NOTICE
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2012 IL App (4th) 110175-U

Filed 6/28/12

NO. 4-11-0175

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
SUZAN M. SMITH,	)	No. 09CF1502
Defendant-Appellant.	)	
	)	Honorable
	)	Lisa Holder White,
	)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices McCullough and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* We grant appointed counsel's motion to withdraw and affirm the trial court's judgment where no meritorious issues can be raised on appeal as to whether defendant's plea of guilty was made knowingly, intelligently, and voluntarily.

¶ 2 This case comes to us on 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 September 2009, the State charged defendant, Suzan M. Smith, with domestic battery with a prior domestic battery conviction, a Class 4 felony (720 ILCS 5/12-3.2(a)(2), (b) (West 2008)). In July 2010, defendant entered a plea of guilty to the charge. In exchange, the

State agreed to 24 months' probation and to dismiss defendant's charges in case numbers 10-CF-831 and 10-CF-1006. At the proceedings, the following exchange occurred:

> "THE DEFENDANT: Your Honor, may I ask to have it be a misdemeanor because I'm an R.N. I haven't been able to maintain employment with this open case. I want to be able to practice as a nurse if I get the conviction.
>
> THE COURT: I'm sure [defendant's attorney] has probably explained that it is up to the State. The court cannot force, just as [defendant's attorney] cannot force the State to give you a misdemeanor. That is entirely up to the State.
>
> DEFENDANT: Okay.
>
> [DEFENDANT'S ATTORNEY]: You understand that, right? We talked about it, what the situation is.
>
> THE COURT: You don't have to go forward today if you don't want to accept the offer that's pending."

¶ 5 Thereafter, the trial court passed defendant's case to allow defendant time to talk to her attorney. Upon recalling the case, the court admonished defendant pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997). The court asked defendant whether she had been promised anything to plead guilty, and the following colloquy then ensued:

> "DEFENDANT: No. I just thought it was worked out as a misdemeanor. That's where my surprise came in.
>
> THE COURT: Well, you understand that's not the case?

DEFENDANT: Correct.

THE COURT: Do you still want to go forward today?

DEFENDANT: Yes, ma'am."

¶ 6 The State then provided the factual basis for defendant's charge, stating that if the case went to trial, the State would call Jennifer Cook, defendant's daughter, who would testify that in September 2009, defendant became physically violent with her, hitting her arm and pulling her hair. Cook suffered injuries to her face and both her arms, which a police officer observed. The State also said that it would have shown defendant was previously convicted of domestic battery in 2002.

¶ 7 The trial court found defendant's plea was knowingly and voluntarily made and entered judgment on the domestic battery with a prior domestic battery conviction charge. The court then sentenced defendant to 24 months' probation.

¶ 8 In August 2010, defendant filed a *pro se* motion to reconsider, asserting that when she made her plea, she believed her felony would be reduced to a misdemeanor upon successful completion of probation, thereby allowing her to practice as a registered nurse. The trial court appointed defendant an attorney, who in December 2010 filed a motion to withdraw guilty plea and vacate sentence, alleging that defendant's plea of guilty was not knowingly, intelligently, and voluntarily made because, when defendant entered her plea (1) she was not aware that a felony conviction would bar her from volunteering at her children's school, (2) she did not know she would be required to register for the child murderer and violent offender youth database (Database), (3) she felt coerced into the plea agreement, and (4) her emotional state was such that she could not knowingly, intelligently, and voluntarily enter into a plea agreement. Following an

April 2011 hearing, the trial court denied defendant's motion.

¶ 9 Defendant appealed, and the court appointed OSAD to represent her. 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 17, 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.

¶ 10 II. ANALYSIS

¶ 11 OSAD asserts it would be frivolous to argue that defendant's plea of guilty was not made knowingly, intelligently, and voluntarily. We agree.

¶ 12 A. The Ability To Volunteer at Children's School

¶ 13 OSAD first concludes it would be without merit to argue that defendant's unawareness that she would not be able to volunteer at her children's school prevented her from entering into a knowing, intelligent, and voluntary guilty plea.

¶ 14 While a court must inform a defendant of the direct consequences of a guilty plea prior to accepting the plea, the court need not inform a defendant of the collateral consequences of a plea. *People v. Williams*, 188 Ill. 2d 365, 372, 721 N.E.2d 539, 544 (1999). A collateral consequence is a consequence that results from "action taken by an agency that the trial court does not control." *Williams*, 188 Ill. 2d at 372, 721 N.E.2d at 544.

¶ 15 We agree with OSAD that, in this case, it would be frivolous to argue the trial court should have warned defendant that she would not be able to volunteer at her children's school if she had a felony conviction, as the school's refusal to allow defendant to volunteer was

a collateral consequence not within the court's control.

¶ 16 B. The Database

¶ 17 OSAD next asserts no meritorious argument can be made that the trial court should have warned defendant she would have to register for the Database. OSAD points out that under the Murderer and Violent Offender Against Youth Registration Act (730 ILCS 154/1 to 86 (West Supp. 2011)), defendant is not required to register for the Database. We agree.

¶ 18 Our research shows that at the time of defendant's September 2009 offense as well as her July 2010 guilty plea and sentencing, the then-titled Child Murderer and Violent Offender Against Youth Registration Act (Child Murderer Act) (730 ILCS 154/1 to 9999 (West 2008)), enacted by Public Act 94-945 (Pub. Act 94-945 § 1 (eff. June 27, 2006) (2006 Ill. Laws 3273)) defined a "violent offense against youth" as a violation of various enumerated sections of the Criminal Code of 1961 (Code), not including section 12-3.2. See 730 ILCS 154/5(b), (c), (c-5) (West 2008). It included attempt (first degree murder) or (child abduction), forcible detention or attempt forcible detention, and—if defendant was not a parent of the victim—kidnapping, aggravated kidnapping, unlawful restraint, and aggravated unlawful restraint. 730 ILCS 154/5(b) (West 2008). Accordingly, defendant did not have to register for the Database under the version of the act in effect at the time of her offense; nor did it apply at the time of her plea proceeding and sentencing.

¶ 19 The Child Murderer Act was subsequently amended, effective one week after defendant's guilty plea and sentencing, under which a defendant who committed domestic battery, on or after January 1, 1996, including a parent of the victim, would have had to register for the Database. 730 ILCS 154/5(b) (West 2010), amended by Public Act 96-1294 (Pub. Act

96-1294, § 5 (eff. July 26, 2010) (2010 Ill. Laws 5259, 5261) ("When the victim is a person under 18 years of age, and the offense was committed on or after January 1, 1996 *** [section] 12-3.2 (domestic battery)"). Thus, defendant would have had to register for the Database. See *Miranda v. Madigan*, 381 Ill. App. 3d 1105, 1109, 888 N.E.2d 158, 162 (2008) ("Because [registration and notification laws] only impose collateral consequences, they may be applied retroactively.").

¶ 20 The Child Murderer Act was again amended, effective August 16, 2011, to modify the definition of a "violent offense against youth" to include only a domestic battery resulting in bodily harm under section 12-3.2 of the Code when the defendant was over 18, the victim was under 18, and the offense was committed on or after July 26, 2010 (730 ILCS 154/5(b)(4.3) (West Supp. 2011)), as amended by Public Act 97-432 (Pub. Act 97-432, § 5 (eff. Aug. 1, 2011) (2011 Ill. Laws 546, 550)), the effective date of Public Act 96-1294. Thus, under Public Act 97-432, defendant was no longer required to register for the Database, as she (1) committed domestic battery on September 1, 2009, and (2) was sentenced on July 19, 2010.

¶ 21 The same General Assembly then enacted Public Act 97-154, effective January 1, 2012, renaming the Child Murderer Act the Murderer and Violent Offender Against Youth Registration Act (Violent Offender Act). (Pub. Act 97-154, § 30 (eff. Jan. 1, 2012) (2011 Ill. Laws 1180, 1220)). Public Act 97-154 reprinted the version of the statute that appeared prior to the amendments of Public Act 97-432. To this version of the statute, Public Act 97-154 added, in underlined text, sections (b-5) and (c-6), requiring a person convicted of first degree murder of an adult to register in the Database. Public Act 97-154 also changed the wording of section (b)(4) from "violation * * * of any of the following Sections" to "violation * * * of the following

Section."

¶ 22 Although Public Act 97-154 reprinted the statute as it existed prior to Public Act 97-432, Public Act 97-154 did not resurrect the version of the statute that existed prior to Public Act 97-432 (under which defendant would have had to register for the Database). Our finding is in accordance with the supreme court's decision in *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 892 N.E.2d 994 (2008).

¶ 23 In *O'Casek*, the supreme court considered the legislature's amendments to section 2-622 of the Code of Civil Procedure (735 ILCS 5/2-622 (West 1994)), commonly known as the Healing Art Malpractice Act (Act). The Act originally allowed, *inter alia*, a medical malpractice plaintiff a 90-day extension to file a required certificate of merit. *O'Casek* , 229 Ill. 2d at 425, 892 N.E.2d at 998. The Act also specified the types of physicians with whom a plaintiff could consult in preparing his certificate of merit. *O'Casek* , 229 Ill. 2d at 424-25, 892 N.E.2d at 998. In 1995, the legislature enacted Public Act 89-7, section 15 of which amended section 2-622 to preclude a plaintiff from obtaining a 90-day extension to file a certificate of merit if the plaintiff previously voluntarily dismissed the same or substantially the same cause of action. Pub. Act 89-7, § 15 (eff. Mar. 9, 1995) (1995 Ill. Laws 284, 291)); see also *O'Casek* , 229 Ill. 2d at 426, 892 N.E.2d at 998. Two years later, the supreme court in *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 467, 689 N.E.2d 1057, 1104 (1997), held Public Act 89-7 void in its entirety. *O'Casek* , 229 Ill. 2d at 426, 892 N.E.2d at 998. The court did not declare the amendments to section 2-622 as substantively unconstitutional, but the court nonetheless deemed them invalid because they could not be severed from the core provisions found invalid. *O'Casek* , 229 Ill. 2d at 426, 892 N.E.2d at 998. Section 2-622 thus reverted to its pre-1995 version. *O'Casek* , 229 Ill. 2d at 426, 892

N.E.2d at 998.

¶ 24 Two months later, the General Assembly passed Public Act 90-579 (Pub. Act 90-579, (eff. May 1, 1998) (1998 Ill. Laws 48)). *O'Casek* , 229 Ill. 2d at 426, 892 N.E.2d at 998. Public Act 90-579 added naprapaths to the list of covered health professionals, using the version of section 2-622 struck down in *Best* rather than the pre-1995 version of section 2-622. *O'Casek* , 229 Ill. 2d at 425, 892 N.E.2d at 998. Thus, the issue was whether Public Act 90-579 reenacted the *Best* version of section 2-622. *O'Casek* , 229 Ill. 2d at 423, 892 N.E.2d at 997.

¶ 25 The supreme court held Public Act 90-579 did not reenact the version of section 2-622 that was held invalid in *Best*. *O'Casek* , 229 Ill. 2d at 450, 892 N.E.2d at 1012. The court noted Public Act 90-579 highlighted only the naprapath language, which supported an inference that the legislature's use of the *Best* version of section 2-622 was "a legislative oversight." *O'Casek* , 229 Ill. 2d at 447, 892 N.E.2d at 1011.

¶ 26 In defendant's case, Public Act 97-154 reprinted the version of the Child Murderer Act in effect prior to the amendments of Public Act 97-0432. However, Public Act 97-154 did not underline or strike out any of the language amended by Public Act 97-432. Rather, struck-out or underlined language appears in only three places in Public Act 97-154: section (b)(4), (b-5), and (c-6). Section (b)(4) makes only a wording change, not a substantive change. Meanwhile, section (c-6) requires a person convicted of first degree murder of an adult to register for the Database, and section (b-5) defines "first degree murder of an adult."

¶ 27 Thus, it appears the legislature's purpose in enacting Public Act 97-154 was to expand the Child Murderer Act to require a defendant convicted of first degree murder of an adult to register in the Database. Indeed, Public Act 97-154 explicitly changed the name of the

Child Murderer Act to the Violent Offender Act. As in *O'Casek*, we conclude the legislature's use of the version of the Child Murderer Act in existence before Public Act 97-432 as a template to make changes in Public Act 97-154 was a mere "legislative oversight" and did not reenact the Child Murderer Act that existed before Public Act 97-432. Accordingly, defendant does not have to register for the Database under the Violent Offender Act currently in effect.

¶ 28 Our conclusion is further guided by the Statute on Statutes, which provides that "[t]wo or more Acts which relate to the same subject matter and which are enacted by the same General Assembly shall be construed together in such manner as to give full effect to each Act except in case of an irreconcilable conflict." 5 ILCS 70/6 (West 2010).

¶ 29 Finally, we note regardless of whether defendant was required to register for the Database, the trial court was not required to inform her of her obligation to do so. See *Williams*, 188 Ill. 2d at 372, 721 N.E.2d at 544 (The court need not inform a defendant of the collateral consequences of a plea).

¶ 30 Based on the foregoing, we agree with OSAD no colorable argument can be made the trial court should have informed defendant she was required to register for the Database.

¶ 31 C. Coercion Into Entering a Guilty Plea

¶ 32 OSAD next considers and concludes it would be without merit to argue that defendant's plea of guilty was not made knowingly, intelligently, and voluntarily because defendant felt coerced to enter the plea agreement.

¶ 33 At the hearing on defendant's motion to withdraw plea and vacate sentence, defendant testified she persisted in her guilty plea, even after learning that she would not be pleading to a misdemeanor as she originally believed, because her attorney told her she did not

have a choice. As OSAD points out, however, the transcript from defendant's July 2010 proceeding indicates the trial court informed defendant that she did not have to go forward if she did not want to accept the State's offer. The court also provided defendant with additional time to talk to her attorney about the plea agreement. Moreover, the court asked defendant twice whether she had been promised anything to plead guilty, and the court explicitly confirmed that defendant understood she was pleading guilty to a felony that was not going to be reduced to a misdemeanor. Based on the foregoing, we agree it would be frivolous to argue defendant felt coerced to enter into a plea agreement such that her plea was not knowingly, intelligently, or voluntarily made.

¶ 34 D. Emotional State at Time of Plea

¶ 35 Finally, OSAD concludes it would be frivolous to argue defendant's emotional state at the time of her guilty plea rendered her unable to enter a plea knowingly, intelligently, and voluntarily.

¶ 36 At the hearing on her motion to withdraw plea and vacate sentence, defendant testified that when she entered into her guilty plea, she was scared, nervous, and became "really upset" and started crying upon learning she would not be pleading guilty to a misdemeanor. She testified that the judge let her "have a break to get [herself] together and to think about things."

¶ 37 The judge at the hearing on defendant's motion to withdraw guilty plea, however, stated she did not recall defendant crying at the plea proceedings, and while she did give defendant a break during the proceedings, it was to allow defendant time to speak with her attorney and decide whether she wished to persist in her guilty plea. Likewise, the transcript from the plea proceeding does not indicate defendant was so emotional that she could not

knowingly, intelligently, and voluntarily enter into a plea agreement. We thus agree with OSAD that no meritorious argument can be made that defendant was in such an emotional state when she entered her guilty plea that her plea was not made knowingly, intelligently, or voluntarily.

¶ 38 III. CONCLUSION

¶ 39 Based on the foregoing, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 40 Affirmed.