

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 101040-U

Filed 7/16/12

NO. 4-10-1040

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
MARQUIS DESEAN MERIWEATHER,)	No. 09CF1186
Defendant-Appellant.)	
)	Honorable
)	James E. Souk,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Appleton and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's appeal presents no meritorious issues for review. The trial court's judgment is affirmed and OSAD's motion to withdraw as appellate counsel is granted.

¶ 2 Defendant, Marquis Desean Meriweather, pleaded guilty to unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2008)) and the trial court sentenced him to 12 years in prison. Defendant appealed and the court appointed the office of the State Appellate Defender (OSAD) to represent him. OSAD filed a motion to withdraw as appellate counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), alleging the case presented no meritorious issues for review and an appeal would be frivolous. We grant OSAD's motion and affirm the court's judgment.

¶ 3 On January 6, 2010, a grand jury indicted defendant on two counts of unlawful

delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2008)) and one count of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(d)(i) (West 2008)). On June 7, 2010, he entered an open plea of guilty to one count of unlawful delivery and, in exchange for his guilty plea, the State agreed to the dismissal of the remaining two counts. The parties also agreed that defendant was subject to a mandatory Class X sentencing range due to his prior felony convictions. On July 29, 2010, the trial court sentenced defendant to 12 years in prison.

¶ 4 On July 30, 2010, defendant filed a motion to reconsider his sentence, arguing it was excessive. On December 2, 2010, the trial court denied defendant's motion.

¶ 5 This appeal followed. As stated, OSAD was appointed to represent defendant on appeal and filed a motion to withdraw, alleging any issue raised on appeal would be without merit. It has attached a brief to its motion and the record shows service on defendant. On November 10, 2011, this court granted defendant leave to file additional points and authorities by December 9, 2011, but he did not respond.

¶ 6 Defendant appealed the trial court's December 2, 2010, denial of his motion to reconsider his sentence. OSAD contends no colorable argument can be made that the court abused its discretion in sentencing defendant. We agree.

¶ 7 "A reviewing court gives substantial deference to the trial court's sentencing decision because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age." *People v. Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d 656, 663 (2011). On review, this court will not overturn the trial court's sentencing decision

absent an abuse of discretion. *Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d at 663. "We recognize that it is the function of the trial court to balance the relevant factors and make a reasoned decision as to the appropriate sentence, and we will not substitute our own judgment for that of the trial court." *People v. Rathbone*, 345 Ill. App. 3d 305, 313, 802 N.E.2d 333, 340 (2003). Further, "[a] sentence within the statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Crenshaw*, 2011 IL App (4th) 090908, ¶ 22, 959 N.E.2d 703, 710 (2011).

¶ 8 Here, defendant pleaded guilty to unlawful delivery of less than one gram of a controlled substance, a Class 2 felony. 720 ILCS 570/401(d)(i) (West 2008). Due to prior convictions, he was subject to sentencing as a Class X offender (730 ILCS 5/5-5-3(c)(8) (West 2008)) with an applicable sentencing range of 6 to 30 years in prison (730 ILCS 5/5-8-1(a)(3) (West 2008)).

¶ 9 In sentencing defendant, the trial court considered that defendant had a significant criminal history, including 2 prior felony convictions, 7 misdemeanor convictions, and 35 convictions for traffic-related offenses. The court also noted, and the record showed, defendant had been released from prison in connection with a prior drug-related felony only six weeks before committing the offense at issue. It relied upon these factors when sentencing defendant to 12 years in prison, a term of imprisonment well within the applicable statutory range. The record shows no abuse of discretion by the court in sentencing defendant and an appeal on this basis would be frivolous and with merit.

¶ 10 On appeal, OSAD has identified three additional issues it considered raising on defendant's behalf but which it also concluded would be frivolous. First, OSAD points to the

trial court's denial of defendant's request for a continuance to secure private counsel and maintains there is no merit to a claim that the court abused its discretion.

¶ 11 "A criminal defendant's right to counsel of choice is constitutionally protected." *People v. Staple*, 402 Ill. App. 3d 1098, 1103, 932 N.E.2d 1064, 1068 (2010). "A trial court considering a motion to continue to retain private counsel must balance defendant's constitutional right against the interests in trying the case efficiently." *Staple*, 402 Ill. App. 3d at 1103, 932 N.E.2d at 1069. "[T]his court has ruled '[a trial] court does not abuse its discretion in denying a defendant a continuance to obtain substitute counsel where new counsel is unidentified or does not stand ready, willing, and able to make an unconditional entry of appearance on defendant's behalf.' [Citation.]" *Staple*, 402 Ill. App. 3d at 1103, 932 N.E.2d at 1069. "[T]he trial court's denial of a defendant's request for a continuance will not be overturned absent an abuse of discretion." *People v. Bingham*, 364 Ill. App. 3d 642, 645, 847 N.E.2d 903, 907 (2006).

¶ 12 In this instance, the public defender was appointed to represent defendant. On April 27, 2010, the trial court received a letter from defendant, complaining that his counsel had not spent sufficient time with him to prepare his case, he had not been shown evidence in the case, and his counsel refused to bring forth certain issues on his behalf. Defendant stated his family was seeking private representation for him and requested removal of the public defender as his counsel.

¶ 13 On June 3, 2010, the trial court conducted a pretrial hearing in the matter. Defendant's counsel informed the court that defendant's family was attempting to hire a private attorney for defendant. The court continued the trial setting in the matter to the following Monday to allow defendant the opportunity to retain substitute counsel. On June 7, 2010, the

parties appeared before the court. Defendant requested an extension of time to hire counsel and the court inquired into defendant's efforts. Defendant asserted his family was "still trying to get a little bit more money together" and were considering two different attorneys. He acknowledged that he had not talked to anyone himself. The court determined defendant's motion came too late, noting the case had been set for trial in April, May, and June and defendant had not hired a new attorney despite raising the issue during the previous weeks' hearing. It denied his request for a continuance.

¶ 14 Here, the record does not reflect an abuse of discretion by the trial court. Defendant had the opportunity, but failed, to secure substitute counsel. Additionally, the court's inquiry into the matter showed defendant did not have the money to retain private counsel, had not personally spoken with an attorney, and could not identify one particular individual who intended to represent him. We agree with OSAD that there would also be no merit to an appeal on this basis.

¶ 15 Next, OSAD notes defendant raised ineffective-assistance-of-counsel claims against his attorney and requested his counsel's removal from the case. OSAD contends it is unable to make a colorable argument that the trial court erred in failing to appoint new counsel based on those claims.

¶ 16 "A *pro se* motion alleging ineffective assistance is governed by the common law procedure developed by this court in *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and refined in subsequent cases." *People v. Patrick*, 2011 IL 111666, ¶ 29, 960 N.E.2d 1114, 1121 (2011).

"In interpreting *Krankel*, the following rule developed.

New counsel is not automatically required in every case in which a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel. Rather, when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should be appointed. [Citations.] The new counsel would then represent the defendant at the hearing on the defendant's *pro se* claim of ineffective assistance. [Citations.]" *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637-38 (2003).

"The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 638. However, the court is not obligated to address *pro se* ineffective assistance claims prior to trial. *People v. Jocko*, 239 Ill. 2d 87, 93, 940 N.E.2d 59, 63 (2010).

¶ 17 The record shows, prior to his trial date, defendant raised issues regarding his counsel's performance in his *pro se* letter to the trial court. The court inquired into the matter by questioning both defendant and defendant's counsel. In response to the court's questions, defendant asserted his counsel failed to assist him in preparing for trial and neglected to raise issues or file motions defendant believed had merit. Defendant also complained that he had not

seen evidence in his case, including digital video disc (DVD) recordings and video surveillance. Upon inquiry, defendant's counsel stated he went over discovery with defendant but agreed he had not shown him the DVD. He stated he explained to defendant the evidence against him and the State's offers, and made counteroffers at defendant's request. Defense counsel also spoke with defendant about certain issues or motions defendant wished to raise and counsel's belief that those issues had no merit and there were no legal grounds to file the motions.

¶ 18 The trial court found no merit to defendant's ineffective-assistance claims, noting defendant had no right to discovery and several of his complaints involved legal questions and matters of trial strategy. It declined defendant's request to appoint new counsel.

¶ 19 Here, although the trial court was not obligated to address defendant's pretrial ineffective-assistance claims, it inquired into the matter by questioning both defendant and defense counsel. The court found those claims to be without merit and a review of the record shows no error. We agree with OSAD that no colorable argument can be made that the court erred in failing to appoint new counsel.

¶ 20 Finally, on appeal OSAD argues no colorable argument can be made that defendant failed to receive proper guilty plea admonishments. Supreme Court Rule 402 (eff. July 1, 1997) sets forth requirements the trial court must meet before accepting a defendant's guilty plea, including admonishing the defendant, determining that the defendant's plea is voluntary, and determining a factual basis for the defendant's plea. In giving admonishments, the court must inform the defendant, and determine that he or she understands, the nature of the charge; the minimum and maximum sentence prescribed by law; the right to plead not guilty, persist in that plea of not guilty, or plead guilty; and the rights the defendant will be waiving upon pleading

guilty. Ill. S. Ct. R. 402(a) (eff. July 1, 1997).

¶ 21 Here, the record shows compliance with Rule 402. Specifically, the trial court fully admonished defendant by advising him of the charges against him, the applicable sentencing range, his right to plead not guilty, and the rights he would waive by pleading guilty. Upon inquiry by the court, defendant asserted he understood the court's admonishments and the terms of his plea agreement. The State provided a factual basis for defendant's plea. Upon further inquiry by the court, defendant asserted his plea was voluntarily made. The record reflects no errors and we agree with OSAD that no colorable argument can be made that the court failed to comply with Rule 402.

¶ 22 For the reasons stated, we affirm the trial court's judgment and grant OSAD's motion to withdraw as appellate counsel.

¶ 23 Affirmed.