

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
SHAWN C. MOODY,	)	No. 09CF889
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Presiding Justice Turner and Justice McCullough concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) Given that the trial court admonished defendant, pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001), that he had to file a written motion for reconsideration of the sentence before appealing from the sentence, the lack of such a written motion necessitates the dismissal of his appeal from the sentence; an oral motion for reconsideration of the sentence, even if the trial court and prosecutor acquiesced to the oral format, does not fulfill the requirement in Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) that the defendant file a written motion for reconsideration of the sentence as a condition precedent to appealing from the sentence.

(2) Omitting to file a motion for reconsideration of the sentence is ineffective assistance of counsel only if there is a reasonable probability that such a motion would have resulted in a reduction of the sentence.

¶ 2 The trial court sentenced defendant, Shawn C. Moody, to 25 years' imprisonment for burglary (720 ILCS 5/19-1 (West 2008)). He appeals, and his sole argument on appeal is that the sentence is excessive.

¶ 3 Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) obliges us to dismiss this appeal because defendant never filed a written motion for reconsideration of his sentence.

¶ 4 I. BACKGROUND

¶ 5 Defendant was charged with a single count of burglary (720 ILCS 5/19-1 (West 2008)), and in a hearing on October 19, 2009, defense counsel told the trial court that defendant wished to plead guilty to the charge. Of course, when a defendant offers to plead guilty, Illinois Supreme Court Rule 402 (eff. July 1, 1997) requires the court to admonish the defendant, and the rule prescribes the content of the admonitions. There is no dispute that the court fulfilled Rule 402 in this case. The court explained to defendant, among other matters, that because his plea was open and because he had prior Class 2 felony convictions, he could receive a sentence of imprisonment for not less than 6 years and not more than 30 years. Defendant said he understood.

¶ 6 After confirming that defendant understood the admonitions and that he was pleading guilty of his own free will and that no one had promised him anything, the trial court requested the prosecutor to give a factual basis for the proposed guilty plea. The prosecutor said that on March 11, 2009, the Game On Sports Tavern in Sadorus, Illinois, was burglarized and a safe was forced open. Approximately \$1,300 in cash was removed from the safe. Blood was found inside the safe; apparently, when reaching inside the safe, the burglar had cut himself on a broken piece of plastic. Forensic scientists would testify that the blood had come from defendant. Defense counsel agreed that the State's witnesses would testify as stated in the factual basis.

¶ 7 The trial court again asked defendant if he wished to plead guilty to the charge of burglary. Defendant said yes, whereupon the court accepted his guilty plea and entered judgment on it.

¶ 8 On November 20, 2009, the trial court held a sentencing hearing. The State called the owner of the bar, Ken Peterson, who testified that a cash register, safe, and juke box had been damaged in the burglary and that between \$1,000 and \$1,500 was missing from the safe. In response to the burglary, he had an alarm system installed at a cost of about \$1,000.

¶ 9 According to the presentence investigation report, defendant had a rather lengthy criminal record. In 1999, 2002, and 2003, he was convicted of burglary a total of four times; in 1997, he was convicted of possession of a controlled substance; in 1998, of manufacturing or delivering cannabis; and in 2008, of escape from a penal institution.

¶ 10 Characterizing defendant as a "career burglar" whom previous sentences had failed to deter, the prosecutor recommended a sentence of imprisonment "on the upper end of the six to thirty year range."

¶ 11 Defense counsel argued, on the other hand, that because "time [was] running out" for the 37-year-old defendant and because he had freely admitted his guilt, he should receive a sentence "as low as possible so that he [could] look forward to some kind of a future when he [got] out."

¶ 12 After hearing these arguments, the trial court found one factor in mitigation—the guilty plea—and two factors in aggravation: (1) defendant's criminal history and (2) the need to deter him and others from committing property crimes. The court believed that even though, evidently, defendant had committed his crimes in order support his addictions to alcohol, cannabis, and cocaine, burglary was a crime that could be deterred by a substantial enough punishment. In the court's view, "[a]nything less than a substantial sentence would deprecate the seriousness of [defendant's] conduct, would be inconsistent with the ends of justice, and definitely would not pose the appropriate deterrent factor for the other multiple convicted burglars who continue to apply [*sic*]

their trade." Therefore, the court sentenced defendant to 25 years' imprisonment.

¶ 13 The trial court then admonished defendant pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001). The court told him:

"Mr. Moody, you have the right to appeal the decision of the court. Prior to taking an appeal, you must file in this court within thirty days of today's date a written motion asking to have this court either reconsider the sentence imposed this date or to have the judgment vacated and for leave to withdraw your guilty plea. You must set forth your grounds in the motion. If your motion is allowed, then the sentence will be modified or the plea of guilty will be vacated and a trial date will be set on this charge. Any issues not raised in your motion will be considered waived. If you cannot afford an attorney to assist you in that kind of a proceeding, an attorney will be appointed for you free of charge, and if you're unable to afford a transcript of everything that happened in court, then a transcript will be provided for you free of charge."

¶ 14 On November 24, 2009, the appointed defense counsel, James Dedman, filed a motion to withdraw from representing defendant and for the appointment of new counsel. The stated ground of the motion was that defendant had expressed dissatisfaction with Dedman's representation of him. The motion also noted that defendant "wanted to appeal this sentence and to withdraw his plea," although "[d]efendant was unable to articulate any reason for a motion to withdraw other than his dissatisfaction with the result and counsel's representation of him." Therefore, in addition to

requesting permission to withdraw from representing defendant, Dedman requested the trial court to "extend the 30 day period for the Defendant to file appropriate motions for appeal."

¶ 15 On November 25, 2009, defendant filed, *pro se*, a notice of appeal.

¶ 16 On January 11, 2010, the trial court granted Dedman's motion to withdraw from representing defendant, and the court appointed Walter Ding to replace Dedman.

¶ 17 The trial court held a status hearing on April 19, 2010, at which Edwin Piraino appeared for defendant. The attorneys and the court agreed that Dedman's motion to withdraw from representing defendant should be construed also as a motion to withdraw the guilty plea and that Piraino should be allowed to amend the motion as he saw fit. Piraino remarked, however, that in his review of the record thus far, he had found no basis for allowing a motion to withdraw the guilty plea. In his opinion, there was "nothing to argue other than the horrific long sentence."

¶ 18 Piraino never filed any amended motion. On June 22, 2010, the trial court held a hearing on the *pro se* motion to withdraw the guilty plea. Piraino told the court that defendant no longer wanted to pursue his motion to withdraw the guilty plea but that, instead, defendant wanted the court to reconsider his sentence. After confirming with defendant that such was his wish, the court told Piraino to go ahead and make his argument for a reduction of the sentence.

¶ 19 Piraino argued that because of "two medical issues" that plagued defendant, the trial court should reduce his sentence. First, defendant was "an admitted drug user" and therefore Piraino requested that the court "reconsider [defendant's] sentence somewhat downward so that he could participate in some of the programs in the Department of Corrections [(DOC)]." Second, defendant needed a hip transplant, but because of the length of his sentence, DOC was not inclined to give him one.

¶ 20 The trial court noted the "extensive criminal history" that defendant had built up in his 37 years of existence. The court said:

"It is apparent from the record that he is an addict and/or an alcoholic and he commits these property crimes to support whatever dependency he has, but, at some point in time, the citizens have to be safe from someone who continues to commit these types of property crimes.

I will note the request to reduce the sentence. That motion is denied."

¶ 21 An appeal was filed on June 29, 2010.

¶ 22 II. ANALYSIS

¶ 23 A. Lack of a Written Motion To Reconsider the Sentence

¶ 24 After a judgment is entered on a plea of guilty, the filing of a motion for reconsideration of the sentence is a prerequisite to an appeal from the sentence. Ill. S. Ct. R. 604(d) (eff. July 1, 2006); *People v. Wallace*, 143 Ill. 2d 59, 60 (1991). "No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged \*\*\*." Ill. S. Ct. R. 604(d) (eff. July 1, 2006). To be "filed," such a motion must be written. An oral motion to reconsider the sentence will not suffice, even if the trial court and the prosecutor acquiesce to the oral format of the motion. *People v. Foster*, 171 Ill. 2d 469, 471-72 (1996).

¶ 25 Despite the trial court's admonition to defendant that before taking an appeal from

the sentence, he had to file a written motion for reconsideration of the sentence, the record does not contain such a motion. Hence, the prerequisite to appealing from the sentence is unfulfilled. See Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 26 In his petition for rehearing, defendant insists, to the contrary, that the record does contain a motion for reconsideration of the sentence, namely, Dedman's motion to withdraw. We disagree. One cannot reasonably interpret Dedman's motion to withdraw as a motion for reconsideration of the sentence. It is true, as defendant argues, that the substance of a motion is more important than its title. See *Loman v. Freeman*, 375 Ill. App. 3d 445, 448 (2006). For that very reason, an interpretation of a motion must have some basis in the substance, the text, of the motion. Nowhere in his motion to withdraw—not even in so many words—did Dedman ask the trial court to reconsider the sentence. Rather, he told the court that defendant wished to "appeal this sentence," and he requested a 30-day extension of the time for "fil[ing] appropriate motions for appeal."

¶ 27 B. Claim of Ineffective Assistance of Counsel

¶ 28 In his petition for rehearing, defendant argues that if we decline to interpret Dedman's motion to withdraw as a motion for reconsideration of the sentence, we should hold that trial counsel rendered ineffective assistance by failing to file a motion for reconsideration of the sentence.

¶ 29 "Failure to file a motion to modify or reduce a sentence \*\*\* does not necessarily rise to ineffective assistance of counsel." (Internal quotations marks omitted.) *People v. Houston*, 363 Ill. App. 3d 567, 577-78 (2006). To qualify as ineffective assistance, the omission of such a motion would have had to prejudice defendant. See *id.* at 578. In other words, we would have to find a "reasonable probability" that but for the lack of a motion for reconsideration of the sentence, the

outcome of the proceeding would have been different: a reasonable probability that the trial court—acting "reasonably, conscientiously, and impartially" (*Strickland v. Washington*, 466 U.S. 668, 695 (1984))—would have reduced the sentence. See *id.* In this case, despite the absence of a written motion for reconsideration of the sentence, the court reconsidered the sentence and declined to reduce it. Apart from dispensing with a written motion for reconsideration of the sentence, this decision by the trial court appears to be reasonable, conscientious, and impartial. The sentence is not excessive or an abuse of discretion, considering defendant's criminal history. *People v. Almo*, 108 Ill. 2d 54, 70 (1985). And, contrary to defendant's contention, drug addiction and psychological disorders need not be considered mitigating. See *People v. Jackson*, 205 Ill. 2d 247, 266-67 (2001); *People v. Thomas*, 178 Ill. 2d 215, 243-44 (1997); *People v. Newbill*, 374 Ill. App. 3d 847, 854 (2007).

¶ 30

### III. CONCLUSION

¶ 31 For the foregoing reasons, we dismiss this appeal. As part of our judgment, we award the State \$50 against defendant as costs of this appeal.

¶ 32 Appeal dismissed.