2017 IL App (4th) 150599-U

NO. 4-15-0599

FILED
June 7, 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.	)	Champaign County
BILLY D. PALMER,	)	No. 14CF721
Defendant-Appellant.	)	
	)	Honorable
	)	Jeffrey B. Ford,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed in part, finding the trial court did not err in denying defendant's motion to withdraw his guilty plea. This court also vacated various assessments imposed against defendant.

¶ 2 In June 2015, defendant, Billy D. Palmer, pleaded guilty to the offense of aggravated driving under the influence (DUI). The trial court sentenced him to two years in prison and imposed various financial obligations. Thereafter, defendant filed a motion to withdraw his guilty plea, which the court denied.

¶ 3 On appeal, defendant argues (1) his guilty plea should be vacated and (2) the circuit clerk improperly imposed various fees and assessments. We affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5 In May 2014, the State charged defendant with two counts of aggravated DUI

(625 ILCS 5/11-501(d)(1)(G) (West 2014)). In count I, the State alleged defendant drove or was in actual physical control of a motor vehicle at a time he was under the influence of alcohol and at a time when his driving privileges were revoked. In count II, the State alleged defendant drove or was in actual physical control of a motor vehicle at a time when he was under the combined influence of alcohol, other drugs, or intoxicating compounds to a degree that rendered him incapable of safely driving and at a time when his driving privileges were revoked. In July 2014, the State charged defendant by information with one count of driving while his license was revoked (count III) (625 ILCS 5/6-303(a) (West 2014)). In a separate case (Champaign County case No. 14-CF-942), the State charged defendant with being an armed habitual criminal and possession of a stolen firearm.

¶ 6 On June 2, 2015, defendant pleaded guilty to count I in exchange for a sentence of two years in prison. The State dismissed counts II and III and agreed defendant would receive credit for 328 days of pretrial incarceration. The State also noted the sentence in this case would be consecutive to the sentence defendant received in case No. 14-CF-942. The trial court accepted defendant's guilty plea and sentenced him to two years in prison. The court also imposed various financial obligations.

¶ 7 On June 4, 2015, defendant filed a motion to withdraw his guilty plea and vacate the judgment. Therein, defendant alleged his decision to plead guilty was not made voluntarily or intelligently, claiming plea counsel explained he would have to serve consecutive sentences but failed to specify the 328 days of sentence credit would only be applied to one of the two sentences. Defendant claimed he would not have pleaded guilty had he known he would not receive the 328 days of credit against both of his consecutive sentences.

¶ 8 Defendant received an eight-year prison sentence for possession of a stolen

firearm in case No. 14-CF-942 on June 26, 2015. The sentencing order in that case did not provide for any credit for pretrial incarceration.

¶ 9 On June 25, 2015, the trial court conducted a hearing on the motion. Defendant testified that when he pleaded guilty to the DUI charge, he understood he would receive 328 days of sentence credit. Defendant stated his attorney did not tell him he would receive the sentence credit only on the DUI sentence, as defendant was under the impression he would receive credit on both cases. Had he known he would receive sentence credit only on one case, defendant stated he would have gone to trial on the DUI charge.

¶ 10 Anthony Fiorentino, defendant's plea counsel, testified he told defendant he would be subject to mandatory consecutive sentences if he pleaded guilty in the two separate cases. Counsel informed defendant he would receive credit for 328 days in pretrial custody, but he "did not mention whether or not it would apply to the other case."

¶ 11 The trial court found defendant never asked whether he would receive sentence credit on his other case and counsel did not provide that information. Because defendant was not given incorrect advice and never asked about whether the 328 days applied in the other case, the court found no ineffective assistance of counsel that would make the guilty plea in this case involuntary. The court denied the motion. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 A. Motion To Withdraw Guilty Plea

¶ 14 Defendant argues his guilty plea should be vacated, claiming he had a plausible defense and the plea was entered under his objectively reasonable misunderstanding that he would receive 328 days of credit against each of his consecutive sentences. We disagree.

¶ 15 A defendant has no absolute right to withdraw his guilty plea. *People v. Jamison*,

197 Ill. 2d 135, 163, 756 N.E.2d 788, 802 (2001). Instead, a "defendant must show a manifest injustice under the facts involved." *People v. Delvillar*, 235 Ill. 2d 507, 520, 922 N.E.2d 330, 338 (2009). The trial court's decision "will not be disturbed unless the plea was entered through a misapprehension of the facts or of the law, or if there is doubt as to the guilt of the accused and justice would be better served by conducting a trial." *Delvillar*, 235 Ill. 2d at 520, 922 N.E.2d at 338.

> "In the absence of substantial objective proof showing that a defendant's mistaken impressions were reasonably justified, subjective impressions alone are not sufficient grounds on which to vacate a guilty plea. Further, the burden is on the defendant to establish that the circumstances existing at the time of the plea, judged by objective standards, justified the mistaken impression." *People v. Davis*, 145 Ill. 2d 240, 244, 582 N.E.2d 714, 716 (1991).

¶ 16 A trial court has discretion to permit a defendant to withdraw his guilty plea, and that decision will not be reversed on appeal absent an abuse of discretion. *People v. Manning*, 227 Ill. 2d 403, 411-12, 883 N.E.2d 492, 498 (2008). "An abuse of discretion will be found only where the court's ruling is arbitrary, fanciful, unreasonable, or no reasonable person would take the view adopted by the trial court." *Delvillar*, 235 Ill. 2d at 519, 922 N.E.2d at 338.

¶ 17 In this case, the State set forth the terms of the plea agreement, noting defendant would receive a 2-year prison sentence and credit for 328 days in custody. The State also noted the sentence would be served consecutively to any sentence received in case No. 14-CF-942. Defendant acknowledged this was the agreement, and the trial court found the plea was voluntarily entered. The court's written sentencing judgment included the 328 days' credit.

¶ 18 In his motion to withdraw his guilty plea, defendant stated counsel explained the sentences in both cases would have to be served consecutively but failed to specify the 328 days of sentence credit would only apply to one case. At the hearing on the motion, defendant stated he was "under the assumptions" that the credit would be applied to both cases. Counsel testified he did not tell defendant the credit would apply to both cases. The trial court found defendant never asked whether the credit would apply to his other case and counsel did not provide inaccurate advice.

¶ 19 We find defendant entered his guilty plea voluntarily and knowingly. Defendant has not established "substantial objective proof" that, at the time of his plea in this case, his claimed misunderstanding was "reasonably justified." We note "a misapprehension that was not induced by the State or the judge's conduct is an insufficient ground for withdrawal of a guilty plea." *People v. Turley*, 174 Ill. App. 3d 621, 628, 528 N.E.2d 1091, 1094 (1988); see also *People v. Smithey*, 120 Ill. App. 3d 26, 33, 458 N.E.2d 87, 93 (1983). Here, not only was defendant's alleged misapprehension not induced by the State or the trial court's conduct, it was also not induced by any inaccurate advice from counsel. Moreover, the state of the law regarding consecutive sentences and pretrial credit has been solidified for some time (see *People v. Latona*, 184 Ill. 2d 260, 270-71, 703 N.E.2d 901, 907 (1998); 730 ILCS 5/5-8-4(g)(4) (West 2014)), and defendant did not testify he was relying on earlier precedent to the contrary or unaware of the current case law. Any alleged mistaken impression defendant may have had about the 328 days' credit was not justified when judged by objective standards. Accordingly, we find the trial court did not err in denying defendant's motion.

¶ 20 B. Assessments

¶ 21 Defendant argues this court should vacate various fines improperly imposed by

the circuit clerk as well as his deoxyribonucleic acid (DNA) assessment. We agree in part.

¶ 22 This court has previously addressed the impropriety of the circuit clerk imposing judicial fines. See *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 55-73, 10 N.E.3d 959. "Although circuit clerks can have statutory authority to impose a fee, they lack authority to impose a fine, because the imposition of a fine is exclusively a judicial act." (Emphases omitted.) *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912. Thus, "any fines imposed by the circuit clerk are void from their inception." *Larue*, 2014 IL App (4th) 120595, ¶ 56, 10 N.E.3d 959. The propriety of the imposition of fines and fees presents a question of law, which we review *de novo*. *People v. Guja*, 2016 IL App (1st) 140046, ¶ 69, 51 N.E.3d 970.

¶ 23 In the case *sub judice*, the State concedes the following fines imposed by the circuit clerk must be vacated as void: (1) $50 court finance fine; (2) $10 arrestee's medical fine; (3) $5 spinal cord research fine; (4) $100 trauma fund fine; (5) $190 traffic/criminal surcharge fine; (6) $5 drug court fine; (7) $76 driver's education fine; (8) $10 State Police services fine; (9) $10 State Police operations fine; and (10) $35 serious traffic violation fine. We agree and vacate these fines.

¶ 24 Defendant also argues the circuit clerk improperly imposed the following assessments: (1) $15 for document storage; (2) $15 for circuit clerk automation; and (3) $2 for State's Attorney automation. The State disagrees and argues the assessments were properly imposed. We agree with the State.

¶ 25 As to the State's Attorney automation fee, this court has held that, because the legislature intended the assessment to reimburse the State's Attorneys for their expenses related to automated record-keeping systems, the assessment was not punitive in nature and thus constituted a fee. *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 115, 55 N.E.3d 117. Thus,

we found the circuit clerk could properly impose the assessment. *Warren*, 2016 IL App (4th) 120721-B, ¶ 115, 55 N.E.3d 117. We decline to depart from our decision in *Warren*. Thus, we do not vacate the $2 State's Attorney automation fee. See *People v. Daily*, 2016 IL App (4th) 150588, ¶ 31.

¶ 26 We also find the same reasoning in *Warren* applies to the $15 circuit clerk automation assessment (705 ILCS 105/27.3a(1) (West 2014)) and the $15 document storage assessment (705 ILCS 105/27.3c(a) (West 2014)), which are compensatory fees and not punitive fines. *People v. Tolliver*, 363 Ill. App. 3d 94, 97, 842 N.E.2d 1173, 1176 (2006); see also *People v. Carter*, 2016 IL App (3d) 140196, ¶ 60, 62 N.E.3d 267 (finding the automation fee and the document storage fee were properly imposed by the circuit clerk). Thus, we do not vacate these fees.

¶ 27 As to the $250 DNA assessment levied by the trial court, defendant argues it should be vacated because he previously supplied a DNA sample. Section 5-4-3(a) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4-3(a) (West 2014)) requires any person convicted of a felony in Illinois to submit specimens of blood, saliva, or tissue to the Illinois State Police to be analyzed and catalogued in a database. Under section 5-4-3(j) of the Code (730 ILCS 5/5-4-3(j) (West 2014)), the person providing the specimen is required to pay an analysis fee of $250. Our supreme court has held the genetic-marker fee can be assessed only once from an individual and cannot be assessed against a defendant whose genetic specimen is already in the database as a result of a prior conviction. *People v. Marshall*, 242 Ill. 2d 285, 303, 950 N.E.2d 668, 679 (2011). The State acknowledges defendant has already submitted a DNA sample and concedes the DNA fee imposed in this case must be vacated. Accordingly, we vacate the $250 DNA fee.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm in part and vacate in part. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 30 Affirmed in part and vacated in part.