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2018 IL App (3d) 150678-U

Order filed February 6, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-15-0678
v.)	Circuit No. 12-CF-864
)	
ANTWON L. GLOVER,)	Honorable
)	Kevin W. Lyons,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Carter and Justice Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* Compliance with Illinois Supreme Court Rules 605(c) and 604(d) was not necessary after defendant's stipulated bench trial.
- ¶ 2 Defendant, Antwon L. Glover, appeals his conviction for predatory criminal sexual assault of a child, arguing that, because his stipulated bench trial was tantamount to a guilty plea, the case should be remanded for compliance with Illinois Supreme Court Rules 605(c) and 604(d) (Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001)); R. 604(d) (eff. July 1, 2017)). We affirm.

¶ 3

FACTS

¶ 4

Defendant was charged with predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2010)) and aggravated criminal sexual abuse (*id.* § 11-1.60(c)(1)(i)). The case proceeded to a stipulated bench trial. The parties agreed that the State would present the stipulated evidence as to the predatory criminal sexual assault of a child. The State would then dismiss the aggravated criminal sexual abuse charge. If the court found the evidence sufficient to convict, the parties presented a joint sentence recommendation of 16 years' imprisonment. The court told defendant:

“This would be a stipulated bench trial. Therefore, [defendant] that would mean that I would turn to the State and ask them to give me a recitation of what they believe the evidence would show in their case. I would turn to your lawyer and ask if he stipulates to that. In other words, agrees that, yes, in fact, that's what he believes the State's testimony and State's witnesses would testify to. Then I would make a finding as to whether or not that would be sufficient to find you guilty; and, if so, then I would indicate that I would agree to the sentence that your lawyer has talked about.”

The court then admonished defendant pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012). Defendant stated that he understood.

¶ 5

The State presented the stipulated evidence. J.W., a minor under the age of 13, would testify that between December 1, 2011, and May 26, 2012, defendant, who was over the age of 17, engaged in a number of acts of sexual penetration with her. Jenny Labanowski, a counselor, would further testify that J.W. volunteered this information to her in 2012. Defense

counsel agreed to that stipulation. Defendant provided no evidence. The court found defendant guilty and sentenced him to the agreed 16 years' imprisonment.

¶ 6 The court then admonished defendant pursuant to Illinois Supreme Court Rule 605(a) (eff. Oct. 1, 2001), stating:

“Having been found guilty and the sentence having been imposed, you have the right to appeal. To do that, you’d have to file with the clerk a notice of appeal within 30 days of today’s date. If you wish and are indigent, I can direct the clerk to file a notice on your behalf and appoint counsel on appeal and provide transcripts without charge.

If you wish to have the sentence reconsidered, you must first file a written motion with the clerk within 30 days of today asking for that and putting forth in writing your reasons in support of the motion. If that is done, a hearing would be set. If you’re indigent and request transcripts or a lawyer to assist you in the preparation of a motion, those could be provided for you without charge if you qualified and ask for them.

If you request reconsideration of the sentence and a hearing is held and the sentence is unchanged, you’d have 30 days from that date to file with the clerk a notice of appeal.”

¶ 7 Defendant filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. The motion alleged “[d]efendant’s decision to enter into a stipulated bench trial with an agreed sentence was neither knowingly, nor voluntarily, made” and he was not proven guilty beyond a reasonable doubt. Defense counsel filed a certificate pursuant to Illinois Supreme Court Rule 604(d), which stated that defense counsel had:

“1. Consulted with the Defendant to ascertain his contentions of error in the stipulated bench trial;

2. Examined the trial court file and report of proceedings of the stipulated bench trial; and,

3. Made any necessary amendments to the motion.”

¶ 8

At the hearing on the motion, defense counsel stated:

“[M]y client has indicated to me that he wished to in essence withdraw that stipulated bench trial.

He had indicated to me that he did not understand the nature of the stipulated bench trial, ***.”

Defendant testified that he was on three medications for bipolar disorder and schizophrenia, but he understood where he was and what was happening. Defendant said he remembered the stipulated bench trial but said, “I didn’t understand what you was saying waiving [a jury trial] and taking a bench trial which I was assuming that I wasn’t gonna be found guilty, that I was still going to trial.” Defendant stated that he thought he was going to have the opportunity to speak and present evidence on his innocence. He stated that it was explained to him, but he did not understand. He was taking different medication at that point that he believed interfered with his understanding. He said had he fully understood what was going on, he would not have agreed to the stipulated bench trial. Defendant stated he understood that, if given a new trial, the second count would be reinstated and he could potentially face a greater sentence. On cross-examination, defendant said he only remembered speaking once with his attorney about the stipulated bench trial. Defendant agreed that his attorney told him “that if [he] had a stipulated bench trial *** where [the State] would recite what [they] believed [the] witnesses would say,

[defendant] would get an agreed to sentence.” He acknowledged counsel had attempted to negotiate for a lesser sentence. Defendant also acknowledged that the judge explained to him what a stipulated bench trial was and the agreed sentence of 16 years’ imprisonment.

¶ 9 The court asked, “Normally we would have a stipulated bench trial so that the defendant can preserve issues of error on appeal, but refresh my memory why we did it in this case.” The State said, “[A]s I remember, the defendant didn’t want to actually admit guilt, and this was done to obtain conviction without him admitting it.” The court denied the motion after providing a detailed analysis of his observations of defendant throughout the case. The court found the stipulated bench trial was explained with great particularity and that defendant understood the nature of the proceedings.

¶ 10 ANALYSIS

¶ 11 On appeal, defendant argues his stipulated bench trial was tantamount to a guilty plea, and based on that, his counsel should have filed a certificate compliant with Rule 604(d) and the court should have admonished him pursuant to Rule 605(c). We agree that defendant’s stipulated bench trial was tantamount to a guilty plea because the State presented its entire case by way of stipulation and defendant did not preserve a defense. However, because of the inherent differences between a stipulated bench trial and a guilty plea, even when the stipulated bench trial is tantamount to a guilty plea, we do not believe that compliance with Rules 604(d) and 605(c) is necessary.

¶ 12 Here, the entirety of the State’s evidence was presented by way of stipulation and defendant did not preserve a defense. Therefore, the stipulated bench trial was tantamount to a guilty plea. *People v. Weaver*, 2013 IL App (3d) 130054, ¶ 19 (“A stipulated bench trial is tantamount to a guilty plea if (1) the State presents its entire case by way of stipulation and the

defendant fails to preserve a defense, or (2) the defendant concedes, by way of stipulation, that the evidence is sufficient to support a guilty verdict.”) In coming to this conclusion, we emphasize that the determination of whether a stipulated bench trial is tantamount to a guilty plea is not based on a defendant’s belief but is instead based on the nature of the stipulation.

¶ 13 Next, we consider the questions of whether counsel should have filed a Rule 604(d) certificate, and whether the court should have admonished defendant pursuant to Rule 605(c).

¶ 14 I. Illinois Supreme Court Rule 604(d)

¶ 15 Rule 604(d) provides, in relevant part:

“No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.

No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment.”

Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

Stated another way, “Rule 604(d) establishes a condition precedent for an appeal from a defendant’s plea of guilty,” that a defendant file a motion to withdraw guilty plea. *People v. Wilk*, 124 Ill. 2d 93, 105 (1988). Our court considered in *Weaver* whether it was necessary for a defendant to file a motion to withdraw guilty plea under Rule 604(d) after a stipulated bench trial, ultimately determining that it was not.

¶ 16 In *Weaver*, upon the denial of his motion to suppress, the defendant proceeded to a stipulated bench trial, where he stipulated that the evidence was sufficient to support a finding of guilt. *Weaver*, 2013 IL App (3d) 130054, ¶¶ 8-12. He then appealed, challenging the suppression ruling, without filing a motion to withdraw the stipulation or reconsider the sentence. *Id.* ¶ 14. On appeal, the State argued that we lacked jurisdiction because the stipulated bench trial was tantamount to a guilty plea and the defendant did not file a motion to withdraw his plea pursuant to Rule 604(d). *Id.* ¶ 16. Because the defendant conceded that the evidence was sufficient to support a guilty verdict (the other scenario in which a stipulated bench trial can be tantamount to a guilty plea), we determined that the stipulated bench trial was tantamount to a guilty plea. *Id.* ¶ 21.

¶ 17 However, we ultimately found that filing a motion to withdraw guilty plea was not required. *Id.* ¶ 22. In doing so, we noted the inherent differences between guilty pleas and stipulated bench trials, stating:

“A guilty plea forfeits all nonjurisdictional defenses or defects. [Citation.] On the other hand, a stipulated bench trial allows a defendant to avoid the forfeiture rule as to an issue the defendant seeks to raise on appeal, while still allowing the defendant to enjoy the advantages of a guilty plea. [Citation.]

*** Either form allows the parties to enjoy the ‘benefits and conveniences’ of a guilty plea without requiring the defendant to forfeit issues such as those raised in a motion to quash and suppress evidence. [Citation.]” *Id.* ¶¶ 17-18.

Therefore, we determined a motion to withdraw guilty plea was not necessary, stating:

“[A] stipulated bench trial tantamount to a guilty plea is still a stipulated bench trial. It allows a defendant to avoid the forfeiture rule as to an issue that he or she seeks to preserve for appeal but take advantage of the benefits of a guilty plea. [Citation.] Thus, while it may be similar to a guilty plea, it is not actually a guilty plea subject to Rule 604(d).

*** Thus, a motion to withdraw and a hearing before the trial court are not necessary.” *Id.* ¶¶ 23-24.

¶ 18 Based on the reasoning in *Weaver*, it was not necessary for defendant to file a Rule 604(d) motion to withdraw guilty plea after his stipulated bench trial. A stipulated bench trial provides certain strategic benefits that may be unavailable in guilty plea proceedings, while still allowing the benefits of a guilty plea. In *Weaver*, the defendant avoided forfeiting his suppression issue. *Id.* ¶ 14. Here, defendant avoided admitting any guilt.

¶ 19 Another requirement of Rule 604(d) requires defense counsel to file

“a certificate stating that the attorney has consulted with the defendant either by phone, mail, electronic means or in person to ascertain defendant’s contentions of error in the sentence and the entry of the plea of guilty, has examined the trial court file and both the report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings.”

Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

As *Weaver* held that defendant was not required to comply with the motion to withdraw guilty plea requirement of Rule 604(d), defense counsel was also not required to comply with the certificate requirement of Rule 604(d). The fact that defense counsel did file a certificate that was

not compliant with the rule does not change the fact that such certificate was unnecessary. We next turn to the question of whether the court was required to admonish defendant pursuant to Rule 605(c).

¶ 20 II. Illinois Supreme Court Rule 605(c)

¶ 21 The trial court must give a defendant admonishments pursuant to Rule 605 after judgment and sentence advising the defendant, *inter alia*, of his appeal rights. Here, the court admonished defendant pursuant to Rule 605(a), which provides the admonishments to be given after pleas of not guilty. Defendant argues that he should have received admonishments pursuant to Rule 605(c), which provides the admonishments for negotiated pleas of guilty.

¶ 22 Rule 605(c) “complements Rule 604(d) and serves as a corollary to the requirements of Rule 604(d),” particularly where the defendant entered into a negotiated guilty plea. *People v. Jamison*, 181 Ill. 2d 24, 27 (1998); Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001). Stated another way, Rules 604(d) and Rules 605(c) “are meant to work together.” *Jamison*, 181 Ill. 2d at 29. The admonishments contained in Rule 605(c) advise the defendant of the need to file a motion to withdraw guilty plea and comply with the other requirements contained in Rule 604(d) before the defendant can appeal. *Id.*

¶ 23 Here, we have concluded that it was not necessary for defendant to file a motion to withdraw guilty plea and comply with Rule 604(d), it was also not necessary for the court to admonish him pursuant to Rule 605(c). Therefore, the court’s admonishments under Rule 605(a) were appropriate.¹

¹In coming to this conclusion, we reject defendant’s reliance on *Jamison*, 181 Ill. 2d at 31, for the proposition that the admonishments were required. *Jamison* solely considered the admonishment requirement after guilty pleas; it did not consider admonishments when a stipulated bench trial is tantamount to a guilty plea.

¶ 24 Moreover, in the interest of a complete analysis in this case, we consider defendant's contention on appeal based on the assumption, that the admonishments under Rule 605(c) were necessary. Based on this assumption, we conclude the court's failure to admonish defendant under Rule 605(c), was harmless error based on the procedural events of record. *People v. Leon*, 66 Ill. App. 3d 778, 779 (1978).

¶ 25 For example, defendant filed a posttrial motion that defense counsel described as reflecting defendant's wishes to "withdraw that stipulated bench trial." Further, the court treated the motion seeking to "withdraw that stipulated bench trial," as described to the court by defense counsel, as a motion to withdraw guilty plea by holding a hearing and determining the stipulated bench trial was not based on a misapprehension of the facts or the law and defendant's agreement to the stipulated bench trial was knowingly and voluntarily made. See *People v. Feldman*, 409 Ill. App. 3d 1124, 1127 (2011). Defendant is now requesting admonishments regarding an act he completed by filing a motion to withdraw guilty plea.

¶ 26 CONCLUSION

¶ 27 The judgment of the circuit court of Peoria County is affirmed.

¶ 28 Affirmed.