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2015 IL App (3d) 141013-U

Order filed September 2, 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,)	
v.)	Appeal Nos. 3-14-1013 and 3-14-1014 Circuit Nos. 13-CF-523 and 13-CF-524
AUBREY D. LAMPKINS and MELINDA M. SCOTT,)	
Defendants-Appellants.)	Honorable Howard Chris Ryan, Jr., Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice McDade and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying defendants' section 2-1401 petitions where said petitions failed to present a meritorious defense.

¶ 2 Defendants, Aubrey D. Lampkins and Melinda M. Scott, appeal the denial of their identical petitions for relief from judgment brought pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)). Because we find that the claims in defendants' petitions failed to present a meritorious defense, we affirm.

FACTS

¶ 3

¶ 4 Defendants were each charged by indictment with unlawful possession of cannabis with the intent to deliver (720 ILCS 550/5(f) (West 2012)) in that they each knowingly and unlawfully possessed more than 2,000 but not more than 5,000 grams of cannabis with the intent to deliver. Defendants were represented by the same trial counsel, Louis Bertrand. Each defendant's bail was set at \$1 million, and each defendant eventually posted \$100,000 bond.

¶ 5 On March 7, 2014, defendants entered into identical fully negotiated plea agreements whereby defendants pled guilty to unlawful possession of cannabis with the intent to deliver. In exchange, defendants each received the following sentence: (1) a term of four years' imprisonment; (2) payment of a street value fine of approximately \$98,000;¹ and (3) payment of other fines and fees. At defendants' guilty plea hearing, the assistant State's Attorney read the terms of defendants' plea deals. In doing so, the assistant State's Attorney further stated that each defendant was entitled to a presentence incarceration credit and that the entire remaining balance of fines and fees would be taken from defendants' bonds *instanter*. Bertrand agreed that the assistant State's Attorney correctly stated the plea agreements. Both defendants stated that they understood. The trial court asked defendants if they had any complaints about anything their counsel had done, and each defendant replied that he or she did not.

¶ 6 As part of the factual basis for the pleas, the State said that it would introduce evidence that the street value of the cannabis was \$20 per gram and that the cannabis seized from the vehicle weighed between 2,000 and 5,000 grams. Defendants' attorney agreed that that if the

¹ Lampkins's street value fine was to be \$98,045, while Scott's street value fine was to be \$98,040.

State were to call witnesses, the witnesses would testify competently and substantially to the factual basis outlined by the State.

¶ 7 On August 29, 2014, defendants filed virtually identical section 2-1401 petitions through a new attorney, Derrick Reese. The petitions alleged that: (1) no waiver of Bertrand's *per se* conflict of interest in representing both defendants appeared in the record; (2) at the guilty plea hearing, defendants did not stipulate to the chain of custody or exact amount of cannabis recovered; (3) it was inequitable for the State to require each defendant to pay the street value for the entire amount of cannabis recovered; (4) the State improperly set a predetermined street value fine without an evidentiary basis in the record, which was consequently void; and (5) the seizure of defendants' bail bonds amounted to taking without due process or notice in violation of the fifth and fourteenth amendments to the United States Constitution. U.S. Const., amends. V, XIV.

¶ 8 Defendants each attached their own affidavit to their section 2-1401 petitions stating, among other things, that they were prevented from presenting their claims with due diligence in the original proceedings due to "lack of notice and understanding from [their] original attorney." Defendants also stated that they acted with due diligence in bringing their section 2-1401 petitions because they hired an attorney to file the petitions.

¶ 9 The State filed virtually identical motions to dismiss defendants' section 2-1401 petitions. In its motions to dismiss, the State alleged that approximately 10,000 grams of cannabis were recovered and approximately 5,000 grams at \$20 per gram was apportioned to each defendant in imposing the street value fines. The State argued that defendants: (1) agreed to pay the street value fines as part of their negotiated guilty pleas; (2) did not raise any issue or present any facts

in their section 2-1401 petitions not known at the time of their guilty pleas; and (3) did not present evidence of the existence of a meritorious defense.

¶ 10 After hearing arguments on December 29, 2014, the trial court denied defendants' section 2-1401 petitions. The trial court reasoned that defendants had agreed to the amount of the street value fines as part of their fully negotiated guilty pleas and, on that basis, the court would not disturb the amounts of the fines. In addressing defendants' argument that there was no evidentiary basis for the amounts of the street value fines, the trial court noted that there was a stipulation and reasoned that defendants' plea counsel may have stipulated knowing that a full trial would have brought in "something else."

¶ 11 ANALYSIS

¶ 12 On appeal, defendants argue that the trial court erred in denying their section 2-1401 petitions because the petitions presented the meritorious claims that the trial court erred in: (1) failing to hold an evidentiary hearing to determine the street value of the recovered cannabis prior to the imposition of the street value fines; and (2) failing to apportion the street value fine according to joint possession.²

¶ 13 When presenting a section 2-1401 petition, "the petitioner must set forth specific *factual* allegations supporting each of the following elements: (1) the existence of a meritorious defense;

² We note that in their briefs, defendants present the issues of whether the trial court erred in failing to conduct an evidentiary hearing on the amount of the street value fine and failing to apportion the fine according to joint possession as if this were a direct appeal. However, the order appealed from in this case was the denial of defendants' section 2-1401 petitions. Thus, the proper issue on appeal is whether the trial court erred in denying defendants' section 2-1401 petitions.

(2) due diligence in presenting this defense; and (3) due diligence in filing the section 2-1401 petition for relief." (Emphasis in original.) *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 51 (citing *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 221 (1986)). We review the trial court's denial of defendants' section 2-1401 petitions for abuse of discretion. *Walters*, 2015 IL 117783, ¶ 51.

¶ 14 We hold that the trial court did not abuse its discretion in denying defendants' section 2-1401 petitions because neither defendants' claim that the trial court erred in failing to hold an evidentiary hearing on the street value fine nor their claim that the trial court erred in failing to apportion the street value fine presented a meritorious defense to their judgments of conviction. We address each argument in turn.

¶ 15 I. Failure to Hold an Evidentiary Hearing

¶ 16 Defendants' argument that the trial court erred in failing to hold an evidentiary hearing to determine the amount of the street value fine is without merit. Section 9-1.1(a) of the Unified Code of Corrections (Code) (730 ILCS 5/5-9-1.1(a) (West 2012)) provides that the amount of the street value fine "shall be determined by the court on the basis of testimony of law enforcement personnel and the defendant as to the amount seized and such testimony as may be required by the court as to the current street value of the cannabis *** seized." However, our supreme court has interpreted section 9-1.1(a) to allow that "[t]he evidentiary basis [for the street value fine] may be provided by testimony at sentencing, a stipulation to the current value, or reliable evidence presented at a previous stage of the proceedings." *People v. Lewis*, 234 Ill. 2d 32, 46 (2009). See also *People v. Otero*, 263 Ill. App. 3d 282, 287 (1994) ("We *** recognize, however, that the trial court need not hold a full-blown evidentiary hearing in each case. For

example, we do not read section 5-9-1.4 as prohibiting the parties from stipulating to the street value of the drugs.").

¶ 17 Here, the parties stipulated to the amount of the street value fines by including the amount of the fine as a term of defendants' fully negotiated guilty pleas. Consequently, no evidentiary hearing on the amount of the fines was required. See *Otero*, 263 Ill. App. 3d at 287.

¶ 18 II. Failure to Apportion the Street Value Fine

¶ 19 Defendants' second argument, that the trial court erred in failing to apportion defendants' street value fine according to joint possession, is also without merit. Initially, we note that section 9-1.1(a) of the Code does not authorize the apportionment of the street value fine among codefendants but rather requires that "a fine shall be levied by the court at not less than the full street value of the cannabis or controlled substances seized." 730 ILCS 5/5-9-1.1(a) (West 2012). Thus, defendants are not legally eligible to have the street value fine apportioned jointly among the two of them.

¶ 20 We reject defendants' reliance on *People v. Ruff*, 115 Ill. App. 3d 691 (1983), in support of their argument that Bertrand should have sought to apportion the street value fine between them because "[t]he same factors that the Judge utilized in *Ruff* to apportion the fine are the same factors that can be utilized here to apportion the street value fine." The *Ruff* court held that section 5-9-1.1 of the Code did not authorize apportionment of the street value fine and, consequently, the street value fine imposed on the defendant was less than that required by statute. *Ruff*, 115 Ill. App. 3d at 693, 696. However, citing principles of estoppel and waiver, the *Ruff* court upheld the apportioned fine because the State recommended apportionment at the sentencing hearing and did not contest the amount of the fine on appeal. *Id.* at 694-96. We find *Ruff* to be factually distinguishable as issues of waiver and estoppel are not at issue in this case.

Additionally, to the extent that the holding in *Ruff* permitted a fine that was unauthorized by statute, we find that it was wrongly decided. *People v. Thompson*, 209 Ill. 2d 19, 23 (2004) ("[A] sentence, or portion thereof, that is not authorized by statute is void.").

¶ 21 Additionally, we reject defendants' reliance on tort principles barring recovery from multiple tortfeasors for amounts in excess of a plaintiff's total damages in support of defendants' claim that the State was "fully compensated" by one payment of the street value fine. The street value fine, unlike an award of damages in a civil case, is punitive rather than compensatory in nature. *People v. Jones*, 223 Ill. 2d 569, 581 (2006).

¶ 22 Finally, defendants generically claim that because Bertrand represented both of them, he labored under a *per se* conflict of interest and "was unable to perform and advocate for either [defendant] and ask for an apportionment of the fine." Because our supreme court has held that, in criminal cases, a section 2-1401 petition is not a proper forum for claims of ineffective assistance of counsel, we decline to address this argument. See *People v. Pinkonsly*, 207 Ill. 2d 555, 567 (2003) ("We have long held that section 2-1401 proceedings are not an appropriate forum for ineffective-assistance claims because such claims do not challenge the factual basis for the judgment.").

¶ 23 CONCLUSION

¶ 24 The judgments of the circuit court of La Salle County are affirmed.

¶ 25 Affirmed.