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2015 IL App (3d) 130358-U

Order filed October 16, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Marshall County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0358
)	Circuit Nos. 12-CF-40, 12-TR-926, 12-TR-927, 12-TR-928 and 12-TR 929
WARITH MUHAMMAD,)	
Defendant-Appellant.)	Honorable Scott A. Shore, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice McDade and Justice Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court substantially complied with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) such that defendant's waiver of his right to counsel was valid.
- ¶ 2 Defendant, Warith Muhammad, appeals his convictions for possession of a controlled substance (720 ILCS 570/402(c) (West 2012)), possession of cannabis (720 ILCS 550/4(b) (West 2012)), and failure to transfer registration upon transferring ownership of a vehicle (625 ILCS 5/3-501 (West 2012)). Defendant alleges he was not properly admonished in accordance

with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). Additionally, defendant argues that he was not proved guilty beyond a reasonable doubt of failure to transfer registration. We affirm in part and reverse in part.

¶ 3

FACTS

¶ 4

Defendant was charged by traffic ticket, later supplanted by information, with possession of a controlled substance (720 ILCS 570/402(c) (West 2012)) and possession of cannabis (720 ILCS 550/4(b) (West 2012)). Additionally, defendant was charged by traffic ticket with failure to transfer registration upon transferring ownership of a vehicle (625 ILCS 5/3-501 (West 2012)) and several other traffic offenses not at issue in this appeal. The ticket for failure to transfer registration listed the nature of the violation as "Failure To Surrender Registration to [the Secretary of State] or To Transfer Registration Upon Transferring Ownership of a [Vehicle] To Another".

¶ 5

At defendant's first court appearance, the trial court called defendant's felony case number and told defendant that the court was going to give him a copy of the criminal information filed by the State and discuss it with him. The court advised defendant that the State had filed a two-count charge alleging that defendant had committed the offenses of unlawful possession of a controlled substance (count 1) and unlawful possession of cannabis (count 2). The court read the portion of the information that laid out the elements of both charges, noting that unlawful possession of a controlled substance was a Class 4 felony and unlawful possession of cannabis was a Class B misdemeanor. The trial court then admonished defendant as to the sentencing range on the Class 4 felony.

¶ 6 The court noted that defendant also had four traffic tickets, which were petty offenses for which defendant could receive only a fine. Defendant made several comments regarding the traffic tickets. The trial court then stated:

"Let me talk to you about the felony case, first of all. On that case you have the right to plead not guilty and have a trial, jury or bench trial. Furthermore, you have the right to have an attorney represent you at all future proceedings. If you can't afford your own attorney, I would appoint the public defender.

Basically today you have three choices. You can ask for more time to hire your own attorney. You can ask for the public defender, and, if you qualify, I will appoint him, or you can waive your right to an attorney and talk directly to the State's Attorney."

¶ 7 Defendant stated that he wished to talk directly to the State's Attorney. The court replied that defendant could do so and if it did not "appear to be fruitful," defendant could request the public defender. The court set the matter over for preliminary hearing. Defendant was *pro se* at the preliminary hearing. At the conclusion of the preliminary hearing, the court found that there was probable cause to believe that defendant committed the offense of possession of a controlled substance and arraigned defendant on that charge. Defendant pled not guilty and requested a jury trial.

¶ 8 Approximately one month later, at a pretrial hearing, the trial court discussed with defendant the importance of having counsel. Defendant initially stated he believed he would be better off representing himself. The trial court further discussed the benefits of being represented by counsel and told defendant he had the right to represent himself but opined that it would not

be a good decision to do so. Defendant said he had decided to represent himself because he had problems with a public defender in a prior case. Defendant eventually agreed to the appointment of the public defender with the understanding that he would be able to later "fire" the public defender and represent himself if he chose to do so.

¶ 9 At the next pretrial hearing, defendant stated that he wished to discharge the public defender and represent himself. The trial court offered to appoint a different public defender. Defendant replied: "No, sir. I feel it's best if I represent myself so I know I won't be underhanding myself. If I, you know, forget to file papers or something like that, I feel that a jury wouldn't hold that as much against me as not being able to trust the person that is representing me." The trial court then admonished defendant as to the allegations in the information regarding both counts and the possible penalties that defendant would face if convicted of each charge. The court further advised defendant that he had the right to be represented by an attorney, including the right to appointed counsel. The court explained that defendant had a constitutional right to represent himself and discussed some of the potential challenges that it would entail. Defendant replied that he had decided to represent himself.

¶ 10 A jury trial was held. Immediately prior to the start of the trial, the court again admonished defendant as to the allegations in the information, the possible sentencing ranges defendant faced if convicted, and defendant's right to appointed counsel. Defendant replied that he wished to represent himself.

¶ 11 The State moved to amend the ticket for failure to transfer registration because the ticket was filed under section 3-501 of the Illinois Vehicle Code (Code) (625 ILCS 5/3-501 (West 2012)), which the State said referred to "the person who transferred the vehicle to [defendant]," when the ticket should have charged defendant under section 3-502 of the Code (625 ILCS 5/3-

502 (West 2012)), which required the new owner to secure registration. Defendant objected to the amendment of the ticket on the date of trial, and the trial court sustained the objection. The State proceeded to prosecute defendant with the unamended ticket.

¶ 12 Following the trial, the jury found defendant guilty of all counts. The jury instructions included instructions for failure to secure new registration pursuant to section 3-502 of the Code (625 ILCS 5/3-502 (West 2012)) even though the ticket charged defendant under section 3-501 of the Code (625 ILCS 5/3-501 (West 2012)). The trial court asked defendant if he wished to have an attorney appointed for sentencing, and defendant replied that he wanted an attorney. The trial court appointed the public defender.

¶ 13 The presentence investigation report stated that defendant had two prior misdemeanor convictions for unlawful possession of cannabis for which defendant had been sentenced to incarceration in jail, conditional discharge, and the payment of fines. Defendant also had a prior ordinance violation conviction for possession of cannabis and a prior felony conviction for possession of a controlled substance.

¶ 14 The trial court sentenced defendant to: (1) 30 months' probation and 6 months' incarceration in the county jail for possession of a controlled substance; and (2) 24 months' probation for possession of cannabis, to be served concurrently. Defendant was sentenced to the minimum fines and costs on each of the traffic tickets.

¶ 15 ANALYSIS

¶ 16 I. Rule 401 Admonitions

¶ 17 On appeal, defendant argues that his convictions for unlawful possession of a controlled substance and unlawful possession of cannabis should be reversed because the trial court failed to comply with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) in that the trial court failed

to admonish him as to his right to counsel and the possible sentencing range on the unlawful possession of cannabis charge prior to the preliminary hearing. Because we find that the trial court substantially complied with Rule 401(a) and defendant knowingly and intelligently waived his right to counsel prior to the preliminary hearing, we affirm defendant's convictions for unlawful possession of a controlled substance and unlawful possession of cannabis.

¶ 18 Where a defendant is charged with an offense punishable by imprisonment, the trial court must comply with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) in order for the defendant's waiver of counsel to be valid. *People v. Campbell*, 224 Ill. 2d 80, 84 (2006). Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) provides as follows:

"(a) Waiver of Counsel. Any waiver of counsel shall be in open court.

The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge;

(2) 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; and

(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court."

¶ 19 "The purpose of Rule 401(a) is to ensure that a waiver of counsel is knowingly and intelligently made." *People v. Haynes*, 174 Ill. 2d 204, 241 (1996). Failure to strictly comply with Rule 401(a) does not automatically entitle a defendant to relief. *Id.* at 236. "Rather,

substantial compliance will be sufficient to effectuate a valid waiver if the record indicates that the waiver was made knowingly and voluntarily, and the admonishment the defendant received did not prejudice his rights." *Id.* "Substantial compliance means a deficiency in the admonishments does not prejudice the defendant, either because the defendant already knows of the omitted information or because the defendant's degree of legal sophistication makes evident his or her awareness of the omitted information." *People v. Moore*, 2014 IL App (1st) 112592, ¶ 38.

¶ 20 The record reveals that the trial court failed to strictly comply with Rule 401(a) prior to the preliminary hearing in that it failed to admonish defendant of the minimum and maximum sentencing range on the possession of cannabis charge. We find, however, that the trial court substantially complied with Rule 401(a) and defendant knowingly and intelligently waived his right to counsel prior to the preliminary hearing. The trial court advised defendant before the preliminary hearing as to the nature of both charges, including that possession of a controlled substance was a Class 4 felony and possession of cannabis was a Class B misdemeanor. The trial court also advised defendant as to the possible sentencing ranges, including the possibility of an extended-term sentence, on the Class 4 felony, the most serious offense of which defendant was charged. Finally, the trial court advised defendant that he had the right to counsel, including the right to appointed counsel if he was indigent.

¶ 21 Because a review of the entire record demonstrates that defendant knowingly and voluntarily waived his right to counsel despite the trial court's failure to admonish him as to the sentencing range for unlawful possession of cannabis prior to the preliminary hearing, the trial court's substantial compliance with Rule 401(a) was sufficient to effectuate a valid waiver of counsel. *People v. Johnson*, 119 Ill. 2d 119, 132 (1987). The record shows that defendant

persisted in his desire to represent himself until the conclusion of his trial, even after he was admonished as to the sentencing range for unlawful possession of cannabis. Subsequent to the preliminary hearing, defendant advised the court that he was reluctant to accept appointed counsel because he had bad experiences with public defenders in the past. Defendant eventually accepted appointed counsel prior to trial but asked to discharge counsel at the following pretrial hearing, stating that it was best that he represented himself so that he would know he was not "under-handing" himself. The reasons given by defendant throughout the proceedings for refusing appointed counsel had nothing to do with the possible sentence he faced if convicted of unlawful possession of cannabis. See *People v. Coleman*, 129 Ill. 2d 321, 338-39 (1989) (holding that the defendant's waiver was knowing and intelligent despite the court's failure to admonish him as to the minimum sentence, in part, because the record showed "that the defendant had specific, legitimate reasons for waiving his right to counsel, which demonstrate[d] that the defendant would have waived counsel regardless of the length of the minimum sentence prescribed by law.").

¶ 22 Additionally, defendant's prior criminal record, including two misdemeanor convictions for unlawful possession of cannabis, support our finding that defendant's waiver of counsel was knowing and intelligent despite the trial court's failure to strictly comply with Rule 401(a). Courts have found that knowledge acquired by a defendant during prior, similar criminal proceedings is relevant to the question of whether a defendant knowingly and intelligently waived his right to counsel despite a noncompliant admonishment. See, e.g., *People v. Black*, 68 Ill. App. 3d 309, 313 (1979); see also *Johnson*, 119 Ill. 2d at 133 (holding that the waiver of counsel of a defendant charged with murder was knowing and voluntary despite deficient Rule

401(a) admonishments in part because of defendant's lengthy criminal history, including a prior conviction for murder for which he was represented by counsel).

¶ 23 In *Black*, 68 Ill. App. 3d at 313, the court held that the trial court substantially complied with Rule 401 and that the defendant knowingly and intelligently waived his right to counsel despite the court's failure to admonish defendant as to the sentencing range on armed robbery. *Id.* The trial court advised the defendant as to the nature of the offense, that the offense was a Class 1 felony punishable by imprisonment, and that he had a right to court-appointed counsel. *Id.* The court found that the defendant knew he could receive a lengthy prison sentence if convicted because the defendant had "spent most of his adult life" in prison for numerous armed robbery convictions. *Id.* Despite this, the defendant was adamant that he wanted to represent himself and repeatedly sought the dismissal of court-appointed counsel. *Id.*

¶ 24 As in *Black*, the trial court in the instant case informed defendant of all the Rule 401(a) information other than the sentencing range for the unlawful possession of cannabis charge. Also like *Black*, defendant's prior convictions for the same or similar crimes demonstrate that he was aware of the potential sentence that he could receive for misdemeanor possession of cannabis.

¶ 25 We reject defendant's contention that *Black* is distinguishable. Defendant calls our attention to the fact that the record does not specify the class of misdemeanor of defendant's prior possession of cannabis convictions. We emphasize that the court in *Black* made no explicit finding that the defendant's prior convictions were the same class of offense as the one at issue in that case. Defendant further argues that *Black* is distinguishable because the defendant in *Black* faced the same charges so many times before that the record demonstrated he had actual knowledge of the sentencing range. However, the *Black* court did not find that the defendant

knew his exact sentencing range due to his prior convictions. Rather, the *Black* court found that, considering the defendant's prior convictions for the same or similar offenses, the defendant "knew that he could receive a lengthy prison sentence upon conviction." *Black*, 68 Ill. App. 3d at 313.

¶ 26 Defendant also contends that in order to find that he knowingly and intelligently waived his right to counsel, we must find that the record contains "affirmative evidence" that defendant knew all of the Rule 401(a) information at the time he waived his right to counsel prior to the preliminary hearing. Stated another way, defendant argues that because there is no evidence in the record that defendant knew the sentencing range for unlawful possession of cannabis at the time of his first waiver, he did not knowingly waive his right to counsel prior to the preliminary hearing.

¶ 27 In support of his argument, defendant cites *Coleman*, 129 Ill. 2d 321 and *Johnson*, 119 Ill. 2d 119. Neither case, however, stands for the proposition that the record must show that defendant knew all of the Rule 401(a) information at the time of the waiver in order for substantial compliance to be sufficient. The trial courts in both *Coleman* and *Johnson* either failed to state or failed to state correctly the minimum sentence the defendants could receive for first degree murder. *Coleman*, 129 Ill. 2d at 334-35; *Johnson*, 119 Ill. 2d at 132. However, the courts found substantial compliance in light of the fact that the defendants were advised that they could receive a maximum sentence of death. *Coleman*, 129 Ill. 2d at 334-35; *Johnson*, 119 Ill. 2d at 132. While the courts in both *Coleman* and *Johnson* supported their findings of substantial compliance with evidence in the record that the defendants were aware of the omitted Rule 401(a) information, neither case stated that a defendant must have knowledge of all the Rule 401(a) information at the time of waiver or that said knowledge was necessary in order to find

that the defendants knowingly waived the right to counsel. See *Coleman*, 129 Ill. 2d at 334-35; *Johnson*, 119 Ill. 2d at 132-33.

¶ 28 In *Haynes*, 174 Ill. 2d 204, the court held that the trial court substantially complied with Rule 401(a) where the trial court admonished the defendant as to the minimum and maximum sentence for his first degree murder charge but not his burglary charge. *Id.* at 243-44. In so holding, the court did not consider as part of its analysis whether the record showed the defendant knew the omitted Rule 401(a) information at the time of waiver. *Id.* Rather, the court reasoned that because the defendant was fully admonished as to the sentencing range for the most serious charge against him, including the possibility of death, "the importance of the defendant's having specific knowledge of the minimum and maximum sentences for the significantly less serious charge of burglary clearly 'pales in comparison.'" *Haynes*, 174 Ill. 2d at 243 (quoting *Coleman*, 129 Ill. 2d at 334). Additionally, the court considered evidence from the record showing that the defendant repeatedly expressed a desire to represent himself throughout the proceedings and understood that he was entitled to legal representation. *Haynes*, 174 Ill. 2d at 243-44.

¶ 29 In light of the above, substantial compliance does not hinge on whether defendant knew all of the Rule 401(a) information at the time of waiver. Instead, we consider whether "a review of the entire record indicates that defendant's waiver of his right to counsel was made knowingly and voluntarily" despite the omitted Rule 401(a) information. *Johnson*, 119 Ill. 2d at 132. Here, we find the trial court substantially complied with Rule 401(a) prior to defendant's preliminary hearing and defendant knowingly and intelligently waived his right to counsel.

¶ 30 We note defendant also argues on appeal that the trial court failed to advise him of his right to appointed counsel on the misdemeanor possession of cannabis charge. However the

record does not support defendant's argument. At defendant's first appearance, the court stated: "Let me talk to you about the felony case, first of all. On that case you have the right to plead not guilty ***. Furthermore, you have the right to have an attorney represent you at all future proceedings." Defendant argues that since the trial court referred only to the "felony case," it never advised defendant that he had the right to counsel on the misdemeanor charge.

¶ 31 The record shows that when the trial court referred to the "felony case," the court was distinguishing defendant's traffic tickets, which it had just been discussing with defendant, from the case in which he was charged with both unlawful possession of a controlled substance and unlawful possession of cannabis, which had a felony case number. The court had just discussed the criminal information with defendant, which listed both counts on the same page. Under these circumstances, the trial court adequately advised defendant that he was entitled to counsel on both charges.

¶ 32 II. Reversal of Conviction for Failure to Transfer Registration

¶ 33 Defendant argues that his conviction for failure to transfer registration upon transferring ownership of a vehicle in violation of section 3-501 of the Code (625 ILCS 5/3-501 (West 2012)) should be reversed outright because he was not proven guilty beyond a reasonable doubt of the charged offense but rather was found guilty of the uncharged offense of failure to secure new registration (625 ILCS 5/3-502 (West 2012)). The State concedes that defendant's conviction for failure to transfer registration should be reversed. We accept the State's concession of error and reverse outright defendant's conviction for failure to transfer registration (625 ILCS 5/3-501 (West 2012)).

¶ 34 CONCLUSION

¶ 35 The judgment of the circuit court of Marshall County is affirmed in part and reversed in part.

¶ 36 Affirmed in part and reversed in part.