

NOTICE

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2019 IL App (4th) 170292-U

NO. 4-17-0292

IN THE APPELLATE COURT

OF ILLINOIS

FILED

September 18, 2019
Carla Bender
4th District Appellate
Court, IL

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
JACKIE V. HARRIS,)	No. 13CF1750
Defendant-Appellant.)	
)	Honorable
)	Brett N. Olmstead,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Holder White and Justice Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s denial of defendant’s postconviction petition after an evidentiary hearing was not against the manifest weight of the evidence.
- ¶ 2 Following an April 2014 stipulated bench trial, defendant, Jackie V. Harris, was convicted of one count of aggravated driving under the influence (DUI) of alcohol and one count of aggravated driving with a blood alcohol concentration (BAC) of greater than 0.08 in violation of statute. 625 ILCS 5/11-501(a), (d)(2)(D) (West 2012). The trial court sentenced defendant to 13 years’ imprisonment. Defendant appealed, and this court affirmed. *People v. Harris*, 2015 IL App (4th) 140696, ¶ 1, 32 N.E.3d 211.
- ¶ 3 In March 2016, defendant filed a petition for postconviction relief under the Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 to 122-7) (West 2014)). In

October 2016, the Court granted the State's motion to dismiss the petition in part but ordered an evidentiary hearing on three of defendant's claims. Following an evidentiary hearing, the trial court denied defendant's petition.

¶ 4 Defendant appeals, arguing the trial court's denial of his postconviction petition was manifestly erroneous because the court applied the wrong legal standard in determining whether defendant's waiver of his constitutional right to a jury trial was voluntary. For the following reasons, we affirm.

¶ 5 I. BACKGROUND

¶ 6 A. Defendant's Conviction, Sentence, and Direct Appeal

¶ 7 On October 18, 2013, the State charged defendant by information with one count of aggravated DUI, alleging defendant drove a vehicle while under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2012)) and one count of aggravated driving with a BAC of greater than 0.08 (*id.* § 11-501(a)(1)). The information alleged defendant had four previous convictions for DUI and both charges were therefore Class 1 felonies. *Id.* § 11-501(d)(2)(D).

¶ 8 Following the trial court's denial of defendant's motion to suppress his BAC, the parties agreed to proceed with a stipulated bench trial. The court admonished defendant pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012), and the parties presented the court with a 35-paragraph stipulation. The court found defendant guilty of two counts of aggravated DUI and merged the two counts.

¶ 9 Following the bench trial, defendant filed a posttrial motion for a new trial and a motion to vacate the conviction and enter a judgment of not guilty notwithstanding the verdict. The trial court denied both motions. The court sentenced defendant to 13 years in prison and denied defendant's subsequent motion to reconsider his sentence.

¶ 10 On direct appeal, defendant argued (1) the trial court erred in finding defendant guilty beyond a reasonable doubt, (2) the court erred in denying his motion to suppress evidence, and (3) the court abused its discretion in sentencing defendant to 13 years in prison. *Harris*, 2015 IL App (4th) 140696, ¶ 1. This court affirmed defendant’s conviction and sentence. *Id.* ¶ 61.

¶ 11 B. Postconviction Proceedings

¶ 12 In March 2016, defendant filed a petition for postconviction relief under the Postconviction Act (725 ILCS 122-1 to 122-7 (West 2014)), alleging eight separate claims, including, *inter alia*, (1) his waiver of his right to a jury trial was not knowing and voluntary; (2) ineffective assistance of counsel for misinforming defendant about his chances of success at the stipulated bench trial; and (3) these defects, among others, contributed to cumulative error in the proceedings that deprived defendant of his constitutional rights to the effective assistance of counsel and due process.

¶ 13 In support of his petition, defendant attached his affidavit averring he had been prescribed an antidepressant, Celexa (citalopram), since 1997. However, at the time he agreed to the stipulated bench trial, he had not taken his medication because of “a glitch with [his] doctor prescribing it.” Defendant averred at the time he agreed to the stipulated bench trial he was severely depressed and had he been properly medicated, he would not have agreed to it. Defendant additionally attached an affidavit from his mother, Rose Harris, who stated she knew about defendant’s prescription and defendant’s trial counsel had never interviewed her.

¶ 14 On June 17, 2016, the trial court entered a written order appointing the Champaign County public defender’s office to represent defendant in the postconviction proceedings. Postconviction counsel filed an amended petition, attaching the following additional documents in support of the petition: (1) an amended affidavit from defendant, (2) a

letter from defendant's physician who prescribed the Celexa, and (3) a report enumerating potential symptoms of Celexa withdrawal. The State filed a motion to dismiss all of defendant's claims.

¶ 15 On October 16, 2016, the court conducted a status hearing on the amended petition. At the conclusion of the hearing, the court granted the State's motion to dismiss all but three of defendant's claims, including (1) his waiver of his right to a jury trial was not knowing and voluntary, (2) ineffective assistance of counsel for misinforming defendant about his chances of success at the stipulated bench trial, and (3) these defects contributed to cumulative error in the proceedings that deprived defendant of his right to due process.

¶ 16 On April 12, 2017, the trial court conducted an evidentiary hearing on defendant's three remaining claims.

¶ 17 *1. Defendant*

¶ 18 Defendant testified a doctor at a Veterans Administration (VA) hospital prescribed Celexa for him and he had taken the medication for his clinical depression since 1997. Defendant confirmed in September 2013, "there [was] a glitch or an issue with getting at least one of [his] Celexa prescriptions refilled." He called the prescription in for a refill to be delivered by mail, but he did not receive it. As a result, he was without the medication for "a few months"—including April 2014 when he signed the jury waiver form.

¶ 19 Defendant testified while he was not on the Celexa, he experienced depression and a lack of focus on daily tasks. Not taking the Celexa affected his decision to sign the jury waiver form "a great deal," including understanding the ramifications of that decision. He never discussed the medication issue with his attorney, James Martinkus, or anyone from the Substance Abuse Rehabilitation Program (SARP) at the VA. He attended the SARP program between

December 2013 and March 2014. During that time, no one from SARP evaluated defendant's mental health, prescribed him medication, or assisted him in obtaining a new prescription for Celexa.

¶ 20 Defendant testified he hired Martinkus to represent him in January 2014. He spoke with Martinkus "about a half dozen" times to discuss his case. Martinkus never discussed the possibility of a jury trial and did not advise defendant on whether he should waive his right to a jury trial. Martinkus never discussed a bench trial with defendant but explained a stipulated bench trial "was somewhat like a guilty plea." He never explained defendant could present witnesses at a bench trial and did not discuss the "pros and cons" of having "the different types of trials." According to defendant, Martinkus informed him if he were to have a stipulated bench trial, he would "probably be found not guilty." Martinkus did not go over the stipulation with defendant, explain what it meant, read it to him, or allow him to read it. Although Martinkus explained the stipulation "was realistically similar to actually pleading guilty," defendant did not want to plead guilty to this charge. Defendant did not understand the rights he was giving up by signing the jury waiver form and proceeding with the stipulated bench trial. Had he known the evidence presented in the stipulation was sufficient to find him guilty and convict him for DUI, he would not have agreed to the stipulated bench trial.

¶ 21 On cross-examination, defendant stated he noticed the effects of not taking his Celexa within "less than a week." He did not recall whether he discussed these issues with his psychologist. Defendant stated Martinkus brought up the possibility of a stipulated bench trial after losing the motion to suppress defendant's BAC.

¶ 22 *2. Melissa Mills*

¶ 23 Melissa Mills testified she had been employed as an addiction therapist with the VA for 14 years in Danville, Illinois. Mills testified she was defendant’s case manager when he participated in the VA outpatient addiction program. She confirmed if someone was not “cognitively, emotionally, or psychologically stable enough to benefit from [the] program,” it would “come to light” during the intake process. During her time as defendant’s addiction therapist, she met with him multiple times and did not notice any significant problems with depression or cognitive impairment that interfered with her ability to communicate with him. She did not have an independent recollection of treating defendant but testified by referring to her “progress notes.” Mills further testified if defendant had trouble communicating about his legal affairs, she would have made note of it and there was no such notation.

¶ 24 *3. James Martinkus*

¶ 25 Martinkus testified defendant hired him in January 2014. Based on the facts in defendant’s case, Martinkus did not believe it would be “winnable” at trial. During the course of his representation of defendant, defendant exhibited no signs of cognitive impairment and had no difficulty communicating with him. Martinkus recalled a two-week period in which defendant had issues obtaining his medication. He denied promising defendant any specific outcome on the motion to suppress because it was “a difficult motion.” Martinkus discussed all of defendant’s options with him, including a jury trial, bench trial, stipulated bench trial, and a plea agreement. Defendant was not interested in a plea agreement with the State. After losing the motion to suppress, Martinkus explained to defendant he believed a stipulated bench trial was the best course of action because it would preserve the suppression issue for appeal. Martinkus testified defendant “absolutely understood” this explanation. Furthermore, Martinkus believed defendant

would receive a less favorable sentence if he went to either a bench or jury trial rather than the stipulated bench trial.

¶ 26 Martinkus testified when he received the draft stipulation from the State, he noticed it was presented in an “unusual” format. Specifically, instead of stipulating as to the evidence in defendant’s case, the stipulation stated what each witness, *if called*, would testify. Martinkus argued at the hearing on defendant’s posttrial motions the format of the stipulation was insufficient to convict defendant. The trial court rejected the argument, and this court affirmed on direct appeal. *Harris*, 2015 IL App (4th) 140696, ¶ 37.

¶ 27 *4. Denial of Defendant’s Postconviction Petition*

¶ 28 At the conclusion of the hearing, the trial court found the testimony of both Mills and Martinkus to be more credible than defendant’s. It also stated defendant “struggled to remember some details” and his testimony was inconsistent with the testimony of Mills and her treatment notes, which were admitted into evidence. According to both Martinkus and Mills, defendant at no point presented as “a person who is incapable of making his own informed decisions, or asserting those decisions.”

¶ 29 The court discussed at length whether proceeding with a jury trial “would have led to a better result” and whether there was any other “plausible defense theory.” The court stated that “the chance of a jury trial with the .303 BAC was, for all practical purposes, zero.” It then concluded the stipulated bench trial offered the greatest likelihood of success because “at least *** there was this technical argument” involving the specific rhetoric used in the stipulation, which was supported by relevant federal case law and could have led to a finding of not guilty. The court reasoned defendant’s decision to proceed with the stipulated bench trial was his best option, which “support[ed] an inference that [defendant was] acting rationally in

making reasonable, informed voluntary decisions about what’s going on.” The court concluded, “If instead that stipulated bench trial had been for some reason just strategically a horrible decision, that would of course corroborate the claim *** that it was the product of an involuntary act brought on by severe depression.”

¶ 30 At the conclusion of the hearing, the trial court denied defendant’s petition.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 On appeal, defendant argues the trial court’s denial of his petition for postconviction relief was manifestly erroneous. Specifically, defendant argues the trial court applied the incorrect legal standard by requiring defendant to show there was a “better legal option” than a stipulated bench trial to demonstrate his decision to waive a jury trial was involuntary.

¶ 34 A. Postconviction Proceedings

¶ 35 The Postconviction Act provides defendants with a collateral means to challenge his or her conviction or sentence for violations of federal or state constitutional rights. *People v. Guerrero*, 2012 IL 112020, ¶ 14, 963 N.E.2d 909. The adjudication of a postconviction petition generally follows a three-stage process. *People v. Tate*, 2012 IL 112214, ¶ 9, 980 N.E.2d 1100. First, the trial court examines the petition to ascertain whether it is frivolous or patently without merit. *People v. Andrews*, 403 Ill. App. 3d 654, 658, 936 N.E.2d 648, 652 (2010). If a petition survives stage one, it advances to stage two, and counsel is appointed. *Id.* Then, the State may answer the petition or move to dismiss it. 725 ILCS 5/122-5 (West 2014). If the State answers the petition or the trial court denies the State’s motion to dismiss, the proceeding advances to a third stage. *Andrews*, 403 Ill. App. 3d at 658-59; 725 ILCS 5/122-5 (West 2014). Where a

petition advances to the third stage of postconviction proceedings, the trial court conducts an evidentiary hearing where fact-finding and credibility determinations may be involved. *People v. Pendleton*, 223 Ill. 2d 458, 473, 861 N.E.2d 999, 1008 (2006). At the third stage, “the defendant bears the burden of making a substantial showing of a constitutional violation.” *Id.*

¶ 36 B. Standard of Review

¶ 37 Where a trial court’s decision to deny a postconviction petition after a third-stage evidentiary hearing is based on disputed issues of fact requiring credibility determinations, we will reverse the decision only if it is manifestly erroneous. *People v. Coleman*, 183 Ill. 2d 366, 384-85, 701 N.E.2d 1063, 1073-74 (1998). “ ‘Manifestly erroneous means arbitrary, unreasonable and not based on the evidence.’ ” *People v. Ballard*, 206 Ill. 2d 151, 162, 794 N.E.2d 788, 798 (2002) (quoting *People v. Wells*, 182 Ill. 2d 471, 481, 696 N.E.2d 303, 308 (1998)). Under this standard, we give deference to the trial court as finder of fact because it was in the best position to observe the conduct and demeanor of the parties and witnesses. *People v. Deleon*, 227 Ill. 2d 322, 332, 882 N.E.2d 999, 1005 (2008). We may not substitute our judgment on issues of witness credibility, the weight to be given the evidence, or the inferences to be drawn. *Id.*

¶ 38 C. Right to Jury Trial

¶ 39 “The right to a trial by jury is a fundamental right guaranteed by our federal and state constitutions.” *People v. Bracey*, 213 Ill. 2d 265, 269, 821 N.E.2d 253, 255 (2004); see also U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13. While a defendant may waive this right, a waiver is only valid if it is knowingly and voluntarily made. *Bracey*, 213 Ill. 2d at 269; see also 725 ILCS 5/103-6 (West 2012); *People v. Warnock*, 2013 IL App (2d) 120057, ¶ 7,

988 N.E.2d 143. “Whether a jury waiver is valid cannot be determined by application of a precise formula, but rather turns on the particular facts and circumstances of each case.” *Bracey*, 213 Ill. 2d at 269. “The defendant who challenges a jury waiver bears the burden of establishing that the waiver was invalid.” *People v. Stokes*, 281 Ill. App. 3d 972, 977, 667 N.E.2d 600, 604 (1996).

¶ 40 Here, the trial court’s determination defendant knowingly and voluntarily waived his right to a jury trial was not manifestly erroneous. While the court found defendant’s testimony to be credible in that it did not believe defendant was “lying,” it also found “[defendant] doesn’t have the best recollection.” Defendant “struggled to remember some details” and his testimony was inconsistent with that of Mills and her treatment notes. The treatment notes provided detailed descriptions of defendant’s multiple contacts with Mills, a trained substance abuse counselor, and at no point did defendant present as “a person who is incapable of making his own informed decisions, or asserting those decisions.” The court further found both Mills’s and Martinkus’s testimony to be credible. Both Mills and Martinkus testified defendant displayed no signs of cognitive impairment and had no trouble communicating with them about the proceedings in this case. The court was permitted to make these credibility determinations, and we will not disturb them on appeal.

¶ 41 Neither did the trial court apply the incorrect legal standard. At no point did the court state defendant was required to demonstrate prejudice. Neither did the court require him to show there was a “better legal option” than a stipulated bench trial to demonstrate his decision to waive a jury trial was involuntary. Rather, the court reasoned the stipulated bench trial was objectively a better strategic option for defendant than a jury trial, and therefore defendant’s decision to waive the jury trial corroborated Mills’s and Martinkus’s testimony that defendant

appeared capable of making informed decisions about his case. The court stated, “[A] person who makes *** what appears to be the best rational decision at the time *** supports an inference that the [person] is acting rationally in making reasonable, informed voluntary decisions about what’s going on.” The court’s consideration of whether the stipulated bench trial was defendant’s best course of action related solely to the issue of whether the waiver was “an involuntary act that was the product of significant mental impairment brought on by his depression.” We find the court applied the correct legal standard and its decision denying defendant’s postconviction petition was not manifestly erroneous.

¶ 42

III. CONCLUSION

¶ 43

For the reasons stated, we affirm the trial court’s judgment.

¶ 44

Affirmed.