

NOTICE
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2013 IL App (4th) 120687-U

NO. 4-12-0687

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 29, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
CHARLES J. WALTERS,)	No. 10TR12647
Defendant-Appellant.)	
)	Honorable
)	Holly F. Clemons,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment is reversed and the cause remanded for further proceedings to determine whether defendant is entitled to appointed counsel based on a more complete financial picture and, if appropriate, to utilize the statutory procedures providing for defendant's reimbursement of the services of a public defender.

¶ 2 Defendant, Charles J. Walters, was convicted after a bench trial of driving while his license was suspended (625 ILCS 5/6-303(a) (West 2008)). The trial court sentenced defendant to 12 months' probation and 180 days in jail. He appeals, arguing (1) the court abused its discretion by denying his request to appoint counsel, and (2) he did not knowingly, intelligently, and voluntarily waive his right to counsel. We agree with defendant's first contention and reverse and remand for a new trial with counsel.

¶ 3 I. BACKGROUND

¶ 4 On June 12, 2010, defendant was involved in an automobile accident and issued four

traffic citations, one of which was driving while his license was suspended, a Class A misdemeanor. 625 ILCS 5/6-303(a) (West 2008). At his July 2010 arraignment, defendant requested the appointment of counsel. The trial court initially granted defendant's request but reversed that decision after reviewing defendant's financial affidavit, which indicated he was earning \$1,200 per month from employment and receiving \$674 per month in Social Security benefits and \$92 on a LINK card. At the next hearing, defendant renewed his request for appointed counsel, emphasizing his job as a landscaper was seasonal, and therefore, he would not earn \$1,200 every month of the year. The court again denied his request and gave him additional time to hire private counsel. At the next hearing, on August 27, 2010, defendant informed the court he would proceed *pro se* because he could not afford to hire an attorney. The court admonished defendant in accordance with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984).

¶ 5 In December 2010, the case proceeded to a bench trial. The State's evidence showed defendant was involved in a two-vehicle accident at approximately 2 p.m. on June 12, 2010. The other driver suffered serious injuries. Officers at the scene discovered defendant was driving on a suspended license and without insurance. Defendant's brakes malfunctioned, causing him to miss a stop sign and drive into the path of the other vehicle. The State presented a certified copy of defendant's driving abstract from the Illinois Secretary of State, showing defendant's license was indeed suspended at the time of the accident. After considering the evidence and arguments of counsel, the trial court found defendant guilty of "every one of these offenses": (1) operating an uninsured vehicle upon the public roadway (625 ILCS 5/3-707(a) (West 2008)) (case No. 10-TR-12646); (2) driving while his license was suspended (625 ILCS 5/6-303(a) (West 2008)) (case No. 10-TR-12647); (3) operating a vehicle with defective brakes (625 ILCS 5/12-301(a)(1) (West 2008))

(case No. 10-TR-12648); and (4) disobeying a traffic control device (625 ILCS 5/11-305 (West 2008)) (case No. 10-TR-12649).

¶ 6 On February 23, 2011, the trial court conducted defendant's sentencing hearing. Noting defendant had not filed any posttrial motions, the court proceeded to sentencing. After considering the presentence investigation report, testimony from the driver of the other vehicle, defendant's statement in allocution, and recommendations of counsel, the trial court sentenced him to 12 months' probation with 180 days in jail, denying good-conduct credit due to the serious personal injury involved.

¶ 7 On March 1, 2011, defendant filed a *pro se* motion to withdraw his guilty plea. At a subsequent hearing, the trial court informed defendant he had not pleaded guilty, so his request for relief was "not going to be a possibility." The court agreed to appoint the public defender to assist defendant in filing a posttrial motion. His court-appointed counsel filed a motion to reconsider his sentence, which the court denied. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 In this appeal, defendant first claims he was denied his fundamental right to the assistance of counsel when the trial court failed to appoint the public defender. He contends the court did not consider his complete financial picture. He also claims he did not knowingly, intelligently, and voluntarily waive his right to counsel. We reverse and remand.

¶ 10 Initially, we note defendant failed to preserve these issues in the trial court proceedings. Ordinarily, such a failure results in forfeiture of the issues. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, because defendant claims he was deprived of a substantial right, we elect to review his claim under the plain-error doctrine. Ill. S. Ct. 615(a) (eff. Jan. 1, 1967).

¶ 11 Section 113-3(b) of the Code of Criminal Procedure of 1963 (Code) provides that an indigent defendant shall have appointed counsel in all criminal cases, except in those cases when the penalty is a fine only. 725 ILCS 5/113-3(b) (West 2008). The decision of whether a defendant is indigent is left to the trial court's discretion and should be based on as complete financial picture as possible. *People v. Ellis*, 309 Ill. App. 3d 443, 446 (1999). "Whether court-appointed counsel is appropriate must be delicately decided and always with an eye toward protecting the rights of the accused." *Ellis*, 309 Ill. App. 3d at 446. The trial court should favor the appointment of counsel in a close case, rather than denying the appointment, in order to protect the defendant. *Ellis*, 309 Ill. App. 3d at 446.

¶ 12 Defendant relies on this court's decision in *Ellis*, where we found the trial court had abused its discretion by failing to appoint counsel. There, the defendant had a disposable monthly income of \$494 from which he paid \$250 in rent. The record did not include an amount for any other expenses such as utilities or food. He had total assets of \$456, while owing \$344 in "other debts." *Ellis*, 309 Ill. App. 3d at 446. The record revealed the defendant had made a good-faith effort to obtain private counsel but each attorney required a retainer exceeding what the defendant could pay. *Ellis*, 309 Ill. App. 3d at 447. Based on these facts, this court determined the defendant was indigent and should have had counsel appointed. *Ellis*, 309 Ill. App. 3d at 447.

¶ 13 In this case, like *Ellis*, defendant repeatedly requested that counsel be appointed. However, based on defendant's financial affidavit, the trial court here found he had sufficient income to hire private counsel. The court granted defendant several continuances to retain counsel but defendant eventually informed the court he could not afford to hire an attorney. He proceeded to trial and sentencing *pro se*.

¶ 14 The financial affidavit in the record indicated defendant, who was a single 23-year-old man with no dependents and living with "roommates," received a monthly income of \$1,200 from his job as a landscaper, \$674 from Social Security disability, and \$92 on a LINK card. Defendant listed no assets or debts. Therefore, defendant had, at his disposal, \$1,966 per month during the time he was employed as a landscaper, and \$766 during the off-season. Although not indicated, it is clear defendant would incur at least some expenses each month. Given the incomplete financial picture, the trial court should have prompted defendant to identify his monthly expenses in order to accurately gauge defendant's complete financial situation.

¶ 15 A defendant's right to counsel is " 'a cornerstone' " in our criminal justice system. *People v. Ames*, 2012 IL App (4th) 110513, ¶ 39 (quoting *People v. Black*, 2011 IL App (5th) 080089, ¶ 11). As such, the trial court should always err on the side of caution in securing representation for a low-income defendant. In other words, if a defendant's indigency status is questionable, the court should appoint counsel and then utilize the procedure set forth in section 113-3.1 of the Code (725 ILCS 5/113-3.1 (West 2008)) to establish a defendant's ability to reimburse for the services of a public defender. See *Ellis*, 309 Ill. App. 3d at 446. Courts should be mindful that a defendant need not be entirely without funds to have counsel appointed. Instead, the court should secure representation by appointment if the defendant "lacks financial resources on a practical basis to retain counsel." *Ellis*, 309 Ill. App. 3d at 446.

¶ 16 To avoid situations where a defendant wants to be represented but fails to hire counsel or is unable to afford counsel, the trial court should be mindful of the reimbursement provisions. In doing so, the court should warn a defendant that if he fails to hire an attorney, one will be appointed and he will be required to pay for those services to the extent he is capable of doing so.

Ames, 2012 IL App (4th) 110513, ¶ 53. As this court recently noted:

"Experience shows that trial courts who utilize section 113-3.1 of the Code as we suggest will ultimately not have many defendants choosing court-appointed counsel when those defendants in fact have the means to hire their own attorneys. In handling those few defendants who are sufficiently stubborn to persist in their dubious claims of not being able to afford to hire private counsel, trial courts should resist distorting the important, fundamental right to counsel, guaranteed by the sixth amendment to the United States Constitution and article I, section 8, of the Illinois Constitution of 1970 (Ill. Const. 1970, art. I, § 8), by engaging in some sort of contest of wills with these defendants and by making such defendants represent themselves. Instead, courts confronted with such a defendant should appoint counsel and utilize section 113-3.1 of the Code to its fullest, requiring that defendant to pay \$5,000 for court-appointed counsel in an appropriate case." *Ames*, 2012 IL App (4th) 110513, ¶ 54.

¶ 17 In order to sufficiently protect defendant's rights, given he expressed his desire to be represented by counsel, the trial court should have done the following: (1) prompted defendant to provide a more complete and accurate picture of his financial status, (2) depending on what the court discovered, advised defendant of his choice to either hire private counsel or have counsel appointed, (3) warned of the likelihood defendant would be required to pay for services of either private or

appointed counsel, and (4) if counsel was appointed, proceeded under section 113-3.1 to secure reimbursement. See *Ames*, 2012 IL App (4th) 110513, ¶ 65 (setting forth suggestions for trial court).

¶ 18 As to the appropriate remedy, given our determination that the trial court erred in failing to further inquire into defendant's financial status and/or appoint counsel if defendant's indigency status was questionable, we note our supreme court's decision in *People v. Campbell*, 224 Ill. 2d 80 (2007). There, the defendant was charged with driving with a suspended license. The defendant advised the court he would proceed *pro se*; however, the court failed to admonish defendant pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). *Campbell*, 224 Ill. 2d at 87. Although the court found error, and noted that ordinarily such error would justify reversal, it declined to remand for a new trial, finding the same "would be neither equitable nor productive" because the defendant had already discharged his sentence of 12 months' conditional discharge. *Campbell*, 224 Ill. 2d at 87. The court simply vacated the defendant's conviction. *Campbell*, 224 Ill. 2d at 87-88.

¶ 19 We find the court's decision not to remand for a new trial was driven by the particular facts presented in that case and does not control our decision to do so in this case. Although defendant here, like the defendant in *Campbell*, has discharged his sentence of 12 months' probation, we find the distinguishing facts in defendant's case justify our decision to remand for a new trial. Unlike the defendant in *Campbell*, defendant here purportedly caused a two-vehicle accident with the other driver suffering serious injuries. Additionally, defendant was driving (1) while his license was suspended, (2) without insurance, and (3) with defective brakes. We find the nature and circumstances of the case before us distinguish it from the remedy provided in *Campbell* and justify a remand for a new trial.

