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2015 IL App (3d) 140464-U

Order filed April 24, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 14th Judicial Circuit,
)	Henry County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-14-0464
v.)	Circuit No. 10-CF-426
)	
RAYMOND M. MEROLLA-DISANZA,)	Honorable
)	Richard A. Zimmer,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's motion to modify fines and court costs.

¶ 2 Defendant, Raymond M. Merolla-DiSanza, appeals the trial court's denial of his motion to modify fines and court costs pursuant to section 5-9-2 of the Unified Code of Corrections (Code) (730 ILCS 5/5-9-2 (West 2012)). We affirm.

¶ 3 FACTS

¶ 4 Defendant was charged by information with cannabis trafficking (720 ILCS 550/5.1(a) (West 2010)), unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(g) (West 2010)), and unlawful possession of cannabis (720 ILCS 550/4(g) (West 2010)). Defendant entered into a fully negotiated plea agreement whereby defendant agreed to plead guilty to the charge of unlawful possession of cannabis with intent to deliver in exchange for the State's agreement to dismiss the remaining charges and a sentence of 7½ years' imprisonment plus 3 years' mandatory supervised release (MSR). The agreement also included the following assessments: (1) \$275,000 street value fine; (2) \$3,000 drug assessment; (3) \$100 lab analysis fee; (4) \$100 trauma center fee; (5) \$25 drug traffic prevention fund fee; (6) \$50 performance-enhancing substance testing fund fee; (7) \$200 DNA analysis fee; and (8) court costs. The trial court accepted the plea agreement.

¶ 5 During the plea hearing, the trial court made the following statement to defendant:

"And as I heard [defense counsel] telling you before we went on the record, *** I don't expect you to pay the \$275-, but it has to be ordered, and within 30 days of your release, you do have to reappear here to get a payment order for the monies that you owe, and it will be a monthly amount that you can pay and still live your life."

Defendant asked how the payment order hearing would be arranged. The court replied: "Any time within 30 days, you show up here, and I'll give you a payment order. It might be [\$]25 a month, it might be [\$]50 a month. It depends on your situation and your outlook."

¶ 6 Approximately one month after defendant was released from prison, he filed a motion to modify fines and court costs, asking the court to modify the \$275,000 street value fine pursuant to section 5-9-2 of the Code (730 ILCS 5/5-9-2 (West 2012)). In the motion, defendant argued

that it was unlikely that he would be able to pay the \$275,000 street value fine within his lifetime because he was unemployed, had no assets, was required to pay costs associated with MSR, had a poor credit rating, and had other outstanding debts.

¶ 7 Upon hearing arguments, the trial court denied defendant's motion, reasoning that defendant entered into a negotiated plea and the fine was imposed as a statutorily required part of the sentence. The court stated: "I don't see anything here that would justify reducing or vacating a fine. Obviously, it's going to be a huge hardship on him, that's the nature of these fines. So I would deny the motion to modify or vacate the fines and costs." The court then set the matter over for a status hearing to set up a payment plan.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant argues that his due process rights were violated when the trial court denied his motion to modify. Specifically, defendant contends he is entitled to modification in light of the fact that the trial court made "an implied promise that the street value fine would not be enforced." Because this argument was not raised in defendant's motion to modify, we deem it forfeited. *People v. Four Thousand Eight Hundred Fifty Dollars (\$4,850) United States Currency*, 2011 IL App (4th) 100528, ¶ 19 ("A nonjurisdictional argument made for the first time on appeal is considered to be forfeited.").

¶ 10 Defendant argues that this argument was not forfeited because constitutional challenges can be raised at any time, even for the first time on appeal. In support of his position, defendant cites cases holding that voidness challenges stemming from the unconstitutionality of a sentence, (*People v. Luciano*, 2013 IL App (2d) 110792), or the unconstitutionality of a criminal statute, (*People v. Guevara*, 216 Ill. 2d 533, 542 (2005)), can be raised at any time. However, none of the cases cited by defendant stand for the broad proposition that any constitutional challenge can

be raised at any time. "[T]he mere fact that an alleged error affects a constitutional right does not provide a separate ground for review, for 'even constitutional errors can be forfeited.'" *People v. Cosby*, 231 Ill. 2d 262, 272-73 (2008) (quoting *People v. Allen*, 222 Ill. 2d 340, 352 (2006)). Defendant's due process claim does not implicate the concerns addressed in *Luciano* and *Guevara*.

¶ 11 Even if we were to excuse defendant's forfeiture and address the merits of his due process claim, defendant fails to establish that the trial court abused its discretion in denying his motion to modify.¹ The motion was filed approximately one month after defendant was released from custody and merely alleged that defendant had not found a job, had no assets, and had other debts. The motion did not indicate that anything prevented defendant from obtaining employment other than his ex-offender status. As the trial court noted, it is in the nature of street value fines to be a financial hardship on criminal defendants.

¶ 12 Upon finding the trial court did not abuse its discretion, we reject defendant's argument that the trial court modified the terms of the plea agreement by making an "implied promise" that defendant would not have to pay the street value fine. Citing *People v. Whitfield*, 217 Ill. 2d 177 (2005), defendant argues that the street value fine must be vacated because enforcement of the fine would breach his plea agreement with the State, as modified by the trial court, and violate due process by denying defendant the benefit of his bargain.

¹ The use of the word "may" in section 5-9-2 of the Code (730 ILCS 5/5-9-2 (West 2012)) indicates that the revocation of fines is a matter within the discretion of the trial court. *People v. Reed*, 177 Ill. 2d 389, 393 (1997). "A trial court's exercise of discretion is subject to an abuse of discretion standard of review." *In re A.B.*, 308 Ill. App 3d 227, 234 (1999).

¶ 13 In *Whitfield*, the defendant entered into a fully negotiated plea agreement but was not advised by the prosecutor or the trial court that a statutorily required three-year term of MSR would be imposed following the defendant's prison sentence. *Whitfield*, 217 Ill. 2d at 179-80. The *Whitfield* court found that the defendant's due process rights were violated because he pled guilty in exchange for a specific sentence but, since the MSR term could not be legally stricken, received a different, more onerous sentence than the one agreed to. *Id.* at 189. The *Whitfield* court reduced the defendant's imprisonment term by three years so that the defendant would receive the benefit of the bargain he reached with the State. *Id.* at 202-03.

¶ 14 Unlike the MSR term in *Whitfield*, the street value fine in the present case was expressly included in defendant's plea agreement with the State and was ordered by the court. The court made no "implied promise" that defendant would not have to pay at least part of the street value fine such as to alter the terms of the plea agreement. Rather, the trial court expressly ordered that the street value fine be assessed against defendant and told defendant that he would have to make monthly payments, likely in the amount of \$25 to \$50 per month, once he was released from prison. Thus, the enforcement of the street value fine did not violate defendant's right to due process by depriving defendant of the benefit of his bargain.

¶ 15 Last, defendant makes the conclusory statement that the trial court's denial of his motion to modify violates the eighth amendment prohibition against excessive fines, without any further argument or citation to authority. As this argument was not made in defendant's motion to modify, we deem it forfeited as well. *Four Thousand Eight Hundred Fifty Dollars (\$4,850) United States Currency*, 2011 IL App (4th) 100528, ¶ 19. Even if the eighth amendment argument had been made in the motion to modify, we would deem the issue waived because it was not sufficiently presented on appeal. *Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1994).

See also *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986) ("A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented.").

¶ 16

CONCLUSION

¶ 17

The judgment of the circuit court of Henry County is affirmed.

¶ 18

Affirmed.