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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|--------------------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court |
| |) | of Cook County. |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 12 CR 9135 |
| |) | |
| KORY MAXFIELD, |) | The Honorable |
| |) | Kenneth J. Wadas, |
| Defendant-Appellant. |) | Judge, presiding. |
| |) | |

JUSTICE HYMAN delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* The record is insufficient to rule on Maxfield's claim that his trial attorney was ineffective for failing to move to suppress evidence and quash his arrest. We vacate his sentence for aggravated unlawful use of a weapon and remand for sentencing on unlawful use of a weapon by a felon.

¶ 2 After an armed robbery, a police officer detained Kory Maxfield and brought him to the victims for identification. One of the victims identified Maxfield as a perpetrator, and an officer found cash and jewelry in Maxfield's pockets. Maxfield was convicted of two counts of armed

1-15-1965

robbery and six counts of aggravated unlawful use of a weapon. Five of those AAUW counts merged into count 3, for which he was sentenced.

¶ 3 Maxfield argues that his trial counsel was ineffective for failing to move to suppress the identification and physical evidence, and quash his arrest, because he was illegally detained by the police. But the record is insufficient for us to rule on Maxfield's claim, which would be better handled in a postconviction proceeding. The parties agree that we should vacate Maxfield's sentence for count 3 and remand for sentencing on count 6, due to precedent holding unconstitutional certain forms of the AAUW statute.

¶ 4 Background

¶ 5 Jason Coleman and Nelly Cabrera were driving when two armed men walked up to their car and demanded money. The two armed men stole money, jewelry, and a cell phone from Coleman and Cabrera, and Coleman thought the men escaped in a white minivan. Coleman and Cabrera flagged down a nearby police car, and the officer soon came upon a white minivan stalled in a traffic jam. When a police officer tried to approach, the minivan pulled away, hitting cars. Someone in the minivan pointed a gun at the officer and the officer fired eight shots into the back of the van.

¶ 6 Coleman and Cabrera followed the minivan while the police officer radioed that he had fired shots. A few blocks away, a second police officer saw Maxfield walking out of an alley. Maxfield was out of breath and sweating; the officer detained him, patted him down for weapons, handcuffed him, and put him in the squad car. A little later, Coleman identified Maxfield as one of the robbers, and police found money and jewelry in Maxfield's pockets.

¶ 7 Maxfield's attorney did not move to suppress the identification or evidence, or move to quash the arrest. Maxfield was convicted of two counts of armed robbery (counts 1 and 2), and

1-15-1965

six counts of AAUW. The trial court sentenced Maxfield to 21 years of imprisonment for counts 1 and 2, and a concurrent 7-year term for count 3 (AAUW). The remaining AAUW counts were merged into count 3.

¶ 8 Analysis

¶ 9 Ineffective Assistance of Counsel

¶ 10 Maxfield argues that the initial detention was illegal and his trial counsel was ineffective for failing to move to suppress evidence and quash his arrest. See *Strickland v. Washington*, 466 U.S. 668 (1984). The State argues that this claim cannot be considered on direct appeal as the record is insufficient.

¶ 11 We agree with the State. The record contains nothing on the first prong of *Strickland*—whether Maxfield’s attorney’s performance was deficient. See *People v. Domagala*, 2013 IL 113688, ¶ 36 (to demonstrate ineffective assistance, defendant must show counsel’s performance was deficient and defendant prejudiced by that performance). *Strickland* creates a strong presumption that the attorney’s decisions were the product of sound trial strategy. See *People v. Richardson*, 189 Ill. 2d 401, 411 (2000). To find otherwise, we need some indication of whether and why the attorney decided not to move to suppress and quash, and that isn’t present here.

¶ 12 *People v. Veach*, 2017 IL 120649, seems to encourage us to consider *Strickland* claims on direct appeal, rather than delaying evaluation of those claims until postconviction. *Id.* ¶ 46. But *Veach* is distinguishable. There, the basis for the ineffective assistance claim was the trial attorney’s decision to stipulate to certain evidence—but the attorney had indicated, on the record, why he chose to do so. *Id.* ¶ 51. No further fact-finding was needed to evaluate the claim. Nothing in the record here indicates Maxfield’s attorney’s reasons for failing to move to suppress and quash.

1-15-1965

¶ 13 We decline to rule as the record is insufficient; Maxfield may pursue the claim in postconviction proceedings.

¶ 14 Sentencing

¶ 15 The parties agree that Maxfield's sentence on count 3 (aggravated unlawful use of a weapon) is unconstitutional under *People v. Burns*, 2015 IL 117387. We vacate his sentence on count 3. Instead, as the parties suggest, he should be sentenced on count 6, unlawful use of a weapon by a felon (for which Maxfield was not sentenced). See *People v. Aguilar*, 2013 IL 112116, ¶ 30 (reversing conviction for aggravated unlawful use of weapon and remanding to trial court for sentencing on unsentenced count of unlawful possession of firearm).

¶ 16 We affirm the conviction, but vacate Maxfield's sentence on count 3. We remand to the trial court for reinstatement of, and sentencing on, count 6 (unlawful use of a weapon by a felon).

¶ 17 Affirmed and remanded with directions.