2019 IL App (4th) 170132-U

NO. 4-17-0132

FILED
August 27, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
ADAM E. MORRALL,	)	No. 13CF172
Defendant-Appellant.	)	
	)	Honorable
	)	Robert K. Adrian,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holder White and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in imposing a sentence upon revocation of probation greater than the sentencing cap from the original plea agreement where the sentence was within the statutory range and the court admonished defendant of the maximum possible sentence before accepting his plea.

¶ 2 Defendant, Adam Morrall, pleaded guilty to aggravated robbery (720 ILCS 5/18-1(b) (West 2012)) in exchange for a 10-year sentencing cap, and the trial court sentenced him to 36 months' probation. The court later revoked defendant's probation and resentenced him to 13 years' imprisonment. Defendant appeals, arguing the trial court erred in resentencing him to 13 years' imprisonment because the court did not admonish him before accepting his plea that the 10-year sentencing cap would not preclude the court from imposing a longer sentence if he was

sentenced to probation and subsequently resentenced upon a revocation of that probation. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 2013, the State charged defendant by information with armed robbery (count I) (720 ILCS 5/18-2(a) (West 2012)) and aggravated robbery (count II) (720 ILCS 5/18-1(b) (West 2012)).

¶ 5 On July 1, 2013, defendant pleaded guilty to count II in exchange for dismissal of count I and a 10-year sentencing cap. Before accepting the plea, the trial court admonished defendant that aggravated robbery carried "a maximum penalty of four to 15 years in prison." Defendant informed the court that he understood the possible range of penalties. The trial court later sentenced him to 36 months' probation.

¶ 6 On February 6, 2014, the State filed a petition to revoke defendant's probation. On November 12, 2015, the trial court informed defendant that if the State proved the petition, he could be resentenced on the original aggravated robbery offense to a period of incarceration from 4 to 15 years. Defendant told the court he understood the possible penalties. The trial court subsequently found that defendant had violated the terms of his probation and resentenced him to 13 years' imprisonment.

¶ 7 Defendant filed a motion to reconsider the sentence, arguing it was excessive in light of the aggravating and mitigating factors. The trial court denied defendant's motion.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues the trial court erred in resentencing him to 13 years' imprisonment because the court did not admonish him before accepting his plea that the 10-year

sentencing cap would not preclude the court from imposing a longer sentence if he was initially sentenced to probation and subsequently resentenced upon a revocation of that probation. Defendant requests we vacate the 13-year sentence and remand for resentencing to a term of imprisonment not greater than 10 years.

¶ 11 Citing to the Third District's decision in *People v. Speed*, 318 Ill. App. 3d 910, 915, 743 N.E.2d 1084, 1087 (2001), the State contends we lack jurisdiction to address defendant's argument. ("[W]hen the steps set forth in Rules 604 and 606 were not taken and the defendant seeks relief from his conviction only after probation is revoked, the appellate court is without jurisdiction to review the underlying judgment unless that judgment is void.") We disagree. Here, defendant is challenging the sentence imposed upon the revocation of his probation, not the underlying judgment of conviction entered upon the guilty plea. Therefore, we have jurisdiction to address his argument.

¶ 12 Defendant concedes he has forfeited the issue identified on appeal by failing to object at the sentencing hearing and raise it in a postsentencing motion, but asks that we review it under the plain error doctrine. See *People v. Hillier*, 237 Ill. 2d 539, 544, 931 N.E.2d 1184, 1187 (2010) ("[T]o preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required."). For the reasons that follow, we find no error in the trial court's sentence.

¶ 13 In *People v. Landers*, 372 Ill. App. 3d 639, 639-40, 867 N.E.2d 1184, 1185 (2007), the defendant pleaded guilty in exchange for a 36-month sentencing cap, and the trial court sentenced her to 30 months' probation. Before accepting the plea, the trial court had admonished the defendant that she "could be looking at one to six" years' imprisonment. *Id*. at 640. The court later revoked defendant's probation and resentenced her to 42 months'

imprisonment. *Id*. On appeal, the defendant argued "the trial court lacked the authority to resentence her to 42 months' imprisonment because [her] original plea agreement was made in consideration of a sentence of no more than [36 months'] imprisonment." *Id*. This court held the trial court did not abuse its discretion in resentencing defendant. *Id*. at 641. We noted that the "defendant was admonished during her guilty-plea hearing that the maximum penalty *** would range from one to six years' imprisonment" and concluded that she could not "argue she did not receive the benefit of her bargain when she herself failed to live up to her end of that bargain." *Id*.; see also *People v. Bray*, 186 Ill. App. 3d 394, 398, 542 N.E.2d 512, 515 (1989) (rejecting the defendant's argument that a three-year sentencing cap in the plea agreement was binding after probation revocation and finding, instead, that the "court was free to resentence [the] defendant to any permissible sentence should he fail to abide by the terms of probation") and *People v. Johns*, 229 Ill. App. 3d 740, 743, 593 N.E.2d 594, 597 (1992) ("[U]pon revocation of a defendant's probation, the trial court is limited in sentencing by the maximum penalty upon which the defendant had originally been admonished.").

¶ 14 Here, prior to accepting defendant's original guilty plea, the trial court admonished him that aggravated robbery carried "a maximum penalty of four to 15 years in prison." Defendant acknowledged he understood the maximum penalties involved. Upon revocation of defendant's probation, the trial court was limited in resentencing defendant not by the 10-year sentencing cap from the initial plea agreement, but by its admonishment regarding the maximum possible penalty. See *Johns*, 229 Ill. App. 3d at 743; *Bray*, 186 Ill. App. 3d at 398. Because the trial court admonished defendant that he faced a possible maximum prison sentence of 15 years, its 13-year sentence was permissible and defendant's argument that his sentence

must be vacated and reduced to not more than ten years based on his initial plea agreement must fail. Accordingly, we find no error in the trial court's 13-year sentence.

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we affirm the trial court's judgment.

¶ 17 Affirmed.