

2014 IL App (2d) 140691-U  
No. 2-14-0691  
Order filed November 7, 2014

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> BARRON L.,	)	Appeal from the Circuit Court
	)	of Lake County.
a Minor.	)	
	)	No. 13-JD-772
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Barron L.,	)	Sarah P. Lessman,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Schostok and Birkett concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Appellate counsel's motion to withdraw granted where there were no issues of arguable merit regarding the minor's conviction or sentence.
- ¶ 2 After a bench trial, respondent, Barron L., age 15, was convicted of resisting a peace officer. 720 ILCS 5/31-1(a) (West 2012). The trial court sentenced respondent to a six-month term of probation and imposed certain fees. Respondent appealed, and the Office of the State Appellate Defender was appointed as counsel.
- ¶ 3 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's appellate attorney moves to withdraw as counsel. The attorney states that he has read the record and has found no issues of arguable merit. Further, the attorney supports his motion with a memorandum of law

providing a statement of facts, potential issues, and argument as to why those issues lack arguable merit. Counsel served respondent with a copy of the motion and memorandum, and we advised respondent that he had 30 days to respond. That time is past, and he has not responded.

¶ 4 Counsel asserts that it would be frivolous to argue that: (1) the evidence was insufficient to prove respondent guilty beyond a reasonable doubt; or (2) the court erred in imposing respondent's sentence. For the following reasons, we agree.

¶ 5 I. BACKGROUND

¶ 6 On December 19, 2013, respondent was charged with: (1) criminal trespass to government-supported property; and (2) resisting a peace officer. Trial commenced on April 16, 2014. The State's sole witness, Officer Jayson Geryol, testified that, on October 21, 2013, at around 7 p.m., he was on patrol in his marked squad car and saw a light shining through the glass doors of a stairwell at Hart School in North Chicago. Geryol testified that Hart School was closed, the building was boarded up and abandoned, and one section of the second floor had previously been set on fire.

¶ 7 Geryol testified that he approached the stairwell to investigate and found respondent and respondent's friend, Terrance, there. Geryol asked the minors what they were doing and whether they had any contraband. He found cannabis on Terrance. Eventually, Geryol escorted respondent to the squad car. According to Geryol, respondent was uncooperative in that Geryol had to "physically help" respondent walk to the squad car by pressing his hand against respondent's back. Once they arrived at the squad car, Geryol advised respondent that he "[was] going to be placed under arrest for trespass on school property[.]" Then, Geryol and a second officer, who had arrived to assist Geryol, told respondent to put his hands behind his back so that he could be handcuffed. Respondent did not cooperate and twisted away, and the officers had to

physically pull respondent's arms behind his back. Geryol demonstrated for the court the manner in which respondent twisted from right to left in an apparent effort to avoid being handcuffed. After a few seconds (but less than 10 seconds), the officers successfully handcuffed respondent. Respondent ultimately calmed down. Geryol agreed that he could not recall the name of the second officer, and he further agreed that his incident report did not mention: (1) a second officer; or (2) that Geryol told respondent that he was under arrest.

¶ 8 The State rested. The trial court granted respondent's motion for a directed finding on the charge of criminal trespass to government-supported property. The court noted that there was no evidence presented that the property was government supported or that respondent had been notified that entry was forbidden, and it found that "[t]he State did not meet its burden during its case in chief." The court denied the motion for a directed finding on the charge of resisting a peace officer and, in doing so, noted that it found Geryol's testimony credible.

¶ 9 Respondent testified that he and Terrance were in the school stairwell when two officers appeared. Respondent agreed that they were uniformed and that he knew they were police officers. One officer shined his flashlight on them, asked if they had any contraband, and instructed them to empty their pockets. Respondent testified that Terrance had on his person a pack of cigarettes that actually belonged to respondent. One officer (not Geryol) took the cigarettes, and respondent asked if he would give respondent money to buy more. The officer replied that he was going to throw them away, and he told respondent to stand up. When respondent stood up, the officer grabbed him by the arm. Respondent pulled back. The officer then grabbed both of respondent's arms, and both officers pressed respondent against the squad car to handcuff him. Respondent testified that, when grabbed, pulling away was simply a natural reaction and, further, that the officers did *not*, before grabbing him, tell him that he was under

arrest. Instead, respondent testified that he was first told that he was under arrest when he was at the police station. Respondent confirmed on cross-examination that he “jerked away” when the officers were trying to handcuff him. However, respondent also testified that he could not resist because he was pinned up against the car. Respondent denied knowingly resisting an arrest.

¶ 10 The trial judge found respondent guilty of resisting a peace officer. The court stated that it found Geryol credible, and it noted that Geryol “testified that he did place [respondent] under arrest.” Further, the court found, based on Geryol’s testimony and demonstration, that, when respondent was told to put his hands behind his back, he twisted in a manner that made it difficult for the officers to handcuff him. The court noted that respondent testified that he: (1) was not told he was being placed under arrest; (2) jerked back because the officer was grabbing at him; and (3) could not resist because he was pressed against the squad car. It found, however, that respondent’s “testimony was not credible looking at the totality of the circumstances.” Finally, referencing certain caselaw, the court noted that, where the evidence reflected that a reasonable person in respondent’s position would have realized that he was being arrested, the fact that the officer did not employ specific words to that effect (such as, “you are under arrest”) was not fatal to a resisting-arrest conviction.

¶ 11 Respondent moved for reconsideration and a new trial. Respondent argued generally that the evidence was insufficient to sustain his conviction. More specifically, respondent argued that the court “found that the arresting officer did not inform the minor that he was under arrest,” and that the caselaw considered by the court (for the proposition that the minor need not be informed that he was under arrest) was distinguishable. At a hearing on the motion, respondent’s counsel argued that Geryol lacked probable cause to arrest respondent and that Geryol did not tell respondent he was under arrest. As such, counsel argued that no reasonable person in

respondent's position would have realized he was resisting arrest by pulling away from Geryol. The court denied the motion, again noting that Geryol had testified credibly.

¶ 12 At sentencing, respondent's social history report was submitted, which reflected that respondent had been arrested on five separate occasions in 2013 and 2014 for property crimes and domestic violence, although the arrest in this case was the first to result in an adjudication. The State requested a sentence of probation. Respondent's counsel argued that the court should dismiss the charge because the incident was triggered by Geryol's illegal arrest of respondent. Counsel argued that Geryol lacked probable cause to arrest respondent and asked the court to recall "how quickly" it granted a directed finding on the criminal trespass charge. Therefore, had Geryol not committed an illegal arrest, respondent would not have resisted.

¶ 13 The court sentenced respondent to six months of probation. The court further ordered respondent to pay reduced probation fees of \$30 per month, based upon his family's financial circumstances. Finally, the court ordered respondent's mother to pay a reduced public defender fee in the amount of \$175. This appeal and *Anders* motion followed.

¶ 14

## II. ANALYSIS

¶ 15 Counsel asserts first that the only issue preserved for appeal concerns the sufficiency of the evidence to find respondent guilty beyond a reasonable doubt of resisting a peace officer. He contends that there is no arguable merit to that argument, and we agree.

¶ 16 When reviewing a minor's challenge to the sufficiency of the evidence, we consider whether, viewing all evidence in the State's favor, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *In re W.C.*, 167 Ill. 2d 307, 336 (1995). A person commits the crime of resisting a peace officer when he or she knowingly resists a police officer's performance of an authorized act. 720 ILCS 5/31-1(a) (West 2012).

¶ 17 Here, there is no dispute that respondent knew Geryol was a police officer and that he twisted or pulled away from Geryol. Further, an arrest, *even if unlawful*, is an authorized act. *City of Champaign v. Torres*, 214 Ill. 2d 234, 242 (2005). The question, therefore, is simply whether there was sufficient evidence for the court to find beyond a reasonable doubt that, when respondent twisted or pulled away, he knew that he was resisting an arrest. Geryol's testimony provided the evidence by which the court could have found this element satisfied. Geryol testified that, *before* respondent moved away, he *told* respondent he was under arrest. The court explicitly found Geryol's testimony credible. Although respondent testified that Geryol did not tell him he was under arrest, the court found respondent's testimony not credible. We will not substitute our judgment for that of the trial court, whose function it is to make credibility determinations and weigh the evidence. *People v. Nally*, 134 Ill. App. 3d 865, 868 (1985). Viewing the evidence in the State's favor, the evidence was sufficient to sustain the conviction.

¶ 18 We briefly note that respondent raised two arguments below that were based on erroneous premises. First, respondent argued that the court found Geryol did *not* tell him he was under arrest. The court made no such finding. Rather, the court found Geryol's testimony credible, but noted, in any event, that the words "you are under arrest" (or other such language) are not necessary to sustain a resisting-arrest conviction. Second, respondent suggested that the court's dismissal of the criminal-trespass charge reflected a finding that respondent's arrest lacked probable cause.<sup>1</sup> Again, the court made no such finding. The court dismissed the

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<sup>1</sup> Counsel also correctly notes that there is no arguable merit to the issue of whether probable cause existed to arrest respondent. Geryol testified that, around 7 p.m., he found respondent, a minor, at Hart School which was closed, boarded up, and abandoned. Thus, the facts were sufficient for a reasonable person to believe that respondent was committing the crime

criminal-trespass charge because of insufficient evidence at trial that the property was government supported and that respondent had been notified that entry was forbidden. As such, the dismissal was based on the State's failure to meet its burden, not the officer's alleged lack of probable cause. In sum, we agree with counsel that there would be no arguable merit to an argument attacking the sufficiency of the evidence.

¶ 19 Counsel next argues that he can raise no issue of arguable merit concerning respondent's sentence. Again, we agree. Sentencing decisions are reviewed for an abuse of discretion. See *People v. Hambrick*, 2012 IL App (3d) 110113, ¶ 22. Here, the trial court was authorized to sentence respondent to up to five years of probation, so the six-month term imposed was on the lower-end of the permissible sentencing range. 705 ILCS 405/5-710 (West 2012); 705 ILCS 405/5-715(a) (West 2012); see also *People v. Null*, 2012 IL App (2d) 110189, ¶ 55 (noting that a sentence within the sentencing range will not be disturbed unless it is manifestly disproportionate to the nature of the offense). The social history report reflected that respondent had prior arrests, including one while this case was pending. Therefore, there would be no arguable merit to an argument that the court's imposition of a six-month term of probation constituted an abuse of discretion.

¶ 20 Further, there would be no arguable merit to an argument attacking the imposed fees. The trial court was required to impose the probation fee, but reduced it from \$50 to \$30, based upon respondent's family's financial circumstances. 705 ILCS 405/5-715(5) (West 2012). Further, the court considered the family's financial circumstances before imposing a \$175 public defender fee (apparently, also a reduced amount). As the court was authorized to impose a reasonable fee, if the evidence reflected an ability to pay, there was no abuse of discretion. 705

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of trespass. See *e.g.*, *People v. Wetherbe*, 122 Ill. App. 3d 654, 657-58 (1984).

ILCS 405/6-9(1) (West 2012). Accordingly, we agree with counsel that there is no arguable merit to an argument challenging respondent's sentence.

¶ 21 After examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that the appeal presents no issue of arguable merit. Thus, we grant the motion to withdraw and affirm the judgment of the circuit court of Lake County.

¶ 22

### III. CONCLUSION

¶ 23 For the reasons stated, the judgment of the circuit court of Lake County is affirmed.

¶ 24 Affirmed.