

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) 130450-U

NO. 5-13-0450

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. 11-CF-170
)	
TYSON D. YOUNT,)	Honorable
)	Robert B. Haida,
Defendant-Appellant.)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Presiding Justice Cates and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's appointed counsel on appeal is allowed to withdraw, and the judgment of conviction is affirmed, where this appeal is wholly lacking in meritorious issues.

¶ 2 The defendant Tyson D. Yount pleaded guilty to three counts of criminal sexual assault and was sentenced to three consecutive eight-year terms of imprisonment. He moved to withdraw his pleas of guilty, but the circuit court denied the motion. He then perfected the instant appeal from the judgment of conviction, and the circuit court appointed the Office of the State Appellate Defender (OSAD) to represent him. In this court, OSAD has filed a motion to withdraw as counsel pursuant to *Anders v. California*,

386 U.S. 738 (1967), alleging that this appeal is wholly frivolous. OSAD properly informed the defendant of the motion. This court gave the defendant an opportunity to file a brief, an objection, or any other document supporting his appeal, but the defendant did not avail himself of that opportunity. This court has examined OSAD's motion and memorandum, as well as the entire record on appeal. For the following reasons, we grant OSAD's motion to withdraw and affirm the judgment of the circuit court of St. Clair County.

¶ 3

BACKGROUND

¶ 4 The defendant was charged by indictment with three counts of criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2010)). On January 25, 2013, the defendant and his court-appointed attorney, Anita J. Ewing, along with an assistant State's Attorney, appeared in the circuit court before Judge Michael Cook. The parties informed the court that the defendant had agreed to plead guilty to all three counts in exchange for mandatory consecutive prison sentences that did not exceed an aggregate of 32 years, plus mandatory supervised release for an indeterminate term of 3 years to natural life. The court admonished the defendant as to the nature of the charges, the possible penalties prescribed by law, his right to plead not guilty or guilty, and the consequences of pleading guilty, including waiver of his right to trial and of his rights at trial, and the defendant indicated his understanding. See Ill. S. Ct. R. 402(a) (eff. July 1, 2012). In response to the court's questions, the defendant indicated that plea counsel had competently explained to him the terms of the plea agreement and his options concerning how to proceed. Through further questioning of the defendant, the court confirmed the

terms of the plea agreement and determined that the defendant was pleading guilty knowingly and voluntarily, and not because of any force, threats, or promises apart from the plea agreement. See Ill. S. Ct. R. 402(b) (eff. July 1, 2012). The State recited a factual basis for the pleas, indicating that on multiple occasions between December 1, 2010, and January 21, 2011, the defendant placed his penis into the mouth, vagina, and anus of the defendant's daughter born in December 1996. The defendant pleaded guilty to the three counts. The court accepted the pleas and ordered a presentence investigation.

¶ 5 On March 5, 2013, the court held a sentencing hearing. The sole witness was Rebecca Coleman, defendant's ex-wife and the victim's mother, who testified on behalf of the State concerning the emotional toll of the defendant's crimes on the entire family, especially the victim. The defendant presented letters from relatives, who described the defendant as a loving parent, a generous person, and a hard worker. On each of the three counts, the court sentenced the defendant to imprisonment for 8 years, with all sentences consecutive, for an aggregate sentence of 24 years, plus mandatory supervised release for a term of 3 years to natural life. After pronouncing sentence, the court admonished the defendant that he had a right to appeal, but to preserve that right he needed to file a motion to reconsider sentence or a motion to withdraw the guilty pleas. (As discussed *infra*, a part of this admonishment was erroneous.)

¶ 6 On April 2, 2013, the defendant, by plea counsel Ewing, filed a motion to reduce sentence, claiming that the sentence was excessive in light of the defendant's background.

¶ 7 On May 22, 2013, the State filed a motion to substitute judge, claiming that Judge Cook was prejudiced against the State.

¶ 8 On June 19, 2013, Judge Robert B. Haida appointed attorney P.K. Johnson V to represent the defendant "on claims of ineffective assistance of counsel." The record does not include any indication that the defendant ever claimed ineffective assistance by plea counsel.

¶ 9 On June 25, 2013, the defendant, plea counsel Ewing, newly-appointed attorney Johnson, and an assistant State's Attorney appeared before Judge Haida. The judge began by telling the defendant that they were in court in order to "clear up some procedural things" concerning perfection of an appeal. The judge informed the defendant that he had a right to file a motion to withdraw his guilty pleas, if he so chose, that the filing of such a motion was necessary in order to preserve his right to appeal, and that any such motion needed to include all claims of error. The defendant indicated that he understood these admonishments. The judge granted attorney Ewing seven days in which to file, on the defendant's behalf, a motion to withdraw guilty pleas, a time period that attorney Ewing deemed sufficient. Attorney Johnson noted that he had been appointed only because of the potential that the defendant might accuse attorney Ewing of ineffective assistance, but the defendant in fact never made such an accusation. The judge discharged Johnson on that basis.

¶ 10 On July 2, 2013, the defendant, by plea counsel Ewing, filed a motion to withdraw his guilty pleas. He claimed that he did not knowingly, intelligently, or voluntarily waive his right to a trial, did not fully understand the court's admonishments at the time of his guilty plea, and "did not fully understand all the consequences of a plea to a felony

charge with a sentencing range," and would have proceeded differently if he had understood the consequences.

¶ 11 On August 13, 2013, Judge Haida heard the defendant's arguments for, and the State's arguments against, the defendant's motion to withdraw the guilty pleas. No testimony or other evidence was presented. Based upon the transcript of the plea hearing, the court found the defendant's pleas valid and denied the motion to withdraw them. The court properly admonished the defendant about filing a notice of appeal.

¶ 12 On September 10, 2013, the defendant, by plea counsel, filed a notice of appeal, thus perfecting the instant appeal. The circuit court appointed OSAD to represent the defendant. As previously mentioned, OSAD has filed in this court an *Anders* motion to withdraw as counsel. The defendant has not filed any type of response in this court.

¶ 13 ANALYSIS

¶ 14 In the memorandum accompanying its *Anders* motion, OSAD discusses four issues that could potentially be raised in this appeal and argues that each argument lacks merit. We view each of the four issues, discussed below, as wholly without merit.

¶ 15 The first potential issue discussed by OSAD is whether the circuit court erred in denying the defendant's motion to withdraw his guilty pleas. The circuit court's denial of a motion to withdraw a guilty plea will be reversed only if it represents an abuse of that court's discretion in the matter. *People v. Baez*, 241 Ill. 2d 44, 110 (2011). A defendant must be permitted to withdraw his guilty plea where (1) the plea was based on the misapprehension of facts or law, due to misrepresentations by the State or defense counsel, (2) there is doubt as to the defendant's guilt, (3) the defendant has a defense

worthy of consideration by the court, or (4) the ends of justice would be better served by allowing the case to proceed to trial. *People v. Davis*, 145 Ill. 2d 240, 244 (1991). Nothing in the record of this case suggests the presence of any one of these factors. The transcript of the plea hearing makes clear that the court admonished and questioned the defendant pursuant to Supreme Court Rule 402 (eff. July 1, 2012), the rule adopted for the purpose of assuring that every guilty plea is made intelligently, understandingly, and voluntarily. See *People v. Thurston*, 25 Ill. App. 3d 900, 902 (1975). The transcript also makes clear that the defendant knew what he was doing, freely chose to do it, and understood the consequences. In other words, the record establishes that his pleas of guilty were made intelligently, understandingly, and voluntarily. See *Boykin v. Alabama*, 395 U.S. 238, 244 (1969).

¶ 16 Second, OSAD notes that sometime after the defendant's pleas of guilty in this case, the judge who presided at the plea hearing was charged with federal drug crimes, resigned from the bench, pleaded guilty to the crimes with which he was charged, and was sentenced to prison. The commission of crimes by the judge who presided at the defendant's plea hearing cannot serve as the basis for relief in this appeal. The defendant did not establish any nexus between the judge's extrajudicial wrongdoing and his handling of the defendant's case, and the defendant did not allege or establish any prejudice resulting from the extrajudicial wrongdoing. See *People v. Titone*, 151 Ill. 2d 19, 30-31 (1992). The defendant never suggested in the circuit court that the extrajudicial wrongdoing had any bearing whatsoever on his case.

¶ 17 The third potential issue discussed by OSAD is that plea counsel should not have remained as counsel during postplea proceedings. The record does not disclose any reason that plea counsel should have been removed from the case. The defendant never made any complaint about plea counsel's performance.

¶ 18 Finally, OSAD suggests that the defendant's sentences could have been attacked on appeal. The defendant pleaded guilty to three counts of criminal sexual assault. Each count was a Class 1 felony (720 ILCS 5/12-13(b)(1) (West 2010)) punishable by imprisonment for 4 to 15 years (730 ILCS 5/5-4.5-30(a) (West 2010)). Consecutive sentencing was mandatory. See 730 ILCS 5/5-8-4(d)(2) (West 2010). The defendant's three consecutive sentences, each for an eight-year term, comported with the relevant statutes and with the sentence cap contained in the plea agreement. Further, the sentences certainly cannot be deemed excessive given the nature of the crimes. See *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). The defendant's mandatory supervised release for a term of three years to natural life was statutorily required (see 730 ILCS 5/5-8-1(d)(4) (West 2010)) and part of the plea agreement. The sentences in this case are not subject to meritorious challenges.

¶ 19 CONCLUSION

¶ 20 Due to the lack of meritorious issues in this appeal, OSAD is hereby granted leave to withdraw as counsel, and the judgment of conviction entered by the circuit court is hereby affirmed.

¶ 21 Motion granted; judgment affirmed.