2017 IL App (4th) 141013-U

No. 4-14-1013

FILED
February 8, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
CHRISTOPHER A. AUSTIN,	)	No. 13CF804
Defendant-Appellant.	)	
	)	Honorable
	)	John W. Belz,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed, concluding defendant was provided ineffective assistance by his trial counsel.

¶ 2 Following a September 2014 trial, a jury found defendant, Christopher A. Austin, guilty of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(d) (West 2012)) and unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2012)). In November 2014, the trial court sentenced defendant to concurrent prison terms of 12 years and 3 years.

¶ 3 Defendant appeals, arguing his trial counsel provided ineffective assistance by (1) presenting a theory of defense which left the jury with no choice but to convict, and (2) allowing the State to unfairly bolster its case through inadmissible testimony and argument regarding a

confidential informant's prior involvement in other cases. In the alternative, defendant asserts his sentence is excessive and violates the one-act, one-crime doctrine. We reverse and remand for a new trial.

¶ 4 I. BACKGROUND

¶ 5 A. Indictment

¶ 6 In September 2013, the State charged defendant by indictment with (1) unlawful possession with intent to deliver between 1 and 15 grams of a substance containing cocaine (720 ILCS 570/401(c)(2) (West 2012)) (count I), a Class 1 felony; and (2) possession of less than 15 grams of a substance containing cocaine (720 ILCS 570/402(c) (West 2012)) (count II), a Class 4 felony. Count I was later amended to charge defendant with unlawful possession with the intent to deliver any amount of a controlled substance containing cocaine (720 ILCS 570/401(d) (West 2012)), a Class 2 felony.

¶ 7 B. Jury Trial

¶ 8 In September 2014, the trial court held a jury trial. In opening statements, the State argued, in relevant part, the evidence would demonstrate defendant possessed crack cocaine "with the intent to deliver it to another individual." In response, defense counsel told the jury it would be instructed possession with intent to deliver meant "possessing with the intent to sell something," and argued, while "the evidence may show *** my client was in possession of cocaine, he did not sell it or intend to sell it."

¶ 9 1. *State's Case in Chief*

¶ 10 The State elicited testimony from (1) Detective Kenneth Karhliker, (2) confidential informant Tracy Jo Schingel, (3) Deputy Michael Long, and (4) Lieutenant Robert Steil. The following is a summary of the testimony elicited and evidence presented.

¶ 11 In April or May 2013, Detective Karhliker began working with confidential informant Schingel. Schingel became a confidential informant after being arrested for possessing crack cocaine. She agreed to work for the sheriff's department in consideration of the charges pending against her. Prior to the instant cause, Schingel was involved in three investigations where she was tasked with purchasing crack cocaine. The first case led to the recovery of a significant amount of drugs and a firearm. The other two investigations led to the recovery of smaller amounts of drugs. Karhliker testified the information Schingel previously provided was "accurate and reliable and truthful." Schingel's charges were dropped following the first successful arrest based on her serving as a confidential informant, and she was then paid $50 for each subsequent arrest, including defendant's.

¶ 12 Schingel testified she had smoked crack cocaine every other weekend for four to five years. She last smoked crack cocaine approximately two weeks before her involvement in defendant's investigation. Schingel acknowledged smoking crack cocaine during the period when she was involved with prior investigations for the sheriff's department but asserted she was never under the influence while actually performing services for the department.

¶ 13 On June 18, 2013, Detective Karhliker and Schingel made arrangements to purchase crack cocaine from an individual Schingel knew as "Dough boy," later identified as defendant. Schingel called defendant from inside Karhliker's vehicle in Karhliker's presence. Schingel requested to purchase an "eight-ball" of crack cocaine. Karhliker heard Schingel ask to

purchase an "eight-ball" of crack. Karhliker indicated an "eight-ball" of crack weighed about 3.5 grams, but typically drug dealers would short their customer and only give 2.5 grams. Schingel testified defendant indicated she could purchase an "eight-ball" for $250. Schingel suggested they meet at a motel, but defendant directed Schingel to meet him at Jamal's, a convenience store.

¶ 14 Karhliker provided Schingel with $250 of official advanced funds for the purchase of 3.5 grams of crack cocaine. Karhliker planned for Schingel to complete the transaction either (1) inside his vehicle, (2) through the window of defendant's vehicle, or (3) inside defendant's vehicle. Schingel maintained the plan was for her to complete the transaction through the window of defendant's vehicle or inside defendant's vehicle.

¶ 15 Shortly after Schingel's phone call, Karhliker and Schingel drove to Jamal's in Karhliker's vehicle. Approximately 30 minutes after Karhliker and Schingel arrived at Jamal's, defendant arrived and parked his vehicle next to Karhliker's vehicle. Karhliker testified defendant motioned for Schingel to come to his vehicle. Schingel testified she approached defendant's vehicle without defendant having first made any motions for her to do so. Schingel entered the passenger side of defendant's vehicle. After Schingel entered defendant's vehicle, defendant drove away. Karhliker, concerned for Schingel's welfare, contacted surveillance deputies and detectives in the area and requested defendant's vehicle be stopped.

¶ 16 After defendant drove out of Jamal's parking lot, Schingel observed drugs "sitting on [defendant's] left hand on his left leg." Shortly thereafter, Deputy Long activated his lights to execute a traffic stop of defendant's vehicle. Schingel testified, after defendant saw the police

car, he put the drugs somewhere to his left and out of sight, and asked Schingel if she "was police." Schingel responded negatively and told defendant, "You're the police."

¶ 17 Defendant stopped his vehicle approximately two blocks from Jamal's. Defendant and Schingel were removed from the vehicle. Schingel reported to Karhliker she observed crack cocaine in defendant's possession but was unable to complete the transaction. Lieutenant Steil questioned defendant about whether he possessed any contraband, to which defendant indicated he had a bag of "weed" in his pocket. Steil proceeded to complete a search of defendant's person. Defendant was wearing loose pants and boxer shorts, which were hanging out above his pants. Steil pulled back on the boxer shorts and observed a plastic Baggie sticking out from defendant's behind. Steil retrieved the bag, which was later determined to contain 7.1 grams of a substance containing cocaine. The crack cocaine was contained in one large bag. Defendant was also found in possession of $27. Karhliker discovered a cell phone located in defendant's vehicle by the driver's seat. Karhliker dialed the number Schingel had earlier called to set up the meeting with defendant, which caused the recovered phone to ring. On this evidence, the State rested.

¶ 18 During the State's case, the trial court questioned defense counsel whether defendant intended to testify. Defense counsel responded she was not sure whether defendant had made a decision but he was leaning toward not testifying as of the previous day. At the conclusion of the State's case, defense counsel indicated defendant wished to testify.

¶ 19 2. *Defendant's Case in Chief*

¶ 20 Defendant testified, on the morning of June 18, 2013, Schingel called his cell phone and stated she had a friend in town who wanted to party. Defendant, who admittedly had

smoked approximately 2.5 grams of crack cocaine daily for about six years, understood Schingel's statement as meaning she and her friend wanted to smoke crack cocaine with him. Defendant told Schingel he only wanted to party with her as he did not like to get high around new people. Schingel agreed and asked to meet at a hotel, but defendant instead made plans to pick her up at Jamal's and then leave.

¶ 21 Later that day, defendant drove to Jamal's. After arriving at Jamal's, defendant observed Schingel standing outside the passenger door of another vehicle. Schingel entered defendant's vehicle, and defendant drove away, intending to drive to a nearby park to smoke. Before they reached the park, an unmarked police vehicle turned on its emergency lights. Defendant asked Schingel if she had set him up.

¶ 22 After being pulled over, several police officers arrived on the scene and ordered defendant out of his vehicle. The officers asked defendant if he had any contraband, to which he responded he had cannabis in his front pocket. Crack cocaine and $27 were also discovered on his person. Defendant did not tell the officer about the crack cocaine because he did not want to be caught with it in his possession.

¶ 23 Defendant testified Schingel never asked to purchase, nor did he offer to sell, crack cocaine. Defendant noticed Schingel had a ball of money in her hand, but she did not offer the money to him. Defense counsel proceeded to question defendant as follows:

> "[DEFENSE COUNSEL]: Did you ever share your drugs with other people?
>
> [DEFENDANT]: Yes, I did.

[DEFENSE COUNSEL]: Did you intend to share your drugs with [Schingel]?

[DEFENDANT]: Yes, I did.

[DEFENSE COUNSEL]: When had you acquired or purchased the seven grams?

[DEFENDANT]: Like two or three days before we was going to party.

[DEFENSE COUNSEL]: On June 18, 2013, you were in possession of crack?

[DEFENDANT]: Yes, ma'am.

[DEFENSE COUNSEL]: Did you at any time on that day possess it with the intent to sell it or deliver it to someone else?

[DEFENDANT]: No I didn't.

[DEFENSE COUNSEL]: What were you going to do with it?

[DEFENDANT]: We was going to smoke it with [Schingel]."

¶ 24 On cross-examination, defendant denied Schingel ever asked him for an "eight-ball" or that they discussed a purchase price of $250. Defendant maintained he did not intend to sell any crack cocaine to Schingel but rather only share it with her. Defendant further acknowledged he was not in possession of a pipe to smoke the crack cocaine when he picked up Schingel but asserted he had a lighter and intended to smoke using a soda can in the backseat of

his vehicle. Defendant further testified he had originally purchased a 10-gram bag of crack cocaine a few days earlier but had previously used a portion of it for himself.

¶ 25 On redirect examination, defendant testified Schingel usually had a pipe with her to smoke. On this evidence, defendant rested.

¶ 26 3. *Closing Arguments*

¶ 27 In closing argument, the State argued, in part, Schingel provided a more credible version of events. The State asserted Schingel was a reliable confidential source, who had worked with the officers for a couple of months and had "always had proven to be reliable, was very successful in her cooperation with the police officer, and taking down large quantities of drugs, a weapon at one point, small quantities of drugs." The State argued, "[l]ike [Schingel] had done in the past, she was going to do the same thing on this day and that was purchase crack cocaine."

¶ 28 The State also told the jury, even if it did not believe Karhliker's and Schingel's testimony, defendant was guilty of possession with intent to deliver based on his own testimony. The State argued:

> "His plan was to bring drugs, crack cocaine, to [Schingel], and they were going to go smoke that crack cocaine together. His exact quote was he was going to give her some of that crack cocaine for her to smoke. That is delivery. That is possession with intent. There's nowhere in the law that says money has to be exchanged during this transaction. If he's going to deliver crack cocaine, whether it's a small amount, whether it's a large amount,

> whether it's for money, whether it's for because [*sic*] he hoped the night would turn into something else as he put it, it doesn't matter. So throw out all of the State's case. You still have the [d]efendant's admission that that's what he was going to do that day ***."

¶ 29 In response, defense counsel (1) attacked Schingel's credibility and the truthfulness of her testimony as she was a "snitch," a paid informant, had a financial motive to testify falsely, and had actively used drugs while working for the sheriff's department; (2) highlighted the lack of any evidence from defendant's phone; (3) highlighted the only evidence regarding the conversation as to why defendant and Schingel met was defendant's and Schingel's conflicting testimony; (4) highlighted the lack of indicia of dealing, including the absence of large quantities of money, individually packaged crack cocaine, firearms, and multiple cell phones; (5) highlighted the presumption of innocence; (6) highlighted the State's burden of proof; and (7) asserted the State failed to prove beyond a reasonable doubt defendant intended to deliver the crack cocaine.

¶ 30 In addition, defense counsel maintained defendant's willingness to share drugs with another person was not an outlandish proposition. Counsel asserted:

> "Getting high together is not delivering drugs to someone. Did you ever smoke? Have you ever given anybody a drink out of your glass? I mean, you're not delivering to someone what is in your glass. For those of you who used to be smokers when you are

younger, somebody taking a drag off your cigarette is not you delivering to them tobacco."

Defense counsel argued defendant was "doing what he thinks he is there to do which is to pick [Schingel] up and to drive her somewhere else so they can use together."

¶ 31 In rebuttal, the State argued, in relevant part, as follows:

> "[Defense counsel] wants to claim that sharing isn't delivering. Delivery. He was going to do that whether you believe his story or her story. 'Delivery' means to transfer possession or attempt to transfer possession. It's exactly what he was going to do.
>
> If you believe his story that he was going to do it for free, give her some of the drugs ***, if you believe his story, they were going to smoke it. Delivery can be in exchange for money. It doesn't have to be in exchange for money. Delivery can occur with or without the transfer or exchange of money. It can occur with or without any other consideration."

The State continued:

> "If you are planning on breaking off a little part and giving it to somebody, that is intent to deliver it to another individual.
>
> I'm confident that you found our testimony truthful. If you did not, he is still guilty of this offense."

¶ 32 4. *Jury Deliberations and Verdict*

¶ 33 The trial court instructed the jury, following Illinois Pattern Jury Instructions, Criminal, No. 17.17 (4th ed. 2000) (IPI Criminal 4th No. 17.17), and Illinois Pattern Jury Instructions, Criminal, No. 17.18 (4th ed. 2000) (IPI Criminal 4th No. 17.18), to sustain the charge of possession with intent to deliver a controlled substance, it must find, beyond a reasonable doubt, defendant knowingly possessed with intent to deliver a substance containing cocaine. At 1:50 p.m., the jury retired to the jury room to commence its deliberations.

¶ 34 At 2:50 p.m., the jury sent a note out that read as follows: "Can we get a copy of the law pertinent to these charges or support documents that would assist with a definition of 'delivery'?" The State provided the trial court with a copy of Illinois Pattern Jury Instructions, Criminal, Nos. 17.05A(1), (2) (4th ed. 2000), which indicated (1) the word "deliver" means to transfer possession or to attempt to transfer possession, and (2) a delivery may occur with or without the transfer or exchange of money, or with or without the transfer or exchange of other consideration. Defense counsel objected on the basis she did not believe there was an attempt to transfer possession. Over defense counsel's objection, the court gave the jury the instruction.

¶ 35 At 3:30 p.m., the jury requested transcripts to review Karhliker's and defendant's testimony. By agreement of the parties, the trial court instructed the jury it had heard all the testimony and evidence admitted and should continue its deliberations.

¶ 36 At 4 p.m., the jury sent a note out that read as follows: "What is the proper procedure if we are unable to reach a unanimous decision on 1 of the 2 charges?" By agreement of the parties, the court directed the jury to continue its efforts until it reached a unanimous verdict on all counts.

¶ 37 At 4:20 p.m., the jury returned a verdict finding defendant guilty of both counts I and II.

¶ 38 C. Posttrial Proceedings

¶ 39 Following the jury's verdict, defendant filed a motion for acquittal or, in the alternative, a motion for a new trial, which was later amended. In November 2014, the trial court held a hearing on defendant's amended posttrial motion and sentencing. The court denied defendant's motion and then sentenced him to 12 years' imprisonment on count I, to run concurrently to a 3-year prison term on count II. Defendant filed a motion to reconsider his sentence, which the court later denied.

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 On appeal, defendant argues his trial counsel provided ineffective assistance by (1) presenting a theory of defense which left the jury with no choice but to convict, and (2) allowing the State to unfairly bolster its case through inadmissible testimony and argument regarding Schingel's prior involvement in other cases. In the alternative, defendant asserts, his sentence is excessive and violates the one-act, one-crime doctrine.

¶ 43 Defendant asserts his trial counsel provided ineffective assistance by presenting a theory of defense which left the jury with no choice but to convict him. Specifically, defendant asserts defense counsel's pursuit of an invalid theory of defense caused her to elicit his testimony, which alone was sufficient to convict him of possession with intent to deliver. The State maintains defense counsel presented a valid defense that the jury simply rejected.

¶ 44 Claims of ineffective assistance of counsel are evaluated under the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Henderson*, 2013 IL 114040, ¶ 11, 989 N.E.2d 192. To prevail on such a claim, "a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1203 (2010). To establish deficient performance, the defendant must show his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 219, 808 N.E.2d 939, 953 (2004). "A defendant establishes prejudice by showing that, but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceeding would have been different." *People v. Houston*, 229 Ill. 2d 1, 4, 890 N.E.2d 424, 426 (2008).

¶ 45 This court recently articulated three different categories of cases in which a defendant raises an ineffective assistance of counsel claim on direct appeal from his or her conviction and sentence. *People v. Veach*, 2016 IL App (4th) 130888, ¶¶ 71-90, 50 N.E.3d 87. Category A cases involve direct appeals raising ineffective assistance of counsel the appellate court should decline to address as they require consideration of matters outside of the record. *Id.* ¶¶ 74-75. Category B cases involve direct appeals raising ineffective assistance of counsel the appellate court may address because they are clearly groundless. *Id.* ¶ 82. Category C cases involve direct appeals raising ineffective assistance of counsel an appellate court may address because trial counsel's errors were so egregious that any answers to questions regarding what led counsel to make those errors simply would not matter. *Id.* ¶ 85. Defendant asserts this case falls within Category C. The State contends this case falls within Category B. Given the record

presented and the arguments made, we find this case falls within Category C. We will address defendant's claim.

¶ 46 Generally, defense counsel's choice of an appropriate defense is a matter of trial strategy not reviewable under the *Strickland* test, unless that choice is based upon a misapprehension of the law. *Strickland*, 466 U.S. at 689-90; *People v. Chandler*, 129 Ill. 2d 233, 248, 543 N.E.2d 1290, 1296 (1989). A misapprehension of a defense theory may be shown where evidence is presented in such a manner that the jury is left with no choice but to convict defendant of the charged offense. *Chandler*, 129 Ill. 2d at 248, 543 N.E.2d at 1296.

¶ 47 Defendant relies heavily upon *Chandler* in support of his request for a new trial. The State fails to address *Chandler*. In *Chandler*, our supreme court found the defendant was provided ineffective assistance of counsel where the record demonstrated defense counsel labored under a misapprehension of the law in presenting a defense. *Id*. at 246-48, 543 N.E.2d at 1295-97. The defense counsel's misapprehension of the law led to his failure to cross-examine key prosecution witnesses; poor cross-examination of other witnesses; failure to call any witnesses despite his assertion in his opening statement the defendant would testify and explain his actions before the jury; and his concession in closing argument, which amounted to a concession of guilt on defendant's behalf. *Id.* at 248-49, 543 N.E.2d at 1296. Given counsel's misunderstanding of the law, coupled with his subsequent actions, our supreme court found the defendant was denied a fair trial. *Id.* at 249, 543 N.E.2d at 1296.

¶ 48 In the years following its decision in *Chandler*, our supreme court rejected multiple requests for a new trial where it was shown defense counsel had presented an invalid or dubious defense. In each of those cases, the supreme court declined to find defense counsel

provided ineffective assistance as the defendant made an incriminating confession or admission prior to trial, the evidence of the defendant's guilt was overwhelming, and no other reasonable defense was available. See *People v. Ganus*, 148 Ill. 2d 466, 472-73, 594 N.E.2d 211, 213-14 (1992); *People v. Page*, 155 Ill. 2d 232, 265-68, 614 N.E.2d 1160, 1175-76 (1993); *People v. Shatner*, 174 Ill. 2d 133, 147-48, 673 N.E.2d 258, 264-65 (1996); *People v. Nieves*, 192 Ill. 2d 487, 498-99, 737 N.E.2d 150, 156-57 (2000). These cases make it clear, the determination of whether defense counsel provided ineffective assistance by presenting an invalid or dubious defense must be determined on a case-by-case basis. *Shatner*, 174 Ill. 2d at 147, 673 N.E.2d at 264. We turn to the specific facts of this case to determine whether defendant was provided ineffective assistance and is entitled to a new trial.

¶ 49 To establish possession of a controlled substance with intent to deliver, the State was required to prove three elements beyond a reasonable doubt: (1) defendant knew of the drugs, (2) the drugs were in defendant's immediate possession or control, and (3) defendant intended to deliver the drugs. See 720 ILCS 570/401 (West 2012); *People v. Robinson*, 167 Ill. 2d 397, 407, 657 N.E.2d 1020 (1995). Under the Illinois Controlled Substances Act (570 ILCS 102(h) (West 2012)), "deliver" or "delivery" is defined as "the actual, constructive or attempted transfer of possession of a controlled substance, with or without consideration, whether or not there is an agency relationship." See also Illinois Pattern Jury Instructions, Criminal, Nos. 17.05A(1), (2) (4th ed. 2000). In *People v. Coots*, 2012 IL App (2d) 100592, ¶ 19, 968 N.E.2d 1151, the Second District construed the drug-induced homicide statute (720 ILCS 5/9-3.3(a) (West 2008)) to determine what constituted delivering a controlled substance to another. After reviewing persuasive case law from other jurisdictions, the court determined two paradigmatic

situations existed. *Coots*, 2012 IL App (2d) 100592, ¶¶ 20-37, 968 N.E.2d 1151. In the first situation, a defendant and couser simultaneously and jointly acquire possession of drugs for their own use with the intent only to share it together. *Id.* ¶ 36. In that situation, the court found, the defendant is guilty not of delivery but merely of possession. *Id.* In the second situation, a defendant separately procures drugs in the absence of the couser and then physically transfers possession to the couser, with no intent to convey any to a third party. *Id.* ¶ 37. In that situation, the court found the defendant is guilty of delivery and is not merely a joint possessor, as he or she has operated as a link between the person with whom he intended to share the drug and the drug itself. *Id.*

¶ 50 While it was defendant's ultimate decision whether to take the witness stand and testify, that decision had to be made after due consultation with defense counsel. *People v. Smith*, 176 Ill. 2d 217, 235, 680 N.E.2d 291, 303 (1997). Defense counsel elicited testimony from defendant indicating he (1) acquired the crack cocaine in his possession days before his arrest, and (2) intended to share the crack cocaine with Schingel. Defense counsel argued defendant should not be found guilty of possession with intent to deliver as he intended only to share the crack cocaine with Schingel. Contrary to defense counsel's argument, defendant's testimony shows defendant intended to operate as the link between Schingel and the crack cocaine he intended to share with her, making him guilty of possession of a controlled substance with intent to deliver. See 570 ILCS 102(h) (West 2012); *Coots*, 2012 IL App (2d) 100592, ¶¶ 36-37, 968 N.E.2d 1151 (finding a defendant who separately procures drugs in the absence of the couser and then physically transfers possession to the couser is guilty of delivery). As the State argued in closing argument, even if the jury disregarded the State's case in its entirety,

defendant is guilty of possession with intent to deliver based on his own testimony. Defense counsel pursued an invalid theory of defense which elicited testimony from defendant by which the jury had no choice but to find him guilty. Counsel provided deficient performance.

¶ 51 We further find, had defense counsel not pursued such a defense, there is a reasonable probability he may have been acquitted. Defense counsel's invalid defense was not the only reasonable defense available. Defense counsel's closing argument demonstrated the validity of a reasonable-doubt defense attacking the State's ability to prove defendant intended to deliver the crack cocaine. We also cannot say the evidence of guilt was overwhelming. Finally, the only incriminating statements prior to trial consisted of purported statements conveyed to a confidential informant whose credibility was at least questionable. Unlike *Ganus, Page, Shatner*, and *Nieves*, we find defense counsel's pursuit of an invalid theory of defense prejudiced defendant where alternative valid theories of defense were available, the evidence of guilt was not overwhelming, and any alleged incriminating statements by defendant were based on a confidential informant's testimony, whose credibility was questionable. We acknowledge, unlike *Chandler*, defense counsel fervently cross-examined the State's witnesses and presented a detailed closing argument attacking the State's case. Our review of defense counsel's cross-examination and attack on the State's case lends additional support to our conclusion there is a reasonable probability defendant may have been acquitted had defense counsel not pursued an invalid defense by which the jury had no choice but to convict. On this ground alone, we find defendant was provided ineffective assistance of counsel and is entitled to a new trial. We need not address defendant's additional ground for arguing why he was provided ineffective assistance or his alternative arguments as to why his sentence should be reduced.

¶ 52 III. CONCLUSION

¶ 53 We reverse defendant's convictions and remand for a new trial.

¶ 54 Reversed and remanded.