2017 IL App (4th) 160464-U

NO. 4-16-0464

FILED
May 17, 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.	)	McLean County
CHARLES K. HAMILTON,	)	No. 11CF989
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court dismissed the appeal for failure to comply with Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013).

¶ 2 In May 2015, the supreme court denied defendant Charles K. Hamilton's petition for leave to appeal this court's decision on direct appeal but, pursuant to its supervisory authority, directed this court to vacate its judgment and remand the matter to the circuit court of McLean County. *People v. Hamilton*, No. 119018, 32 N.E.3d 670-71 (2015). In July 2015, this court remanded the matter to the trial court with directions to make a factual determination of whether a disputed prior felony conviction was attributable to defendant and whether the sentence imposed remained the appropriate sentence for defendant. In March 2016, the trial court reduced defendant's sentence from 22 years in the Illinois Department of Corrections (DOC) to 19 years. Defendant appeals, arguing for a further reduction of his sentence. We dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 In March 2013, following a jury trial, defendant, who proceeded *pro se*, was found guilty of unlawful possession of cannabis with intent to deliver (more than 5,000 grams) (720 ILCS 550/5(g) (West 2010)) (count I), unlawful possession of cannabis (more than 5,000 grams) (720 ILCS 550/4(g) (West 2010)) (count II), and cannabis trafficking (more than 2,500 grams) (720 ILCS 550/5.1(a) (West 2010)) (count III). In April 2013, the trial court sentenced defendant to 22 years in DOC.

¶ 5 On direct appeal, defendant argued the trial court erred in its sentencing by relying on a disputed prior felony conviction listed in the presentence investigation report as a factor in aggravation. In February 2015, this court found, because defendant filed a posttrial motion to reconsider his sentence but later moved to strike the motion, he had waived this claim, and we affirmed the trial court's judgment. *People v. Hamilton*, 2015 IL App (4th) 130612-U (unpublished order under Supreme Court Rule 23).

¶ 6 In May 2015, the supreme court denied defendant's petition for leave to appeal this court's decision but, pursuant to its supervisory authority, directed this court to vacate its judgment and remand the matter to the circuit court of McLean County. *People v. Hamilton*, No. 119018, 32 N.E.3d 670-71 (2015). In July 2015, this court remanded the matter to the trial court with directions to make a factual determination of whether the disputed prior felony conviction was attributable to defendant and whether the sentence imposed remained the appropriate sentence for defendant.

¶ 7 In September 2015, the trial court appointed the public defender’s office to represent defendant, noting, “[Defendant] may waive counsel at that hrg.[,] but ct. is trying to insure proper representation at this time.” At a January 2016 hearing, the State conceded the

State of Georgia had erroneously associated the disputed 1990 Georgia conviction to defendant's Federal Bureau of Investigation number. Therefore, the conviction had been erroneously attributed to defendant in the presentence investigation report (PSI) relied upon in sentencing defendant in the instant case. Since defendant's appointed counsel had not represented defendant at the time of the original sentencing, he asked for a continuance to review the transcripts and the PSI.

¶ 8 At the remand hearing on March 4, 2016, the State recommended no change in the sentence in light of the fact, at the original sentencing hearing, the trial court noted defendant's prior record had less weight than the other factors in aggravation, which included (1) the seriousness of the offense and the overall weight of the cannabis defendant was trafficking, (2) the unlikelihood and unwillingness of defendant being rehabilitated, (3) the need for deterrence of others, and (4) the need to punish defendant. The State further noted defendant's attitude throughout the pendency of the case pointed to the unlikelihood defendant would be rehabilitated. This included defendant's closing argument, where he frankly told the jury, no matter what its verdict, he would never stop violating the laws when it came to cannabis. Therefore, the State argued, the fact the oldest prior offense was not attributable to defendant should not change the sentence.

¶ 9 Appointed counsel argued it was difficult to know exactly how much weight the trial court placed on the erroneous information, particularly in light of the fact the court noted defendant had three prior felony convictions, two of which were drug-related. Counsel argued this comment could lead to the inference those drug-related convictions were significant to the court in determining the appropriate sentence in the instant drug-related conviction. In reality, defendant had two prior felony convictions, one of which was drug-related. Counsel

recommended the sentence be reduced to 15 years.

¶ 10 The trial court stated it was familiar with the case but had also reviewed the PSI and the transcript of the original sentencing hearing. The court noted the supreme court's supervisory order presented the trial court with the very narrow issue of revisiting the original sentence in light of the incorrect prior record considered by the court. The court stated it had not placed a lot of weight in aggravation on defendant's prior convictions, primarily because they were so far distant in time from the instant offense. However, the court stated, at the time of sentencing, it incorrectly believed defendant had three prior felony convictions, two of which were drug-related. The court stated further:

> "The defendant only had two prior felony convictions, one of which was drug related in terms of felony convictions; and so, as I contemplate the basis for my sentence in this case[,] which was based primarily on retribution, as I outlined in my comments, and deterrence of others, based on the seriousness of the offense, I do not believe that whether the defendant had two or three prior felony convictions was a factor of any significance in the imposition of the sentence; however, I think it is probably fair and appropriate for the [c]ourt to note or suggest, or at least ponder the fact, that in considering a prior record that has three felony convictions as opposed to two, even if not given much weight at all because it was distant, the fact is the [c]ourt still gave it weight. It wasn't a significant amount of weight, but the [c]ourt certainly did consider it, and I think, in all fairness to the defendant, who very vocally protested that DeKalb County, Georgia, conviction, that it would be entirely appropriate for the [c]ourt today, in kind of removing that from consideration, to suggest that even though I don't

> believe that it really made any difference in the sentence, I think human nature is such that it must have had some influence on the [c]ourt, some subtle influence simply because it was another conviction. And I think out of fairness to the defendant, it is appropriate to alter the sentence in some way."

Thereafter, the court reduced the 22-year sentence to 19 years, followed by three years on mandatory supervised release.

¶ 11 The trial court advised defendant, pursuant to the supervisory order, his right to appeal was confined only to sentencing issues arising on remand. The court further advised defendant, in order to preserve any sentencing issues for appeal, he must first file within 30 days a written motion seeking reconsideration of the sentence imposed setting forth all issues or claims of error regarding the sentence or the sentencing hearing.

¶ 12 On March 23, 2016, defendant filed a *pro se* motion to reconsider or reduce his sentence in which he, *inter alia*, argued his sentence should be further reduced because (1) it was harsher than sentences imposed in other cases in which the amount of cannabis was higher than in his case; and (2) he was being punished for having asserted his right to go to trial rather than plead guilty.

¶ 13 At the June 6, 2016, hearing on the motion to reconsider, appointed counsel advised the trial court defendant wanted to represent himself and stand on his *pro se* written motion. The court questioned defendant, who assured the court he no longer wanted appointed counsel to represent him, preferring to represent himself on the motion, knowing the rights he was waiving. Counsel was granted leave to withdraw. Defendant advised the court he had no further arguments, standing on the issues raised in his written motion. After hearing arguments from the State, the court noted defendant's motion raised several different issues in eight

numbered paragraphs. The court found only five of the numbered paragraphs were relevant to the motion to reconsider. It further noted sentencing in Illinois is individualized, and it is inappropriate to compare sentences across the board on similar offenses because of the other factors that go into sentencing decisions. The court indicated its consideration of the relevant factors in aggravation and mitigation, which led to reduction of the original sentence. Therefore, the court denied the motion to reconsider.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 As he did in the trial court, defendant proceeds *pro se* in this appeal.

¶ 17 *Pro se* appellants are held to the same standards as attorneys on appeal. *In re A.H.*, 215 Ill. App. 3d 522, 529-30, 575 N.E.2d 261, 266 (1991). Supreme court rules governing the contents of appellate briefs are not mere suggestions, but are requirements. *People v. Stevenson*, 2014 IL App (4th) 130313, ¶ 22, 12 N.E. 3d 179. " 'The purpose of the rules is to require parties to proceedings before a reviewing court to present clear and orderly arguments so that the court may properly ascertain and dispose of the issues involved. [Citation.] Where an appellant's brief fails to comply with the rules, this court has inherent authority to dismiss the appeal for noncompliance with its rules.' " *La Grange Memorial Hospital v. St. Paul Insurance Co.*, 317 Ill. App. 3d 863, 876, 740 N.E.2d 21, 32 (2000) (quoting *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095, 618 N.E.2d 771, 776 (1993)); see also *Niewold v. Fry*, 306 Ill. App. 3d 735, 737, 714 N.E.2d 1082, 1084 (1999) (stating the appellate court has "discretion to strike the plaintiffs' brief and dismiss the appeal for failure to comply with Rule 341").

¶ 18 In the case *sub judice*, defendant's *pro se* filing in this court fails to adhere to

Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013) for appellate briefs (made applicable to criminal cases by Illinois Supreme Court Rule 612(i) (eff. Feb. 6, 2013)). Although defendant sets forth his version of the facts in this case, he does not support his facts with any citations to the record. Additionally, his arguments are not supported by any legal authority or citations to the record.

¶ 19 Where a record is short and the issues are simple, we will, at times, decline to penalize an appellant for an inadequate brief and consider the issues. *People v. Johnson*, 192 Ill. 2d 202, 206, 735 N.E.2d 577, 580 (2000). Here, however, the record consists of 32 volumes. Therefore, defendant's failure to provide a statement of facts with citations to the record, as well as his failure to provide supporting legal authority in his argument, "is not an inconsequential matter." *Burmac Metal Finishing Co. v. West Bend Mutual Insurance Co.*, 356 Ill. App. 3d 471, 478, 825 N.E.2d 1246, 1253 (2005). The appellate court "is not simply a depository into which a party may dump the burden of argument and research." *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56, 4 N.E.3d 1. We are not required to do an appellant's work for him and decline to do so here.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we dismiss the appeal. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2014).

¶ 22 Appeal dismissed.