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2015 IL App (3d) 140625-U

Order filed May 15, 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 9th Judicial Circuit,
)	Knox County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-14-0625
v.)	Circuit No. 12-CF-171
)	
ANGEL HOLLOWAY,)	Honorable
)	Paul L. Mangieri,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant pled guilty to two offenses, both of which alleged the same act as a factual basis. Defendant filed a motion to reconsider sentence, but did not raise a one-act, one-crime claim in the trial court. On review, the one-act, one-crime error is reversible under the plain error doctrine.
- ¶ 2 Defendant, Angel Holloway, and the State entered a plea agreement, under which defendant pled guilty to obstruction of justice (720 ILCS 5/31-4(a)(1) (West 2010)) and endangering the health or life of a child (720 ILCS 5/12-21.6 (West 2010)). The factual basis for both charges alleged that defendant destroyed a letter detailing the sexual abuse suffered by

defendant's daughter. On appeal, defendant raises for the first time her claim that her convictions violate one-act, one-crime principles. We conclude that defendant's convictions violate one-act, one-crime principles and vacate the lesser conviction under the plain error doctrine.

¶ 3

FACTS

¶ 4

The State charged defendant with one count of obstruction of justice (720 ILCS 5/31-4(a)(1) (West 2010)) and six counts of endangering the life or health of a child (720 ILCS 5/12-21.6 (West 2010)). The parties reached a plea agreement pursuant to which defendant would plead guilty to obstruction of justice and one count of endangering a child, while the State would dismiss the remaining counts.

¶ 5

At the guilty plea hearing, the court read the charges to defendant. Defendant took issue with the factual basis supporting the charge of endangering the life or health of a child. The charging information alleged that defendant had endangered her minor daughter by allowing defendant's paramour to sexually abuse the daughter. Defendant requested that the State amend the language because defendant claimed not to have known about any sexual abuse. The plea hearing was postponed while the State amended the charge for endangering the life or health of a child. After the amendment, both the charges for obstruction and endangering the life or health of a child claimed that defendant destroyed a letter from her minor daughter detailing the sexual abuse committed by defendant's paramour against the minor.

¶ 6

Defendant pled guilty to the amended charges. The court sentenced defendant to three years' imprisonment for obstruction of justice and 364 days in the county jail for endangering the life or health of a child.

¶ 7 Defendant filed a motion to reduce sentence on the obstruction of justice charge, arguing for a sentence of probation. Defense counsel did not file the certificate required by Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). The judge denied the motion.

¶ 8 On appeal, this court remanded the cause, ordering the parties to "start anew and strictly comply with the requirements of Supreme Court Rule 604(d)." The mandate for the court's order was issued on June 4, 2014. *People v. Holloway*, No. 3-14-0059 (May 8, 2014) (dispositional order).

¶ 9 On August 5, 2014, defendant filed a new motion to reduce sentence, with a Rule 604(d) certificate attached. The trial court again denied the motion.

¶ 10 ANALYSIS

¶ 11 On appeal, defendant's sole argument is that we must vacate her conviction for endangering the life or health of a child because that offense arose out of the same act as the obstruction of justice offense. The State responds that the present appeal must be dismissed for lack of jurisdiction because defendant's second motion to reduce sentence was untimely. In the alternative, the State argues that defendant forfeited her one-act, one-crime claim by failing to raise it in the trial court.

¶ 12 I. Jurisdiction

¶ 13 The State claims that the present appeal must be dismissed because defendant failed to comply with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013) by failing to file a postsentencing motion within 30 days of this court issuing its mandate ordering the case remanded for Rule 604(d) proceedings.

¶ 14 Rule 604(d) provided that "[n]o appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed,

files in the trial court a motion to reconsider the sentence *** or *** a motion to withdraw the plea of guilty and vacate the judgment." Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013).

¶ 15 The State relies on *People v. Flowers*, 208 Ill. 2d 291 (2003), in support of its argument that the present appeal must be dismissed. *Flowers* held that "[t]he failure to file a timely Rule 604(d) motion precludes the appellate court from considering the appeal on the merits." *Id.* at 301. The State attempts to expand the holding in *Flowers* to require that a Rule 604(d) motion be filed within 30 days of the mandate ordering remand.

¶ 16 However, the language of Rule 604(d) does not support the State's argument. Rule 604(d) requires a postplea motion to be filed "within 30 days of the date on which *sentence is imposed*," (emphasis added) Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013), a requirement which defendant met in the present case by filing her initial motion to reduce sentence. Rule 604(d) does not include a timeliness requirement for filing a new post-sentencing motion upon remand. To the contrary, in *People v. Lindsay*, 239 Ill. 2d 522 (2011), our supreme court clarified that Rule 604(d) does not require the filing of a new postplea motion when a cause is remanded for the filing of a Rule 604(d) certificate.

¶ 17 In the present case, defendant complied with the dictates of Rule 604(d). Thus, we have jurisdiction to consider defendant's appeal.

¶ 18 II. One-act, One-crime

¶ 19 On the merits, defendant argues that we should vacate her conviction for endangering the life or health of a child, where that offense was based on the same act that supported the offense of obstruction of justice. The State argues that defendant forfeited this issue by failing to raise it in a motion to withdraw her guilty plea. Defendant requests that we examine her claim under the plain error doctrine.

¶ 20 Generally, a defendant's claims are forfeited if not raised in the trial court. *People v. Enoch*, 122 Ill. 2d 176 (1988). However, the plain error doctrine allows a reviewing court to consider forfeited errors where the error was clear and obvious and either: (1) the evidence was closely balanced; or (2) the error was so serious that it affected the integrity of the judicial process. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 21 Under the one-act, one-crime doctrine, a defendant may not be convicted of multiple sentences arising out of a single physical act. *People v. King*, 66 Ill. 2d 551 (1977). Where the same physical act supports multiple convictions, only the most serious conviction can stand. *People v. Artis*, 232 Ill. 2d 156, 170 (2009). In the present case, the parties agree that the two offenses to which defendant pled guilty arose out of the same act, in violation of one-act, one-crime principles. We further find that the error was clear and obvious because the charging information alleged essentially identical facts to support both charges.

¶ 22 Having found that a clear and obvious error occurred, next we must determine whether that error is reversible under either prong of the plain error doctrine. In *People v. Morgan*, 385 Ill. App. 3d 771 (2008), we held that we may review the defendant's claim on appeal that her guilty plea violated one-act, one-crime principles, even where the defendant failed to raise that issue in the trial court. Such a claim is cognizable on appeal under the second prong of plain error because it affects the integrity of the judicial process. *Id.* at 775. We conclude that the one-act, one-crime error in the present case is reversible under the second prong of the plain error doctrine.

¶ 23 We decline to follow the holdings of *People v. Buckner*, 2013 IL App (2d) 130083, and *People v. Rogers*, 364 Ill. App. 3d 229 (2006), which create a rule that one-act, one-crime violations are not reviewable on appeal where a defendant entered a partially negotiated plea and

failed to file a motion to withdraw the plea in the trial court. *Buckner* and *Rogers* would limit plain error review to situations in which the plea agreement did not include an agreement by the State to dismiss any charges. We conclude that a one-act, one-crime violation is susceptible to plain error review even where the guilty plea agreement included the State's dismissal of other charges, as in the present case. As a result, only the most serious charge—obstruction of justice—may stand. See *Artis*, 232 Ill. 2d at 170. We therefore vacate defendant's conviction for endangering the life or health of a child. See *Morgan*, 385 Ill. App. 3d 771; *People v. Moshier*, 312 Ill. App. 3d 879 (2000).

¶ 24

CONCLUSION

¶ 25

The judgment of the circuit court of Knox County is affirmed in part and vacated in part.

¶ 26

Affirmed in part and vacated in part.