

No. 1-10-3626

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	09 CR 14624
)	
TYRONE WILSON,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Murphy and Salone concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when it refused to appoint standby counsel to assist the defendant, because the college-educated defendant had considerable experience with criminal procedures, and he chose to represent himself in a simple criminal trial on charges of failing to register as a sex offender. But when the defendant requested counsel for posttrial proceedings, and then discharged counsel before sentencing, the court's failure to readmonish the defendant about the severity of the charges against him and his right to counsel requires the appellate court to remand for resentencing.

¶ 2 This case involves the problem a trial court faces when a difficult, uncooperative defendant

rejects the assistance of appointed counsel. In 2009, a grand jury indicted the defendant, Tyrone Wilson, for violating the Sex Offender Registration Act (Act) (730 ILCS 150/1 *et seq.* (West 2008)) by failing to register his address with police. Wilson fired his public defender before trial and then requested the assistance of standby counsel. The trial court denied the request and Wilson represented himself at trial. The jury found him guilty as charged. Wilson requested counsel for posttrial proceedings, but he fired counsel shortly after the appointment. The trial court did not repeat its admonishments about proceeding *pro se* before the sentencing hearing at which Wilson represented himself. The court sentenced Wilson to seven years in prison.

¶ 3 On appeal, Wilson argues that the court committed plain error when it denied his request for standby counsel at trial and when it failed to admonish him about the sentences he faced before permitting him to represent himself at sentencing. We find no plain error in the denial of the request for standby counsel, but we find that the lack of proper readmonishment about proceeding *pro se* at sentencing requires us to vacate the sentence and remand for resentencing.

¶ 4 BACKGROUND

¶ 5 After a bench trial in 1984, the trial court found Wilson not guilty on three counts of aggravated criminal sexual assault, but guilty on one other count of aggravated criminal sexual assault. The trial court sentenced Wilson to 20 years in prison.

¶ 6 The prison released Wilson in 1994. After he left prison, the legislature amended the Act, and the Act as amended required Wilson to come to a police station to register his address

with police, in person, every year, and to report any change of address within 10 days. 730 ILCS 150/3(b), 150/6 (West 2000).

¶ 7 In 2001, a court found Wilson guilty of failing to register as a sex offender and sentenced him to 13 months of probation. He again failed to register his address in 2006, and a court sentenced him to two years in prison. Further amendments to the Act required Wilson to register his address with police every 90 days, and to report any change of address within 3 days. 730 ILCS 150/3(b), 150/6 (West 2008).

¶ 8 After he finished serving his sentence for the 2006 offense, Wilson went to a police station to register as a sex offender in January 2009 and April 2009. Each time he listed his address as 7208 South South California Ave. In April 2009, a police officer went to the address Wilson listed, and the officer found a vacant house at that address. When Wilson returned to the police station in July 2009, and again gave his address as 7208 South South California Ave., police arrested him and charged him (1) with providing false information about his address in violation of section 10 of the Act, and (2) with failing to inform police when he changed his address, in violation of section 6 of the Act. 730 ILCS 150/10, 150/6 (West 2008).

¶ 9 At the arraignment, Wilson had no attorney. The court told Wilson a grand jury had charged him with failing to change his address and with providing false information about his address, in violation of the Act. The court said that Wilson faced a sentencing range of three to seven years on each charge, and that the court could also impose an extended term sentence of 14 to 30 years. The court reminded Wilson that if Wilson could not afford an

attorney, the court would appoint a public defender to represent him. Wilson, who was 54 years old and a college graduate who had worked as a case manager for the Department of Children and Family Services, chose to proceed *pro se* at the arraignment.

¶ 10 In November 2009, Wilson asked the court to appoint counsel to represent him. The court appointed the public defender. Two weeks later, Wilson fired his counsel and moved for appointment of standby counsel to assist him at trial. The court said:

"It is within the Court's discretion to appoint stand-by counsel. At this point in time I don't believe the defendant – he has a right to represent himself. He can't have it both ways.

I will deny the motion for stand-by counsel."

¶ 11 In March 2010, Wilson again moved for appointment of a bar association attorney to represent him at trial. When the trial court offered to appoint a public defender, Wilson said he had a conflict of interest with the public defender's office, and he would not permit those attorneys to continue to violate his rights. He chose to proceed *pro se* instead of accepting representation by the public defender's office.

¶ 12 Before trial, Wilson tried to obtain his medical records to show that he suffered a stroke in 2005, and that he had heart disease and other conditions requiring medication. Wilson said that after the prison released him in 2007, he went to live in a nursing home. Police told him he could not live in the nursing home because of its proximity to a school. Wilson showed the court a document from the parole board stating that the prohibition on proximity to a school did not apply to Wilson because the State never convicted him as a child predator.

Wilson claimed that police tried to remove him from the nursing homes on false grounds to deny him medical care and to harass him. The court found the parole board's letter inadmissible at trial, and Wilson did not present to the jury any evidence or argument about police harassment.

¶ 13 At trial, Wilson relied primarily on evidence that the trial court in 1984 found Wilson not guilty on three counts of aggravated criminal sexual assault, arguing that the evidence showed the court in 1984 had found that he did not commit the crime for which he spent ten years in prison. Wilson admitted that he lived at the nursing home at an address unrelated to the address he gave police when he registered as a sex offender. Wilson never introduced his medical records into evidence. He could not get into evidence a document he claimed he faxed to Illinois State Police in Springfield. The document purportedly showed that Wilson attempted to inform those police of his correct address, so that he could substantially comply with the Act while still discouraging police harassment.

¶ 14 The State presented a certified record of Wilson's conviction for aggravated criminal sexual assault. A police officer testified that he found a vacant building at the address Wilson used when he registered as a sex offender. The jury found Wilson guilty of both giving false information when he registered as a sex offender, and failing to report his change of address.

¶ 15 After the trial, Wilson asked the court to appoint an attorney to help him with posttrial motions and with sentencing. The court appointed a public defender, who filed a motion for a new trial. Wilson fired the attorney and told the court he would represent himself. This colloquy followed:

"THE COURT: You're asking for the Public Defender not to represent you for purposes of a motion for new trial and for any notice of appeal; is that what you're telling me, sir?

MR. WILSON: Yes.

THE COURT: Do you understand that we're at a phase here where in the motion for new trial you have to be very specific with regard to any errors that were made either in the pretrial motions, the testimony, the jury's verdict, the instruction[s] to the jury because if those issues are not raised at this point in time, they are waived for appeal.

MR. WILSON: I understand all that, but he can not say anything for me, your Honor.

THE COURT: Do you understand that if that motion is denied, I will proceed to sentence you; do you understand that, sir?

MR. WILSON: Yes, sir."

The court permitted Wilson to represent himself for the posttrial motion and for sentencing.

¶ 16 In his motion for a new trial, Wilson claimed that only 11 of the 12 jurors voted to find him guilty. The trial court found that the verdict forms and the trial transcript contradicted this assertion. Wilson accused police of prosecuting him vindictively in retaliation for his assertion of his rights. He also argued that the prosecution had twice before prosecuted him for the same sex offense, and he had already served more than ten years in prison on the

charges for which the 1984 jury found him not guilty.

¶ 17 The trial court denied the request for counsel and the motion for a new trial. The court found that because of Wilson's prior convictions, the law required the court to impose a sentence for a class X offense. See 730 ILCS 5/5-5-3(c)(8) (West 2008). The court sentenced Wilson to seven years in prison. Wilson now appeals.

¶ 18 ANALYSIS

¶ 19 The State Appellate Defender's Office represents Wilson on appeal. Wilson now does not pursue the issues he preserved in his posttrial motion. Instead, he argues that the trial court committed plain error when it refused his request for the assistance of standby counsel at trial, and when the court failed to admonish him properly before permitting him to represent himself at the sentencing hearing. To show plain error, Wilson must show either that (1) the evidence of innocence balances closely against the evidence of guilt, and the error might have tipped the balance, or (2) the error denied the defendant his fundamental right to a fair trial. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 20 Standby Counsel

¶ 21 The evidence of innocence here does not balance closely against the overwhelming evidence of guilt. The certified record of Wilson's conviction for aggravated criminal sexual assault proved the conviction necessary to trigger the Act's reporting requirements. The Act, as amended, required Wilson to register with police every 90 days, and to inform police within 3 days of any time he changed his address. 730 ILCS 150/3(b), 150/6 (West 2008). Wilson admitted that he lived in a nursing home, and police records show that when Wilson

registered, he never supplied the address of the nursing home. Instead, he gave police an unrelated address of a vacant building where he did not live. The first prong of plain error review cannot provide grounds for relief.

¶ 22 Neither can Wilson obtain relief under the second prong of plain error review, because he has no fundamental right to the assistance of standby counsel. See *People v. Trotter*, 254 Ill. App. 3d 514, 526 (1993). Moreover, we find that the trial court could have denied the request for standby counsel without abusing its discretion.

¶ 23 Our supreme court held that when a defendant acting *pro se* requests standby counsel, "[r]elevant criteria appropriately considered [by a trial court in deciding whether to [grant the request] include the nature and gravity of the charge, the expected factual and legal complexity of the proceedings, and the abilities and experience of the defendant." *People v. Gibson*, 136 Ill.2d 362, 380 (1990). Wilson faced simple charges of failing to register as the Act required, and the case presented little legal or factual complexity. Wilson sought to introduce evidence that he did not commit the sex offense reflected in the certified record of conviction, but the proceedings on the charge of failing to register do not serve as a forum for a collateral attack on the initial conviction. He also sought to introduce evidence of his medical afflictions, but the evidence had no bearing on the case. His illnesses did not prevent him from going to the police station to register his address. The evidence of police harassment might have counted as a mitigating factor, but the Act does not make such harassment a legal defense to the charges lodged against Wilson. See 730 ILCS 150/1 *et seq.* (West 2008). Wilson, a college graduate with extensive experience with the legal system and

criminal law, showed some ability to raise legal arguments. Because we cannot say that the trial court would have abused its discretion if it denied the motion for standby counsel after considering all of the appropriate factors, we find no plain error in the denial of the motion for standby counsel. See *People v. Ware*, 407 Ill. App. 3d 315, 351-53 (2011).

¶ 24 Counsel for Sentencing

¶ 25 After the trial, Wilson again requested assistance of counsel, and the trial court again appointed the public defender's office to represent Wilson. At the next hearing, Wilson expressed his dissatisfaction with appointed counsel. The court warned Wilson about the dangers of writing his own posttrial motion, and pointed out that Wilson would not have the assistance of counsel during sentencing. But the court did not remind Wilson of the nature of the charges or the available sentencing range, and the court did not expressly remind Wilson that the court would appoint him counsel. Wilson discharged his attorney and proceeded *pro se*.

¶ 26 On appeal, Wilson argues that the trial court committed plain error when it failed to admonish him in accord with Supreme Court Rule 401(a) before permitting him to represent himself at sentencing. Rule 401(a) requires that before the trial court permits a defendant in a criminal trial to represent himself, the court must admonish the defendant about (1) the nature of the charges against him, (2) the minimum and maximum penalties the court could impose, and (3) his right to counsel. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). Because the mitigating evidence could have justified a less severe sentence, we find the evidence pertaining to sentencing closely balanced. See *People v. Martin*, 119 Ill. 2d 453, 458 (1988).

Therefore, we review the issue under the first prong of plain error review. See *Thompson*, 238 Ill. 2d at 613. We also find that the denial of counsel during the sentencing proceedings affected Wilson's fundamental right to counsel, and therefore the second prong of plain error review applies as well. See *Thompson*, 238 Ill. 2d at 613; *People v. Black*, 2011 IL APP (5th) 080089, ¶24-26.

¶ 27 For plain error review, we first consider whether the trial court erred. *People v. Walker*, 392 Ill. App. 3d 277, 294 (2009). We agree with Wilson that *People v. Cleveland*, 393 Ill. App. 3d 700 (2009), *overruled on other grounds*, *People v. Jackson*, 2011 IL 110615, ¶16, guides our consideration of the issue. See also *Ware*, 407 Ill. App. 3d at 346-47. In *Cleveland*, the defendant, before trial, discharged his counsel. The trial court properly admonished the defendant in accord with Rule 401(a) before permitting him to represent himself at trial. *Cleveland*, 393 Ill. App. 3d at 702. After the trial, the defendant requested the assistance of counsel, and the court appointed the public defender. At the hearing on the posttrial motion, the defendant fired his counsel. The court reminded the defendant that he could have the assistance of counsel, and the court offered to appoint counsel for the defendant. When the defendant declined the offer, the trial court, without any further admonishments, permitted the defendant to proceed *pro se*. The *Cleveland* court held:

"[T]he trial court was required to readmonish defendant upon his second request to waive counsel. While this second set of admonishments does not require strict, technical adherence to Supreme Court Rule 401(a), substantial compliance is required.

[Citation.] Absent at least substantial compliance, defendant's waiver is ineffective." *Cleveland*, 393 Ill. App. 3d at 709.

¶ 28 The *Cleveland* court found that the trial court had substantially readmonished the defendant only about the availability of appointed counsel to represent the defendant. Because the trial court had not reminded the defendant of the nature of the charges against him or the range of available sentences, the *Cleveland* court found the waiver of counsel for sentencing ineffective, and therefore the court remanded for resentencing.

¶ 29 The State asks us to look to the pretrial admonishments as proof that the court here substantially complied with Rule 401(a), but the *Cleveland* court found that complete pretrial admonishments did not suffice to meet the need for readmonishment when a defendant, after trial, requests the assistance of counsel, and then seeks to represent himself. As the *Cleveland* court said,

"the instant case involves circumstances that *Johnson* alluded to which create the 'necessity to admonish defendant anew'—namely, defendant's request for, and receipt of, counsel. [*People v.*] *Johnson*, 119 Ill.2d [119] at 147 [(1987)]. Under these circumstances, *** defendant's earlier admonishments simply cannot suffice for substantial compliance when defendant waived counsel a second time. *** If the initial admonishments could be applied to defendant's second waiver of counsel and constitute substantial compliance with Rule 401(a), then the rule requiring defendant to be readmonished

would make no sense." *Cleveland*, 393 Ill. App. 3d at 710.

¶ 30 The court here did not remind Wilson of the nature of the charges against him, and the court never – before trial, during trial, or at any time prior to the moment in which the trial court imposed sentence – complied with Rule 401(a) by advising Wilson that due to his record, he would face sentencing for a class X crime, with a minimum of 6 years and a maximum of 30 years in prison. Following the reasoning of *Cleveland*, we find that the trial court here erred by failing to readmonish Wilson in accord with Rule 401(a) when Wilson discharged appointed counsel after trial. *Cleveland*, 393 Ill. App. 3d at 709-10.

¶ 31 Although we believe that Wilson has established that the trial court committed a plain error affecting fundamental rights when it failed to comply with Rule 401(a) before sentencing, we further note that Wilson suffered prejudice from his inability to argue coherently that police harassed him by trying to evict him from the nursing home that provided him with needed medical care. If he had proffered to the court admissible evidence of such harassment, the court should have considered it as a mitigating factor explaining Wilson's decision not to tell police he continued to live in the nursing home. Moreover, an attorney may have persuaded the court to accept evidence that Wilson faxed his correct address to Illinois State Police in an effort to substantially comply with the Act without subjecting himself to harassment by Chicago police.

¶ 32 Following *Cleveland*, we find that the plain error of failing to readmonish Wilson as to the severity of the charges and the range of sentences he faced makes his posttrial waiver of counsel for sentencing ineffective and requires us to vacate the sentence and remand for

resentencing.

¶ 33

CONCLUSION

¶ 34

Wilson did not show that the trial court committed plain error when the court denied his request for standby counsel. However, the court committed plain error when it failed to comply with Rule 401(a) by readmonishing Wilson about the consequences of acting *pro se* when Wilson first requested counsel for posttrial proceedings, and then fired appointed counsel before sentencing. Accordingly, we affirm the convictions, but we vacate the sentence and we remand for resentencing.

¶ 35

Affirmed in part, vacated in part and remanded.