

2018 IL App (2d) 170930-U
Nos. 2-17-0930 & 2-17-0931 Cons.
Order filed March 12, 2018

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re IVAN M., a Minor,) Appeal from the Circuit Court
) of Kane County.
)
) Nos. 16-JD-199
) 16-JD-333
)
) Honorable
(The People of the State of Illinois, Petitioner-) Clint Hull,
Appellee, v. Ivan M., Respondent-Appellant).) Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Hudson and Justice Schostok concurred in the judgment.

ORDER

- ¶ 1 *Held:* We granted appellate counsel’s motion to withdraw and affirmed the judgment of the trial court because the record did not present any issues of arguable merit.
- ¶ 2 Respondent, Ivan M., pleaded guilty in case 16-JD-199 to one count of unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(1) (West 2016)). Respondent subsequently pleaded guilty in case 16-JD-333 to aggravated fleeing or attempting to elude a police officer (625 ILCS 5/11-204.1(a)(1) (West 2016)).

¶ 3 On August 30, 2017, respondent entered an admission to some of the State’s petitions to revoke probation in both cases. Pursuant to an agreement, he was discharged unsatisfactorily in case 16-JD-333 and committed to the Department of Juvenile Justice in case 16-JD-199.

¶ 4 Respondent subsequently filed a motion to withdraw his admission to the petitions to revoke probation. In an amended motion, he argued that he did not understand the meaning of “indeterminate sentence” and therefore did not make a knowing and intelligent waiver of his rights. The trial court denied the motion, and respondent appealed.

¶ 5 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *People v. Jones*, 38 Ill. 2d 384 (1967), respondent’s appellate attorney has moved to withdraw as counsel. She states that she has read the record and determined that an appeal would be frivolous because no potentially meritorious issues exist. Counsel has supported her motion to withdraw with a memorandum of law providing a statement of facts, potential issues for review, and an argument as to why those issues lack arguable merit. Counsel has served respondent with a copy of her motion, and we advised respondent that he had 30 days to respond. He has not submitted a reply to the motion.

¶ 6 The potential issues that appellate counsel has raised are: (1) whether the jurisdictional requirements of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 (West 2016)) were met; (2) whether respondent’s admission to the probation violations was intelligent and voluntary; and (3) whether the sentence constituted an abuse of discretion. For the reasons that follow, we agree with counsel that it would be frivolous to argue these issues.

¶ 7 I. BACKGROUND

¶ 8 On May 24, 2016, a petition for adjudication was filed against respondent in case 16-JD-199, alleging that he committed five offenses. On June 8, 2016, he pleaded guilty to one count of unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(1) (West

2016)), and the State nolle prossed the remaining charges. Respondent was 14 years old at the time of the offense and 15 years old at the time of his guilty plea. He was sentenced to 36 months' probation, 17 days' detention, and placed on home electronic monitoring.

¶ 9 On October 3, 2016, a petition for adjudication was filed against respondent in case 16-JD-333, alleging two counts of aggravated fleeing and eluding a peace officer (625 ILCS 5/11-204.1(a)(1) (West 2016)). He pleaded guilty to one count and was sentenced to probation, to run concurrently with the probation in case 16-JD-199, and 29 days' detention.

¶ 10 Between September 27, 2016, and July 18, 2017, the State filed eight petitions to revoke respondent's probation in case 16-JD-199. The State also filed four petitions to revoke respondent's probation in case 16-JD-333.¹

¶ 11 In case 16-JD-199, respondent admitted the allegations in the first through fourth and sixth petitions to revoke probation. The State withdrew the fifth petition. In case 16-JD-333, respondent admitted the allegations in the second petition, as amended, and the State withdrew the first petition. Regarding the remaining petitions, on August 30, 2017, the trial court approved an agreement in which respondent admitted the allegations in the seventh and eighth petitions to revoke in case 16-JD-199, and the third and fourth petitions in case 16-JD-333. Case 16-JD-333 would close, with credit for 30 days that respondent spent in detention, and respondent would be discharged unsatisfactorily. In case 16-JD-199, respondent would be committed to the Department of Juvenile Justice.

¶ 12 In response to questions from the trial court, respondent stated that he was not under the influence of drugs or alcohol. He said that he had spoken to his attorney about the agreement

¹ Respondent was also charged with mob action and two counts of battery in case 16-JD-394, but that case is not part of the instant appeal.

and did not need additional time to speak to her about questions or concerns. Respondent stated that he understood the rights he was giving up by pleading guilty, and that no one threatened him or promised him anything in exchange for the plea. The trial court asked if he understood what an indeterminate sentence meant, explaining that “we are not sure when you are going to be released.” It stated that the sentencing range could be anywhere from supervision, to 30 days in a youth home, to commitment to the Department of Juvenile Justice for an indeterminate period of time. It stated that respondent could be held no longer than until his 21st birthday or the maximum of 10 years for the crime, whichever came first. After respondent was released, he would have one year of “aftercare.” Respondent asked that the trial court explain to his mother that aftercare was like parole, because she did not understand. The trial court stated:

“We want to make sure you understand he is going to be committed to the IDJJ, and then IDJJ will assess him and then make a determination based upon his offense and based upon how he does there how long he will stay there.”

It went on to explain aftercare. At the end of the hearing, the trial court asked respondent if he had any questions, and he replied in the negative.

¶ 13 On September 28, 2017, respondent filed a motion to withdraw the plea agreement. In an amended motion filed on October 6, 2017, he alleged that he did not make a knowing and intelligent waiver of his rights, and did not enter the plea freely and voluntarily, because he did not understand the meaning of “indeterminate sentence.”

¶ 14 A hearing on the motion took place on October 19, 2017. Respondent testified that he did not remember the plea agreement’s terms because he “was going through alot [sic] of things” and it was “hard for [him] to understand that stuff.” His mother “went through hard times and [he] was trying to find a way to help [her],” but doing so required getting “out of the system.”

Respondent wanted to withdraw the plea agreement because he did not understand the word “indeterminate” and did not “know what [he] was getting [himself] into.” He felt that he could fight the alleged probation violations because many of them were false.

¶ 15 The trial court ruled that respondent did not meet his burden of demonstrating sufficient grounds to withdraw his stipulation to the probation violations, and respondent appealed.

¶ 16

II. ANALYSIS

¶ 17 Counsel contends that there is no arguable merit to a jurisdictional argument in this case, and we agree. Subject matter jurisdiction was invoked when the State filed a petition for adjudication alleging the existence of a justiciable matter (see *In re M.W.*, 232 Ill. 2d 408, 426 (2009)), specifically alleging that respondent had committed various crimes. As for personal jurisdiction, a juvenile’s parents are entitled to notice of under the Act (705 ILCS 405/1-5 (West 2016)) and must be served with a summons and copy of the complaint (705 ILCS 405/5-525 (West 2016)). The appearance of the minor’s parent constitutes waiver of service and submission to the court’s jurisdiction (*id.*), and here respondent’s mother appeared at the proceedings. The trial court correctly waived service on respondent’s father based on representations by respondent and his mother that the father did not live with him, was homeless, was not involved with his life, and did not provide financial support. See 705 ILCS 405/5-525(a) (West 2016) (summons not necessary for “a parent who does not reside with the minor, does not make regular child support payments to the minor ***, and has not communicated with the minor on a regular basis”).

¶ 18 Counsel next contends that there is no arguable merit to an assertion that respondent’s stipulation to the probation violations was not intelligent and voluntary. See *In re M.H.*, 313 Ill. App. 3d 205, 214 (2004) (admissions made in proceedings under the Act must be intelligent and

voluntary to be valid). Due process is satisfied if the record shows that the respondent was aware of the consequences of his admission. *In re J.G.*, 182 Ill. App. 3d 234, 236 (1989). Respondent alleged in his amended motion to withdraw the plea agreement that he did not understand the meaning of “indeterminate sentence.” However, prior to the hearing on the plea agreement, the trial court explained on more than one occasion the meaning of the phrase “indeterminate sentence.” Significantly, before accepting respondent’s stipulation, the trial court again explained the meaning of an indeterminate sentence. It stated that “we are not sure when you are going to be released” and that the sentence could be anywhere from supervision to commitment for an indeterminate period of time, up to the shorter of respondent’s 21st birthday or 10 years. The trial court further said that respondent was “going to be committed to the IDJJ, and then IDJJ will assess him and then make a determination based upon his offense and based upon how he does there how long he will stay there.” Based on this record, we agree with counsel that there is no arguable merit to an assertion that respondent’s stipulation to the probation violations was not intelligent and voluntary.

¶ 19 The last potential issue that counsel raises is whether the sentence constituted an abuse of discretion. The trial court found that based upon a review of respondent’s social history and the facts presented, including considerations of respondent’s age, background, assessment results, education, health, and lack of compliance with community services provided, the Department of Juvenile Justice could provide respondent with the services he needed. The trial court stated that reasonable efforts had been made to prevent the need to remove respondent from his home and to locate less restrictive alternatives to commitment to the Department of Juvenile Justice, but those had been unsuccessful. We agree with counsel that the trial court made the necessary findings

for commitment to the Department of Juvenile Justice (see 705 ILCS 405/5-570 (West 2016)) and that the record does not provided a basis for contesting respondent's sentence.

¶ 20 After carefully examining the record, the motion to withdraw, and the accompanying memorandum of law, we agree with counsel that no meritorious issue exists that would warrant relief in this court. Therefore, we grant the motion to withdraw and affirm the judgment of the Kane County circuit court.

¶ 21

III. CONCLUSION

¶ 22 For the reasons stated, the judgment of the Kane County circuit court is affirmed.

¶ 23 Affirmed.