2019 IL App (4th) 170476-U

NO. 4-17-0476

FILED
September 4, 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.	)	Livingston County
ASHLEY R. MILES,	)	No. 17CM121
Defendant-Appellant.	)	
	)	Honorable
	)	Mark A. Fellheimer,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Pursuant to *Anders v. California*, 386 U.S. 738 (1967), the appellate court granted counsel's motion to withdraw on direct appeal because no meritorious issues could be raised.

¶ 2 In April 2017, defendant, Ashley R. Miles, pleaded guilty to two counts of child endangerment, Class A misdemeanors (720 ILCS 5/12C-5 (West 2016)). In May 2017, the trial court sentenced her to 360 days in jail. Defendant filed a motion to reconsider her sentence, which the court denied. Defendant appealed.

¶ 3 In May 2019, the Office of the State Appellate Defender (OSAD) filed a motion to withdraw. In its brief, OSAD contends that no meritorious issues can be raised on appeal. We agree, grant OSAD's motion to withdraw as counsel, and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 On April 11, 2017, defendant, her boyfriend, Matthew B., and their two toddler children, S.B and E.B., appeared at Matthew's parents' house in Cullom in Livingston County, requesting money for gasoline. Because they had given the couple money the day before, the parents refused. As a result, defendant and Matthew left their children in the parents' custody and did not indicate they would be back. When Matthew's mother began tending to the children because, according to the factual basis, they "were a mess and smelled," she noticed red bed sores and a severe diaper rash on E.B.'s buttocks and legs. E.B. had a days-old dirty diaper and both children's clothes "were extremely dirty and moldy." Matthew's mother called the police, who photographed the children's condition, before taking them to the doctor. Defendant and Matthew were arrested upon a report of stolen gasoline from a gas station.

¶ 6 On April 14, 2017, the State charged defendant with two counts of endangering the life or health of a child—one count for E.B. and one count for S.B. On April 27, 2017, defendant pleaded guilty to both charges. On May 8, 2017, the trial court sentenced defendant to 360 days in jail. The record before us does not include a transcript or other report of proceedings from the plea hearing or the sentencing hearing.

¶ 7 On May 15, 2017, defendant filed a motion to reconsider her sentence, claiming it was excessive and that various factors in mitigation were not considered. At the hearing, the trial court noted the extent of defendant's criminal history—a 2016 driving while license was suspended. The court, after noting the severity of the children's condition as it appeared in photographs and as described by the treating physician, stated "it doesn't get much worse than this." The court reiterated that "the child care seats—car seats, whatever you want to call them, was dripping in urine. That the children had bed sores on them that appeared to be as a result of having spent a considerable amount of time in the car seat. That there was evidence of mold on

the children. And the kids were, in effect, in a deplorable condition that occurred over a significant period of time." The court further noted the family had recently been evicted from a homeless shelter "based on drugs or illegal substances." Despite the unfortunate circumstances of homelessness and poverty, the court noted, there was "no excuse, though, as to why the children ended up in this absolutely deplorable condition that they found themselves in." The court denied defendant's motion, and this appeal followed.

¶ 8 In May 2019, OSAD filed a motion to withdraw as counsel on defendant's appeal. OSAD attempted to provide a copy of the motion to the defendant, but the copy sent to defendant at her last known address was returned. OSAD subsequently learned of a different address and sent a copy of its motion to withdraw to defendant at the new address. The copy was not returned to OSAD as undeliverable. On June 4, 2019, this court sent notice to defendant at the new address, granting her until July 9, 2019, to file a response to OSAD's motion. She has not done so.

¶ 9 II. ANALYSIS

¶ 10 OSAD contends no colorable argument challenging defendant's conviction or sentence can be presented on direct appeal. We agree.

¶ 11 OSAD identifies two potential issues that could arguably be raised on appeal. See *In re Brazelton*, 237 Ill. App. 3d 269, 270 (1992) (*Anders* requires that counsel's request to withdraw be accompanied by a brief referring to possible issues that could arguably support an appeal.). First, OSAD addresses whether defense counsel complied with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014), which prescribes counsel's duty when a postplea motion has been filed. The rule requires counsel to (1) consult with defendant to ascertain her contentions of error in the sentence or entry of the guilty plea, (2) examine the court file and report of

proceedings of the plea hearing and sentencing hearing, and (3) make any necessary changes to defendant's motion to ensure the contentions of error are adequately presented. Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014). In order to demonstrate his compliance with these requirements, counsel must file a certificate with the court stating he has done so. *Id.*

¶ 12 On May 31, 2017, counsel filed a motion to reconsider sentence and an accompanying Rule 604(d) certificate. The certificate indicates that counsel consulted with defendant to ascertain her contentions of error "in the entry of the plea of guilty and in the sentence[.]" Counsel also certified he examined the court file and the transcripts of the plea hearing and the sentencing hearing. Finally, he stated he made any necessary amendments to the motion.

¶ 13 OSAD claims counsel's certificate sufficiently complies with the requirements of Rule 604(d) and therefore no colorable argument can be made challenging the certificate. Based on the contents of counsel's certificate, the trial court would have been satisfied that counsel had reviewed defendant's claims and had considered all relevant bases for defendant's motion. We agree with OSAD's assessment on this issue and find that no meritorious issue could be raised regarding counsel's compliance with Rule 604(d).

¶ 14 Second, OSAD addressed potential issues related to defendant's sentence but found none. In May 2017, the trial court sentenced defendant to 360 days in jail without the imposition of any subsequent probationary period or conditional discharge. As of July 2019, defendant has served her sentence in full. Because her sentence is complete, any issue regarding the propriety of her sentence is moot. "An issue on appeal becomes moot where events occurring after the filing of the appeal render it impossible to grant effectual relief to the complaining party." *In re Shelby R.*, 2012 IL App (4th) 110191, ¶ 16. Defendant cannot challenge the length

of her sentence once it has been served in full. We again agree with OSAD's assessment regarding the lack of any meritorious claim challenging defendant's sentence.

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we agree with appellate counsel that no meritorious issue can be raised on appeal. We therefore grant counsel's motion to withdraw and affirm the trial court's judgment. See *Anders*, 386 U.S. at 744.

¶ 17 Affirmed.