2018 IL App (5th) 150088-U

NO. 5-15-0088

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Johnson County.
	)	
v.	)	No. 14-CF-49
	)	
LARRY TURNER,	)	Honorable
	)	James R. Williamson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Barberis and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court is affirmed because there are no nonfrivolous issues that could be raised on appeal.

¶ 2 The defendant, Larry Turner, appeals his conviction for aggravated battery. The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant and has filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Anders v. California*, 386 U.S. 738 (1967). The defendant was given proper notice and granted an extension of time to file briefs, objections, or any other document supporting his appeal. The defendant did not file a response. We considered OSAD's motion to withdraw as counsel on appeal. We examined the entire record on appeal and

found no error or potential grounds for appeal. For the following reasons, we grant OSAD's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court of Johnson County.

¶ 3 BACKGROUND

¶ 4 The State charged the defendant with multiple counts of aggravated battery arising from the defendant head-butting corrections officer Larry Henderson. Each count included an open and obvious statement that the defendant was subject to Class X sentencing due to the defendant's previous criminal record.

¶ 5 The defendant requested a bench trial. At that time, the circuit court advised the defendant of all the rights he was giving up by waiving a jury trial. The defendant then signed a written waiver and affirmed in open court that he desired to waive a jury trial.

¶ 6 At the trial, Officer Henderson and two other corrections officers present at the time of the battery testified that while they were moving the defendant within the prison, the defendant head-butted Officer Henderson. They each also testified that they were corrections officers engaged in official duties and that the defendant knew they were corrections officers. The defendant testified that it was actually Officer Henderson who head-butted him. The defendant also claimed that the officers had been treating him inappropriately prior to attacking him. The court found the defendant guilty of aggravated battery.

¶ 7 At the sentencing hearing, Officer Henderson testified that he suffered a concussion as a result of the head-butting incident, and he began suffering migraines that he had not suffered before. Officer Henderson then testified that his doctor told him the

migraines were caused by the battery. The defendant objected to the hearsay. In response, the State argued that hearsay is allowed at sentencing hearings. The court overruled the objection. The court sentenced the defendant to 10 years' incarceration to be followed by 3 years of mandatory supervised release. This appeal followed.

¶ 8 ANALYSIS

¶ 9 After considering OSAD's motion and our own review of the record, we find this is a case in which no nonfrivolous argument for reversal exists, the exact type of case for which *Anders* motions exist. We briefly touch on a couple of issues which come closest to being nonfrivolous.

¶ 10 Proof Beyond a Reasonable Doubt

¶ 11 In reviewing a claim that a defendant was not proved guilty beyond a reasonable doubt, this court does not reweigh the evidence. *People v. Hendricks*, 325 Ill. App. 3d 1097, 1110 (2001); see *People v. Smith*, 185 Ill. 2d 532, 541 (1999). A conviction will only be overturned on the basis that the defendant was not proved guilty beyond a reasonable doubt when no reasonable finder of fact could have found the defendant guilty based on the evidence presented. *Smith*, 185 Ill. 2d at 541.

¶ 12 There is no doubt that a reasonable finder of fact could have found the defendant guilty of aggravated battery. Three officers testified that the defendant head-butted Officer Henderson. Only the defendant testified that he did not head-butt Officer Henderson. The court was left to decide which testimony was most credible. Resolving factual disputes arising from conflicting or contradictory testimony is the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the fact

finder on issues of witness credibility or the weight to be given their testimony. *People v. Harden*, 2011 IL App (1st) 092309, ¶ 38. The court believed the officers. No meritorious argument can be made that the defendant was not proven guilty beyond a reasonable doubt.

¶ 13 Admission of Hearsay Evidence During Sentencing

¶ 14 At sentencing, Officer Henderson gave hearsay testimony that his doctor told him that the migraines he suffered from were caused by the battery. The defendant objected to this hearsay testimony. Generally, hearsay testimony is not proper unless an exception exists. *People v. Caffey*, 205 Ill. 2d 52, 88 (2001). But at a sentencing hearing, the rules of evidence are relaxed. *People v. Varghese*, 391 Ill. App. 3d 866, 873 (2009). "The source and type of information that the sentencing court may consider is virtually without bounds." *People v. Rose*, 384 Ill. App. 3d 937, 941 (2008). Evidence is admissible if it is relevant and reliable, a determination for the court. *Id.* Further, hearsay is not *per se* inadmissible at sentencing. *People v. Jett*, 294 Ill. App. 3d 822, 830-31 (1998). We will not substitute our opinion for that of the trial court's that Officer Henderson's testimony regarding his migraines was reliable and relevant. In any event, the presentence investigation (PSI) states that Officer Henderson endured a concussion and headaches on the day of the attack. The defendant accepted the PSI with minor changes not relevant to this issue.

¶ 15 Jury Trial Waiver

¶ 16 The United States and Illinois Constitutions guarantee criminal defendants the right to a trial by jury. U.S Const., amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13. Illinois statutes also protect this right. 725 ILCS 5/103-6(i) (West 2012). The waiver of a jury trial should be made in open court and in writing. *Id.*; 725 ILCS 5/115-1 (West 2012); *People v. Scott*, 186 Ill. 2d 283, 285-86 (1999). Additionally, the waiver is only proper if the defendant understands the decision he is making. 725 ILCS 5/103-6(i) (West 2012).

¶ 17 In this case, the defendant stated more than once in open court that he desired a bench trial. Also in open court, he executed a written waiver of a jury trial. Before accepting the waiver, the court informed the defendant of the rights he was waiving and asked the defendant if he understood. The defendant responded affirmatively. The court properly allowed the defendant to waive a jury trial.

¶ 18 Finally, the defendant was properly sentenced as a Class X offender where the presentence investigation report contained certified copies of two prior Class 1 felony convictions as well as a prior Class 2 felony conviction (see 730 ILCS 5/5-4.5-95(b) (West 2012)), and the defendant is not entitled to presentence incarceration credit against his sentence in this case for time spent in custody in Cook County case 2013-CR-2186601 because the trial court ordered the sentence in this case to be served consecutively to the sentence in that case (see *People v. Latona*, 184 Ill. 2d 260, 271-72 (1998)).

¶ 19 CONCLUSION

¶ 20 The circuit court properly found the defendant guilty. Further, there are no nonfrivolous issues to raise on appeal. Therefore, OSAD's motion for leave to withdraw is granted, and the circuit court of Johnson County is affirmed.

¶ 21 Motion granted; judgment affirmed.