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2015 IL App (3d) 130957-U

Order filed January 13, 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, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0957
JEFFREY SKAGGS,)	Circuit No. 07-CF-1442
Defendant-Appellant.)	Honorable Stephen A. Kouri, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's sentence was not void where it conformed with statutes in effect both at the time the offense was committed and at the time of sentencing.
- ¶ 2 Defendant, Jeffrey Skaggs, pled guilty to unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(a)(2)(B) (West 2006)). At both the plea hearing and sentencing, defendant was admonished that he would be eligible for only 7½ days of good-conduct credit for every month served in prison. Defendant did not file a direct appeal, but did file a postconviction petition, which was dismissed at the second stage of postconviction

proceedings. On appeal from that dismissal, defendant has abandoned the constitutional claims set forth in the original petition, instead arguing that his sentence is void. Defendant contends that under the statute in effect at the time of his plea hearing, he is eligible for day-for-day good-conduct credit. We affirm.

¶ 3

FACTS

¶ 4

Defendant was charged by indictment with unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(a)(2)(B) (West 2006)). The indictment alleged that on or about December 5, 2007, defendant "knowingly and unlawfully possess[ed] with the intent to deliver 100.0 grams or more but less than 400.0 grams of a substance containing a controlled substance, cocaine." On September 25, 2008, pursuant to a partially negotiated plea agreement, defendant pled guilty to unlawful possession of a controlled substance with the intent to deliver. Under the agreement, defendant's possible sentence would be capped at 12 years' imprisonment.

¶ 5

At the plea hearing, the parties disputed the amount of good-conduct credit defendant would be eligible for under the plea. The State argued that defendant would receive only 7½ days of credit for every month served, and would thus have to serve 75% of his sentence. Defendant argued that he would be eligible for day-for-day credit, and would therefore have to serve only 50% of his sentence. The discussion between the parties and the court centered on a dispute over which of two acts amending the statute entitled "Rules and Regulations for Early Release" was in effect at the time. See 730 ILCS 5/3-6-3 (West 2006). With acquiescence from the parties, the court chose to delay its ruling on the matter until sentencing. In admonishing defendant, however, the court did advise him that it was possible he would receive no more than 7½ days of good-conduct credit for each month served.

¶ 6

The State provided the factual basis for defendant's plea. The State expected that

evidence would show, *inter alia*, that on December 5, 2007, the Peoria police department received information from an individual that he could purchase cocaine from defendant. After setting up surveillance, officers saw defendant carrying a plastic bag containing what was later confirmed to be 41.1 grams of cocaine. Officers then obtained a search warrant and discovered 125.3 additional grams of cocaine. Defendant agreed that the State would be able to produce such evidence.

¶ 7 The court found that the plea was knowingly and voluntarily made, but also stated that it was "just a little uncomfortable admonishing [defendant] as to potential penalties *** if there's any kind of a dispute." The court chose to put the matter over for a week, stating, "then we can decide what to do before I do accept any partial plea agreement." The cause was set "for possible plea October 2nd." On October 2, 2008, upon the granting of a continuance, the court noted: "Matter was continued to this day from start of a plea on September 25. Some questions have come up about whether that plea came to fruition, let's put it that way[.]"

¶ 8 Following an additional continuance, a sentencing hearing was held on March 5, 2009. The issue of whether the guilty plea had been finalized was not addressed. The transcript of the hearing also indicates that the court, sometime prior, had decided that defendant would have to serve 75% of his sentence. After hearing arguments concerning aggravating and mitigating factors, the court sentenced defendant to a term of 12 years' imprisonment, of which defendant would have to serve 75%.¹ The court's sentencing order reflected this sentence, as well as a term of three years' mandatory supervised release.

¶ 9 Defendant did not file a direct appeal. However, on March 2, 2012, defendant filed a

¹ The court stated that this ruling was "[p]ursuant to [its] previous finding," though the record is silent as to when that ruling was made.

petition for postconviction relief. In the petition, defendant argued, *inter alia*, that he had been sentenced in violation of the constitutional prohibition against *ex post facto* laws. Specifically, defendant contended that the offense to which he pled guilty had been committed as early as May of 2007, as evidenced by the complaint for a search warrant attached to the petition. Defendant maintained that because the statute under which he was required to serve at least 75% of his sentence was effective as of August 13, 2007, his constitutional rights had been violated. The court docketed defendant's petition for second-stage proceedings.

¶ 10 The State filed a motion to dismiss in which it argued that defendant's contentions could have been raised on direct appeal. Defendant's failure to bring those issues in a direct appeal, the State reasoned, resulted in a forfeiture of those issues. The State also argued that the issues raised in defendant's petition were without merit, pointing out that defendant had been charged with—and pled guilty to—possession with intent to deliver on December 5, 2007. Any offenses set out in the complaint for a search warrant had not been charged. The court granted the State's motion in part, allowing defendant's petition to proceed only to the extent that it challenged defendant's sentencing.

¶ 11 On June 7, 2013, the court held a further hearing on the lone remaining issue: whether defendant was ordered to serve the correct percentage of his sentence. The State renewed the arguments made in its motion to dismiss, including that defendant had waived the issue. On October 24, the court allowed, in full, the State's motion to dismiss.

¶ 12 Defendant appeals, arguing that he is eligible for day-for-day good-conduct credit and that the court's order mandating that he serve 75% is void.

¶ 13 ANALYSIS

¶ 14 We note at the outset of our analysis that defendant's argument on appeal is distinct from that made in his original petition. At the trial level, defendant argued that he should have been sentenced under the statute in effect at the time he first committed the offense of unlawful possession of a controlled substance with the intent to deliver, and that the court's decision to sentence him under the statute in effect on the date of the charged offense was a violation of the prohibition on *ex post facto* laws. On appeal, however, defendant argues for the first time that his sentence is void because, under the statute in effect at the time of his guilty plea, he was eligible for day-for-day good-conduct credit, rather than 7½ days per month.

¶ 15 Defendant has thus abandoned the constitutional challenges set out in his original postconviction petition. However, an attack on a void judgment may be raised "at any time or in any court, either directly or collaterally." *People v. Thompson*, 209 Ill. 2d 19, 25 (2004). A sentence is void if it does not conform to a statutory requirement. *Thompson*, 209 Ill. 2d 19. Whether a sentence is void is a matter of law, which we review *de novo*. *People v. Cortez*, 2012 IL App (1st) 102184.

¶ 16 Defendant contends that from the time of his offense through his sentencing hearing, multiple versions of section 3-6-3 of the Unified Code of Corrections, entitled "Rules and Regulations for Early Release," were in effect. See 730 ILCS 5/3-6-3 (West 2006). One version of this statute, effective August 13, 2007, enumerates possession of a controlled substance with intent to deliver as an offense for which an offender "shall receive no more than 7.5 days good conduct credit for each month of his or her sentence of imprisonment." Pub. Act. 95-134 (eff. Aug. 13, 2007) (adding 730 ILCS 5/3-6-3(a)(2)(v)). A second version of the statute, effective June 1, 2008, replaced the list of drug-related offenses in section (a)(2)(v)—including possession of a controlled substance with intent to deliver—with the offense of luring a minor. Pub. Act.

95-625 (eff. June 1, 2008) (amending 730 ILCS 5/3-6-3 (West 2008)). Both versions of the statute hold that, for offenses not otherwise enumerated, "[e]ach day of good conduct credit shall reduce by one day the prisoner's period of imprisonment or recommitment under Section 3-3-9." 730 ILCS 5/3-6-3(a)(2.1) (West 2006); 730 ILCS 5/3-6-3(a)(2.1) (West 2008).

¶ 17 Defendant argues that of the two conflicting statutes, effect must be given to that which requires defendant to serve only 50% of his sentence, because that version of the statute was acted upon more recently. See 5 ILCS 70/6 (West 2008) ("In case of an irreconcilable conflict the Act last acted upon by the General Assembly is controlling to the extent of such conflict.") Defendant urges that the same result should be reached via the rule of lenity.

¶ 18 Defendant's argument, however, has no bearing on whether his sentence was void. A criminal defendant is "entitled to be sentenced under either the law in effect at the time the offense was committed or that in effect at the time of sentencing." *People v. Hollins*, 51 Ill. 2d 68, 71 (1972). On December 5, 2007, when defendant committed the offense to which he pled guilty, the controlling statute required an offender convicted of unlawful possession of a controlled substance with the intent to deliver to serve at least 75% of his sentence. Pub. Act. 95-134 (eff. Aug. 13, 2007) (adding 730 ILCS 5/3-6-3(a)(2)(v) (West 2006)). The differing versions of the statute identified here by defendant was resolved by Public Act 95-773, effective January 1, 2009, which, again, listed unlawful possession with intent to deliver as an offense for which the offender shall receive only 7½ days of good-conduct credit for each month served, while the offense of luring a minor was moved to section (a)(2)(vi). See 730 ILCS 5/3-6-3(a)(2)(v) (West 2008). This is the version of the statute that was in effect when defendant was sentenced on March 5, 2009. Defendant concedes that by January 1, 2009, the General Assembly had resolved the conflicting statutes.

¶ 19 The present case certainly presents a novel set of facts, in that the controlling statute changed twice—once between the commission of the crime and the plea hearing, and again between the plea hearing and sentencing. Defendant, however, does not now challenge his guilty plea or otherwise argue that he was not given the benefit of his bargain. Indeed, defendant was admonished at the plea hearing that he would only be eligible for 7½ days per month of good-conduct credit, and was reminded again before sentencing. Defendant's sentence, including the order that he serve a minimum of 75% of the sentence, conformed with the statutes in effect both at the time the offense was committed and at the time of sentencing. The sentence, therefore, is not void.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 22 Affirmed.