

2012 IL App (1st) 110670-U

SECOND DIVISION
September 18, 2012

No. 1-11-0670

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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.)	No. 09 CR 19864
)	
DRAKKAR SMITH,)	The Honorable
)	Angela Munari Petrone,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Harris and Justice Murphy concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant was not deprived of her right to due process when the trial court imposed fines, fees, and costs in addition to the restitution fine contemplated by the plea agreement; the trial court's order must be corrected to reflect a total of \$529 owed by defendant in fines, fees, and costs. We affirm and correct the fines and fees order.
- ¶ 2 Defendant, Drakkar Smith, was charged with two counts of felony theft and one count of

forgery. She pleaded guilty to one count of felony theft and was sentenced to two years of probation, restitution of \$453 payable within one year of her conviction date, and a fine of \$685. On appeal, defendant seeks to withdraw her guilty plea and contends for the first time that she was deprived of due process when she was denied the benefit of her plea bargain when the trial court imposed fines, fees, and costs not contemplated by the plea agreement. Alternatively, defendant contends that if she is not permitted to withdraw her guilty plea, we should correct the fines and fees order to reflect a reduced fine of \$529.

¶ 3 Following a negotiated plea agreement, defendant pleaded guilty to theft. During the trial court's admonishments to defendant, defendant testified that she understood the charges against her. The trial court also admonished defendant that she could be fined up to \$25,000 for theft, in addition to the possibility of being sentenced to two to five years in prison. When the trial court asked whether defendant understood the possible penalties, defendant replied "yes," and that she still wished to plead guilty. Defendant was also admonished of her right to plead not guilty, to the State's burden of proving guilt beyond a reasonable doubt, and of giving up her right to trial. Defendant indicated affirmatively that she understood she was relinquishing these rights. She confirmed she was pleading guilty of her own free will and that no one made any other promise to her aside from her plea. After the parties agreed to the stipulation of the factual basis for defendant's plea, the trial court again asked defendant whether she understood the nature of the charge, the possible penalties, and her rights under the law. Defendant replied affirmatively.

¶ 4 The trial court then stated it would "abide by the agreed upon disposition" and ordered defendant to serve two years of probation, and per the agreement, pay \$453 in restitution. The trial court allowed the State to nol-pros Count 2 and Count 3. The trial court then imposed

"mandatory Court fees and fines set by the legislature in the amount of \$685.00." After sentencing defendant, the trial court admonished defendant of her right to appeal, and then asked defendant whether she understood those admonishments. Defendant again replied, "yes."

¶ 5 Defendant's counsel filed a timely motion to withdraw guilty plea and vacate judgment, arguing that defendant was not guilty, had a meritorious defense, and did not understand her rights. The motion also asserted that her plea was coerced because she was in custody, had never been arrested before, was unable to post bail, and was confused about her options prior to entering a guilty plea. Defendant also filed a signed affidavit in support of her motion, stating "[b]eing convicted of a felony will have long term consequences in my life and will make it difficult for me to find a job." The trial court later conducted a hearing on defendant's motion to withdraw her guilty plea and denied it. Defendant now appeals.

¶ 6 Defendant first contends that the trial court's imposition of fines, fees, and costs in excess of the restitution amount of \$453 denied her the benefit of her plea agreement, and thus denied her due process. She contends that she should be allowed to withdraw her guilty plea. This issue was not properly preserved for review because defendant failed to raise the present benefit-of-the-bargain contention in her written motion to withdraw guilty plea, and her counsel failed to argue the issue during the hearing on the motion. As a result, her claim is procedurally defaulted. Ill. S. Ct. R. 604(d) (eff. July 1, 2008) (any issue not raised in a motion to withdraw a guilty plea is waived); and *People v. Fuller*, 205 Ill. 2d 308, 322-23 (2005) (holding that any issue not raised in a motion to withdraw a guilty plea is waived and that if a trial court fails to give the defendant the admonishments required by Rule 402, the action may be reviewed for plain error). Defendant acknowledges her default but urges us to review her claim for plain error.

¶ 7 The plain error doctrine allows a reviewing court to consider an unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565, (2007); see also Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999). In reviewing a plain error contention, this court first determines whether error occurred at all. See *People v. Bannister*, 232 Ill. 2d 52, 65 (2008); and *People v. Brant*, 394 Ill. App. 3d 663, 677 (2009). This requires "a substantive look at the issue." *People v. Naylor*, 229 Ill. 2d 584, 593 (2008).

¶ 8 Supreme Court Rule 402 requires that the trial court give a defendant certain admonishments before accepting the guilty plea, including "the minimum and maximum sentenced prescribed by law." Ill. S. Ct. R. 402(a)(2) (eff. July 1, 1997). Here, the trial court properly admonished defendant that she could be fined up to \$25,000 for the offense of theft. Defendant stated on the record that she understood this possibility and still agreed to plead guilty. She confirmed her understanding of this admonishment two times thereafter: after the parties agreed to the stipulation of facts supporting the guilty plea, and after the trial court sentenced defendant. Because she was warned of the fines and agreed to the possibility of up to \$25,000 in fines, defendant cannot now claim that her sentence was contrary to her plea agreement. See *People v. Petero*, 384 Ill. App. 3d 594, 598 (2008) (concluding that the record clearly established that following the State and the trial court's recitation of sentence, defendant agreed on the record to restitution, and that defendant could not claim on appeal that the sentence was contrary to the

terms of the negotiated plea agreement).

¶ 9 Defendant argues that even though she was warned of the maximum fine and was told of the \$685 fine at the time the court imposed sentence, the admonishments were insufficient because the judge failed to tell her the exact amount prior to accepting the plea. Substantial compliance with Rule 402 is sufficient to establish due process. *People v. Whitfield*, 217 Ill. 2d 177, 195 (2005). "[W]hether an imperfect admonishment requires reversal depends on whether real justice has been denied or whether the inadequate admonishment prejudiced the defendant." *People v. Thompson*, 375 Ill. App. 3d 488, 493 (2007). Here, real justice was not denied and defendant was not prejudiced because defendant knew she could be fined up to \$25,000, and in fact, she was fined significantly less. *Id.* at 493-94 (concluding that the "defendant was not prejudiced by the incomplete admonishment as he did not receive a more onerous sentence than the one he was told he would receive" where the defendant was ordered to pay \$1,242.69 in restitution, which was lower than the admonished maximum fine of \$25,000).

¶ 10 Furthermore, defendant's reliance on *Whitfield* is misplaced. In the present case, defendant was informed in open court that the fine total would be \$685, while the *Whitfield* defendant did not learn of his Mandatory Supervised Release term until he was already in prison serving his sentence. *Whitfield*, 217 Ill. 2d at 180. Defendant certainly had the opportunity to object to the fine at the time she was sentenced, or to include this issue in her motion to withdraw the guilty plea. She did neither. We find that due process was not violated, and defendant will not be permitted to withdraw her guilty plea.

¶ 11 Because there was no error, defendant received the benefit of the bargain and her trial counsel was not ineffective for failing to raise the issue of the trial court's admonishments in a

postplea motion.

¶ 12 Defendant next requests corrections to the order to reflect a reduced amount due of \$529. The State agrees with defendant that the order assessing mandatory fines, fees, and costs should be corrected to reflect a total amount due of \$529, rather than the assessed amount of \$685. To begin, the assessments incorrectly reflect a sum of \$685, and instead should be \$585. Also, the Violent Crime Victims Assistance assessment should have been \$4, rather than \$20, because defendant was also assessed fines for the Children's Advocacy Center and the Mental Health Court. See 725 ILCS 240/10(c) (the \$20 charge applies only where "no other fine is imposed"). Further, pursuant to section 110-14 of the Code of Criminal Procedure of 1963, defendant was also permitted to offset any fines against her with credit of \$5 per day for her time in custody prior to sentencing. 725 ILCS 5/110-14(a). Defendant was in custody 43 days prior to sentencing, so the \$40 should be deducted for the \$30 Children's Advocacy Center and the \$10 Mental Health Court fines. Thus, we apply a credit of \$40 toward the Children's Advocacy Center and the Mental Health Court fees and modify the Violent Crime Victims Assistance fee to \$4 under Supreme Court Rule 615(b)(2). See *People v. Coleman*, 404 Ill. App. 3d 750, 754 (2010) (vacating unauthorized assessments).

¶ 13 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County denying defendant's motion to withdraw her guilty plea. We apply a credit of \$40 toward the Children's Advocacy Center and the Mental Health Court fees, modify the Violent Crime Victims Assistance fee to \$4, and order the clerk of the circuit court to modify the order to reflect the correct amount due of \$529.

¶ 14 Affirmed; fines and fee order corrected.

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