

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (3d) 160778-U

Order filed September 8, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-16-0778
TINA PHILLIPS,)	Circuit No. 16-CF-31
Defendant-Appellant.)	Honorable Gregory G. Chickris, Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court. Justices Schmidt and Carter concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to convict the defendant of unlawful possession of a controlled substance. We decline to address the defendant’s ineffective assistance of counsel claim because it relies on matters outside of the record.

¶ 2 The defendant, Tina Phillips, appeals her conviction arguing the evidence is insufficient to prove her guilt beyond a reasonable doubt. Alternatively, the defendant argues trial counsel provided ineffective assistance.

¶ 3 **FACTS**

¶ 4 The State charged the defendant with unlawful possession of a controlled substance (alprazolam) (720 ILCS 570/402(c) (West 2016)). The defendant was appointed counsel from the public defender's office. The cause proceeded to a bench trial.

¶ 5 At trial, Officer Philip Ledbetter, testified that he stopped the defendant's vehicle for improper lane usage. While the defendant was searching for her driver's license, Ledbetter observed a plastic bag containing a white powdery substance in the defendant's purse. The substance was partially crushed. Ledbetter inspected the bag and asked the defendant to identify the substance. The defendant said the substance was her alprazolam. Ledbetter then searched the defendant's vehicle and purse. Ledbetter found a straw that was cut off in the defendant's purse.

¶ 6 According to Ledbetter, the defendant said that she had a prescription for alprazolam, but did not have it with her. Although Ledbetter did not test the straw for the presence of narcotics, Ledbetter sent the bag containing the white substance for testing. The test revealed the presence of alprazolam.

¶ 7 The defendant testified on her own behalf. The defendant acknowledged that the substance in question was alprazolam, but that she had a prescription for the drug. The defendant stated that she had a prescription at the time of the traffic stop, but currently no longer had one because she had lost her job and medical insurance. The last time she refilled the prescription was January 2016. The defendant usually filled her prescription at a Hy-Vee in Davenport, Iowa.

¶ 8 During the defendant's testimony, the court interjected by asking if defense counsel intended to call a physician to testify as to the defendant's claim that she was prescribed alprazolam. Counsel informed the court that the defendant's medical information, including the name of her physician, had not been provided to counsel. The defendant replied that she gave counsel her prescription information around the time of her first court appearance. The court

continued the trial and appointed an investigator to accompany the defendant to retrieve her prescription records.

¶ 9 When the parties returned to court, a different attorney from the public defender's office appeared on the defendant's behalf. Counsel informed the court that the court-appointed investigator did obtain records from the defendant's pharmacy, but the defendant's trial counsel was ill and had not had an opportunity to review the documents. Counsel requested a continuance because he was unfamiliar with the defendant's case and could not represent the defendant adequately. Over the State's objection, the court granted the defense's motion to continue the trial.

¶ 10 When the trial recommenced, the defendant's original trial counsel appeared. Counsel rested without presenting any additional evidence. The circuit court found the defendant guilty of unlawful possession of a controlled substance. The court sentenced the defendant to 30 months' probation with a 180-day suspended sentence. The defendant did not file any posttrial motions.

¶ 11 ANALYSIS

¶ 12 I. Sufficiency of the Evidence

¶ 13 Initially, we summarily reject the State's argument that the defendant forfeited her challenge to the sufficiency of the evidence because she failed to file a posttrial motion. Our supreme court has specifically held that a defendant does not forfeit a sufficiency of the evidence argument despite the defendant's failure to file a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 190 (1988).

¶ 14 We now turn to the substance of the defendant's argument. The defendant concedes the evidence is sufficient to establish that she possessed a controlled substance. However, the defendant argues she established the affirmative defense that she had a prescription for the

substance at the time of her arrest. The defendant contends the State failed to meet its burden in disproving her defense. Therefore, the defendant asserts the evidence is insufficient to establish that she *unlawfully* possessed the controlled substance.

¶ 15 In considering the defendant's claim we note that it is not the function of a reviewing court to retry the defendant. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). "Rather, in a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 16 Section 402(a) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/402 (West 2016)) provides: "[e]xcept as otherwise authorized by this Act, it is unlawful for any person knowingly to possess a controlled *** substance." The Act provides an exemption authorizing lawful possession by an "ultimate user *** pursuant to a lawful prescription of a practitioner." 720 ILCS 570/302(c)(3) (West 2016). However, "[i]t is not necessary for the State to negate any exemption or exception in [the] Act in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under [the] Act. [Rather, t]he burden of proof of any exemption or exception is upon the person claiming it." 720 ILCS 570/506 (West 2016). Thus, a defendant charged with unlawful possession of a controlled substance must produce evidence that her possession was pursuant to a prescription, which then places the burden on the State to disprove the defense beyond a reasonable doubt. *People v. Kolichman*, 218 Ill. App. 3d 132, 144 (1991).

¶ 17 Here, the defendant does not dispute that alprazolam is a schedule IV drug under the Act. *People v. Kathan*, 2014 IL App (2d) 121335, ¶ 26. Therefore, once the defendant admitted to possessing alprazolam, the State met its burden of showing that the defendant possessed a

controlled substance. The burden then shifted to the defendant to prove the exemption authorizing lawful possession pursuant to a lawful prescription of a practitioner. 720 ILCS 570/302(c)(3) (West 2016). The defense did not present any evidence by way of the defendant's treating physician or prescription history to show that the alprazolam in her possession was pursuant to a lawful prescription. The only evidence presented showing the defendant had a prescription for alprazolam was the defendant's own self-serving testimony. However, "the trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt." *Siguenza-Brito*, 235 Ill. 2d at 229. In finding the defendant guilty, the court did not believe the defendant's self-serving testimony. We will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or credibility of witnesses. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). Because the State showed that the defendant possessed a controlled substance, and the defendant failed to meet her burden of proving that an exemption applied, there was sufficient evidence of unlawful possession.

¶ 18

II. Ineffective Assistance of Counsel

¶ 19

Alternatively, the defendant contends trial counsel provided ineffective assistance for failing to investigate and call additional witnesses to support the prescription drug defense. We decline to address the merits of the defendant's argument. Where the disposition of a defendant's ineffective assistance of counsel claim requires consideration of matters beyond the record on direct appeal, it is more appropriate that the defendant's contentions be addressed in a proceeding for postconviction relief, and this court may properly decline to adjudicate the defendant's claim in her direct appeal from her criminal conviction. See *People v. Morris*, 229 Ill. App. 3d 144, 167 (1992). Courts allow postconviction petitions where resolution of the issues

requires an inquiry into matters outside the common law record. *People v. Smith*, 268 Ill. App. 3d 574, 578 (1994).

¶ 20 To support her claim, the defendant calls our attention to her testimony that she had a prescription for alprazolam and had provided trial counsel with her prescription information. The defendant also relies on the fact that the court-appointed investigator did obtain her prescription records and provided it to trial counsel. However, the record does not disclose whether counsel reviewed this information in order to present it as a defense at trial. Moreover, neither the testimony of the defendant's treating physician nor evidence of the defendant's prescription records are part of the report of the proceedings. In other words, the defendant's argument is based on the assumptions that the prescription records exist and an examination of those records or testimony by her treating physician would corroborate her claim. Because none of these facts are part of the record, we cannot adequately dispose of the defendant's contention. The defendant's claim, therefore, is more properly presented in a petition for postconviction relief. See *Morris*, 229 Ill. App. 3d at 167.

¶ 21 CONCLUSION

¶ 22 The judgment of the circuit court of Rock Island County is affirmed.

¶ 23 Affirmed.