

2012 IL App (2d) 110868-U
No. 2-11-0868
Order filed May 18, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CM-3920
)	
CHARLES S. BANKS,)	Honorable
)	Helen S. Rozenberg,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

Held: Because the trial court lacked jurisdiction to grant defendant's late motion to withdraw his guilty plea, we remanded with directions to vacate the grant, thereby reinstating defendant's conviction and sentence, and to dismiss the motion.

¶ 1 Defendant, Charles S. Banks, appeals under Illinois Supreme Court Rule 604(f) (eff. July 1, 2006), from the trial court's denial of his motion to bar trial on the basis of double jeopardy. On appeal, defendant argues that his prior guilty plea was improperly vacated and bars any subsequent prosecution. For the reasons that follow, we remand the cause with directions to the trial court to (1) vacate its May 9, 2011, vacatur of defendant's guilty plea, thereby reinstating defendant's

conviction and sentence and (2) dismiss defendant's oral motion to withdraw his plea, for lack of jurisdiction.

¶ 2

I. BACKGROUND

¶ 3 On January 10, 2011, defendant, a Wisconsin resident, entered a negotiated plea of guilty to disorderly conduct, a Class C misdemeanor (720 ILCS 5/26-1(a)(1), (b) (West 2010)). The trial court sentenced defendant to a 12-month term of "supervised supervision" and permitted defendant to return home to Milwaukee to serve his sentence.

¶ 4 On April 29, 2011, defendant filed a motion to modify the terms of his supervision. In the motion, defendant averred that, when he returned home, Wisconsin probation authorities determined that defendant had committed a sexual offense and they imposed certain restrictions on his computer use and interstate travel. Defendant asked the court to amend the sentencing order to "remove supervised supervision" and probation and to specifically permit him to access his computer and to travel out of state.

¶ 5 On May 9, 2011, almost four months after defendant pleaded guilty, the parties appeared in court for a hearing on defendant's motion to modify.¹ At the hearing, the trial court confirmed with the State that defendant's sentence was fully negotiated and then asked the State whether it objected to any modifications. The State indicated that it did object. The court then informed defendant that it would not grant his motion. At that point, defense counsel argued the inherent unfairness of the

¹No court reporter was present at the hearing. Defendant and the State filed conflicting bystander's reports concerning what occurred at the hearing. Ultimately, under Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005), the trial court resolved the conflict and certified the State's bystander's report as the record in this case.

negotiated plea, because “defendant did not know what he was getting himself into by entering a plea of guilty, due to a conflict of law between Illinois, where the defendant pled guilty, and Wisconsin where the defendant was to be monitored.” The court then commented to defense counsel that “it sounded like [defense counsel] wished to make a motion to vacate the negotiated plea.” Defense counsel “affirmed that he wanted to vacate the plea, and stated unequivocally that he makes an oral motion to vacate the plea.” The State did not object. The trial court “granted [defense counsel’s] motion to vacate, reinstated the original charge, and reinstated all the original conditions of the defendant’s bond.” Defense counsel then requested a trial date on the original charges. The matter was set for trial. A written order, prepared by defense counsel, stated that “[t]he court vacates the judgment and sentence; allows [defendant] to withdraw his plea.”

¶ 6 On June 22, 2011, defense counsel filed a speedy-trial demand and answered ready for trial at 9:50 a.m. but indicated that he was “unsure if he w[ould] be available [at] 10:25 a.m. to pick jury.” The court continued the case on its own motion, over defendant’s objection.

¶ 7 On August 26, 2011, defendant filed a motion to “bar trial” based on double jeopardy. According to the motion, defendant never sought to withdraw his guilty plea. He further maintained that his former prosecution was “concluded” by his plea of guilty. At the hearing on the motion, defense counsel insisted that the court had *sua sponte* vacated defendant’s guilty plea. The court stated that defense counsel’s recollection was incorrect and that the court “did [nothing] on its own motion” but acted only on defense counsel’s request. Defendant argued that he “had not sought to withdraw his plea of guilty. Nor was he seeking a trial on this cause.” He argued: “[W]e could not have asked the Court to withdraw the plea. More than 30 days had elapsed. We couldn’t have withdrawn the plea because no 604(d) certificate was filed by the defendant.” The court stated that,

whether or not defendant's motion to vacate the plea was sufficient, defendant had been granted the relief he requested. Thus, the court denied defendant's motion to bar trial.

¶ 8 Defendant filed a timely notice of interlocutory appeal under Illinois Supreme Court Rule 604(f) (eff. July 1, 2006). Defendant argues that his guilty plea was improperly vacated, such that the State is barred from further prosecution.

¶ 9

II. ANALYSIS

¶ 10 As an initial matter, we address the State's motion, ordered taken with this case, to strike defendant's statement of facts. The State argues that, contrary to Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005), defendant included in the record an uncertified bystander's report and that, contrary to Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2008), defendant erroneously relied on the uncertified bystander's report in his statement of facts. A review of defendant's statement of facts shows that it contains two incorrect statements without proper record support: (1) that the trial court *sua sponte* vacated the supervision order and allowed defendant to withdraw his plea; and (2) that no judgment was entered on his plea. As noted above, according to the certified bystander's report, contrary to defendant's assertion, defense counsel "affirmed that he wanted to vacate the plea, and stated unequivocally that he makes an oral motion to vacate the plea." In addition, contrary to defendant's assertion, the record establishes that judgment was entered on the plea. Nevertheless, we find that defendant's violations are not so egregious that they hinder our review of the issues raised on appeal, and thus we do not find it necessary to strike defendant's statement of facts; rather, we simply disregard any improper or unsupported statements. *John Crane Inc. v. Admiral Insurance Co.*, 391 Ill. App. 3d 693, 698 (2009). Accordingly, the State's motion is denied.

¶ 11 Turning to the merits, the parties agree that the trial court was without jurisdiction to allow defendant to withdraw his plea. Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) provides that a defendant seeking to withdraw his guilty plea must file a motion within 30 days of sentencing. When more than 30 days have elapsed since the defendant's sentencing, and the trial court has not extended the limitations period upon proper application of the defendant for good cause shown, the trial court is divested of jurisdiction to entertain a defendant's postplea motion under Rule 604(d). *Peopl ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40-41 (2011); *People v. Flowers*, 208 Ill. 2d 291, 303 (2003). Here, defendant pleaded guilty on January 10, 2011, and orally moved to withdraw his plea on May 9, 2011, more than 30 days later. Because the 30-day period after sentencing had expired when defendant made his oral motion to withdraw his plea, the trial court lacked jurisdiction to consider it, and thus the court's May 9, 2011, order vacating the judgment allowing defendant to withdraw his plea is void. See *Flowers*, 208 Ill. 2d at 306 (a trial court's ruling made in the absence of subject-matter jurisdiction is void).

¶ 12 The parties agree that the proper remedy is to remand the cause with directions to the trial court to (1) vacate its May 9, 2011, order, thereby reinstating defendant's conviction and sentence and (2) dismiss defendant's oral motion to withdraw his plea, for lack of jurisdiction. Defendant further agrees that such a conclusion renders moot his double-jeopardy claim.

¶ 13 III. CONCLUSION

¶ 14 Accordingly, in light of the foregoing, we remand the cause with directions to the circuit court of Lake County.

¶ 15 Remanded with directions.