

NOTICE
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2011 IL App (4th) 100640-U

Filed 11/9/11

NO. 4-10-0640

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

| | | |
|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Woodford County |
| JORDAN L. WATKINS, |) | No. 09CF42 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | John B. Huschen, |
| |) | Judge Presiding. |

JUSTICE COOK delivered the judgment of the court.
Justices Appleton and McCullough concur in the judgment.

ORDER

¶ 1 *Held:* We grant appointed counsel's motion to withdraw under *Anders v. California*, 386 U.S. 738 (1967), and affirm the trial court's judgment where counsel concludes no meritorious issues could be raised on appeal because (1) defendant was lawfully charged; (2) the indictment was legally sufficient to charge an offense; (3) a preliminary hearing was not required because defendant was indicted within 60 days of his arrest; and (4) defendant's sentence is not excessive.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. For the following reasons, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 4, 2009, defendant, Jordan L. Watkins, was arrested after the vehicle he was a passenger in was stopped for speeding. During the stop, the officer noticed a strong odor of cannabis, which led to a search of the vehicle. The officer asked defendant for his name and

defendant gave him a false name three times. Defendant first responded his name was Mark E. Watts (date of birth August 6, 1977), then Mark E. Watkins (date of birth August 6, 1977), and then Mark E. Watkins (date of birth October 12, 1975). The officer later learned that defendant's actual name was Jordan L. Watkins. Defendant had supplied the officer with a false name in an effort to prevent apprehension on a valid Peoria County warrant.

¶ 5 On April 4, 2009, the date of arrest, defendant was charged, by information, with the offenses of obstructing justice in that he gave a false name to a police officer (720 ILCS 5/31-4(a) (West 2008)) and possession of cannabis less than 2.5 grams (720 ILCS 550/4(a) (West 2008)). On April 6, 2009, he posted bond and was released from custody. On May 7, 2009, defendant was indicted with obstructing justice in that he gave a false name to a police officer. 720 ILCS 5/31-4(a) (West 2008).

¶ 6 In July 2009, defendant failed to appear at a final pretrial conference and a warrant was issued for his arrest. The warrant stated the charge as "obstruct[ing] just[ice]/destroy evidence."

¶ 7 On December 29, 2009, defendant filed a notice of default in discovery and a motion to dismiss the charge, arguing that he was not indicted on the charge of "obstructing justice/destroy evidence" within 60 days of his arrest. Additionally, he argued he was never charged with "obstructing justice/furnishing false information" and that the indictment was unlawful because the "State's Attorney knew [his] charge was 'obstructing justice/destroy evidence' [but] *** unlawfully changed the *** offense to 'furnishing false information' " on the indictment. On January 4, 2010, the trial court struck that motion. On January 8, 2010, defendant filed a second motion to dismiss the charge, making the same arguments. On January

12, 2010, the court also struck that motion. The court explained to defendant that he cannot file *pro se* motions while he is represented by counsel. Defendant claimed that he did not have a problem with counsel representing him, but felt his motion had merit and could not understand why counsel would not present it. Defendant asked the court to explain why the indictment showed the words "obstructing justice/furnishing false information," but some of the documents defendant had—the arrest warrant and police report—showed the words "obstructing justice/destroy evidence." The court explained that the State's Attorney has the authority to charge defendant with whatever charge he feels he has probable cause to charge with. The police reports and other documents are not charging instruments, and while they may suggest different offenses, only the charges filed in the indictment or information are controlling.

¶ 8 On January 14, 2010, defendant pleaded guilty to obstructing justice, furnishing false information, as charged in the indictment. The State dismissed the possession-of-cannabis charge and agreed not to request more than four years on obstructing justice, furnishing false information. Prior to accepting his plea, the trial court admonished defendant, in part, as follows:

"Class 4 felonies are punishable by imprisonment in the Department of Corrections of up to three years. If I find, however, that you've been convicted of the same or a greater class offense in the last ten years, then you can be sentenced to up to six years. Apparently, that applies to you. In addition, you can be fined up to \$25,000."

The court also explained it was not bound by the State's recommendation and could sentence defendant to up to six years in prison. Defendant acknowledged he understood and persisted in

pleading guilty.

¶ 9 At the February 8, 2010, sentencing hearing, the trial court admonished defendant as required under Illinois Supreme Court Rule 605(b)(1-6)(eff. Oct. 1, 2001). After considering the factual basis presented at the plea hearing, the presentence investigation, all evidence offered in mitigation, and defendant's statement in allocution, the court sentenced defendant to 30 months in prison followed by one year's mandatory supervised release. Defendant was given 80 days' credit for time served and assessed \$499 in costs.

¶ 10 On March 4, 2010, defendant filed a motion to withdraw his plea of guilty and vacate the judgment and reconsider his sentence. Defendant argued his plea and sentence were unlawful because he was never arrested for obstructing justice, furnishing false information; the State's Attorney unlawfully changed the charge; counsel refused to argue defendant's motion to dismiss the charge; and the State's Attorney used defendant's traffic citations as criminal history. On May 5, 2010, defendant filed a motion to amend the motion to reconsider his sentence and vacate the void judgment and arrest of judgment. On May 10, 2010, the trial court struck this motion because defendant was represented by counsel. On May 12, 2010, the court allowed defendant's request to proceed *pro se* and counsel was dismissed. Defendant was given 45 days to amend his March 2010 motion.

¶ 11 On June 16, 2010, defendant filed a motion to amend the motion to vacate the void judgment and arrest of judgment. Defendant alleged (1) he was originally charged with obstructing justice in that he destroyed evidence, and the charge was unlawfully changed by the prosecutor to obstructing justice in that he gave the police a false name; and (2) his constitutional rights were violated because he did not receive a prompt preliminary hearing. In the amended

motion, he also stated he no longer wished to pursue his motion to withdraw his guilty plea or reconsider his sentence. After a July 16, 2010, hearing, the trial court denied the motion.

¶ 12 In August 2010, a notice of appeal was filed and OSAD was appointed to represent defendant. In August 2011, OSAD moved to withdraw, attaching to its motion a brief in conformity with the requirements of *Anders v. California*, 386 U.S. 738 (1967). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by September 21, 2011, but defendant has not done so. After examining the record and executing our duties in accordance with *Anders*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 13 II. ANALYSIS

¶ 14 OSAD contends the record shows no meritorious issues that can be raised on appeal. Specifically, OSAD asserts the following: (1) the charge against defendant was not unlawfully changed; (2) the indictment was legally sufficient to charge an offense; (3) defendant was not entitled to a preliminary hearing since he was indicted within 60 days of his arrest and was not in custody; and (4) the trial court did not abuse its discretion in sentencing defendant to 30 months in prison and assessing \$499 costs.

¶ 15 A. Defendant Was Lawfully Charged

¶ 16 OSAD first contends no meritorious argument can be made that the charge against defendant was unlawfully changed. We agree.

¶ 17 On April 4, 2009, defendant was charged by information with obstructing justice "in that defendant knowingly furnished false information to Trooper Mike Conner ***, in that he told Trooper Connor his name was Mark Watts and Mark Watkins in order to prevent his

apprehension on a valid Peoria County warrant when he knew that was not his name." See 720 ILCS 5/31-4(a) (West 2008). On May 7, 2009, defendant was indicted for the same charge.

¶ 18 Defendant contends that certain documents in the record state he was charged with obstructing justice in that he destroyed evidence. These documents include a jail document and a written warrant for his arrest. He argues that the State's Attorney unlawfully changed the charge from destroying evidence to furnishing false information. Additionally, two other documents, an appearance bond and a verified statement of arrest, fail to state the section number of the statute. Defendant asserts that the failure of these documents to provide the section number results in a substantive defect rendering the charge void.

¶ 19 Defendant correctly states that a complaint which lacks certainty to charge an offense is void and vulnerable to attack at any time. *People v. Heard*, 47 Ill. 2d 501, 505, 266 N.E.2d 340, 343 (1970); *People v. Minto*, 318 Ill. 293, 295, 149 N.E. 241, 243 (1925); *People v. Billingsley*, 67 Ill. App. 2d 292, 299-300, 213 N.E.2d 765, 769-70 (1966). Additionally, an indictment cannot be amended if the error is substantive. *People v. Zajac*, 244 Ill. App. 3d 42, 44, 614 N.E. 2d 15, 16-17 (1991). Defendant, however, is under the erroneous impression that the jail document, written warrant for arrest, appearance bond, and verified statement of arrest are charging instruments. The information and subsequent indictment are the actual charging instruments and these are the instruments that are important. Both charging instruments put defendant on notice of the charge against him, that is, obstructing justice by furnishing false information to a peace officer (720 ILCS 5/31-4(a) (West 2008)).

¶ 20 As the trial court informed defendant at the hearing on the motion, the charge was never changed because the charging instrument was not amended. The other documents to

which defendant refers are not charging instruments. No colorable argument can be made that the trial court was in error when it denied defendant's motion because defendant was lawfully charged.

¶ 21 B. Indictment Was Legally Sufficient to Charge an Offense

¶ 22 OSAD next contends no colorable argument can be made that the charging instruments were insufficient to charge an offense. We agree.

¶ 23 Defendant was charged with the offense of obstructing justice, furnishing false information by information, and indictment. Section 111-3 of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure) (725 ILCS 5/111-3 (West 2008)) governs what information must be included in a charging instrument. Section 111-3(a) requires a written charge that states the name of the offense and of the accused, cites the statute allegedly violated, and lists the nature and elements of the crime and the date of the offense. 725 ILCS 5/111-3(a)(1) through (a)(5); see also *People v. Pujoue*, 61 Ill. 2d 335, 338, 335 N.E.2d 437, 439 (1975).

¶ 24 In defendant's case, the indictment lists the offense of obstructing justice, "[a] [C]lass 4 felony in violation of 720 ILCS 5/31-4(a) *** in that said defendant [Jordan Watkins] knowingly furnished false information to Trooper Mike Conner, a peace officer engaged in the execution of his official duties, in that he told Trooper Conner his name was Mark Watts and Mark Watkins [on April 4, 2009] in order to prevent his apprehension on a valid Peoria County warrant, when he knew that was not his name." The earlier information follows the same language generally. Section 31-4 states "[a] person obstructs justice when *** he knowingly commits any of the following acts: (a) Destroys, alters, conceals or disguises physical evidence, plants false evidence, [or] furnishes false information." 720 ILCS 5/31-4(a) (West 2008). The

indictment stated the name of the offense and the name of defendant, cited the statutory provision at issue, and listed the nature and elements of the crime and the date of the offense. No meritorious argument can be made that the charging instrument in this case was insufficient.

¶ 25 C. Defendant Was Not Entitled to a Preliminary Hearing

¶ 26 OSAD next asserts that defendant was not entitled to a preliminary hearing since he was indicted within 60 days of his arrest and was not in custody. We agree.

¶ 27 Defendant alleged in his motion that his constitutional rights were violated because he did not have a prompt preliminary hearing. Specifically, he "was not taken without unnecessary delay before a judge." Defendant was arrested on April 4, 2009, and was released from custody on April 6, 2009, after posting bond. Under section 109-3.1(b) of the Code of Criminal Procedure, a person charged with a felony must receive a preliminary examination or an indictment within 30 days if in custody. 725 ILCS 5/109-3.1(b) (West 2008). A person released on bail or recognizance for a felony must receive a preliminary hearing *or* be indicted within 60 days from the date of arrest. On May 7, 2009, defendant was indicted, which was within 60 days of his arrest. No colorable argument can be made that defendant was entitled to a preliminary hearing.

¶ 28 D. Excessive Sentence

¶ 29 Last, OSAD contends that defendant has forfeited any excessive-sentencing claim, and even if we were to find this issue had not been forfeited, no meritorious claim can be made that the trial court erred in sentencing defendant to 30 months in prison.

¶ 30 Normally, any issue not raised in a postsentencing motion is forfeited. *In re Angelique E.*, 389 Ill. App. 3d 430, 432, 907 N.E.2d 59, 61 (2009). Defendant's original motion

requested the court reconsider his sentence but did not allege his sentence was excessive.

Moreover, defendant's June 16, 2010, amended motion specifically stated the following: "The defendant no longer wishes to pursue motion to withdraw guilty plea or reconsider sentence."

See also Ill. Sup. Ct. R. 604(d) ("Upon appeal any issue not raised by the defendant in the motion to reconsider sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived.") A guilty plea "waives all errors, defects, and irregularities in the proceeding that are not jurisdictional, including constitutional error" that could have been raised. *People v. Jackson*, 319 Ill. App. 3d 110, 113, 744 N.E.2d 1275, 1278 (2001) (citing *People v. Peeples*, 155 Ill.2d 422, 491, 616 N.E.2d 294, 326 (1993)). Therefore, defendant has forfeited this issue. However, even if we were to disagree with OSAD, which we do not, no colorable argument can be made that defendant's sentence was excessive.

¶ 31 "A trial court is given great deference when making sentencing decisions, and if a sentence falls within the statutory limits, it will not be disturbed on review unless the trial court abused its discretion and the sentence was manifestly disproportionate to the nature of the case." *People v. Thrasher*, 383 Ill. App. 3d 363, 371, 890 N.E.2d 715, 722 (2008) (citing *People v. Grace*, 365 Ill. App. 3d 508, 512, 849 N.E.2d 1090, 1093-94 (2006)). It is not the function of the reviewing court to substitute its own judgment for that of the trial court, even if it determines that it would have imposed a different sentence had that function been delegated to it. *People v. Perruquet*, 68 Ill. 2d 149, 156, 368 N.E.2d 882, 885 (1977).

¶ 32 Obstructing justice is a Class 4 felony, which carries a nonextended sentencing range of one to three years in prison and an extended sentencing range of three to six years in prison. 720 ILCS 5/31-4(a)(1); 730 ILCS 5/5-8-1(a)(7); 730 ILCS 5/5-8-2(a)(6) (West 2008).

Defendant was eligible for an extended sentence based on a 2001 felony. At the time of sentencing, defendant had eight prior criminal convictions, three of which were felony convictions. He also had six prior driving-while-license-suspended convictions and three prior driving-while-license-revoked convictions. Defendant had been placed on court supervision for one case, conditional discharge for six cases, and probation for four cases. In August 2003, defendant was sent to prison for violating his probation. He was paroled in April 2004, but violated his parole in September 2004. Despite defendant's criminal history, the State agreed to cap its sentencing request at four years' imprisonment. Defendant was sentenced to 30 months in prison. Defendant's sentence was within the statutory limits, and nothing in the record indicates the court considered any improper factors in sentencing defendant. Thus, no colorable argument can be made that the court abused its discretion in sentencing defendant.

¶ 33 Finally, defendant entered a negotiated guilty plea and abandoned his motion to withdraw his plea and reconsider his sentence. Ill. Sup. Ct. Rs. 604(d), 605(b) (eff. July 1, 2006, and Oct. 1, 2001, respectively).

¶ 34 III. CONCLUSION

¶ 35 After reviewing the record consistent with our responsibilities under *Anders*, we agree with OSAD that no meritorious issues can be raised on appeal, and we grant OSAD's motion to withdraw as counsel for defendant and affirm the trial court's judgment.

¶ 36 Affirmed.