2015 IL App (2d) 141078-U
Nos. 2-14-1078 & 2-14-1084 cons.
Order filed December 8, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JUSTIN L. BARTLETT, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 10-CF-2636 Honorable John R. Truitt, Judge, Presiding.

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JUSTIN L. BARTLETT, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 08-CF-2133 Honorable John R. Truitt, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Schostok and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court substantially complied with Rule 402: although the court did not directly advise defendant of the prospect of discretionary consecutive sentences,

> the court and the attorneys discussed that prospect in defendant's presence, and defendant admitted that he heard that discussion.

¶ 2 In 2008, defendant, Justin L. Bartlett, pleaded guilty to aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008)) and was sentenced to two years' probation (case No. 08-CF-2133). In 2010, the State petitioned to revoke his probation and charged him with various offenses, including (1) aggravated driving under the influence of alcohol involving death (DUI) (625 ILCS 5/11-501(d)(1)(F) (West 2010)); (2) unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)); and (3) unlawful possession of firearm ammunition without a firearm owner's identification (FOID) card (430 ILCS 65/2(a)(2) (West 2010)) (case No. 10-CF-2636).

¶ 3 The causes were consolidated. Defendant admitted to the revocation petition and entered an open plea of guilty to the three noted charges. The trial court admonished him, accepted the admission and the plea, and entered judgment. After a hearing, the court resentenced defendant to 3½ years' imprisonment for aggravated battery and sentenced him to concurrent terms of 12 years' imprisonment for aggravated DUI; 8 years for unlawful possession of a firearm; and 5 years for unlawful possession of ammunition. Based on its finding that consecutive sentences were necessary to protect the public (see 730 ILCS 5/5-8-4(c) (West 2010)), the court made the sentences in case No. 10-CF-2636 consecutive to the one in case No. 08-CF-2133.

¶ 4 Defendant moved to withdraw his admission and plea, arguing in part that the court had failed to admonish him that consecutive sentencing was possible. The court denied the motion. On appeal, this court, noting that defendant's attorney had failed to file a certificate of compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), vacated the denial of the motion and remanded for compliance with Rule 604(d) and for further postjudgment proceedings. *People v. Bartlett*, Nos. 2-12-1241 & 2-12-1242 cons. (Feb. 4, 2014) (minute order).

¶ 5 On remand, defendant's attorney filed a Rule 604(d) certificate and defendant stood on his original motion. Recognizing that the ammunition offense was a Class A misdemeanor, not a felony, the court reduced the sentence thereon to 364 days' imprisonment. In all other respects, it affirmed the judgment. Defendant appealed.

¶ 6 On appeal, defendant contends that the trial court erred by denying his motion to withdraw. He argues that the court's failure to admonish him that consecutive sentencing was possible made his admission and guilty plea involuntary. For the following reasons, we affirm.

¶ 7 We summarize the hearing on defendant's admission and guilty plea, held March 23, 2011. Defendant was present throughout the proceedings. The parties presented the agreement, under which defendant would admit to the probation-violation petition and plead guilty to the three charges noted and the State would dismiss the remaining charges. The following colloquy took place:

> "THE COURT: And is anything mandatory consecutive?
>
> MR. KULKARNI [defendant's attorney]: Judge, my belief is nothing in this case is mandatory consecutive.
>
> I know the State will be arguing for a consecutive sentence regarding the probation, but it is not my belief that it is mandatory consecutive sentence [*sic*].
>
> THE COURT: Ms. Dehn-Miller?
>
> MS. DEHN-MILLER [assistant State's Attorney]: I think that's correct, Judge.
>
> THE COURT: Okay. Discretionary?
>
> MR. KULKARNI: Yes.
>
> MS. DEHN-MILLER: Yes.
>
> THE COURT: But not mandatory?

MR. KULKARNI: Yes.

MS. DEHN-MILLER: Yes."

¶ 8 The judge and the parties discussed the possible range of sentences for the various offenses. All agreed that the ammunition offense was a Class 3 felony.

¶ 9 The judge then asked defendant, "You've heard this partial plea agreement?" Defendant responded, "Yes." The judge asked him, "Do you understand it?" He responded, "Yes." The judge explained the charges and the possible sentences and specifically told defendant that the aggravated-battery charge could be punished by 2 to 5 years' imprisonment; the aggravated DUI charge carried a range of 3 to 14 years' imprisonment with no more than 15% sentencing credit and with probation only in exceptional circumstances; the weapon charge was nonprobationable and also carried a range of 3 to 14 years' imprisonment; and the ammunition charge was a felony that carried a sentencing range of either probation or 2 to 10 years' imprisonment. There is no dispute that the admonishments were correct, except that pertaining to the ammunition charge. However, the judge did not tell defendant that, in the court's discretion, consecutive sentences could be imposed. Defendant told the judge that he understood the admonishments.

¶ 10 The State presented the factual bases for the admission and plea. The judge admonished defendant of the rights that he would be giving up by entering the admission and plea. Defendant stated that he understood and still wanted to enter the admission and the plea. The judge found that defendant's admission and plea were voluntary and ordered a sentencing hearing.

¶ 11 On August 30, 2011, after a sentencing hearing, the court found that the circumstances of the offenses and defendant's history and character called for consecutive sentences (see 730 ILCS 5/5-8-4(c) (West 2010)). Therefore, the court made the concurrent sentences in case No.

10-CF-2636 consecutive to that in case No. 08-CF-2133. Defendant received credit for 368 days of presentencing custody.

¶ 12 Defendant moved to withdraw his admission and guilty plea, contending, in part, that the court had failed to admonish him of the possibility of consecutive sentencing. On October 5, 2012, the court held a hearing on the motion. Defendant testified. He conceded that the judge and the attorneys had noted that defendant could receive consecutive sentences as a matter of judicial discretion and that he had stated afterward that he understood the plea agreement. The State's Attorney asked defendant, "We also discussed on the record that the Court could sentence you, as to the petition to vacate, that it was up to the Court to sentence you either consecutive or concurrent [*sic*], that it was not mandatory; do you remember that discussion?" Defendant answered, "Yeah." The court denied the motion.

¶ 13 On appeal, defendant contends that the trial court erred in denying his motion to withdraw his admission and plea. Defendant notes that, under Illinois Supreme Court Rule 402(a)(2) (eff. July 1, 1997), the trial judge must personally admonish a defendant who pleads guilty of "the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or *consecutive sentences*." (Emphasis added.) Defendant argues that, because the trial judge never admonished him directly that he could receive consecutive sentences, his admission and plea were not voluntary.

¶ 14 The State responds by noting that defendant was present when the judge and the attorneys noted at some length that consecutive sentencing would be possible at the discretion of the judge. The State notes further that defendant told the judge that he understood the parties' agreement. Finally, the State points out that, at the hearing on his postjudgment motion, defendant admitted

that he remembered hearing the judge and the attorneys discuss how he could receive consecutive sentences at the court's discretion. Thus, the State reasons, the court substantially complied with Rule 402 (see Ill. S. Ct. R. 402 (eff. Jan. 1, 1997) ("In hearings on pleas of guilty *** there must be substantial compliance with the following")), and defendant suffered no prejudice from the deficiency in the admonishments.

¶ 15 Whether the trial court substantially complied with Rule 402 is a question of law, which we review *de novo*. *People v. Hall*, 198 Ill. 2d 173, 177 (2001). As noted, Rule 402 requires substantial (not strict) compliance. Moreover, the failure to admonish a defendant properly does not in itself require reversing the judgment or vacating the plea; the test is "whether real justice has been denied or *** [the] defendant has been prejudiced by the inadequate admonishment." *People v. Davis*, 145 Ill. 2d 240, 250 (1991). The defendant has the burden to establish prejudice. *People v. Delvillar*, 235 Ill. 2d 507, 522 (2009).

¶ 16 We hold that, under all the circumstances, the trial court's failure to admonish defendant specifically about the possibility of consecutive sentencing did not deny defendant real justice or cause him prejudice. As the State emphasizes, defendant was present when the judge and the attorneys for both parties noted at some length that consecutive sentencing was available at the judge's discretion. Defendant told the judge that he had heard the "plea agreement" and that he understood it. The judge could assume that defendant had been listening to the colloquy, and so may we. See, *e.g.*, *In re R.A.B.*, 197 Ill. 2d 358, 364 (2001) (if defense counsel expresses jury waiver in defendant's presence and defendant does not object, courts may presume knowing and voluntary waiver). Further, at the hearing on his postjudgment motion, defendant conceded that he had heard the judge and the parties note that he could receive consecutive sentences at the

judge's discretion. Defendant has not shown that the defect in the admonishments prejudiced him.

¶ 17 In *United States ex rel. Price v. Lane*, 723 F. Supp. 1279 (C.D. Ill. 1989), the defendant sought federal relief against the state trial court's refusal to release him on bond pending his appeal from convictions, on guilty pleas, to four counts of forgery. *Id.* at 1280. He argued in part that the court had not admonished him of the possibility that he could receive consecutive sentences. *Id.* at 1283. The federal court rejected this claim. It noted that, directly before the admonishments, the trial judge, the prosecutor, and the defendant's attorney engaged in a colloquy in which they agreed that the defendant would be eligible for consecutive sentences. The defendant was present for that discussion. The federal court concluded that the defendant had been "sufficiently advised of the possibility of consecutive sentences as required by Rule 402(a)(2)." *Id.* at 1283.

¶ 18 Although it is obviously not binding, we find *Price* persuasive. We note that, in the federal case, the defendant was an attorney and thus perhaps more sophisticated about the plea process. However, it does not appear that the court placed great weight on this fact. The court explained that "[t]he test for determining whether the trial judge's admonitions were sufficient is whether *an ordinary person* in the circumstances of the accused would have understood them as conveying the required information." (Emphasis added.) *Id.* at 1282. Further, in rejecting the defendant's argument that the court's failure to admonish him of the possibility of consecutive sentences warranted relief, the court did not allude to the defendant's status as an attorney but relied on the objective content of the discussion and admonishments.

¶ 19 Although we hold that the trial court substantially complied with Rule 402) and that defendant has failed to show reversible error, we must stress that strict compliance with Rule 402

is preferable for all concerned. The required admonishments are not numerous, and giving all of them to a defendant will provide for a fairer and more expeditious plea process.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 21 Affirmed.