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2013 IL App (3d) 120949-U

Order filed August 8, 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 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellant,	)	
	)	Appeal No. 3-12-0949
v.	)	Circuit No. 07-CF-1733
	)	
OLIVER BEACH,	)	Honorable
	)	Richard C. Schoenstedt,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Wright and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in finding that defense counsel was ineffective; therefore, we reverse its order granting defendant a new sentencing hearing.

¶ 2 Defendant, Oliver Beach, pled guilty to attempted first degree murder (720 ILCS 5/8-4, 9-1(a)(1) (West 2006)) and was sentenced to 12 years in prison. Defendant did not file a motion to reconsider sentence or a direct appeal. Thereafter, defendant filed a postconviction petition, alleging that trial counsel was ineffective for failing to file a motion to reduce sentence or

otherwise perfect an appeal on his behalf. The circuit court dismissed the petition as frivolous and patently without merit. Defendant appealed, and we reversed the dismissal and remanded for second-stage proceedings. *People v. Beach*, No. 3-10-0386 (2011) (unpublished order under Supreme Court Rule 23). Upon remand, the cause proceeded to an evidentiary hearing. Following the hearing, the circuit court determined that trial counsel was ineffective and granted defendant's petition, thus entitling defendant to a new sentencing hearing. The State appeals, arguing that the trial court erred in finding counsel ineffective. We find that counsel was not ineffective and reverse the trial court's order granting defendant a new sentencing hearing.

¶ 3 FACTS

¶ 4 Defendant was charged with one count of attempted first degree murder (720 ILCS 5/8-4, 9-1(a)(1) (West 2006)). The State alleged that defendant intended to kill his mother, Charisee Beach, by striking her about the body with a piece of wood and a hammer and by stabbing her with a knife. Defendant entered into a blind guilty plea, and the trial court sentenced him to 12 years in prison. Defendant did not file a motion to reconsider sentence or a direct appeal.

¶ 5 Nearly two years after he was sentenced, defendant filed a postconviction petition, alleging that trial counsel was ineffective for failing to file a motion to reduce sentence or otherwise perfect an appeal on his behalf. Defendant's petition was dismissed as frivolous and without merit. However, defendant appealed the dismissal, and we reversed, finding that defendant's claim was not frivolous. The cause was remanded to the trial court for a second-stage proceeding under the Post-Conviction Hearing Act.

¶ 6 Upon remand, the cause proceeded to a third-stage evidentiary hearing. At the hearing, defendant testified that, after he was sentenced and admonished on his appeal rights by the court,

he asked his attorney, Michelle Hansen, if there was anything else he could do with regard to his plea. Counsel, according to defendant, said there was not and informed him that he was given the best sentence he could have received and that any other judge would have sentenced him to more time.

¶ 7 Hansen testified that she was defendant's attorney. She said that defendant did not ask her whether he could withdraw his plea directly after he was sentenced. She further stated that defendant did not indicate to her in any manner that he wanted to withdraw his plea or appeal his sentence, and she never informed him that another judge would have given him a longer sentence. She did, however, inform defendant that he had 30 days to appeal if he wished to do so.

¶ 8 At the conclusion of the hearing, the trial court noted that after sentencing defendant, the court had admonished him as to his appeal rights. Further, it found that Hansen was credible and concluded that defendant did not indicate that he wished to appeal. However, the court found that because Hansen informed defendant that he had 30 days to appeal, she had an obligation to ensure that her representation and advice with respect to defendant's appeal rights was complete. Because she failed to inform him of all of his options, the court concluded that counsel was ineffective and granted defendant a new sentencing hearing. The State appeals.

¶ 9 ANALYSIS

¶ 10 The State argues that the trial court's reasoning was flawed when it found that defense counsel was ineffective for failing to inform defendant of all of his appeal rights. While we generally will not disturb a trial court's determination regarding a postconviction petition unless it was manifestly erroneous (See *People v. Pendleton*, 223 Ill. 2d 458 (2006)), when the issue is

whether the trial court correctly applied the law to the facts, the correct standard of review is *de novo* (*People v. Wilburn*, 338 Ill. App. 3d 1075 (2003)).

¶ 11 Here, in making its ruling, the trial court determined that counsel was ineffective because once she informed defendant that he had a right to appeal, she had an obligation to ensure that her representation and advice on that point was complete. Although there is a general rule that where an attorney undertakes an affirmative duty, the duty to perform the function with reasonable care is clear (*Jewish Hospital of St. Louis, Missouri v. Boatmen's National Bank of Belleville*, 261 Ill. App. 3d 750 (1994)), we do not believe that that rule governs the outcome of this case. Instead, the applicable rule is that an attorney has a constitutionally imposed duty to consult with a defendant about an appeal only when there is reason to think that: (1) a rational defendant would want to appeal; or (2) this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

¶ 12 Since the trial court did not consider the *Flores-Ortega* factors, we conclude that the rationale for its decision was erroneous. However, we are not limited by the court's reasoning, and we can affirm the trial court on any basis supported by the record. *People v. Lee*, 344 Ill. App. 3d 851 (2003). Therefore, using the *Flores-Ortega* factors, we must determine if the record supports the conclusion that trial counsel was ineffective.

¶ 13 One factor is whether defendant reasonably indicated that he wished to appeal. At the conclusion of the evidentiary hearing, the trial court made a factual finding that defendant did not ask his attorney to appeal the case. The court's determination on this issue was based on its belief that the attorney, and not defendant, was telling the truth. We do not find this conclusion to be manifestly erroneous. Thus, we conclude that defendant did not reasonably demonstrate to

counsel that he was interested in appealing.

¶ 14 The other *Flores-Ortega* factor concerns whether a rational defendant would have wanted to appeal the sentence. Based on our review of the record, we do not believe that this is the case. First, defendant pled guilty to the offense, thus suggesting that he was seeking an end to the judicial proceedings. Second, we are unable to find any nonfrivolous grounds for appeal. Lastly, defendant's sentence of 12 years for attempting to kill his mother was much closer to the minimum than maximum sentence. See 720 ILCS 5/8-4(c)(1) (West 2006) (attempted first degree murder is a Class X felony); 730 ILCS 5/5-8-1(a)(3) (West 2006) (the sentence for a Class X felony is not less than 6 years and not more than 30 years). Thus, we do not find that this is a case where an attorney would believe that a rational defendant would have wanted to appeal.

¶ 15 Having found that an attorney would not have believed that a rational defendant would have wanted to appeal and that defendant did not ask for an appeal, we conclude that counsel was not ineffective for failing to inform defendant of all of his appeal rights. Therefore, we reverse the trial court's order granting defendant a new sentencing hearing.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Will County is reversed.

¶ 18 Reversed.