2015 IL App (4th) 140053-U

NO. 4-14-0053

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 30, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
RONALD R. BRAMLEY,	)	No. 12CF641
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion either by refusing to allow defendant to withdraw his guilty plea or by sentencing him to five years' imprisonment.

¶ 2 The trial court sentenced defendant, Ronald R. Bramley, to five years' imprisonment on his open plea of guilty to the Class 4 felony of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2012)). Afterward, he filed an amended motion to withdraw his guilty plea or, in the alternative, for a reduction of his sentence. The court denied the amended motion. He appeals. Because we find no abuse of discretion in either the refusal to allow him to withdraw his guilty plea or in the sentence of five years' imprisonment, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. The Information

¶ 5 The information had three counts, and the date of the offense for each count was April 22, 2012.

¶ 6 Count I charged defendant with the Class 3 felony of unlawfully possessing cannabis with the intent to deliver it (720 ILCS 550/5(d) (West 2012)).

¶ 7 Count II charged him with the Class 4 felony of unlawfully possessing cannabis with the intent to deliver it (720 ILCS 550/5(c) (West 2012)).

¶ 8 Count III charged him with the Class 4 felony of unlawfully possessing a controlled substance (720 ILCS 570/402(c) (West 2012)).

¶ 9 B. The Guilty Plea Hearing

¶ 10 Defendant's attorney, Daniel Jackson, suggested to the trial court that defendant wanted to plead guilty to count III. Therefore, on March 11, 2013, the court held a guilty plea hearing.

¶ 11 The trial court admonished defendant pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 2012), telling him, among other things:

> "THE COURT: Mr. Bramley, in Count III, sir, you've been charged with the offense of unlawful possession of a controlled substance, a Class 4 felony, eligible for extended term sentencing.
>
> Sir, it is alleged that you committed this offense on April 22nd of 2012, in Champaign County, Illinois. Specifically, that you did knowingly and unlawfully possess less than 15 grams of a substance containing cocaine, a controlled substance, other than as authorized by the Controlled Substances Act.
>
> Sir, do you understand what the charge is claiming?

THE DEFENDANT: Yes, I do, Your Honor.

THE COURT: Did you want a moment to talk to your attorney?

THE DEFENDANT: Yes.

THE COURT: You may.

(Mr. Jackson and the Defendant converse.)

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Sir, did you have any questions about that?

THE DEFENDANT: No, ma'am.

THE COURT: And you have had enough time to talk to your attorney, Mr. Jackson?

THE DEFENDANT: Yes, ma'am.

THE COURT: Sir, that is a Class 4 felony, eligible for extended term sentencing. What that means is that if you were convicted, you are eligible for a sentence that could include a period of incarceration in the Illinois Department of Corrections. That would be for a specific term. The normal range would fall anywhere between one to three years. There is a suggestion that you have prior felony convictions with the last ten years. If that is the case, then you are eligible for what's called an [']extended term sentence.['] That means you could be sentenced to the Illinois

Department of Corrections for a specific term that could fall anywhere between three to six years of incarceration.

THE DEFENDANT: Yes.

THE COURT: So the range of incarceration if you have that prior conviction is anywhere between one to six years.

* * *

Mr. Bramley, did you understand the full range of possible penalties?

THE DEFENDANT: Yes, ma'am.

* * *

THE COURT: Have there been plea negotiations, Mr. Banach?

MR. BANACH [(prosecutor)]: Yes, Your Honor. The plea negotiations contemplate the Defendant would plead guilty to unlawful possession of a controlled substance, Class 4 felony, as alleged in Count III. There would be no agreement as to the sentence in that cause. However, Counts I and II of this case would be dismissed.

Also, several traffic violations would be dismissed [(which the prosecutor then listed)].

THE COURT: Is that your understanding of the agreement, Mr. Jackson?

MR. JACKSON: Yes, Your Honor.

THE COURT: Mr. Bramley, did you understand what the attorneys said about the agreement, sir?

THE DEFENDANT: Yes.

THE COURT: Sir, if you do choose to plead guilty, then at the sentencing hearing, the State will dismiss those traffic charges, and Counts I and II will be dismissed.

I will set this down for a sentencing hearing. ***

***

*** And then I would decide what the correct sentence should be based on the full range of possible penalties that I explained.

Now, sir, do you understand all that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Sir, other than those things happening, has anyone promised you that anything else would happen?

THE DEFENDANT: No, ma'am, other than the fact that the State had offered me a year. And the only reason why I'm taking an open plea is I would rather the judge—I'm trying to get probation because of my health, ma'am, and that's the only reason why I'm taking an open plea.

THE COURT: And you would have a chance to present any evidence or arguments about that. I can't guarantee you what the sentence would be from the range.

Do you understand that, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Anything else that's been promised to you, sir?

THE DEFENDANT: No, ma'am.

THE COURT: Factual basis, please.

MR. BANACH: Your Honor, if the matter were to proceed to trial, the State would present evidence that on April 22nd, 2012, Champaign police officers stopped a vehicle being driven by the Defendant for a broken windshield. Defendant had on his person about 30 grams of a substance containing cannabis, also a metal pipe which contained a small amount of a substance which tested positive for the presence of cocaine when tested by the Illinois State Police crime laboratory.

THE COURT: From your investigation, Mr. Jackson, would you stipulate that if called for trial, the People would have evidence and witnesses who would testify substantially as indicated?

MR. JACKSON: Yes, Your Honor.

THE COURT: At this time, Mr. Bramley, do you plead guilty, sir, to the offense of unlawful possession of a controlled substance, a Class 4 felony?

THE DEFENDANT: Yes ma'am."

¶ 12 The trial court found the guilty plea to be knowingly, understandingly, and voluntarily made, and the court found there was a factual basis for the guilty plea. Therefore, the court accepted the plea of guilty to count III and entered judgment on it.

¶ 13 The trial court had admonished defendant, at the beginning of the hearing, that if he wished to appeal after pleading guilty, he would have to file a motion, within 30 days, asking for permission to withdraw the guilty plea and to vacate the judgment. The court said: "In that motion, you must set forth the grounds or reasons for your motion. Any issue or claim of error that was not included in your written motion would be waived, which means it would be given up."

¶ 14 C. The Sentencing Hearing

¶ 15 1. *The Presentence Investigation Report, Filed on May 15, 2013*

¶ 16 a. Prior Record

¶ 17 (i) *Felonies*

¶ 18 According to the presentence investigation report, defendant accumulated nine prior felony convictions from October 1985 to April 2008. These were for deceptive practices, theft, aggravated battery, misuse of a credit card, theft with a prior theft conviction, attempt (aggravated robbery), forgery, aggravated robbery, and unlawful delivery of a controlled substance.

¶ 19 For these felonies, he was sentenced to probation four times and to prison five times. One of these sentences of probation was revoked, and mandatory supervised release was revoked seven times.

¶ 20 (ii) *Misdemeanors*

¶ 21 From July 1985 to October 1999, defendant accumulated five misdemeanor convictions. They were for public indecency, theft, resisting or obstructing a peace officer, battery, and domestic battery.

¶ 22 For these misdemeanors, he was sentenced to probation four times and to jail once (for the domestic battery). He was "unsuccessfully discharged" from probation for the misdemeanor battery.

¶ 23 (iii) *Traffic Offenses*

¶ 24 From 1988 to 1998, defendant was convicted seven times of driving while his driver's license was suspended. From 1999 to 2012, he was convicted four times of driving after his driver's license had been revoked.

¶ 25 b. Family Information

¶ 26 Defendant, 50 years old, lived with his wife, in Champaign. He had a son, who was 36 years old and who lived in Atlanta, Georgia.

¶ 27 c. Education

¶ 28 From 2004 to 2007, while he was incarcerated in the Illinois Department of Corrections, defendant attended Lakeland College, earning an associate's degree. Also, while in prison, he "earned a Custodial Maintenance Certificate, a Food Safety & Sanitation Certificate, and a Minister's License and was on the Dean's List with a 3.8 [grade point average] on a 4.0 scale." He reported he presently was "pursuing a Bachelor's Degree in Business Administration by taking on-line courses" from Kaplan University.

¶ 29 d. Physical Health

¶ 30 Defendant described his physical health as "poor." He reported that in 2008, while he was in the Department of Corrections, he was diagnosed with prostate cancer. The

cancer now was in remission, he said, but he still was suffering from complications from the surgery, including pain. Because prescribed medication no longer alleviated the pain, he smoked cannabis, which seemed to help.

¶ 31 The probation officer wrote: "Mr. Bramley was directed to provide his attorney with all necessary paperwork outlining his health conditions for presentation to the Court (if not already done so)." (Defendant had been released on bond.)

¶ 32 e. Financial Circumstances and Employment

¶ 33 Since 1983, defendant had been receiving social security disability benefits, and he also had an Illinois Link card, by which he received supplemental nutrition assistance and cash assistance.

¶ 34 He reported he currently was unemployed but that since 2009 he had been doing odd jobs for cash, such as lawn care, painting, scrapping, hauling, and moving.

¶ 35 For six months in 2007, he was employed by Plasti-Pak, until he was fired because of a disagreement with management.

¶ 36 From 2002 to 2004, he worked for M.W. Painting in Urbana.

¶ 37 From 2001 to 2002, he worked for University Church in Champaign.

¶ 38 f. Alcohol and Drugs

¶ 39 Defendant reported that although he had not consumed alcohol since 2003 or 2004, he used to have a severe problem with alcohol. One winter night in 1983, he was so intoxicated he fell down outside and knocked himself out. Because he was not found until morning, he lost some of his fingers and toes from frostbite.

¶ 40 He had smoked cannabis every day since the age of 13 and last smoked it two days before the interview.

¶ 41 The probation officer wrote:

"Mr. Bramley reports he first snorted cocaine at the age of [18]. From the ages of [18] to [21], the defendant indicates he snorted one[-]sixteenth of a gram daily. The defendant notes he began 'free basing cocaine' at the age of [21] and continued said use, daily, until the age of [26]. From [26] to [27], the defendant indicates he would smoke $100.00 to $200.00 worth of crack daily. From [27] to [44], the defendant's crack use increased to $400.00 to $500.00 worth of crack daily. The defendant relates he has not used cocaine in any form since his release from prison.

Mr. Bramley reports he first used pain medication at the age of [21]. The defendant admits he became addicted to morphine after he was hospitalized for his frostbite injuries. The defendant notes he snorted $300.00 to $400.00 worth of heroin daily from the ages of [21] to [22], but has not used heroin since that time.

Mr. Bramley admits he has committed crimes while under the influence of drugs and to acquire drugs and feels his use of illegal drugs was problematic in his life in the past."

¶ 42 Defendant reported participating in the following drug-abuse programs: "Regarding substance abuse treatment, the defendant explains he participated in inpatient substance abuse treatment from 2004 to 2007 while incarcerated in the Illinois Department of Corrections

(Southwestern). The defendant explains he was returned to [the Illinois Department of Corrections] in 2008 and placed back into the treatment program. Finally, defendant relates, he was also referred to ACES [(Assessment, Counseling & Educational Services)] by TASC [(the Treatment Alternatives to Street Crimes Program)] while on parole for outpatient treatment. The defendant notes he attended sobriety-based self help groups from 2004 to 2008."

¶ 43 2. *The Sentencing Hearing*

¶ 44 The trial court held a sentencing hearing on May 20, 2013. The State called no witnesses and presented no evidence in aggravation beyond that in the presentence report.

¶ 45 Defendant took the stand and testified in mitigation. Although he had brought along no medical documentation, he represented to the trial court that spots had been found on his bladder and in his testicles and that his cancer had returned. He had an appointment in a couple of days with Thomas H. Tarter, a surgical oncologist, in Decatur.

¶ 46 Defendant testified that although he formerly was addicted to drugs ("I mean my body is falling apart from years of abuse, of drug abuse"), it had been years since he used any drug other than cannabis. He still smoked cannabis, only because it helped him endure the pain in his lower abdomen and in his testicles.

¶ 47 As for the jacket in which the police had found the crack pipe, defendant explained:

"[T]he drug paraphernalia that was found on me was—it—it was found in the jacket, a jacket that was in my car—all right—that—

> that—that did not belong to me. Okay? I was the victim of a crime that day and my windows was knocked out so that's the only reason why I picked that jacket up to wear it is because it was cold and I didn't have a jacket of my own so I used that jacket. I never searched the pockets of that jacket, you know what I'm sayin', to see if there was anything in it because I didn't think that I would have to search the pockets of that jacket and it turned out that when the police stopped me they asked me did I have any drugs on me or—or—or—or any weapons and I told him yes I did have drugs on me and the drugs that I handed him was the cannabis that I was caught with and then he searched me further and he found a—a—a coke—a cocaine hitter, you know what I'm sayin', in—in the poket of the jacket. Okay? And I told him then that was not mine and I knew nothing about it."

¶ 48 No one testified other than defendant, and the defense presented no further evidence in mitigation.

¶ 49 After hearing arguments by counsel and a statement in allocution by defendant, the trial court remarked that defendant's prior record was "astounding." It was unclear to the court why he had stopped working in 2007: the loss of fingers and toes had not stopped him from working in the past. There was no question of dependencies, since his only child was an adult. He had "achieved higher education," but that was while he was incarcerated. In fact, he seemed to be most successful when incarcerated. He had presented no documentation that his cancer had returned, although the probation officer had warned him that the court would require

documentation of any medical concerns. The court nevertheless said: "[A]nd certainly I will accept that he has the concerns he has described[,] and the Court is not without compassion for the medical difficulties, [but] the last thing he needs to be adding to the mix is to continue to abuse substances[,] and his life is a life that has been dissipated by substance abuse." The only time he had engaged in treatment was when he was incarcerated.

¶ 50 Given defendant's "miserable record of noncompliance" and his "continued commission of crimes," the trial court decided that "a community-based sentence would deprecate the seriousness of the Defendant's conduct, be inconsistent with the ends of justice, and frankly it would be a miserable failure." Noting "the mitigation from the medical issues and primarily from [defendant's] pleading guilty," the court sentenced him to imprisonment for five years.

¶ 51 D. The Amended Motion To Withdraw the Guilty Plea or, in the Alternative, To Reconsider the Sentence

¶ 52 On August 9, 2013, through his new attorney, First Assistant Public Defender Janie Miller-Jones, defendant filed an amended motion to withdraw his guilty plea and to vacate the judgment or, in the alternative, to reconsider the sentence.

¶ 53 In the amended motion, defendant alleged that "his decision to plead guilty was the result of ineffective assistance of counsel." His former counsel, Jackson, allegedly rendered ineffective assistance in two ways: (1) "[telling defendant] he would receive a sentence of probation if he were to enter a plea on the open sentence agreement" as opposed to accepting the State's alternative offer of one year's imprisonment; and (2) failing to "investigate his case [or] provide any type of due diligence" in that Jackson failed to (a) follow up with the subpoena served on the Champaign police department, (b) file a motion for suppression or do any

investigation into the advisability of doing so, or (c) investigate whether the weight of the cannabis was indeed above the 30-gram threshold.

¶ 54 In sum, the amended motion asserted that defendant "did not want to enter a plea of guilty to the Unlawful Possession of a Controlled Substance charge as he maintained he was innocent of such charge and he only pled guilty to that charge because he felt coerced by his counsel, Mr. Jackson, and said counsel also informed him [that] if he pled guilty, *** he would receive a sentence of probation."

¶ 55 On November 13, 2013, the trial court held a hearing on defendant's amended motion to withdraw his guilty plea and to vacate the judgment or, in the alternative, to reconsider the sentence. Defendant testified that, in the guilty plea hearing, he really did not want to plead guilty to count III, because the crack pipe did not belong to him and he had not possessed it knowingly. He explained:

> "I even said that they done took the plea, you know, that I did not want to me to plead to possession of a controlled substance because I had what they call a cocaine pipe, you know what I'm saying, that was found in a jacket, which to this day I'm still telling the Court that it was not mine. It was in some clothes that I got out of Laquesha Petes' [*sic*] garage, you know, and —and people had been in there getting high and I guess they put it in a—in one of my jackets to hide it."

¶ 56 Nevertheless, defendant decided to plead guilty to count III because, according to him, the attorney he had hired, Jackson, had assured him he would receive probation if he entered an open plea of guilty to that count. Defendant testified:

> "He said, ['W]ell, we could get probation on an open plea.['] And I said, ['W]ell, do you think the Judge would give it to me?['] He said, ['O]h, yeah, I really believe that Judge Ladd would give it to you because Judge Ladd likes you for some reason. I don't know why, but she likes you for some reason. And I believe that she would give it to you.[']
>
> And I kept asking him, you know what I'm saying, ['D]o you think that I can get probation, that Judge Ladd would give me probation?['] [']Yeah, sure, she will give it to you.['] You know, I said, ['B]ecause if—if not, I'll take the one year, you know.['] And I would have been willing to take the one year that Mr. Banach offered."

¶ 57 Actually, defendant further testified, he would not have pleaded guilty at all if only Jackson had diligently represented him. Specifically, defendant complained that Jackson had failed to do four things. First, he had failed to follow up with a subpoena *duces tecum* he had served on the Champaign police department, in which he had requested a copy of the department's towing policies. See *People v. Ferris*, 2014 IL App (4th) 130657, ¶ 57 ("There must be a standard police procedure authorizing the towing of the car in the first place. [Citations.] Otherwise, in the unbridled exercise of his or her discretion, the police officer could opt for a police tow in order to create the occasion for an inventory search—which really would be an investigatory search in the guise of an inventory search."). Second, Jackson never kept his promise to retrieve defendant's previous traffic tickets for driving without a valid driver's license. Supposedly, these previous tickets would have shown it was not the policy of the Champaign

police department to tow vehicles simply because the driver was unlicensed. Third, Jackson had failed to file a motion for suppression, a motion defendant believed would have been meritorious because the inventory search of his car, including the jacket in his car, was really an investigatory search. Fourth, defendant telephoned the crime laboratory, and a woman there had told him the cannabis weighed 30.4 grams *inside the sandwich bag*. According to defendant, subtracting the weight of the sandwich bag would have brought the weight down to 29.4 grams, and as far as he knew, Jackson never talked with the woman at the crime laboratory and never confirmed the correct weight of the cannabis, minus the bag. Had Jackson done all those things, defendant would not have pleaded guilty, or so he testified.

¶ 58 Defendant was the only person to testify in the hearing on his amended motion to withdraw his guilty plea.

¶ 59 After hearing arguments by counsel, the trial court stated: "The State has elected not to call Mr. Jackson as a witness. I would like to take this matter under advisement in light of that. So I will issue my ruling in writing." The court then recessed the matter.

¶ 60 During the recess, the prosecutor then moved for permission to reopen the evidence so as to allow the State to call Jackson as a witness. Over defense counsel's objection, the trial court granted the State's motion, noting that, in a separate criminal case, the court had granted defendant's motion for a continuance so that defendant could arrange for the attendance of a witness.

¶ 61 On December 18, 2013, the hearing resumed. The State called Jackson, who denied telling defendant he would be sentenced to probation if he entered an open plea of guilty to count III. Rather, Jackson had expressed to defendant his opinion that one year's imprisonment would be a "not unreasonable" sentence. Defendant, however, was adamant that

he could not and would not serve any time in the Department of Corrections. Consequently, the remaining options were an open plea to count III or a trial.

¶ 62 Jackson testified he had telephoned the forensic laboratory and had confirmed that the laboratory always weighed materials *without* the packaging.

¶ 63 As for the towing procedures of the Champaign police department, Jackson testified he had obtained a copy of them, "in another matter," about a month before defendant pleaded guilty in this case. Miller-Jones asked Jackson on cross-examination:

> "Q. *** Can you discuss with us what your investigation was into those tow records or tow procedures?
>
> A. Well, I've been working with the Champaign Police Department on that and other issues for a number of years in various capacities, both as a prosecutor and as a defense attorney. I am familiar with their tow procedures. And when they seize a vehicle, the driver who is not authorized to drive it, they can tow it. And when they tow it, they can look inside and see and inventory what is in the car. It was pursuant to that inventory search that they looked in the coat and they looked in the glove box and found the things that they found."

But see 625 ILCS 5/4-203(b) (West 2012) ("When a vehicle is abandoned on a highway in an urban district 10 hours or more, its removal by a towing service may be authorized by a law enforcement agency having jurisdiction."); *People v. Clark*, 394 Ill. App. 3d 344, 348 (2009) ("[T]he fact that [the] defendant's car would be left unattended is not a sufficient reason for impoundment unless the car would be illegally parked."); *United States v. Duguay*, 93 F.3d 346,

353 (7th Cir. 1996) ("[I]mpoundment based solely on an arrestee's status as a driver, owner, or passenger is irrational and inconsistent with 'caretaking' functions. Under either Detective Waldrup or Detective Adams' policies, towing is required any time the arrestee is carted off to jail, regardless of whether another person could have removed the car and readily eliminated any traffic congestion, parking violation, or road hazard.").

¶ 64 After Jackson testified, the trial court denied the amended motion in its entirety. The court perceived that defendant was moving to withdraw his guilty plea "because he simply rolled the dice and it didn't turn out in his favor." The court concluded that the plea of guilty to count III was knowing and voluntary, defendant had received all the required admonitions, and the sentence of five years' imprisonment was reasonable.

¶ 65 This appeal followed.

¶ 66 II. ANALYSIS

¶ 67 A. Denial of Permission To Withdraw the Guilty Plea

¶ 68 To commit the offense in count III, to which he pleaded guilty, defendant had to "knowingly" possess a controlled substance. 720 ILCS 570/402(c) (West 2012). Defendant does not dispute his possession of a controlled substance, but he disputes his knowing possession of it. He represents in his brief, as he represented to the trial court after pleading guilty: "[He] did not know that the jacket, which was not his, had a pipe with cocaine residue in one of the pockets until the police searched him." He argues that because he had, in this respect, "a defense worthy of consideration" by a finder of fact, the court abused its discretion by denying his amended motion to withdraw his guilty plea (see *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009) (a ruling on a motion to withdraw a guilty plea is reviewed for an abuse of discretion)). (Internal quotation marks omitted.) *People v. Davis*, 145 Ill. 2d 240, 244 (1991).

¶ 69 For two reasons, we are unconvinced the trial court made an "arbitrary, fanciful, [or] unreasonable" decision by denying permission to withdraw the guilty plea. *Delvillar*, 235 Ill. 2d at 519.

¶ 70 First, in the guilty plea hearing, defendant solemnly admitted to the trial court that on April 22, 2012, he knowingly possessed the cocaine. Again, we quote from the transcript of that hearing:

> "THE COURT: Mr. Bramley, in Count III, sir, you've been charged with the offense of unlawful possession of a controlled substance, a Class 4 felony, eligible for extended term sentencing.
>
> Sir, it is alleged that you committed this offense on April 22nd of 2012, in Champaign County, Illinois. Specifically, that you did *knowingly* and unlawfully possess less than 15 grams of a substance containing cocaine, a controlled substance, other than as authorized by the Controlled Substances Act.
>
> Sir, do you understand what the charge is claiming?
>
> THE DEFENDANT: Yes, I do, Your Honor.
>
> THE COURT: Did you want a moment to talk to your attorney?
>
> THE DEFENDANT: Yes.
>
> THE COURT: You may.
>
> (Mr. Jackson and the Defendant converse.)
>
> THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Sir, did you have any questions about that?

THE DEFENDANT: No, ma'am.

THE COURT: And you have had enough time to talk to your attorney, Mr. Jackson?

THE DEFENDANT: Yes, ma'am.

* * *

THE COURT: At this time, Mr. Bramley, do you plead guilty, sir, to the offense of unlawful possession of a controlled substance, a Class 4 felony?

THE DEFENDANT: Yes ma'am." (Emphasis added.)

¶ 71 Nobody knew better than defendant whether his possession of the cocaine was knowing. "A judicial admission is a deliberate, clear, unequivocal statement of a party, about a concrete fact, within the party's peculiar knowledge." *Eidson v. Audrey's C T L, Inc.*, 251 Ill. App. 3d 193, 195 (1993). What defendant knew on April 22, 2012, was a concrete fact within his peculiar knowledge, and his admission of that fact, in the form of a guilty plea, was clear, deliberate, and unequivocal. Cases hold that knowing and voluntary pleas of guilt are judicial admissions. *People v. Peterson*, 74 Ill. 2d 478, 488 (1978); *People v. Green*, 17 Ill. 2d 35, 42 (1959); *People v. Feldman*, 409 Ill. App. 3d 1124, 1128 (2011); *Spircoff v. Stranski*, 301 Ill. App. 3d 10, 15-16 (1998); *People v. Powell*, 107 Ill. App. 3d 418, 419 (1982); see also *People v. Williams*, 188 Ill. 2d 365, 370 (1999) ("If a defendant's guilty plea is not voluntary and knowing, it has been obtained in violation of due process and, therefore, is void."). It appears, from the record, that defendant's plea of guilty was knowing and voluntary. A plea of guilty is an

admission of every fact alleged in the charging instrument, provided that each fact admitted is an element of the crime charged. *Feldman*, 409 Ill. App. 3d at 1128. As we said, knowing possession of cocaine was an element of the crime, and defendant, in open court, made a formal concession that he possessed cocaine. "If the fact admitted to is a concrete fact within the peculiar knowledge of the individual who admits it, an opposing party is entitled to hold the individual to the fact, and the individual may not have the benefit of other evidence that might tend to falsify the admission unless the court finds that the individual has provided a reasonable explanation of it due to mistake." *Id.*

¶ 72 Defendant does not claim that, in the guilty plea hearing, he was mistaken as to whether his possession of the cocaine was knowing. Instead, he tells us basically that, when pleading guilty, he was unaware of the cocaine at the time of the traffic stop but he deliberately chose to mislead the trial court in the guilty plea hearing by stipulating he had been aware of the cocaine and now he wishes to controvert that stipulation. We cannot say the court was arbitrary and unreasonable by refusing to allow him to do this. See *Delvillar*, 235 Ill. 2d at 519; *People v. Walston*, 38 Ill. 2d 39, 44 (1967) ("We do not believe that a statement of innocence, accompanied by a motion to withdraw a plea of guilty by a defendant theretofore adequately informed of the nature of the charge to which he was admitting guilt and adequately admonished as to the possible consequences of such plea, is sufficient of itself to require allowance of such motion."); *Feldman*, 409 Ill. App. 3d at 1128. If defendant is judicially estopped from denying a certain fact, the denial of that fact cannot be "a defense worthy of consideration" by a trier of fact. (Internal quotation marks omitted.) *Davis*, 145 Ill. 2d at 244.

¶ 73 Another, alternative reason why the trial court could have reasonably decided that defendant lacked "a defense worthy of consideration" by a trier of fact was that his statements of

the defense contradicted one another. (Internal quotation marks omitted.) *Id.* In the sentencing hearing, he represented to the trial court that he had grabbed a coat that belonged to someone else:

> "[T]he drug paraphernalia that was found on me was—it—it was found in the jacket, a jacket that was in my car—all right—that—that—that did not belong to me. Okay? I was the victim of a crime that day and my windows was knocked out so that's the only reason why I picked that jacket up to wear it is because it was cold and I didn't have a jacket of my own so I used that jacket. I never searched the pockets of that jacket, you know what I'm sayin', to see if there was anything in it ***."

¶ 74 Later, however, in the hearing on his amended motion to withdraw his guilty plea, defendant admitted the jacket was his, but he claimed the crack pipe belonged to someone else, who, without his knowledge, had put it in his jacket:

> "I even said that they done took the plea, you know, that I did not want to me to plead to possession of a controlled substance because I had what they call a cocaine pipe, you know what I'm saying, that was found in a jacket, which to this day I'm still telling the Court that it was not mine. It was in some clothes that I got out of Laquesha Petes' [*sic*] garage, you know, and —and people had been in there getting high and I guess they put it in a—*in one of my jackets* to hide it." (Emphasis added.)

Thus, we find no abuse of discretion in the trial court's refusal to exchange a judicial admission for a self-contradictory account. See *Delvillar*, 235 Ill. 2d at 519.

¶ 75 B. The Sentence

¶ 76 1. *"Manifestly Disproportionate to the Nature of the Offense"*

¶ 77 Defendant pleaded guilty to a violation of section 402(c) of the Illinois Controlled Substances Act, a Class 4 felony (720 ILCS 570/402(c) (West 2012)). Normally, a Class 4 felony was punishable by imprisonment for not less than one year and not more than three years. 730 ILCS 5/5-4.5-45(a) (West 2012). It is undisputed, though, that, because of his criminal history, defendant was eligible for an extended sentence: imprisonment for not less than three years and not more than six years. See 730 ILCS 5/5-4.5-45(a), 5-5-3.2(b)(1), 5-8-2(a) (West 2012). (Probation for not more than 30 months was an alternative option. See 730 ILCS 5/5-4.5-45(d) (West 2012).) The trial court sentenced defendant to imprisonment for five years, only one year short of the maximum extended term.

¶ 78 Defendant argues that this five-year prison sentence is "manifestly disproportionate to the nature of [his] offense," considering that his offense harmed no one and considering that the amount of cocaine on the crack pipe was so vanishingly small that the forensic laboratory apparently was unable to weigh it. *People v. Fern*, 189 Ill. 2d 48, 54 (1999). Citing *Fern*, and *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, defendant argues that "[a] sentence within the statutory range is excessive, and an abuse of discretion, if it is 'manifestly disproportionate to the nature of the offense.' "

¶ 79 This argument misapplies the phrase "nature of the offense." The "nature" of something means its "basic or inherent features." The New Oxford American Dictionary 1140 (2001). The basic or inherent features, that is to say, the elements, of the offense defined by

section 402(c) (720 ILCS 570/402(c) (West 2012)) are the knowing possession of less than 15 grams of a substance containing cocaine. Those elements remain the same regardless of what the amount of the substance is within that range. For example, the knowing possession of 14 grams of cocaine is not, by nature, a different offense from the knowing possession of only 0.1 grams of cocaine. Nor does the nature of the offense change if someone gets hurt as a result of the defendant's possession of the cocaine. Granted, a defendant might deserve a more severe punishment within the statutory range if he possessed 14 grams and someone got hurt than if he possessed only 0.1 grams and no one got hurt—but that would have nothing to do with "the nature of the offense." *Fern*, 189 Ill. 2d at 54.

¶ 80 Originally, when the supreme court discussed whether "the penalty imposed [was] manifestly disproportionate to the nature of the offense," the supreme court really meant "the nature of the offense." *People v. Touhy*, 9 Ill. 2d 462, 465-66 (1956). In *Touhy*, for example, the supreme court considered whether, for purposes of article II, § 11, of the 1870 constitution (Ill. Const. 1870, art. II, § 11), the legislatively prescribed penalty for helping a prisoner escape was "manifestly disproportionate to the nature of [that] offense" considered in the abstract. *Touhy*, 9 Ill. 2d at 465-66. Somehow, though, over the years, the phrases "the spirit and purpose" of the law (*People v. Lloyd*, 304 Ill. 23, 36 (1922)) and "manifestly disproportionate to the nature of the offense" (*Touhy*, 9 Ill. 2d at 465-66) got transplanted to a different discussion, in which those phrases are less apt: a discussion of whether the sentence the trial court imposed, within the legislatively authorized range, was too severe, given the egregiousness of the defendant's particular act, or the way he committed the crime. See *Fern*, 189 Ill. 2d at 54 ("A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.").

¶ 81 Defendant seems to argue the trial court abused its discretion if there is a mismatch between the sentence and the egregiousness of defendant's criminal act, considered in isolation. That argument cannot be correct because it would exclude the defendant's prior criminal record from the equation. To illustrate what we mean, assume the following. A jury has found two codefendants, A and B, guilty of the same act of theft. A has no criminal record, and B has five prior convictions of theft; but all other things are equal. Because of those five prior convictions of theft, the trial court decides to give B a sentence considerably more severe than the sentence it gives A. By defendant's logic, the sentence the trial court imposed on B would be an abuse of discretion because there would be a clear mismatch, a lack of proportion, between the severity of his sentence and the egregiousness of his criminal act, as shown by the more lenient sentence that A received: a sentence that was based on nothing other than the same act of theft that B had committed.

¶ 82 Defendant's logic is fallacious because, even according to the cases he cites, the trial court should take into account the defendant's "general moral character" (*id.* at 53) and his prior criminal record (*Price*, 2011 IL App (4th) 100311, ¶ 37 ("[H]e had an extensive juvenile record and history of violence.")). See also *People v. Pace*, 2015 IL App (1st) 110415, ¶ 91 ("an inclusive, holistic consideration" of all the factors in aggravation and mitigation, including criminal history); *People v. Gimmler*, 46 Ill. App. 3d 440, 447 (1977) ("Two important factors to be considered in reviewing the trial court's sentencing decision are the seriousness of the crime and prior convictions."). If the defendant has been committing crimes over and over again, he might deserve a more severe sentence than the sentence a first-time offender would receive if only the present criminal act were considered in isolation. The trial court in this case could have reasonably decided that, with his substantial criminal record, defendant deserved five years'

imprisonment for an offense for which, otherwise, the minimum punishment would have been appropriate. See 730 ILCS 5/5-5-3.2(a)(3) (West 2012).

¶ 83 2. *Efforts at Self-Improvement*

¶ 84 Defendant complains that instead of counting as mitigation his efforts to improve himself while he was in custody—specifically, his earning an associate's degree and some occupational certificates—the trial court "viewed [these personal strides] as a reason to *increase* [his] sentence because he achieved many of these goals while in [the] custody [of the Department of Corrections]." (Emphasis in original.)

¶ 85 It would be fairer to say that, instead of putting these achievements in the aggravating column, the trial court somewhat *discounted* them as mitigation by observing that defendant had achieved these things while in custody. In other words, the self-improvement counted as mitigation, but it might have been easier to believe in defendant's rehabilitative potential if at least some of the self-improvement had occurred outside the Department of Corrections, when he was not being closely supervised by correctional officers.

¶ 86 *3. Cancer and the Loss of Fingers and Toes*

¶ 87 According to defendant, the trial court "afforded no real weight to his struggles as a forty-nine-year-old, physically disabled cancer patient who lost most of his fingers and toes in an accident thirty years before the offense and recently learned that his prostate cancer, which had been in remission, apparently spread to his testicles." He cites section 5-5-3.1(a)(12) of the Unified Code of Corrections (730 ILCS 5/5-5-3.1(a)(12) (West 2012)), which requires a trial court to consider, as a mitigating factor, that "[t]he imprisonment of the defendant would endanger his or her medical condition."

¶ 88 But we are aware of no evidence that imprisonment actually would endanger defendant's medical condition. See *People v. Manning*, 227 Ill. 2d 403, 422 (2008) ("The eighth amendment to the United States Constitution requires that inmates receive adequate medical care."); 730 ILCS 5/3-7-2(d) (West 2012) ("All institutions and facilities of the Department [of Corrections] shall provide every committed person with *** medical *** care."). In fact, in the sentencing hearing, defendant expressed gratitude to the trial court for previously sending him to prison because, if he had not been in prison, his prostate cancer would have remained undiagnosed and untreated. While in the custody of the Department of Corrections, he underwent life saving cancer surgery—paid for, apparently, by the state. He testified:

> "I was sent to the Department of Corrections because I missed court in this very courtroom and I had already taken three years and I was—I was caught on a warrant. Judge Ladd issued a warrant for my arrest and I thank God for that. I was arrested and I was sent back to—to the Department of Corrections and then I went back to Southwestern Correctional Center and they send me to St. Louis University Hospital where I was diagnosed with prostate cancer."

Now that his cancer allegedly has returned, it is unclear why defendant fears the Department of Corrections would deny him the medical care it gave him previously.

¶ 89 *4. Letters From Pastors*

¶ 90 Defendant complains that the trial court gave no consideration to letters that several pastors had written on his behalf. Upon receiving those letters a couple of weeks before

the sentencing hearing, the trial court forwarded them to the prosecutor and defense counsel, along with a cover letter stating it would not consider the letters at that time.

¶ 91 It does not appear that, in the sentencing hearing, defense counsel requested the trial court to consider these letters for purposes of mitigation, even though, after defendant's testimony, the court asked defense counsel if he had any other evidence in mitigation:

> "THE COURT: Is there further evidence on behalf of the Defendant with respect to the motion to withdraw guilty plea and reconsider sentence in this matter, Ms. Miller-Jones?
>
> MS. MILLER-JONES: No, [Y]our Honor."

Therefore, the issue is forfeited. See *People v. Williams*, 137 Ill. App. 3d 816, 818 (1985).

¶ 92 III. CONCLUSION

¶ 93 For the foregoing reasons, we affirm the trial court's judgment, and we award the State $50 against defendant in costs.

¶ 94 Affirmed.