

NOTICE

Decision filed 06/25/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110108-U
NO. 5-11-0108
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Marion County.
)	
v.)	No. 09-CF-379
)	
VESSIE M. BRINSON,)	Honorable
)	Kimberly G. Koester,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

- ¶ 1 *Held*: The circuit court properly denied the defendant's motion to reconsider her sentence; the trial court did not abuse its discretion in sentencing the defendant to a term of imprisonment rather than probation, and the defendant is not eligible for day-for-day good-conduct credit.
- ¶ 2 The defendant, Vessie M. Brinson, appeals the denial of her motion to withdraw her guilty plea and for a reduction of her sentence. The Office of the State Appellate Defender has been appointed to represent her. The State Appellate Defender has filed a motion with an attached memorandum pursuant to *Anders v. California*, 386 U.S. 738 (1967), alleging that there is no merit to the appeal and requesting leave to withdraw as counsel. See *McCoy v. Court of Appeals*, 486 U.S. 429 (1988). Brinson was given proper notice and was granted an extension of time to file briefs, objections, or any other documents supporting her appeal. She has not filed a response. We have considered the State Appellate Defender's motion to withdraw as counsel on appeal and the attached memorandum. We have examined the entire

record on appeal and find no error or potential grounds for appeal. For the following reasons, we now grant the State Appellate Defender's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court of Marion County.

¶ 3 Brinson pled guilty to aggravated discharge of a firearm. At the plea hearing, the State presented the following factual basis for the plea. On October 26, 2009, Centralia police were advised that Renee Woods was being treated at the local hospital for a gunshot wound. At the hospital, Woods told police that she was walking down the street when she accepted a ride from a man in a van. Once in the van, the man told Woods that his wife was following them in an SUV. The man pulled into a parking lot, and the SUV pulled up next to them on the passenger side, where Woods was seated. Woods lowered the window and started to tell the woman who was driving the SUV that she was merely getting a ride. The woman pointed a gun at the van. Woods tried to duck, but she heard one or two shots, and was hit in the chin or neck. The man drove Woods to the hospital, dropped her off in the parking lot, and left. Police spoke with a witness who had seen the two vehicles and had heard a gunshot. A radio dispatch describing the vehicles was sent out to all officers. An officer thought the description of the two vehicles matched those belonging to the Brinsons. He drove to the Brinsons' residence, where he saw a van and an SUV matching the description of the vehicles involved in the shooting. Brinson, crying, came out of the house. She stated that she was sorry and that she had been trying to shoot her husband, not Woods. Two of the Brinsons' children had been in the SUV at the time of the shooting. One of them stated that Brinson removed a gun from her purse and fired it. Defense counsel agreed that the State would produce this evidence at trial. The trial court accepted Brinson's plea and ordered a presentence investigation report.

¶ 4 A sentencing hearing was held on May 24, 2010. Woods testified that the bullet had hit her in the face and "shattered it in nine places." Her windpipe and teeth were damaged

and a nerve was severed. She was in severe pain for several months and could barely open her mouth. She had undergone two surgeries and was anticipating two more. She was also seeing a psychiatrist. Brinson's husband, LaMonte, testified as follows. He and Brinson had three children, ages 10, 12, and 13. Brinson was a good mother and was involved in church activities and school functions. She bought shoes and clothing for neighborhood children who were without. She did not drink alcohol or take drugs. She was not a violent person and did not pose a threat to anybody. Four other witnesses, three of them ministers, described Brinson as a loving and compassionate person who cared for her children, attended church services, and helped others. The presentence investigation report indicated that in 2000 Brinson had been convicted of a Class A misdemeanor involving possession of a firearm and that she had served 18 months' probation.

¶ 5 After considering the relevant factors in aggravation and mitigation, the trial court sentenced Brinson to five years' imprisonment. The court rejected a sentence of probation, finding that a sentence of probation "would make a mockery of the seriousness of the offense" that Brinson had committed. The court also found that Brinson's criminal conduct caused Woods to suffer great bodily harm, but noted that regardless of any harm, Brinson would be eligible for no more than 4.5 days of good-conduct sentence credit per month of imprisonment because of the offense of which she had been convicted.

¶ 6 Brinson subsequently filed a motion to reduce her sentence, arguing that her sentence should be reduced to probation and time served because of her good character and her limited criminal history. The trial court denied the motion. Brinson appeals.

¶ 7 Brinson argued in her motion to reduce sentence that she should have received a sentence of probation given her good character and limited criminal history. Section 5-6-1(a) of the Unified Code of Corrections (Code) provides that except where otherwise prohibited, a trial court shall impose a sentence of probation unless, considering the nature

and circumstances of the offense, and the history, character and condition of the defendant, the court is of the opinion that imprisonment is necessary for the protection of the public or that probation would deprecate the seriousness of the defendant's conduct and would be inconsistent with the ends of justice. 730 ILCS 5/5-6-1(a) (West 2008). A trial court's decision to deny a sentence of probation will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 75 Ill. App. 3d 214, 229, 393 N.E.2d 1132, 1144 (1979).

¶ 8 In the present case, the trial court found that a sentence of probation would deprecate the seriousness of Brinson's conduct. The record supports this determination. According to the factual basis for the plea, Brinson fired a weapon into a vehicle in which her husband and the victim were seated. Brinson admitted to police that she was trying to shoot her husband. A bullet struck Woods, causing her sever bodily injury. As the trial court noted, it was a fortuity that Woods was not killed. We also note that two of Brinson's children were in the car with her at the time of the shooting. Under these circumstances, no meritorious argument can be made that the trial court abused its discretion in refusing to impose a sentence of probation.

¶ 9 Brinson argued in the alternative that she should receive day-for-day good-conduct credit because the State failed to prove that Woods suffered great bodily harm as a result of Brinson's criminal conduct. Section 3-6-3(a)(2)(iv) of the Code provides that any prisoner serving a sentence for aggravated discharge of a firearm committed on or after June 23, 2005, regardless of whether the conduct leading to the conviction resulted in great bodily harm to a victim, shall receive no more than 4.5 days of good-conduct credit for each month of his or her sentence of imprisonment. 730 ILCS 5/3-6-3(a)(2)(iv) (West 2008). The conduct which resulted in Brinson's conviction for aggravated discharge of a firearm occurred on October 26, 2009. Consequently, Brinson was ineligible for day-for-day good-conduct credit irrespective of whether her conduct caused great bodily harm to Woods.

Moreover, the record amply supports the trial court's finding that Brinson's conduct caused Woods to suffer great bodily harm. Thus, she was also ineligible for day-for-day good-conduct credit pursuant to section 3-6-3(a)(2)(iii) of the Code. 730 ILCS 5/3-6-3(a)(2)(iii) (West 2008).

¶ 10 For the foregoing reasons, appointed counsel's motion to withdraw as counsel on appeal is granted, and the judgment of the circuit court of Marion County is affirmed.

¶ 11 Motion granted; judgment affirmed.