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NOS. 4-14-0526, 4-14-0957 cons.

FILED
June 21, 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
TODD S. HOWELL,	)	Nos. 12CF673
Defendant-Appellant.	)	12CF887
	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) the trial court and this court had jurisdiction over defendant's petitions for postjudgment relief, and (2) defendant invited any error with respect to the court's judgment.

¶ 2 In April 2013, defendant, Todd S. Howell, entered into a negotiated plea agreement wherein he agreed to plead guilty in two felony cases—theft and driving while license revoked (driving revoked)—for consecutive four-year sentences in each. As part of the plea agreement, the State agreed to dismiss four other pending charges.

¶ 3 In February 2014, defendant filed a petition pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)) in the driving-revoked case, alleging his driving-revoked conviction was void and requesting the trial court modify the charge to reflect a misdemeanor without impacting the other cases in the plea agreement. In May 2014,

the court vacated defendant's plea in the driving-revoked case and, at the State's request, reinstated the previously dismissed charges. Although the court initially stated it would vacate defendant's plea in the theft case as well, at defendant's request, the court made no rulings with respect to the theft case.

¶ 4 In August 2014, defendant filed a motion to uphold the judgment and sentencing order as set forth in the theft case. The trial court considered the merits of defendant's argument and denied the motion.

¶ 5 Defendant appeals the trial court's judgment in both his driving-revoked and theft cases, asserting (1) the trial court and this court have jurisdiction over his appeals, and (2) the trial court's orders with respect to the petitions for postjudgment relief exceeded its authority. We affirm.

¶ 6 I. BACKGROUND

¶ 7 A. Guilty Pleas

¶ 8 In April 2012, the State charged defendant by information with one count of theft with a prior theft conviction, a Class 4 felony (Champaign Co. case No. 12-CF-673). 720 ILCS 5/16-1(a)(1), (b)(2) (West 2012). Thereafter, in June 2012, the State charged defendant by information with one count of driving revoked, a Class 4 felony (Champaign Co. case No. 12-CF-887). 625 ILCS 5/6-303(a), (d-2) (West 2012). This count alleged, on May 9, 2012, defendant drove a motor vehicle on a public highway at a time when his driver's license was revoked, and defendant had previously committed three or more violations of driving while his license was suspended or revoked.

¶ 9 In April 2013, defendant entered a plea of guilty to both the theft case and the driving-revoked case in exchange for a sentence of four years in the Illinois Department of

Corrections on each count, with the sentences to run consecutively. As part of the agreement, the State dismissed defendant's pending charges in Champaign Co. case Nos. 12-CF-980, 12-CF-780, 13-CF-468, and 13-CM-301. Defendant did not file a motion to withdraw his plea or appeal the judgment.

¶ 10 B. Petition for Relief From Judgment

¶ 11 In February 2014, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2014)) in case No. 12-CF-887, the driving-revoked case. Therein, defendant alleged his conviction was void because the charging instrument inaccurately stated he had committed three or more violations of the statute prohibiting driving on a suspended or revoked license, and it failed to state those alleged violations. In his prayer for relief, defendant asked the trial court to (1) vacate the judgment and sentence, (2) reduce the felony conviction to a misdemeanor and resentence him accordingly, (3) allow him to elect between accepting a reduced sentence or withdrawing his plea, or (4) allow him to plead to a lesser charge. He attached a copy of his driving abstract for the court's consideration. Defendant specifically asserted he did not wish to challenge his plea in case No. 12-CF-673, the theft case.

¶ 12 In April 2014, the State filed a response, denying defendant's allegations. However, in the event the trial court granted defendant's petition, the State urged the court to also reinstate the dismissed charges as part of the nonseverable plea agreement.

¶ 13 The following month, the hearing on defendant's petition commenced. At the hearing, defendant argued he had never been convicted of driving on a revoked license; thus, the State failed to establish his three prior convictions as required by law. Defendant conceded he entered the plea of guilty and, at the time, told the court sufficient evidence existed to prove

beyond a reasonable doubt that he committed the offense as charged. He also stipulated to the contents of the presentence investigation report prior to entering his plea of guilty. However, he said that was due to his ignorance and he no longer agreed with the criminal history as outlined in the report.

¶ 14 The State, in turn, pointed to court records showing at least two instances in which judgment had been entered against defendant for the charge of driving revoked, which were sufficient to charge defendant with a felony. The only difference was the mandatory minimum jail time. Since defendant did not accept a community-based sentence, the jail time was irrelevant. Regardless, if the court was inclined to find defendant's plea in the driving-revoked case void, the State requested the court to reinstate the charges dismissed pursuant to the plea agreement.

¶ 15 After considering the evidence and arguments, the trial court found the driving-revoked case was improperly charged because (1) the charging instrument failed to comply with the law and (2) a substantial factual question existed regarding defendant's prior convictions. Thus, the court stated it would vacate the entire April 2013 plea agreement, which included (1) vacating defendant's guilty pleas in both the driving-revoked case and the theft case; and (2) reinstating the dismissed charges in case Nos. 12-CF-980, 12-CF-780, 13-CF-968, and 13-CM-301. However, the court then clarified it would not vacate defendant's sentence in the theft case because defendant had specifically requested no intervention in that case. The court noted defendant could speak with his attorney if he sought to vacate the plea in the theft case. Defendant was thereafter remanded to the Illinois Department of Corrections to serve his sentence in the theft case.

¶ 16 C. Motion To Uphold Judgment

¶ 17 In August 2014, defendant filed, in his theft case, a motion requesting the trial court uphold the judgment and sentencing order. Defendant asserted the theft case, not the driving-revoked case, was the one in which the State agreed to dismiss the four pending charges. Thus, defendant contended the court's decision to vacate his plea in the driving-revoked case should have had no impact on the theft case or the four cases dismissed as part of his plea in the theft case.

¶ 18 In October 2014, the trial court held a hearing on defendant's motion. The court found defendant's argument that his pleas were entered into separately to be inconsistent with the record. The court then denied defendant's motion, finding the cases that had been dismissed prior to the plea agreement could be reinstated because they were part of defendant's all-encompassing plea agreement.

¶ 19 Defendant filed notices of appeal following the judgments in both his driving-revoked and theft cases. We docketed defendant's driving-revoked case as No. 4-14-0526 and his theft case as No. 4-14-0957. We have consolidated these cases for review.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant asserts (1) the trial court and this court have jurisdiction over his appeals, and (2) the trial court's orders with respect to the petitions for postjudgment relief exceeded its authority.

¶ 22 A. Jurisdiction

¶ 23 Defendant first asserts no jurisdictional bars would prevent this court from reaching the merits of his appeals.

¶ 24 1. *Driving-Revoked Case*

¶ 25 The State concedes this court has jurisdiction over defendant's driving-revoked case, and we accept the State's concession. Defendant properly filed a section 2-1401 petition, which the trial court granted, in part, in May 2014. This constituted a final and appealable order. See Ill. S. Ct. R. 304(b)(3) (eff. Feb. 26, 2010). Defendant thereafter filed a timely notice of appeal. Accordingly, this court has jurisdiction over defendant's driving-revoked case. See *People v. Smith*, 228 Ill. 2d 95, 104, 885 N.E.2d 1053, 1058 (2008) (filing a notice of appeal provides the jurisdictional step necessary for review by the appellate court).

¶ 26 Although the State concedes this court has jurisdiction over the driving-revoked case, the State asserts our jurisdiction is limited to the matters raised in defendant's section 2-1401 petition filed in the driving-revoked case. In other words, the State argues we are restricted to reviewing defendant's driving-revoked case, not the theft case or other dismissed cases. In addressing the State's argument, we look to whether the driving-revoked charge stood alone or was part of an all-encompassing plea agreement.

¶ 27 Plea agreements are generally governed by contract law. *People v. Schlabach*, 2012 IL App (2d) 100248, ¶ 23, 965 N.E.2d 585. Where a provision in a contract is unenforceable, that provision will be severed from the remainder of the contract, unless it is "so closely connected with the remainder of the contract that to enforce the valid provisions of the contract without it would be tantamount to rewriting the [a]greement. [Citation.]" (Internal quotation marks omitted.) *Id.* ¶ 24.

¶ 28 Here, the parties agree the cases that encompassed defendant's plea agreement could not be severed from one another or it would be tantamount to rewriting the agreement. Rather, the parties intended to enter into an all-encompassing plea agreement wherein defendant would receive an aggregate prison sentence of eight years in exchange for the State dismissing

four other pending charges. The parties therefore agree, when the trial court vacated defendant's conviction in the driving-revoked case, it should have vacated the plea agreement in its entirety. By entering an order with respect to the driving-revoked case and reinstating the four dismissed charges, the court therefore impacted the entire plea agreement, including the theft case. Moreover, because we conclude we have jurisdiction to review defendant's postjudgment motion in the theft case, this court is not limited to discussing the judgment solely as it relates to the driving-revoked charge.

¶ 29 2. *Theft Case*

¶ 30 The State contests the trial court's jurisdiction over the August 2014 motion filed in defendant's theft case and, as a result, also challenges our jurisdiction over the appeal. While defendant asserts we should construe his motion as a section 2-1401 petition, over which we would have jurisdiction, the State contends the motion was not filed pursuant to section 2-1401 and was therefore not an appropriate means for challenging the court's May 2014 order.

¶ 31 A party may not simply file a freestanding motion to challenge a void order entered by the trial court because such a motion does not initiate an action over which the court has jurisdiction. *People v. Needham*, 2016 IL App (2d) 130473, ¶ 13, 48 N.E.3d 900. Rather, a party must file a section 2-1401 petition for postjudgment relief. See 735 ILCS 5/2-1401 (West 2014). Where a party files a petition pursuant to section 2-1401, the petition constitutes a new proceeding rather than a continuation of the original cause. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102, 776 N.E.2d 195, 200 (2002).

¶ 32 However, in many instances, the party filing a postjudgment motion fails to specifically invoke section 2-1401 as the basis for review, which leaves the courts to decide whether the motion can be properly construed as a section 2-1401 petition. When called upon to

determine the nature of a motion, we examine the substance of the motion rather than its caption. *Shutkas Electric, Inc. v. Ford Motor Co.*, 366 Ill. App. 3d 76, 81, 851 N.E.2d 66, 70 (2006). Whether the trial court properly construed the motion as a section 2-1401 motion is a question of law subject to *de novo* review. *People v. Helgesen*, 347 Ill. App. 3d 672, 675, 807 N.E.2d 718, 721 (2004) (citing *Woods v. Cole*, 181 Ill. 2d 512, 516, 693 N.E.2d 333, 335 (1998)).

¶ 33 The State contends, under Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001), defendant had 30 days from the April 2013 date on which he entered his plea to challenge his guilty plea in the theft case. After that period, the trial court loses jurisdiction over the case. *People v. Bailey*, 2014 IL 115459, ¶ 8, 4 N.E.3d 474. Because defendant filed his motion to uphold the judgment and sentencing more than a year later, the State asserts the court lacked jurisdiction over the motion.

¶ 34 Defendant, on the other hand, asserts his August 2014 motion should be construed as a section 2-1401 petition seeking postjudgment relief, and the court's order denying the motion would therefore constitute a final and appealable order. See Ill. S. Ct. R. 304(b)(3) (eff. Feb. 26, 2010). We agree with defendant.

¶ 35 Although defendant's section 2-1401 petition in the driving-revoked case only challenged his driving-revoked conviction, the trial court's order went beyond granting relief in the driving-revoked case and also impacted the other cases within the plea agreement. Accordingly, defendant filed a motion in his theft case to uphold the judgment that he perceived the court had vacated. When the court denied defendant relief on the merits, noting defendant had specifically disclaimed any interest in challenging the theft case, defendant thereafter filed a notice of appeal within 30 days.

¶ 36 Defendant's motion is captioned as a "motion to uphold the judgment and sentence order" in his theft case. The caption does not specifically request relief under section 2-1401, nor does the motion itself reference section 2-1401. Essentially, however, the purpose of defendant's motion was to attack as void any judgment that impacted his plea agreement in the theft case. This would include the judgment entered in May 2014, vacating his driving-revoked plea and reinstating the four cases previously dismissed as part of the overall plea agreement. Defendant sought to challenge what he perceived as a void judgment entered in the driving-revoked case. See *Sarkissian*, 201 Ill. 2d at 105, 776 N.E.2d at 202 (a challenge to a void order is properly raised in a section 2-1401 petition). In doing so, defendant followed the necessary procedural rules for filing a section 2-1401 petition, which required (1) the motion to be filed at least 30 days and no more than 2 years after the final judgment, (2) the inclusion of information not available in the original record, and (3) proper service. See 735 ILCS 5/2-1401(a), (b), (c) (West 2014)).

¶ 37 Moreover, although the trial court did not specifically state it construed defendant's motion as a section 2-1401 petition, the fact that the court considered the merits and noted its final order was appealable demonstrates the court construed defendant's motion as a section 2-1401 petition. No other avenue would have permitted the court to consider the motion. *Sarkissian*, 201 Ill. 2d at 105, 776 N.E.2d at 202.

¶ 38 Accordingly, we conclude the trial court had jurisdiction to consider defendant's claim, and this court therefore has the jurisdiction to review its decision where defendant filed a timely notice of appeal. See Ill. S. Ct. R. 304(b)(3) (eff. Feb. 26, 2010).

¶ 39 B. Relief From Judgment

¶ 40 Defendant next asserts the trial court exceeded its authority when it *sua sponte* vacated part of his fully negotiated plea agreement by reinstating the previously dismissed charges. He further contends the court erred by not ordering the parties to renegotiate the plea agreement based on their mutual mistake regarding defendant's past convictions. Whether the trial court exceeded its authority in issuing a ruling on a section 2-1401 petition for relief from judgment is a legal question subject to *de novo* review. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 47, 32 N.E.3d 1099.

¶ 41 1. *Reinstatement of Dismissed Charges*

¶ 42 Defendant contends the trial court lacked the authority to *sua sponte* reinstate the previously dismissed charges, as it deprived the State of its discretion in determining which cases to prosecute. However, we note the court did not act *sua sponte*; rather, the State specifically asked the court to reinstate the charges previously dismissed as part of the plea agreement if the court vacated defendant's driving-revoked conviction.

¶ 43 Moreover, at the time defendant entered into his guilty plea, the trial court informed him, in the event his plea was vacated, the court, *at the request of the State*, could reinstate the charges dismissed as part of the plea agreement. See Ill. S. Ct. R. 605(c)(4) (eff. Oct. 1, 2001). When the court vacated defendant's plea, it thereafter reinstated the dismissed charges at the request of the State.

¶ 44 Defendant relies on *People v. Hughes*, 2012 IL 112817, 983 N.E.2d 439, and *People v. Stafford*, 325 Ill. App. 3d 1069, 759 N.E.2d 115 (2001), to support the proposition that the trial court loses jurisdiction to reinstate dismissed charges after 30 days, unless the State takes action to vacate the dismissal order or files new charges.

¶ 45 In *Hughes*, the State moved to enter a *nolle prosequi* on numerous counts of criminal sexual assault and abuse pending against the defendant. *Hughes*, 2012 IL 112817, ¶ 4, 983 N.E.2d 439. The trial court administratively dismissed the remainder of the defendant's pending charges when he was declared a sexually dangerous person and civilly committed. *Id.* ¶¶ 5-6. When the defendant's civil commitment was remanded for a new trial, the State chose not to proceed with a new civil commitment proceeding and sought, instead, a plea agreement with respect to the previously dismissed criminal charges. *Id.* ¶ 6. Accordingly, the State informed the court the parties had agreed to vacate the administrative order dismissing the criminal charges, which allowed the defendant to plead guilty to those criminal charges. *Id.* However, the State never asked to reinstate the charges for which it moved to enter a *nolle prosequi*. *Id.* ¶ 7. The defendant thereafter entered a plea of guilty on one of the charges that had been nol-prossed. *Id.*

¶ 46 When the Attorney General's office filed new civil commitment proceedings immediately after the defendant's plea, the defendant filed a motion to withdraw his plea, which the trial court denied. *Id.* ¶¶ 10, 15. On appeal, the supreme court determined the question was whether the State's entry of a *nolle prosequi* divested the trial court of its jurisdiction over those counts. *Id.* ¶ 21.

¶ 47 The supreme court held the trial court retained jurisdiction because a defective indictment, such as one that had been nol-prossed, did not divest the court of its jurisdiction. *Id.* ¶ 28. Rather, the court maintained the authority to vacate the order for *nolle prosequi* and reinstate the charges where jeopardy had not yet attached and the statute of limitations had not run. *Id.* ¶ 25. Accordingly, the *Hughes* court held the State's failure to refile the charges or ask

to reinstate the previously dismissed charge did not affect the power of the trial court render a judgment on the plea. *Id.* ¶ 30.

¶ 48 Similarly to *Hughes*, the trial court's decision in this case to reinstate the dismissed counts was within its jurisdictional authority. Though defendant asserts the court improperly acted *sua sponte*, without a request from the State to reinstate the charges or a new filing, the record demonstrates otherwise. The State specifically requested the court to reinstate the charges previously dismissed as part of the plea agreement, which follows the procedural requirements set forth in *Hughes*. Thus, contrary to defendant's argument, we conclude *Hughes* supports the court's decision to reinstate the dismissed charges.

¶ 49 In *Stafford*, the State nol-prossed five counts of attempted murder against the defendant and proceeded to trial on two remaining counts of murder. *Stafford*, 325 Ill. App. 3d at 1070, 759 N.E.2d at 117. The defendant was convicted of both counts of murder, but the appellate court reversed for a new trial. *Id*. On the date of the retrial, the State informed the trial court of its intention to proceed not only on the two counts of murder, but also on the five counts of attempted murder that had previously been nol-prossed. *Id*. at 1071, 759 N.E.2d at 117. Over the defendant's objection, the trial court granted the State's request to reinstate the attempted-murder charges. *Id*.

¶ 50 On appeal, the First District held the State was required to file new charges of attempted murder after it initially nol-prossed the counts of attempted murder. *Id.* at 1073, 759 N.E.2d at 119. Because the defendant was not aware he would be prosecuted on the previously nol-prossed attempted-murder charges until the day of the trial, the appellate court concluded, "[d]efendant was unfairly forced to defend himself against charges that were not even pending

against him at the time of his jury trial in violation of his constitutional rights." *Id.* at 1074, 759 N.E.2d at 120.

¶ 51 Defendant relies on *Stafford* to support his argument that the trial court could not reinstate the charges dismissed pursuant to the plea agreement absent a new filing by the State. However, *Stafford*'s concern focused more on whether the defendant had notice that the State intended to prosecute him on the attempted murder charges, which the State sought to reinstate on the date of trial. *Id.* at 1074, 759 N.E.2d at 120. Moreover, the First District's decision in *Stafford* long predated the supreme court's decision in *Hughes*, which held the State could request reinstatement of the charges. See *Hughes*, 2012 IL 112817, ¶ 25, 983 N.E.2d 439. Thus, we find defendant's reliance on *Stafford* unpersuasive.

¶ 52 Accordingly, we conclude the State properly requested the reinstatement of the previously dismissed charges, and the trial court did not exceed its jurisdictional authority by granting the State's request.

¶ 53 2. *Requiring the Parties To Renegotiate*

¶ 54 Defendant next argues the trial court, rather than vacating his plea agreement, should have ordered the parties to renegotiate. Defendant asserts this is the only equitable solution, as he has already served four years' imprisonment in the theft case, thus providing the State with the benefit of the bargain without providing the consideration of the dismissed cases.

¶ 55 When the parties make a mutual mistake of law or fact, generally, the remedy is to allow the parties to reform their agreement in a way that would give both parties the benefit of their bargain. *People v. Donelson*, 2013 IL 113603, ¶ 17, 989 N.E.2d 1101. In this case, the parties arguably made a mutual mistake with respect to defendant's previous convictions that rendered his plea on the driving-revoked case void. Because the various cases in defendant's

plea agreement were not severable, the court attempted to vacate defendant's entire plea agreement. That would have placed the parties in the position they were in prior to the plea agreement. Therefore, because neither party received or was denied the benefit of the bargain, reformation would not be necessary.

¶ 56 Instead, in both his written motion and in his argument before the trial court, defendant specifically requested the court not address his theft case, a request granted by the court. The doctrine of invited error estops the accused from requesting to proceed in one manner before the trial court, and then contending on appeal that the course of action was in error. See *People v. Carter*, 208 Ill. 2d 309, 319, 802 N.E.2d 1185, 1190 (2003); *People v. Lucas*, 231 Ill. 2d 169, 174, 897 N.E.2d 778, 781 (2008). Accordingly, any error that resulted from the court ordering defendant to continue serving his theft sentence was invited by defendant.

¶ 57 Defendant asserts he did not invite the error because he objected to the trial court vacating his plea in the driving-revoked case. While that may be true, after learning of the court's judgment, defendant maintained he did not wish for the court to enter any orders with respect to his theft case. Conversely, on appeal, defendant asks this court to consider the fact that he served his theft sentence in his favor and use that as the basis for requiring reformation of the plea agreement. We are not inclined to allow defendant to invite the court to act one way, then attempt to use his decision to disadvantage the State on appeal. We therefore conclude defendant is estopped from raising this issue on appeal.

¶ 58 By filing his section 2-1401 petition, defendant sought to hold the State accountable for its part of the bargain—dismissing four cases—while unilaterally reducing the eight-year sentence to which he had earlier agreed. See *People v. Evans*, 174 Ill. 2d 320, 327, 673 N.E.2d 244, 247-48 (1996). This is inconsistent with contract-law principles and the

constitutional concerns of fundamental fairness to the parties. *Id.* at 327, 673 N.E.2d at 248. To allow defendant this course of action would encourage other defendants to "negotiate with the State to obtain the best deal possible in modifying or dismissing the most serious charges and obtain a lighter sentence than [they] would have received had [they] gone to trial or entered an open guilty plea, and then attempt to get that sentence reduced even further by reneging on the agreement." *Id.* at 327-28, 673 N.E.2d at 248. In turn, prosecutors would be less inclined to enter into negotiated plea agreements, a process necessary to the efficiency of our justice system. *Id.* at 328, 673 N.E.2d at 248. Thus, we conclude the trial court did not err by vacating defendant's driving-revoked conviction, reinstating the dismissed charges, and entering no judgment with respect to the theft case.

¶ 59 III. CONCLUSION

¶ 60 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we grant the State its $75 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 61 Affirmed.