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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-CF-25
)	
MOSES RAMIREZ,)	Honorable
)	John A. Barsanti,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court substantially complied with Rule 401(a): although it admonished defendant of the Class 1 and extended-term sentencing ranges and not the Class X sentencing range, defendant was sentenced below those maximums and thus was not prejudiced; although it failed to admonish defendant that he had the right to counsel, he had already twice been appointed counsel and thus clearly knew of that right.

¶ 2 Defendant, Moses Ramirez, contends that he was denied the right to counsel when the trial court failed to admonish him properly under Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). Because the court substantially complied with Rule 401(a), we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted in the circuit court of Kane County on one count of unlawful delivery of more than 1 gram, but less than 15 grams, of a controlled substance (cocaine) (720 ILCS 570/401(c)(2) (West 2012)).

¶ 5 On March 9, 2012, defendant, who was represented by the public defender, was arraigned. The trial court advised defendant that he was charged with a Class 1 felony that carried a potential sentence of 4 to 15 years in prison and a potential extended term of up to 30 years' imprisonment. See 730 ILCS 5/5-4.5-30(a) (West 2012). The court further advised defendant that he had the right to an attorney.

¶ 6 Defendant opted for a jury trial, which was scheduled for March 24, 2014. On March 20, 2014, with defendant present, the State asked that defendant be arraigned, because of the possibility that he could be sentenced as a Class X felon based on two prior felony convictions in Texas. Defendant's counsel commented that defendant had told her that one of the Texas convictions had been overturned on appeal. She added that, if that were not the case, defendant might be eligible for a Class X sentence. When asked, defendant's counsel had no objection to defendant being admonished regarding the potential Class X sentence.

¶ 7 The trial court then admonished defendant that the sentence for a Class 1 felony was 4 to 15 years in prison. The court added that the maximum would double to 30 years if an extended-term sentence applied. See 730 ILCS 5/5-4.5-30(a) (West 2012). Further, the court explained to defendant that, if the State proved that defendant had two prior Class 2 or greater felonies, then defendant would be sentenced as a Class X offender. See 730 ILCS 5/5-5-3.2(b)(1) (West 2012). The court noted that for a Class X felony the minimum sentence would be 6 years in prison and the maximum would be 30 years. See 730 ILCS 5/5-4.5-25(a) (West 2012). The court further

advised defendant, among other things, that he had the right to appointed counsel. Defendant acknowledged that he understood the admonishments.

¶ 8 Following trial, defendant was found guilty. Defendant's retained counsel filed several posttrial motions. On August 28, 2014, the trial court allowed retained counsel to withdraw and appointed the public defender. On December 12, 2014, the public defender withdrew, and defendant retained private counsel.

¶ 9 On August 12, 2015, defendant's counsel filed a supplemental posttrial motion. That motion was denied on October 16, 2015.

¶ 10 Counsel subsequently filed a posttrial motion incorporating most of defendant's *pro se* posttrial filings. Thereafter, defendant filed a motion to dismiss his attorney.

¶ 11 On November 6, 2015, defendant told the trial court that he wanted to hire a new attorney. The court granted defendant's current counsel leave to withdraw. The court continued the matter to November 9, 2015.

¶ 12 On November 9, 2015, defendant indicated that he needed more time to hire a new attorney. The trial court continued the case to December 4, 2015.

¶ 13 On December 4, 2015, defendant advised the trial court that he wanted to proceed *pro se*. The court explained to defendant the importance and benefits of having counsel. The court then determined that defendant was not under the influence of alcohol, drugs, or medication and that he had no physical, mental, or emotional issues that would affect his understanding of the proceedings. The court allowed defendant to represent himself. The court then noted that it would need to rearraign defendant but that it would continue the case to January 14, 2016, to do so.

¶ 14 On January 14, 2016, the trial court initially denied defendant’s *pro se* motion for discovery and transcripts for the purpose of pursuing an ineffectiveness claim against his prior attorneys. It then stated that it was going to arraign defendant again, because he had decided to proceed *pro se*. In doing so, the court explained that, because of prior out-of-state felony convictions, defendant “could be class X [eligible].” The court then advised defendant that the Class 1 felony made him eligible to be sentenced to 4 to 15 years in prison. The court added that, if the extended term applied, defendant would be subject to a maximum of 30 years in prison.

¶ 15 On December 19, 2016, the trial court denied defendant’s various posttrial motions. The court later denied defendant’s motion to reconsider.

¶ 16 On January 27, 2017, the trial court sentenced defendant. At the hearing, the State established that defendant had two prior felony convictions in Texas. The court found that defendant was eligible to be sentenced as a Class X offender and imposed a 10-year prison sentence. Defendant, in turn, filed this timely appeal.

¶ 17 **II. ANALYSIS**

¶ 18 On appeal, defendant contends that the trial court failed to properly admonish him pursuant to Illinois Supreme Court Rule 401(a) (eff. July. 1 1984). The State responds that there was substantial compliance with Rule 401(a).

¶ 19 We begin by noting that defendant failed to challenge the admonishments under Rule 401(a) in the trial court. However, because the right to counsel is fundamental, we may review the issue for plain error. See *People v. Pike*, 2016 IL App (1st) 122626, ¶ 109. The first step of plain-error review is determining whether any error occurred. *People v. Sargent*, 239 Ill. 2d 166,

189 (2010). If it did not, then plain error could not have occurred. *People v. Kitch*, 239 Ill. 2d 452, 465 (2011).

¶ 20 Under Rule 401(a), a trial court shall not permit a defendant subject to a prison sentence to waive counsel without first addressing the defendant in open court and informing him of and determining that he understands: (1) the nature of the charge, (2) the minimum and maximum sentence prescribed by law, including any penalty because of prior convictions, and (3) that he has a right to counsel and, if indigent, to have counsel appointed by the court. Ill. S. Ct. R. 401(a) (eff. July. 1, 1984); *Pike*, 2016 IL App (1st) 122626, ¶ 110.

¶ 21 Strict compliance with Rule 401(a), however, is not necessary. *Pike*, 2016 IL App (1st) 122626, ¶ 112. Instead, only substantial compliance is required. *Pike*, 2016 IL App (1st) 122626, ¶ 112. Substantial compliance occurs if the record indicates that the defendant's waiver was made knowingly and voluntarily and the admonishments given did not prejudice the defendant. *People v. Wright*, 2017 IL 119561, ¶ 41. Whether a court failed to substantially comply with Rule 401(a) is reviewed *de novo*. *Pike*, 2016 IL App (1st) 122626, ¶ 114.

¶ 22 Defendant first asserts that the trial court insufficiently admonished him regarding the potential penalty for a Class X felony. We disagree.

¶ 23 The trial court gave its Rule 401(a) admonishments on January 14, 2016.¹ As defendant argues, the court did not tell him the Class X sentencing range.² However, the court advised him

¹ Defendant notes that, before admonishing him, the trial court ruled on his *pro se* motion for discovery and transcripts. Although defendant had not yet validly waived counsel, he had no automatic right to counsel on a *pro se* motion pertaining to the ineffectiveness of his prior attorneys. See *People v. Moore*, 207 Ill. 2d 68, 77 (2003).

² Although the trial court had advised him of the Class X sentencing range on March 20,

of the Class 1 maximum sentence of 15 years. The court also told him that there was a possibility of a Class X sentence and a 30-year maximum, albeit as an extended-term sentence. Defendant was ultimately sentenced to 10 years' imprisonment. Thus, defendant was not prejudiced by the failure to advise him of the 30-year maximum sentence for a Class X offender. See *Pike*, 2016 IL App (1st) 122626, ¶ 126.

¶ 24 Defendant also asserts that he was not adequately admonished regarding his right to appointed counsel. We disagree.

¶ 25 As discussed, on March 9, 2012, defendant was advised that he had the right to counsel. More importantly, he had been appointed counsel two different times. Where a defendant has been advised of his right to counsel, and, in fact, received the assistance of appointed counsel, it is evident that he understood that he was entitled to counsel. *Wright*, 2017 IL 119561, ¶ 46. Thus, there was substantial compliance with Rule 401(a) regarding defendant's right to appointed counsel.

¶ 26 Finally, we note that defendant's reliance on several appellate-court decisions is misplaced, as the facts in those cases differ significantly from this case. In *People v. LeFlore*, 2013 IL App (2d) 100659, *rev'd on other grounds*, 2015 IL 116799, the trial court admonished the defendant that the maximum sentence was 15 years when it was actually 30. *LeFlore*, 2013 IL App (2d) 100659, ¶ 53. However, the defendant then was sentenced to 20 years. *LeFlore*, 2013 IL App (2d) 100659, ¶ 53. Here, as noted, defendant's sentence was below the maximums of which he had been advised. Thus, *LeFlore* does not support defendant's position.

2014, that did not necessarily validate the waiver. See *People v. Jiles*, 364 Ill. App. 2d 320, 329-30 (2006) (no substantial compliance where admonishments were given three months before the waiver and when the defendant was not requesting to waive counsel).

¶ 27 Similarly, *People v. Koch*, 232 Ill. App. 3d 923 (1992), does not support defendant. In *Koch*, the trial court failed to advise the defendant that he was eligible for an extended-term sentence and of the applicable sentencing range. *Koch*, 232 Ill. App. 3d at 926. However, the defendant was sentenced beyond the maximum of which he was advised. *Koch*, 232 Ill. App. 3d at 927. Because defendant here was sentenced below those maximums, *Koch* is distinguishable.

¶ 28 In conclusion, the record shows that defendant's waiver of counsel was knowing and voluntary and that he was not prejudiced by the given admonishments. Thus, the trial court substantially complied with Rule 401(a).

¶ 29 **III. CONCLUSION**

¶ 30 For the reasons stated, we affirm the judgment of the circuit court of Kane County. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 31 Affirmed.