2019 IL App (4th) 170414-U

NO. 4-17-0414

FILED
July 5, 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
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
JAMES P. HUGHES,	)	No. 10CF641
Defendant-Appellant.	)	
	)	Honorable
	)	John W. Belz,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) defendant was not denied due process at the hearing on the State's motion to dismiss his section 2-1401 petition and (2) the trial court did not violate Illinois Supreme Court Rule 185 (eff. Aug. 1, 1992) by allowing defendant to appear by telephone at a contested hearing.

¶ 2 In June 2016, defendant, James P. Hughes, filed a *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2014)). On July 28, 2016, the State filed a motion to dismiss defendant's petition and mailed defendant notice of the hearing on its motion to dismiss. On May 1, 2017, the trial court conducted a hearing on the State's motion. The State appeared in person, while defendant appeared *pro se* by telephone. After hearing argument of the parties and taking the matter under advisement, the trial court granted the State's motion to dismiss by written order.

¶ 3 On appeal, defendant argues he was denied procedural due process where the trial court allowed him to participate by telephone in the hearing on the State's motion to dismiss instead of ensuring his personal presence. In addition, defendant argues that the trial court violated Illinois Supreme Court Rule 185 (eff. Aug. 1, 1992) by allowing him to appear by telephone at a contested hearing when he made no request to do so. We disagree and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 On August 31, 2010, the State charged defendant with attempt (first degree murder) (count I) (720 ILCS 5/9-1(a)(1) (West 2008)), aggravated battery (counts II-IV) (720 ILCS 5/12-4(a), (b)(1), (b)(7) (West 2008)), and armed violence (count V) (720 ILCS 5/33A-2 (West 2008)). On December 11, 2012, a jury found defendant guilty of count I, count IV, and count V, and the trial court subsequently sentenced defendant to 28 years' imprisonment. This court affirmed the trial court's judgment on direct appeal. *People v. Hughes*, 2015 IL App (4th) 130319-U.

¶ 6 In August 2013, defendant filed a *pro se* petition for relief from judgment under section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2012)). In response, the State filed a motion to dismiss defendant's petition. By mail, defendant received notice of hearing on the motion to dismiss, which stated the following: "You are hereby notified that a hearing in the above-captioned case has been set ***. The hearing will be conducted by telephone conference call, and the call will be made by Judge Belz to the Defendant at Menard Correctional Center." Defendant appeared *pro se* at the hearing by telephone and made no objection to appearing in this manner. Following the hearing, the trial court dismissed defendant's petition with prejudice

by docket entry. In March 2014, defendant appealed from the dismissal of his petition. The same month, this court granted defendant's motion to dismiss the appeal.

¶ 7 On June 7, 2016, defendant filed a second *pro se* petition for relief from judgment under section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2014)), which is at issue in the instant appeal. Again, the State filed a motion to dismiss defendant's petition and mailed defendant notice of a hearing to be conducted on its motion, which stated the following: "You are hereby notified that a hearing in the above-captioned case has been set ***. The hearing will be conducted by telephone conference call, and the call will be made by Judge Cavanagh to the Defendant at Western Illinois Correctional Center." On May 1, 2017, the trial court held a hearing on the State's motion. The State appeared at the hearing in person, while defendant appeared *pro se* by telephone; defendant again made no objection to appearing by telephone. On May 17, 2017, after hearing argument of the parties and taking the matter under advisement, the trial court dismissed defendant's petition by written order.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant argues he was denied procedural due process. Specifically, defendant asserts that instead of ensuring his personal appearance, the trial court allowed defendant to appear by telephone at the hearing on the State's motion to dismiss his section 2-1401 petition. In addition, defendant argues that the trial court violated Illinois Supreme Court Rule 185 (eff. Aug. 1, 1992) by allowing him to appear by telephone at a contested hearing when he made no request to appear remotely.

¶ 11 At the outset, we note defendant has forfeited the issues he asserts on appeal where he failed to raise them in the trial court. See, *e.g.*, *In re Marriage of Pratt*, 2014 IL App

(1st) 130465, ¶ 23, 17 N.E.3d 678 ("Arguments raised for the first time on appeal are waived."); *Bowman v. Chicago Park District*, 2014 IL App (1st) 132122, ¶ 59, 19 N.E.3d 75 ("[I]ssues not raised in the trial court are waived and may not be considered for the first time on appeal."); *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 127, 938 N.E.2d 542, 556 (2010) ("A reviewing court will not consider arguments not presented to the trial court."). However, forfeiture is a limitation on the parties and not on this court. *Sekerez v. Rush University Medical Center*, 2011 IL App (1st) 090889, ¶ 64, 954 N.E.2d 383. In an effort to clear up any misconception regarding the merits of defendant's claims, we elect to address them.

¶ 12 A. Procedural Due Process

¶ 13 First, defendant argues he was denied procedural due process where he appeared not in person, but by telephone, during the hearing on the State's motion to dismiss. "[W]e review a claim of the denial of due process *de novo*." *People v. Bradley*, 2017 IL App (4th) 150527, ¶ 13, 85 N.E.3d 591.

¶ 14 "An individual's right to procedural due process is guaranteed by the United States and Illinois Constitutions." *Bradley*, 2017 IL App (4th) 150527, ¶ 15. " 'Due process is a flexible concept'; not all circumstances call for the same type of procedure." *Id.* (quoting *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201, 909 N.E.2d 783, 796 (2009)). "The fundamental requirement of due process is the opportunity to be heard ***." *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 28, 6 N.E.3d 162; see also *In re D.W.*, 214 Ill. 2d 289, 316, 827 N.E.2d 466, 484 (2005) (Due process requires "the opportunity to be heard at a meaningful time and in a meaningful manner."); *Tolliver v. Housing Authority of the County of Cook*, 2017 IL App (1st) 153615, ¶ 22, 82 N.E.3d 1220 (Internal quotation marks omitted.) ("The essence of procedural due process is meaningful notice and a meaningful opportunity to be heard."); *People*

v. Cardona, 2013 IL 114076, ¶ 15, 986 N.E.2d 66 ("The fundamental requirements of due process are notice of the proceeding and an opportunity to present any objections.").

¶ 15 Here, the process utilized afforded defendant his constitutional right to due process. Defendant (1) received notice of the hearing on the State's motion to dismiss his petition and (2) was provided a meaningful opportunity to present his objections to the State's motion. The State notified defendant by mailing him a copy of its motion to dismiss and a notice of the hearing on the motion. Defendant also received a meaningful opportunity to present his objections.

¶ 16 Defendant filed a written response to the State's motion to dismiss and appeared by telephone at the hearing on the State's motion. Defendant presented his arguments to the trial court and responded to the contentions raised by the State. The trial court listened to each argument advanced by defendant prior to making a decision. Finally, absent is any indication that defendant's appearance by telephone precluded him from presenting an argument or evidence. Thus, we reject defendant's conclusory statement that the only way for him to be heard in a meaningful manner was for him to be personally present at the hearing. To the contrary, we find that defendant received both meaningful notice and a meaningful opportunity to be heard in full compliance with his due process rights.

¶ 17 Moreover, the cases cited by defendant for the proposition that he had a constitutional right to be present at the hearing are unpersuasive. First, defendant cites to *Grant v. Paluch*, 61 Ill. App. 2d 247, 210 N.E.2d 35 (1965). In *Grant*, the court noted that a party to a civil proceeding has "a right to be present in the court during the entire trial." *Id*. at 258. However, *Grant* is inapplicable because defendant's appeal does not involve a trial. Rather, defendant's appeal involves a hearing on a motion to dismiss his section 2-1401 petition. Second,

defendant cites to *People v. Stroud*, 208 Ill. 2d 398, 804 N.E.2d 510 (2004). In *Stroud*, when considering the appropriateness of a guilty plea taken via closed-circuit television, our supreme court noted that "both the federal and state constitutions afford criminal defendants the general right to be present, not only at trial, but at all critical stages of the proceedings from arraignment to sentencing." *Id*. at 404. This general right does not apply to the facts of defendant's case. Defendant has already been convicted and sentenced and we affirmed the trial court's judgment on direct appeal. *Hughes*, 2015 IL App (4th) 130319-U. Because a hearing on a motion to dismiss a section 2-1401 petition is not a critical stage of the proceedings "from arraignment to sentencing" the general right to be present is inapplicable. *Stroud*, 208 Ill. 2d at 404.

¶ 18 B. Illinois Supreme Court Rule 185

¶ 19 Next, defendant argues that the trial court violated Illinois Supreme Court Rule 185 (eff. Aug. 1, 1992) by allowing him to appear by telephone at a contested hearing when he made no request to do so. When called upon to construe a supreme court rule, our standard of review is *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 41-42, 862 N.E.2d 977, 979 (2007).

¶ 20 Rule 185 states the following:

> "Except as may be otherwise provided by rule of the circuit court, the court may, at a party's request, direct argument of any motion or discussion of any other matter by telephone conference without a court appearance. The court may further direct which party shall pay the cost of the telephone calls" Ill. S. Ct. R. 185 (eff. Aug. 1, 1992).

Defendant contends that the proper interpretation of Rule 185 is that it permits a trial court to direct argument on a motion by telephone conference only when the party to appear by telephone makes such a request.

¶ 21 "In interpreting a supreme court rule, we apply the same principles that are employed to construe a statute ***." *In re Marriage of Webb*, 333 Ill. App. 3d 1104, 1108, 777 N.E.2d 443, 446 (2002). "The primary rule of statutory construction is to give effect to legislative intent by first looking at the plain meaning of the language." *Davis v. Toshiba Machine Co., America*, 186 Ill. 2d 181, 184, 710 N.E.2d 399, 401 (1999). "Where the language of a statute is clear and unambiguous, a court must give it effect as written, without reading into it exceptions, limitations or conditions that the legislature did not express." (Internal quotation marks omitted.) *Garza v. Navistar International Transportation Corp.*, 172 Ill. 2d 373, 378, 666 N.E.2d 1198, 1200 (1996). "When the language of a statute is clear, no resort is necessary to other tools of interpretation." *Davis*, 186 Ill. 2d at 185.

¶ 22 The language of Rule 185 is clear and unambiguous, and we therefore "must give it effect as written." *Garza*, 172 Ill. 2d at 378. The language clearly states that the trial court may direct argument on a motion by telephone conference "at *a* party's request ***." (Emphasis added.) Ill. S. Ct. R. 185 (eff. Aug. 1, 1992). The rule does not limit the request to the party who will appear remotely. By arguing to the contrary, defendant attempts to impermissibly read into the rule a limitation not expressed by the drafters. Because the plain language lacks any limitation on which party can make a request, we reject defendant's argument and conclude the trial court acted in accordance with Rule 185 when it allowed defendant to appear by telephone.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the judgment of the trial court.

¶ 25 Affirmed.