

NOTICE

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2016 IL App (4th) 150929-U

NO. 4-15-0929

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 14, 2016

Carla Bender

4th District Appellate

Court, IL

In re: Alonzo O., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 14JD152
ALONZO O.,)	
Respondent-Appellant.)	Honorable
)	John Brian Goldrick,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Trial counsel's failure to impeach the State's witness with a recent felony conviction did not amount to ineffective assistance of counsel.

¶ 2 On February 9, 2015, the trial court adjudicated respondent, Alonzo O. (born February 28, 1997), delinquent and found him guilty of battery (720 ILCS 5/12-3(a)(1) (West 2014)). Thereafter, the court sentenced respondent to 12 months' probation. Respondent appealed, asserting he was denied his right to effective assistance of counsel. *In re Alonzo O.*, 2015 IL App (4th) 150308, ¶ 17, 40 N.E.3d 1228. On October 7, 2015, this court remanded to the trial court for the limited purpose of holding an evidentiary hearing regarding respondent's ineffective-assistance-of-counsel claim. *Id.* ¶ 30. We retained jurisdiction to review the trial court's ruling after remand.

¶ 3 On remand, the trial court found respondent's counsel was not ineffective. We affirm.

¶ 4 I. BACKGROUND

¶ 5 During respondent's February 9, 2015, trial for battery, the State called 29 year-old Cleofas Aguirre-Alarcon (Aguirre), the alleged victim, to testify with the assistance of a Spanish interpreter. According to Aguirre, at approximately 3:30 a.m. on July 20, 2014, respondent came to his house looking for Aguirre's roommate, Carlos. Aguirre informed respondent Carlos was asleep. Aguirre then observed respondent walk to a neighbor's house and knock on the door. When no one answered the door, respondent walked back to Aguirre's house and stole Aguirre's bicycle. Aguirre went to respondent's house to speak with respondent's father, Alonzo, whom he knew through work. When he knocked on respondent's door, Alonzo opened the door holding a baseball bat in his hand. Respondent was standing behind Alonzo holding a hand weight. Respondent's mother and sister were also at the door.

¶ 6 Aguirre testified respondent grabbed the baseball bat from his father and hit Aguirre on the head. Alonzo then took the bat from respondent and respondent "went on top of [Aguirre]" and continued to hit him with his fists. Aguirre hit respondent in self defense. Aguirre left respondent's house and called his girlfriend, Amanda Bailey, who took him to the hospital.

¶ 7 On cross-examination, Aguirre testified he did not call the police after respondent took his bicycle because "the last time [he] called the police" for "[s]omething similar," the police "arrested [him] unjustly."

¶ 8 Jason Haworth, a Bloomington police officer, testified he was dispatched to the hospital to speak with Aguirre. On cross-examination, Haworth stated Aguirre told him he did not call the police to report the theft of his bicycle due to previous incidents with the police.

¶ 9 Monica, respondent's 15-year-old sister, testified she was awakened by "a loud banging on the door" at approximately 3 a.m. on July 20, 2014. She opened the door and a man she did not know said something about respondent and a bicycle. She tried to close the door but the man pushed it open. At that point, respondent and Alonzo came to the door and everyone went outside. Once outside, the man became aggressive, accused respondent of stealing his bicycle, and hit respondent with his fist. Respondent then hit the man with a baseball bat. According to Monica, respondent already had the bat in his hand because "it was weird that somebody was comin[g to] the house at 3:00 in the morning bangin[g] on the door. It scared all of us."

¶ 10 On cross-examination, Monica testified inconsistently regarding how respondent came to be in possession of the bat. She first stated respondent had the bat in his hand while he was standing next to her at the door. However, she later testified respondent took the bat from her father after the man punched respondent.

¶ 11 Respondent testified that at approximately 3:30 a.m. on July 20, 2014, he was awoken by a loud knock on the door. He grabbed a baseball bat and his sister opened the door. His sister then tried to close the door but Aguirre would not let her. Respondent, Alonzo, and Monica went outside, at which point Aguirre hit respondent with a closed fist. Respondent then hit Aguirre in the head with the baseball bat. Respondent stated he had possession of the bat throughout the entire incident.

¶ 12 Respondent's mother, Georgina, testified with the partial assistance of a Spanish interpreter. Georgina stated she heard a knock on the door in the early morning hours of July 20, 2014. Her daughter answered the door and Aguirre, who was at the door, was acting aggressively. Respondent was holding a baseball bat. Everyone went outside and Aguirre accused respondent of stealing his bicycle. According to Georgina, Aguirre was "aggressive" toward respondent and hit respondent in the eye. Respondent then hit Aguirre with the bat.

¶ 13 On cross-examination, Georgina agreed it was her husband who picked up the baseball bat and took it outside and that respondent grabbed the bat from her husband and hit Aguirre in the head.

¶ 14 The State called respondent's father, Alonzo, in rebuttal. Alonzo testified that Aguirre knocked on his door at approximately 3:30 a.m. on July 20, 2014. He and respondent, followed by his wife and daughter, stepped outside because Aguirre "was not in a very friendly way." According to Alonzo, respondent carried the baseball bat outside. On cross-examination, Alonzo testified respondent hit Aguirre with the bat only after Aguirre hit respondent.

¶ 15 After considering all the evidence, the trial court adjudicated respondent delinquent and found him guilty of battery. In making its determination, the court noted it had observed the witnesses' physical characteristics and demeanors while testifying and found Aguirre's version of the incident to be credible. The court noted the inconsistencies in the testimony of respondent and his family regarding how the baseball bat came to be in respondent's possession.

¶ 16 On direct appeal, respondent argued his trial counsel was ineffective for failing to impeach Aguirre with a prior felony conviction for aggravated domestic battery. See *Alonzo O.*, 2015 IL App (4th) 150308, ¶ 17, 40 N.E.3d 1228. As noted, this court remanded to the trial

court for the limited purpose of holding an evidentiary hearing regarding respondent's ineffective-assistance-of-counsel claim, and we retained jurisdiction to review the trial court's ruling following remand. *Id.* ¶ 30.

¶ 17 On November 2, 2015, the trial court conducted an evidentiary hearing. Arthur Feldman, an assistant public defender who represented respondent at trial, testified that at the time of respondent's trial, he was not aware that Aguirre had a felony record. Feldman explained, "[w]e don't do discovery in juvenile court." Feldman agreed he would have discovered Aguirre's prior criminal record if he had checked county records, but he noted he had hundreds of cases in his caseload and he "generally do[es] not run every individual that may be a witness before I go to a trial hearing." Feldman testified that had he known about Aguirre's criminal record, he would have "brought it up to the [c]ourt." However, Feldman stated that knowledge of Aguirre's criminal history would not have changed his trial strategy and would have been "just one other, for lack of a better term, arrow in the quiver, that I would have tried to use."

¶ 18 Thereafter, the trial court determined that Feldman's performance had not fallen below an objective standard of competence, noting there were no discovery guidelines or requirements for the disclosure of information in the juvenile division and the court believed Feldman "fully pursued the defense that was set forth." Further, while the court acknowledged it did not know the specifics of Aguirre's criminal history, it knew Aguirre had prior contact with the police based upon the testimony at trial. In finding Aguirre's version of the incident to be credible, the court noted the inconsistencies in the testimony of defense witnesses concerning how respondent came to be in possession of the baseball bat. The court found that evidence of Aguirre's prior felony conviction for aggravated domestic battery "would not have made a

difference in this [c]ourt's mind as to its findings at the trial that was conducted" and "the result would not have been different." The court determined respondent's counsel was not ineffective.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 The sole issue on appeal is whether respondent was denied his right to effective assistance of counsel.

¶ 22 "[A] minor charged with committing an offense *** is entitled to the effective assistance of counsel in juvenile delinquency proceedings." *In re Danielle J.*, 2013 IL 110810, ¶ 31, 1 N.E.3d 510. As in criminal cases, ineffective-assistance-of-counsel claims are reviewed under the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Danielle J.*, 2013 IL 110810, ¶ 31, 1 N.E.3d 510. "Under this standard, ineffective assistance of counsel is established if the minor can demonstrate: (1) counsel's performance failed to meet an objective standard of competence and (2) counsel's performance resulted in prejudice to the minor." *Id.* Under the deficiency prong of *Strickland*, respondent must "demonstrate counsel made errors so serious and counsel's performance was so deficient that counsel was not functioning as 'counsel' guaranteed by the sixth amendment (U.S. Const., amend. VI)." *In re Ch. W.*, 399 Ill. App. 3d 825, 829, 927 N.E.2d 872, 875 (2010). To prove prejudice, respondent "must prove a reasonable probability exists that, but for counsel's unprofessional errors, the proceedings' result would have been different." *Id.*

¶ 23 Respondent first argues that his counsel's performance was deficient because he failed to investigate and impeach Aguirre, the State's central witness, with his recent felony conviction for aggravated domestic battery. Although this court is not required to consider whether counsel's performance was deficient before examining whether respondent was

prejudiced by counsel's alleged deficiencies (see *People v. Taspcott*, 386 Ill. App. 3d 1064, 1078, 899 N.E.2d 597, 610 (2008) (ineffective-assistance claims can be disposed of purely on the ground that respondent did not suffer prejudice)), we do so in this case to point out a flaw in respondent's argument.

¶ 24 Central to respondent's argument here is that counsel failed to request discovery which would have disclosed Aguirre's criminal history. In support of his contention, respondent notes that the 1999 amendments to the Juvenile Court Act of 1987 included a provision that "minors shall have all the procedural rights of adults in criminal proceedings, unless specifically precluded by laws that enhance the protections of such minors." 705 ILCS 405/5-101 (West 2014). Accordingly, respondent argues that "the adult right to discovery is provided to all minors charged with a criminal offense," and therefore, the trial court's determination on remand that respondent's counsel provided adequate representation and "fully pursued" a defense for respondent "since there are no discovery guidelines or requirements to disclose" in juvenile court was error.

¶ 25 Respondent's argument, however, fails to recognize that general discovery rules do not apply in cases involving misdemeanor offenses. See Illinois Supreme Court Rule 411 (eff. Dec. 9, 2011) (providing that discovery rules apply "in all criminal cases wherein the accused is charged with a felony, and all juvenile delinquency cases wherein the accused is charged with an offense that would be a felony if committed by an adult"). Rather, cases involving misdemeanor offenses, such as the one at issue here, are entitled only to limited discovery. See *People v. Schmidt*, 56 Ill. 2d 572, 574, 309 N.E.2d 557, 558 (1974) (in misdemeanor cases, the State must furnish the defendant with a list of witnesses, any confession of the defendant, and evidence negating the defendant's guilt); see also 725 ILCS 5/114-9;

114-10 (West 2014) (on motion of the defendant, the State must furnish the defense with (1) a list of prosecution witnesses and their last known addresses and (2) a copy of any written confession made to any law enforcement officer and a list of witnesses to its making). Thus, contrary to respondent's assertion, Aguirre's criminal history was not discoverable. Accordingly, counsel's failure to request discovery based on these facts did not amount to ineffective representation.

¶ 26 Further, even if we were to assume counsel was ineffective, the trial court's comments establish respondent was not prejudiced. On remand, the judge who presided over respondent's trial less than nine months before stated that even if he had known of Aguirre's recent felony conviction for aggravated domestic battery, he would not have decided the case differently. Accordingly, respondent is unable to establish the prejudice prong of *Strickland*.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the trial court's judgment.

¶ 29 Affirmed.