2019 IL App (4th) 160918-U

NO. 4-16-0918, 4-16-0919 cons.

FILED
April 16, 2019
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.	)	McLean County
KEITH ALEXANDER ARBUCKLE,	)	Nos. 13CF1501, 15CF972
Defendant-Appellant.	)	
	)	Honorable
	)	Paul G. Lawrence,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), the circuit court made an adequate inquiry into defendant's *pro se* claim of ineffective assistance, and the inquiry revealed no possible neglect of the case that might have invalidated his guilty plea.

(2) In the hearing on his motion to withdraw his guilty plea, defendant suffered no prejudice from the new judge's omission to review the transcript of the guilty-plea hearing since the sole argument that defendant made in support of withdrawing his guilty plea had nothing to do with the contents of that transcript and, on appeal, defendant alleges no violation of Illinois Supreme Court Rule 402 (eff. July 1, 2012).

(3) For purposes of the doctrine of plain error, omitting to review the transcript of the guilty-plea hearing before denying defendant's motion to withdraw his guilty plea cannot convincingly be characterized as an error so grave as to throw the judicial system into disrepute if nothing in the transcript would justify allowing the guilty plea to be withdrawn and the sole argument that defense counsel made in support of withdrawing the guilty plea was based on evidence outside the guilty-plea hearing.

¶ 2 Defendant, Keith Alexander Arbuckle, is serving a sentence of eight years' imprisonment for criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2014)). He appeals on two grounds.

¶ 3 First, he argues that the circuit court of McLean County failed to make an adequate inquiry into his *pro se* claim of ineffective assistance. We disagree. In a nonadversarial investigatory proceeding, the court requested defendant to provide all the details underlying his *pro se* claim of ineffective assistance, and the court gave defense counsel an opportunity to respond. The inquiry revealed no possible neglect of the case that might have invalidated defendant's open guilty plea to the charge of criminal sexual assault.

¶ 4 Second, defendant characterizes his posttrial hearing as unfair because a different judge presided over that hearing than had presided over the guilty-plea hearing and sentencing hearing and, before denying defendant's motion to withdraw his guilty plea, the new judge admitted he had not reviewed the transcript of the guilty-plea hearing. Defense counsel, however, had reviewed the transcript—as she had certified in her Rule 604(d) certificate (see Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016))—and both parties agreed, or at least strongly implied, that the transcript was irrelevant to the sole argument that defense counsel chose to make in the posttrial hearing. And we note that, on appeal, defendant identifies no defect in the transcript, no error or omission in the Rule 402 admonitions (see Ill. S. Ct. R. 402 (eff. July 1, 2012).

¶ 5 Therefore, we affirm the judgment.

¶ 6 I. BACKGROUND

¶ 7 On January 22, 2016, in McLean County case No. 15-CF-972, defendant pleaded guilty to count III of the information, a count charging him with criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2014)). He also admitted that by committing that offense, he

violated probation in McLean County case No. 13-CF-1501. There was no agreement as to a sentence, but in return for the guilty plea and the admission of the petition to revoke probation, the State had promised to dismiss the remaining two counts in McLean County case No. 15-CF-972. After admonishing defendant, the circuit court accepted his guilty plea to count III, finding the plea to be knowing and voluntary. Counts I and II were dismissed, and the court scheduled a sentencing hearing on count III for March 29, 2016.

¶ 8 On that date, the circuit court received a *pro se* letter from defendant, in which he complained of having received ineffective assistance from appointed defense counsel. He wrote, *inter alia*, that defense counsel had advised him to "cop out," she had acted "as though she didn't even care" about his case, and she had never expressed any intention of "fighting for" him in the case.

¶ 9 In the hearing of March 29, 2016, the circuit court told defendant it had received the letter, and the court asked him "to provide [the court] with as much specific detail—not conclusions, but specific detail—about what [he] believe[d] [his] lawyer either did or didn't do that was ineffective." Again the court emphasized that it wanted to hear "specific details, not conclusions." In response, defendant asserted he would never have pleaded guilty had he been aware of a laboratory report that defense counsel had neglected to show him.

¶ 10 The circuit court allowed defense counsel to respond. She stated that although she had not shown defendant the November 2015 laboratory report, she had told him what the report said—that two exhibits were being passed along in the laboratory for further testing. Defense counsel further stated that on December 3, 2015, when she appeared with defendant for a court hearing, she showed him a laboratory report from December 2015, which set forth the results of the additional testing, *i.e.*, that the alleged victim's DNA (deoxyribonucleic acid) was found on

defendant's penile swab. Defense counsel explained to the court that after reviewing the December 2015 laboratory report as well as some text messages she had extracted from defendant's cell phone and after considering that he would be "extended term eligible for a subsequent criminal sexual assault," she and another public defender concluded it would be in defendant's best interest to enter a negotiated guilty plea to count III and that defense counsel so advised him. Finding defense counsel's account to be "more persuasive" than defendant's, the court decided that defense counsel was "not ineffective" and that there was no reason to appoint substitute counsel.

¶ 11 The matter then proceeded to sentencing. The circuit court sentenced defendant to eight years' imprisonment for count III, to run concurrently with the resentence of three years' imprisonment in case No. 13-CF-1501, in which defendant had admitted violating probation.

¶ 12 On April 14, 2016, defendant moved to withdraw his guilty plea and his admission of the petition to revoke probation, alleging he had not understood the consequences of his guilty plea. On November 29, 2016, the circuit court held a hearing on the motion. Although Judge Drazewski had presided over defendant's guilty plea and sentencing hearing, Judge Lawrence presided over the hearing on defendant's motion to withdraw his guilty plea.

¶ 13 In that hearing, Judge Lawrence stated: "I take it—well, I know you filed your [Rule] 604(d) [(Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016))] certificate, [defense counsel]. I haven't seen a copy of the transcript. I assume there's [*sic*] no issues with the transcript. No one has raised any issues as far as the conduct of the plea hearing." Defense counsel responded:

> "[DEFENSE COUNSEL]: My client's argument is that he was made aware of this new information of DNA testing after his plea, and that would have changed his position on pleading guilty at the time.

THE COURT: All right.

[PROSECUTOR]: The State believes all the correct admonishments were given at the plea hearing.

THE COURT: All right then. The motion to withdraw guilty plea is based upon the fact that the defendant did not understand the consequences of his plea. There being no evidence presented today other than the article here which is kind of a—I will go ahead and mark this as an exhibit if you'd like, [defense counsel]? It's kind of a primer on DNA evidence, and the Court has reviewed it.

[DEFENSE COUNSEL]: Yes, Your Honor. I would like it marked as an exhibit.

THE COURT: All right. [Defense counsel] has asked me to review it[,] and I have. It's obviously kind of a general primer on DNA evidence and nothing specific to this case.

So it's clear that the defendant has not been able to show that he did not understand the consequences of his plea, and so the Court will deny the motion for new trial.

Is there anything else we need to do today then, [defense counsel]?

[DEFENSE COUNSEL]: No, Your Honor. I believe—I don't know if he needs to be admonished as to how it works on the motion to withdraw or not.

THE COURT: Does he want to—

[DEFENSE COUNSEL]: He has indicated that he's going to want to appeal the decision today.

THE COURT: Okay. I will direct the clerk to file the notice of appeal on behalf of [defendant] ***."

¶ 14 II. ANALYSIS

¶ 15 A. The Adequacy of the *Krankel* Hearing

¶ 16 A knowing and voluntary guilty plea waives all nonjurisdictional errors, including constitutional errors. *People v. Townsell*, 209 Ill. 2d 543, 545 (2004). Ineffective assistance by defense counsel, a constitutional error (see *People v. Domagala*, 2013 IL 113688, ¶ 36), has nothing to do with the jurisdiction of the circuit court. Therefore, a guilty plea waives all claims that defense counsel rendered ineffective assistance before the guilty plea (see *Townsell*, 209 Ill. 2d at 545; *People v. Ivy*, 313 Ill. App. 3d 1011, 1017 (2000))—unless the ineffective assistance made the guilty plea inadequately informed or involuntary (*People v. Miller*, 346 Ill. App. 3d 972, 980-81 (2004); *People v. Brumas*, 142 Ill. App. 3d 178, 180 (1986)).

¶ 17 On appeal, defendant does not argue that his guilty plea was inadequately informed or involuntary, let alone explain how the alleged ineffective assistance by defense counsel might have made it so. He complained, in his letter to the circuit court, that defense counsel had advised him to "cop out," that she had acted "as though she didn't even care" about his case, and that she had never discussed "fighting for" him. On appeal, he argues that the circuit court failed to make an adequate preliminary inquiry into his *pro se* complaint. See *Krankel*, 102 Ill. 2d at 188.

¶ 18 On the contrary, in the *Krankel* hearing, the court twice requested defendant to give the court "specific details, not conclusions," "about what [his] lawyer either did or didn't do." See *People v. Moore*, 207 Ill. 2d 68, 78 (2003) ("A brief discussion between the trial court and the defendant may be sufficient."); *cf. People v. Ayres*, 2017 IL 120071, ¶ 6 ("The circuit

court did not consider or even reference [the] defendant's [*pro se*] petition[,] [in which he alleged ineffective assistance].") In his conversation with the court, defendant did not explain how defense counsel, by advising him to "cop out" (or plead guilty) and by supposedly displaying a lack of zeal and fighting spirit, misled, forced, or threatened defendant into pleading guilty. See Ill. S. Ct. R. 402(b) (eff. July 1, 2012). In other words, he failed to show any possible neglect of his case that might have invalidated his guilty plea. Therefore, we agree with the circuit court that it was unnecessary to appoint substitute counsel. See *Moore*, 207 Ill. 2d at 78; *Townsell*, 209 Ill. 2d at 545; *Ivy*, 313 Ill. App. 3d at 1017.

¶ 19 Defendant argues that the circuit court committed reversible error by "conclud[ing]—on the merits—that there [had been] no effective assistance" (*People v. Roddis*, 2018 IL App (4th) 170605, ¶ 81) instead of limiting itself to the question of whether there had been "possible neglect of the case" (*Moore*, 207 Ill. 2d at 78). Regardless of whether the court applied the wrong standard by concluding that defense counsel was "not ineffective," we review the court's judgment, not its reasoning, and we may affirm the judgment on any basis the record supports. See *People v. Wright*, 194 Ill. 2d 1, 16 (2000); *Bjorkstam v. MPC Products Corp.*, 2014 IL App (1st) 133710, ¶ 23 (a reviewing court may affirm on any basis in the record, regardless of whether the circuit court relied on that basis or whether its reasoning was correct). Our review of this issue is *de novo* (*People v. Thomas*, 2017 IL App (4th) 150815, ¶ 24), and in our *de novo* review, we find "an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel" (*Moore*, 207 Ill. 2d at 78).

¶ 20 B. Defendant's Argument That the Circuit Court Should Have Reviewed the Transcript of the Guilty-Plea Hearing Before Denying His Motion to Withdraw His Guilty Plea

¶ 21 As we said, Judge Drazewski presided over defendant's guilty plea and sentencing hearing, but Judge Lawrence presided over the hearing on defendant's motion to withdraw his guilty plea. On the authority of *People v. Hampton*, 223 Ill. App. 3d 1088, 1096 (1991), defendant argues that "a defendant is denied a fair proceeding where the record demonstrates that the new posttrial judge failed to review *the relevant evidence* before ruling on the posttrial motions." (Emphasis added.) It appears, though, that the parties agreed with the court, at least implicitly, that the transcript of the guilty-plea hearing was irrelevant. The circuit court said: "I assume there's [*sic*] no issues with the transcript. No one has raised any issues as far as the conduct of the plea hearing." And instead of contradicting the court in that respect, defense counsel responded: "My client's argument is that he was made aware of this new information of DNA testing after his plea, and that would have changed his position on pleading guilty at the time."

¶ 22 Acknowledging that defense counsel never objected when Judge Lawrence stated he had not read the transcript of the guilty-plea hearing, defendant invokes the doctrine of plain error. Defendant argues that by omitting to read the transcript of the guilty-plea hearing before denying the motion to withdraw the guilty plea, Judge Lawrence imperiled the integrity of the judicial process. See *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). We are unconvinced. Defendant does not allege any noncompliance with Illinois Supreme Court Rule 402 (eff. July 1, 2012). He alleges no mistake in the admonitions or other guilty-plea procedures. If, from an objective point of view, nothing in the transcript of the guilty-plea hearing would call into question the knowingness and voluntariness of defendant's guilty plea—and, again, defendant identifies no such defect in the transcript—it would be an exaggeration to say that Judge

Lawrence threw the judicial system into disrepute by following both parties' lead and disregarding the transcript as irrelevant.

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reasons, we affirm the circuit court's judgment, and we award the State $50 in costs.

¶ 25 Affirmed.