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2015 IL App (3d) 130624-U

Order filed June 9, 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 13th Judicial Circuit,
)	La Salle County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-13-0624
v.)	Circuit No. 13-CF-62
)	
CARLOS A. BROWN,)	Honorable
)	Cynthia M. Raccuglia,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McDade and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court failed to substantially comply with the requirements of Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). Consequently, we reverse defendant's conviction and remand for a new trial.

¶ 2 Defendant, Carlos A. Brown, appeals his conviction for driving while license revoked (DWLR) (625 ILCS 5/6-303(a), (d-3) (West 2012)), arguing that the trial court failed to comply with the admonishment requirement of Illinois Supreme Court Rule 401(a) (eff. July 1, 1984).

We reverse and remand.

¶ 3

FACTS

¶ 4

Defendant was charged by information, later supplanted by indictment, with DWLR (625 ILCS 5/6-303(a), (d-3) (West 2012)), a Class 4 felony due to defendant's prior convictions. At defendant's first appearance hearing, the prosecutor stated that defendant was charged with DWLR, a Class 4 felony. The prosecutor further stated that defendant had been given a copy of the information, which alleged that on or about January 25, 2013, defendant knowingly drove a vehicle bearing an Illinois registration upon a public highway in Streator, Illinois, at a time when his driver's license was revoked due to a conviction for driving under the influence of alcohol. The information then listed the prior offenses which rendered the charge a Class 4 felony.

¶ 5

The trial court appointed a public defender to represent defendant. Defendant stated that he did not understand what he was being charged with. The trial court replied, "That means you were driving on the road with a license that was revoked."

¶ 6

At the next hearing, a public defender represented defendant. The court stated that defendant was charged with DWLR, a Class 4 felony. A one-count indictment was tendered to defendant, and the public defender waived reading of the indictment. Defendant pled not guilty and demanded a jury trial. The public defender advised the court that defendant wished to proceed *pro se*. The trial court discouraged defendant from representing himself, but told him to tell the court in writing why he believed he should proceed *pro se*.

¶ 7

Defendant filed a letter requesting that he be permitted to represent himself, which stated:

"I choose to waive counsel and represent myself because I am fully aware of the nature of the charge, the minimum and maximum sentence and penalties defendant may be subjected to due to prior convictions or consecutive sentences.

I understand that I have the right to counsel and if indigent, one will be appointed to me by the court."

The letter went on to list the reasons why defendant wanted to represent himself, which included various negative experiences he had with public defenders in the past.

¶ 8 At the next hearing, the trial court stated:

"Frankly, I was quite impressed when I read exactly what you did and why you want to represent yourself. I still think you are making a mistake *** but the standard to be applied you were well aware of and did a good job of telling me your knowledge of the law."

The court went on to advise defendant what would be required if he chose to represent himself at trial and the benefits of being represented by counsel. Defendant stated that he understood and still wished to proceed *pro se*.

¶ 9 Thereafter, defendant filed a motion to dismiss indictment. At a hearing on the motion, the prosecutor stated that he believed that defendant did not understand the difference between a grand jury and a trial jury such that defendant believed the State had already presented his case and that he had been found guilty. Defendant confirmed that he believed he had already been found guilty. The trial court denied the motion.

¶ 10 Defendant agreed to a stipulated bench trial. The stipulation stated that, if called to testify, Officer Aaron Smith of the Streator police department would testify that on the date of defendant's arrest, he was looking for a vehicle that had been involved in an accident. Smith stopped a vehicle being driven by defendant on a public way in Streator. Smith verified that defendant's license was revoked and took him into custody. Additionally, the State presented

certified copies of three of defendant's prior convictions for DWLR, which the State marked as exhibits.

¶ 11 After the prosecutor read the stipulation, defendant asked if he was charged with a Class 4 felony. The trial court replied in the affirmative. Defendant then stated he thought that DWLR was a Class A misdemeanor to be enhanced to a Class 4 felony. The trial court stated that was correct. Defendant asked if it was enhanced before it was charged and then enhanced again. The trial court replied that the State had charged him with a Class 4 felony for DWLR, not a Class A misdemeanor.

¶ 12 Based on the stipulated evidence, the trial court found defendant guilty of DWLR. The court explained that defendant was not being convicted of a Class A misdemeanor, only a Class 4 felony.

¶ 13 Defendant filed a motion in arrest of judgment. At the hearing on the motion, defendant argued that there was no statute authorizing a Class 4 felony charge for DWLR. Defendant contended that DWLR had to be charged as a Class A misdemeanor and could only be enhanced to Class 4 felony at sentencing. The trial court denied the motion.

¶ 14 The presentence investigation report revealed that defendant had two prior Class 4 felony convictions for DWLR, for both of which he was sentenced to 30-month terms of imprisonment. Defendant also had a prior Class A misdemeanor conviction for DWLR and Class A misdemeanor convictions for driving on a suspended license. Additionally, defendant had prior convictions for obstruction of justice, possession of cannabis, possession of a controlled substance, domestic battery, and various traffic offenses.

¶ 15 The trial court sentenced defendant to an extended-term sentence of 3½ years' imprisonment. At the conclusion of the sentencing hearing, the trial court asked defendant if he

would like an attorney appointed for his motion to reconsider sentence. Defendant replied that he would like an attorney, and the trial court appointed the public defender.

¶ 16 Subsequently, defendant filed a motion to waive counsel. The court vacated the public defender's appointment and allowed defendant to proceed *pro se* without giving Illinois Supreme Court Rule 401(a) admonishments. Defendant filed a motion to reconsider sentence and an amended motion to reconsider sentence. The amended motion stated:

"Defendant was wrongly convicted of felony DWLR which was subjected to extended term 1 to 6. Defendant was to be charged misdemeanor [*sic*] DWLR and receive a sentence pursuant to Criminal Procedure 111-3(c) which states: It does not include an increase in the sentence applied within the same level of classification of offense. Defendant committed class A misdemeanor. Enhanced classification to class 4 felony. It does not include an increase in sentence applied. 1 to 3 not 1 to 6."

¶ 17 At the hearing on defendant's motion to reconsider, the State noted that the offenses that made defendant eligible for extended-term sentencing had nothing to do with his prior DWLR convictions. The trial court denied defendant's motion to reconsider sentence.

¶ 18 ANALYSIS

¶ 19 On appeal, defendant argues that his conviction for DWLR should be reversed because the trial court failed to comply with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). Because we find that the trial court failed to substantially comply with Rule 401(a), we reverse defendant's conviction and remand for a new trial.

¶ 20 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). Rule 401(a) 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." Ill. S. Ct. R. 401(a) (eff. July 1, 1984).

¶ 21 "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. In determining whether substantial compliance with Rule 401(a) is sufficient, 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. *People v. Johnson*, 119 Ill. 2d 119, 132 (1987).

¶ 22 The record reveals that the trial court failed to strictly comply with Rule 401(a) in that it failed to admonish defendant in open court of the nature of the charge and the sentencing range at the time of waiver.

¶ 23 Additionally, we find that the trial court failed to substantially comply with Rule 401(a). We acknowledge that defendant had been advised of the nature of the charges against him prior to his waiver. The trial court admonished defendant at prior hearings that DWLR meant that he was driving on the road when his license was revoked and that he was charged with a Class 4 felony. However, at no point prior to defendant's waiver of counsel did the trial court advise defendant as to the possible sentencing range he would be subjected to if convicted, including his eligibility for extended-term sentencing. See, e.g., *People v. LeFlore*, 2013 IL App (2d) 100659, ¶ 53 (no substantial compliance with Rule 401(a) where the court misinformed defendant as to the minimum and maximum sentences that he could receive if convicted); *People v. Bahrs*, 2013 IL App (4th) 110903, ¶ 14 (no substantial compliance with Rule 401(a) where the court failed to inform defendant that the sentence on one of his charges would run consecutively to the other charges); *People v. Koch*, 232 Ill. App. 3d 923, 927-28 (1992) (no substantial compliance with Rule 401(a) where the court misinformed defendant of the maximum sentence at the time defendant waived counsel and defendant was sentenced in excess of the maximum sentence of which he was admonished).

¶ 24 We reject the State's argument that the letter written by defendant requesting that he be permitted to represent himself establishes that defendant knew the Rule 401(a) information.

Significantly, the letter does not show that defendant had specific knowledge of the nature of the actual charge and the possible sentencing range. Rather, the letter generically copies the language of Rule 401(a). Defendant's subsequent questions confirm his lack of knowledge. Specifically, the record shows that defendant was confused throughout the proceedings as to basic legal principles, such as the State's ability to charge DWLR as a Class 4 felony based on prior convictions and the difference between a grand jury and a trial jury.

¶ 25 Furthermore, the record in this case does not support a finding that he possessed a level of legal sophistication that made apparent his awareness of the omitted Rule 401(a) information. Again, we emphasize that defendant's comments and pleadings throughout the proceedings indicate that he was confused as to why he was charged with a Class 4 felony rather than a Class A misdemeanor. Defendant's motion to reconsider sentence also indicates that defendant did not understand why extended-term sentencing applied to his charge. Defendant's two prior Class 4 felony convictions for DWLR do not necessarily show that defendant was aware of the potential penalties as neither conviction resulted in an extended-term sentence of imprisonment.

¶ 26 CONCLUSION

¶ 27 The judgment of the circuit court of La Salle County is reversed and the cause is remanded for a new trial.

¶ 28 Reversed and remanded.