

NOTICE
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2012 IL App (4th) 110101-U

Filed 5/8/12

NO. 4-11-0101

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
DUSTIN LINNETT,)	No. 10CF417
Defendant-Appellant.)	
)	Honorable
)	John W. Belz,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* We grant appointed counsel's motion to withdraw and affirm the trial court's judgment where counsel concludes no meritorious issues could be raised on appeal as to the following: whether (1) the trial court substantially complied with Supreme Court Rule 402, (2) the trial court abused its discretion in sentencing defendant to six years' imprisonment, (3) the trial court abused its discretion in denying defendant's motion to reconsider sentence, or (4) the certificate filed by defense counsel did not comply with Supreme Court Rule 604(d).

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967), because no meritorious issues can be raised in this case. For the following reasons, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2010, the State charged defendant, Dustin Linnett, with one count of

robbery and one count of aggravated robbery for an incident that took place in January 2010. In October 2010, defendant agreed to an open plea of guilty to aggravated robbery. In exchange, the State agreed to dismiss the count of robbery in this case as well as the charges in case No. 10-CF-416.

¶ 5 Prior to accepting defendant's plea, the trial court informed defendant aggravated robbery was a probationable, Class 1 felony, with a sentencing range of 4 to 15 years in prison. The court also explained any prison sentence would include a two-year term of mandatory supervised release (MSR). The court confirmed defendant understood the court could sentence defendant to anything within the statutory range.

¶ 6 The trial court then advised defendant of the rights he was giving up by pleading guilty. The court informed defendant he had a right to either a jury or bench trial, at which time the State would have to prove defendant guilty beyond a reasonable doubt. The court explained that at a trial, defendant could testify on his own behalf, subpoena witnesses, and confront and cross-examine the State's witnesses. Defendant indicated he understood his rights, understood he was giving up his right to a trial, and wished to persist in his guilty plea.

¶ 7 The State then presented the factual basis for defendant's plea. Specifically, the State asserted it would present evidence that in January 2010, defendant entered Family Video on 930 West Jefferson. At the time, defendant had his hand in his pocket and was indicating he had a weapon. He approached an employee and said, "You know what's going on. Where's the money?" Defendant then successfully took money from the employee by force or by threatening force.

¶ 8 After confirming defendant was not pleading guilty because he had been bullied,

threatened, or promised anything, the trial court found defendant knowingly and voluntarily waived his rights in open court. The court further found defendant understood the terms of the plea agreement, and a factual basis supported defendant's plea.

¶ 9 In December 2010, the trial court held a sentencing hearing. Defense counsel called defendant's mother, Emily Cochran, to testify. Cochran testified defendant's father had not "been in his life" since defendant was approximately three years old, which caused defendant to experience attachment issues and behavioral and mental health problems. Defendant was diagnosed with attention deficit hyperactivity disorder (ADHD), post-traumatic stress disorder, major depression, and bipolar disorder. When defendant was five years old, he began seeing a psychiatrist, and he continued to do so until 2005. Throughout this time, defendant was provided psychotropic medication. Cochran said when defendant was medicated, he did "great in school," "paid more attention," didn't have behavioral problems or impulsiveness, and exercised good judgment. When he was not medicated, however, his judgment was "awful."

¶ 10 In 2005, defendant became involved in the juvenile system and spent time in the Juvenile Department of Corrections. In 2008, he was released "on parole." Initially, Cochran was able to obtain medication for defendant, but when defendant turned 18, he was denied a medical card. Because he did not have a medical card, defendant could not obtain his medication. Defendant tried to obtain medication from the Mental Health Centers of Illinois but was unable to do so. Overall, Cochran believed defendant would "thrive" if he were properly medicated, in a structured environment.

¶ 11 The hearing then proceeded to arguments. The State emphasized defendant's long history of criminal activity, noting as a juvenile he was adjudicated delinquent for domestic

battery with bodily harm, residential burglary, and possession with intent to deliver. As an adult, defendant had pleaded guilty to a Class 2 robbery. Defendant admitted he used crack cocaine four days after he was sentenced to probation on that charge. The State argued defendant should be sentenced to a term of six to eight years in prison based on defendant's criminal history and his age.

¶ 12 Defense counsel pointed out the State offered defendant probation on his robbery case, knowing defendant's juvenile record and that defendant was being investigated on the charges in this case. With respect to defendant's use of crack cocaine while on probation, counsel argued defendant should be given a chance to succeed on probation, and four days was not enough time to do so. Given defendant's age, his potential, and his mental health problems, counsel argued defendant should be given a probation sentence, to run concurrently with defendant's probation sentence on his robbery case.

¶ 13 Defendant then addressed the court, apologizing for his conduct. He acknowledged needing mental health treatment, stating he experienced extreme highs and lows and he self-medicated with "street drugs" when he could not obtain his medication. He said he possessed his general equivalency diploma (G.E.D) and believed he could obtain a job and successfully complete probation.

¶ 14 The trial court sentenced defendant to six years' imprisonment, to be followed by a two-year period of MSR. The court noted although defendant had mental health issues, defendant's prior inability to complete probation made the court lack confidence in defendant's ability to successfully complete probation on this charge.

¶ 15 Later that month, defendant filed a motion for reduction of sentence, which the

court denied in January 2011. Defendant subsequently filed a notice of appeal, and the trial court appointed OSAD to represent him. In January 2012, OSAD filed a motion to withdraw, attaching to its motion a brief conforming to the requirements of *Anders v. California*, 386 U.S. 738 (1967). On its own motion, this court granted defendant leave to file additional points and authorities by February 13, 2012. Defendant has not done so. After examining the record and executing our duties in accordance with *Anders*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 16

I. ANALYSIS

¶ 17 OSAD contends the record shows no meritorious argument can be raised on appeal. Specifically, OSAD concludes (1) the trial court substantially complied with Illinois Supreme Court Rule 402 (eff. July 1, 1997), (2) the trial court did not abuse its discretion in sentencing defendant to six years' imprisonment, (3) the trial court did not abuse its discretion in denying defendant's motion to reconsider sentence, and (4) the certificate filed by defense counsel complied with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 18

A. Supreme Court Rule 402

¶ 19 OSAD first asserts no colorable argument can be made the trial court failed to substantially comply with Supreme Court Rule 402. We agree.

¶ 20 Supreme Court Rule 402(a) (eff. July 1, 1997) requires a court, prior to accepting a plea of guilty or stipulation, to inform and ensure defendant understands all of 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."

¶ 21 The record in this case indicates the trial court informed defendant of, and determined defendant understood, the nature of his charge and that he could be sentenced to probation or 4 to 15 years' imprisonment. Further, the court confirmed defendant understood he had the right to plead not guilty, to have a jury or bench trial, to testify on his own behalf, and to confront and cross-examine witnesses. In addition, the court informed and determined defendant understood if he pleaded guilty, he would not have a trial. Thus, we agree with OSAD the court substantially complied with Rule 402(a).

¶ 22 Illinois Supreme Court Rule 402(b) (eff. July 1, 1997) states a trial court "shall confirm the terms of the plea agreement, or that there is no agreement, and shall determine whether any force or threats or any promises, apart from a plea agreement, were used to obtain the plea." In this case, the court determined defendant understood there was no agreement regarding the sentence to be imposed. Further, defendant informed the court he had not been

threatened or promised anything to plead guilty. We agree with OSAD the court substantially complied with Rule 402(b).

¶ 23 Finally, Illinois Supreme Court Rule 402(c) (eff. July 1, 1997) provides "[t]he court shall not enter final judgment on a plea of guilty without first determining that there is a factual basis for the plea." Here, the State provided the factual basis noted above. No colorable argument can be made the State failed to establish the necessary elements for defendant to be guilty of aggravated robbery under section 18-5(a) of the Criminal Code of 1961 (720 ILCS 5/18-5(a) (West 2010)) ("A person commits aggravated robbery when he or she takes property from the person or the presence of another by the use of force or by threatening the imminent use of force while indicating verbally or by his or her actions to the victim that he or she is presently armed with a firearm or other dangerous weapon").

¶ 24 Based on the foregoing, we agree with OSAD no colorable argument can be made the trial court failed to substantially comply with Supreme Court Rule 402. Further, OSAD correctly notes it would be frivolous to argue defendant's guilty plea was deficient where defendant did not file a motion to withdraw his guilty plea, as required by Supreme Court Rule 604(d).

¶ 25 B. Six-Year Prison Sentence

¶ 26 OSAD next contends no meritorious argument can be made the trial court abused its discretion when it sentenced defendant to a term of six years' imprisonment. We agree.

¶ 27 A trial court has broad discretion in imposing a sentence. *People v. Phippen*, 324 Ill. App. 3d 649, 651, 756 N.E.2d 474, 477 (2001). A sentence within statutory guidelines will not be disturbed on review absent an abuse of discretion. *People v. Mitchell*, 395 Ill. App. 3d

161, 168, 916 N.E.2d 624, 630 (2009). A court abuses its discretion "where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000).

¶ 28 In this case, defendant pleaded guilty to aggravated robbery, a Class 1 felony. A Class 1 felony is punishable by a prison sentence of not less than 4 years and not more than 15 years. 730 ILCS 5/5-4.5-30(a) (West 2010). The trial court's six-year sentence fell within the statutory guideline. The record shows, in determining its sentence, the court considered both the mitigating and aggravating factors, namely defendant's mental health issues, criminal history, and failure to successfully complete probation in the past. Moreover, the record does not indicate the court considered any improper factors in determining defendant's sentence. We therefore agree with OSAD it would be frivolous to argue the court abused its discretion in sentencing defendant to six years' imprisonment.

¶ 29 C. Motion for Reduction of Sentence

¶ 30 OSAD next contends no meritorious argument can be made that the trial court abused its discretion in denying defendant's "Motion for Reduction of Sentence." We agree.

¶ 31 Defendant filed a "Motion for Reduction of Sentence" in December 2010, alleging the trial court imposed an excessive sentence, placed too much weight on defendant's juvenile history of delinquency, and placed too little weight on defendant's lack of adult criminal history and other mitigating factors. At the hearing on defendant's motion in January 2011, the court stated it weighed the factors in mitigation and aggravation and gave defendant a sentence in the lower end of the sentencing range. The court therefore denied the motion. We agree with OSAD it would be frivolous to argue, based on the foregoing, that the trial court abused its

discretion in denying defendant's "Motion for Reduction of Sentence."

¶ 32 D. Defense Counsel's Certificate

¶ 33 Finally, OSAD argues no colorable argument can be made defense counsel's certificate did not comply with Supreme Court Rule 604(d). We agree. Defense counsel's certificate, filed in January 2011, stated defense counsel (1) consulted with defendant personally about defendant's claims of error with respect to the sentence imposed, (2) reviewed the transcripts of the plea of guilty proceedings and the sentencing hearing, and (3) examined the trial court file. Further, the certificate stated defense counsel spoke to defendant on at least two occasions to re-examine all claims of error with respect to defendant's sentence, and that defendant's December 2010 motion for reduction of sentence contained all of the defendant's claims of error. We therefore agree with OSAD that defendant's certificate complied with the requirements of Rule 604(d).

¶ 34 III. CONCLUSION

¶ 35 After reviewing the record consistent with our responsibilities under *Anders*, we agree with OSAD defendant can raise no meritorious issues on appeal. We grant OSAD's motion to withdraw as counsel for defendant and affirm the trial court's judgment.

¶ 36 Affirmed.