2015 IL App (4th) 130706-U

NO. 4-13-0706

FILED
May 21, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
TYLER R. BURLINGTON,	)	No. 12CF1536
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Pope and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed defendant's conviction and remanded for a new trial, finding the trial court erred in failing to properly admonish him.

¶ 2 In July 2013, the trial court found defendant, Tyler R. Burlington, guilty of single counts of retail theft with a prior residential burglary conviction and resisting a peace officer. The court then sentenced defendant to two years in prison on the retail-theft conviction.

¶ 3 On appeal, defendant argues (1) the trial court failed to properly admonish him and (2) his sentence must be vacated. We reverse and remand for a new trial.

¶ 4 I. BACKGROUND

¶ 5 In November 2012, the State charged defendant by information with one count of retail theft with a prior residential burglary conviction (count I) (720 ILCS 5/16-25(a)(1) (West 2012)), alleging he knowingly took possession of merchandise from Kroger having a value less

than $300 with the intent to permanently deprive Kroger of the merchandise. The State also charged defendant with one count of resisting a peace officer (count II) (720 ILCS 5/31-1 (West 2012)), alleging he knowingly resisted the performance of two peace officers when he ran from the officers and refused to place his hands behind his back when ordered to do so.

¶ 6 In February 2013, defendant was admitted to the Macon County hybrid court program for 24 months. As conditions to entering the program, defendant signed a participation contract and an incriminating stipulation regarding the facts of this case. Prior to accepting the stipulation and transferring defendant into hybrid court, the trial court admonished defendant that he was giving up his right to a jury trial. The court did not discuss the nature of the charges, the range of punishments he could face if he failed to complete the program, his right to refuse the stipulation, or that by entering into the stipulation he was waiving his right to confront witnesses against him.

¶ 7 In June 2013, the State filed a petition requesting defendant's termination from the hybrid court program. The State alleged defendant failed to report to his probation officer, failed to report to treatment, failed to report for drug screening, and was observed by police officers to be under the influence of an intoxicating substance and in possession of synthetic substances.

¶ 8 In July 2013, defendant admitted the allegations in the petition and requested he be terminated from hybrid court. Thereafter, the case proceeded to a bench trial. The parties offered no evidence other than the stipulation of facts, and the court found defendant guilty on both counts. The matter proceeded to immediate sentencing, and the court sentenced defendant to two years in prison on count I. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues he is entitled to a new trial after the trial court failed to properly admonish him under Illinois Supreme Court Rule 402(a) (eff. July 1, 2012). We agree, and the State concedes the error.

¶ 11 A stipulation is tantamount to a guilty plea when the State presents its entire case by stipulation and the defendant fails to preserve a defense. *People v. Clendenin*, 238 Ill. 2d 302, 324, 939 N.E.2d 310, 323 (2010). In this situation, a defendant should be afforded the protections set forth in Illinois Supreme Court Rule 402 (eff. July 1, 2012). *People v. Horton*, 143 Ill. 2d 11, 21, 570 N.E.2d 320, 324 (1991). In guilty-plea hearings or in cases in which the defense offers to stipulate the evidence is sufficient to convict, Illinois Supreme Court Rule 402(a) (eff. July 1, 2012) provides, in part, as follows:

> "(a) Admonitions to Defendant. The court shall not accept a plea of guilty or a stipulation that the evidence is sufficient to convict without first, by addressing the defendant personally in open court, informing him or her of and determining that he or she 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;
>
> (3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already

been made, or to plead guilty; and

(4) that if he or she pleads guilty there will not be a trial of any kind, so that by pleading guilty he or she waives the right to a trial by jury and the right to be confronted with the witnesses against him or her; or that by stipulating the evidence is sufficient to convict, he or she waives the right to a trial by jury and the right to be confronted with any witnesses against him or her who have not testified."

When the trial court fails to admonish a defendant pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 2012), the judgment must be reversed and the cause remanded for a new trial. *Horton*, 143 Ill. 2d at 27, 570 N.E.2d at 327.

¶ 12 In the case *sub judice*, the State's entire case against defendant was presented by stipulation. Defense counsel made no arguments and presented no defense at trial. Thus, defendant's stipulated bench trial was tantamount to a guilty plea, and the trial court was required to admonish him pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 2012) before accepting the stipulation. While the court admonished defendant regarding his right to a jury trial prior to admitting him to the hybrid court program, the court did not say anything regarding the nature of the charges against defendant, the range of punishments he could face, or that he was waiving his right to be confronted with witnesses against him. Accordingly, as the admonitions in this case were not in substantial compliance with Rule 402(a) (Ill. S. Ct. R. 402(a) (eff. July 1, 2012)), we reverse defendant's conviction and remand for a new trial.

¶ 13 In light of our decision, we need not address defendant's remaining argument that the trial court erred in sentencing him without the benefit of a presentence investigative report. See 730 ILCS 5/5-3-1 (West 2012). Also, because we are remanding for a new trial and we find the record contains sufficient evidence for the trier of fact to have found defendant guilty of the crimes charged beyond a reasonable doubt, no double jeopardy violation will occur upon retrial. See *People v. Ward*, 2011 IL 108690, ¶ 50, 952 N.E.2d 601. This conclusion does not imply a determination of defendant's guilt or innocence that would be binding on retrial. *In re R.A.B.*, 197 Ill. 2d 358, 368-69, 757 N.E.2d 887, 894 (2001).

¶ 14 III. CONCLUSION

¶ 15 For the reasons stated, we reverse the trial court's judgment and remand for a new trial.

¶ 16 Reversed and remanded.