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2012 IL App (3d) 100263-U

Order filed January 24, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 21st Judicial Circuit,
Plaintiff-Appellee,) Kankakee County, Illinois,
)
v.) Appeal No. 3-10-0263
) Circuit No. 09-CF-496
VINCENT A. WILLIAMSON,)
) Honorable
Defendant-Appellant.) Clark E. Erickson,
) Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Schmidt and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant did not establish that counsel was ineffective or that the sentence imposed by the trial court was excessive. However, defendant's conviction for both burglary and possession of burglary tools violated the one-act, one-crime doctrine.
- ¶ 2 Following a bench trial, defendant, Vincent A. Williamson, was convicted of burglary (720 ILCS 5/19-1(a) (West 2008)) and possession of burglary tools (720 ILCS 5/19-2 (West 2008)). The trial court sentenced defendant to concurrent prison terms of

seven years for burglary and three years for possession of burglary tools. Defendant appeals, arguing that: (1) defense counsel was ineffective for introducing defendant's inadmissible prior convictions; (2) defendant's seven year sentence for burglary was excessive; and (3) his convictions for burglary and possession of burglary tools violate the one-act, one-crime doctrine. We conclude defense counsel was effective and defendant's sentence was proper. However, due to the one-act, one-crime doctrine, we vacate defendant's conviction for possession of burglary tools.

¶ 3

FACTS

¶ 4

Following an incident that occurred on August 1, 2009, defendant was charged in an indictment with one count of burglary (720 ILCS 5/19-1(a) (West 2008)) and one count of possession of burglary tools (720 ILCS 5/19-2 (West 2008)). Defendant waived his right to a jury trial, and the cause proceeded to a bench trial.

¶ 5

At trial, the State produced evidence that defendant was arrested after police officers were dispatched to an apartment building on the evening of August 1. Upon their arrival, the officers noticed a broken basement window at the rear of the building. The building manager testified that the room with the broken window was a utility room that defendant did not have permission to enter. After observing a man wearing a white shirt and a black baseball cap flee after emerging from the broken window, the officers observed defendant still inside the room with the broken window. Defendant explained to the officers that he had heard the glass break and came to investigate. The officers searched defendant and found a pair of pliers. Defendant claimed that he had used the pliers while working on a car earlier in the day.

¶ 6 On August 3, 2009, defendant was again interviewed by police. This time, defendant told the officers that he was drunk and accidentally fell through the window. He then changed his story and stated that he had fallen through the window while fighting. He stated he used the pliers while cooking out on a grill.

¶ 7 Defendant and Desiree Collins testified as defense witnesses and explained that on August 1, they were barbecuing with family members in the back of the apartment located close to the broken window. Defendant lifted the lid of the grill with a pair of pliers. During the barbecue, an individual insulted Collins, prompting defendant to fight with the individual. The fight ended with defendant being knocked through the basement window. Defendant acknowledged that he had changed his story many times.

¶ 8 Defense counsel discussed defendant's prior convictions during direct examination by asking if he had been convicted of any other felonies. Defendant responded that he had a 1988 felony for murder and a 2005 felony for possession, as well as a felony conviction for aggravated battery. Defendant said that he pled guilty because he was guilty of those offenses but that he was not guilty of the current charges.

¶ 9 The trial court found defendant guilty of burglary and possession of burglary tools. At sentencing, the trial court noted that defendant was eligible for an extended-term sentence based on his 1988 murder conviction, and thus, the sentencing range for burglary was probation to 14 years' imprisonment. The court stated that it could not ignore defendant's prior record, which included the murder conviction, two theft convictions in 1985 and 1986, and a Class A misdemeanor conviction for domestic battery. The court also noted that defendant returned to the Department of Corrections in

2003 for possession of a controlled substance that occurred after his sentence for murder had elapsed. Ultimately, the trial court sentenced defendant to seven years for burglary and a concurrent sentence of three years for possession of burglary tools. Defendant appeals.

¶ 10

ANALYSIS

¶ 11

Defendant first argues that defense counsel was ineffective for introducing inadmissible prior convictions during defendant's direct examination. To establish ineffective assistance of counsel, a defendant must show that: (1) counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. *People v. Albanese*, 104 Ill. 2d 504 (1984). In order to establish the first prong, a defendant must demonstrate that the errors were so serious that counsel was not functioning as the counsel guaranteed the defendant by the sixth amendment. *People v. Clendenin*, 238 Ill. 2d 302 (2010). In doing so, a defendant must overcome the strong presumption that the challenged action of counsel was the product of sound trial strategy. *Id.* Further, decisions concerning what evidence to present on defendant's behalf ultimately rest with trial counsel. *People v. Ramey*, 152 Ill. 2d 41 (1992). We will not find ineffective assistance based merely on tactical miscalculations. *People v. Weatherspoon*, 394 Ill. App. 3d 839 (2009).

¶ 12

In this case, defense counsel inquired into defendant's prior convictions that would have otherwise been inadmissible. Defendant's murder conviction was inadmissible because more than 10 years had passed since his release from confinement, and

defendant's battery conviction was actually a Class A misdemeanor for domestic battery that was not suitable for impeachment because it was not punishable by death or imprisonment in excess of one year. See *People v. Montgomery*, 47 Ill. 2d 510 (1971); 720 ILCS 5/12-3.2(b) (West 2002); 730 ILCS 5/5-8-3 (West 2002). Following introduction of those convictions, however, defendant testified that he pled guilty to the prior offenses because he was guilty. The decision to introduce a defendant's prior convictions can be a matter of trial strategy. See *People v. Williams*, 317 Ill. App. 3d 945 (2000). It is clear from the record that counsel addressed the previous convictions as a matter of strategy, in an effort to convince the court that defendant had always previously accepted responsibility for crimes that he actually committed but did not plead guilty in this case because he did not commit this offense. Here, this strategy was reasonable and we conclude counsel's performance did not fall below an objective standard of reasonableness.

¶ 13 Defendant next argues that his seven-year sentence for burglary was excessive. The Illinois Constitution mandates that all penalties be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11. However, we will not reverse a trial court's sentence unless we find that the court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203 (2000). A sentence that falls within the statutory range does not amount to an abuse of discretion unless it is manifestly disproportionate to the nature of the offense. *People v. Jackson*, 375 Ill. App. 3d 796 (2007).

¶ 14 Burglary is a Class 2 felony with a sentencing range of not less than three years

and not more than seven years. 730 ILCS 5/5-4.5-35 (West 2008). Section 5-5-3.2(b)(1) of the Unified Code of Corrections allows the court to impose an extended-term sentence upon an offender who is convicted of any felony after having been previously convicted of the same or similar class felony or a greater class felony, when such conviction has occurred within 10 years after the previous conviction, excluding time spent in custody. 730 ILCS 5/5-5-3.2(b)(1) (West 2008). Therefore, defendant was eligible for an extended-term sentence of 14 years due to his previous murder conviction. 730 ILCS 5/5-4.5-35(a) (West 2008). Thus, we conclude the court did not abuse its discretion when it sentenced defendant to seven years' imprisonment for burglary.

¶ 15 Finally, defendant argues, and the State agrees, that his conviction for both burglary and possession of burglary tools violates the one-act, one-crime doctrine. Multiple convictions are improper if they are based upon the same physical act. *People v. King*, 66 Ill. 2d 551 (1977). Therefore, defendant's conviction for possession of burglary tools is vacated.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Kankakee County is affirmed in part and vacated in part.

¶ 18 Affirmed in part and vacated in part.