

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 (4th) 150433-U

NO. 4-15-0433

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 5, 2017

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
MICHAEL L. SKINNER,)	No. 14TR1767
Defendant-Appellant.)	
)	Honorable
)	Brian L. McPheters,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court held (1) the trial court failed to substantially comply with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) prior to permitting defendant to waive his right to counsel; and (2) based on the circumstances, noncompliance warranted vacating defendant's conviction.

¶ 2 In February 2015, a jury found defendant, Michael L. Skinner, guilty of driving while his license was suspended (625 ILCS 5/6-303(a) (West 2014)). In April 2015, the trial court sentenced him to 18 months of supervision, subject to 300 hours of public service. Defendant appeals, arguing the (1) trial court improperly admonished him prior to waiving his right to counsel and (2) circuit clerk improperly imposed numerous fines against him. For the following reasons, we vacate defendant's conviction. (While a sentence of supervision does not technically involve a "conviction," we use that term for ease of reference.)

¶ 3 I. BACKGROUND

¶ 4 On February 12, 2014, defendant received a traffic citation from the Urbana police department for driving while his license was suspended, a Class A misdemeanor (625 ILCS 5/6-303(a) (West 2014)). On March 14, 2014, the trial court appointed a public defender to represent defendant. Defendant entered a plea of not guilty and requested a jury trial.

¶ 5 On October 30, 2014, defendant's counsel filed a motion to vacate her appointment, stating defendant expressed his desire to proceed *pro se* because of differences of opinion regarding the legal strategy to use for his defense. Defendant did not object to the motion. The trial court granted the motion and set a status hearing to allow defendant time to retain private counsel.

¶ 6 On November 12, 2014, the trial court held a status hearing. Defendant appeared *pro se* and the court discussed risks of proceeding without counsel. Defendant expressed his desire to retain private counsel and the court gave him more time.

¶ 7 On December 8, 2014, defendant informed the trial court he was unable to retain counsel and wished to proceed *pro se*. The court asked defendant if he wanted to seek reappointment of the public defender and informed defendant, in relevant part, as follows:

"I want you to be aware Rule 401 provides I have to admonish you that if you do want to represent yourself there are certain things you need to be informed of.

One is presenting a defense is not a simple matter of telling one's story. It requires adherence to various technical rules governing the conduct of a trial.

Two. A lawyer has had substantial experience and training in trial procedure and prosecution ***.

Three, a person unfamiliar with legal procedures may allow the prosecutor an advantage by failing to make objections to inadmissible evidence and may not make effective use of such rights as voir dire of *** jurors and may make tactical decisions that produce unintended consequences.

Number 4. If you proceed to represent yourself, you will not be allowed to complain on appeal about the competency of your representation.

Five. The effectiveness of your defense may well be diminished by your dual role as an attorney and as the accused.

Six. You will receive no special consideration from the Court.

Seven. You'll receive no extra time for preparation or greater library time if you are incarcerated while awaiting trial which doesn't fit in your situation.

Eight. A lawyer can provide important assistance by determining the existence of possible defenses to the charges against you by thorough consultation with the prosecutor regarding possible reduced charges or lesser penalties and in the event that you are convicted by presenting the Court with any matters which might lead to a lesser sentence.

Nine. If the Court accepts your decision to represent yourself, you will not be given an opportunity to change your mind during the trial.

Ten. If you choose to represent yourself, the Court is not going to appoint stand-by counsel to assist you at any stage during the trial."

Defendant stated he understood and wanted to represent himself.

¶ 8 On February 26, 2015, a jury found defendant guilty of driving while his license was suspended. On April 13, 2015, the trial court sentenced him to 18 months of court supervision and 300 hours of public service.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Defendant makes two arguments on appeal. First, defendant argues the trial court's admonishments were insufficient because it did not inform him of the nature of the offense or the statutory penalties. The State concedes this issue. Alternatively, defendant argues the circuit clerk improperly imposed numerous fines. The State disagrees and argues the trial court imposed the fines.

¶ 12 Initially, we note defendant failed to object to the lack of Rule 401(a) admonishments at trial or in a posttrial motion. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); see *People v. Rathbone*, 345 Ill. App. 3d 305, 309, 802 N.E.2d 333, 336 (2003). However, the plain-error doctrine bypasses forfeiture principles and allows a reviewing court to consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error; or (2) the error is serious, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill.

2d 167, 186-87, 830 N.E.2d 467, 479 (2005). "This court has consistently held that the right to counsel is so fundamental that we will review as plain error a claim that there was no effective waiver of counsel although the issue was not raised in the trial court." *People v. Herring*, 327 Ill. App. 3d 259, 262, 762 N.E.2d 1186, 1188 (2002).

¶ 13 The United States and Illinois Constitutions guarantee a criminal defendant the right to counsel at every critical stage of the proceedings. U.S. Const., amends VI, XIV; Ill. Const. 1970, art I, § 8. However, a defendant may waive this right to counsel and proceed *pro se* if the trial court finds he voluntarily and intelligently elects to do so. *People v. Campbell*, 224 Ill. 2d 80, 84, 862 N.E.2d 933, 936 (2006).

¶ 14 Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) provides as follows:

"Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and

(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court."

¶ 15 The purpose of Rule 401(a) is "to ensure that a waiver of counsel is knowingly and intelligently made." (Internal quotation marks omitted.) *Campbell*, 224 Ill. 2d at 84, 862 N.E.2d at 936. Accordingly, a trial court must substantially comply with Rule 401(a) for a defendant's waiver of counsel to be effective. *Campbell*, 224 Ill. 2d at 84, 862 N.E.2d at 936.

¶ 16 In this case, the record clearly demonstrates the trial court failed to address the first two elements required by Rule 401(a)—that the court determined defendant understood the nature of the charge and the minimum and maximum penalties. See Ill. S. Ct. Rs. 401(a)(1), (2) (eff. July 1, 1984). The admonitions the court recited to defendant are a helpful supplement to the admonitions required by Rule 401(a), which help ensure a defendant knows what he is giving up when he waives his right to counsel. See *People v. Ward*, 208 Ill. App. 3d 1073, 1081-82, 567 N.E.2d 642, 647-48 (1991) (citing W. LaFave and J. Israel, 2 Criminal Procedure §§ 11.5(a), (b), (c), at 42-45 (1984)). However, these supplemental admonitions do not replace the Rule 401(a) admonishments. Accordingly, as substantial compliance with Rule 401(a) is required, defendant's waiver of counsel was ineffective and his conviction cannot stand. See *Campbell*, 224 Ill. 2d at 84-85, 862 N.E.2d at 936.

¶ 17 We note defendant has successfully completed the 18 months' supervision and 300 hours of public service imposed in this case and the trial court dismissed the charge against him on October 14, 2016. However, this is of no consequence as "the completion of a defendant's sentence renders a challenge to the sentence moot, but not a challenge to the conviction." *In re Christopher K.*, 217 Ill. 2d 348, 359, 841 N.E.2d 945, 952 (2005). As such, the parties disagree as to the appropriate remedy. Defendant suggests a new trial would be neither equitable nor productive and the trial court's judgment should be outright vacated, citing *Campbell*. The State argues this court should reverse the trial court's judgment and remand for a

new trial because the disposition of supervision could be used later as aggravating evidence in sentencing for any subsequent offense.

¶ 18 In *Campbell*, our supreme court addressed a factually similar case. *Campbell*, 224 Ill. 2d at 82, 862 N.E.2d at 935. The defendant was charged with driving while his license was suspended and requested to proceed to a bench trial *pro se*. *Campbell*, 224 Ill. 2d at 82, 862 N.E.2d at 935. The trial court allowed him to proceed *pro se* but failed to admonish him pursuant to Rule 401(a). *Campbell*, 224 Ill. 2d at 82, 862 N.E.2d at 935. The court found him guilty and sentenced him to 12 months of conditional discharge, subject to the payment of a \$100 fine and 240 hours of community service. *Campbell*, 224 Ill. 2d at 83, 862 N.E.2d at 935. On appeal, the defendant argued his waiver of counsel was ineffective because the trial court accepted his waiver without first complying with Rule 401(a). *Campbell*, 224 Ill. 2d at 83, 862 N.E.2d at 935. The Third District agreed and vacated his conviction. *Campbell*, 224 Ill. 2d at 83, 862 N.E.2d at 936.

¶ 19 The supreme court affirmed the Third District's decision, finding the defendant failed to receive Rule 401(a) admonishments. *Campbell*, 224 Ill. 2d at 87-88, 862 N.E.2d at 938. The court explained it would ordinarily reverse the defendant's conviction and remand for a new trial; "however, defendant has already discharged his sentence, and a new trial therefore would be neither equitable nor productive." *Campbell*, 224 Ill. 2d at 87, 862 N.E.2d at 938. The State filed a petition for rehearing and argued vacating the defendant's conviction conferred a "windfall" on him. *Campbell*, 224 Ill. 2d at 88 n.1, 862 N.E.2d at 938 n.1. The State requested a new trial. *Campbell*, 224 Ill. 2d at 88 n.1, 862 N.E.2d at 938 n.1. The court rejected the State's argument and stated, in relevant part, as follows:

"We question whether defendant would perceive himself the beneficiary of a 'windfall,' having already served the 12 months of conditional discharge, performed the 240 hours of community service, and paid the \$100 fine imposed in this case. In any event, the State did not raise this argument in its brief and *** may not raise it in arguing for rehearing." *Campbell*, 224 Ill. 2d at 88 n.1, 862 N.E.2d at 938 n.1.

¶ 20 In *People v. Vázquez*, 2011 IL App (2d) 091155, ¶ 1, 955 N.E.2d 172, the Second District distinguished its case from *Campbell* and found, based on the facts and circumstances before it, the appropriate remedy for noncompliance with Rule 401(a) when probation was successfully completed was to vacate the defendant's convictions and remand for retrial. In *Vázquez*, the State charged the defendant with two misdemeanors: contributing to the delinquency of a minor and harboring a runaway. *Vázquez*, 2011 IL App (2d) 091155, ¶ 4, 955 N.E.2d 172. The defendant waived his right to counsel without adequate Rule 401(a) admonishments and proceeded to a jury trial. *Vázquez*, 2011 IL App (2d) 091155, ¶¶ 4, 9, 955 N.E.2d 172. The jury found the defendant guilty on both counts and the court sentenced him to concurrent terms of probation, with 180 days in jail. *Vázquez*, 2011 IL App (2d) 091155, ¶ 10, 955 N.E.2d 172. The defendant appealed, arguing, *inter alia*, he did not receive the required Rule 401(a) admonishments, and because he already completed his sentence, the court should vacate his conviction. *Vázquez*, 2011 IL App (2d) 091155, ¶ 1, 955 N.E.2d 172. The State conceded the admonishments were insufficient, but it disagreed as to the appropriate remedy. *Vázquez*, 2011 IL App (2d) 091155, ¶ 12, 955 N.E.2d 172.

¶ 21 The defendant argued he was almost identically situated to the defendant in *Campbell* and retrial would serve no good purpose. *Vázquez*, 2011 IL App (2d) 091155, ¶ 16, 955 N.E.2d 172. The State responded the defendant's case was distinguishable from *Campbell* due to a disparity in the seriousness of the offenses. *Vázquez*, 2011 IL App (2d) 091155, ¶ 16, 955 N.E.2d 172. The Second District agreed with the State and held retrial would be both equitable and productive. *Vázquez*, 2011 IL App (2d) 091155, ¶ 16, 955 N.E.2d 172. The court discussed *Campbell*'s holding and concluded, in relevant part, as follows:

"We note that, generally, vacatur of a conviction is followed by remand for retrial, and we conclude that a decision to vacate a defendant's conviction without remand for retrial must be limited to the facts of *Campbell*. We note further that the *Campbell* court's reasoning was that retrial would be neither equitable nor productive. The court did not elaborate on which facts or circumstances it considered in concluding that retrial would be neither equitable nor productive, nor did it enunciate factors to guide future courts. In the absence of such guidance, we must look to the facts upon which the decision was based. In *Campbell*, the facts included both that the defendant served his complete sentence *and* that the charge at issue was a misdemeanor traffic offense—driving with a suspended license." (Emphasis in original.)
Vázquez, 2011 IL App (2d) 091155, ¶ 18, 955 N.E.2d 172.

¶ 22 As a result, the *Vázquez* court declined to apply *Campbell* to "criminal convictions of a very different character from the one involved in *Campbell*." *Vázquez*, 2011 IL

App (2d) 091155, ¶ 19, 955 N.E.2d 172. In further distinguishing *Campbell*, the court emphasized driving with a suspended license is a traffic offense that does not inherently involve danger to the public, in contrast to the defendant's charges of harboring a runaway and contributing to the delinquency of that minor as these offenses are directed against minors, who are most vulnerable and in need of protection. *Vázquez*, 2011 IL App (2d) 091155, ¶ 20, 955 N.E.2d 172.

¶ 23 In the case at bar, defendant argues the outcome in *Campbell* should also apply to his case, and the reasoning in *Vázquez* supports this proposition. The State argues this court should not vacate defendant's conviction because the disposition of supervision could be used later as aggravating evidence in sentencing for any subsequent offense. We agree with defendant. With the exception of some minor sentencing differences between defendant's case and *Campbell*, the cases present the same issue and facts.

¶ 24 We find the State's argument unpersuasive. Although the State in *Campbell* did not make this argument, we presume our supreme court considered the collateral consequences of either outright vacating defendant's conviction or remanding for a retrial. This is evidenced by the court's response to the State's petition for rehearing, where it questioned whether defendant received a " 'windfall' " as a result of vacating his conviction when he already completed his probation, paid a \$100 fine, and completed 240 hours of community service. See *Campbell*, 224 Ill. 2d at 88 n.1, 862 N.E.2d at 938 n.1.

¶ 25 Here, the trial court failed to substantially comply with Rule 401(a), and defendant has already completed his sentence of court supervision. In accordance with *Campbell*, we vacate defendant's conviction because retrial would be neither equitable nor productive. Following the reasoning in *Vázquez*, defendant was convicted of a misdemeanor

traffic offense that does not inherently involve a danger to the public and he already completed his 18 months of court supervision, subject to 300 hours of public service. Although defendant has not paid any of the fines imposed in this case, this fact is immaterial because he challenges the imposition of many of these fines on appeal, and based on the record before us, it appears the circuit clerk improperly imposed the fines he challenges. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 89, 55 N.E.3d 117; see also *People v. Daily*, 2016 IL App (4th) 150588, ¶¶ 28-30, ___N.E.3d___. Moreover, since we are vacating defendant's conviction, the issue of fines is moot.

¶ 26

III. CONCLUSION

¶ 27

For the reasons stated, we vacate defendant's conviction.

¶ 28

Vacated.