2016 IL App (4th) 4140099-U

NO. 4-14-0099

FILED
February 16, 2016
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.	)	Champaign County
JAMES DALY,	)	No. 08CF1179
Defendant-Appellant.	)	
	)	Honorable
	)	Charles McRae Leonhard,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: We grant OSAD's motion for leave to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967) and affirm, finding no meritorious claims can be raised on appeal.

¶ 2 This case comes to us on a motion from the office of the State Appellate Defender (OSAD) pursuant to *Anders v. California*, 386 U.S. 738 (1967). OSAD moves to withdraw as appellate counsel, arguing the potential issues raised on appeal are frivolous and without merit. We grant OSAD's motion and affirm the trial court.

¶ 3 I. BACKGROUND

¶ 4 On May 24, 2008, defendant crashed his car into the car of James and Marvetta Marron. James and Marvetta were transported to a nearby hospital. James died as a result of injuries sustained in the accident. Immediately after the accident, defendant exited his car, admitted he was drunk, and later registered a blood-alcohol concentration of 0.204. Defendant

had six prior driving-under-the-influence convictions.

¶ 5 In June 2008, the State charged defendant with aggravated driving under the influence of alcohol (DUI) (great bodily harm) (count I) (625 ILCS 5/11-501(d)(1)(C) (West 2008), a Class 4 felony on the charging instrument, and aggravated DUI (revoked license) (count II) (625 ILCS 5/11-501(d)(1)(G) (West 2008)). In July 2008, the State added charges for defendant's seventh DUI (Class X felony) (count IV) (625 ILCS 5/11-501(d)(2)(E) (West 2008)) and aggravated DUI (resulting in death) (count III) (625 ILCS 5/11-501(d)(1)(F) (West 2008)).

¶ 6 On the charging instrument, the State mislabeled count III as "625 ILCS 5/11-501(a)(2)." The charging instrument's text describes the offense as a "motor vehicle accident that resulted in the death of James Marron and the violation was a proximate cause of the injuries." It is listed as a Class 2 felony with a sentencing range from 3 to 14 years. The charging instrument's text, felony class, and sentencing range were all consistent with the intended charge of aggravated DUI proximately causing death (625 ILCS 5/11-501(d)(1)(F), (d)(2)(G) (West 2008)).

¶ 7 The State offered to drop counts I, II, and IV if defendant pleaded guilty to count III. On June 29, 2009, defendant entered a fully negotiated guilty plea to count III, aggravated DUI, and the trial court sentenced him to 14 years in prison. As part of the sentencing order, the court specified defendant was eligible to receive 4.5 days of good-conduct credit per month (good-time credit) pursuant to the rules and regulations for sentence credit (730 ILCS 5/3-6-3(a)(2.3) (West 2008)), *i.e.*, defendant was required to serve 85% of the sentence.

¶ 8 On June 30, 2009, the trial court's written sentencing judgment was filed, sentencing defendant to 14 years in prison for committing aggravated DUI under "625 ILCS 5/11-501(a)(2)." It did not address the limit on good-time credit. On June 21, 2010, count III and the written sentencing judgment were both amended to show defendant was charged and

convicted under section 11-501(d)(1)(C) of the Illinois Vehicle Code (625 ILCS 5/11-501(d)(1)(C) (West 2008)), which was still the incorrect statute. The amended written sentencing judgment included two years of mandatory supervised release term (MSR) but did not include the limit on good-time credit. On February 4, 2011, the written sentencing judgment was modified to reflect the proper statutory citation for aggravated DUI (625 ILCS 5/11-501(d)(1)(F) (West 2008)). It did not address the limit on good-time credit.

¶ 9 On July 16, 2013, the State filed an amended statement of facts, stating the proper statute to charge against defendant and adding the limit on good-time credit to the sentence. On October 30, 2013, the State filed a motion to amend defendant's sentencing judgment to reflect the accurate statutory charge and the limit on good-time credit. It was brought in response to a letter from the Department of Corrections (DOC) addressing the June 21, 2010, amendment to defendant's sentence. The DOC letter indicated it was unaware of the proper section 11-501(d)(1)(F) conviction until notified by the State in July 2013.

¶ 10 The State did not send a copy of the motion to amend to defendant. On November 13, 2013, the trial court sent a copy of the motion to defendant *sua sponte*, with instructions to file any written response by November 30, 2013. On December 2, 2013, the trial court granted the State's motion. That same day, defendant filed an objection to amending the sentencing judgment, which stated amending the sentencing judgment was improper and he was entitled to day-for-day good-time credit. Despite defendant's late filing, the trial court considered the objection. It overruled defendant's objection and granted the motion to amend the sentencing judgment.

¶ 11 In a memorandum opinion and order, the trial court specifically found defendant was not entitled to day-for-day good-time credit as a matter of law. It also found both parties agreed to the modified sentencing judgment on February 4, 2011, to correct a clerical error.

Failing to inform DOC was an additional clerical oversight. Although DOC was unaware of the proper conviction, both parties were aware and the issue was corrected. Defendant was not entitled to day-for-day good-time credit as a result of this error. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 This court appointed OSAD to represent defendant on appeal. OSAD filed an *Anders* motion and brief seeking to withdraw. The record shows service of the motion on defendant. This court granted defendant until July 3, 2015, to file additional points and authorities. He filed none. In discharging our responsibilities, we have examined the record and decided, as did OSAD, the case presents no colorable issues and the appeal is without merit.

¶ 14 In its motion to withdraw, OSAD raises three potential issues for our review: (1) the trial court lacked jurisdiction to amend the sentencing judgment; (2) the trial court could not amend the sentencing judgment to limit defendant's good-time credit to 4.5 days per month; and (3) defendant's 2-year MSR term should be subtracted from his 14-year sentence. OSAD finds each of these issues frivolous and without merit on appeal. We agree.

¶ 15 A. Trial Court's Jurisdiction to Amend the Sentencing Judgment

¶ 16 OSAD argues the trial court had jurisdiction to amend the sentencing judgment on the State's motion on December 6, 2013. The trial court retains jurisdiction to correct clerical errors so the record conforms to the judgment entered. *People v. Flowers*, 208 Ill. 2d 291, 306-307, 802 N.E.2d 1174, 1183 (2003). This includes amending the sentencing judgment to correct a mistake. *Baker v. Department of Corrections*, 106 Ill. 2d 100, 106, 477 N.E.2d 686, 689 (1985) (acknowledging a trial court's jurisdiction to amend the sentencing judgment to correct a mistake). Here, the trial court found defendant guilty of aggravated DUI and imposed a 14-year sentence and specified defendant's eligibility for good-time credit at 4.5 days per month. Both parties were present for the judgment and the sentence in open court. The sentencing order filed

on June 29, 2009, further reflects the trial court's intended judgment. Although it referenced the incorrect statutory cite for count III, it properly described the intended charge, the intended sentence, and the intended limit on good-time credit.

¶ 17 Any errors and omissions in the written sentencing judgment were clerical errors. The trial court retained jurisdiction to correct those errors to conform them to its intended judgment. Moreover, both parties were aware of the trial court's intended judgment prior to discovering any errors. This issue is frivolous and without merit on appeal.

¶ 18 B. Amending the Written Sentencing Judgment to Limit Good-Time Credit

¶ 19 OSAD argues the trial court could amend the written sentencing judgment to limit defendant's good-time credit to 4.5 days per month. We agree. Under the aggravated DUI statute and the rules and regulations for early release, defendant is required to serve 85% of his sentence (625 ILCS 5/11-501(d)(1)(F) (West 2008); 730 ILCS 5/3-6-3(a)(2.3) (West 2008)). In other words, he cannot earn more than 4.5 days per month of good-time credit toward his release. When there is a discrepancy between a pronounced judgment and a written sentencing judgment, the pronounced judgment prevails. *People v. Miles*, 117 Ill. App. 3d 257, 260, 453 N.E.2d 68, 69-70 (1983). While the sentencing judgment was amended several times to provide the correct sentence, the pronounced judgment of the court always limited good-time credit to 4.5 days per month. This is reflected in the sentencing hearing transcript, the original June 2009 written sentencing order, and the trial court's December 2013 memorandum and opinion order, which held the limit on good-time credit applied as a matter of law. The discrepancy on the written sentencing judgment, until it was corrected, did not entitle defendant to day-for-day good-time credit against his prison sentence under any circumstance. This issue lacks merit on appeal.

¶ 20 C. Defendant's Two-Year MSR Term

¶ 21 OSAD argues defendant's argument the two-year MSR term should be subtracted

from his sentence is frivolous and without merit. We agree. Prior to accepting a guilty plea, a trial court must admonish defendant of any applicable MSR term. *People v. Whitfield*, 217 Ill. 2d 177, 195, 840 N.E.2d 658, 669 (2005). The admonishment is sufficient if an ordinary person, in defendant's circumstance, would understand it. *People v. Morris*, 236 Ill. 2d 345, 366, 925 N.E.2d 1069, 1082 (2010). The trial court, here, admonished defendant, "if sentenced to the penitentiary you would be required to serve, upon your release, a mandatory supervised release period of two years." The trial court clearly admonished defendant of any MSR term he would be required to serve. Arguing defendant was not properly admonished about his MSR term would clearly be frivolous and without merit.

¶ 22 OSAD also addresses the omission of the MSR term from the June 29, 2009, sentencing order and the June 30, 2009, written sentencing judgment. A two-year MSR term attaches to any Class 2 felony by operation of law (730 ILCS 5/5-8-1(d)(2) (West 2008)). The Illinois Supreme Court rules require a defendant to be admonished of any MSR term when pleading guilty. Ill. S. Ct. R. 402(a)(2) (eff. July 1, 2012); *Whitfield*, 217 Ill. 2d at 188, 840 N.E.2d at 665. Admonishment of an MSR term in court is enough to comply with Rule 402. See *Morris*, 236 Ill. 2d at 353, 368, 925 N.E.2d at 1074, 1083 (finding admonishment alone was enough to inform defendant of his MSR term). The trial court, here, clearly admonished defendant about the MSR term that would attach to his 14-year prison sentence. The MSR term was eventually added to the written sentencing judgment as well. Any argument to reduce defendant's sentence based on a failure to admonish defendant of a two-year MSR term is frivolous and without merit.

¶ 23 III. CONCLUSION

¶ 24 We find any potential basis for OSAD to appeal would be frivolous and without merit. We grant its motion to withdraw as counsel on appeal and affirm the trial court's

judgment.

¶ 25 Affirmed.