2017 IL App (4th) 150024-U

NO. 4-15-0024

FILED
April 25, 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.	)	Vermilion County
LANGSTON BOWLES,	)	No. 12CF48
Defendant-Appellant.	)	
	)	Honorable
	)	Nancy S. Fahey,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's appeal presents no meritorious issues for review. The trial court's judgment is affirmed and OSAD's motion to withdraw as appellate counsel is granted.

¶ 2 Following a bench trial, defendant, Langston Bowles, was convicted of aggravated unlawful use of a weapon for failure to possess a firearm owner's identification (FOID) card (720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2010)). The trial court sentenced him to 30 months' probation. Defendant then appealed and the office of the State Appellate Defender (OSAD) was appointed to represent him. On appeal, OSAD filed a motion to withdraw as appellate counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting the appeal presents no meritorious issues for review. We grant OSAD's motion and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In January 2012, the State charged defendant with possession of a stolen firearm (720 ILCS 5/24-3.8) (West Supp. 2011)) (count I) and aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (3)(A) (2010)) (count II). The State nol-prossed count I. Count II was later amended to aggravated unlawful use of a weapon for failure to possess a FOID card (720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2010)).

¶ 5 At a preliminary hearing in February 2012, the State presented the following factual basis. Police officer Doug Miller testified that he observed defendant driving without a front license plate near the intersection of Walnut Street and Main Street in Danville. Miller initiated a traffic stop and approached defendant's driver's side window. When Miller requested defendant's driver's license and proof of insurance, defendant stated that he believed his license had been suspended.

¶ 6 After confirming defendant's license was in fact suspended, Miller asked defendant to exit the car. Miller informed defendant that he was "go[ing] [to] be placed under arrest." Miller testified that he "searched [defendant] incident to his arrest outside the vehicle." During the search, Miller discovered brass knuckles in defendant's right front pocket. Soon thereafter, Miller called for a tow truck and proceeded to inventory the car. During the inventory process, Miller recovered a loaded handgun from under the driver's seat. Miller ran a check on the gun and learned that it had been reported as stolen. Later, Officer Miller determined that defendant had not been issued a valid FOID card. Based on Miller's testimony, the court found probable cause to bind defendant over for trial.

¶ 7 In November 2014, the trial court held a stipulated bench trial contemporaneously

with a hearing to revoke defendant's probation in a separate case. Both the stipulated bench trial and the revocation hearing were based on the same conduct—defendant's possession of a firearm. During the proceedings, defendant admitted the allegations in the petition to revoke his probation. Defendant also waived his right to a jury trial after the court admonished him. In doing so, the court explained that aggravated unlawful use of a weapon for failure to possess a FOID card carried with it a possible sentencing range of probation up to one to three years in prison. Defendant acknowledged he understood the court's admonishments. Ultimately, the court found defendant guilty of aggravated unlawful use of a weapon for failure to possess a FOID card.

¶ 8 In January 2015, the trial court held a sentencing hearing. The State recommended concurrent two-year prison terms for defendant's probation violation and his conviction for aggravated unlawful use of a weapon for failure to possess a FOID card. We note the record does not reflect the sentence imposed in the case involving the probation revocation as it is not part of this appeal.

¶ 9 Defense counsel recommended a sentence of probation. In support of this recommendation, defense counsel acknowledged defendant's prior record, which included a conviction for possession of a controlled substance, resisting a peace officer, and endangering the life of a child. Defense counsel stated that defendant had "addressed" those "scrapes" with the law and insisted that defendant was a "good candidate for intensive probation." The trial court sentenced defendant to 30 months of probation and 180 days in jail.

¶ 10 This appeal followed. OSAD was appointed to represent defendant on appeal and filed a motion to withdraw, alleging the case presents no meritorious issues for review. OSAD

attached a brief to its motion and the record shows service on defendant. On October 5, 2016, this court granted defendant leave to file additional points and authorities, but he has not done so.

¶ 11 II. ANALYSIS

¶ 12 On appeal, OSAD identifies three potential issues for review: whether (1) trial counsel was ineffective for failing to move to suppress the gun; (2) defendant was properly admonished pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997); and (3) defendant's sentence was excessive. OSAD maintains all three issues lack merit. We agree.

¶ 13 A. Ineffective Assistance of Counsel

¶ 14 First, OSAD contends that no colorable argument can be made that trial counsel was ineffective for failing to file a motion to suppress the gun.

¶ 15 Under the two-pronged test for a claim of ineffective assistance of counsel, defendant must establish that his attorney's performance fell below an objective standard of reasonableness and, but for that deficient performance, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984). "Effective assistance of counsel means competent, not perfect, representation." *People v. Hughes*, 220 Ill. App. 3d 34, 37, 580 N.E.2d 179, 180 (1991). "There is a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance." *People v. Rodriguez*, 364 Ill. App. 3d 304, 312, 846 N.E.2d 220, 226 (2006).

¶ 16 Here, defense counsel never filed a motion to suppress the gun that was discovered in defendant's car. OSAD maintains that defendant could not successfully challenge the search of his car, and thus a motion to suppress the gun would have failed.

¶ 17 Both the United States Constitution and the Illinois Constitution protect

individuals from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Our supreme court has interpreted the search-and-seizure clause of the Illinois Constitution in a manner consistent with the United States Supreme Court's fourth-amendment jurisprudence. See *People v. Caballes*, 221 Ill. 2d 282, 335–36, 851 N.E.2d 26, 57 (2006).

¶ 18 Under *Arizona v. Gant*, 556 U.S. 332, 343 (2009), police may search a vehicle incident to a recent occupant's arrest where (1) the arrestee was unsecured and within reaching distance of the passenger compartment or (2) evidence related to the crime of arrest may be found in the vehicle. Here, Officer Miller searched defendant's car after arresting him for driving with a suspended driver's license. The search of defendant's car could not be justified as a search incident to arrest because defendant did not have access to the car at the time of the search, and there was no reason to believe the car contained any evidence relevant to defendant's driving with a suspended driver's license.

¶ 19 However, Illinois law provides an exception for inventory searches when a vehicle is lawfully impounded. *People v. Hundley*, 156 Ill. 2d 135, 138, 619 N.E.2d 744, 745 (1993); *People v. Clark*, 394 Ill. App. 3d 344, 347, 914 N.E.2d 734, 737 (2009) (citing *People v. Gipson*, 203 Ill. 2d 298, 304, 786 N.E.2d 540, 544 (2003)). The threshold question thus is whether the impoundment here was proper since the need and justification for the inventory search arose from the impoundment. *Clark*, 394 Ill. App. 3d at 348, 914 N.E.2d at 738. Generally, police may lawfully impound a vehicle pursuant to their community caretaking function when the vehicle impedes traffic or threatens public safety and convenience. *People v. Nash*, 409 Ill. App. 3d 342, 348, 357-58, 947 N.E.2d 350, 357, 364 (2011) (inventory search proper where police officer testified that he called a tow truck after determining defendant's

driving privileges were suspended and the Vehicle Code required impoundment).

¶ 20 Though Officer Miller's testimony regarding the tow truck and the inventory search were not part of the stipulated facts presented at the bench trial, the State most likely would have been able to establish the inventory exception applied where Officer Miller had previously testified at the preliminary hearing that he called a tow truck after determining that defendant was driving on a suspended license and there was no one who could drive the car from the scene. Thus, as OSAD contends, no colorable argument can be made that defense counsel was ineffective for failing to file a motion to suppress the gun.

¶ 21 B. Admonishments

¶ 22 Next, OSAD considers whether defendant was properly admonished at the time of the stipulated bench trial.

¶ 23 A stipulated bench trial is the equivalent of a guilty plea if the defendant stipulates to the sufficiency of the evidence to convict or fails to present and preserve a defense. *People v. Horton*, 143 Ill. 2d 11, 22, 570 N.E.2d 320, 325 (1991); *People v. Clendenin*, 238 Ill. 2d 302, 322, 939 N.E.2d 310, 322 (2010). A stipulated bench trial, when designed to establish guilt beyond a reasonable doubt, is tantamount to a guilty plea and requires the protections set forth in Illinois Supreme Court Rule 402 (eff. July 1, 1997). *People v. Smith*, 59 Ill. 2d 236, 242, 319 N.E.2d 760, 764 (1974). Whether the trial court substantially complied with Rule 402 is a question of law to be reviewed *de novo. People v. Chapman*, 379 Ill. App. 3d 317, 326, 883 N.E.2d 510, 517 (2007) (citing *People v. Mitchell*, 353 Ill. App. 3d 838, 844, 819 N.E.2d 1252, 1258 (2004)).

¶ 24 In this case, defendant both stipulated to the facts that the State presented at the

bench trial and failed to preserve any defense. The stipulated bench trial was thus tantamount to a negotiated guilty plea, requiring the trial court to admonish defendant pursuant to Rule 402.

¶ 25 Here, Rule 402 required admonishments be given concerning the nature of the charge, the minimum and maximum sentences, defendant's right to plead not guilty, his right to a jury trial, and the fact that his guilty plea would result in the waiver of his right to a trial as well as his confrontation rights. Illinois Supreme Court Rule 402 (eff. July 1, 1997). Due process requires only "substantial compliance" with Rule 402. *People v. Burt*, 168 Ill. 2d 49, 64, 658 N.E.2d 375, 382 (1995). In this case, before defendant waived his right to a jury trial, the court admonished him regarding the nature of the charge, the minimum and maximum penalties for the offense, his right to plead not guilty, his right to a jury trial, and the rights he was giving up by proceeding with a stipulated bench trial. Upon inquiry by the court, defendant asserted he understood the court's admonishments. We thus agree with OSAD that no arguable basis exists either in law or fact for defendant to claim that the court failed to comply with Rule 402.

¶ 26 C. Excessive Sentence

¶ 27 Finally, OSAD asserts that no colorable argument can be made that defendant's sentence was excessive. We agree.

¶ 28 Defendant was convicted of aggravated unlawful use of a weapon for failure to possess a FOID card, a Class 4 felony. 720 ILCS 5/24-1.6(d)(1) (West 2010). The sentencing range for a Class 4 felony is 1 to 3 years in prison or a period of probation of up to 30 months. 730 ILCS 5/5-4.5-45(a), (d) (West 2010). The trial court sentenced defendant to 30 months of probation.

¶ 29 A trial court's sentencing decision is entitled to great deference as the trial court is

generally in a "better position than a court of review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case." (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341. We review a trial court's sentencing decision for an abuse of discretion. *Id.* "If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." (Internal quotation marks omitted.) *Id.* (quoting *People v. Hensley*, 354 Ill. App. 3d 224, 234-35, 819 N.E.2d 1274, 1284 (2004), quoting *People v. Kennedy*, 336 Ill. App. 3d 425, 433, 782 N.E.2d 864, 871 (2002)).

¶ 30 Given the possible sentencing range, which included a prison term of up to three years, as well as defendant's prior criminal history—resisting a peace officer, endangering the life of a child, and possession of a controlled substance—we cannot say the trial court's sentence of 30 months' probation was improper. Accordingly, we find no colorable argument can be made that defendant's sentence was excessive.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment and grant OSAD's motion to withdraw as appellate counsel.

¶ 33 Affirmed.