2020 IL App (4th) 190556-U

NO. 4-19-0556

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 18, 2020
Carla Bender
4th District Appellate
Court, IL

TAVARIS E. HUNT,	)	Appeal from the
Petitioner-Appellant,	)	Circuit Court of
v.	)	Champaign County
CHAMPAIGN COUNTY CIRCUIT COURT,	)	No. 19MR569
Respondent-Appellee.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's denial of petitioner's petition for *mandamus* was proper.

¶ 2 In May 2019, petitioner, Tavaris E. Hunt, filed a *pro se* petition for *mandamus* (735 ILCS 5/14-101 *et seq.* (West 2018)) against respondent, the Champaign County circuit court. In his petition, petitioner first requested the circuit court to vacate its December 18, 2012, judgment and withdraw the involuntary plea of guilty pursuant to a negotiated plea agreement that involved the following cases: (1) People v. Hunt, No. 12-CF-1867 (Cir. Ct. Champaign County) (hereinafter case No. 1867); (2) People v. Hunt, No. 12-CF-1868 (Cir. Ct. Champaign County) (hereinafter case No. 1868); (3) People v. Hunt, No. 12-CF-1869 (Cir. Ct. Champaign County) (hereinafter case No. 1869); and (4) People v. Hunt, No. 12-CF-1870 (Cir. Ct. Champaign County) (hereinafter case No. 1870). Petitioner also sought the dismissal with prejudice of the aforementioned cases and an additional 704 days of credit toward his seven-year

sentence in case No. 1868. In an August 8, 2019, docket entry, the Champaign County circuit court *sua sponte* denied petitioner's *mandamus* petition.

¶ 3 Petitioner appeals and appears to assert the circuit court erred by denying his *mandamus* petition because (1) it did not follow proper procedures, (2) it had a duty to not enforce an illegal plea agreement, and (3) he demonstrated he was entitled to 704 days of additional sentencing credit. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Petitioner is not a stranger to this court, and we are familiar with the facts of petitioner's underlying criminal proceedings. Thus, we will briefly set forth the facts necessary to understand the appeal before us.

¶ 6 A. Case No. 1867

¶ 7 In November 2012, the State initially charged petitioner by information with one count of aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2012)) for petitioner's actions on November 12, 2012. As part of a negotiated plea agreement, petitioner pleaded guilty on December 18, 2012, to aggravated domestic battery in case No. 1867, and the circuit court sentenced him to five years' imprisonment to run concurrently with the sentence imposed in case No. 1868. In February 2013, petitioner filed a motion to withdraw his guilty plea and vacate the judgment. After a hearing on the petitioner's motion, the circuit court allowed petitioner to withdraw his December 2012 guilty plea in case No. 1867 and accepted petitioner's guilty plea to a different charge of domestic battery with a prior domestic battery conviction (720 ILCS 5/12-3.2(a)(1) (West 2010) (eff. July 1, 2011)). The court again sentenced petitioner to five years' imprisonment with a sentencing credit of 106 days. According to the Department of Corrections's website of which we may take judicial notice (*Cordrey v. Prisoner Review Board*,

2014 IL 117155, ¶ 12, 21 N.E.3d 423), petitioner's five-year sentence has been discharged. Illinois Department of Corrections, Inmate Search, http://www2.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx (last visited Apr. 14, 2020)).

¶ 8 B. Case No. 1868

¶ 9 In November 2012, the State charged petitioner by information with six counts of domestic battery with a prior domestic battery conviction (counts I through VI) (720 ILCS 5/12-3.2(a)(1) (West 2010) (eff. July 1, 2011)) and one count of aggravated domestic battery (count VII) (720 ILCS 5/12-3.3(a-5) (West 2012)). All seven counts related to a series of incidents occurring on September 27, 2012. In December 2012, pursuant to a plea agreement, petitioner pleaded guilty to count VII, and the State dismissed the other charges in case No. 1868, as well as the charges in case Nos. 1869 and 1870. The State also recommended petitioner serve 48 months' probation. The circuit court accepted the guilty plea and sentenced petitioner to the 48 months' probation to run concurrently with his five-year prison sentence in case No. 1867.

¶ 10 In January 2014, the State filed a petition to revoke petitioner's probation based on petitioner receiving another domestic battery charge. In February 2014, petitioner agreed to admit the allegations in the State's petition, and the circuit court revoked petitioner's probation. At a March 2014 hearing, the court resentenced petitioner to seven years' imprisonment with a sentence credit of 103 days. According to the Department of Corrections's website, petitioner is currently on mandatory supervised release having been released from prison on November 18, 2019. Illinois Department of Corrections, Inmate Search, http://www2.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx (last visited Apr. 14, 2020)).

¶ 11 C. Joint Proceedings in Case Nos. 1867 and 1868

¶ 12 In June 2017, petitioner filed a joint section 2-1401 petition for both case Nos.

1867 and 1868. He later filed a supplement to his section 2-1401 petition, contending the judgment in case No. 1868 was void because the plea agreement did not include a mandatory 60 days of imprisonment. The State filed a motion to dismiss petitioner's section 2-1401 petition, which the court granted on September 11, 2017. Petitioner appealed the denial of his section 2-1401 petition. This court docketed the appeal in case No. 1867 as No. 4-17-0775 and the appeal in case No. 1868 as No. 4-17-0776.

¶ 13 On October 30, 2017, petitioner filed a motion for a *nunc pro tunc* order, contending he was entitled to 352 additional days of sentencing credit based on his concurrent imprisonment in case No. 1867. He argued it was part of the plea agreement and should be doubled to 704 days based on day-for-day credit. On November 8, 2017, the circuit court entered a docket entry denying petitioner's motion. Petitioner appealed the denial of his motion for a *nunc pro tunc* order, and this court docketed the appeal as case No. 4-17-0914.

¶ 14 In February 2018, this court granted petitioner's request to consolidate the appeals in appellate court case Nos. 4-17-0775, 4-17-0776, and 4-17-0914. In our July 3, 2018, order, we first rejected petitioner's argument his judgment in case No. 1868 was void because the State failed to include a mandatory sentencing requirement as part of the negotiated plea. *People v. Hunt*, 2018 IL App (4th) 170775-U, ¶ 43. We noted our supreme court abolished the void sentencing rule, which had provided a sentence that did not conform to a statutory requirement was void. *Hunt*, 2018 IL App (4th) 170775-U, ¶ 43 (citing *People v. Castleberry*, 2015 IL 116916, ¶¶ 13, 19, 43 N.E.3d 932). Thus, a judgment is void only if the circuit court which entered the challenged judgment lacked subject-matter or personal jurisdiction. *Hunt*, 2018 IL App (4th) 170775-U, ¶ 43 (citing *Castleberry*, 2015 IL 116916, ¶¶ 11-12). Since the circuit court had personal and subject-matter jurisdiction when it entered its December 18, 2012,

judgment in case No. 1868, the December 18, 2012, judgment was not void. *Hunt*, 2018 IL App (4th) 170775-U, ¶ 43. This court also found the circuit court lacked jurisdiction of petitioner's October 30, 2017, *nunc pro tunc* motion. *Hunt*, 2018 IL App (4th) 170775-U, ¶ 47. Thus, we vacated the circuit court's denial of petitioner's *nunc pro tunc* motion and dismissed petitioner's October 30, 2017, motion for a *nunc pro tunc* order. *Hunt*, 2018 IL App (4th) 170775-U, ¶ 47.

¶ 15 C. *Mandamus* Petition

¶ 16 On May 23, 2019, petitioner filed his petition for *mandamus*, seeking to have the circuit court vacate its December 12, 2018, judgment, withdraw his guilty plea, and dismiss with prejudice case Nos. 1867, 1868, 1869, and 1870. He also asked for an additional 704 days of sentencing credit towards his seven-year sentence in case No. 1868. In addition to the *mandamus* petition, petitioner filed a motion for leave to file a petition for *mandamus* and a brief in support of his *mandamus* petition. The State did not file any pleadings. On August 8, 2019, the circuit court denied petitioner's *mandamus* petition.

¶ 17 On August 12, 2019, petitioner filed a timely notice of appeal from the denial of his petition for *mandamus* in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). Thus, this court has jurisdiction of petitioner's appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 18 II. ANALYSIS

¶ 19 A. Procedures

¶ 20 Defendant first argues the circuit court did not follow the proper procedures in denying his *mandamus* complaint. The State disagrees.

¶ 21 In *People v. Vincent*, 226 Ill. 2d 1, 871 N.E.2d 17 (2007), our supreme court clarified the procedures for handling petitions for relief from judgment under section 2-1401 of

the Code of Civil Procedure (Civil Procedure Code) (735 ILCS 5/2-1401 (West 2018)) when the respondent does not file a responsive pleading. Like a section 2-1401 petition, a petition for *mandamus* is a civil action, as it is contained in the Civil Procedure Code. See 735 ILCS 5/14-401 *et seq.* (West 2018). The *Vincent* court explained "responsive pleadings are no more required in section 2-1401 proceedings than they are in any other civil action." *Vincent*, 226 Ill. 2d at 9, 871 N.E.2d at 23. A respondent's failure to respond to a petition constitutes an admission of all well-pleaded facts. *Vincent*, 226 Ill. 2d at 9-10, 871 N.E.2d at 24. Additionally, when the State fails to respond, the petition becomes "ripe for adjudication." *Vincent*, 226 Ill. 2d at 10, 871 N.E.2d at 24. When the case is ripe for adjudication, the circuit court "may decide the case on the pleadings, affidavits, exhibits, and supporting material before it, including the record of any prior proceedings." *Vincent*, 226 Ill. 2d at 9, 871 N.E.2d 23. The *Vincent* court held a defendant is not entitled to notice or an opportunity to respond before the circuit court *sua sponte* disposes of a section 2-1401 petition. *Vincent*, 226 Ill. 2d at 12-13, 871 N.E.2d at 25-26. Moreover, Illinois cases "recognize that a trial court may, on its own motion, dispose of a matter when it is clear on its face that the requesting party is not entitled to relief as a matter of law." *Vincent*, 226 Ill. 2d at 12, 871 N.E.2d at 25. "Case law has long recognized that such a judgment, whether it be characterized as a judgment on the pleadings or a dismissal, can be entered by the court notwithstanding the absence of a responsive pleading." *Vincent*, 226 Ill. 2d at 10, 871 N.E.2d at 24.

¶ 22 Here, the circuit court followed the procedures set forth in *Vincent* and *sua sponte* denied defendant's *mandamus* action after respondent failed to file a responsive pleading. Implicit in the circuit court's denial is a finding petitioner was not entitled to relief as a matter of law. Thus, we disagree the circuit court erred by not explicitly stating a reason for its denial.

Accordingly, we find the circuit court properly followed the procedures for denying a civil petition on the pleadings.

¶ 23 B. Merits

¶ 24 *Mandamus* relief is an extraordinary remedy which will not be granted unless the petitioner establishes he has a clear right to the relief requested, the respondent public officer has a clear duty to act, and the public officer has clear authority to comply with the order. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 192-93, 909 N.E.2d 783, 791 (2009). If the act in question involves the exercise of an official's discretion, relief will not be granted. *Konetski*, 233 Ill. 2d at 193, 909 N.E.2d at 791. This court reviews *de novo* whether the circuit court correctly entered a judgment on pleadings. *Vincent*, 226 Ill. 2d at 14, 871 N.E.2d at 26.

¶ 25 1. *Plea Agreement*

¶ 26 Petitioner appears to argue the circuit court had a duty to not enforce an illegal plea agreement and provide him with a legal sentence. The State argues petitioner forfeited the issue, the issue is barred by *res judicata*, and the matter is moot. It further notes petitioner raised this issue in his section 2-1401 petition and this court previously addressed it on appeal. *Hunt*, 2018 IL App (4th) 170775-U, ¶ 43. In his reply brief, petitioner disagrees it is the same issue as the one in his previous appeal and notes the supreme court recommended the remedy of *mandamus* for sentences that violated a mandatory sentencing requirement in *Castleberry*, 2015 IL 116916, ¶ 27.

¶ 27 In *Castleberry*, 2015 IL 116916, ¶ 27, our supreme court stated, "The remedy of *mandamus* therefore permits the State to challenge criminal sentencing orders where it is alleged that the circuit court violated a mandatory sentencing requirement, but precludes the State from challenging ordinary, discretionary sentencing decisions." Assuming petitioner could also

invoke *mandamus* to challenge a sentencing order that is noncompliant with a mandatory sentencing requirement, the relief to which petitioner would be entitled is the application of the mandatory sentencing provision. See *People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, ¶ 21, 72 N.E.3d 276 (explaining the relief when a sentence does not comply with a mandatory sentencing requirement). Here, the mandatory sentencing provision petitioner cites (720 ILCS 5/12-3.3(b) (West 2010) (eff. July 1, 2011)) related to his probation sentence. However, in 2014, the circuit court revoked petitioner's probation and resentenced him to a prison term of seven years. A *mandamus* petition is moot " 'if no actual rights or interests of the parties remain or if events occur that make it impossible for the court to grant effectual relief to either party.' " *Munroe-Diamond v. Munroe*, 2019 IL App (1st) 172966, ¶ 61, 139 N.E.3d 630 (quoting *Jackson v. Peters*, 251 Ill. App. 3d 865, 867, 623 N.E.2d 839, 840 (1993)). Here, the revocation of petitioner's probation and resentencing make it impossible for the court to grant effectual relief. Thus, we find petitioner's challenge to his original sentence based on the failure to include a mandatory sentencing requirement is moot.

¶ 28 2. *Sentencing Credit*

¶ 29 Petitioner also contends he is owed 704 days of sentencing credit in case No. 1868 for time previously served in case No. 1867 because the sentences in those cases ran concurrently and were part of the same plea agreement. The State contends petitioner has forfeited this issue by failing to raise it in a posttrial motion. However, this court has recognized a criminal defendant's statutory right to receive credit for time served is mandatory and thus forfeiture rules do not apply. *People v. Dieu*, 298 Ill. App. 3d 245, 249, 698 N.E.2d 663, 666 (1998).

¶ 30 Petitioner contends he was imprisoned in case No. 1867 from December 19, 2012,

to December 6, 2013, for a total of 352 days. He then claims he earned day-for-day credit, which brings the total to 704 days. Contrary to his argument, those days are not applicable to his sentence in case No. 1868. In *People v. Wadelton*, 82 Ill. App. 3d 684, 684, 402 N.E.2d 932, 933 (1980), the defendant pleaded guilty to burglary and misdemeanor theft pursuant to a plea agreement, and the court sentenced him to concurrent terms of three years' probation for burglary and 314 days of imprisonment for the theft. *Wadelton*, 82 Ill. App. 3d at 684, 402 N.E.2d at 933. Later, the defendant was found to have violated his probation, and the circuit court resentenced the defendant to a prison term of three years. *Wadelton*, 82 Ill. App. 3d at 687, 402 N.E.2d at 934. On appeal from the revocation of his probation, the defendant argued he should have received credit for the time spent in jail for theft because his probationary period for burglary ran concurrently, and thus, for some period of his probation, he was in custody. *Wadelton*, 82 Ill. App. 3d at 688, 402 N.E.2d at 935. The reviewing court found the statute (Ill. Rev. Stat., 1978 Supp., ch. 38, ¶ 1005-8-7(b)) was very clear that, unless the period of incarceration resulted from the offense for which the sentence was imposed, no credit should be given. *Wadelton*, 82 Ill. App. 3d at 688, 402 N.E.2d at 935. Thus, since the imprisonment resulted from the theft conviction and not the burglary conviction, the defendant was entitled to no credit for the time served in custody as a result of the theft conviction. *Wadelton*, 82 Ill. App. 3d at 688, 402 N.E.2d at 935. Citing *Wadelton*, the reviewing court reached the same result in *People v. Granados*, 271 Ill. App. 3d 995, 998-99, 649 N.E.2d 508, 511 (1995).

¶ 31 The relevant statute is now section 5-4.5-100(b) of the Unified Code of Corrections, and it still provides "the offender shall be given credit on the determinate sentence or maximum term and the minimum period of imprisonment for the number of days *spent in custody as a result of the offense for which the sentence was imposed*." (Emphasis added.) 730

ILCS 5/5-4.5-100(b) (West 2018). Thus, we find *Wadelton* is still good law. As in *Wadelton,* petitioner's concurrent sentences of probation in case No. 1868 and a prison term in case No. 1867 were part of a plea agreement. Accordingly, petitioner is not entitled to sentencing credit in case No. 1868 for his time served in case No. 1867.

¶ 32 In this case, petitioner is not entitled to relief as a matter of law on both of his contentions in his *mandamus* petition. Thus, the circuit court did not err by denying his petition for *mandamus* on the pleadings.

¶ 33 C. Sanctions

¶ 34 In its brief, the respondent asks this court to impose sanctions on petitioner under Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) because petitioner engages in litigation as a sport. Petitioner disagrees he is engaging in litigation as a sport. Petitioner notes he is currently out of prison, working 40 hours a week, and attending college full-time.

¶ 35 Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) allows a reviewing court to impose an appropriate sanction if:

> "it is determined that the appeal or other action itself is frivolous, or that an appeal or other action was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting or defending the appeal or other action is for such purpose."

"The purpose of Rule 375(b) is to condemn and punish the abusive conduct of litigants and their attorneys who appear before us." *Fraser v. Jackson,* 2014 IL App (2d) 130283, ¶ 51, 12 N.E.3d 62. The imposition of sanctions under Rule 375(b) is strictly in our discretion. *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 26, 39 N.E.3d 589.

¶ 36 After reviewing the record and the arguments before us, we will give petitioner the benefit of the doubt and exercise our discretion not to impose sanctions on him for this appeal.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 39 Affirmed.