

2012 IL App (2d) 110164-U
No. 2-11-0164
Order filed June 13, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Lee County.
)	
Plaintiff-Appellee,)	
)	
v.)	Nos. 06-CF-155
)	06-CF-167
)	
WILLIAM B. JACKSON,)	Honorable
)	Daniel A. Fish,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Bowman and Schostok concurred in the judgment.

ORDER

Held: (1) The trial court did not abuse its discretion in denying defendant's motion to withdraw guilty pleas as evidence presented did not support finding that defendant was unfit at the time he pleaded guilty; and (2) defendant failed to establish that trial counsel was ineffective for failing to request a fitness hearing prior to guilty plea proceeding.

¶ 1 Defendant, William B. Jackson, appeals the judgment of the circuit court of Lee County denying his motion to withdraw his guilty pleas. According to defendant, the trial court abused its discretion in denying the motion because he presented uncontroverted testimony that, at the time he

pleaded guilty, he was experiencing hallucinations, hearing voices, and suffering from insomnia. Alternatively, defendant argues that trial counsel was ineffective for failing to request a fitness evaluation prior to the guilty plea proceeding. We affirm.

¶ 2 The record establishes that on December 27, 2005, defendant was charged in the circuit court of Lee County with domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2004)) in case No. 05-CF-352. The following day, having waived counsel, defendant pleaded guilty and was released on bond pending sentencing. Subsequently, defendant was charged in Lee County with driving while his license was revoked (625 ILCS 5/6-303(a) (West 2006)) in case No. 06-CF-155 and with theft (720 ILCS 5/16-1(a)(1)(A) (West 2006)) in case No. 06-CF-167. Public defender Douglas Lathe was appointed to represent defendant.

¶ 3 On July 11, 2006, the sentencing hearing in case No. 05-CF-352 began. A question arose regarding the accuracy of some Cook County convictions listed in the presentence investigation report, so the trial court continued the hearing to allow the matter to be investigated. On the same day, defendant wrote the court a letter stating that he wished to withdraw his guilty plea. Defendant also asked for new counsel to be appointed, stating his belief that Lathe did not have his “best interest at heart.” On July 20, 2006, the sentencing hearing in 05-CF-352 resumed. After stating that it would not consider any of the Cook County cases, the court sentenced defendant to six years’ imprisonment.

¶ 4 On August 9, 2006, defendant wrote the court another letter requesting that his guilty plea be withdrawn in case No. 05-CF-352. On August 23, 2006, the court held a hearing on defendant’s letter. During the hearing, the trial court asked defendant what he wanted. Defendant stated that he spoke to his attorney and he would “like to stay where it’s at right there.” The court, seeking

clarification, asked defendant if he wanted to “withdraw” his request to vacate his guilty plea. Defendant responded in the affirmative. The court admonished defendant that if he withdrew his request, he would not be able to file another one. Defendant replied that he understood.

¶ 5 On October 19, 2006, defendant entered negotiated guilty pleas in case Nos. 06-CF-155 and 06-CF-167. Pursuant to the plea agreement, defendant was sentenced to three years’ imprisonment for driving with a revoked license and five years’ imprisonment for theft. These sentences were consecutive to each other, as well as to the six-year sentence imposed in case No. 05-CF-352. In addition, the sentences were consecutive to a two-year sentence imposed in a case from Whiteside County.¹ This resulted in an aggregate sentence of 16 years. The State also agreed to dismiss additional charges pending against defendant. Thereafter, the court admonished defendant of his appeal rights.

¶ 6 On November 13, 2006, defendant filed a *pro se* motion for reduction of sentence. The motion listed the three Lee County cases (Nos. 05-CF-352, 06-CF-155, and 06-CF-167) as well as the Whiteside County case. In his motion, defendant argued that he had been erroneously advised that his sentences would run concurrently. On November 15, 2006, the trial court received two letters from defendant. In one of those letters, dated October 30, 2006, defendant asked the court for new counsel because Lathe had not reviewed the case and would not respond to his request to file a motion to withdraw as counsel. In the other letter, dated October 31, 2006, defendant asked

¹ It is unclear from the record whether the sentence in the Whiteside County case was two years or two-and-a-half years. At the guilty plea proceeding, the State represented that the Whiteside County sentence was two years. In his brief, defendant claims the Whiteside County sentence was two-and-a-half years. This discrepancy is irrelevant for the purposes of the issues raised on appeal.

to withdraw his guilty pleas in case Nos. 05-CF-352 and 06-CF-155 and reiterated his understanding that the sentences would run concurrently.

¶ 7 On January 11, 2007, the trial court appointed new counsel, Al Williams, to represent defendant due to a potential conflict with Lathe. There were several continuances to allow counsel to review the record. At a hearing on April 19, 2007, the State argued that the court lacked jurisdiction over case No. 05-CF-352 because nothing had been filed within 30 days of sentencing. The court asked defendant which case or cases his October 31, 2006, letter concerned, and Williams replied “155 and 167.” The court told Williams that the clerk’s docket showed that on November 13, 2006, defendant filed a motion for reduction of sentence in case Nos. 05-CF-352, 06-CF-155, and 06-CF-167. The court continued the matter for the parties to determine what was actually pending.

¶ 8 On May 2, 2007, Williams filed a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) that listed only case No. 05-CF-352. On May 9, 2007, the court ruled that the time limit has already passed to file any new motions in case No. 05-CF-352. On May 30, 2007, Williams told the court that nothing was pending in defendant’s cases. Defendant asked the court about the motion for reduction of sentence and Williams responded, “There’s nothing pending. You withdrew it all.” Based on Williams’ representation that nothing was pending, the trial court ordered defendant remanded and that “no further dates” be scheduled. Thereafter, we allowed defendant to file a late notice of appeal in case Nos. 05-CF-352, 06-CF-155, and 06-CF-167.

¶ 9 On appeal, defendant argued that Williams had failed to comply with Rule 604(d) where, although he filed a certificate, it listed only case No. 05-CF-352, he did nothing with regard to that case, and he refused to even acknowledge pending motions in case Nos. 06-CF-155 and 06-CF-167.

We concluded that defendant had not timely filed a motion to withdraw his plea in case No. 05-CF-352. *People v. Jackson*, No. 2-07-0634 (2009) (unpublished order under Supreme Court Rule 23).

With regard to case Nos. 06-CF-155 and 06-CF-167, we concluded that the appeal was premature because the trial court never ruled on the motions as Williams indicated that there was nothing pending. *People v. Jackson*, No. 2-07-0634 (2009) (unpublished order under Supreme Court Rule 23). Thus, we dismissed the appeal and remanded the case with instructions that the trial court appoint counsel and hear and decide the motion to withdraw defendant's guilty pleas in case Nos. 06-CF-155 and 06-CF-167. *People v. Jackson*, No. 2-07-0634 (2009) (unpublished order under Supreme Court Rule 23).

¶ 10 On December 4, 2009, the trial court appointed Thomas Murray to represent defendant on the motion to withdraw his guilty pleas in case Nos. 06-CF-155 and 06-CF-167. On October 14, 2010, Murray filed an amended motion to vacate the guilty pleas along with a certificate indicating his compliance with Rule 604(d). The motion alleged that when defendant pleaded guilty on October 19, 2006, he was suffering from withdrawal and detoxification from alcohol abuse and was in need of a fitness evaluation. The motion further alleged that defendant had raised these concerns with counsel, but counsel did not request a fitness hearing. The motion also asserted that when he pleaded guilty, defendant's understanding was that any sentences imposed were to be served concurrently. Alternatively, defendant raised allegations of ineffective assistance of counsel at the guilty plea proceeding. Defendant requested that the court vacate the pleas and order a fitness evaluation to determine whether he is fit to stand trial. Attached to the motion was an affidavit executed by defendant averring that his mind had been negatively impacted by years of alcohol

abuse, and that, at the time of the entry of the guilty pleas, he was not of sound mind and he was unable to understand the nature of the proceedings against him.

¶ 11 At the hearing on the motion, defendant testified that he recalled being in court on October 19, 2006, but that he did not understand what was going on. He stated that, at that time, he was having hallucinations and was hearing and seeing things. Defendant had been having these problems, which he attributed to an “alcohol problem,” since 2005. Defendant testified that he had been treated at hospitals six different times between January 2005 and May 2006 as a result of similar symptoms. Defense counsel submitted medical records from the hospitals where defendant had been treated.

¶ 12 Defendant further testified that he was incarcerated in the Lee County jail on June 15, 2006, on an unspecified charge. While incarcerated, he received medication to treat hallucinations. Defendant was transferred to the Illinois Department of Corrections on July 26, 2006. At that time, he stopped receiving any medication. Soon thereafter, defendant began to suffer from headaches, hallucinations, and insomnia. Defendant remained in the custody of the Illinois Department of Corrections through his guilty plea hearing.

¶ 13 Defendant testified that on October 19, 2006, the day of the guilty plea proceeding, he was still hearing and seeing things and had not been able to sleep for a week. In particular, defendant recounted seeing “[p]eoples in front of [him] that was not even there [*sic*]” and hearing a voice telling him that “[d]eath was around the corner.” Defendant asked his attorney to have him evaluated for fitness, but his attorney did not do so. Defendant testified that although the court informed him on the record that his sentences would be consecutive, he did not understand what was

happening. Defendant subsequently learned that the sentences were consecutive when he read the transcripts of his guilty plea proceeding, and at that time he wrote a letter to the court seeking relief.

¶ 14 On cross-examination, defendant testified that he did not mention his hallucinations to the judge at the guilty plea proceeding on October 19, 2006, because his attorney would not allow him to speak to the court. Defendant further testified that the court admonished him about pleading guilty and he never told the court that he was on medication or suffering from insomnia.

¶ 15 On January 24, 2011, the court denied defendant's motion to vacate his pleas. The court reasoned that defendant only presented medical records from a period of time that occurred prior to his pleas and did not submit medical documentation proximate to the time of his guilty pleas. The court also reasoned that it had not heard from defendant's original guilty plea attorney, anyone in the probation department, or medical personnel from the hospitals where defendant was treated. Further, it did not receive any medical records from the Illinois Department of Corrections or testimony from members of the jail staff to show that defendant was having mental health problems. In addition, the court reviewed the transcript of defendant's guilty plea proceeding and noted that at the time of the pleas, defendant said that he understood that his sentences would run consecutively. This appeal ensued.

¶ 16 On appeal, defendant argues that the trial court erred in denying his motion to withdraw his guilty pleas because he presented substantial objective proof that he was unfit at the time he entered those pleas. A decision on a defendant's motion to withdraw a guilty plea is a matter within the discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. *People v. Sharifpour*, 402 Ill. App. 3d 100, 111 (2010). An abuse of discretion occurs only where

the trial court's ruling is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court. *Sharifpour*, 402 Ill. App. 3d at 111.

¶ 17 A defendant does not have an absolute right to withdraw a guilty plea, but, rather, must establish some recognized basis for withdrawal. *People v. Cruz*, 372 Ill. App. 3d 556, 558 (2007). Thus, for instance, a guilty plea may be withdrawn where it is based on a misapprehension of the facts or the law, or on misrepresentations by defense counsel; where there is doubt as to the defendant's guilt; where the defendant has a defense worthy of consideration; or where the ends of justice will be better served by taking the case to trial. *People v. Davis*, 145 Ill. 2d 240, 244 (1991). Furthermore, the due process clause of the United States Constitution (U.S. Const., amend. XIV) bars the conviction and sentencing of a defendant who is not fit to stand trial. *People v. Itani*, 383 Ill. App. 3d 954, 970 (2008). Under Illinois law, a defendant is presumed fit to stand trial, and will only be considered unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or he is unable to assist in his defense. 725 ILCS 5/104-10 (West 2006); *People v. Haynes*, 174 Ill. 2d 204, 226 (1996); *People v. Daubman*, 190 Ill. App. 3d 684, 694 (1989).

¶ 18 According to defendant, he presented "uncontroverted" testimony that he was experiencing hallucinations, hearing voices, and suffering from insomnia on the day he entered his guilty pleas. Defendant further asserts that his testimony is corroborated by medical evidence of treatment for symptoms stemming from his alcoholism in the two years preceding his pleas. Thus, defendant reasons, the evidence establishes that he was unfit to enter a plea and the trial court should have either allowed him to withdraw his pleas or ordered a fitness hearing. We conclude that the trial

court did not abuse its discretion in denying defendant's motion to withdraw his guilty pleas because the evidence of record fails to establish that defendant was unfit at the time he pleaded guilty.

¶ 19 Defendant presented medical records from hospital visits occurring in January 2005, March 2005, November 2005, January 2006, March 2006, and May 2006. Thus, the last hospital visit occurred approximately five months prior to the date defendant pleaded guilty. However, defendant did not report that he was experiencing hallucinations at that time. Indeed, defendant did not report hallucinations at all of these hospital visits. In fact, the medical record closest in time to defendant's plea proceeding, an emergency room visit on May 1, 2006, does not reference hallucinations at all. The most recent hospital visit where defendant complained of hallucinations was in November 2005, almost a year before defendant pleaded guilty. Since the medical records defendant submitted are from hospital visits that predate the time defendant pleaded guilty and they do not consistently reference hallucinations, we conclude that they do not corroborate defendant's testimony that he was experiencing hallucinations in October 2006.

¶ 20 Indeed, other than his testimony that he was experiencing hallucinations and insomnia at the time of the guilty plea proceeding, defendant presented no evidence in support of his claim that he was unfit to plea in October 2006. As the trial court noted, defendant did not present any documentation from the Illinois Department of Corrections to establish that he had mental health issues. Defendant contends that there was no documentation because he was not receiving any medical treatment at that time. However, it is the defendant's burden to establish some basis for the withdrawal of his guilty plea. *Cruz*, 372 Ill. App. 3d at 558. The fact that the record is lacking any jail or medical records referencing that claimant was having hallucinations or suffering from

insomnia proximate to the time he pleaded guilty casts doubt on defendant's claim that he was experiencing these symptoms in October 2006.

¶21 Additionally, as the trial court pointed out, defendant did not present evidence from any other witnesses to support his claim that he was experiencing hallucinations and insomnia at the time of the guilty plea proceedings. Defendant insists that it would have been futile to call guilty plea counsel to testify on his behalf where he charged that counsel's performance was deficient. See *People v. Collins*, 202 Ill. 2d 59, 67-68 (2002) (suggesting that when the defendant in a post-conviction petition alleges that trial counsel was ineffective, requiring the attachment of an affidavit from counsel would "place an unreasonable burden upon postconviction petitioners"). We note initially that *Collins* is distinguishable in that it involved the post-conviction hearing process. However, even if we accept defendant's claim that it would have been futile to call guilty plea counsel under the circumstances of this case, a reading of *Collins* suggests that the only relevant evidence the defendant in that case could have presented was that of trial counsel. *Collins*, 202 Ill. 2d at 68. In this case, the trial court identified other potential witnesses, such as jail personnel or medical professionals, who could have corroborated defendant's testimony that his hallucinations were ongoing. Defendant does not explain his failure to call or obtain an affidavit from these other witnesses.

¶22 Defendant also complains that the State did not present any evidence to counter his claim of unfitness. See *People v. King*, 316 Ill. App. 3d 901, 916-19 (2000) (remanding case for a new trial where trial counsel did not testify at the third-stage post-conviction evidentiary hearing to refute claims alleging his ineffectiveness). However, as noted above, it is defendant's burden to establish the basis for withdrawing his plea. *Cruz*, 372 Ill. App. 3d at 558. Here, the State could have

reasonably concluded that there was no need to “counter” defendant’s testimony because the evidence of record was insufficient to sustain his burden.

¶ 23 In this regard, a review of the transcript of the guilty plea proceeding belies defendant’s claim that he was unfit at the time of the guilty plea proceeding. The evidence establishes not only that defendant understood the nature and purpose of the proceedings, including the fact that his sentences would run consecutively, but that he assisted in his defense. After the State set forth the terms of the plea agreement, but prior to accepting the pleas, defendant confirmed that he understood the terms of the plea agreement. The following exchange then took place between the court and the parties:

“THE COURT: You understand, Mr. Jackson, by consecutive—I’m sure your attorney has explained to you—that means you will have to serve one sentence. When that sentence is completed you will begin the second sentence. When that sentence is completed, then you’ll begin the third sentence and when that sentence is completed, then you will begin the fourth sentence. Do you understand that?”

THE DEFENDANT: Yes, sir.

THE COURT: And there’s no credit for any of these times on prior sentencing with regard to new sentences. Do you understand that?”

THE DEFENDANT: There’s credit for jail time.

MR. BUH [Assistant State’s Attorney]: He does get credit from July 6 of ‘06 in which he was arrested on the theft charge until today’s date with regards to the amount of time spent in custody because he was held on a warrant on that case, he was held on bond on that case.

THE COURT: That was in 06-CF-167?

MR. BUH: Yes.

THE COURT: So you'd receive credit on that case from July 6 through today.

THE DEFENDANT: I thought it was, it was June 14 was when I got picked up.

MR. BUH: I have your—

THE DEFENDANT: That's when I got picked up, June 14.

THE COURT: June 15 the defendant did appear.

MR. BUH: Is that—okay, then it's from June 15, Your Honor.

THE DEFENDANT: And I got sentenced July sometime for the domestic.

MR. BUH: So it's June 15.

THE COURT: It is June 15 through today then?

MR. BUH: That would be 124 days.

THE COURT: Is that correct, Mr. Jackson?

THE DEFENDANT: Yes.

THE COURT: Is that correct, Mr. Lathe [defense counsel]?

MR. LATHE: Yes, Your Honor.”

¶ 24 Thereafter, the trial court admonished defendant as to the nature of the charge, the statutory sentencing range, and the rights he would be waiving by pleading guilty. See Illinois Supreme Court Rule 402(a) (eff. July 1, 1997). Defendant indicated that he understood the admonishments. In response to inquiries from the trial court, defendant also stated that he was making his pleas freely, that no one forced him to enter the pleas, and that he was made no promises other than those contained in the plea agreement. The court also determined that claimant had a GED, that he is able

to read and write, and that he was not on any medications. After listening to the factual basis for the pleas, the trial court accepted defendant's pleas and explained to defendant his appeal rights.

¶ 25 The foregoing evidence demonstrates not only that defendant understood what was happening the day he pleaded guilty, but that he actively and effectively assisted in his defense. Notably, defendant corrected the court when it stated that he would not receive any credit for time served. Defendant then corrected the State when the prosecutor stated the wrong date that defendant had entered jail. Defendant's corrections enabled him to receive the proper amount of credit for time served. More important, defendant's assistance establishes that he was aware of what was happening and that he understood the proceedings. Therefore, defendant's testimony at the hearing on his motion to withdraw his guilty pleas was contrary to defendant's actions at the time of the guilty plea proceedings. As such, the trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty pleas.

¶ 26 Alternatively, defendant argues the attorney who represented him at the guilty plea proceedings provided ineffective assistance because he never asked that defendant be evaluated for fitness. We disagree.

¶ 27 To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was so seriously deficient as to fall below an objective standard of reasonableness under prevailing professional norms and that the deficient performance so prejudiced the defendant as to deny him a fair trial. *People v. Mitchell*, 189 Ill. 2d 312, 332 (2000). In assessing a claim of ineffective assistance of counsel involving a defendant's fitness to stand trial, *Mitchell* explains that the proper test for evaluating prejudice when counsel fails to seek a fitness hearing is whether there is a reasonable probability that the result of a hearing would have been the

determination that the defendant was unfit to stand trial. *Mitchell*, 189 Ill. 2d at 334. As noted above, an accused is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or he is unable to assist in his defense. 725 ILCS 5/104-10 (West 2006); *Mitchell*, 189 Ill. 2d at 334; *Haynes*, 174 Ill. 2d at 226.

¶ 28 Here, as in *Mitchell*, the record belies any claim that defendant did not understand the nature of the proceedings or was unable to assist in his defense. Defendant again insists that the State did not counter his testimony that he was suffering from hallucinations and insomnia on the day of his guilty pleas or that he asked counsel to request a fitness evaluation. However, as we note above, there was no need for the State to “counter” defendant’s testimony because the record refuted his testimony. Defendant acted as his own advocate during his plea proceedings. He corrected mistakes by both the trial court and the prosecutor, thus actively and effectively participating in the guilty plea proceeding. As we concluded above, defendant’s assistance establishes that he was aware of what was happening and that he understood the proceedings. Thus, even if defendant’s counsel requested a fitness hearing, there is not a reasonable probability that defendant would have been found unfit.

¶ 29 For the reasons set forth above, we affirm the judgment of the circuit court of Lee County.

¶ 30 Affirmed.