2019 IL App (4th) 170233-U

NO. 4-17-0233

FILED
March 19, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LLOYD D. DAVIS III, Defendant-Appellee.	) Appeal from the) Circuit Court of) Macon County) No. 13CF1542)) Honorable) Thomas E. Griffith Jr.,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holder White and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: Because the petition for relief from judgment fails to raise a defense or claim that would have precluded entry of the judgment in the original action, the circuit court was correct to deny the petition.

¶ 2 Defendant, Lloyd D. Davis III, petitioned for relief from judgment. See 735 ILCS 5/2-1401 (West 2016). The Circuit Court of Macon County denied the petition. Defendant appeals.

¶ 3 Perceiving no arguable merit in this appeal, the Office of the State Appellate Defender (appellate defender) has moved to withdraw from representing defendant. See *People v. Meeks*, 2016 IL App (2d) 140509, ¶ 8. We notified defendant that he had the right to provide us additional points and authorities by a certain date. He has not done so. We agree with the appellate defender that it would be impossible to make a reasonable argument in support of this appeal. The section 2-1401 petition clearly fails to raise any defense or claim that would have

precluded entry of the judgment in the original action. Therefore, we grant the appellate defender's motion to withdraw, and we affirm the judgment.

¶ 4 I. BACKGROUND

¶ 5 On December 13, 2013, the State charged defendant with two counts. Count I of the information was aggravated fleeing or attempting to elude a police officer (625 ILCS 5/11-204.1(a)(1) (West 2012)), and count II was residential burglary (720 ILCS 5/19-3 (West 2012)).

¶ 6 On October 26, 2015, pursuant to a fully negotiated plea agreement, defendant offered to plead guilty to both counts of the information. In admonishing defendant, the circuit court explained to him that the court would recommend him for the impact incarceration program (see 730 ILCS 5/5-8-1.1(a) (West 2012)) but that it was up to the Illinois Department of Corrections (Department) whether to accept him into the program. Finding the guilty pleas to be knowing and voluntary and concurring with the plea agreement, the circuit court accepted the guilty pleas, entered judgment on them, and sentenced defendant to three years' imprisonment for count I and a concurrent term of eight years' imprisonment for count II. (The parties waived a presentence investigation report.) Pursuant to the plea agreement, charges in other cases were dismissed. The court entered an order opining that defendant was eligible for the impact incarceration program, and the court recommended him for the program.

¶ 7 In deciding whether to accept someone into the impact incarceration program, the Department might "consider, among other matters, *** whether the committed person has a history of escaping or absconding." *Id.* § 5-8-1.1(b). As it turned out, the Department regarded aggravated fleeing or attempting to elude a police officer as a form of escaping or absconding. Consequently, the Department denied defendant's application to participate in the impact incarceration program.

¶ 8 On June 21, 2016, in response to the Department's rejection of his application, defendant filed in the circuit court a motion for specific performance of the plea agreement.

¶ 9 Even though the circuit court had admonished defendant that his admittance into the impact incarceration program was entirely up to the Department and was not something the court could guarantee, the State was willing to revest the court with subject-matter jurisdiction for the purpose of attempting to improve defendant's prospects for getting into the program. See *People v. Bailey*, 2014 IL 115459, ¶ 25 (discussing the revestment doctrine). The docket entry for September 15, 2016, reads as follows:

> "Pursuant to the principle of revestment, the judgment of October 26, 2015[,] is modified so the [d]efendant's judgment of conviction as to [c]ount I, [a]ggravated [f]leeing and [e]luding, is vacated. Count I is dismissed and stricken.
>
> Otherwise, the agreed sentence imposed by the [c]ourt on October 26, 2015, is reaffirmed by all the parties, including the recommendation the [d]efendant receive impact incarceration."

The circuit court entered an amended judgment, which showed that defendant was sentenced only for count II, residential burglary. The punishment for that count was the same as before, eight years' imprisonment. Also, the court entered a "Supplemental Sentencing Order for Impact Incarceration," which found that defendant met the eligibility requirements in section 5-8-1(b)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-1.1(b)(1) to (8) (West 2012)).

¶ 10 Unpersuaded by the vacation of the conviction on count I, the Department again denied defendant's application to be admitted into the impact incarceration program.

¶ 11 On January 11, 2017, defendant petitioned for relief from judgment. See 735 ILCS 5/2-1401 (West 2016); *People v. Vincent*, 226 Ill. 2d 1, 8 (2007) ("[S]ection 2-1401 is a

civil remedy that extends to criminal cases as well as to civil cases."). Because it appeared now he had no hope of getting into the impact incarceration program, he requested the circuit court to reduce his eight-year prison sentence to five years, to be served at 50%.

¶ 12 On March 2, 2017, the circuit court denied the petition for relief from judgment, finding no "legal or factual basis" for relief.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 The law is clear that "for a defendant to prevail in a challenge to a sentence entered pursuant to a negotiated plea agreement, the defendant must (1) move to withdraw the guilty plea and vacate the judgment, and (2) show that the granting of the motion is necessary to correct a manifest injustice." *People v. Evans*, 174 Ill. 2d 320, 332 (1996). Defendant never moved to withdraw his guilty plea to count II, residential burglary. Therefore, he may not challenge his sentence of eight years' imprisonment for that count, a sentence imposed on him pursuant to the fully negotiated plea agreement. See *id.*

¶ 16 Because the petition for relief from judgment fails to raise "a defense or claim that would have precluded entry of the judgment in the original action" (*People v. Alexander*, 2014 IL App (4th) 130132, ¶ 34), we conclude, in our *de novo* review (see *People v. Matthews*, 2016 IL 118114, ¶ 9), that the circuit court was correct to deny the petition.

¶ 17 III. CONCLUSION

¶ 18 For the foregoing reasons, we grant appellate counsel's motion to withdraw, we affirm the circuit court's judgment, and we award the State $50 in costs.

¶ 19 Affirmed.