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2013 IL App (3d) 110522-U

Order filed February 15, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellee,)	Peoria County, Illinois,
)	
v.)	Appeal No. 3-11-0522
)	Circuit No. 09-CF-1019
DENNIS WILLIAMS,)	
)	Honorable
Defendant-Appellant.)	Glenn H. Collier and Michael E. Brandt,
)	Judges, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The defendant was not prejudiced by defense counsel's failure to call a witness to testify at trial; and (2) defendant's sentence was not an abuse of discretion.
- ¶ 2 Following a bench trial, the defendant, Dennis Williams, was convicted of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2008)) and criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2008)). The trial court sentenced the defendant to 30 years of imprisonment. On appeal, the defendant argues that: (1) he received ineffective assistance of

counsel; and (2) his sentence was an abuse of discretion. We affirm.

¶ 3

FACTS

¶ 4 The defendant was charged by indictment with one count each of aggravated criminal sexual assault and criminal sexual assault, and the case proceeded to a bench trial.

¶ 5 Mark Nelson testified that on September 12, 2009, around 11:30 or 11:45 p.m., he was riding his bicycle near his home on Charlton Street in Peoria. As he returned home, he heard a lady screaming "God help me" in a muffled voice. Nelson was concerned that someone's life was in danger, and went to investigate. The screams were coming from an area that was across the street from his house. Nelson shone his flashlight in the area where he heard the screams and saw the shadow of two people lying on the ground. Nelson yelled out "Hey! What are you doing?" No one replied, but the female voice continued screaming. Nelson went home and called the police.

¶ 6 Officer Joseph Spears testified that on the night of the incident, he was dispatched to a residence in the area of Charlton and Millman Street. Spears spoke with the complainant, Nelson, and began investigating the area. Spears did not hear anyone calling for help, but as he drove through an alley between Millman Street and Butler Street, he saw a man who was later identified as the defendant lying on top of the victim in a backyard. As Spears exited his car, the defendant got up, pulled his pants up, and ran from the scene. The victim yelled that the defendant had "raped her." Initially, Spears pursued the defendant, but was unable to catch him. He then returned to the scene to tend to the victim. Spears noted that the victim had scratches on her face and hands, and her neck was red. Thereafter, another officer apprehended and transported the defendant back to the scene. Spears noted that the defendant had an abrasion to

his right knee as well as injuries to his left and right elbows. While the defendant's knee injury was photographed, the defendant stated that the injury was the result of a carpet burn that he sustained while wrestling with his girlfriend's son.

¶ 7 The victim testified that at the time of her court appearance, she was incarcerated for a 2010 prostitution conviction. The victim also admitted that she had three prior felony prostitution convictions.

¶ 8 The victim stated that in the early morning hours of September 12, 2009, she was walking to her brother-in-law's house when she cut through an alley. While she was in the alley, the defendant grabbed her by the throat, dragged her to a nearby house, threw her on the ground, and instructed her to remove her pants. The victim screamed for help, but the defendant strangled her until she lost consciousness. When the victim regained consciousness, she screamed for help again. The defendant strangled her until she passed out a second time. Shortly after she regained consciousness, the police arrived, and the defendant got off of her, pulled his pants up, and ran. The victim recalled that during the attack, the defendant removed her pants and placed his penis inside of her vagina. The victim stated that she suffered red marks to her neck and scratches on her face as a result of the attack. The victim had never seen the defendant before the incident, and she did not agree to have sexual intercourse. At the time of the attack, she was not working as a prostitute, and she was employed as a waitress.

¶ 9 Detective Robert McMillen testified that he was the detective in charge of the incident. At the scene, he noted that the victim was breathing heavy and crying, and she had a scratch on her face. In a later interview with the defendant, McMillen noticed that the defendant had two scratches on his arm and what appeared to be a rug burn on his right knee. The defendant denied

knowing the victim and, initially, denied having sexual contact with anyone on the night of the incident. Later, he stated that he had given another woman, Valerie Levy, \$10 for oral sex so that she could buy crack. The defendant indicated that he had sex with Levy while he was wearing a condom, but later stated that he had received oral sex.

¶ 10 Officer Anthony Allen testified that he responded to a call on Butler Street on the night of the incident. At the scene, he saw the victim crying and noted that she appeared disheveled. After the victim declined ambulance transportation, Allen drove her to the hospital because she appeared to need medical attention.

¶ 11 Stipulated evidence indicated that a Vitullo rape kit was administered to the victim at the hospital. The defendant's deoxyribonucleic acid (DNA) was found on evidence taken during the procedure. A second stipulation indicated that the sexual assault nurse examiner would testify that she observed bruising on the victim's right thigh and left calf, abrasions to her right hip, and multiple soft tissue injuries and redness to her neck as well as an injury to her face. The State also introduced photographs taken at the scene of the injuries sustained by the victim and the defendant.

¶ 12 The defendant testified that he was driving to a friend's house on the night of the incident. In an alley near Butler Street, the victim approached his car and asked "who had some drugs." The defendant volunteered that he had drugs to sell. The victim inquired if the defendant had any drugs for \$10. He did not, but the victim propositioned sex in exchange for the drugs. The defendant procured a pipe for the victim and, thereafter, engaged in consensual sex. During intercourse, a car pulled up. The defendant immediately got up and ran because he was in possession of drugs and was embarrassed about being caught having sex in public. The

defendant denied injuring the victim. He claimed that the injuries to his arms were from wrestling with his girlfriend's son and he had incurred the knee injury a few days before his encounter with the victim. The defendant maintained that he engaged in consensual sex with the victim.

¶ 13 The trial court ruled that the evidence of the victim's injuries and other physical evidence was "very" consistent with the testimony provided by the victim and the police officers.

Although the defendant said that his knee injury was preexisting, in the photograph it appeared red and looked like it was about to bleed. The court noted that the victim's injuries and testimony of her screams for help and distraught appearance were not consistent with consensual sex. The court found the defendant guilty of aggravated criminal sexual assault and criminal sexual assault.

¶ 14 The defendant filed a *pro se* motion for new trial alleging his counsel was ineffective for failing to call the defendant's mother, Katherine Williams, to testify. According to the defendant, his mother would have testified that he had sustained the injury to his knee prior to the incident.

¶ 15 On July 22, 2011, the case proceeded to sentencing. The court noted in mitigation that the defendant had a "fine family" and a history of some employment, and that he had made some effort to overcome his alcohol and drug problems. However, in aggravation, the court noted that the defendant had 7 prior felony convictions and 14 prior misdemeanor convictions, and that the defendant's sentence was necessary to deter others and to protect the public. The court sentenced the defendant to 30 years' imprisonment.

¶ 16

ANALYSIS

¶ 17

I. Ineffective Assistance of Counsel

¶ 18 The defendant argues that he was denied the effective assistance of counsel when his trial counsel failed to call Katherine to testify. Katherine's testimony allegedly would have supported the defendant's consent defense because she intended to testify that the defendant had sustained a rug burn on his knee three days before the incident.

¶ 19 To prevail on an ineffective assistance of counsel claim, a defendant must show that: (1) counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. *People v. Albanese*, 104 Ill. 2d 504 (1984); see also *Strickland v. Washington*, 466 U.S. 668 (1984). Where we do not find the requisite prejudice, we may decide the defendant's claim without analyzing the effectiveness of counsel's representation. *People v. Edgeston*, 243 Ill. App. 3d 1 (1993). To show prejudice, the defendant must establish that, except for counsel's errors, there is a reasonable probability that the outcome of the proceeding would have been different. *Strickland*, 466 U.S. 668. We review, *de novo*, whether counsel's failure to call a witness supports an ineffective assistance claim. *People v. Davis*, 353 Ill. App. 3d 790 (2004).

¶ 20 In the instant case, the defendant does not establish that counsel's actions prejudiced his case such that the outcome of the proceeding would have been different. While we agree that Katherine's testimony may have supported the defendant's consent defense, the evidence to the contrary strongly supported the opposite conclusion. At trial, the victim testified that she did not consent to have sexual intercourse with the defendant, and she screamed for help as the defendant choked her and sexually assaulted her. Nelson heard the victim's screams, and several police officers testified that the victim appeared disheveled and her neck was red at the scene.

Additionally, the stipulated evidence indicated that the victim suffered injuries to her neck. The stipulations also established that the defendant's DNA was found on the victim. Overall, this evidence clearly corroborated the victim's testimony.

¶ 21 In contrast, Katherine's testimony that the defendant incurred a carpet burn on his knee several days before the incident serves only to explain one of the defendant's injuries. It does not explain the injuries that the victim exhibited or dispel her version of events. Thus, the defendant has not demonstrated that there is a reasonable probability that the outcome of the case would have changed if trial counsel had called Katherine to testify, and we hold that the defendant did not receive ineffective assistance of counsel.

¶ 22 II. Sentence

¶ 23 The defendant argues that the trial court abused its discretion when it sentenced him to 30 years of imprisonment. The defendant contends that there were significant factors in mitigation that warranted a sentence closer to the minimum term of six years of imprisonment.

¶ 24 We review the defendant's sentence for an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203 (2000). We proceed with caution when reviewing the propriety of the defendant's sentence as we must not substitute our judgment for that of the trial court. *People v. Cameron*, 2012 IL App (3d) 110020.

¶ 25 The sentencing range for a defendant convicted of aggravated criminal sexual assault is a term of imprisonment of not less than 6 years and not more than 30 years. 730 ILCS 5/5-4.5-25 (West 2008).

¶ 26 Here, the trial court considered the factors in mitigation and aggravation before pronouncing the defendant's sentence. In particular, the trial court noted in mitigation that the

defendant had a "fine family" and some history of employment, and had made some attempts to resolve his alcohol and drug problems. However, in aggravation, the court noted that the defendant had 7 prior felony convictions and 14 prior misdemeanor convictions. Although the defendant received the maximum sentence, his sentence was within the applicable sentencing range and was reflective of the defendant's extensive criminal history and the brutality of the charged offense. Therefore, we do not find that the trial court abused its discretion.

¶ 27

CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 29 Affirmed.