2015 IL App (4th) 140347-U

NO. 4-14-0347

FILED
December 8, 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.	)	Woodford County
DANIEL J. KNAUB,	)	No. 12CF157
Defendant-Appellant.	)	
	)	Honorable
	)	Charles M. Feeney III,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant's guilty plea was voluntary; (2) the trial court did not abuse its discretion by commenting at sentencing about defendant's prescription medication use; and (3) the court erred by imposing an extended-term sentence on defendant's lesser-class offense.

¶ 2 In July 2013, defendant pleaded guilty to aggravated driving under the influence of alcohol (aggravated DUI) (count I) (625 ILCS 5/11-501(d)(1)(A) (West 2012)) (Class 2 felony) and aggravated driving while license revoked (count II) (625 ILCS 5/6-303(a) (West 2012)) (Class 4 felony). At an August 2013 hearing, the trial court sentenced defendant to six years in prison on count I and an extended-term sentence of 5 years in prison on count II, to run consecutively.

¶ 3 Defendant appeals, arguing as follows: (1) his guilty plea was involuntary; (2) the trial court abused its discretion by considering defendant's use of prescription medications as a factor in aggravation; and (3) the court erred by imposing an extended-term sentence on defend-

ant's lesser-class offense. Because we agree only with defendant's third argument, we affirm in part, vacate his sentence on count II, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In November 2012, the State charged defendant with aggravated DUI and aggravated driving while license revoked. The charges were aggravated because defendant had previously been convicted of violating those statutes.

¶ 6 In March 2013, the trial court scheduled a jury trial for July 15, 2013. At the July 2, 2013, final pretrial hearing, defense counsel informed the court that defendant wished to plead guilty and asked for a date "a couple of weeks down the road" to enter his guilty plea. The court scheduled a guilty-plea hearing for July 15, 2013, noting that "the State *** is not obligated to be prepared for a jury trial." Defense counsel added, "I would state on the record that we are not going to persist in having a jury trial."

¶ 7 At the July 15, 2013, guilty-plea hearing, defense counsel stated that the parties had reached an agreement, one term of which was that defendant would not begin serving his sentence until August 16, 2013. Defense counsel requested that the trial court continue the plea hearing until August 16. The court denied defendant's request to continue the plea hearing, stating as follows:

> "No. Today's the day. It was set on this jury calendar. This has been set for a plea. This was on my March calendar, and we continued it off the March, skipped May, and brought it to today.
>
> ***
>
> *** I'm not continuing it off of today. So if we're going to

do the plea, we do the plea today. If we're not going to do the plea today, that's fine, then we'll do a jury trial this week. Those are the options ***.

***

*** [T]he time for continuance is over."

¶ 8 Defense counsel stated that the parties had talked about a "partial plea agreement *** where [the State] agreed to recommend a certain cap" at a subsequent sentencing hearing. The trial court agreed that it would hold a sentencing hearing and allowed the parties five minutes to reach a decision on defendant's plea. The court reiterated that "a delayed plea is not an option."

¶ 9 After a five-minute recess, defense counsel stated that "we've had some negotiations. I don't think we're there, so we would be willing to [plead guilty] today and ask the court to set a sentencing hearing in a short period." Defense counsel informed the court that defendant would plead guilty to both charges. The State explained that the misdemeanor charges against defendant would be dismissed. (At the time, neither the court nor the parties explained the nature of the misdemeanor charges. The charging information for the misdemeanor charges does not appear in the record on appeal.)

¶ 10 The trial court admonished defendant of the nature of the charges and the potential sentencing ranges, including the potential for consecutive sentencing and extended-term sentencing on both charges. Defendant responded that he understood the sentencing ranges. The court then admonished defendant further of his right to a jury trial and the rights he was giving up by pleading guilty. Defendant stated that he understood. The following discussion then occurred:

"[THE COURT]: Has anyone threatened you—

[DEFENSE COUNSEL]: I'm sorry.

[THE COURT]: Go ahead.

[DEFENSE COUNSEL]: Sorry, your honor.

[THE COURT]: That's all right. Have you had an opportunity to discuss whatever issues you need to discuss with your attorney *** ?

[DEFENDANT]: As far as I know. I was thinking—

[THE COURT]: No, I don't want you to tell me what you discussed, I just need to know, are you ready to proceed?

[DEFENDANT]: Yes.

[THE COURT]: So has anyone threatened you, forced you, or made any promises to you to get you to plead guilty?

[DEFENDANT]: No, your honor.

[THE COURT]: Is it your decision alone to plead guilty?

[DEFENDANT]: Yes, your honor.

[THE COURT]: What is your plea to count 1, aggravated driving under the influence ***, guilty or not guilty?

[DEFENDANT]: I'm just making sure—

[THE COURT]: Guilty or not guilty?

[DEFENDANT]: Guilty.

[THE COURT]: And as to count 2 ***, aggravated driving while license revoked, guilty or not guilty?

[DEFENDANT]: Guilty."

¶ 11 The State then recited a factual basis that on November 25, 2012, police received information that two highly intoxicated males were in a Ford Mustang in the McDonald's drive-through line. Soon thereafter, officers found the Mustang rolled upside-down after a single-vehicle accident. Defendant was found near the vehicle and another man was found in the passenger seat. Defendant's blood-alcohol content was 0.151.

¶ 12 The trial court accepted defendant's plea, finding that it was knowing and voluntary. In addition, the court stated that "pursuant to the State's motion, 12-DT-104 and 12-TR-3816, that's the DUI and the misdemeanor, driving while license revoked, those are both dismissed." (As best we can tell, the two misdemeanor charges were the nonaggravated versions of the felony charges.) The court scheduled a sentencing hearing for August 20, 2013.

¶ 13 At the August 2013 sentencing hearing, defendant testified that he was 30 years old, unemployed, and living with his parents. On the day of the incident that led to these charges, he was taking Vicodin and Valium, which his doctor had prescribed. Defendant explained that he was taking his prescriptions because of a "panic anxiety disorder" and injuries, including "herniated and bulging disks in my neck and pinched nerves." Shortly before the incident, defendant's doctor had switched his prescription from Xanax to Valium, a drug with which defendant was unfamiliar.

¶ 14 Defendant's criminal history included the following: (1) a juvenile adjudication of delinquency for criminal defacement of property; (2) a 2003 conviction for retail theft; (3) two 2003 convictions for driving while license suspended; (4) a 2007 conviction for illegal transportation of alcohol; (5) a 2007 conviction for contributing to the delinquency of a minor; (6) a 2008 conviction for criminal damage to governmental property, for which his sentence of probation

was later revoked; (7) a 2008 conviction for DUI, for which his sentence of probation was later revoked; (8) a 2009 conviction for domestic battery; and (9) a 2010 conviction for DUI. After the 2010 DUI conviction, defendant completed an intensive outpatient treatment program for alcohol abuse. Defendant testified that he had had an alcohol problem for "years" and "struggle[d] with not drinking all the time." As to the offense in this case, defendant did not remember anything other than waking up in the hospital.

¶ 15 The State recommended a sentence of 3 1/2 years in prison on each count, to run concurrently. The trial court noted that defendant "was combining Valium and alcohol," which the court considered a "[t]errible combination." Commenting further on defendant's use of prescription medications, the court stated as follows:

> "[E]qually clear is [defendant's] absolute certainty that he needs these drugs in his life to deal with the anxiety, to deal with his herniated disks and things like that. And you know what—and pain is a terrible thing. I understand that. But I would suggest to you that drugs, period, are harmful to you. When you're an addict you are an addict. And most treatment facilities that I'm familiar with try to acquaint you with that kind of knowledge, that the idea of using Valium or Vicodin, those types of things, unless absolutely positively necessary is a bad idea."

¶ 16 When discussing factors in mitigation and aggravation, the trial court stated the following:

> "Factors in mitigation. The defendant's conduct did not cause serious physical harm to another. Factors in mitigation.

> Factors in aggravation. The defendant's conduct did threaten serious harm to another. He has a history of prior criminal activity, and he has a history of prior criminal activity in this very regard. Sentence is necessary to deter others."

¶ 17 The trial court sentenced defendant to six years in prison on count I and an extended-term of 5 years in prison on count II, to run consecutively. The court stated that the consecutive sentences were necessary to protect the public from further criminal conduct by defendant.

¶ 18 Defendant appealed, and this court remanded for compliance with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). *People v. Knaub*, 4-13-0971 (Feb. 3, 2014) (dispositional order granting appellant's motion for summary remand).

¶ 19 On remand, defense counsel filed a Rule 604(d) certificate, along with a motion to withdraw the plea or, alternatively, to reconsider the sentence. In the motion, defendant asked to withdraw his plea, arguing that he pleaded guilty based on the State's representation that his potential sentence would be capped at four years. In the alternative, defendant argued that the trial court should reconsider his sentence because (1) he received an enhanced sentence without proper advance notice and (2) his sentence was excessive, considering that the State had actually recommended to the court a sentence of 3 1/2 years in prison.

¶ 20 At the April 2014 hearing on defendant's motion, the State admitted that as part of defendant's guilty-plea agreement, the State agreed to recommend a sentence of 3½ years in prison but did not agree to a sentencing cap that was binding on the trial court. The State explained that the court "was not sufficiently informed of the agreement" at the time defendant pleaded guilty. Defendant agreed that the terms of the plea agreement were that defendant would plead

guilty to the two felony charges in exchange for the State's recommending a sentencing cap. After hearing the parties' arguments, the court denied the motion. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Defendant argues that (1) his guilty plea was involuntary; (2) the trial court improperly relied on defendant's use of prescription drugs as an aggravating factor; and (3) the court improperly sentenced defendant to an extended-term sentence on count II. We address defendant's claims in turn.

¶ 23 A. Whether Defendant's Guilty Plea Was Involuntary

¶ 24 Defendant contends that his guilty plea was involuntary. Specifically, defendant argues that the trial court hurried him into pleading guilty by requiring that he plead guilty within five minutes or else proceed to trial later that week.

¶ 25 The State argues that defendant forfeited this claim by failing to raise it in his motion to withdraw his guilty plea. Defendant responds that an involuntary guilty plea makes the resulting conviction void, thereby bypassing forfeiture. See *People v. Williams*, 188 Ill. 2d 365, 370, 721 N.E.2d 539, 543 (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."). In the alternative, defendant argues that, even if he forfeited his claim, the claim is reviewable under the plain-error rule.

¶ 26 The plain-error rule allows for review of a forfeited error when:

> "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so se-

> rious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010) (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007)).

Generally, the first step of a plain-error analysis is to determine whether a plain or obvious error occurred at all. See, *e.g.*, *People v. McLaurin*, 235 Ill. 2d 478, 489, 922 N.E.2d 344, 351-52 (2009) (determining first whether a clear or obvious error occurred).

¶ 27 We need not resolve the dispute between the parties about whether an involuntary plea makes a plea agreement void because we conclude that defendant's plea was voluntary, and, thus, no error occurred at all.

¶ 28 Due process requires that a defendant enter his guilty plea voluntarily and with full knowledge of its direct consequences. *People v. Whitfield*, 217 Ill. 2d 177, 184, 840 N.E.2d 658, 663 (2005). A defendant does not have an absolute right to withdraw a guilty plea but should be allowed to withdraw the plea when it was not constitutionally entered. *People v. Manning*, 227 Ill. 2d 403, 412, 883 N.E.2d 492, 498 (2008).

¶ 29 Defendant cites *People v. Morreale*, 412 Ill. 528, 107 N.E.2d 721 (1952), in support of his claim that his guilty plea was not knowing and voluntary. In *Morreale*, the defendant appeared for trial represented by a youthful associate of his counsel of record, Crane. The associate requested a continuance because Crane was busy trying another case. The State suggested that the case could be resolved quickly by a guilty plea and requested a continuance, which the trial court granted. The State offered to recommend a sentence of probation if the defendant pleaded guilty. The parties discussed the offer with Crane, who was in another courtroom within

the courthouse. Crane informed the defendant that if he pleaded guilty, the court would sentence him to probation. The defendant agreed to plead guilty. The court accepted the defendant's plea and sentenced him to 5 to 10 years in prison. The court denied the defendant's subsequent motion to withdraw his guilty plea.

¶ 30 The supreme court reversed. *Id.* at 534, 107 N.E.2d at 725. It held that the "hurried consultations" between the parties "could not but help to engender confusion and misapprehension" in the defendant. *Id.* at 532-33, 107 N.E. 2d at 724. The court also found that the prosecutor had pressured the defendant to plead guilty and that the defendant was not represented by counsel of his choice. *Id.* at 533, 107 N.E.2d at 724. In conclusion, the court held that "the haste and manner in which the arrangements were made is the dominating factor in creating a belief that [the defendant] was induced to change his plea while confused and in a state of misapprehension." *Id.* Considering all the circumstances, the supreme court held that the trial court should have allowed the defendant to withdraw his guilty plea. *Id.* at 534, 107 N.E.2d at 725.

¶ 31 The facts in this case are distinguishable from those in *Morreale*. In this case, defendant appeared at the guilty-plea hearing with the intent to plead guilty, after having already engaged in plea negotiations with the State. In *Morreale*, on the other hand, the defendant appeared with the expectation of going to trial and with no plan to plead guilty. Only upon *the State's request* for a recess were plea negotiations initiated. In addition, the defendant in *Morreale* was not represented by counsel of his choice and had access to him only by visiting another courtroom. In this case, defendant was represented by counsel of his choice, who had requested that the trial court set the cause for a plea hearing, with the expectation that defendant would plead guilty.

¶ 32 Defendant makes much of the trial court's statement at the July 15, 2013, hearing

that defendant had five minutes to decide whether or not to plead guilty. Defendant, however, had much more than five minutes to make his decision. He was charged with these offenses in November 2012. In March 2013, the court scheduled a jury trial for July 15, 2013. On July 2, 2013, defendant informed the court that he intended to plead guilty and requested a date for a plea hearing, which the court scheduled for July 15, 2013. When defendant appeared at the July 15, 2013, hearing, the court informed him that it would not grant a further continuance and demanded an answer to how defendant would plead. Rather than being granted only five minutes to reach a decision, defendant had months to decide and voluntarily scheduled the July 15, 2013, hearing to plead guilty.

¶ 33 We note that a trial court "has the inherent authority to control its docket." *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 65, 979 N.E.2d 383. Every defendant must at some point decide whether to plead guilty or to proceed to trial. The decision-making process cannot continue indefinitely. We conclude that *Morreale* is distinguishable and that the ultimatum given by the court in this case did not make defendant's plea involuntary.

¶ 34 B. Defendant's Use of Prescription Medications as an Aggravating Factor

¶ 35 Defendant argues that the trial court abused its discretion by considering defendant's use of prescription medications as a factor in aggravation. The State responds that defendant forfeited this claim by failing to raise it in his motion to reconsider the sentence. Defendant contends that his claim is reviewable under the plain-error rule.

¶ 36 As stated above, the first step of plain-error analysis is to determine whether a clear or obvious error occurred. *McLaurin*, 235 Ill. 2d at 489, 922 N.E.2d at 351-52. We conclude that no such error occurred.

¶ 37 First, it is not clear from the record that the trial court considered defendant's pre-

scription drug use as an aggravating factor. At the sentencing hearing, the court informed defendant that it considered defendant's use of prescription medications a bad idea. However, the court did not state that it was considering defendant's prescription medication use as an aggravating factor and did not mention prescription medication use when it recited the factors it was finding in aggravation.

¶ 38 Second, even assuming that the trial court relied on defendant's prescription medication use as an aggravating factor, that reliance was not error. Defendant cites no authority for the proposition that relying on prescription medication use as an aggravating factor is necessarily error. Rather, defendant argues that defendant's prescription medication use made him less culpable because it affected his awareness and memory. The court considered defendant's prescription medication use as part of defendant's larger battle with addiction and criminality. In that context, the court could have considered defendant's continued use of controlled substances as an aggravating factor or to refute potential mitigating factors, including that defendant's conduct was unlikely to recur. See *People v. Smith*, 214 Ill. App. 3d 327, 340, 574 N.E.2d 784, 793 (1991) ("a defendant's drug addiction, in fact, could be considered an aggravating factor"). We conclude that the court did not abuse its discretion by commenting about defendant's prescription medication use.

¶ 39 C. Extended-Term Sentence

¶ 40 Defendant argues that the trial court erred by imposing an extended-term sentence on defendant's lesser-class offense. Defendant argues that his extended-term sentence for aggravated driving while license revoked is void because "when a defendant has been convicted of multiple offenses of differing classes, an extended-term sentence may be imposed only on the conviction within the most serious class." *People v. Thompson*, 209 Ill. 2d 19, 23, 805 N.E.2d

1200, 1202 (2004). The State concedes that the extended-term sentence for aggravated driving while license revoked was void. We accept the State's concession.

¶ 41 We therefore vacate defendant's sentence on count II—aggravated driving while license revoked—and remand the cause with directions to amend the sentencing judgment to reflect that defendant is sentenced to three years in prison on count II—the maximum allowable non-extended-term sentence. See 730 ILCS 5/5-4.5-45(a) (West 2012) (For a Class 4 felony, the "sentence of imprisonment shall be *** not less than one year and not more than 3 years.").

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, we affirm in part, vacate in part, and remand with directions. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

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