

NOTICE
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2012 IL App (4th) 110118-U

Filed 3/1/12

NO. 4-11-0118

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
DANIEL J. DAY,)	No. 07CF531
Defendant-Appellant.)	
)	Honorable
)	Michael D. Clary,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* We grant appointed counsel's motion to withdraw under *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirm the trial court's judgment where counsel concludes no meritorious issues could be raised on appeal as to the following issues: (1) whether the trial court's admonitions concerning the terms of mandatory supervised release (MSR) were deficient, so imposing MSR deprived defendant of due process, and (2) whether the trial court did not have jurisdiction or its sentence was void.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. We agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2007, the State charged defendant, Daniel J. Day, with one count of obstructing justice, a Class 4 felony (720 ILCS 5/31-4(a) (West 2006)). The State alleged

defendant knowingly furnished false information as to his identity to Kyle S. Huckstadt, a police officer.

¶ 5 In January 2009, defendant executed a written jury waiver and entered a guilty plea to the charge. In return for defendant's plea, the State agreed to a sentence of "probation, terms and conditions open." The court admonished defendant in compliance with Illinois Supreme Court Rule 402 (eff. July 1, 1997), and informed defendant the ordinary range of punishment for obstruction of justice was one to three years in prison but could be up to six years if defendant was extended-term eligible. The court also stated, "Upon your release from the Department of Corrections you would be required to serve one year [of] mandatory supervised release." Defendant asserted he understood the charge and possible penalties for the charge and persisted in his guilty plea.

¶ 6 The State set forth the factual basis for defendant's plea, alleging if the matter went to trial, Officer Kyle Huckstadt would testify as follows. On April 24, 2007, he performed a traffic stop and ticketed the driver for speeding. The driver told Huckstadt his name was "Jacob Mallick." On May 7, Jacob Mallick contacted Huckstadt after receiving a ticket notice in the mail. He informed Huckstadt he was defendant's brother, and defendant, Daniel Day, was actually the driver of the car. On May 11, Huckstadt took defendant into custody for obstruction of justice. Huckstadt would testify defendant apologized for giving his brother's name.

¶ 7 Defense counsel added defendant gave his brother's name instead of his own because at the time, defendant believed his license was suspended. Defendant later learned he was mistaken and his license was not suspended.

¶ 8 The trial court accepted defendant's plea and entered judgment on the obstruction-

of-justice charge. In February 2009, the court held a sentencing hearing and sentenced defendant to 30 months of probation. Defendant did not appeal his sentence.

¶ 9 In August 2009, the State filed a petition to revoke probation, alleging defendant violated his probation conditions. In April 2010, defendant appeared at the violation hearing. The court again explained to defendant possible sentences for an obstruction-of-justice conviction ranged from one to three years in prison or up to six if defendant was extended-term eligible. The court also told defendant, "If you were required to serve any time in the penitentiary on this case, then immediately upon your release from custody you would have to serve one year of mandatory supervised release, which is what we used to call parole."

¶ 10 Defendant indicated he understood and admitted he violated his probation by failing to visit his probation officer as required on May 5, 2009. The State provided the factual basis for the charge. The trial court accepted defendant's admission and entered judgment on the petition to revoke probation but reserved ruling on whether to revoke defendant's probation.

¶ 11 In May 2010, defendant appeared for sentencing. The trial court revoked defendant's probation and resentenced him to three years in prison. Defendant did not appeal the judgment or sentence.

¶ 12 In October 2010, defendant filed a petition for relief from judgment (735 ILCS 5/2-1401 (West 2010)), alleging that he was not admonished as to the mandatory supervised release (MSR) terms. In December 2010, the trial court denied defendant's petition. In January 2011, defendant filed a *pro se* notice of appeal. OSAD was appointed to represent him. In November 2011, OSAD moved to withdraw, attaching to its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). On its own motion, this court

granted defendant leave to file additional points and authorities by December 19, 2011.

Defendant has not done so. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 13

II. ANALYSIS

¶ 14 1. *Defendant's Challenge to the Trial Court's Imposition of a One-Year MSR Term*

¶ 15 OSAD first argues defendant cannot make a meritorious argument the admonitions concerning the term of MSR were deficient or imposing MSR deprived defendant of due process. We agree.

¶ 16 A trial court must admonish a defendant as to "the minimum and maximum sentence prescribed by law" before accepting a defendant's guilty plea. Ill. S. Ct. R. 402(a)(2) (eff. July 1, 1997). To comply with Supreme Court Rule 402(a)(2) and ensure preservation of a defendant's due-process rights, the court must inform a defendant MSR is a part of the sentence that will be imposed. *People v. Whitfield*, 217 Ill. 2d 177, 188, 840 N.E.2d 658, 665 (2005). However, "as long as the trial court informs a defendant at the time of his *guilty plea* that an MSR term must follow any prison sentence that is imposed upon him, he has received all the notice and all the due process to which he is entitled regarding MSR." (Emphasis added.) *People v. Andrews*, 403 Ill. App. 3d 654, 665, 936 N.E.2d 648, 657 (2010).

¶ 17 The trial court admonished defendant twice about the one-year MSR term—first in January 2009, when it accepted defendant's guilty plea, and again in April 2010, when it accepted defendant's probation-violation admission. In both instances, the court specifically told defendant if he were sentenced to prison time, he would have to serve one year of MSR upon his release.

¶ 18 The trial court failed to inform defendant about the MSR term again during resentencing and in its final judgment order but, the court's admonitions at defendant's guilty plea and probation-violation hearing were sufficient. We agree with OSAD it would be frivolous to argue the admonitions defendant received concerning the term of MSR were deficient or imposing MSR deprived defendant of due process.

¶ 19 *2. Jurisdictional and Procedural Issues*

¶ 20 OSAD next argues it would be frivolous to argue the trial court did not have jurisdiction over defendant or the judgment is void. We agree.

¶ 21 First, OSAD notes the trial court properly had jurisdiction. The court was located in Vermilion County and the criminal offense took place in Vermilion County. 720 ILCS 5/1-6 (West 2006). Moreover, the three-year sentence imposed upon defendant was within the statutory range of punishment for obstruction of justice, a Class 4 felony. 720 ILCS 5/31-4(d) (West 2006); 730 ILCS 5/5-8-1(a)(7) (West 2006).

¶ 22 Next, OSAD states the trial court's judgment was not void for failure to state an offense. When attacked for the first time on appeal, a charge is sufficient if it outlines the offense charged with sufficient particularity to allow a defendant to prepare a defense and plead a resulting conviction as a bar to future prosecution arising out of the same conduct. *People v. Smith*, 337 Ill. App. 3d 819, 823, 786 N.E.2d 1121, 1124 (2003). A criminal defendant's conviction will not be reversed based on a technical defect in the charging instrument raised for the first time on appeal unless the defendant shows that the defect prejudiced him in preparing his defense. *People v. Maggette*, 311 Ill. App. 3d 388, 394-95, 723 N.E.2d 1238, 1243 (2000).

¶ 23 A charge couched in the language of a statute is insufficient when the statute

defines an offense in general terms. *People v. Hughes*, 229 Ill. App. 3d 469, 473, 592 N.E.2d 668, 670 (1992). Obstructing justice by false information is an offense defined in general terms. *People v. Gerdes*, 173 Ill. App. 3d 1024, 1029-30, 527 N.E.2d 1310, 1314 (1988). Therefore, the State was required to allege or make reference to some particular impending apprehension or prosecution for an identifiable or potentially chargeable offense. *People v. Alvarado*, 301 Ill. App. 3d 1017, 1023, 704 N.E.2d 937, 941 (1998).

¶ 24 In this case, the State charged defendant with obstruction of justice as follows:

"COUNT 1 - OBSTRUCTING JUSTICE, the defendant(s)
on or about the 24th day of April, 2007, with the intent to prevent
the apprehension of Daniel Day, knowingly furnished false
information to Kyle S. Huckstadt, a police officer as to his identity,
in violation of 720 ILCS 5/31-4(a)."

¶ 25 Thus, the State's charge did not specify the particular offense defendant was alleged to have obstructed by furnishing false information. However, the record does not indicate the State's deficient charge prejudiced defendant in his ability to prepare a defense. Rather, the factual basis for defendant's plea demonstrates defendant was aware of the offenses for which he was attempting to avoid apprehension: driving on a suspended license and speeding.

¶ 26 Moreover, while defendant was ultimately mistaken about his driver's license being suspended, this does not provide the basis for a defense to an obstruction-of-justice charge because " 'the requisite intent in an obstructing-justice charge is established at the time the original false information is given and not at the time of its recantation.' " *People v. Davis*, 409

Ill. App. 3d 457, 462, 951 N.E.2d 230, 234 (2011) (quoting *People v. Gray*, 146 Ill. App. 3d 714, 717, 496 N.E.2d 1269, 1271 (1986)). In addition, intent can be inferred from proof of the surrounding circumstances, and need not be proved by direct evidence. *People v. Hollingsead*, 210 Ill. App. 3d 750, 761-62, 569 N.E.2d 216, 223-24 (1991). The factual basis at the plea hearing showed defendant provided Huckstadt with his brother's name, and did so with the intent to avoid being ticketed for driving with a suspended license. We agree with OSAD it would be frivolous to argue defendant was prejudiced in his ability to prepare a defense to the State's obstruction-of-justice charge.

¶ 27

III. CONCLUSION

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

¶ 29 Affirmed.