2019 IL App (4th) 160947-U

NO. 4-16-0947

FILED
May 7, 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
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Pike County
JUSTIN R. RAWLINGS,	)	No. 15CF92
Defendant-Appellant.	)	
	)	Honorable
	)	J. Frank McCartney,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed defendant's conviction and sentence.

¶ 2 In April 2016, defendant entered an open plea of guilty to methamphetamine trafficking (more than 15 grams but less than 100 grams) (720 ILCS 646/56(a), (b) (West 2014)). In May 2016, the trial court sentenced defendant to 18 years in prison. In June 2016, defendant filed a *pro se* motion to withdraw his plea of guilty and vacate his sentence, alleging ineffective assistance of counsel. In September 2016, the trial court permitted defendant to amend his motion to withdraw his guilty plea to a motion to reconsider sentence. After a December 2016 hearing, the trial court denied the motion.

¶ 3 Defendant appeals, arguing (1) the trial court improperly considered two aggravating factors inherent in the offense in sentencing him, (2) his sentence is excessive, (3) the trial court erred in ordering him to pay a $9680 street-value fine, (4) he is entitled to day-

for-day sentencing credit, and (5) his case should be remanded for a hearing pursuant to *People v Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny. For the following reasons, we disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 On November 18, 2015, the State charged defendant by information with one count of methamphetamine trafficking (more than 100 grams but less than 400 grams), a Class X felony (720 ILCS 646/56(a) (West 2014)) and one count of unlawful possession of methamphetamine with intent to deliver (more than 100 grams but less than 400 grams), a Class X felony (720 ILCS 646/55(a)(2)(D) (West 2014)).

¶ 6 On April 5, 2016, the State and defendant entered into a plea agreement. The agreement provided defendant would plead guilty to a lesser charge of methamphetamine trafficking (more than 15 grams but less than 100 grams) (720 ILCS 646/56(a), (b) (West 2014)). In exchange for defendant's guilty plea, the State agreed it would dismiss the charge alleging unlawful possession with intent to deliver.

¶ 7 At the hearing on defendant's guilty plea, the trial court advised defendant of the nature of the charge and the range of possible penalties, "between 12 and 60 years" in prison. The court advised defendant he had the right to plead not guilty and persist in that plea. The court advised defendant that by pleading guilty, he would give up his right to trial. The court further explained that by pleading guilty, defendant would relinquish his right to be confronted with the witnesses against him and to cross-examine those witnesses. Defendant told the trial court he understood the nature of the charge against him and the range of possible penalties for the offense. Defendant also informed the court he understood the rights he would be waiving by

pleading guilty. Defendant stated the choice to plead guilty was made of his own free will and that no person forced, threatened, or pressured him to enter the plea.

¶ 8 The State then presented the following factual basis for the plea:

> "[I]f this case were to proceed to trial, the [S]tate would call numerous witnesses from law enforcement, the main one being an investigator from Morgan County named Sean Haefeli. And he would testify that he had had an ongoing investigation of [defendant] and that on this particular date, November 17th, 2015, he had tracked through pings off a cell phone, had tracked [defendant] to western Missouri and back and they picked him up in a vehicle, watching him from Missouri into Illinois.
>
> A traffic stop was initiated in Pike County, Illinois, on [defendant's] vehicle after he had gone over the line on Interstate 72. And during the course of the investigation, it was discovered within [defendant's] vehicle that he had an amount of methamphetamine between 15 and 100 grams, and he had that with the purpose of delivering said methamphetamine and he had brought it from Missouri into Illinois by all accounts of [defendant] and the codefendants."

¶ 9 Thereafter, the trial court found defendant had knowingly, understandingly, and voluntarily entered the plea and the factual basis supported the plea of guilty. The court entered judgment on the plea and set the matter for sentencing.

¶ 10 At the May 2016 sentencing hearing, defendant presented testimony in mitigation from his mother, Bobbie Thomas, and the mother of his two-year-old child, Kendall Eastin. Thomas testified that defendant had a strong family support system that would help him find housing and employment following his release from prison. Eastin testified that defendant was a

good father despite his drug addiction and that defendant was dedicated to supporting their child in the future.

¶ 11 During argument, the State requested the trial court sentence defendant to 17 years in prison. The State emphasized the extensive evidence that defendant was a "big drug dealer," stating:

> "I found on page 33 of the PSI, it said it all to me, and I quote and this is from the police report, '[Defendant] advised he would pay [codefendants] in money or dope for their efforts. [Defendant] estimated that he had bought drugs more than 300 times in the past. [Defendant] advised the most he had ever purchased at one time was a pound of methamphetamine. [Defendant] estimated he had purchased enough methamphetamine to fill a five-gallon trash can 20 times.' "

Defendant also admitted to investigators that he had previously sold a gun in exchange for methamphetamine. Finally, the State emphasized defendant's criminal history, which included a juvenile adjudication and various misdemeanors and petty offenses.

¶ 12 Defendant argued for the minimum sentence of 12 years in prison. Defendant emphasized his acceptance of responsibility for his actions, cooperation with police, potential for rehabilitation, expressions of remorse, struggles with substance abuse, and youth.

¶ 13 Upon inquiry by the trial court, the parties agreed defendant would serve his sentence at 75%. See 730 ILCS 5/3-6-3(a)(2)(v) (West 2014) (75% truth-in-sentencing statute).

¶ 14 In sentencing defendant, the trial court stated it had reviewed the presentence investigation report (PSI), including the "lengthy, lengthy report about what happened." The court also stated it considered the statutory factors in aggravation and mitigation. As a factor in aggravation, the court noted the PSI report was not clear as to whether defendant "received

compensation for committing the offense." The court stated, "Obviously I think there's an inference that can be made that maybe he was making money off this but it's not crystal clear to me that that was the case." The court then noted defendant had a "history of criminal activity" but found the "strongest factor in aggravation to be deterrence." Before entering its final sentencing decision, the court stated it did not find that a minimum sentence was appropriate in this case. The court noted its consideration of the following factors:

> "He's got some criminal history, he's been to juvenile DOC. He had over 120 grams of methamphetamine. It's obvious to me from the report that he was the ringleader here, as [defense counsel] indicated. We had him hiding drugs. And as I indicated, you know, fortunately the drugs were stopped this time. We stopped it from getting on the streets. But when we have trading firearms for methamphetamine and we have all these other occasions, and I'm not putting a lot of weight on that; I don't need to here. I can put my weight on the facts of this case and that's what I'm doing."

¶ 15 The court then sentenced defendant to 18 years in prison followed by 3 years of mandatory supervised release.

¶ 16 In June 2016, defendant filed a *pro se* motion to withdraw his plea of guilty, claiming ineffective assistance of counsel and asserting he advised counsel to negotiate a plea agreement providing for "a 50% deal, and this is [what] I was advise[d] befor[e] court and was told I was going to get." Thereafter, the court appointed new counsel to represent defendant in the postplea proceedings.

¶ 17 In September 2016, counsel for the State and counsel for the defendant appeared for a status hearing on defendant's motion to withdraw his guilty plea. At the hearing, counsel for defendant requested leave to amend the motion, stating:

> "[B]ased on what [defendant] had previously, or what he told me Monday on the phone is that he's actually not going to be seeking a Motion to Vacate and would like to have leave to amend that to a Motion to Reconsider.
>
> And just ask for a sentence reduction versus trying to undo everything that happened, which I think—I don't believe there's any objection by the State for him to do that. But, I guess I would like to go ahead and put it in the motion, or the order that we have leave to amend it to a Motion to Reconsider."

¶ 18 The trial court permitted defendant to amend his motion to withdraw his guilty plea to a motion to reconsider sentence, which defendant filed in November 2016. In his motion to reconsider sentence, defendant stated his agreement with the State "was to amend count I to reduce the amount allegedly trafficked thereby reducing the sentencing range to *** 12-60 years to be served at 75%." Defendant asserted his 18-year sentence was excessive, contending (1) the trial court failed to consider various mitigating factors and (2) the sentence was disproportionate to the sentences of his codefendants. Following a December 2016 hearing, at which defendant appeared, the trial court denied the motion to reconsider.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant argues (1) the trial court erred in sentencing him by considering factors in aggravation that were inherent in the offense, (2) his sentence is excessive, (3) the trial court erred in ordering him to pay a $9680 street-value fine, (4) he is entitled to day-

for-day sentencing credit, and (5) his case should be remanded for a hearing pursuant to *Krankel* and its progeny. For the following reasons, we affirm.

¶ 22 A. Factors in Aggravation

¶ 23 Defendant argues the trial court improperly relied on factors inherent in the offense in sentencing him. Specifically, defendant argues the court improperly considered as aggravating factors (1) the societal harm caused by the introduction of methamphetamine into a community and (2) his compensation for the trafficking of methamphetamine. We note that defendant has forfeited this issue by failing to raise it in a timely manner in a written postplea motion. See *People v. Reed*, 177 Ill. 2d 389, 393, 686 N.E.2d 584, 586 (1997). Defendant requests that we review this issue for plain error.

¶ 24 In order to preserve a sentencing error for review on appeal, a criminal defendant must (1) object to the error in the trial court and (2) raise the issue in a written motion to reconsider. *People v. Sharp*, 2015 IL App (1st) 130438, ¶ 132, 26 N.E.3d 460. If the defendant fails to preserve an issue, we may review the claim of error only if the defendant establishes plain error, which is "a narrow and limited exception." *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010).

> "To obtain relief under this rule, a defendant must first show that a clear or obvious error occurred. [Citation.] In the sentencing context, a defendant must then show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Id.*

The defendant bears the burden of persuasion under both prongs of the test, and a procedural default will be honored if he fails to meet that burden. *Id.*

¶ 25 We begin our plain-error analysis by first determining if any error occurred. *People v. Sanders*, 2016 IL App (3d) 130511, ¶ 12, 58 N.E.3d 661. "[A trial] court may consider the nature and circumstances of an offense, including the nature and extent of each element of the offense as committed by the defendant." *Id.* ¶ 13. A defendant "must show more than the mere mentioning of an improper fact" to obtain remand for resentencing. *People v. Reed*, 376 Ill. App. 3d 121, 128, 875 N.E.2d 167, 174 (2007). "Rather, defendant must show that the trial court relied on the improper fact when imposing sentence." *Id.* If the defendant can establish that the trial court relied on the improper factor and the reviewing court is unable to determine the weight given to that factor, the cause must be remanded for resentencing. *Sanders*, 2016 IL App (3d) 130511, ¶ 13. However, remand is not required if the reviewing court determines the weight placed on that factor was insignificant. *Id.*

¶ 26 1. *General Societal Harm*

¶ 27 Here, the trial court did not improperly consider the general societal harm of drug trafficking as an aggravating factor. First, the court referred to methamphetamine as a "dangerous drug" only when considering in *mitigation* whether "defendant's conduct [n]either caused [n]or threatened serious physical harm to another." See 730 ILCS 5/5-5-3.1(a)(1) (West 2014). The court stated it was "trying to give defendant the benefit of the doubt" and determined that defendant "did not contemplate that his criminal conduct would cause or threaten serious physical harm to another." Furthermore, the court's comment that it could not "comprehend the number of lives that [defendant] has touched in a negative manner with this horrific drug, this horrible habit[,]" was made after the court referenced the amount of methamphetamine defendant estimated he had purchased, "enough meth *** to fill a five-gallon trash can 20 times." In this context, the court's comment was a proper consideration of the nature of defendant's conduct.

¶ 28 2. *Compensation*

¶ 29 "While the proceeds of the crime are not an aggravating factor under section 5-5-3.2(a)(2), they can be proper considerations at sentencing when the proceeds relate to such things as the extent and nature of a defendant's involvement in a particular criminal enterprise, a defendant's underlying motivation for committing the offense, the likelihood of the defendant's commission of similar offenses in the future and the need to deter others from committing similar crimes." *People v. Rios*, 2011 IL App (4th) 100461, ¶ 15, 960 N.E.2d 70.

¶ 30 Here, although the court referenced compensation as *an* aggravating factor (see 730 ILCS 5/5-5-3.2(a)(2) (West 2014)), it then stated that the PSI report was "not clear" as to whether defendant received compensation for committing the offense. The court continued, stating, "Obviously I think there's an inference that can be made that maybe he was making money off this but it's not crystal clear to me that that was the case." Thus, the court's remarks expressing doubt that defendant received compensation "for committing the offense" clearly show it did not rely on compensation as an aggravating factor in determining defendant's sentence. Moreover, the court's comment that it could not "imagine that [defendant has] not profited in some manner with the amount of trips he was making to various places" was made immediately after noting that defendant admitted he "purchased enough methamphetamine to fill a five-gallon trash can 20 times[.]" As noted above, this was a proper consideration of the nature and seriousness of defendant's conduct.

¶ 31 Because we do not find the court committed a clear or obvious error, we need not consider whether the evidence was closely balanced or if defendant was denied a fair sentencing hearing.

¶ 32 B. Excessive Sentence

¶ 33 Defendant next argues his 18-year prison sentence is excessive because the trial court failed to properly consider in mitigation defendant's (1) potential for rehabilitation, (2) cooperation with police, and (3) past struggles with addiction. We disagree and affirm defendant's sentence.

¶ 34 The Illinois Constitution requires that in criminal cases, "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11; *People v. Clemons*, 2012 IL 107821, ¶ 30, 968 N.E.2d 1046. The trial court has great discretion in issuing a sentence within the proper statutory limits, as it is in the best position to weigh the evidence and assess the credibility of the witnesses. *People v. Haley*, 2011 IL App (1st) 093585, ¶ 63, 960 N.E.2d 670. The court's sentencing determination shall be based "on the particular circumstances of each case, considering such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999). The reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *Id.* "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." *Id.* at 54.

¶ 35 Here, we do not find the sentence imposed by the trial court excessive. Defendant pleaded guilty to one count of methamphetamine trafficking (more than 15 but less than 100 grams), which carries a sentencing range between 12 and 60 years in prison. (720 ILCS 646/56(a), (b) (West 2014)); 720 ILCS 646/55(a)(2)(C) (West 2014). Defendant's 18-year sentence is within the lower range for class X sentencing. The court specifically found that defendant's statements in the PSI report were inconsistent with his admissions to law

enforcement following his arrest. In the PSI report, defendant insisted his trips were all for personal use; conversely, he previously admitted to law enforcement that he made more than 300 methamphetamine purchases—enough to fill a five-gallon trash can 20 times—which, given the volume, would be inconsistent with personal use. The trial court further considered defendant's criminal history, noting that while he did not have any felonies as an adult, he had several juvenile adjudications, misdemeanors, and petty offenses on his record. Although defendant presented some evidence of his potential for rehabilitation, cooperation with law enforcement, and history of drug addiction, we cannot say that defendant's 18-year sentence is at great variance with the spirit of the law or is manifestly disproportionate to the nature of the offense. Given the trial court's finding that defendant lacked credibility, the sheer volume of methamphetamine defendant brought into Illinois, his criminal history, and the trial court's consideration of the deterrence factor, we do not find the court failed to properly consider the mitigating factors. Accordingly, we affirm defendant's sentence.

¶ 36 C. Street-Value Fine

¶ 37 Defendant next argues the trial court erred in ordering him to pay a $9680 street-value fine. See 730 ILCS 5/5-9-1.1(a) (West 2014). We conclude we do not have jurisdiction to review this issue and do not address it.

¶ 38 Pursuant to Illinois Supreme Court Rule 472(a)(1) (eff. Mar. 1, 2019), the trial court retains jurisdiction of a criminal case to correct certain sentencing errors, including the "imposition or calculation of fines, fees, assessments, or costs[.]" A party may request such a correction "any time following judgment and after notice to the parties, including during the pendency of an appeal, on the court's own motion, or on motion of any party[.]" Ill. S. Ct. R. 472(a) (eff. Mar. 1, 2019). Furthermore, "[n]o appeal may be taken by a party from a judgment

of conviction on the ground of any sentencing error specified [in Rule 472] unless such alleged error has first been raised in the circuit court." Ill. S. Ct. R. 472(c) (eff. Mar. 1, 2019) Our review of the record reveals defendant has not yet raised a challenge to the court's calculation of the street-value fine. Therefore, this court does not have jurisdiction to review it.

¶ 39 D. Day-for-Day Sentencing Credit Eligibility

¶ 40 Defendant next argues he is entitled to day-for-day credit against his sentence and the trial court erred in requiring him to serve at least 75% of his sentence pursuant to section 3-6-3(a)(2)(v) of the Unified Code of Corrections (Code) (730 ILCS 5/3-6-3(a)(2)(v) (West 2014)). We note that defendant agreed at the sentencing hearing that "this is a 75 percent sentence" and stated in his motion to reconsider that "[a]s amended, the Defendant's sentencing range is 12-60 years to be served at 75%." Generally, a party is estopped from taking a position on appeal that is inconsistent with the position he took in the trial court. See *In re Stephen K.*, 373 Ill. App. 3d 7, 25, 867 N.E.2d 81, 98 (2007). However, even if defendant was not estopped from raising this argument on appeal, we find that it would fail on the merits.

¶ 41 Defendant argues that section 3-6-3(a)(2)(v) of the Code (730 ILCS 5/3-6-3(a)(2)(v) (West 2014)) requires an individual convicted of methamphetamine trafficking to serve at least 75% of his sentence *only* if he is convicted of trafficking 100 grams or more of a substance containing methamphetamine. Defendant pleaded guilty to methamphetamine trafficking (more than 15 grams but less than 100 grams) (720 ILCS 646/56(a), (b) (West 2014)). The State argues the 75% requirement applies to all convictions for methamphetamine trafficking. We agree with the State.

¶ 42 Section 3-6-3(a)(2)(v) of the Code states:

> "[A] person serving a sentence for gunrunning, narcotics racketeering, controlled substance trafficking, *methamphetamine trafficking*, drug-induced homicide, aggravated methamphetamine-related child endangerment, money laundering pursuant to clause (c) (4) or (5) of Section 29B-1 of the Criminal Code of 1961 or the Criminal Code of 2012, *or a Class X felony conviction for* delivery of a controlled substance, possession of a controlled substance with intent to manufacture or deliver, calculated criminal drug conspiracy, criminal drug conspiracy, street gang criminal drug conspiracy, participation in methamphetamine manufacturing, aggravated participation in methamphetamine manufacturing, delivery of methamphetamine, possession with intent to deliver methamphetamine, aggravated delivery of methamphetamine, aggravated possession with intent to deliver methamphetamine, methamphetamine conspiracy *when the substance containing the controlled substance or methamphetamine is 100 grams or more shall receive no more than 7.5 days sentence credit for each month of his or her sentence of imprisonment*[.]" (Emphases added.) 730 ILCS 5/3-6-3(a)(2)(v) (West 2014).

¶ 43 When called upon to interpret a statute, the primary objective of the reviewing court is to give effect to the intention of the legislature. *People v. Collins*, 214 Ill. 2d 206, 214, 824 N.E.2d 262, 266 (2005). The best indication of intent is the language of the statute. *Id.* "Where the language is plain and unambiguous we must apply the statute without resort to further aids of statutory construction." *Id.* We review issues of statutory interpretation *de novo*. *Id.* at 214.

¶ 44 Here, we find that under the plain language of section 3-6-3(a)(2)(v) of the Code, the 75% requirement applies to all of the offenses listed in the statute—including the offenses listed after "or a Class X felony conviction for" if the controlled substance is 100 grams or more. The offense for which defendant was convicted (methamphetamine trafficking) does not fall into the latter category, and he is therefore not entitled to day-for-day sentencing credit.

¶ 45 E. *Krankel* Inquiry

¶ 46 Finally, defendant argues this case should be remanded for a *Krankel* hearing because his *pro se* motion to withdraw his guilty plea alleged ineffective assistance of counsel. See *Krankel*, 102 Ill. 2d at 189. We disagree.

¶ 47 Under *Krankel* and its progeny, when a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, the trial court must inquire into the factual basis of the claim. *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003). "If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion." *Id.* at 78. New counsel should be appointed when the allegations show possible neglect of the case. *Id.* The purpose of appointing new counsel following a preliminary *Krankel* inquiry is to ensure the independent evaluation of defendant's claim and to "avoid the conflict of interest that trial counsel would experience if trial counsel had to justify his or her actions contrary to defendant's position." *Id.* However, a trial court is not required to conduct an independent inquiry into a defendant's *pro se* allegations of ineffective assistance if he later withdraws the motion and "effectively prevent[s] the trial court from any substantive review of [the] motion." *People v. McGee*, 345 Ill. App. 3d 693, 699, 801 N.E.2d 948, 954 (2003).

¶ 48 Here, defendant clearly raised a claim of ineffective assistance of counsel in his *pro se* motion to withdraw his guilty plea. Defendant alleged, "I feel that I was being pressure[d] into taking a plea that I fully did not understand, and I advised my lawyer to work out a plea with the State for a 50% deal, and this is was I was advise[d] befor[e] court and was told I was going to get." Following defendant's filing of his *pro se* motion, the trial court appointed new counsel to represent defendant in the postplea proceedings and set the matter for a hearing. At the hearing on defendant's *pro se* motion to withdraw his guilty plea, defendant effectively withdrew his motion when his posttrial counsel, who had no apparent conflict of interest that would prevent her from raising the issue of previous counsel's competence at the sentencing hearing, amended the motion and converted it to a motion to reconsider sentence. This decision to amend the motion came after a discussion with defendant, who agreed that he would prefer to pursue a motion to reconsider rather than a motion to withdraw his guilty plea. Because defendant agreed to amend his motion to withdraw to a motion to reconsider sentence and pursue a different form of relief, he abandoned his claim of ineffective assistance and prevented the court from addressing it. Accordingly, we do not find that this case should be remanded for a *Krankel* hearing.

¶ 49 III. CONCLUSION

¶ 50 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. See 55 ILCS 5/4-2002(a) (West 2016).

¶ 51 Affirmed.