2018 IL App (4th) 160533-U

NO. 4-16-0533

FILED
November 20, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
EDWIN F. UNDERWOOD,	)	No. 15CF390
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith Jr.,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: Pursuant to *Anders v. California*, 386 U.S. 738 (1967), the appellate court granted counsel's motion to withdraw because no meritorious issues could be raised on appeal.

¶ 2 This appeal comes to us on a motion from the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal because no meritorious issues can be raised in this case. For the following reasons, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2015, the State charged defendant, Edwin F. Underwood, with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)). In October 2015, a jury found defendant guilty, and the trial court later sentenced him to six years in prison.

¶ 5 A. Trial

¶ 6 *1. Defendant's Absence*

¶ 7 At a pretrial hearing on May 13, 2015, the court admonished defendant he could be tried and sentenced *in absentia* if he failed to appear. On the day of trial (October 6, 2015), defendant appeared briefly in the morning, left the courtroom to make a phone call during a recess, and never returned. The court conducted the trial *in absentia* over defense counsel's objection.

¶ 8 *2. The Evidence Presented*

¶ 9 At the October 2015 trial, the only witness was Decatur patrol officer Timothy Wittmer, who testified that he performed a traffic stop on March 16, 2015, in Decatur. Defendant was a passenger in the vehicle. Wittmer searched defendant's person after a canine alerted to narcotics in the vehicle. Wittmer located a pair of metal knuckles in defendant's shoe. The metal knuckles were introduced into evidence at trial.

¶ 10 The parties stipulated that defendant had a prior felony conviction. The State provided the court with a certified copy of defendant's prior conviction for burglary. The jury found defendant guilty of unlawful possession of a weapon by a felon, and the trial court sentenced defendant, *in absentia*, to six years in prison.

¶ 11 B. Posttrial Proceedings

¶ 12 On December 14, 2015, defendant appeared in custody. The trial court admonished him of his right to file a motion to reconsider his sentence and his right to appeal.

¶ 13 On December 30, 2015, defendant filed a *pro se* motion to reconsider his sentence. Following a hearing on July 8, 2016, the trial court denied the motion.

¶ 14 C. The Current Appeal and OSAD's Motion to Withdraw

¶ 15 In July 2016, defendant filed a notice of appeal. OSAD was appointed to represent defendant. In May 2018, OSAD filed a motion to withdraw and served a copy on

defendant. On its own motion, this court granted defendant until July 5, 2018, to file a response. Defendant has not filed a response.

¶ 16 In its brief, OSAD addresses the following potential issues on appeal: (1) whether the state presented sufficient evidence at trial to prove defendant guilty beyond a reasonable doubt; (2) whether the trial court properly admonished defendant about the possibility of being tried *in absentia*; and (3) whether defendant's sentence was excessive or based on improper factors. OSAD concludes these potential issues lack arguable merit and requests to withdraw as appellate counsel. We agree and grant OSAD's motion for leave to withdraw.

¶ 17 II. ANALYSIS

¶ 18 A. Standard of Review and Applicable Law

¶ 19 The United States Supreme Court has set forth the procedures to be followed for an appellate attorney to withdraw as counsel. *Anders v. California*, 386 U.S. 738 (1967); *People v. Mares*, 2018 IL App (2d) 150565, ¶ 6, 98 N.E.3d 554. Counsel's request to withdraw must be accompanied by a brief referring to anything in the record that could support an appeal. *People v. Meeks*, 2016 IL App (2d) 140509, ¶ 10, 51 N.E.3d 1109. After identifying issues that counsel could conceivably raise, counsel must then explain why these potential arguments are without merit. *Id*. A copy of this motion must be provided to the client, who will then be given an opportunity to respond to the motion to withdraw. *Id*. The appellate court will then review the record to determine whether the available arguments are wholly without merit. *Id*.

¶ 20 B. Sufficiency of the Evidence

¶ 21 "When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, a

rational trier of fact could have found the required elements of the crime beyond a reasonable doubt." *People v. Bradford*, 2016 IL 118674, ¶ 12, 50 N.E.3d 1112.

¶ 22 To convict defendant of unlawful possession of metal knuckles by a felon, the State was required to prove defendant (1) knowingly possessed metal knuckles and (2) had a prior felony conviction under Illinois law. 720 ILCS 5/24-1.1(a) (West 2014). At trial, Wittmer testified that defendant admitted to him that he possessed metal knuckles in his shoe and the metal knuckles were introduced into evidence. Further, the parties stipulated that defendant had a prior felony under Illinois law, and the State gave the court a certified copy of his prior burglary conviction. Thus, any argument that the State failed to prove the elements of the crime charged beyond a reasonable doubt would be without merit.

¶ 23 C. Admonishments

¶ 24 A court may commence trial in the absence of a defendant when the State has proven the defendant is willfully avoiding trial. See 725 ILCS 5/115-4.1(a) (West 2014). A *prima facie* case of willful absence is established when the State demonstrates a defendant (1) was advised of his trial date, (2) was admonished of the consequences of failure to appear, and (3) did not appear. *People v. Johnson*, 2018 IL App (2d) 160674, ¶ 12.

¶ 25 On May 13, 2015, the trial court admonished defendant that if he failed to appear for trial he could be tried and sentenced in his absence. Defendant initially appeared in court on his trial date but left the courtroom during a recess and never returned. Therefore, the court was statutorily authorized to commence trial in defendant's absence and any argument to the contrary would be wholly without merit.

¶ 26 D. Excessive Sentence

¶ 27 "A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." (Internal quotation marks omitted.) *People v. Little*, 2011 IL App (4th) 090787, ¶ 22, 957 N.E.2d 102. The reviewing court may not reduce a defendant's sentence unless the sentence constitutes an abuse of the trial court's discretion. *Id*. ¶ 24.

¶ 28 The range for defendant's prison sentence was not less than 3 years and not more than 14 years. At sentencing, the trial court noted defendant's extensive criminal record and his willful failure to appear for both trial and sentencing. Thus, any argument the trial court abused its discretion in sentencing defendant would be without arguable merit.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we agree with OSAD that no meritorious issue can be raised on appeal. We therefore grant OSAD's motion for leave to withdraw as appellate counsel and affirm the trial court's judgment. *Anders*, 386 U.S. at 744.

¶ 31 Affirmed.