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2012 IL App (3d) 100562-U

Order filed March 27, 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 14th Judicial Circuit,
Plaintiff-Appellee,) Rock Island County, Illinois,
)
v.) Appeal No. 3-10-0562 and 3-10-0613
) Circuit No. 06-CF-333
)
IGNACIO A. SAGUILAN,) Honorable
) Charles H. Stengel,
Defendant-Appellant.) Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction and sentence for criminal drug conspiracy is vacated, and defendant is entitled to a \$1,945 credit towards his fines. Defendant's remaining conviction and sentence is otherwise affirmed.

¶ 2 Defendant, Ignacio A. Saguilan, was convicted of possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(D) (West 2006)) and criminal drug conspiracy (720 ILCS 570/405.1(a) (West 2006)). Defendant's direct appeal was dismissed as untimely.

Thereafter, defendant filed a postconviction petition alleging ineffective assistance of counsel for

failing to perfect defendant's direct appeal and for informing defendant of an improper sentencing range during plea negotiations. The trial court allowed defendant to file a timely notice of appeal but denied relief on defendant's contention that trial counsel incorrectly informed him of the sentencing range. Defendant appeals, arguing that: (1) his conviction for criminal drug conspiracy should be vacated or reversed; (2) he is entitled to a \$5 per day credit to be applied toward his fine; and (3) the trial court's denial of a portion of his postconviction petition was erroneous.

¶ 3

FACTS

¶ 4 Defendant was charged with possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(D) (West 2006)) and criminal drug conspiracy (720 ILCS 570/405.1(a) (West 2006)). At trial, the State produced evidence that defendant had conspired with a confidential source, working with the government, to deliver more than 900 grams of a substance containing cocaine. The jury found defendant guilty of both offenses. The trial court sentenced defendant to concurrent terms of 45 years' imprisonment and assessed a \$250,000 fine against him.

¶ 5 Defendant filed a notice of appeal that was dismissed as untimely by the trial court.

Thereafter, defendant filed a postconviction petition alleging that trial counsel was ineffective for failing to perfect defendant's direct appeal and for informing defendant of an improper sentencing range during plea negotiations.

¶ 6 Defendant's postconviction petition progressed to a third-stage evidentiary hearing. At the hearing, defendant introduced a letter that he claimed was written by trial counsel and given to him in court, likely on February 7, 2007. The letter stated that defendant was subject to a

sentencing range of 15 to 30 years, when in reality the range was from 15 to 60 years. Both defendant and trial counsel testified that the letter was given to defendant. Counsel also testified that he had orally informed defendant of the improper sentencing range.

¶ 7 The court also heard evidence that: (1) the charging instrument, which was given to trial counsel and defendant, showed a sentencing range of 15 to 60 years; (2) defendant only spoke some English, and counsel could speak and write in Spanish; and (3) the letter defendant claimed he received in court was dated February 9, 2007, one day after the last hearing before trial, and was entirely in English.

¶ 8 At the end of the evidentiary hearing, the trial court noted that it was odd that: (1) the letter was written in English and not Spanish due to the fact that defendant primarily spoke Spanish and used an interpreter during each hearing; and (2) the letter was dated February 9, but the last possible time defendant could have received the letter in court was on February 8. The court also stated that it believed that trial counsel was aware of the correct sentencing range. Therefore, the trial court found that defendant had not been given the letter prior to trial and denied relief based on his claim that counsel was ineffective for informing him of an incorrect sentencing range. However, the court did grant defendant relief based on the claim that counsel was ineffective for failing to perfect defendant's direct appeal. Thus, defendant now brings his direct appeal and an appeal from the trial court's denial of a portion of his postconviction petition.

¶ 9

ANALYSIS

¶ 10

I.

¶ 11 Defendant argues that his conviction for the inchoate offense of criminal drug conspiracy

should be vacated because he was also convicted of the underlying principal offense of possession of a controlled substance with intent to deliver. The State agrees with defendant's argument. Section 8-5 of the Criminal Code of 1961 states that no person shall be convicted of both the inchoate and the principal offense. 720 ILCS 5/8-5 (West 2006). Thus, pursuant to section 8-5, we vacate defendant's conviction and sentence for criminal drug conspiracy. See *People v. Stroud*, 392 Ill. App. 3d 776 (2009).

¶ 12 II.

¶ 13 Defendant also argues that his conviction for criminal drug conspiracy should be reversed because the alleged coconspirator was working with the police during all relevant periods of the planned delivery. We note that this issue is moot because we have already determined that defendant's conviction for criminal drug conspiracy should be vacated.

¶ 14 III.

¶ 15 Defendant next argues that he should receive a \$5 per day credit toward his fine. Pursuant to section 110-14 of the Code of Criminal Procedure of 1963, a defendant who is assessed a fine is allowed a credit of \$5 for each day spent in custody on a bailable offense for which he did not post bail. 725 ILCS 5/110-14 (West 2006). Here, defendant spent 389 days in presentence custody; therefore, he is entitled to a \$1,945 credit toward his \$250,000 fine.

¶ 16 IV.

¶ 17 Finally, defendant argues that the trial court improperly denied the portion of his postconviction petition dealing with ineffective assistance of counsel based on defendant's contention that trial counsel incorrectly informed him of the proper sentencing range. 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).

¶ 18 When a postconviction petition has advanced to a third-stage evidentiary hearing at which fact-finding and credibility determinations are involved, we will not reverse the denial of postconviction relief unless the trial court's decision was manifestly erroneous. *People v. Pendleton*, 223 Ill. 2d 458 (2006). Manifestly erroneous means arbitrary, unreasonable, and not based on the evidence. *People v. Wells*, 182 Ill. 2d 471 (1998). Further, we give deference to the trial court as the fact finder because it is in the best position to observe the conduct and demeanor of the parties and witnesses. *People v. Deleon*, 227 Ill. 2d 322 (2008).

¶ 19 Here, following an evidentiary hearing, the trial court concluded that the evidence did not establish defendant's contention that trial counsel incorrectly informed him of the sentencing range. Based on our review of the record, we do not believe that the court's factual determination was manifestly erroneous. Therefore, we will not disturb the trial court's decision regarding this matter.

¶ 20 **CONCLUSION**

¶ 21 We affirm defendant's conviction and sentence for possession of a controlled substance with intent to deliver, vacate defendant's conviction and sentence for criminal drug conspiracy, and award defendant a \$1,945 credit against his fine.

¶ 22 Affirmed in part, vacated in part, and modified in part.