

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (3d) 140657-U

Order filed June 3, 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 12th Judicial Circuit, Will County, Illinois, |
| Plaintiff-Appellee, |) | |
| v. |) | Appeal No. 3-14-0657 |
| ALEXANDER MOORE, |) | Circuit No. 08-CF-90 |
| Defendant-Appellant. |) | Honorable Carla Alessio-Policandriotes, Judge, Presiding. |

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice McDade and Justice Carter concurred in the judgment.

ORDER

- ¶ 1 *Held:* The Attorney General acted within its authority by assisting the State's Attorney with the prosecution in the absence of a court order appointing a special prosecutor. The trial court properly denied defendant's motion to vacate conviction.
- ¶ 2 Defendant, Alexander Moore, appeals from the trial court's denial of his motion to vacate conviction on the grounds that he was improperly prosecuted by the Attorney General (AG). We affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 Defendant was charged by complaint with attempted first degree murder (720 ILCS 5/8-4, 9-1(a)(1), (2) (West 2008)) and aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)). An Assistant AG appeared on behalf of the State on January 14, 2008, and advised the court the Will County State’s Attorney’s office requested that the AG’s office “take over” defendant’s case because the mother of the victim was an employee of the State’s Attorney’s office. The court allowed the AG to appear on behalf of the State’s Attorney on that date.

¶ 5 On February 7, 2008, a grand jury returned an indictment charging defendant with six counts of first degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2008)).¹ On the date the indictment was returned, an individual referred to in the record only as “Mr. Chudwin,” presumably a Will County Assistant State’s Attorney, made the following statement to the court when defendant’s case was called:

“[Defendant is] up for arraignment today. This is actually an [AG] case that they are prosecuting due to conflict. I ask that the return of Indictment be made in open court *** this morning. The [AG] will be present in your courtroom, your Honor.”

¶ 6 An Assistant State’s Attorney appeared twice on behalf of the State in an unrelated but pending criminal proceeding against defendant while an assistant AG appeared on behalf of the State in the instant case. During the second of the two hearings where the State’s Attorney’s office appeared on behalf of the State, the Assistant State’s Attorney stated:

“I am still representing the State on the narcotics matter which we are anticipating the [AG’s] office [will be] taking over. We still have to write them a

¹ During grand jury proceedings, Michael Finley, an assistant AG, appeared on behalf of the State.

letter to formally request them to take the case over, which we'll do by the next court date.”

¶ 7 Following a jury trial conducted by an Assistant AG, the jury returned a guilty verdict for one count of first degree murder. The trial court sentenced defendant to serve 73 years' imprisonment. In his direct appeal, defendant challenged the court's ruling on certain jury instructions and alleged his sentence was excessive without raising any issue concerning the trial court's personal jurisdiction over the prosecutor. This court affirmed defendant's conviction and sentence. See *People v. Moore*, 2012 IL App (3d) 100793-U.

¶ 8 On June 7, 2013, defendant filed a *pro se* postconviction petition, which the court advanced to the second stage of postconviction proceedings. After obtaining private postconviction counsel, on March 20, 2014, defendant filed a motion to vacate his conviction. The motion alleged defendant's conviction should be vacated on the grounds that the trial court did not have subject matter jurisdiction over the criminal prosecution since the AG's office acted without the requisite authority when prosecuting defendant for first degree murder.

¶ 9 The State's response to defendant's motion to vacate his conviction included an attached letter from a Will County Assistant State's Attorney directed to the AG's office. The letter, which was dated January 17, 2008, provides as follows:

“I am writing to request the assistance of the Illinois [AG's] Office in prosecuting the Alexander Moore case. The mother of the victim *** is an employee of the Will County State's Attorney's Office.

Please advise me of your decision to accept this conflict case at your earliest convenience.”

The State’s response also included a letter from the criminal enforcement division chief at the AG’s office to the Will County State’s Attorney, which was dated January 17, 2008, and provides:

“On behalf of the [AG], I am pleased to inform you that your request for prosecution assistance regarding [*People v. Alexander Moore*] has been approved. Assistant Attorney General Steve Nate *** is assigned to handle this matter. *** As always, we welcome this opportunity to serve you and the citizens of Will County in this cooperative effort.”

¶ 10 The trial court construed defendant’s motion to vacate conviction as an amended postconviction petition without objection from either party. For purposes of this order, we will refer to the document filed by private postconviction counsel on March 20, 2014, as the amended postconviction petition. On August 22, 2014, after hearing arguments on the amended postconviction petition, the trial court entered an order dismissing defendant’s amended postconviction petition following the second stage proceeding.

¶ 11 ANALYSIS

¶ 12 At the onset, we note defendant has filed two *pro se* requests with this court seeking leave to submit supplemental briefs in this appeal. However, defendant is currently represented by appellate counsel who has filed a brief and reply brief on defendant's behalf. Consequently, we deny defendant's *pro se* request to file supplemental documents in connection with this appeal. Therefore, we will decide the pending appeal based solely on the briefs submitted by counsel.

¶ 13 On appeal, appellate defense counsel urges this court to conclude that the trial court lacked personal jurisdiction over the “People of the State of Illinois” due to the absence of a

court order appointing the AG to act as a special prosecutor in this case. On this basis, defendant submits the trial court should have granted his amended postconviction petition.

¶ 14 Whether defendant's conviction is void due to the trial court's lack of personal jurisdiction over a party involves a question of law which we review *de novo*. *In re Luis R.*, 239 Ill. 2d 295, 299 (2010). We recognize the State's Attorney, as a member of the executive branch of county government, is vested with exclusive discretion in the initiation and management of a criminal prosecution. 55 ILCS 5/3-9005(a)(1) (West 2008); *People ex rel. Daley v. Moran*, 94 Ill. 2d 41, 45 (1983). Certainly, as part of the task of initiating and managing a criminal prosecution, the State's Attorney is, in any case, entitled to request and accept assistance from the AG's office.

¶ 15 In this case, the State's Attorney sent a letter seeking supportive assistance from the AG's office. The AG agreed to provide assistance to this particular State's Attorney as allowed by statute. 15 ILCS 205/4 (West 2008). Here, neither the State's Attorney nor the AG felt it was necessary to obtain a court order substituting the AG as prosecutor in order to maintain personal jurisdiction over the People of the State of Illinois. Since defendant did not object to the appearance of the AG at any stage of the proceedings or request a written court order noting the AG's involvement, and the State's Attorney requested the AG's involvement in open court with the AG's concurrence, a court order was not necessary. This approach is supported by existing case law. Our supreme court has held that:

“[T]he [AG] may assist the State's Attorney to the extent that he may discharge all those powers of the State's Attorney at all stages in a prosecution, including the preliminary proceedings such as presentations to a grand jury, where the latter does not object.” *People v. Massarella*, 72 Ill. 2d 531, 538-39 (1978).

¶ 16 In this case, the record clearly establishes the Will County State’s Attorney’s office invited and was well aware of the AG’s involvement in all stages of this prosecution from indictment to conviction. It was within the executive discretion of the State’s Attorney to maintain some degree of involvement in the prosecution without formally seeking a court order or thereby relinquishing all prosecutorial discretion. *People v. Looney*, 314 Ill. 150, 154 (1924) (“If the state’s attorney, without objection, permits the [AG] to appear in court assisting in the prosecution of one accused of crime, it certainly does not lie in the mouth of the defendant to object.”) A request for assistance from another State agency authorized to conduct criminal trials on behalf of the People of the State of Illinois does not automatically extinguish the State’s Attorney’s authority to share or delegate prosecutorial responsibilities to the AG in a particular, individual, criminal prosecution.

¶ 17 Defendant’s reliance on *People v. Pankey*, 94 Ill. 2d 12 (1983), is misplaced because the State’s Attorney in *Pankey* neither acknowledged nor acquiesced in the proceedings initiated by someone other than an attorney with prosecutorial authority, a police officer. *Id.* at 17-18. The facts of record support the conclusion that the People of the State of Illinois were represented in this case by the AG acting with the permission of the State’s Attorney at all times during the trial and on direct appeal. We conclude the informal cooperative partnership that existed between the State’s Attorney and the AG in this case was not jurisdictionally problematic.

¶ 18 Accordingly, we affirm the trial court’s denial of the relief sought in defendant’s amended postconviction petition which requested the trial court to vacate defendant’s conviction and sentence for first degree murder due to the trial court’s failure to acquire jurisdiction over the People of the State of Illinois .

¶ 19

CONCLUSION

¶ 20

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

¶ 21

Affirmed.