

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 150185-U

NO. 4-15-0185

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 7, 2015
Carla Bender
4th District Appellate
Court, IL

In re: AKIRA J., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 14JD87
AKIRA J.,)	
Respondent-Appellant.)	Honorable
)	Brian Goldrick,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* Respondent minor failed to establish she was denied the effective assistance of counsel when counsel agreed, at sentencing, a full restitution was appropriate when the minor was averse to such payment.

¶ 2 In March 2015, the trial court ordered respondent minor, A.J. (born August 28, 1997), to pay \$1,073.67 in restitution for injuries she caused to William McGonigle, a Bloomington police officer. A.J. appeals, arguing trial counsel was ineffective for agreeing she should pay the full amount of restitution when the record shows she objected to the payment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 18, 2014, A.J. called the police after a disagreement with her mother, Eara Rudolph, who confiscated A.J.'s cell phone. A.J. hoped the police would assist her in

getting her phone returned. Bloomington police officers William McGonigle and David Ziemer responded to the call. While the officers were present, Officer McGonigle positioned himself between the arguing mother and daughter. A.J. was arrested after she struck Officer McGonigle. A.J. denied striking the officer.

¶ 5 That same month, the State filed a petition for adjudication of wardship, alleging A.J. was delinquent (705 ILCS 405/5-520 (West 2012)). The State alleged A.J. committed four offenses: (1) aggravated battery of a peace officer, a Class 2 felony (720 ILCS 5/12-3.05(d)(4) (West 2012)); (2) resisting a peace officer that proximately caused an injury to that officer, a Class 4 felony (720 ILCS 5/31-1(a-7) (West 2012)); (3) battery, a Class A misdemeanor (720 ILCS 5/12-3(a)(2) (West 2012)); and (4) resisting a peace officer, a Class A misdemeanor (720 ILCS 5/31-1(a) (West 2012)).

¶ 6 In July 2014, A.J. entered into a negotiated plea, admitting the misdemeanor offenses. The trial court advised A.J. regarding the consequences of her plea, including the possibility A.J. "could be ordered to pay restitution for any injury sustained by the victim in this case."

¶ 7 A.J., approximately two months later, filed a motion to withdraw her guilty plea, which the trial court granted. In her motion, A.J. alleged her actions "did NOT cause any injury to the police officer." She further stated despite the fact her actions did not cause Officer McGonigle's injuries, the State seeks restitution: "Court Services and the State are requesting that [A.J.] pay restitution to the insurance agency for alleged injuries to Officer McGonigle, which minor denies causing."

¶ 8 In November 2014, the State supplemented the petition for adjudication of

wardship. The State added a charge of aggravated battery of a peace officer (720 ILCS 5/12-3.05(d)(4) (West 2012)).

¶ 9 A bench trial was held in January 2015. The State dismissed the first two battery charges, but proceeded on the resisting-arrest charges and the aggravated-battery charge in the supplemental petition. At trial, A.J.'s mother, Earra Rudolph, testified A.J. hit Officer McGonigle in the chest three times, and after the third time, the officer took A.J. to the ground. On cross-examination, counsel asked for additional details on how Officer McGonigle took A.J. to the ground. Rudolph testified Officer McGonigle grabbed A.J.'s arm, put her arm behind her, pulled her to the ground, and handcuffed her. Rudolph testified the officer did not fall. The officer did not complain of an injury, and Rudolph did not observe the officer acting in a manner indicating he had been injured.

¶ 10 Officer McGonigle testified, as the dispute between A.J. and Rudolph escalated, he positioned himself between the two. While standing between them, Officer McGonigle faced A.J. She said, "you're not going to touch me." A.J. placed her hands on Officer McGonigle's chest and attempted to push him. Officer McGonigle started to grab A.J.'s arm. As he did so, A.J. "balled her right fist up and right hand in a fist motion and swung at [him], hitting [him] in the chest." When Officer McGonigle attempted to grab A.J.'s wrist, A.J. pulled away, saying "let go of me." As A.J. pulled back, Officer McGonigle maintained control over A.J.'s arm. As A.J. pulled back, she fell over a small couch. Officer McGonigle, while holding onto A.J.'s arm, also fell over the couch, landing on his wrist and right shoulder. A.J. landed on her stomach. After falling, Officer McGonigle regained control over A.J. fairly quickly. Officer Ziemer handcuffed A.J. Officer McGonigle's injuries required multiple medical tests and three months'

therapy. Officer Ziemer's testimony corroborated the testimony of Officer McGonigle.

¶ 11 Testifying on her own behalf, A.J. recalled Officer McGonigle's standing between her and her mother. A.J. tried to get closer to her mother when Officer McGonigle grabbed her wrist. A.J. denying attempting to hit her mother, but admitted she was yelling. A.J. testified Officer McGonigle then took her to the ground: "[H]e, like, somewhat like pushes me, not too hard. I kind of like, like on the other side. Well, on the carpet. And then that's when he like came to me. I was standing up, and he went around, like, the couch and pulled me down to the ground and arrested me." A.J. denied anyone fell. Officer McGonigle did not land on his arm or shoulder. On cross-examination, A.J. denied pushing or touching Officer McGonigle before the officer grabbed her wrist.

¶ 12 During closing argument, A.J.'s counsel argued A.J.'s and Rudolph's testimony was consistent, and the testimony of Officer McGonigle, describing how he fell over A.J., made no sense physically. Counsel emphasized neither A.J. nor Rudolph noticed any injury to Officer McGonigle.

¶ 13 The trial court found the State proved the allegations beyond a reasonable doubt, and A.J. was adjudicated delinquent.

¶ 14 At sentencing, the trial court noted it reviewed an updated social investigation report. According to the report, A.J. had only one previous involvement with the police, identified as a "Domestic Dispute, Disorderly Conduct," which was disposed of without a court date. A.J.'s actions resulted in injuries to Officer McGonigle for which Alternative Service Concepts, a workers' compensation insurance provider, paid a total of \$1,073.67 in treatment expenses. A.J. was a senior in high school, passing all classes and was expected to graduate in

May 2015. A.J. had no attendance problems, and she planned to find a full-time job and attend college to pursue a nursing degree. A.J. had been participating in counseling since July 2014. The author of the report opined "given the minor's strengths, she has the potential to be successful on probation and in life in general." The author recommended a 12-month term of probation and A.J. compensate Alternative Service Concepts \$1,073.67.

¶ 15 Defense counsel, at sentencing, emphasized A.J.'s performance at school and her anticipated graduation, as well as her participation with Boys and Girls Club. Counsel agreed "[a]s far as restitution goes, the amount as stated is appropriate," but asked the court forgo the monthly payment the State requested and allow restitution be due one month before the probation term ended.

¶ 16 Before entering its order, the trial court addressed A.J.'s comment she was not a bad person, a criminal, "or whatever it is you make me be." The court informed A.J. it did not believe her act defined her or made her a bad person. The court observed A.J. made a bad choice, but this did not make her "a bad person." The court emphasized A.J. previously held employment and had no problems in school. The court ordered 12 months' probation and restitution of \$1,073.67, due in the last month of her probation period. The court decided not to order probation fees in the case.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, A.J. argues she was denied the effective assistance of counsel when her attorney agreed with the prosecution that \$1,073.67 in restitution was appropriate when she was averse to such payment. A.J. emphasizes, in juvenile cases, the trial court has discretion in

ordering restitution (see 705 ILCS 405/5-710(4) (West 2012)) and, because she was unemployed at the time and planned to attend college, counsel should not have agreed to restitution but should have argued against it or for a lesser amount. A.J. contends the reason she sought withdrawal of her plea was to avoid paying restitution. A.J. asserts, given the costs of higher education, the restitution amount is a steep financial penalty, and her counsel failed to advocate for her.

¶ 20 To establish her claim of ineffective assistance of counsel, A.J. must prove (1) her counsel's performance failed to meet an objective standard of competence, and (2) that deficient performance caused her prejudice. *In re Ch. W.*, 408 Ill. App. 3d 541, 546, 948 N.E.2d 641, 648 (2011). Regarding the deficiency prong, the effort of counsel must be so serious and so deficient "counsel was not functioning as 'counsel' guaranteed by the sixth amendment (U.S. Const., amend. VI)." *Id.* at 546-47, 948 N.E.2d at 648. There is a strong presumption counsel's action resulted from sound trial strategy. *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163 (1999). "We are mindful [a] defendant is entitled to reasonable, not perfect, representation, and mistakes in strategy or in judgment do not, of themselves, render the representation incompetent." *People v. Fuller*, 205 Ill. 2d 308, 330-31, 793 N.E.2d 526, 542 (2002).

¶ 21 We find counsel's performance does not fail to meet an objective standard of competence. When she entered a negotiated plea, A.J. initially agreed she could be ordered to pay full restitution. In her motion to withdraw her plea, A.J.'s argument against restitution was that she should not have to pay it because she did not cause Officer McGonigle's injuries. At trial, counsel defended A.J. on this theory. Counsel developed Rudolph's testimony and A.J.'s testimony in cross-examination, showing Officer McGonigle did not fall to the ground. Counsel

thoroughly cross-examined Officer McGonigle, attempting to show his version did not make sense "physically." After the trial court ruled against A.J. on this ground, we find no error in counsel's decision not to seek a lower restitution payment for injuries A.J. inflicted on a police officer, while counsel was seeking a payment schedule favorable to A.J., and while the court considered an appropriate sentence.

¶ 22 We further find A.J. could not establish she was prejudiced by counsel's alleged error. To satisfy this prong, A.J. "must prove a reasonable probability exists that, but for counsel's unprofessional errors, the proceedings' result would have been different." *Ch.W.*, 408 Ill. App. 3d at 547, 948 N.E.2d at 648. As shown above, the decision whether and in what amount to order restitution is discretionary. See 705 ILCS 405/5-710(4) (West 2012). We presume a trial court knows and follows the law absent record proof otherwise. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 72. Here the record does not establish otherwise. While the trial court observed A.J. was "not a bad person" and was not defined by her conduct in this scenario, there is not a reasonable probability the court would have ruled differently. The author of the social investigative report recommended full restitution. A police officer was injured. The court, aware of A.J.'s circumstances, lessened her burden by denying the State's request for monthly payments and by not ordering a probation fee. There was no evidentiary dispute about the amount of restitution. A.J. simply wanted to pay less or none at all because restitution would be a financial burden. There is no indication the court would have placed the burden of restitution on the insurance carrier rather than A.J. if counsel had asked the court to do so.

¶ 23 III. CONCLUSION

¶ 24 We affirm the trial court's judgment.

¶ 25

Affirmed.