2015 IL App (4th) 130453-U

NO. 4-13-0453

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 7, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
MATTHEW SMITH,	)	No. 12CF15
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed in part, vacated in part, and remanded for a new sentencing hearing, concluding the trial court (1) substantially complied with Illinois Supreme Court Rule 401 (eff. July 1, 1984) in admonishing defendant regarding his waiver of counsel, (2) did not err in denying defendant's motion to suppress his confession, and (3) improperly sentenced defendant as a Class X offender.

¶ 2 In January 2012, the State charged defendant, Matthew Smith, with aggravated battery to a corrections officer, a Class 2 felony (720 ILCS 5/12-3.05(d)(4)(i), (h) (West 2010)). In April 2012, defendant waived his right to counsel after being admonished pursuant to Illinois Supreme Court Rule 401(a)(2) (eff. July 1, 1984) that he was eligible for mandatory Class X sentencing due to his prior criminal convictions. See 730 ILCS 5/5-4.5-95(b) (West 2010). The same month, defendant filed a motion to suppress an incriminating statement he made to a corrections officer, which the trial court subsequently denied in August 2012.

¶ 3 Following an April 2013 trial, a jury found defendant guilty and, in May 2013, the trial court sentenced him as a Class X offender to six years in the Department of Corrections (DOC).

¶ 4 Defendant appeals, asserting the trial court erred by (1) improperly admonishing him regarding his waiver of counsel, (2) denying his motion to suppress his confession, and (3) improperly sentencing him as a Class X offender.

¶ 5 We affirm in part, vacate in part, and remand for a new sentencing hearing.

¶ 6 I. BACKGROUND

¶ 7 In January 2012, the State charged defendant by indictment with the offense of aggravated battery, a Class 2 felony (720 ILCS 5/12-3.05(d)(4)(i), (h) (West 2010), alleging, on September 2, 2011, defendant, an inmate at the Pontiac Correctional Center (Pontiac), threw an unknown liquid on corrections officer Jody Davis. That same month, the State filed notice that defendant was eligible for mandatory Class X sentencing pursuant to section 5-4.5-95(b) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4.5-95(b) (West 2010)). At the time, defendant was 20 years old, as his date of birth is September 24, 1991.

¶ 8 In April 2012, defendant, still 20 years old, expressed his desire to waive his right to counsel and proceed *pro se*. The trial court asked defendant several questions regarding his level of education and experience, and defendant responded he attended school through the ninth grade and could read and write. He had represented himself in criminal proceedings previously, but not during a trial. He further indicated he understood he was charged with aggravated battery of a corrections officer, a Class 2 felony. The court explained defendant was subject to mandatory Class X sentencing if convicted, which meant he faced a sentencing range of 6 to 30 years in DOC, and defendant indicated he understood. The court also noted any sentence

defendant received would run consecutively to his ongoing DOC sentences. Finally, the court admonished defendant as to the benefit of having trained, experienced counsel to represent him, and that the court could not assist him with his defense. Following these admonishments, defendant waived his right to counsel.

¶ 9 On the same date, defendant, *pro se*, filed a motion to suppress an incriminating statement he made to corrections officer Robert Snyder, as he was not read his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). In August 2012, the motion to suppress proceeded to a hearing, at which time the parties offered the following evidence.

¶ 10 Officer Snyder testified he was an investigator for the internal-affairs unit at Pontiac. Officer Snyder explained, in September 2011, he interviewed defendant regarding an allegation that defendant threw an unknown liquid at Officer Davis. Officer Snyder, wearing his corrections uniform, escorted defendant from his cell in segregation to an interview room in the health unit, which consisted of a small room with a single exit, fluorescent lighting, a desk, and two chairs. Defendant remained handcuffed during the interview, though Officer Snyder stated inmates were always handcuffed upon leaving their cells, including while walking to the shower or exercise yard. Officer Snyder indicated he did not read defendant any *Miranda* warnings before interviewing him. Officer Snyder stated, at the time he interviewed defendant, he was concerned for Officer Davis' health and safety, as the nature of the substance thrown at Officer Davis was unknown. The interview lasted approximately 10 minutes, during which time defendant admitted assaulting Officer Davis after the officer failed to provide defendant with his weekly shower. Officer Snyder testified he interviewed defendant in anticipation of filing a prison disciplinary action against defendant, not to pursue criminal charges. He said he did not

pressure defendant to answer in a certain way, nor did he tell defendant he could not leave unless he confessed.

¶ 11 Following the hearing, the trial court denied defendant's motion to suppress, finding Officer Snyder was conducting an investigation, not an interrogation. The court also pointed out defendant was interviewed in a less restrictive environment than the segregation unit in which he was housed, which demonstrated he was not "in custody" for purposes of *Miranda*. Additionally, the court found any statements defendant made to Snyder were knowingly and voluntarily made.

¶ 12 In April 2013, defendant's case proceeded to a jury trial. Following the presentation of evidence, including defendant's statement to Officer Snyder, the jury returned a guilty verdict. In May 2013, the trial court sentenced defendant as a Class X offender to six years in DOC.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues the trial court erred by (1) improperly admonishing him regarding his waiver of counsel, (2) denying his motion to suppress his confession, and (3) improperly sentencing him as a Class X offender. We address these arguments in turn.

¶ 16 A. Waiver of Counsel

¶ 17 Defendant first asserts the trial court's admonishments regarding the waiver of counsel were insufficient under Illinois Supreme Court Rule 401(a)(2) (eff. July 1, 1984). Defendant concedes this issue was not raised or preserved at trial, but he seeks plain-error review under the second prong of the plain-error doctrine. Ordinarily, a defendant's failure to preserve an issue before the trial court results in forfeiture. *People v. Morgan*, 385 Ill. App. 3d 771, 773,

896 N.E.2d 417, 419 (2008). However, where the defendant challenges a fundamental right, such as the right to counsel, we may review the court's order for plain error. *People v. Vernón*, 396 Ill. App. 3d 145, 150, 919 N.E.2d 966, 973 (2009). Under the second prong of the plain-error doctrine, a defendant must demonstrate that (1) a clear or obvious error occurred, and (2) the error is so serious, regardless of the closeness of the evidence, that it affects the fairness of the trial and raises questions as to the very integrity of the judicial process. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007). The Illinois Supreme Court has "equated the second prong of plain-error review with structural error," which, when found, requires reversal. *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010).

¶ 18 Having established the appropriate standard of review, we now turn to the merits of defendant's argument.

¶ 19 When a defendant chooses to exercise his right to waive counsel, the trial court must admonish him pursuant to Illinois Supreme Court Rule 401 (eff. July 1, 1984). Rule 401 states, in relevant part:

> "(a) Waiver of Counsel. Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:
>
> (1) the nature of the charge;
>
> (2) the minimum and maximum sentence prescribed by law, including, when applicable, the

> penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and
>
> (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court." Ill. S. Ct. R. 401 (eff. July 1, 1984).

The purpose of Rule 401 is to ensure that a defendant knowingly and intelligently makes a waiver of counsel. *People v. Campbell*, 224 Ill. 2d 80, 84, 730, 862 N.E.2d 933, 936 (2006).

¶ 20 At issue here is the trial court's admonishment under subsection (a)(2). Defendant asserts the trial court failed to properly admonish him as to the appropriate minimum and maximum sentences, thus rendering his waiver invalid. We begin by determining whether the court committed a clear or obvious error by admonishing defendant that he was eligible for mandatory Class X sentencing.

¶ 21 1. *Whether Defendant Was Eligible for Class X Sentencing*

¶ 22 Section 5-4.5-95(b) of the Unified Code provides:

> "When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender." 730 ILCS 5/5-4.5-95(b) (West 2010).

¶ 23 The parties address this issue by focusing on defendant's age at the time he was charged versus his age at the time of conviction. Defendant argues he was never eligible for Class X sentencing because, at the time he was charged, he was only 20 years old. See *People v. Douglas*, 2014 IL App (4th) 120617, ¶ 31, 13 N.E.3d 390 (a defendant's eligibility for mandatory Class X sentencing depends on his age at the time he is charged with the offense). The State, on the other hand, asserts defendant was eligible for mandatory Class X sentencing because he was 21 years old at the time of conviction. See *People v. Baaree*, 315 Ill. App. 3d 1049, 1053, 735 N.E.2d 720, 724 (2000); *People v. Williams*, 358 Ill. App. 3d 363, 366, 832 N.E.2d 925, 928 (2005); and *People v. Stokes*, 392 Ill. App. 3d 335, 344, 910 N.E.2d 98, 106 (2009).

¶ 24 In *Douglas*, this court found a defendant's eligibility for mandatory Class X sentencing depends on his age at the time he is charged rather than at the time of conviction. *Douglas*, 2014 IL App (4th) 120617, ¶ 31, 13 N.E.3d 390. The *Douglas* court held the statutory language regarding Class X eligibility was ambiguous because it was subject to more than one interpretation. *Id.* ¶ 27, 13 N.E.3d 390. With that consideration in mind, the court engaged in an analysis of the statutory language and determined "the key point in time is no longer the date of conviction but instead is the date the individual is charged with an offense," because it is at that point the individual is defined as a "defendant." *Id.* ¶¶ 28-29, 13 N.E.3d 390. Due to the ambiguity of the statute, the court applied the rule of lenity, which required that any ambiguity be determined in the defendant's favor. *Id.* ¶ 30, 13 N.E.3d 390. Accordingly, because the defendant was under 21 on the date he was *charged*, the *Douglas* court held he was not eligible for Class X sentencing. *Id.* ¶ 31, 13 N.E.3d 390.

¶ 25 The State argues the trial court admonished defendant correctly because, in the end, he was eligible for mandatory Class X sentencing. In support of its argument, the State

urges us to follow First District cases holding Class X eligibility is determined by the defendant's age at the time of conviction. See *Baaree*, 315 Ill. App. 3d at 1053, 735 N.E.2d at 724; *Williams*, 358 Ill. App. 3d at 366, 832 N.E.2d at 928; and *Stokes*, 392 Ill. App. 3d at 344, 910 N.E.2d at 106. The State notes the legislature has not amended that portion of the statute in the years following the *Baaree* decision, which indicates its acquiescence with the First District's holdings. See *Pielet v. Pielet*, 2012 IL 112064, ¶ 48, 978 N.E.2d 1000 ("The legislature is presumed to be aware of judicial decisions interpreting legislation."). The State's argument is the trial court properly admonished defendant that he was eligible for mandatory Class X sentencing because, when defendant was convicted at age 21, he was eligible for mandatory Class X sentencing. The State fails to persuade us to depart from *Douglas*.

¶ 26 When defendant was charged, he was 20 years old. Thus, under section 5-4.5-95(b) of the Unified Code (730 ILCS 5/5-4.5-95(b) (West 2010)), defendant was not eligible for mandatory Class X sentencing. Instead, defendant should have been admonished that he faced 3 to 14 years in DOC, the appropriate range for a Class 2 felony with extended-term eligibility. 730 ILCS 5/5-4.5-35(a) (West 2010). Therefore, the trial court's admonishment that defendant was subject to mandatory Class X sentencing was incorrect. Defendant asserts, given the court's failure to strictly comply with Rule 401, automatic reversal is required. However, before we make that determination, we must examine whether the court substantially complied with Rule 401.

¶ 27 2. *Whether the Trial Court Substantially Complied With Rule 401*

¶ 28 The State asserts that even if the trial court incorrectly admonished defendant, the record demonstrates the court substantially complied with Illinois Supreme Court Rule 401(a)(2) (eff. July 1, 1984). Generally speaking, the court must strictly comply with Rule 401 to

effectuate a valid waiver of counsel. *People v. Koch*, 232 Ill. App. 3d 923, 927, 598 N.E.2d 288, 291 (1992). However, strict compliance is not always required. *People v. Haynes*, 174 Ill. 2d 204, 236, 673 N.E.2d 318, 333 (1996). "Rather, substantial compliance will be sufficient to effectuate a valid waiver if the record indicates that the waiver was made knowingly and voluntarily, and the admonishment the defendant received did not prejudice his rights." *Id.* (citing *People v. Coleman*, 129 Ill. 2d 321, 333, 544 N.E.2d 330, 336 (1989)). The record must show the "deficiency in the admonishments [did] not prejudice the defendant, either because the defendant already [knew] of the omitted information or because the defendant's degree of legal sophistication [made] evident his or her awareness of the omitted information." *People v. Moore*, 2014 IL App (1st) 112592, ¶ 38, 15 N.E.3d 486.

¶ 29 Defendant asserts the trial court's overstatement of the sentencing range constitutes a lack of compliance with Rule 401. In support, he relies on *People v. LeFlore*, 2013 IL App (2d) 100659, 996 N.E.2d 678, and *People v. Bahrs*, 2013 IL App (4th) 110903, ¶ 15, 988 N.E.2d 773. In *LeFlore*, the appellate court concluded the defendant's waiver of counsel was ineffective where the trial court admonished the defendant he faced a sentencing range of 4 to 15 years in DOC, when he in fact faced 6 to 30 years in DOC. *LeFlore*, 2013 IL App (2d) 100659, ¶ 53, 996 N.E.2d 678. In *Bahrs*, this court held the trial court's understatement of the sentencing range defendant faced failed to substantially comply with Rule 401. *Bahrs*, 2013 IL App (4th) 110903, ¶ 15, 988 N.E.2d 773. However, these cases are distinguishable in that the trial courts understated the sentencing range, thus downplaying the significance of the consequences the respective defendants faced.

¶ 30 The State asserts the present case is more akin to *Coleman*. In *Coleman*, the trial court, in admonishing the defendant about his right to counsel, incorrectly admonished the

defendant that he faced a minimum sentence of 20 years in DOC and a maximum sentence of the death penalty. *Coleman*, 129 Ill. 2d at 331-32, 544 N.E.2d at 335. The defendant actually faced a minimum sentence of life imprisonment. *Id*. at 332, 544 N.E.2d at 335. In finding the trial court substantially complied with Rule 401(a) despite the court's error as to the minimum sentence, the supreme court stated, "[w]here a defendant knows the nature of the charges against him and understands that as a result of those charges he may receive the death penalty, his knowledge and understanding that he may be eligible to receive a lesser sentence pales in comparison." *Id.* at 333-34, 544 N.E.2d at 336. Though *Coleman* is a death-penalty case, we find its reasoning persuasive. Similar to the reasoning in *Coleman*, the fact that defendant was actually eligible for a sentencing range of 3 to 14 years in DOC pales in comparison to the court's admonishment that he faced 6 to 30 years in DOC.

¶ 31 Moreover, despite the court's mistake in admonishing defendant, the record demonstrates his waiver was made knowingly and intelligently. See *id.* Defendant's argument implies, had he known he faced 3 to 14 years in DOC rather than 6 to 30 years in DOC, he would not have waived his right to counsel. That argument makes little sense in light of the circumstances. Here, the trial court overstated the possible sentence defendant faced. The purpose of admonishing a defendant regarding the range of penalties is to ensure the defendant appreciates the seriousness of the offense with which he is charged and the consequences he may face if convicted. See *Haynes*, 174 Ill. 2d at 241, 673 N.E.2d at 335 ("The purpose of Rule 401(a) is to ensure that a waiver of counsel is knowingly and intelligently made."). The court accomplished this goal despite overstating the sentence defendant might receive. If anything, such an overstatement would have impressed upon defendant the seriousness of the consequences he faced if convicted, thus encouraging defendant to take advantage of his

constitutional right to counsel. The court also took the time to impress upon defendant the nature of the charges and the benefit of having an experienced attorney represent him. Still, defendant persisted in his waiver. Therefore, we conclude defendant's waiver was knowingly and intelligently made. Furthermore, because defendant actually faced a range of penalties less harsh than the range for which he was admonished, he simply cannot demonstrate prejudice.

¶ 32 Accordingly, we conclude defendant's waiver of counsel was not ineffective because the trial court substantially complied with Illinois Supreme Court Rule 401 (eff. July 1, 1984) in admonishing defendant. Because we find no clear or obvious error, defendant cannot establish plain error.

¶ 33 B. Motion To Suppress

¶ 34 Defendant next asserts the trial court erred by denying his motion to suppress. We begin by noting defendant failed to preserve this issue by filing a posttrial motion. *Piatkowski*, 225 Ill. 2d at 564, 870 N.E.2d at 409 (an issue is deemed forfeited if not properly preserved by filing a posttrial motion). However, "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

¶ 35 To demonstrate plain error, a defendant must first show a clear or obvious error occurred. *Piatkowski*, 225 Ill. 2d at 565, 870 N.E.2d at 410-11. If the defendant proves a clear or obvious error occurred, he then must show the error (1) alone threatened to tip the scales of justice in a closely balanced case, or (2) is so serious that it affected the fairness of the trial and the integrity of the judicial process. *Id.* With respect to a hearing on a motion to suppress a confession, the trial court's findings of fact will not be overturned unless those findings are against the manifest weight of the evidence. *People v. Pitman*, 211 Ill. 2d 502, 512, 813 N.E.2d

93, 100 (2004). However, the court's ultimate legal conclusion of whether the facts established defendant was in "custody" or subject to "interrogation" is reviewed *de novo*. *Id.*, 813 N.E.2d at 101. Where the defendant moves to suppress his statements as illegally obtained, the State bears the burden of demonstrating, by a preponderance of the evidence, that the defendant's statement was voluntary. *People v. Slater*, 228 Ill. 2d 137, 149, 886 N.E.2d 986, 994 (2008).

¶ 36 The need for *Miranda* warnings is triggered when the accused is both in custody and subjected to interrogation. *In re Tyler G.*, 407 Ill. App. 3d 1089, 1092, 947 N.E.2d 772, 775 (2010). The parties do not dispute defendant was subject to interrogation; rather, the central issue is whether defendant was in custody when he made statements to Officer Snyder.

¶ 37 In defendant's motion to suppress, he asserted Officer Snyder engaged in a custodial interrogation without first apprising him of his rights pursuant to *Miranda*. At the suppression hearing, the trial court found defendant was not "in custody" for purposes of *Miranda*; thus, Officer Snyder was not required to read defendant his rights. We agree.

¶ 38 Here, defendant was an inmate, which placed him physically in the custody of DOC at the time of his interrogation. However, his status as an inmate does not automatically infer that any interrogation constitutes a custodial interrogation. See *People v. Patterson*, 146 Ill. 2d 445, 453, 588 N.E.2d 1175, 1179 (1992) (an inmate is subjected to a custodial interrogation "only if an inmate's liberty is limited beyond the usual conditions of his confinement"). Rather, the question is "whether there is a restraint on the defendant's freedom of movement of the degree associated with a formal arrest." *Id.* at 454, 588 N.E.2d at 1180. In making this determination, the court should also consider such factors as (1) the location of questioning, (2) the focus of questioning, (3) the duration of questioning, (4) statements made during the

interview, (5) the presence or absence of physical restraints, and (6) the release of the interviewee at the end of questioning. *Id.*

¶ 39 Defendant asserts he was subjected to a "custodial interrogation," as he was held in segregation and escorted to a health care "holding tank" for an interview, during which time Officer Snyder chose not to remove defendant's handcuffs. The State, in contrast, asserts defendant was not subject to a custodial interrogation because he was in a less restrictive setting than his usual segregation unit, relying on *Patterson.* We agree with the State's position, as defendant's interview took place in a setting less restrictive than his segregation cell.

¶ 40 In *Patterson*, the supreme court reversed the lower courts' suppression of the inmate defendant's confession, concluding the failure to read the defendant his *Miranda* rights did not violate his constitutional rights. *Id.* at 458-59, 588 N.E.2d at 1182. While interviewing the defendant for the purpose of protecting his safety in the prison, the interviewing officer obtained incriminating statements from the defendant. *Id.* at 449, 588 N.E.2d at 1177. The court concluded the defendant was housed in a segregation unit but was transferred to an office for an interview, thus demonstrating the defendant had an increased freedom of movement during the interview. *Id.* at 455, 588 N.E.2d at 1180. The defendant in *Patterson* was transferred to the interview in handcuffs, just as he would have been if he were being transferred to the shower or for exercise. *Id.* During the interview, he did not ask the officer to remove the handcuffs. *Id.*

¶ 41 Though the purpose of the officer's questioning in *Patterson* differed from the purpose in the present case, we find the legal reasoning equally applicable. Defendant was housed in the most restrictive area of the prison—the segregation unit. Officer Snyder transferred defendant to the interview room in the health unit, which Officer Snyder described as containing a desk, two chairs, and fluorescent lighting. Defendant wore handcuffs, just as he

would be if he was being transferred to the showers or for exercise, and he did not request the removal of his handcuffs during the brief, 10-minute interview. Defendant asserts Officer Snyder's failure to remove his handcuffs during the interview demonstrated he was in custody. However, under the circumstances, where Officer Snyder alone was interviewing defendant regarding his alleged battery of another officer, restraining defendant was reasonable in light of the safety risk to Officer Snyder. Defendant also argues he would have faced disciplinary charges for failing to cooperate with Officer Snyder, so his statement was obtained coercively. However, Officer Snyder testified he would have permitted defendant to leave the interview at any time and had no interest in or intent to coerce a statement from defendant.

¶ 42 In reviewing the totality of the circumstances, we conclude defendant was not subjected to a custodial interrogation that would otherwise require the constitutional safeguards of *Miranda*. Therefore, the court did not err in denying defendant's motion to suppress his statements to Officer Snyder.

¶ 43 C. Sentencing

¶ 44 Defendant next argues that his case must be remanded for a new sentencing hearing because he was not eligible for Class X sentencing. We agree. Following this court's decision in *Douglas*, defendant was not eligible for Class X sentencing because he was not 21 at the time he was charged with the offense. *Douglas*, 2014 Ill App (4th) 120617, ¶ 31, 13 N.E.3d 390; 730 ILCS 5/5-4.5-95(b) (West 2010). Rather, defendant was eligible for Class 2 sentencing with extended-term eligibility. 720 ILCS 5/12-3.05(d)(4)(i), (h) (West 2010). We therefore vacate defendant's sentence and remand this case for a new sentencing hearing under the appropriate sentencing guidelines.

¶ 45 III. CONCLUSION

¶ 46 For the foregoing reasons, we affirm in part, vacate in part, and remand for a new sentencing hearing. As part of our judgment, we grant the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 47 Affirmed in part and vacated in part; cause remanded with directions.