2019 IL App (4th) 160532-U

NO. 4-16-0532

FILED
January 3, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MAURICE MARTIN, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Woodford County No. 15DT68 Honorable Michael L. Stroh, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Holder White and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in admonishing defendant pursuant to Illinois Supreme Court Rule 401 at a posttrial hearing and finding defendant forfeited his argument on the improper assessment of the Violent Crime Victims Assistance Fund fine.

¶ 2 In June 2015, defendant, Maurice Martin, was arrested and charged with driving under the influence of alcohol (DUI). In May 2016, defendant pleaded guilty to DUI, and the trial court sentenced him to 250 days' imprisonment. In June 2016, defendant filed a posttrial motion for an emergency hearing for furlough, a motion to have the judgment vacated, and a motion for leave to withdraw his plea of guilty. The court granted the motion for furlough but denied the motions to vacate the judgment and for leave to withdraw defendant's guilty plea.

¶ 3 On appeal, defendant argues the trial court erred by not transcribing the admonishments pursuant to Illinois Supreme Court Rule 401 (eff. July 1, 1984) and the court

assessed an incorrect amount for defendant's Violent Crime Victims Assistance Fund fine. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2015, defendant was arrested and charged with DUI (625 ILCS 5/11-501(a) (West 2014)). Defendant represented to the trial court that he wished to proceed *pro se*. The court inquired about his age and education and stated, "I want you to understand presenting a defense is not a simple matter of telling one's story, but requires adhering to various technical rules governing the conduct of trial." Defendant stated he understood. The court proceeded to mention the various advantages of having an attorney and disadvantages of self-representation, and defendant stated he understood that as well. The court then informed defendant he had a right to an attorney, which led to the following exchange:

> "DEFENDANT: Yeah. But the thing is, I'm not in a position to afford an attorney. I got various court proceedings going on, and I don't trust the people that you will appoint to me, so…
>
> THE COURT: You said that you can't afford an attorney. You understand that if you can't afford one, I would appoint an attorney to represent you?
>
> DEFENDANT: Yeah, but I don't trust them.
>
> THE COURT: You don't trust the attorneys that are public defenders?
>
> DEFENDANT: No, sir.

THE COURT: Do you understand that they are trained attornies [*sic*], and that if they are appointed, it is their job to represent you dutifully and to the best of their abilities?

DEFENDANT: Yeah, but I don't believe that. But I understand they take an oath to do that. But I don't believe that they hold to that."

¶ 6 The trial court concluded defendant was not swayed by its warning against self-representation and admonished defendant on the nature of the charges, the maximum and minimum sentences prescribed by law, and his right to counsel according to Illinois Supreme Court Rule 401 (eff. July 1, 1984). Once defendant stated he understood, he attempted to present an oral motion to suppress without case law. The court told him this was the type of issue an attorney is trained to examine and to research and inquired if defendant wanted to have counsel appointed. Defendant said no, and the court instructed him that a motion could not be made orally but had to be written. The court asked a third time if defendant still wanted to proceed without an attorney, and defendant stated he did. The court found defendant "knowingly and voluntarily waive[d] his right to counsel." The court continued the pretrial hearing.

¶ 7 Upon reconvening for the hearing, the trial court again admonished defendant about his "absolute right to be represented by an attorney in this case" and told him one would be appointed free of charge if defendant could not afford it. Defendant said he understood. The court then asked if defendant still wished to proceed without an attorney, and defendant said he had to because "there's no attorney that will be able to come in and take this case to trial right now." The court once again informed him, "We have public defenders available to you. If you cannot afford one I would appoint one of those attorneys to represent you." Once defendant

learned his case would be continued if counsel was appointed, defendant said he did not want representation. The court again told defendant it could not help him in the case if he decided to represent himself and he would be at a disadvantage to the State. Then, the court asked if he was represented by a public defender in his other upcoming criminal trial, and defendant answered in the affirmative. The court then inquired whether defendant would want that public defender to represent him in both cases, and defendant said, "I'll do that."

¶ 8 In May 2016, defendant, represented by appointed counsel, pleaded guilty, accepting a negotiated plea for 250 days of incarceration, a $350 fine, and court costs. In June 2016, defendant filed posttrial motions for an emergency hearing for furlough, a motion to have the judgment vacated, and a motion for leave to withdraw his plea of guilty. Although the hearing on the motions was not transcribed, notes about the hearing are located in the docket. The trial court, once again, inquired whether defendant wanted counsel appointed, and defendant declined. Defendant's motion for furlough was granted and the proceedings on the motions to vacate the judgment and withdraw defendant's guilty plea were continued. In July 2016, the court reconvened and denied the motions to vacate the judgment and withdraw defendant's guilty plea.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 A. Illinois Supreme Court Rule 401

¶ 12 Defendant argues the trial court erred by not properly admonishing him at his posttrial hearing pursuant to Illinois Supreme Court Rule 401 (eff. July 1, 1984) and thus defendant's waiver of his right to counsel was not voluntary, knowing, and intelligent. We disagree.

¶ 13 "The language of Rule 401(a) manifests only the intent to deal with defendants who are considering a waiver of counsel at the initial-appointment stage of the proceedings." *People v. Young*, 341 Ill. App. 3d 379, 387, 792 N.E.2d 468, 475 (2003).

¶ 14 Defendant, by not objecting at the posttrial hearing, forfeited this issue. *People v. Hestand*, 362 Ill. App. 3d 272, 279, 838 N.E.2d 318, 324 (2005). Nonetheless, we will address why the argument fails on the merits. Defendant argues the trial court did not properly admonish him on his right to counsel when he waived this right during his posttrial proceedings. As this court said in *Young*, 341 Ill. App. 3d at 387, Illinois Supreme Court Rule 401 (eff. July 1, 1984) applies only to the "initial-appointment stage of the proceedings;" otherwise, it would lead to an absurd result. The admonishments are "to be given to a defendant 'accused' of an offense 'punishable' by imprisonment." *Young*, 341 Ill. App. 3d at 387. Defendant was already convicted and sentenced and, as such, was not entitled to the admonishments under that rule. However, we note, as this court did in *Young*, defendant was no stranger to these admonishments and the rights within them.

¶ 15 At the time of defendant's posttrial motion to withdraw his plea, defendant had been admonished pursuant to Illinois Supreme Court Rule 401 (eff. July 1, 1984) twice and generally admonished on his right to counsel and the ability to appoint counsel over five times. On March 14, 2016, the trial court admonished defendant about (1) the nature of the charge; (2) the minimum and maximum sentences prescribed by law; and (3) his right to counsel and, if indigent, the right to have counsel appointed by the court. The hearing was transcribed verbatim. Upon receiving those admonishments, defendant decided to represent himself. The court found defendant knowingly and voluntary waived his right to counsel. Three days later, at a hearing on various *pro se* motions, the court again admonished defendant pursuant to his rights under Rule

401. This time defendant decided to have the court appoint an attorney on his behalf, which was the attorney who was representing him in a separate criminal matter. On May 17, 2016, defendant appeared with counsel to enter a guilty plea and was given admonishments pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 2012), which contains all the admonishments in Rule 401. On June 16, 2016, defendant filed *pro se* motions for an emergency hearing for furlough, to vacate the judgment, and to withdraw his guilty plea. According to the docket, the court asked defendant if he "wishe[d] to be considered for appt. of P.D." The docket shows defendant wished to represent himself. Despite noting the court's repeated attempts to advise defendant of his right to counsel throughout the proceedings, we reiterate these admonishments are not necessary at the posttrial stage. Thus, even if the argument was not forfeited, it would fail on the merits.

¶ 16 B. Violent Crime Victims Assistance Fund Fine

¶ 17 Defendant argues the trial court erred in assessing a Violent Crime Victims Assistance Fund fine of $128 instead of a $50 fine.

¶ 18 "Under Rule 604(d), any issue not raised in a motion to withdraw a guilty plea or to reconsider a sentence after a guilty plea is forfeited." *People v. Thompson*, 375 Ill. App. 3d 488, 492, 874 N.E.2d 572, 575-76 (2007). "However, in some circumstances, the plain-error doctrine may be applied as an exception to the forfeiture rule." *People v. Wishard*, 396 Ill. App. 3d 283, 286, 919 N.E.2d 1118, 1120 (2009). "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

> "[T]he plain-error doctrine bypasses normal 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. In the first instance, the defendant must prove 'prejudicial error.' That is, the defendant must show both that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him. The State, of course, can respond by arguing that the evidence was not closely balanced, but rather strongly weighted against the defendant. In the second instance, the defendant must prove there was plain error and that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 186-87, 830 N.E.2d 467, 479-80 (2005).

¶ 19 In the second instance, "[p]rejudice to the defendant is presumed because of the importance of the right involved, '*regardless* of the strength of the evidence.' " (Emphasis in original.) *Herron*, 215 Ill. 2d at 187 (quoting *People v. Blue*, 189 Ill. 2d 99, 138, 724 N.E.2d 920, 9 (2000)). "[W]e do not believe a *de minimus* exception can be placed on plain-error review." *People v. Lewis*, 234 Ill. 2d 32, 48, 912 N.E.2d 1220, 1230 (2009). " 'The imposition of an unauthorized sentence affects substantial rights' and, thus, may be considered by a reviewing court even if not properly preserved in the trial court." *People v. Fort*, 2017 IL 118966, ¶ 19, 88 N.E.3d 718 (quoting *People v. Hicks*, 181 Ill. 2d 541, 545, 693 N.E.2d 373, 375 (1998)).

¶ 20 As our supreme court stated in *Lewis*, 234 Ill. 2d at 48, plain-error review is appropriate to consider the imposition of a fine when it contravenes the intent of a statute. In this

case, the statute implicated is section 10(b) of the Violent Crime Victims Assistance Act (725 ILCS 240/10(b) (West 2016)). Under that section:

> "When any person is convicted in Illinois of an offense listed below, or placed on supervision for that offense on or after July 1, 2012, the court shall impose the following fines:
>
> (1) $100 for any felony;
>
> (2) $50 for any offense under the Illinois Vehicle Code, exclusive of offenses enumerated in paragraph (a)(2) of Section 6-204 of that Code, and exclusive of any offense enumerated in Article VI of Chapter 11 of that Code relating to restrictions, regulations, and limitations on the speed at which a motor vehicle is driven or operated; and
>
> (3) $75 for any misdemeanor, excluding a conservation offense." 725 ILCS 240/10(b) (West 2016).

¶ 21 Here, the trial court, at sentencing, assessed a fine of $128. Defendant concedes forfeiture on this issue and asks for review under the plain-error doctrine. However, this issue is not subject to plain-error review as defendant is not arguing he was denied a fair process for determining the fine, just that the wrong amount was imposed, which does not implicate a substantial right. See *People v. Smith*, 2018 IL App (1st) 151402, ¶ 5, 97 N.E.3d 117 (Stating the defendant "does not claim that the trial court failed to provide a fair process for determining his fines and fees. Therefore, his complained-of errors do not affect substantial rights and are not reviewable under the plain error doctrine."). Thus, defendant's argument is forfeited.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the trial court's judgment. 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 2016).

¶ 24 Affirmed.