

NOTICE

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FILED

May 18, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 180056-U
NO. 4-18-0056

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

<i>In re</i> C.L., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Champaign County
Petitioner-Appellee,)	No. 17JD144
v.)	
C.L.,)	Honorable
Respondent-Appellant).)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Harris and Justice Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court did not err by not treating respondent’s motion for leave to file a motion to reconsider his sentence as a request to terminate his DOJJ commitment, and respondent was not denied effective assistance of counsel.
- ¶ 2 In September 2017, the State filed a petition for adjudication of delinquency and wardship, alleging respondent, C.L. (born in March 2001), was a delinquent minor because he committed robbery (720 ILCS 5/18-1(a), (c) (West 2016)). That same month, pursuant to a plea agreement, respondent admitted committing robbery. The Champaign County circuit court accepted respondent’s admission and adjudicated respondent a delinquent minor. After an October 2017 dispositional hearing, the court committed respondent to an indeterminate term in the Department of Juvenile Justice (DOJJ) that would automatically terminate in 15 years or upon respondent’s twenty-first birthday, whichever came first. In January 2018, respondent’s counsel filed a motion for leave to file a motion to reconsider respondent’s sentence based on a

December 2017 letter from respondent. After a hearing, the court denied respondent's motion.

¶ 3 Respondent appeals, claiming the circuit court erred by not considering C.L.'s request to terminate his DOJJ commitment, or in the alternative, he was denied effective assistance of counsel because counsel failed to file a motion to terminate respondent's DOJJ commitment. We affirm.

¶ 4 I. BACKGROUND

¶ 5 At the September 2017 plea hearing, the State gave the following factual background for respondent's admission to robbery:

“Your Honor, if this matter were to go to trial, James Clements would testify that on August 24th of this year, he was 89 years of age.

As he was walking from his car to his apartment in the 400 block of Fairlawn in Urbana, he was approached by an individual who's later identified as [respondent], who initially asked him for change. When he declined to make change for that individual, he continued toward his apartment. The individual then came towards him from behind, wrapped his arms around his waist, and threw him to the ground. [Respondent] then pinned James down with his knee on James' back and went through his pockets and took Mr. Clements' wallet and cellular telephone without Mr. Clements' permission.

The offender then fled on a bicycle.

Investigation resulted in identifying this Respondent Minor. And officers went to his home, where his mother gave permission to search his room. The officers located the victim's cellular telephone in the minor's room.”

The circuit court accepted respondent's admission and adjudicated respondent a delinquent

minor.

¶ 6 Respondent's social investigation report indicated he had prior adjudications for theft and residential burglary. He also had a pending case in Vermilion County, in which he was accused of committing theft over \$500. Moreover, respondent had numerous police contacts, including four in 2017 before he committed the robbery at issue in this case. The report recommended respondent be committed to DOJJ. Clements, the victim, filed a victim-impact statement. He stated he received several body bruises and a bloody facial contusion from respondent violently throwing him down on some tree roots. Clements further noted the greatest impact had been on his sense of security. He was now scared to leave his locked apartment during the daytime and no longer went out after dark unless someone was with him. In addition to the social investigation report and the victim-impact statement, the circuit court considered the reports from the youth detention center, several letters from respondent, and letters of recommendation from respondent's friends and relatives.

¶ 7 On October 30, 2017, the circuit court held the sentencing hearing. After considering all of the evidence and hearing the parties' arguments, the circuit court found it was in the best interests of respondent and the public to commit respondent to DOJJ because respondent's behavior presented a serious danger to the public and the person or property of others and to himself. The court gave a lengthy explanation of the facts supporting its finding. The court committed respondent to an indeterminate term in DOJJ that would automatically terminate in 15 years or upon respondent's twenty-first birthday, whichever came first. At the hearing, the court also explained to respondent his appeal rights.

¶ 8 On December 27, 2017, the Champaign County public defender's office received a letter from respondent. The letter stated the following:

“Katia Jessup I want to get appeal so I can come home on probation. I’m doing good down here tho I want appeal. This prison stuff change me. This prison make me turn into a better person. You is a very nice person. I really wanna come home. I really miss my mom and I wanna go home. Please and thank you. I’m gone do very good when I go home. I be so sad in YIC Harrisburg. I’m just asking for appeal. I’m beging you please please I wanna get of appeal and get release and I know I can get of appeal cause cause people want me to jag my time so I can fight but I just walk away. That all I need appeal.”

In response to respondent’s letter, the public defender’s office filed a motion for leave to file a motion to reconsider respondent’s sentence. Attached to the motion was respondent’s letter.

The motion noted counsel was asking to file the motion to reconsider because respondent wanted to appeal his sentence.

¶ 9 On January 17, 2018, the circuit court held a hearing on the motion for leave to file a motion to reconsider. Respondent’s counsel noted respondent did not ask for an appeal until the December 2017 letter. The State objected because the request was untimely. The court denied the motion, finding it had “meticulously” informed respondent of his appeal rights and made sure he understood them.

¶ 10 On February 2, 2018, respondent filed a timely amended notice of appeal from the circuit court’s January 17, 2018, order in compliance with Illinois Supreme Court Rules 606 (eff. July 1, 2017) and 303(b)(5) (eff. July 1, 2017). See Ill. S. Ct. R. 660(a) (eff. Oct. 1, 2001) (providing the rules applicable to criminal cases govern appeals from final judgments in delinquent minor proceedings, unless specifically provided otherwise). This court only has jurisdiction of the January 18, 2018, order.

¶ 11

II. ANALYSIS

¶ 12

A. Termination of DOJJ Commitment

¶ 13

Respondent first asserts the circuit court abused its discretion by failing to rule on his request to terminate DOJJ custody under section 5-745 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-745 (West 2016)). The State disagrees, noting respondent's letter asked for an appeal and not the termination of custodianship. This court has found a court's decision regarding recharacterization of a motion is reviewed under an abuse of discretion standard. See *People v. Holliday*, 369 Ill. App. 3d 678, 682, 867 N.E.2d 1016, 1020 (2007) (addressing the recharacterization of a *habeas corpus* petition as a postconviction petition). Under that standard of review, we will not reverse the circuit court's decision "unless it was unreasonable, or no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.) *Holliday*, 369 Ill. App. 3d at 682, 867 N.E.2d at 1020 (quoting *People v. Johnson*, 368 Ill. App. 3d 1146, 1155, 859 N.E.2d 290, 299 (2006)).

¶ 14

Section 5-745 of the Juvenile Court Act (705 ILCS 405/5-745 (West 2016)) addresses court review in delinquent minor proceedings after sentencing. Under section 5-745(3) of the Juvenile Court Act (705 ILCS 405/5-745(3) (West 2016)), a delinquent minor may apply to the court for a change in custody and the appointment of a new custodian or guardian or for the restoration of the minor's custody to his or her parents. Section 5-745(1) of the Juvenile Court Act (705 ILCS 405/5-745(1) (West 2016)) gives the court the power to require DOJJ or any other legal custodian to make a "full and accurate report" of its doings on behalf of the delinquent minor.

¶ 15

In support of his argument, respondent cites *In re Justin L.V.*, 377 Ill. App. 3d 1073, 882 N.E.2d 621 (2007). There, the circuit court conducted a review hearing permitted by

section 5-745(1) (705 ILCS 405/5-745(1) (West 2004)) to evaluate the respondent's progress in DOJJ. *Justin L.V.*, 377 Ill. App. 3d at 1081, 882 N.E.2d at 628. During that hearing, the respondent's counsel requested the court vacate the respondent's commitment to DOJJ and the respondent be released to his parents on probation. *Justin L.V.*, 377 Ill. App. 3d at 1081, 882 N.E.2d at 628. This court held the respondent's counsel's request must be construed as a motion to vacate the guardianship of DOJJ pursuant to section 5-745(3) and noted the State failed to object to the form of the respondent's motion. *Justin L.V.*, 377 Ill. App. 3d at 1082, 882 N.E.2d at 629. This court further stated that, while it found the respondent did move to vacate the DOJJ commitment, respondents should file a written motion expressly invoking section 5-745(3) of the Juvenile Court Act (705 ILCS 405/5-745(3) (West 2004)) when seeking a change in custody. *Justin L.V.*, 377 Ill. App. 3d at 1082, 882 N.E.2d at 629.

¶ 16 Here, respondent's counsel filed a motion for leave to file a motion to reconsider respondent's sentence. The motion did not invoke section 5-745(3) of the Juvenile Court Act. Respondent's counsel also noted she was making the request because respondent wanted to appeal his sentence. Unlike in *Justin L.V.*, respondent's counsel never requested the court to terminate respondent's commitment to DOJJ in either the written motion or at the hearing on the motion. Respondent points to the language of his letter. However, respondent was represented by counsel, and this court has consistently held "a defendant possesses no right to some sort of hybrid representation, whereby he would receive the services of counsel and still be permitted to file *pro se* motions." (Internal quotation marks omitted.) *In re Sean N.*, 391 Ill. App. 3d 1104, 1106, 911 N.E.2d 1094, 1095 (2009) (quoting *People v. James*, 362 Ill. App. 3d 1202, 1205, 841 N.E.2d 1109, 1113 (2006)). Thus, we cannot consider respondent's letter as a separate motion, seeking relief different from that requested by respondent's counsel's motion. Accordingly, we

find the circuit court did not err by treating respondent's counsel's motion for leave to file a motion to reconsider respondent's sentence as just that and not a motion to vacate commitment under section 5-745(3) of the Juvenile Court Act.

¶ 17 B. Ineffective Assistance of Counsel

¶ 18 In the alternative, respondent contends he was denied effective assistance of counsel because counsel failed to file a motion to vacate his DOJJ commitment under section 5-745(3) of the Juvenile Court Act (705 ILCS 405/5-745(3) (West 2016)). The State contends he cannot establish prejudice.

¶ 19 This court analyzes ineffective assistance of counsel claims under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163 (1999). To obtain reversal under *Strickland*, a defendant must prove (1) his counsel's performance failed to meet an objective standard of competence and (2) counsel's deficient performance resulted in prejudice to the defendant. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. To satisfy the deficiency prong of *Strickland*, the defendant 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). *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. Further, the defendant must overcome the strong presumption the challenged action or inaction could have been the product of sound trial strategy. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. To satisfy the prejudice prong, the defendant must prove a reasonable probability exists that, but for counsel's unprofessional errors, the proceeding's result would have been different. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163-64. The *Strickland* Court noted that, when a case is more easily decided on the ground of lack of sufficient prejudice rather than constitutionally deficient representation by counsel, the court

should do so. *Strickland*, 466 U.S. at 697.

¶ 20 Respondent contends he was prejudiced by counsel's failure to file a motion to vacate his DOJJ commitment under section 5-745(3) because, if counsel would have done so, the circuit court would have held a hearing. That assertion is insufficient to establish prejudice, as it does not show the proceeding's result would have been different. For example, in the case of an ineffective assistance of counsel claim for counsel's failure to file a motion for a fitness hearing, the defendant must show that, if the defendant had received a hearing to which he was entitled, he would have been found unfit to stand trial. See *People v. Hayden*, 338 Ill. App. 3d 298, 314, 788 N.E.2d 106, 120 (2003). Likewise, respondent must demonstrate that, if he would have received a hearing on a request to vacate his commitment to DOJJ, he would have been released from DOJJ. Respondent does not make that argument, and it is unlikely he could show such, given his short time in DOJJ and the numerous reasons why the circuit court found he was a danger to the public. Accordingly, we find respondent has failed to establish ineffective assistance of counsel.

¶ 21

III. CONCLUSION

¶ 22 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 23 Affirmed.