

NOTICE
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2012 IL App (4th) 100754-U

Filed 4/11/12

NO. 4-10-0754

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
ISAAH M. STOKES,)	No. 08CF352
Defendant-Appellant.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court erred in failing to admonish defendant pursuant to Illinois Supreme Court Rule 402 as defendant stipulated to the State's entire case and did not present or preserve any defense to the State's charges.

¶ 2 In November 2008, following a stipulated bench trial, the trial court found defendant, Isaiah Stokes, guilty of home invasion (720 ILCS 5/12-11(a)(2) (West 2006)) and attempt (criminal sexual assault) (720 ILCS 5/8-4, 12-13 (West 2006)). In May 2009, the court sentenced defendant to concurrent terms of imprisonment of 20 years for home invasion and 6 years for attempt (criminal sexual assault).

¶ 3 Defendant appeals, arguing (1) the trial court erred by failing to admonish him pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997), where his stipulated bench trial was tantamount to a guilty plea; (2) the court erred by transferring defendant to adult court where

it is unclear from the record the court considered placing defendant in the Department of Juvenile Justice (DJJ) before it allowed the State's transfer motion; (3) defendant was denied the effective assistance of trial counsel because his counsel failed to present evidence on a factor critical to the success of the State's motion to transfer defendant to adult court; (4) defendant's sentence was excessive in light of his age, rehabilitative potential, mental health issues, and poor childhood; (5) the trial court had no authority to impose the \$200 deoxyribonucleic acid (DNA) analysis fee because defendant had previously submitted a DNA sample; (6) defendant's violent-crimes-victims-assistance-fund "fine" was not properly calculated; and (7) the children's-advocacy-center assessment imposed on defendant should be vacated because the statute authorizing the fine was not in effect at the time of defendant's offense and constituted an *ex post facto* punishment. We reverse and remand for further proceedings.

¶ 4

I. BACKGROUND

¶ 5 In January 2008, the State filed a second supplemental petition for adjudication of wardship with regard to defendant (born December 19, 1990), alleging on or about March 1, 2007, defendant committed the following offenses: home invasion, residential burglary, attempt (criminal sexual assault), criminal trespass to a residence, and unlawful restraint. Later that month, the State filed a motion pursuant to section 5-805(2) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/5-805(2) (West 2006)) for permission to prosecute defendant under the criminal laws of the State. The motion pointed to the State's allegation in the second supplemental petition for adjudication that defendant committed a Class X felony (home invasion). The motion also stated defendant was 17 at the time the motion was filed and was 16 when he allegedly committed the home invasion. Finally, the motion alleged defendant was not

a "fit and proper subject to be dealt with under the Juvenile Justice Reform Provisions of 1998."

¶ 6 On March 21, 2008, defendant filed a motion to dismiss the home-invasion charge from the second supplemental petition for adjudication of wardship, arguing the State did not show he was "armed with a dangerous weapon." The second supplemental petition only alleged defendant was armed with a pillow. Defendant also filed a motion to dismiss the State's motion to transfer him to criminal court, arguing the case did not fall under section 5-805(2) of the Juvenile Act (705 ILCS 405/5-805(2) (West 2006)) without the home-invasion charge.

¶ 7 In February 2008, the State filed a third supplemental petition for adjudication of wardship. The petition stated defendant was delinquent because:

"[O]n or about 03/01/2007, in Bloomington, McLean County, Illinois, the respondent minor committed the offense of home invasion/cause injury, in that the respondent knowingly without authority entered the dwelling place of Janet Wendt *** in Bloomington, Illinois while the respondent minor was not a peace officer acting in the line of duty, and the respondent minor remained within the dwelling place of Janet Wendt when he knew that one or more persons were present, and intentionally caused injury, the inability to breathe, to a person within the dwelling place, Janet Wendt, a Class X felony, in violation of 720 ILCS 5/12-11(a)(2)." (Emphasis omitted.)

The State also filed another motion for permission to prosecute defendant under the criminal laws of Illinois asserting the same reasons the State provided in its earlier motion to prosecute

defendant as an adult.

¶ 8 In March 2008, the trial court transferred jurisdiction over the case to the adult court and dismissed the second and third supplemental petitions for adjudication of wardship.

¶ 9 In April 2008, defendant appealed the transfer of his case to adult court. In July 2008, the appellate court dismissed defendant's appeal on his motion.

¶ 10 In April 2008, a grand jury indicted defendant for home invasion (720 ILCS 5/12-11(a)(2) (West 2006)), residential burglary (720 ILCS 5/19-3(a) (West 2006)), attempt (criminal sexual assault) (720 ILCS 5/8-4, 12-13 (West 2006)), criminal trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2006)), and unlawful restraint (720 ILCS 5/10-3 (West 2006)), superseding an information previously filed in March 2008.

¶ 11 On September 18, 2008, defendant filed a written jury waiver with the trial court. The record of proceedings for September 18, 2008, does not reflect any discussion with defendant concerning his jury waiver. See 725 ILCS 5/103-6 (West 2006); *People v. Victors*, 353 Ill. App. 3d 801, 805-06, 819 N.E.2d 311, 315-16 (2004). A stipulated bench trial was set for November 25, 2008.

¶ 12 On November 25, 2008, defendant's stipulated bench trial was held. The State and defense counsel stipulated to the testimony of Janet Wendt, Bloomington police officer Scott Karstens, Illinois State Police forensic scientist Chris Jacobson, and Detective Robert Kosack. The State's entire case consisted of these stipulations. Defense counsel neither offered any evidence nor made any argument. The State nol-prossed count II (residential burglary), count IV (criminal trespass to a residence), and count V (unlawful restraint) of the indictment. Based on the stipulations, the court found defendant guilty of home invasion and attempt (criminal sexual

assault).

¶ 13 In May 2009, the trial court sentenced defendant to concurrent terms of 20 years' imprisonment for home invasion and 6 years for attempt (criminal sexual assault).

¶ 14 In June 2009, defendant filed a motion to reconsider sentence arguing the trial court abused its discretion as the sentence was excessive.

¶ 15 It appears defendant filed a *pro se* notice of appeal on July 29, 2009. The trial court struck this notice because of the pending motion to reconsider sentence.

¶ 16 Defendant's motion to reconsider sentence was denied by the trial court in August 2010, more than a year after he was sentenced.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Rule 402 Admonishments

¶ 20 Defendant argues his stipulated bench trial amounted to a guilty plea. As a result, the trial court was obligated to admonish him pursuant to Illinois Supreme Court Rule 402, which the court failed to do. Defendant argues his conviction must be reversed and the case remanded for further proceedings. We agree.

¶ 21 The State argues defendant forfeited this issue because he neither raised it at trial nor in a posttrial motion. However, the trial court's failure to admonish defendant falls under the second prong of the plain error rule. Our supreme court has stated:

"[T]he plain-error doctrine allows a reviewing court to consider 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 the 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, 870 N.E.2d 403, 410-11 (2007).

The court's failure to admonish defendant pursuant to Rule 402 is a clear and obvious error and challenged the integrity of the judicial process.

¶ 22

Our supreme court has stated:

"In order to satisfy due process, a guilty plea must be affirmatively shown to have been made voluntarily and intelligently. [Citations.] Supreme Court Rule 402 (177 Ill.2d R. 402) was adopted to ensure compliance with these due process requirements." *People v. Fuller*, 205 Ill. 2d 308, 322, 793 N.E.2d 526, 537 (2002).

Supreme Court Rule 402 requires defendants to be advised (1) of the rights they are relinquishing by pleading guilty and (2) the consequences of pleading guilty. The purpose of the admonishments is to guarantee a defendant understands his plea or stipulation, the rights he is waiving, and the consequences of his action. Rule 402(a) states:

"In hearings on pleas of guilty, *or in any case in which the defense offers to stipulate that the evidence is sufficient to convict*, there must be substantial compliance with the following:

(a) Admonitions to Defendant. The court shall not accept a

plea of guilty *or a stipulation that the evidence is sufficient to convict* without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences;

(3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made, or to plead guilty; and

(4) that if he pleads guilty there will not be a trial of any kind, so that by pleading guilty he waives the right to a trial by jury and the right to be confronted with the witnesses against him; or that *by stipulating the evidence is sufficient to convict*, he waives the right to a trial by jury and the right to be confronted with any witnesses against him who have not testified." (Emphases added.) Ill. S. Ct. R. 402 (eff. July 1, 1997.)

¶ 23 Whether a stipulation amounts to a guilty plea is to be reviewed *de novo*. *People v. Mitchell*, 353 Ill. App. 3d 838, 844, 819 N.E.2d 1252, 1258 (2004). A stipulated bench trial is the equivalent of a guilty plea if the defendant stipulates to the sufficiency of the evidence to convict or fails to present and preserve a defense. *People v. Horton*, 143 Ill. 2d 11, 22, 570 N.E.2d 320, 325 (1991); see also *People v. Campbell*, 208 Ill. 2d 203, 218, 802 N.E.2d 1205, 1213 (2003).

¶ 24 In this case, defense counsel both stipulated to the sufficiency of the evidence to convict and failed to preserve any kind of defense. In addition, the State did not introduce any evidence to which defense counsel did not stipulate. The following exchange between defense counsel and the trial court is quite telling:

"[TRIAL COURT]: Those stipulations are essentially, the State's case in this matter. Any further evidence from Defendant?

[DEFENSE COUNSEL]: Judge, we'd have no evidence.

[TRIAL COURT]: Is there to be argument on the fund of evidence that's presented to the Court?

[DEFENSE COUNSEL]: Judge, that's not necessary. This is, as indicated, a stipulated bench trial.

[TRIAL COURT]: Okay. Does the stipulation contemplate that there is a factual basis upon which the Defendant could be found guilty?

[DEFENSE COUNSEL]: It does, your Honor.

[TRIAL COURT]: Okay. Can you let me read the

stipulations, make certain I agree?

[DEFENSE COUNSEL]: I think—to clarify matters a bit, I think the State would agree that we're, essentially, proceeding on Counts 1 and 3.

[ASSISTANT STATE'S ATTORNEY]: That's correct, Judge. Here's a nolle for two, four and five—sorry—which would be the Home Invasion count and the Attempted Criminal Sexual Assault count.

[DEFENSE COUNSEL]: Correct.

[TRIAL COURT]: Based on the stipulations, which have been received and clarified by counsel's remarks, the Court will find the Defendant guilty of Home Invasion and Attempt Criminal Sexual Assault. The Court will order a Pre-Sentence Investigation, and the cause will be set for a sentencing hearing January 26 at 10:30."

The trial court should have admonished defendant pursuant to Rule 402 because his stipulated bench trial was in essence a guilty plea as his counsel stipulated to the State's entire case and offered no defense. Defendant was not given a single Rule 402 admonishment in this case.

¶ 25 As a result, we reverse defendant's conviction and remand for further proceedings. Because we reverse defendant's conviction and remand the case for further proceedings, we need not consider at this time defendant's arguments with regard to his sentence, his transfer to adult criminal court, or the effectiveness of either his counsel in the juvenile court or his counsel in the

adult criminal court.

¶ 26

III. CONCLUSION

¶ 27

We reverse defendant's conviction based on the trial court's failure to properly admonish him pursuant to Rule 402 prior to his stipulated bench trial and remand the case for further proceedings.

¶ 28

Reversed and remanded.