, defendant contends there are two procedural roadblocks this court should address. First, defendant contends that the law of the case applies. The law of the case doctrine bars the relitigation of an issue previously examined by this court in the same case. *People v. Tenner*, 206 Ill. 2d 381, 395 (2002). The first appeal involved an issue related to the double “enhancement” of a sentence by considering the threat of serious harm as an aggravating factor when the same factor was implicit in the nature of the offense of drug-induced homicide. See *Calvin*, 2015 IL App (3d) 130505-U, ¶ 28.

¶ 16 In this appeal, defendant recognizes the existence of severe bodily injury, a concept relevant to the application of a consecutive sentence, is not “exactly the same” as the concept of threatened serious harm reviewed by this court in the prior appeal. Yet, in spite of the legal distinction between these two concepts, defendant broadly, but vaguely, declares: “This issue has been decided by this Court, and the State cannot now re-litigate the issue.”

¶ 17 Defendant’s argument is not persuasive because our supreme court has explicitly held the imposition of consecutive sentences is not sentence “enhancement” at all and cannot be attacked based on a legal theory related to double enhancements. *People v. Phelps*, 211 Ill. 2d 1, 13-15 (2004). In *Phelps*, the court wrote: “To be sure, the consecutive sentencing order was premised on the fact that defendant ‘inflicted severe bodily injury’ (see 730 ILCS 5/5-8-4(a) (West 1996)), an element of both aggravated kidnapping and heinous battery. *Phelps*, 211 Ill. 2d at 14. The *Phelps* court pointed out that an order that two sentences be served consecutively does not enhance a sentence, but rather merely “ ‘determines only the manner in which a defendant will serve his sentences for multiple offenses.’ ” *Id.* (quoting *People v. Carney*, 196 Ill. 2d 518, 532 (2001)). Therefore, we reject defendant’s theory that the law of the case doctrine prevents this court from considering the State’s argument concerning mandatory consecutive sentences.

¶ 18 Second, defendant claims this court may not consider the State’s argument that consecutive sentences were proper, as a matter of law, because this approach is contrary to the holding in *People v. Castleberry*, 2015 IL 116916. In *Castleberry*, the court held the merits of the State’s assertion that the court’s sentence challenged by defendant on appeal was unlawfully lenient could only be raised by the State in a mandamus action. The court observed the State could not “attack the decree” in defendant’s appeal in that case to either enlarge the State’s rights or lessen the rights of a defendant. *Id.* ¶ 22.

¶ 19 Unlike *Castleberry*, the State is not attacking the trial court’s decree imposing consecutive sentences on remand. Instead, the State argues the trial court’s sentence was legally correct, even though the court’s rationale may have been faulty. The State argues the sentence for each separate conviction must be served consecutively as a matter of law. We agree.

¶ 20 It is the circuit court’s ultimate judgment, not its rationale, that is before us on appeal. *People ex rel. Waller v. 1990 Ford Bronco*, 158 Ill. 2d 460, 463 (1994). The opinion in *Castleberry* recognizes this long-established principle by stating: “As the appellee in the appellate court, the State could, without filing a cross-appeal, raise any argument of record in support of the circuit court’s judgment. [Citations]” *Castleberry*, 2015 IL 116916, ¶ 22. It is well accepted that an appellate court such as ours “may affirm the trial court’s judgment on any ground warranted, regardless of whether the trial court relied on it and regardless of whether the trial court’s reasoning was correct.” *People v. Campos*, 349 Ill. App. 3d 172, 177 (2004) (citing *Waller*, 158 Ill. 2d at 463). For these reasons, we conclude the decision in *Castleberry* allows this court to affirm the punishment imposed by the trial court on any ground that is evident of record.

¶ 21 Next, we consider the merits of defendant’s contention that he should be allowed to serve both sentences concurrently, rather than on a consecutive basis. The State opposes defendant’s request to lessen his punishment to allow him to serve both sentences for separate deaths on a concurrent basis.

¶ 22 Section 5-8-4(d)(1) of the Unified Code of Corrections (Code) states:

“(d) Consecutive terms; mandatory. The court shall impose consecutive sentences in each of the following circumstances:

(1) One of the offenses for which the defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury.” 730 ILCS 5/5-8-4(d)(1) (West 2010)

Both sides recognize that a drug-induced homicide is a Class X felony and death constitutes a severe bodily injury.

¶ 23 However, defendant contends the evidence established each victim, rather than defendant, “inflicted” the uncontested severe bodily injuries. In support of this theory, defendant emphasizes that each victim voluntarily consumed the methadone defendant merely provided. Based on this fact, defendant argues he did not personally “inflict” the severe bodily injuries upon each victim and was not eligible for a mandatory consecutive sentence based on this consideration.

¶ 24 When construing a statute, our primary aim is to give effect to the intent of the legislature. *People v. Pullen*, 192 Ill. 2d 36, 42 (2000). Contrary to defendant’s logic, a self-inflicted death would be more accurately described as a drug-induced suicide, rather than a drug-induced homicide.

¶ 25 The term homicide is defined as “[t]he act of purposely, knowingly, recklessly, or negligently causing the death of another human being.” Black’s Law Dictionary 851 (10th ed. 2014). In this case, the statute assigns criminal liability to the person that delivers an illegal substance to “another” resulting in the death of “any person” that is “caused” by the “injection, inhalation, absorption, or ingestion” after delivery. (720 ILCS 5/9-3.3(a) (West 2010)). Here, the victims qualify as “any” person that died as a result of the ingestion of the substance this defendant personally delivered to another.

¶ 26 The statute assigns causation of a death to the person who delivered the controlled substance that was fatally ingested by another. The elements of drug-induced homicide do not require proof that the offender placed the pills in the deceased's mouth or pushed the plunger on a syringe inserted into the deceased's vein. Instead, the statute assigns criminal liability for each death to the person that delivered the drugs causing death.

¶ 27 It appears to this court that the legislators sought to assign criminal liability to the person who delivered the fatal dose of methadone to the deceased victims in this case, without assigning any blame to each victim for voluntarily or involuntarily ingesting the substance delivered. The facts of this particular case demonstrate the logic of the legislature's reasoning as a method to decrease drug-related deaths. Here, if defendant had not delivered the methadone, neither victim would have had an opportunity to voluntarily consume the substance that directly caused their deaths. Defendant would have this court conclude he participated in a drug-related suicide. Such is not the case. Neither victim intended to end their life, but death was inflicted by the defendant's decision to place the controlled substance in the hands of each victim. Consequently, we conclude the court order requiring defendant to serve both sentences consecutively should be affirmed.

¶ 28 CONCLUSION

¶ 29 The judgment of the circuit court of Tazewell County is affirmed.

¶ 30 Affirmed.