2016 IL App (1st) 160948-U

Nos. 1-16-0948 & 1-16-0949 (Consolidated)

FIFTH DIVISION
September 2, 2016

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF J.H., a Minor,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
	)	
	)	No. 15 JD 2323
	)	
	)	The Honorable
	)	Lana Charise Johnson,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

O R D E R

¶1 *HELD*: Minor-respondent was not entitled to withdraw his guilty pleas based on his argument that he did not understand the requirements and consequences of the Sexual Offender Registration Act where compliance with the act was a collateral consequence that did not require admonishment by the trial court to satisfy the voluntary and intelligent requirements for acceptance of a guilty plea.

¶2 Minor-respondent, J.H., appeals from his adjudication of delinquency and dispositional order of five years' probation and lifetime sex offender registration following his pleas of guilty

for criminal sexual abuse to separate victims across two cases and robbery to one victim. Respondent contends the trial court erred in refusing to allow him to withdraw his guilty pleas where he did not understand the requirements and consequences of the Sexual Offender Registration Act (SORA) (730 ILCS 150/1 *et seq.* (West 2014)) and, therefore, did not knowingly and voluntarily enter those pleas. Based on the following, we affirm.

¶3 FACTS

¶4 On June 24, 2015, in accordance with the terms of a plea agreement, respondent pled guilty to one count of criminal sexual abuse related to an incident with R.M. that occurred in December 2014. Respondent's agreed-upon sentence included three years' probation and registration as a sex offender for 10 years. The State announced the sentence in open court and respondent's counsel acknowledged that defendant's plea "require[d] registration [under SORA] for a period of ten years." Prior to entering his plea, respondent was admonished. Respondent stated he understood that, by pleading guilty, he was giving up his right to a trial, to the presentation of evidence and witnesses by the State, to the State having to prove its case beyond a reasonable doubt, and to presenting a defense. Respondent also stated that he was not promised anything in exchange for his plea outside the terms of the agreement and that his plea was a product of his own free will. After the State provided a factual basis to support respondent's plea, the trial court found that "[respondent] understands the nature of the charges, the possible penalties. The plea has been given freely and voluntarily. A factual basis exists with the plea, and the plea will therefore be accepted." Respondent was not sentenced on that court date; instead, the case was continued for a social investigation and a sex offender evaluation.

¶5 Prior to the next court date, however, respondent was arrested and charged with new offenses, including, *inter alia*, two counts of criminal sexual abuse. Respondent requested a 402

conference in relation to the new charges. Following the 402 conference, respondent pled guilty to one count of criminal sexual abuse to D.N.E. and one count of robbery of M.B. related to the new offenses occurring in July 2015. Prior to accepting respondent's plea, the trial court again admonished respondent of his rights to a trial, to forcing the State to prove its case beyond a reasonable doubt, to confront witnesses against him, and to presenting a defense. Respondent stated that he had not been threatened or promised anything and that he was entering the plea of his own free will. Then, after hearing the State's factual basis, the trial court found "[respondent] understands the nature of the charges, the possible penalties, the plea. The plea has been given freely and voluntarily. A factual basis exists for the plea and the plea will, therefore, be accepted."

¶6 On October 28, 2015, respondent was sentenced in both cases. The State requested that respondent be sentenced to the Department of Juvenile Justice. The State, however, acknowledged that, at the earlier 402 conference, the court indicated it would sentence respondent, in relevant part, to 5 years' probation and a lifetime registration under SORA. Respondent's attorney acknowledged that the statute required respondent to lifetime sex offender registration. Ultimately, the trial court sentenced respondent to five years' probation and a lifetime registration under the SORA, along with other obligations. Respondent's mother was provided an opportunity to address the court at the sentencing. With regard to the requirement that respondent register under the SORA, respondent' mother stated: "to have somebody say my son is going to be doing this for a lifetime, you know, it's like there's no future for him. But I understand this is how the law works and this is how it's set up, but I really don't know. I just pray that he gets everything together, and maybe he can come off in five years." Assistant State's Attorney (ASA) Adrienne Lund informed the court that respondent's probation officer, Jessica

McConville, reviewed the SORA notification form with respondent and his mother. ASA Lund stated that respondent initialed each and every paragraph of the SORA notification form and also signed it. After the trial court announced his sentence, respondent indicated that he understood.

¶7 Then, on November 24, 2015, respondent filed a motion to withdraw both of his guilty pleas and to vacate the findings in the cases, alleging the pleas were not knowing and voluntary because he did not understand the SORA requirements. In affidavits attached to his motions, respondent stated that he signed the documents regarding SORA without understanding them. The request to withdraw his guilty pleas took place one week after respondent was arraigned for a third, separate sex case. After hearing arguments from respondent's counsel and the State and considering relevant case law, the trial court denied respondent's motion to withdraw his guilty pleas. First, the trial court found respondent knowingly and voluntarily entered a guilty plea for the December 2014 offense. In so finding, the trial court stated:

> "He was fully aware of the consequences at the time [of his plea]. The Court believes [respondent] did understand the requirements and conditions along with the sanctions for failure to comply with the Illinois Sex Offender Registration Act. They were explained to him in court. It was put on the record—well, it was explained to him by Ms. McConville, and there was no objection made that he did not understand it when I went through admonishments at that time. So we believe that, again, it was a knowing and voluntary plea of guilty and that he did understand the consequences of pleading guilty and what would be required of him under the Illinois Sex Offender Registration Act."

The trial court additionally concluded that respondent made a knowing and voluntary plea of guilty for the July 2015 offenses. In so finding, the trial court stated:

"He understood the consequences of the plea. He understood the requirements, conditions, along with any sanctions for failure to comply with the Illinois Sex Offender Registration Act. They were explained to him by Ms. McConville, and he initialed each statement that was made—or each explanation that was made to him by Ms. McConville. She testified to that in court.[1]

[T]he court finds that I did fully admonish you as to collateral consequences of a plea of guilty. But even if I had not, the Court finds that a failure to admonish collateral consequences would not have violated your due process and would not be a basis for motion to withdraw your guilty plea.

Sex offender registration is a collateral consequence of a guilty plea, but, again, the Court finds that you were properly admonished in both petitions prior to pleading guilty or at the time of sentencing—or at the time before you plead guilty. That you understood that it was voluntary and consensual, under no threats—and one was based on the results of a 402 conference, so you knew exactly what the Court was going to sentence you [to].

And[,] so for those reasons, the minor's pleas of guilty will not be vacated."

This appeal followed.

¶8 ANALYSIS

¶9 Respondent contends the trial court erred in denying his motion to vacate his guilty pleas where he did not enter those pleas knowingly and voluntarily because he did not understand the consequences of SORA when he plead guilty. The State argues respondent was properly admonished as to the direct consequences of his guilty pleas and those pleas were entered into

[1] ASA Lund testified that McConville reviewed the SORA form with respondent and his mother.

knowingly and voluntarily. The State additionally argues respondent was notified of the collateral consequences of his guilty pleas, namely, his duties under SORA.

¶10 A defendant has no absolute right to withdraw a guilty plea. *People v. Jamison*, 197 Ill. 2d 135, 163 (2001). Rather, it is the defendant's burden to demonstrate a manifest injustice under the facts involved. *Id*. The decision whether to allow a defendant to withdraw a guilty plea rests within the sound discretion of the trial court. *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009). The trial court's decision will not be disturbed unless the plea was entered through a misapprehension of the facts or the law, or if there is doubt as to the guilt of the accused and justice would be better served by conducting a trial. *Id*. 520-21. "Where the defendant has claimed a misapprehension of the facts or the law, the misapprehension must be shown by the defendant." *Id*. at 520. We review a trial court's denial of a motion to withdraw a guilty plea for an abuse of discretion. *Id*. at 519.

¶11 "An admission of a delinquent act by a minor in a juvenile court proceeding is entitled to protections at least equal to that which are constitutionally required for the making of guilty pleas in criminal trials [citation] thereby ensuring that admissions are made intelligently and voluntarily." *In re Interest of B.R.*, 164 Ill. App. 3d 784, 789 (1987). The standard for determining what due process requires in any juvenile proceedings is "fundamental fairness." *People v. Taylor*, 76 Ill. 2d 289, 302 (1979). With regard to guilty pleas in juvenile proceedings, "it is sufficient to satisfy due process requirements that it be apparent from the record that the minors were aware of the consequences of their admissions; that is, they understood their rights against self-incrimination, their rights to confront their accusers and their rights to a trial." *In re Beasley*, 66 Ill. 2d 385, 392 (1977). A reviewing court must assess whether the guilty plea was affirmatively shown to have been made voluntarily and intelligently. *Delvillar*, 235 Ill. 2d at 520.

In terms of voluntariness, the court looks to whether the defendant had knowledge of the direct consequences of his plea prior to its acceptance. *Id*. In contrast, "[c]ourts are under no duty to admonish a defendant as to any collateral consequences of a guilty plea." *In re E.V.*, 298 Ill. App. 3d 951, 957 (1998). Collateral consequences are effects upon the defendant that are not under the control of the trial court, such as those imposed by an agency. *Delvillar*, 235 Ill. 2d at 520. Our supreme court has found that requiring a juvenile sex offender to register under SORA is a collateral consequence, not a punishment. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 89.

¶12 Respondent contends that, although he admittedly was admonished about SORA, he did not understand the requirements and the consequences of the act. Respondent reasons that his lack of understanding is supported by the "profound differences between juvenile and adult minds." Respondent urges this court to find the SORA requirements as applied to juveniles not to be considered collateral consequences because of SORA's punitive nature.

¶13 Based on the record before us, we find respondent entered his guilty pleas voluntarily and knowingly. Respondent has not established by "substantial objective proof" that, at the time of his pleas, his claimed misunderstanding was "reasonably justified." See *People v. Davis*, 145 Ill. 2d 240, 244 (1991). Instead, respondent admits that he was admonished of the direct consequences of his guilty pleas. Accordingly, the record affirmatively demonstrates that respondent voluntarily and intelligently entered his guilty pleas. See *Delvillar*, 235 Ill. 2d at 520. Moreover, the trial court was not required to advise respondent of the SORA reporting requirements, which are collateral consequences. See *id*. Nevertheless, the record demonstrates, and respondent admits, that he was advised regarding SORA. *Cf. People v. Cowart*, 2015 IL App (1st) 131073, ¶ 20 (where the trial court was not required to admonish the defendant regarding SORA, the absence of such admonishment did not render his plea unknowing or involuntary).

We, therefore, conclude that the trial court did not err in denying his motions to withdraw his guilty pleas.

¶14 Respondent, however, maintains that his status as a juvenile prevented him from understanding the implications of SORA. Even assuming, *arguendo*, that respondent was entitled to admonishments regarding SORA, despite their status as collateral consequences, and that the record failed to demonstrate he received those admonishments, which is contrary to what happened here, respondent did not provide any object evidence that *he* was unable to understand the consequences of SORA. Instead, the record reveals that he initialed every provision of the SORA form, including one informing him of the circumstances requiring lifetime registration and the consequences of failing to register. Respondent also signed the form, indicating that he read, or was read, the registration requirements and knew and understood his responsibilities. Moreover, each time respondent pled guilty, respondent's attorney acknowledged the terms of the SORA registration—at first being a 10-year registration and ultimately requiring a lifetime registration. In fact, prior to respondent's sentencing, respondent's attorney acknowledged that the statute required respondent to lifetime registration as a sex offender. In addition, respondent's mother clearly understood the consequences of respondent's plea with regard to SORA, as evidenced by her statement to the court at the time of his sentencing. Simply stated, respondent cannot satisfy his burden of demonstrating a misapprehension of the facts or the law in order to withdraw his pleas. *Delvillar*, 235 Ill. 2d at 520-21.

¶15 We recognize that, under eighth amendment jurisprudence, courts consistently have recognized the difference between adult and juvenile offenders in terms of maturity; however, we decline respondent's request to find that SORA's application to juveniles is punitive. The Illinois Supreme Court repeatedly has determined that requiring a juvenile to comply with SORA

is *not* a punishment. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 89; *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 207 (2009); *In re J.W.*, 204 Ill. 2d 50, 75 (2003); see also *In re A.C.*, 2016 IL App (1st) 153047, ¶ 79. In fact, in *In re A.C.*, this court recently performed a thorough analysis of SORA in conjunction with the test provided in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), ultimately determining that the current version of SORA remains non-punitive. *In re A.C.*, ¶¶ 70-79 (finding amendments to SORA "reflect social changes and do not manifest a punitive bent"). We will not depart from the holdings of these cases.

¶16 In sum, we conclude the trial court did not abuse its discretion in denying respondent's motion to withdraw his guilty pleas. The record reveals, and respondent concedes, he was advised of the requisite direct consequences of his plea in order to ensure it was knowing and voluntary. Moreover, although not required, the record demonstrates respondent was advised of the SORA requirements.

¶17 CONCLUSION

¶18 We affirm the denial of respondent's motions to withdraw his guilty pleas.

¶19 Affirmed.