2019 IL App (4th) 170727-U

NO. 4-17-0727

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 17, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ENOCH J. JACKSON, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Champaign County No. 17CF505 Honorable Roger B. Webber, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justice Knecht concurred in the judgment.
Justice Turner specially concurred.

ORDER

¶ 1 *Held*: The appellate court affirmed, granting the Office of the State Appellate Defender's motion to withdraw as counsel.

¶ 2 In May 2017, defendant, Enoch J. Jackson, pleaded guilty to one count of retail theft with a prior retail theft conviction and was sentenced to 30 months' probation and 180 days in jail held in remission. Eight days later, the State filed a petition to revoke probation because defendant had violated probation by being charged with battery and disorderly conduct. Defendant admitted and stipulated to the petition to revoke. The trial court sentenced defendant to two years' imprisonment. In September 2017, defendant filed a notice of appeal, and the court appointed the Office of the State Appellate Defender (OSAD) to represent defendant in this appeal.

¶ 3 On appeal, OSAD moves to withdraw its representation of defendant, citing *Anders v. California*, 386 U.S. 738 (1967), contending any appeal in this cause would be

frivolous. We grant OSAD's motion and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 In April 2017, the State charged defendant by information with retail theft (720 ILCS 5/16-25(a)(1) (West 2016)), which was a Class 4 felony because he had a prior retail theft conviction. See 720 ILCS 5/16-25(f)(2) (West 2016). In May 2017, defendant pleaded guilty to the charge. For the factual basis of the plea, the State said defendant walked into a gas station around 10:40 p.m. on April 18, 2017, and began throwing merchandise on the floor. After that, he took two cans of beer from the cooler and left without attempting to pay for them. The employees of the gas station identified him as the person who committed a similar crime about a week prior, and police officers recognized defendant from that theft as well. When stopped and arrested, he had an open can of beer in his hand. The factual basis also included defendant had a prior conviction for retail theft. The trial court sentenced defendant to 30 months of probation and 180 days in the Champaign County Correctional Center held in remission.

¶ 6 Eight days after defendant's plea and sentence, the State filed a petition to revoke probation. In the petition, the State alleged defendant committed battery (720 ILCS 5/12-3(a)(2) (West 2016)), when he spit on John Tatum, and disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2016)), when he slammed the hood of Amanda Delaney's car after he asked her for money. In July 2017, defendant admitted and stipulated to the petition. As the factual basis, the State said defendant went to Burger King around 5:50 p.m. on May 15, 2017, approached Delaney's car in the drive-through lane, and asked for money. When Delaney refused, defendant slammed the hood of her car hard and walked to the car in front of Delaney, requesting money from the driver of that vehicle. When the driver said she only had enough to pay for her food, defendant reached into her car to attempt to take her money. The driver called the police, as

defendant walked around and hit the side or windows of the car. Officer John Tatum was one of the officers who responded and detained defendant. The State said after defendant's arrest, he told officers something to the effect of "get out of my fucking face," and then spat in the eye of Officer Tatum. The trial court sentenced defendant to two years' imprisonment in the Illinois Department of Corrections followed by one year of mandatory supervised release.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 OSAD has filed a motion to withdraw its representation of defendant and a supporting memorandum of law. The record shows OSAD has attempted to serve defendant with notice of its motion to withdraw and has been unsuccessful due to defendant's release from incarceration with no forwarding address. Based on our examination of the record, we conclude, as has OSAD, an appeal in this cause would be without arguable merit.

¶ 10 A. Guilty Plea

¶ 11 " 'When no direct appeal is taken from an order of probation and the time for appeal has expired, a reviewing court is precluded from reviewing the propriety of that order in an appeal from a subsequent revocation of that probation, unless the underlying judgment of conviction is void.' " *People v. Gregory*, 379 Ill. App. 3d 414, 418, 883 N.E.2d 762, 765-66 (2008) (quoting *People v. Johnson*, 327 Ill. App. 252, 256, 762 N.E.2d 1180, 1183 (2002)). Due process requires a defendant's guilty plea be voluntary and knowing, and if it is not, it violates due process and is void. *People v. Williams*, 188 Ill. 2d 365, 370, 721 N.E.2d 539, 543 (1999).

¶ 12 The trial court admonished defendant pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 2012), advising him of the nature of the charge, the minimum and maximum sentence prescribed by law, the waiver of rights by pleading guilty, and the right to plead guilty

or not guilty. The State also presented a factual basis for the plea. As such, his plea did not violate his right to due process and is not void.

¶ 13 A defendant cannot collaterally attack his order of probation unless that order is void. *In re T.E.*, 85 Ill. 2d 326, 333, 423 N.E.2d 910, 913 (1981). Here, however, the court was operating within its authority when sentencing defendant to 30 months' probation, and the conditions of probation were appropriate. 730 ILCS 5/5-4.5-35(d), 5-6-3(a) (West 2016).

¶ 14 B. Probation Revocation Proceedings

¶ 15 In *People v. Hall*, 198 Ill. 2d 173, 181, 760 N.E.2d 971, 975 (2001), our supreme court stated, when accepting admission to a probation violation, the trial court should admonish defendant to decide whether:

> "(1) the defendant understands the specific allegations in the State's petition to revoke probation;
>
> (2) the defendant understands that he has the right to a hearing with defense counsel present at which the State must prove the alleged violation, and that he has the rights of confrontation and cross-examination at such a hearing;
>
> (3) the defendant's admission is voluntarily made and not made on the basis of any coercion or promises, other than any agreement as to the disposition of his case;
>
> (4) the defendant understands the consequences of his admission or the sentencing range for the underlying offense; and
>
> (5) a factual basis exists for the admission."

¶ 16 Substantial compliance with the admonishments in *Hall*, subsequently listed in Illinois Supreme Court Rule 402A(a) (eff. Nov. 1, 2003), is sufficient to satisfy due process. *People v. Ellis*, 375 Ill. App. 3d 1041, 1046, 874 N.E.2d 980, 983 (2007).

¶ 17 In this case, the trial court substantially complied with Rule 402A by informing defendant of his right to a hearing represented by counsel, the allegations in the State's petition to revoke, the consequences of admitting the allegations, and his waiver of rights by admitting to the petition. Defendant stated he understood the admonishments and his plea was voluntarily made. The court complied with all aspects of Rule 402A, and thus, the revocation proceedings comported with due process.

¶ 18 C. Sentence

¶ 19 As of May 2019, defendant's sentence was fully discharged. As such, any argument regarding defendant's sentence is moot. See *People v. Melton*, 2013 IL App (1st) 060039, ¶ 28, 4 N.E.3d 99 ("[A] challenge to the validity of an imposed sentence becomes moot once the entire sentence has been served.").

¶ 20 After reviewing the possible issues on appeal, we find no issues raised would have merit. Therefore, we grant OSAD's motion to withdraw.

¶ 21 III. CONCLUSION

¶ 22 We grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 23 Affirmed.

¶ 24 JUSTICE TURNER, specially concurring.

¶ 25 I specially concur. I write separately to note the Illinois Supreme Court has recognized only three situations in which a judgment will be deemed void: "(1) where the judgment was entered by a court that lacked personal or subject-matter jurisdiction, (2) where the

judgment was based on a statute that is facially unconstitutional and void *ab initio*, and (3) where a judgment of sentence did not conform to a statutory requirement (the void sentence rule)." *People v. Price*, 2016 IL 118613, ¶ 31, 76 N.E.3d 1240. In *People v. Castleberry*, 2015 IL 116916, ¶ 19, 43 N.E.3d 932, the supreme court abolished the third type of void judgment, "thus narrowing the universe of judgments subject to attack in perpetuity." *Price*, 2016 IL 118613, ¶ 31.

¶ 26 In the case *sub judice*, defendant does not have a meritorious contention the trial court lacked personal or subject-matter jurisdiction to accept defendant's guilty plea and enter a probation order nor does he have a meritorious argument he was placed on probation for a facially unconstitutional statutory offense. Accordingly, any assertion defendant's guilty plea and probation order were void would be meritless.