2020 IL App (3d) 180235-U

Order filed August 26, 2020

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2020

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
	)	La Salle County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-18-0235
v.	)	Circuit No. 16-CF-205
	)	
SINEAD D. JONES,	)	Honorable
	)	Cynthia Raccuglia,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant forfeited review of her sentencing error claim.

¶ 2 The defendant, Sinead D. Jones, appeals from her conviction for domestic battery. The defendant argues the La Salle County circuit court failed to consider her original charge when it resentenced her due to her probation violations.

¶ 3 I. BACKGROUND

¶ 4 The State charged the defendant with aggravated battery with a deadly weapon (720 ILCS 5/12-3.05(f)(1) (West 2016)). By agreement, the defendant pled guilty to a lesser charge of domestic battery (*id.* § 12-3.2(a)), and the State dismissed the aggravated battery with a deadly weapon charge. Pursuant to the parties' agreement, the court sentenced the defendant to 30 months of probation.

¶ 5 Approximately six months after the plea, the State filed a petition to revoke the defendant's probation. The petition alleged that the defendant had committed the misdemeanor offenses of theft and criminal damage to property. The defendant made a blind admission to the petition. The court resentenced the defendant to 30 months of probation. In its ruling, the court stated, "But I will see you if you violate it, and you can bet you are going to spend six years in prison which is what you're eligible for ***."

¶ 6 Roughly six months after the resentencing hearing, the State filed a second petition to revoke probation. The petition alleged that the defendant had admitted to ingesting cocaine and cannabis, and she had not obtained mental health and drug and alcohol evaluations and had not attended treatment. The defendant made a blind admission to the petition. The court ordered an updated presentence investigation report (PSI).

¶ 7 At the resentencing hearing, the State began its argument by stating, "[the defendant] is to be resentenced for a Class 4 domestic." The remaining argument outlined the defendant's inability to comply with probation. The State argued, "She's given you no choice at this point, Judge, but to punish her and give her the six years ***."

¶ 8 Defense counsel argued that the PSI had no significant changes since the last sentencing hearing. Counsel mentioned the defendant had not committed any new offenses and noted that

according to the PSI, she was employed and had made efforts to complete the requirements of her probation sentence.

¶ 9 Following the parties' arguments, the court said,

> "I gave to you all we have to offer. I have no more to offer. ***
>
> * * *
>
> *** And all I can tell you is the drug problem is getting worse the more you're out of prison. *** So the only alternative I have is—to save you and the public is to place you in prison for a considerable period of time to—***, I find this to be a rehabilitative sentence. You cannot do it outside of prison. You need to be in prison to save yourself.
>
> Based on those circumstances, I hereby sentence you to six years in the Department of Corrections."

¶ 10 The defendant filed a motion to reconsider sentence that argued the court "erred in not giving proper weight to the potential for rehabilitation of the Defendant." At a hearing on the defendant's motion, defense counsel argued that the court should consider the alternative sentence of boot camp versus her six-year prison sentence. The court denied the defendant's motion and stated, "You, obviously, could not handle—as much as you wanted to and I know you wanted to—you could not handle your drug addiction by yourself outside of an isolated place like prison." The defendant appeals from the court's denial of her motion to reconsider sentence.

¶ 11 II. ANALYSIS

¶ 12 The defendant argues that the circuit court failed to consider her original sentence when resentencing her on the probation violations. The defendant acknowledges that she did not

properly preserve this issue for appellate review as she did not object to this issue during the resentencing hearing or raise it in her motion to reconsider sentence. Nevertheless, the defendant argues that we "may consider this issue as plain error under [Illinois] Supreme Court Rule 615(a)."

¶ 13 When a defendant forfeits appellate review of a claim of error, we may only consider the claim when the defendant establishes that a plain error occurred. See Ill. S. Ct. R. 615(a). "To obtain relief under this rule, a defendant must first show that a clear or obvious error occurred." *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

> "In the sentencing context, a defendant must then show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. [Citation.] Under both prongs of the plain-error doctrine, the defendant has the burden of persuasion. [Citation.] If the defendant fails to meet [her] burden, the procedural default will be honored." *Id.*

¶ 14 While the plain error analysis typically begins with a determination of whether the circuit court "committed a clear or obvious (or 'plain') error" (*People v. Hollahan*, 2019 IL App (3d) 150556, ¶ 19), we find that in this case, even if the court erred, the defendant cannot meet her burden to establish plain error. The defendant does not argue that the court's alleged plain error of not considering her original sentence is reversible because the evidence at the sentencing hearing was closely balanced, or the error was so egregious that it interfered with the integrity of the sentencing hearing. See *Hillier*, 237 Ill. 2d at 545; *People v. Nieves*, 192 Ill. 2d 487, 503 (2000). Therefore, the defendant cannot meet her burden of persuasion, and we must honor her procedural default. See *Hillier*, 237 Ill. 2d at 545.

¶ 15 III. CONCLUSION

¶ 16 The judgment of the circuit court of La Salle County is affirmed.

¶ 17 Affirmed.