2012 IL App (1st) 101652-U

SECOND DIVISION
March 30, 2012

No. 1-10-1652

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 2159
	)	
DARIUS WALTON,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

O R D E R

¶ 1 *Held*: Where trial court placed parties on notice that it would not consider a negotiated plea after it set the case for trial, court did not abuse its discretion in refusing to consider plea agreement after commencement of jury selection and then sentencing defendant based on open plea, and thus, no plain error occurred; the judgment of the trial court was affirmed.

¶ 2 Pursuant to an open guilty plea, defendant Darius Walton was convicted of first degree murder and was sentenced to 60 years in prison. On appeal, defendant contends his conviction should be reversed and this case remanded because the trial court abused its discretion in refusing to consider a plea agreement because jury selection for defendant's trial had begun. We affirm.

¶ 3 Defendant was charged with the October 2007 shooting death of Ronald Heard. Defendant first appeared before the trial court in February 2008, after which he received a fitness exam and was found fit to stand trial in August 2008. Defendant was 23 years old at the time of the offense.

¶ 4 After the parties engaged in discovery and the defense filed several motions, defense counsel addressed the court on November 12, 2009, and stated that the parties had reached a plea agreement. Counsel requested a conference pursuant to Supreme Court Rule 402 "just to run the circumstances past Your Honor." Defense counsel told the court that defendant had agreed to accept the State's offer of 45 years in prison, which was the minimum term allowed by law.[1]

¶ 5 The court admonished defendant as to the length of his agreed-upon sentence, his waiver of a jury and his decision to forego a trial by entering a plea. Defendant then told the court he did not want to plead guilty. The court conferred with counsel for both sides and set the case for trial on January 4, 2010. The court then stated: "I would point out so everybody knows once the case is set for trial, there [are] no more negotiated pleas."

¶ 6 On January 4, 2010, defense counsel reported the parties were ready for trial. The State indicated it would proceed to trial on two counts in the indictment. Jury selection began.

¶ 7 After several jurors were chosen, the following exchange took place in chambers:

> "THE COURT: What do you want your lawyer to do?
>
> DEFENDANT: I wanted to ask my judge for a plea.
>
> THE COURT: I am not getting involved in a conference. Mr. Walton, at this point, the minimum sentence is 45. The maximum is life. Is there anything to talk about?

[1]The minimum term for first degree murder is 20 years in prison (730 ILCS 5/5-8-1(a) (West 2006)), and an additional term of 25 years to life was required because the offender caused the death by personally discharging a firearm (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2006).

DEFENDANT: I said –

THE COURT: Is there something to talk about? The minimum is 45 years, the maximum is life. Is there something to talk about under these circumstances? We went through this the last time *** and then he changed his mind as we get all the way through.

Mr. Walton, the minimum sentence is 45 years *** up to life imprisonment. What is there to talk about at this point?

MR. LIPSON [assistant public defender]: Judge, if I can interject, the State and Mr. Phalen [assistant public defender] have come to an agreement pursuant to –

THE COURT: We went through this the last time. You had an agreement before.

MR. LIPSON: I think that we're doing this differently.

THE COURT: No, if the parties want to do a blind plea, I will certainly consider that, but the minimum is 45 years [] to life.

MR. PHALEN: We know, yes.

THE COURT: You negotiated a plea. We went through this the last time. We started doing the plea and then he changed his mind.

MR. BRASSIL [assistant State's attorney]: May I talk to counsel for a minute.

THE COURT: In future, guys, try not to waste my time. I want to finish. What is there to talk about, [Mr. Lipson]? The minimum sentence is 45 calendar years [in prison]. What is there to talk about?

MR. LIPSON: But if my client wants to take that offer that's available, he is entitled to –

THE COURT: When we've got the jury selection started, I'm only agreeing to a blind plea. He'll possibly do 45 to life. We can do that. Even a 45-year sentence is a life sentence for a guy his age.

MR. LIPSON: I can request you talk to the jury on –

THE COURT: We'll finish the selection. Do this on your own time in the future. Don't waste my time. We've been here since 2 [p.m.] trying to get this jury picked. Now you're telling me he wants to plead guilty.

MR. LIPSON: Judge, this happened moments ago.

THE COURT: Mr. Lipson, I'll take a plea at this point. It's going to be a blind plea, 45 years to life. You will never hear the end of it, post-conviction motions to withdraw for ineffective assistance of counsel [*sic*] and everything else. Talk to him. Do what you want to do.

MR. BRASSIL: We'll finish the jury selection and we can talk.

MR. PHALEN: Then we can decide what the next move is."

¶ 8 Jury selection was completed, and the court made the following statement to the attorneys outside the presence of the jury:

"THE COURT: We have a jury. We spent four hours and 15 minutes getting it.

If the defendant wants to plead guilty to an open plea, he can probably do it. I can't keep him from pleading guilty, but I will not accept a negotiation between either side. And the minimum sentence in this case is 45 calendar years [] up to a life sentence.

I went through this once before. Once [defendant] started talking about pleading guilty to the 45 years, he started, went back and forth, then he didn't want to do it, which is fine. Then it was set for trial today.

> I cannot give a – keep a guy from pleading guilty on the blind plea, but at this stage, the court does not have to accept any negotiations and I will not accept any negotiations because I went through this once before and that's why we are here now."

¶ 9 The next day, defense counsel informed the court that defendant had decided to enter an open, or blind, guilty plea "against [counsel's] advice." The court addressed defendant, who told the court he was aware his decision was contrary to his attorney's advice. The court admonished defendant as to his guilty plea, and the State gave the factual basis for the plea. The State indicated it would present testimony that defendant fatally shot Heard on October 6, 2007, after an argument outside a White Castle restaurant at 6901 South Western Avenue in Chicago. The shooting was witnessed by three people who accompanied Heard and was recorded on a Chicago Police Department surveillance camera as well as a restaurant camera.

¶ 10 The court accepted defendant's guilty plea and continued the case for a pre-sentence investigation. Defendant was found fit for sentencing. On March 25, 2010, the court heard evidence in aggravation and mitigation of defendant's sentence. The State presented the testimony of a Cook County deputy sheriff as to defendant's behavior while in a maximum security sector of the Cook County jail in 2009. The deputy testified that defendant threw things from his cell, shouted profanities and threw a cup of urine at him. The court also heard a victim impact statement read by Heard's sister.

¶ 11 The State also summarized defendant's criminal history, which included juvenile cases involving drug possession for which defendant received probation and subsequently violated those terms of probation. As an adult, defendant committed additional offenses, including possession of a stolen motor vehicle, aggravated unlawful use of a weapon and drug possession, and again violated his probation. Additionally, the State noted defendant's gang affiliation and lack of employment history.

¶ 12 In mitigation, defense counsel presented records of a psychological evaluation of defendant. Defendant addressed the court and expressed remorse for his actions. The court sentenced defendant to 35 years for the murder and the minimum 25-year enhancement for discharging a firearm causing death, for a total sentence of 60 years in prison.

¶ 13 On May 26, 2010, defense counsel filed a motion to withdraw defendant's plea, asserting that defendant had not been fit on January 5, 2010, when he entered his guilty plea, because he was not properly medicated. The trial court denied the motion to withdraw the plea, noting defendant chose to plead guilty and lacked any valid basis to withdraw his voluntary plea.

¶ 14 On appeal, defendant contends the trial court abused its discretion in refusing to consider the terms of the negotiated plea on January 4, 2010. Defendant acknowledges his counsel did not include this argument in his motion to withdraw his plea, which would normally forfeit any review of those claims under Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 15 Defendant first argues this court should not consider his current argument forfeited because it is based on the conduct of the trial judge, an exception known as the *Sprinkle* doctrine. See *People v. Sprinkle*, 27 Ill. 2d 398, 400-01 (1963). That doctrine relaxes the forfeiture rule where the trial court "has overstepped its authority in the presence of the jury or when counsel is effectively prevented from objecting as any objection would have 'fallen on deaf ears.' " *People v. Hanson*, 238 Ill. 2d 74, 118 (2010), quoting *People v. McLaurin*, 235 Ill. 2d 478, 488 (2009).

¶ 16 Defendant argues the *Sprinkle* doctrine can be applied here because defense counsel's attempts to inform the court of a negotiated plea agreement were rebuffed and an objection would be based on the trial judge's bias against the defendant. However, the forfeiture of an issue is excused under this doctrine only in extraordinary situations, such as where a judge makes inappropriate remarks to a jury or when the judge relies on social commentary, as opposed to the evidence, in imposing a death sentence. See *People v. Thompson*, 238 Ill. 2d 598, 612 (2010).

¶ 17 In the instant case, the trial court expressed impatience with defendant (and with counsel for both sides) at several points, including when defendant announced on the day of jury selection that he wanted to plead guilty. However, defense counsel was not prevented from raising and preserving any objection after defendant's blind plea was accepted and defendant was sentenced. Defense counsel did not include the issue in his motion to withdraw his plea or motion to reconsider his sentence. The record here does not warrant application of the *Sprinkle* doctrine.

¶ 18 As an alternative means of review, defendant asserts this court can reach the issue of his unsuccessful plea attempt under the substantial rights prong of the plain error rule, under which this court can consider a forfeited claim where a clear and obvious error occurred and the error is so serious that it challenged the integrity of the judicial process. See *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). A trial court's failure to follow proper procedure governing guilty pleas and plea agreements has been found to constitute plain error. See *People v. Collins*, 100 Ill. App. 3d 611, 614 (1981). The first step in plain error analysis is to determine whether a clear or obvious error occurred. *Piatkowski*, 225 Ill. 2d at 565. It is the defendant's burden to demonstrate error. *People v. Herron*, 215 Ill. 2d 167, 187 (2005).

¶ 19 Defendant argues the trial court erred in refusing to consider the negotiated plea agreement on the day that jury selection was slated to begin. He contends the judge favored expediency at the expense of his right to enter a plea.

¶ 20 The plea bargaining process, and the negotiated plea agreements that result from that process, are "vital to and highly desirable for our criminal justice system." *People v. Evans*, 174 Ill. 2d 320, 325 (1996), citing *Santobello v. New York*, 404 U.S. 257, 260-61 (1971). However, while plea bargaining is to be encouraged, a defendant does not have an absolute right to have a guilty plea accepted by the circuit court, and a court may reject a proposed plea agreement in the exercise of sound judicial discretion. *Santobello*, 404 U.S. at 262; *People v. Henderson*, 211 Ill.

2d 90, 103 (2004). An abuse of discretion will be found only where the court's ruling is arbitrary, fanciful or unreasonable or where no reasonable person would take the view adopted by the trial court. *People v. Baez*, 241 Ill. 2d 44, 105 (2011).

¶ 21 In the past decade, this court has twice considered a trial judge's ability to reject a plea agreement as untimely based on a deadline set by the judge. In *People v. Henderson*, 334 Ill. App. 3d 290, 294 (3d Dist. 2002), this court noted that it faced a question of first impression in Illinois when it held the trial court abused its discretion in rejecting a guilty plea presented after a court-imposed deadline, noting the court's action did "not seem to be in the best interests of justice or of public policy concerning resolution of cases."

¶ 22 The appellate court noted two different theories regarding plea deadlines that had evolved in other jurisdictions: (1) inflexible plea deadlines, by their very nature, eliminate the court's exercise of its discretion in accepting a plea; and (2) plea deadlines are integral to the court's case management authority and "may be enforced where the parties have actual notice of the court's practice and where exceptions to the deadline are permitted for good cause." *Henderson*, 334 Ill. App. 3d at 294, citing *State v. Hager*, 630 N.W. 828 (Iowa 2001) and *People v. Jasper*, 17 P.3d 807 (Colo. 2001). The appellate court found the first theory, espoused in *Hager*, to be more persuasive, stating "it is an abuse of discretion for the court to refuse to exercise discretion in determining whether the plea should be accepted or rejected on the merits simply because an arbitrary deadline has passed." *Henderson*, 334 Ill. App. 3d at 295.

¶ 23 However, the Illinois Supreme Court reversed, stating that the issue of the trial court's rejection of the plea was not properly before the appellate court because no plea agreement had been presented to the trial court for its consideration. *Henderson*, 211 Ill. 2d at 103. Rather, the supreme court noted, the State made an offer that had not been accepted by the defense, and the defendant then attempted to reach a plea agreement directly with the trial court. *Henderson*, 211

Ill. 2d at 103-05 ("*the parties* were not, jointly, either indicating a desire to negotiate further or presenting a negotiated agreement for the court's consideration") (Emphasis in original.)

¶ 24 Several months after the supreme court ruled in *Henderson*, this court held in *People v. Allen*, 351 Ill. App. 3d 599, 607 (4th Dist. 2004), that a trial judge abused its discretion in refusing to consider a plea agreement presented on the scheduled day of trial. Finding it addressed a matter of first impression, this court in *Allen* disagreed with the notion of a plea deadline unless notice was provided to the parties, stating: "[I]f the parties tender a plea agreement before trial, it is arbitrary for a court to summarily reject it as late unless the court told the parties, in advance, what 'late' meant with respect to tendering plea agreements." *Allen*, 351 Ill. App. 3d at 607. The court noted it did "not appear from the record in this case that the court ever notified the parties in advance that it would refuse to consider plea agreements tendered after a certain date." *Allen*, 351 Ill. App. 3d at 607. No published Illinois decision since *Allen* has addressed this issue.

¶ 25 Applying the standard set out in *Allen*, the trial court here did not abuse its discretion in rejecting the defendant's request to enter a negotiated plea on January 4, 2010. On November 12, 2009, defense counsel told the court that a plea agreement had been reached, after which defendant told the court he did not want to plead guilty. The court set a trial date, and then expressly imposed a deadline, as contemplated in *Allen*, by stating that once the case was set for trial, there would be "no more negotiated pleas." Therefore, the court gave notice to the parties as to when a plea agreement would be rejected as late. See *Allen*, 351 Ill. App. 3d at 607.

¶ 26 It is true that the court did not hear the terms of the plea agreement the parties attempted to present on the day of trial. However, the trial court was not required to consider the plea agreement's merits because the court had already indicated when setting the case for trial that it would reject any negotiated plea presented at that time. The court did not commit error in ruling that defendant could not enter a negotiated plea after jury selection had begun. Because

defendant has not established error, there can be no plain error. See *Piatkowski*, 225 Ill. 2d at 565.

¶ 27 Accordingly, the judgment of the trial court is affirmed.

¶ 28 Affirmed.