2017 IL App (1st) 143055-U

No. 1-14-3055

Order filed November 16, 2017

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 14 MC2 2241
	)	
ENKHBAATE DAMBADARJAA,	)	Honorable
	)	Callie Lynn Baird,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's denial of motion to withdraw guilty plea affirmed. Defendant was not denied effective assistance of counsel on motion to withdraw guilty plea, as counsel did not suffer potential or actual conflict based on counsel's "implicit" allegation of own ineffectiveness in advising defendant on plea.

¶ 2 Defendant Enkhbaate Dambadarjaa, while represented by counsel, pleaded guilty to one count of assault involving his stepdaughter. He later moved to withdraw that guilty plea, a motion in which he was represented by that same defense counsel. The substance of the motion

was that his counsel failed to make defendant aware of a certain fact—that the complaining witness, defendant's stepdaughter, was no longer willing to testify against him—and thus his guilty plea was not knowing and voluntary. During the litigation of that motion, counsel freely admitted to the court that she did not interview the complaining witness before advising defendant on the guilty plea, and that she should have done so. She also told the court that she came to learn, shortly after the plea was entered, that the complaining witness was not willing to testify against defendant.

¶ 3 The trial court denied the motion. After hearing sworn testimony from the complaining witness, the trial court stated that it did not believe the complaining witness's claim that she was not willing to testify at the time of trial. Rather, the trial court found, the complaining witness *had* been willing to testify against her stepfather but now suffered from remorse.

¶ 4 Defendant now alleges that his attorney suffered from a conflict of interest when she litigated that motion, because she was arguing, in essence, her own ineffectiveness. He claims both that the trial court failed in its duty to inquire into the possibility of a conflict, and that an actual conflict existed. Defendant thus seeks a new hearing on the motion.

¶ 5 We affirm. We agree with defendant that counsel was implicitly arguing her own ineffectiveness. But the record shows that counsel fully presented and prosecuted the allegation of her deficiency. Thus, we find nothing lacking in counsel's postplea representation of defendant and no reason why the trial court should have suspected that counsel's loyalties may have been divided.

¶ 6 The State charged defendant with one count of assault against his 17-year-old stepdaughter, U.T. On August 21, 2014, when the case was called in court, assistant State's

attorney (ASA) Jeremiah Davis said, "Complaining witness is in court. State's proceeding." The court asked defense counsel if she wanted to pass the case for pretrial, and counsel agreed.

¶ 7 When the case was recalled, the parties indicated that they had agreed that defendant would plead guilty in exchange for a sentence of time considered served, *i.e.*, 14 days in the Cook County department of corrections. ASA Davis said that he had talked to U.T. about the plea.

¶ 8 The court asked defendant if he understood that he was pleading guilty to the charge of assault in exchange for a sentence of 14 days in the Cook County Department of Corrections with time considered served. Defense counsel interjected that she told defendant that the guilty finding "will and could" have adverse affects on his citizenship. The court asked defendant if, knowing that, he still wished to accept the State's offer, and defendant answered, "Yes."

¶ 9 The trial court admonished defendant of the nature of the charge and sentencing range, and asked him how he wished to plead. Defendant answered, "Plead guilty." The court then explained what a jury trial was, and defendant confirmed that he did not want a trial and that he had signed the jury waiver. Defendant denied that anyone had threatened or promised him anything other than the 14-day sentence to persuade him to plead guilty, and he confirmed that he was pleading guilty of his own free will.

¶ 10 ASA Davis provided the factual basis for the plea. According to Davis, the State would establish beyond a reasonable doubt that on August 6, 2014, defendant raised his fist at U.T., stopped, and said, "Why should I hit you when the next time this happens, I will kill you." Defense counsel stipulated to Davis's characterization of the State's evidence.

¶ 11 The trial court found that defendant's guilty plea was freely and voluntarily given and entered a guilty finding on the assault charge. The court imposed the agreed-upon sentence and

admonished defendant of his right to appeal. The court also informed defendant that if he was not a United States citizen, his conviction could result in deportation or the denial of naturalization.

¶ 12 Four days later, on August 25, 2014, defense counsel filed a motion to withdraw defendant's guilty plea, asserting that, after the plea was entered, defendant learned that his family did not want to pursue criminal charges against him. The motion claimed that defendant did not fully understand the consequences of his plea, because he did not know that his family wanted to drop the charges.

¶ 13 At the hearing on the motion, defense counsel said that she "was mistakenly under the impression that his family wished to go forward with the plea." However, counsel said that, shortly after the plea was entered, she spoke with defendant's wife and U.T., and they said that they did not wish to go forward with the charges. Counsel also said that she mistakenly believed that the State was going to proceed with the case "evidence-based"—that is, that the State could prove the charge even without U.T.'s testimony. The day after pleading guilty, defendant contacted counsel and told her that he wanted to withdraw his plea. Counsel said that she spoke with defendant's family again on the morning of August 25, and they maintained that they did not wish to go forward with the charges against him.

¶ 14 Counsel acknowledged that she did not speak with defendant's family prior to his guilty plea. She explained that she did not do so because "[i]t was a busy day," she was the only public defender in the courtroom, and she believed the State was proceeding with the case "evidence-based." Counsel argued that defendant's guilty plea was not knowingly and voluntarily made, because he did not know that his family did not wish to go forward with the charges against him.

¶ 15 Opposing the motion, ASA Davis told the court that he did not ask the witnesses if they wished to go forward with the charges, because that premise is a legal fiction. He explained that it is not a witness's decision to keep or dismiss the charge. Davis said that he interviewed U.T., and based on that interview, he assessed the evidence and made the offer because it was his charge to keep or dismiss. Davis argued that defendant had been admonished of his rights, and he asked the court to deny defendant's motion to withdraw his plea.

¶ 16 ASA Davis acknowledged that this was not a case on which he could have proceeded "evidence-based." But he said that, when he interviewed U.T., she said she would testify if asked to do so.

¶ 17 U.T. testified in support of the motion. She testified that she was present in court on the date of the plea, and that she spoke with defense counsel after defendant had already pleaded guilty. At that time, U.T. told counsel that she was confused about the procedure, she did not know what was happening, and she wanted to drop the charges and have defendant released, because he helps with everything at home. U.T. did not know whom to talk to or where to go to drop the charges, and she tried to talk to the ASA and thought he understood her. U.T. also said that she spoke with the ASA before the plea was entered and told him that she would not testify and wanted defendant released.

¶ 18 On cross-examination by ASA Davis, U.T. acknowledged that she had approached him that morning (August 25) before court and asked to speak with him. They entered a booth in the hallway, and U.T. then told Davis that she wanted the charges dismissed. U.T. acknowledged that Davis told her that it was his decision to make and that it was not her charge to dismiss. U.T. further acknowledged that while they were talking, defendant was standing just outside the booth until Davis asked him to leave.

¶ 19 The trial court then asked defense counsel why anything U.T. said to the ASA regarding her desire to pursue charges was relevant to defendant's motion to withdraw his plea. Counsel said that she did not advise defendant that his family was not seeking to go forward with the charges against him. She claimed that defendant was not given all of the information relative to his plea, and if he knew that information, it would have affected his decision to plead guilty. Counsel said that it was her duty to talk to the family and ascertain this information, but she did not speak to his family before the plea.

¶ 20 Counsel filed an amended motion to withdraw defendant's guilty plea, incorporating the arguments she had made at the hearing on the initial motion. The motion said that counsel did not interview the complaining witness prior to speaking with defendant, and that U.T. approached counsel after defendant pleaded guilty and indicated that she did not wish to go forward with the charges against him. The motion also asserted that the State could not proceed in this case without U.T.'s cooperation, because it would be unable to prove the assault charge without her testimony.

¶ 21 The motion noted that U.T. had testified under oath that she informed the ASA that she did not want to proceed with the charges against defendant and that she would not testify against him. The motion further asserted that defendant was not given the necessary information to make an informed and knowing decision regarding his guilty plea, and that his plea was not entered into freely and voluntarily. The motion did not expressly allege that defense counsel had rendered ineffective assistance.

¶ 22 At the hearing on the amended motion, defense counsel reiterated that she had not spoken with U.T. prior to the guilty plea, and that immediately after defendant pleaded guilty, U.T. indicated that she did not wish to proceed with the charges against him. Counsel argued that

when she advised and counseled defendant about whether to accept the State's offer, she did not give him the "key piece of information" that U.T. did not wish to proceed with the assault charge against him. Counsel further argued that, in hindsight, the State was unable to proceed with the charge without U.T.'s cooperation. Counsel said, "I did not know at the time I was talking to him that I should have interviewed her." Counsel argued that, because she failed to interview U.T., defendant pleaded guilty without having all of the necessary information to make a decision.

¶ 23 In response, ASA Gail Vierneisel referred to the transcript from the previous court date and pointed out that ASA Davis had said that he interviewed U.T., and U.T. said that she *would* testify. Vierneisel noted that defendant was admonished of his rights, and that it was not defense counsel's decision to determine whether the State would have been able to proceed with the case without U.T.'s cooperation.

¶ 24 Vierneisel then corroborated ASA Davis's testimony. Vierneisel said that she was also present that day in court with ASA Davis and "the victim did state that she would testify if the case would go to trial." She explained that the plea offer was made after assessing the evidence and the case, and after speaking with U.T.

¶ 25 The trial court said that the basis of defendant's motion to withdraw his plea was that he would have prevailed if he would have gone to trial, because U.T. had decided not to testify. The court noted that U.T. was present in court on the date of the plea, and that she told the ASAs (Davis and Vierneisel) that she wanted to proceed with the case. The court pointed out that on each court date after that, defendant was with U.T. On the date that U.T. testified that she did not wish to proceed, she came to court with defendant and returned home with him. On the following court date, U.T.'s presence was not required, but she came to court with defendant.

¶ 26 The court noted that it specifically asked defendant if he was pleading guilty voluntarily, and defendant said that he was. The court reviewed its admonishments to defendant and noted that he had indicated that he understood those admonishments and his rights, and that he wished to accept the State's offer.

¶ 27 The trial court also said that it was "not entirely convinced" that U.T. did not wish to proceed with the case "especially after she testified in court." The court stated "that may be the case now that he's no longer in jail and she's home with him." The court found that when ASA Davis interviewed U.T., she told him that she wanted to proceed. The court also noted that defense counsel had said that she did not know if the State could proceed "evidence-based." The court then stated "that is a red herring, it's all a matter of trial strategy, not an issue of assistance of counsel, not an issue of a motion to withdraw a plea of guilty." The court found that defendant had been advised of his rights, that he indicated that he understood them, and that there was no evidence to the contrary. The court denied defendant's motion to withdraw his guilty plea.

¶ 28 Defendant filed this appeal.

¶ 29 The issues on appeal revolve around defendant's claim that he was represented in postplea proceedings by a conflicted attorney. Counsel's conflict arose, defendant argues, because she "implicitly alleged" her own ineffectiveness, based on her failure to discover and inform defendant of U.T.'s decision not to testify, a fact defendant says was necessary for him to make an informed (and thus voluntary) plea decision. To be clear, defendant is not saying the trial court should have found ineffectiveness and erred in doing so; defendant is merely saying that his counsel had a conflict in arguing her own ineffectiveness, and thus a new hearing on the motion is warranted with conflict-free counsel.

¶ 30 The State challenges the underlying predicate of this argument; the State says that defense counsel was not arguing her own ineffectiveness. The State claims that counsel simply "explained how she came to be apprised of 'the family's' post-plea change of heart" and never alleged any defect in her representation of defendant.

¶ 31 If the State is correct that defense counsel was not arguing her own ineffectiveness, then defendant's argument would obviously fail, as there would be no basis for finding a conflict in the first place. So the first question we must decide is whether defense counsel was, or was not, alleging her own ineffectiveness in litigating this motion to withdraw the guilty plea.

¶ 32 In the amended motion, as we have noted, counsel alleged that defendant did not enter his plea "freely and voluntarily" because he "was not given the necessary information to make an informed and knowing decision." Counsel laid the blame entirely at her own feet; she alleged that defendant did not have the information he needed because she "did not interview [U.T.]" before advising defendant about his plea decision, and thus failed to discover that U.T. "did not want to proceed with the charges" and "would not testify against" defendant.

¶ 33 Counsel elaborated somewhat on these allegations at the hearing on the amended motion. She explained to the trial court that she "was mistakenly under the impression that [defendant's] family wished to go forward with the plea," and this mistake meant that defendant did not fully understand the consequences of his plea. She added that she failed to interview U.T. before defendant pleaded guilty and that, if she had interviewed U.T., she would have been able to give defendant a "key piece of information" about his case that he did not otherwise have. Thus, counsel did not merely explain that she learned of U.T.'s change of heart *after* the plea, as the State argues; she said that she *should have learned* of U.T.'s change of heart *before* the plea.

¶ 34 Counsel thus alleged that defendant entered an uninformed guilty plea because she failed to do something that she, as his attorney, should have done for him. On its face, that allegation was presented in terms of "[t]he longstanding test for determining the validity of a guilty plea," namely, "whether the plea represents a voluntary and intelligent choice among the alternative sources of action open to the defendant." *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (quoting *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)). Among other reasons, a plea may be involuntary if—as counsel alleged—it "was entered on a misapprehension of the facts or of the law, or in consequence of misrepresentations by counsel." *People v. Pugh*, 157 Ill. 2d 1, 13-14 (1993). But of course, not every piece of erroneous advice from counsel will render a plea involuntary. *Id.* at 14. Rather, "whether the defendant's plea[ ], made in reliance on counsel's advice, [was] voluntarily, intelligently, and knowingly made depends on *whether the defendant had effective assistance of counsel*." (Emphasis added.) *Pugh*, 157 Ill. 2d at 14; see also *Hill*, 474 U.S. at 56 ("Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice "was within the range of competence demanded of attorneys") (quotation marks omitted).

¶ 35 So we agree with defendant that counsel's allegations necessarily implied a claim of her own ineffective assistance. We are not suggesting—nor have we been asked to hold—that this was a *meritorious* claim of ineffectiveness. The merits of the ruling on the guilty plea are not before us. Defendant uses the fact that his counsel was alleging her own ineffectiveness to argue that counsel was conflicted in doing so, thus warranting a remand for a new hearing.

¶ 36 So we now turn to defendant's claim that defense counsel, having alleged her own ineffectiveness, was conflicted. A defendant's sixth amendment right to effective assistance of counsel includes the right to representation that is free from conflicts. *People v. Taylor*, 237 Ill.

2d 356, 374 (2010). Our supreme court has identified two categories of conflicts of interest: *per se* and actual. *Id*.

¶ 37 We do not read defendant's brief as arguing a *per se* conflict, and for good reason. To date, our supreme court has limited *per se* conflicts, requiring automatic reversal, to one of three situations: "(1) where defense counsel has a prior or contemporaneous association with the victim, the prosecution, or an entity assisting the prosecution; (2) where defense counsel contemporaneously represents a prosecution witness; and (3) where defense counsel was a former prosecutor who had been personally involved in the prosecution of defendant." *Id*.; *People v. Short*, 2014 IL App (1st) 121262, ¶ 111. We have previously rejected the argument that an attorney's allegation of his or her own ineffectiveness automatically creates a *per se* conflict. See, *e.g.*, *Short*, 2014 IL App (1st) 121262, ¶ 116; *People v. Perkins*, 408 Ill. App. 3d 752, 761 (2011).

¶ 38 Rather, defendant claims that an actual conflict existed. We review this question *de novo*. *People v. Miller*, 199 Ill. 2d 541, 544 (2002) (whether defense counsel labored under actual conflict is question of law subject to *de novo* review.)

¶ 39 To show an actual conflict (as opposed to a *per se* conflict), a defendant must show "a conflict of interest that adversely affected counsel's performance." *People v. Hernandez*, 231 Ill. 2d 134, 144 (2008). That is not to say that a defendant must demonstrate prejudice or harmful error resulting from the conflict—he need not. *People v. Spreitzer*, 123 Ill. 2d 1, 18-19 (1988). It only means that the defendant must identify "some specific defect in his counsel's strategy, tactics, or decision making attributable to the conflict." *People v. Morales*, 209 Ill. 2d 340, 349 (2004) (quoting *Spreitzer*, 123 Ill. 2d at 18).

¶ 40 Here, defendant has not identified any such defect. This motion was, after all, a very straightforward one. It boiled down to the three essential points: (1) U.T. was unwilling to testify against defendant at the time of trial and guilty plea; (2) defense counsel never spoke to U.T. before the plea was entered; and (3) defense counsel thus never advised defendant about U.T.'s willingness, or lack thereof, to testify. Counsel readily admitted the second and third points, without any qualification, and without any dispute from defendant, the State, or anyone else. She went further and said she *should have* interviewed U.T. beforehand, which is an argument, not a fact—but regardless of that distinction, she willingly and unhesitatingly admitted to that, too.

¶ 41 The only thing defense counsel could not establish by herself—the first point, U.T.'s unwillingness to testify at the time of the plea—she established by calling U.T. to testify and eliciting U.T.'s testimony to that end.

¶ 42 Thus, we find no basis for concern that counsel's loyalties may have been divided, or that her litigation of defendant's postplea motion was in any way restrained. We can glean nothing from the record that provides even the slightest indication that any possible conflict of interest "adversely affected counsel's performance" (*Hernandez*, 231 Ill. 2d at 144), nor any indication whatsoever of a "specific defect" in "counsel's strategy, tactics, or decision making attributable to the conflict." *Morales*, 209 Ill. 2d at 349 (quoting *Spreitzer*, 123 Ill. 2d at 18). Counsel did everything she could possibly do to prevail on that motion.

¶ 43 Defendant argues that counsel should have withdrawn from the representation and testified under oath to "flesh out her failure to investigate the case." Defendant says that counsel had to explain why she did not interview U.T., why she believed U.T. would testify, and why she thought the State was proceeding "evidence-based." Defendant also contends that counsel should have called him to testify about the representations she made to him before his plea.

¶ 44 But it would have made absolutely no difference *why* counsel failed to interview U.T.; *why* counsel assumed U.T. would testify; or *why* counsel apparently believed that the State had evidence apart from U.T.'s testimony on which it could proceed. All that mattered, for the purposes of the motion, was that defense counsel did not interview U.T. beforehand, and thus did not inform defendant regarding U.T.'s willingness to testify. And counsel clearly and indisputably established those points. We cannot see how counsel's "failure" to present that additional proof could be viewed as a defect in her performance.

¶ 45 We do not mean to leave the impression that attorneys alleging their own ineffectiveness could never be conflicted; of course they could. It would not be hard to imagine lawyers' reluctance to blame themselves in this context, arising from a natural human reaction to protect their "professional and reputational interests" (*Christeson v. Roper*, 135 S. Ct. 891, 895 (2015)) or perhaps because of a disagreement with the defendant over whether any ineffectiveness, in fact, occurred. The cases cited by defendant are good examples, but their facts fall far wide of this case.

¶ 46 For example, in *People v. Willis*, 134 Ill. App. 3d 123 (1985), counsel incorporated Willis's *pro se* allegation of ineffective assistance into an amended motion to withdraw his plea. *Id.* at 126. Willis's allegation was based in part on his claim that counsel misled him about his possible sentence because counsel relied on a rap sheet that was later discovered to be incorrect. *Id.* at 128. At the hearing, counsel was less than forthcoming about his review of Willis's criminal history, and at one point while counsel examined Willis, Willis actually posed questions to counsel about the rap sheet, to which counsel gave an evasive response and "almost immediately changed his line of questioning." *Id.* at 131. And in the closing argument, while counsel did argue that Willis was confused about the rap sheet, counsel steered clear of placing

any blame at his own feet. *Id*. at 128-29. It was fair to say, in these circumstances, that counsel and his client were "in conflict" with each other, and that counsel was not vigorously defending the allegations he dutifully—if less than wholeheartedly—incorporated into the amended motion. *Id.* at 132.

¶ 47 In *People v. Williams*, 176 Ill. App. 3d 73 (1st Dist. 1988), counsel filed a motion to withdraw Williams's guilty plea on the ground that it was obtained by "coercion," "fraud," and "material misrepresentations" by "the court, his attorney and other persons." *Id.* at 77. At the hearing, counsel explained to the judge, "as you can see, essentially it's me who is accused of perpetrating this fraud and engaging in this coercion," but Williams "can't quite decide" if "you tricked him" or "I misrepresented what you said to him, and that tricked him and coerced him." *Id.* at 78. In these circumstances, counsel should have been called as a witness on the motion. *Id.* at 79. Unlike counsel in this case, Williams's attorney clearly had no intention of admitting any deficiency or wrongdoing on his part (see *id.* at 78) and thus should have been subject to cross-examination.

¶ 48 In *People v. Friend*, 341 Ill. App. 3d 139 (2003), counsel filed a motion to withdraw Friend's guilty plea, alleging simply that he had been "forced into" it. *Id.* at 140. At the hearing, counsel referred the court to Friend's statements in the presentence report suggesting another explanation for his plea, and invited the court to question Friend. *Id.* In response, Friend questioned the adequacy of counsel's representation; and alleged that counsel had "blackmailed" him into pleading guilty by charging him large fees, for motions that were never filed, until he ran out of money and had no other choice but to plead guilty. *Id.* at 140, 143. Counsel neither incorporated these allegations into the motion nor argued their merits at the hearing. *Id.* at 142.

Indeed, for all practical purposes, "the [trial] court was faced with nothing more than defendant's *pro se* allegations." *Id.*

¶ 49 We have no similar facts here. Nothing counsel did or said in support of the motion to withdraw showed the slightest hint of reluctance, much less antagonism, toward defendant's position. Everything counsel said and did supported defendant's position wholeheartedly.

¶ 50 Nor can we agree with defendant that the trial court erred in failing to inquire into a possible conflict. When a potential conflict is brought to the trial court's attention at "an early stage," the court must either appoint separate counsel or "take adequate steps to ascertain whether the risk of conflict [is] too remote to warrant separate counsel." *Spreitzer*, 123 Ill. 2d at 18. Relying on *People v. Hardin*, 217 Ill. 2d 289, 302 (2005), defendant argues that because the trial court failed to undertake this inquiry, he does not need to show that counsel's potential conflict actually affected her performance

¶ 51 We do not think the trial court's duty to inquire into a potential conflict was triggered in this case, because we do not see what pertinent information the trial court could have hoped to learn from such an inquiry. As we have noted, the universe of critical facts here was quite small, and the two facts that counsel herself could establish, she *did* establish, willingly and without qualification, at the outset of the hearing. There was simply nothing left for the trial court to learn about counsel's ability to zealously represent defendant on his motion. We thus conclude that, in the specific factual circumstances presented here, there was no need for the trial court to conduct an inquiry into a potential conflict.

¶ 52 Finally, in a somewhat different vein, defendant also claims that counsel suffered from an actual conflict because she failed to argue that the trial court's guilty plea admonishments were insufficient. Defendant acknowledges that the court advised him of most of the admonishments

but notes that it failed to mention that, by pleading guilty, he would forfeit his right to confront the witnesses against him. See Ill. S. Ct. R. 402(a)(4) (eff. July 1, 2012) (instructing trial court to admonish defendant who is pleading guilty that he is waiving his "right to be confronted with the witnesses against him").

¶ 53 Rule 402(a) states that a trial court must "substantial[ly] compl[y]" with the list of admonishments its sets out. Ill. S. Ct. R. 402(a) (eff. July 1, 2012); see also *People v. Fuller*, 205 Ill. 2d 308, 323 (2002) (substantial compliance with Rule 402(a) satisfies due process). Here, the court told defendant about the nature of the charge, the sentencing range, his right to plead not guilty, his right to a jury or bench trial, and that by pleading guilty he was waiving his right to a trial. This court has held that, standing alone, the failure to specifically inform a defendant that he is waiving his right to confrontation is not a substantial defect in Rule 402(a) admonishments. See, *e.g.*, *People v. Sutton*, 229 Ill. App. 3d 960, 966 (1992); *People v. Stice*, 160 Ill. App. 3d 132, 135 (1987). Because the admonishments substantially complied with Rule 402(a), counsel's failure to raise the issue does not show any defect in her performance, and therefore does not show that she had an actual conflict.

¶ 54 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 55 Affirmed.