

NOTICE

Decision filed 07/30/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 130374-U

NO. 5-13-0374

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	No. 08-CF-1448
)	
LORTEZ THOMAS,)	Honorable
)	Jan V. Fiss,
Defendant-Appellant.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Where the Office of the State Appellate Defender can make no meritorious argument in support of the defendant's appeal, its motion to withdraw as counsel is granted, and the judgment of the circuit court is affirmed.

¶ 2 The defendant, Lortez Thomas, appeals the circuit court's denial of his motion to reconsider his sentence. The Office of the State Appellate Defender (OSAD) has been appointed to represent him. OSAD has filed a motion with an attached memorandum pursuant to *Anders v. California*, 386 U.S. 738 (1967), alleging that there is no merit to the appeal and requesting leave to withdraw as counsel. See *McCoy v. Court of Appeals*, 486 U.S. 429 (1988). The defendant was given proper notice and time to file briefs,

objections, or any other documents supporting his appeal. He has filed a response. We have considered OSAD's motion to withdraw and the attached memorandum as well as the defendant's response. We have examined the entire record on appeal and find no error or potential grounds for appeal. For the following reasons, we now grant OSAD's motion to withdraw as counsel, and we affirm the judgment of the circuit court of St. Clair County.

¶ 3

BACKGROUND

¶ 4 On November 20, 2008, the State charged the defendant with unlawful possession of less than 15 grams of cocaine. The matter proceeded to a jury trial. The following information was adduced at trial.

¶ 5 Officer Aaron Keeney testified that he was on patrol in Alorton, Illinois, at 3:15 a.m. on October 9, 2008, when he stopped a car for failing to use a turn signal. There were two people in the car: the defendant, who was driving, and a female passenger named Carrie McDaniel. When the car pulled to the side of the road, the defendant jumped out. Keeney told the defendant to stop and then patted him down for weapons. Keeney did not find any drugs or weapons on the defendant. Keeney saw an open alcohol container in the car. When Keeney checked if the defendant or McDaniel had any active warrants against them, he discovered that they both had warrants. Keeney thereafter arrested both of them and placed them in separate squad cars. While he was conducting a search of the car, he saw the defendant moving around in the back of the squad car. When Keeney approached the squad car, he saw the defendant's hand in the back of his pants. When Keeney turned the defendant around, he saw that the defendant

was holding a plastic bag in his hand. Keeney took the bag, which was holding several smaller plastic bags containing a white substance. Keeney suspected that the white substance was crack cocaine. He placed the bag in an evidence bag and labeled it.

¶ 6 On cross-examination, Keeney admitted that the squad cars did not have video cameras at the time of the defendant's arrest. The plastic bags did not have any identifying marks and he did not request that they be tested for fingerprints.

¶ 7 Lieutenant Greg Musgrave performed a solvent test on the contents of the plastic bags to determine if they contained a controlled substance. The contents tested positive for cocaine. Musgrave then sent the bags to the Illinois State Police lab. Brian Stevenson, a chemist at the lab, weighed the bags individually. Combined, they weighed 5.6 grams. Stevenson also tested the contents and found that they were positive for cocaine.

¶ 8 The defendant testified on his own behalf. He testified that he was with his friend, Carrie McDaniel. He did not have cocaine in his car or on his person. After Keeney pulled him over, Keeney arrested him and he was placed in Keeney's squad car. He was not removed from the squad car to be searched and he never removed anything from his pocket.

¶ 9 The jury convicted the defendant of possession of less than 15 grams of cocaine. The defendant filed a motion for a new trial, which the court denied. At sentencing, neither party presented evidence in mitigation or aggravation. The circuit court sentenced the defendant to two years in prison which, because of the amount of presentence incarceration credit to which the defendant was entitled, he had effectively

served as of the time the court imposed the sentence. The defendant filed a motion to reconsider his sentence, which the circuit court denied. The defendant appeals.

¶ 10

ANALYSIS

¶ 11 In its motion to withdraw as counsel on appeal, OSAD lists two possible issues that could be presented on appeal, but contends that those issues are without merit. We review those issues below.

¶ 12 The first issue OSAD identifies is whether the defendant was proven guilty beyond a reasonable doubt. To determine if a defendant's guilt has been proven beyond a reasonable doubt, we must ask whether, after viewing the evidence in the light most favorable to the State, the evidence is so unsatisfactory that no rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v. Wheeler*, 334 Ill. App. 3d 273, 280 (2001). Credibility determinations are within the province of the jury, and we will not disturb those findings absent evidence so improbable that it raises a reasonable doubt as to the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). To prove the defendant guilty of possessing cocaine, the State had to present evidence that the defendant knowingly possessed less than 15 grams of a substance containing cocaine. 720 ILCS 570/402(c) (West 2008).

¶ 13 Here, the State presented the testimony of Officer Keeney. Keeney observed the defendant acting suspiciously in the squad car. When Keeney turned the defendant around, he saw the defendant's hand down the back of his pants, and the defendant was holding a bag full of smaller bags containing a substance Keeney suspected was cocaine. The jury's determination that the defendant possessed the cocaine was supported by the

evidence—Keeney actually saw the cocaine in the defendant's hand. The jury was also presented with the defendant's version of events, but determined that Keeney's testimony was more credible. When the cocaine was weighed and tested at the Illinois State Police lab, it weighed less than 15 grams and was positive for cocaine. Therefore, the State presented sufficient proof that the defendant possessed less than 15 grams of cocaine.

¶ 14 The second issue that OSAD identifies is whether the circuit court abused its discretion when it sentenced the defendant to two years in prison. The circuit court has considerable discretion when imposing a sentence and such decisions will not be overturned unless there has been an abuse of discretion. *People v. Wilson*, 143 Ill. 2d 236, 250-51 (1991). Indeed, the circuit court is in the best position to determine an appropriate sentence, and a reviewing court may not substitute its own judgment for that of the circuit court. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). When a sentence falls within the statutory sentencing range, the circuit court has not abused its discretion unless the sentence is manifestly disproportionate to the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007).

¶ 15 In this case, possessing a controlled substance is a Class 4 felony punishable by between one and three years in prison. 720 ILCS 570/402(c) (West 2008); 730 ILCS 5/5-8-1(a)(7) (West 2008). While neither the State nor defense counsel presented any factors in mitigation or aggravation, the defendant's presentence investigation report indicated that the defendant had prior convictions, including possession of a controlled substance and residential burglary. The defendant was not sentenced outside of the statutory range and had actually completed his sentence because of the time he spent in pretrial custody.

Given the nature of the crime and the defendant's prior history of criminal activity, the court did not abuse its discretion when it sentenced the defendant to two years in prison.

¶ 16

CONCLUSION

¶ 17 For the foregoing reasons, the motion of OSAD to withdraw as counsel on appeal is granted, and the judgment of the circuit court of St. Clair County is affirmed.

¶ 18 Motion granted; judgment affirmed.