2012 IL App (1st) 110516-U

Third Division
August 22, 2012
Modified Upon Denial of Rehearing September 26, 2012

No. 1-11-0516

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.	)	09 CR 11999
	)	
VICTOR NAVARRO,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Steele and Justice Salone concurred in the judgment.

ORDER

¶ 1 *Held*: When a defendant who has pled guilty seeks to appeal from his sentence, the appellate court lacks jurisdiction to consider the appeal unless the defendant has filed a motion to withdraw his guilty plea, and the trial court has ruled on the motion.

¶ 2 The defendant, Victor Navarro, pled guilty to aggravated discharge of a firearm, and the trial court sentenced him to four years in the Illinois Department of Corrections (IDOC). IDOC decided to award Navarro only 4.5 days' good conduct credit for each month of his sentence,

although it awarded day-for-day credit to Navarro's codefendant, who pled guilty to the same charge in exchange for the same sentence. Navarro moved to correct the mittimus, and the trial court denied the motion. Navarro now appeals.

¶ 3 We find that the trial court had jurisdiction to enter the sentencing order, so the order and the corresponding mittimus are not void. Because Navarro failed to seek leave to withdraw his guilty plea before filing this appeal, we find that we lack jurisdiction to consider the appeal. Accordingly, we dismiss the appeal.

¶ 4 BACKGROUND

¶ 5 Around 4:30 a.m. on June 19, 2009, two men fired gunshots into a crowd on Chicago's west side. A car sped from the scene of the shooting, and police near the scene gave chase. The officers stopped a car a few miles away, and arrested the driver, Victor Navarro, and his two passengers.

¶ 6 Navarro told a detective that he and Jesus Suarez fought with some men on June 18, 2009. Later that evening, Navarro, Suarez, and another man, named Gonzalez, obtained guns. They returned to the scene of the fight after midnight on the 19th. Suarez and Gonzalez got out of the car while Navarro stayed behind the wheel. Navarro heard 11 or 12 gunshots. Suarez and Gonzalez got back in the car and Navarro drove off with the police in pursuit. Navarro tried to elude police, but police caught him. A grand jury indicted Navarro and Suarez for aggravated discharge of a firearm.

¶ 7 Navarro agreed to plead guilty to the charge in exchange for a recommendation of a sentence of four years in prison. At the hearing on July 12, 2010, Navarro stipulated that the detective

would testify about what Navarro said in the interview shortly after the shooting. The trial court accepted the guilty plea and sentenced Navarro to four years in prison.

¶ 8 On August 10, 2010, Navarro moved to withdraw his guilty plea, but on September 21, 2010, he withdrew the motion to withdraw the plea.

¶ 9 On January 3, 2011, Navarro filed a motion to amend the mittimus to add an express finding that the aggravated discharge of a firearm did not cause great bodily harm. He believed that the amended mittimus would cause IDOC to award him a one day reduction in his period of imprisonment for each day of good conduct in prison. According to Navarro, IDOC gave him only 4.5 days of good conduct credit for each month he spent in prison. In support of his motion, Navarro presented an IDOC record which showed that IDOC expected Navarro to serve almost 3½ years because it would award him only 4.5 days of good conduct credit for each month he served. A similar record for Suarez, who pled guilty to the same charge in exchange for the same sentence of four years in prison, showed that the prison expected to release Suarez after he served two years, because it awarded him day-for-day good conduct credit.

¶ 10 The trial court denied Navarro's motion for correction of the mittimus. Navarro filed a notice of appeal.

¶ 11 ANALYSIS

¶ 12 The State points out that a defendant who pleads guilty must file a motion to withdraw his plea before pursuing appellate relief. Ill. S. Ct. R. 604(d) (eff. July 1, 2006); *People v. Flowers*, 208 Ill. 2d 291, 301 (2004). Navarro acknowledges that he did not comply with the

rule, but he argues that the rule does not apply because the trial court imposed a void sentence that does not conform to statutory requirements. See *People v. Arna*, 168 Ill. 2d 107, 113 (1995).

¶ 13 Section 5-4-1(c-1) of the Unified Code of Corrections provides:

> "In imposing a sentence for the offense of aggravated kidnapping for ransom, home invasion, armed robbery, aggravated vehicular hijacking, aggravated discharge of a firearm, or armed violence with a category I weapon or category II weapon, the trial judge shall make a finding as to whether the conduct leading to conviction for the offense resulted in great bodily harm to a victim, and shall enter that finding and the basis for that finding in the record." 730 ILCS 5/5-4-1(c-1) (West 2008).

¶ 14 The trial court did not make any finding pursuant to section 5-4-1(c-1). However, the lack of that finding does not make the sentence void. See *People v. Salley*, 373 Ill. App. 3d 106, 109 (2007). The trial court's failure to make a finding concerning great bodily harm does not give this court jurisdiction to consider this appeal without a decision on a motion to withdraw the guilty plea and vacate the judgment. Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 15 Navarro also argues that the court lacked jurisdiction to impose a sentence that did not permit him to earn day-for-day good conduct credit. The trial court imposed a sentence of four years for the offense of aggravated discharge of a firearm, and that sentence falls at the low end of the available range for the offense. See 730 ILCS 5/5-8-1(a)(4); 720 ILCS 5/24-1.2 (West

2008). The sentencing order makes no mention of good conduct credit, and it need not make such mention. See *Salley*, 373 Ill. App. 3d at 109. The trial court had jurisdiction to impose the sentence it imposed. IDOC's failure to award Navarro day-for-day good conduct credit does not give this court jurisdiction to consider this appeal from the denial of a motion to correct the mittimus issued after the trial court accepted Navarro's guilty plea.

¶ 16 Finally, Navarro argues that Supreme Court Rule 615 gives this court jurisdiction to hear this appeal. Ill. S. Ct. R. 615 (eff. Aug. 27, 1999). Rule 615(b)(2) broadly empowers this court to "modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken," (Ill. S. Ct. R. 615(b)(2) (eff. Aug. 27, 1999)), but only when this court has jurisdiction to decide the appeal. *People v. Dixon*, 91 Ill. 2d 346, 353 (1982). Rule 615 does not confer jurisdiction on this court to decide a case without a proper notice of appeal. *Dixon*, 91 Ill. 2d at 353. Here, Rule 604(d) restricts this court's jurisdiction to decide an appeal from a judgment entered, like the judgment here, on a plea of guilty. When the defendant has not complied with Rule 604, this court lacks jurisdiction to consider an appeal from a judgment entered following the entry of a guilty plea. *Flowers*, 208 Ill. 2d at 301.

¶ 17 Petition for Rehearing

¶ 18 In a petition for rehearing, Navarro argues that we have jurisdiction to consider the appeal because the trial court imposed an invalid sentence under section 3-6-3(a)(2)(iv) of the Unified Code of Corrections (730 ILCS 5/3-6-3(a)(2)(iv) (West 2008)), rather than a valid sentence under section 3-6-3(a)(2)(iii) (730 ILCS 5/3-6-3(a)(2)(iii) (West 2008)). The

sentencing order makes no reference to section 3-6-3. The sentencing order shows only a valid sentence of four years in prison for the offense of aggravated discharge of a firearm.

¶ 19 As proof that the trial court actually entered an invalid sentence, beyond the court's jurisdiction, Navarro points to a transcript from a proceeding on his motion to correct the mittimus. The court sent IDOC the sentencing order, with no reference to section 3-6-3, on July 12, 2010. On July 27, 2010, IDOC printed out its status report for Navarro, showing a projected parole date of September 12, 2013, indicating that Navarro would serve 85% of his four-year sentence. On December 7, 2010, Navarro filed his motion to correct the mittimus, and in that motion he specifically requested a finding that his crime did not cause great bodily harm. The trial court, on December 17, 2010, denied the motion. The complete transcript of the proceeding says:

> "THE COURT: Mr. Navarro has asked that corrected mitt in fact that received good time credit at 50 percent. The statute under which he was convicted sentence at 85 percent statute. Motion for corrected Mitt is denied. Defendant to be notified. Off Call. [*sic*]."

¶ 20 Navarro insists that the transcript proves that the trial court imposed a void sentence under section 3-6-3(a)(2)(iv) (730 ILCS 5/3-6-3(a)(2)(iv) (West 2008)), and therefore this court has jurisdiction to review the sentence despite Navarro's failure to comply with Rule 604.

¶ 21 We do not see how the December 17 transcript can retroactively void a judgment entered in July 2010. Navarro cites no authority holding a judgment void because of a comment the judge made at a subsequent proceeding. Nothing in the transcript shows that the trial court

lacked authority to decide the case or to enter the sentencing order it actually entered. The sentencing order remains a valid order for a sentence well within the range of available sentences for the offense to which Navarro pled guilty. The order makes no reference to section 3-6-3(a)(2) or great bodily harm, and the lack of any such reference does not affect the validity of the order or give this court jurisdiction to hear this appeal where Navarro did not comply with the jurisdictional requirements of Rule 604.

¶ 22 CONCLUSION

¶ 23 Because Navarro, who pled guilty, failed to seek leave to withdraw his guilty plea, the appellate court lacks jurisdiction to consider this appeal from an order denying a motion to modify the mittimus, as the trial court had jurisdiction to enter the sentencing order it entered, and the mittimus reflects that order. Accordingly, we dismiss the appeal.

¶ 24 Appeal dismissed.