2014 IL App (2d) 131301-U
No. 2-13-1301
Order filed May 9, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MIGUEL C.,	)	Appeal from the Circuit Court
a Minor,	)	of Kane County.
	)	
v.	)	No. 10-JD-87
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee v. Miguel C., Respondent-Appellant).	)	Patrick Yarbrough,
	)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: After carefully reviewing the record in this cause, as well as appellate counsel's motion to withdraw and the accompanying memorandum of law, we agree with appellate counsel that any appeal would be frivolous and without merit. As no issue supports an appeal, we allow appellate counsel to withdraw, and we affirm.

¶ 2 Respondent, Miguel C., was charged in a delinquency petition. The State filed a petition for designation of the case as an extended jurisdiction juvenile prosecution (EJJ) (705 ILCS 405/5-810 (West 2010)), which was granted. On October 5, 2010, the minor entered into a fully-negotiated plea of guilty to one count of attempt first-degree murder. The minor and the State agreed that the minor would serve an indeterminate sentence in the Illinois Department of

Juvenile Justice (IDJJ) but if the State proved by a preponderance of the evidence that the minor committed a new offense of a Class C misdemeanor or greater during his juvenile sentence, the court would impose an adult sentence of 26 years' of imprisonment, with a 3-year term of mandatory supervised release (MSR). The minor did not appeal the indeterminate sentence.

¶ 3 On March 15, 2012, the minor was released on parole from the IDJJ. On November 29, 2012, the State filed a motion to lift the stay of the adult sentence, alleging that the minor had committed the offenses of unlawful possession of a firearm, unlawful possession of a controlled substance, and aggravated assault.

¶ 4 In response to the motion to lift the stay on the adult sentence, the minor's counsel filed three motions, alleging (1) the judgment order was unconstitutionally vague because it did not state that the minor was subject to parole; (2) the imposition of the adult sentence would violate double jeopardy in that the imposition of the adult sentence is an attempt to resentence for the same actions and offense; and (3) the minor did not knowingly waive his right to a jury trial when he entered his plea.

¶ 5 A hearing was held on the motions. The minor testified that, when he entered his plea, he did not understand that the jury waiver applied to the adult case. He conceded that he had listened to the judge's admonishments and read the guilty plea form, including the language regarding the waiver of his right to a jury trial, or trial of any kind. He also acknowledged that his attorney told him that, if he did not comply with his juvenile sentence, he would have to serve his adult sentence. He understood "if he caught another case" and was found guilty, then he would have to serve 26 years in prison. The trial court denied all three motions and the case proceeded to a hearing on the motion to lift the stay of the adult sentence.

¶ 6 Following the hearing, the court advised the minor of his right to testify, and he told the court that he was choosing not to do so. After hearing arguments, the court found that the State had met its burden of proof and lifted the stay on the 26-year adult sentence, along with the 3-year term of MSR. The court advised the minor under Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001) that in order to appeal, he had to file a written motion to withdraw his plea within 30 days. The minor did not file such a motion and instead filed a notice of appeal. The trial court appointed the Office of the State Appellate Defender to represent defendant on appeal.

¶ 7 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *People v. Jones*, 38 Ill. 2d 384 (1967), the appellate defender has moved to withdraw as counsel on appeal. Counsel has filed a memorandum of law in support of her motion, and she represents that she has advised the minor of her opinion and sent copies of the motion to the minor and to his mother and alleged father. The clerk of this court also informed the minor that he had 30 days in which to respond. The minor sent a response to this court in which he wrote that another inmate who was assisting him sent a letter to the "courts" giving reasons why the motion should not be granted, but the minor did not know if we had received the letter. The clerk of this court responded, notifying the minor that we had not received a response to the motion filed by the appellate defender to withdraw as counsel and informing him that it was important that the deadline of April 18, 2012, for filing a response be met. Due to a clerical error, the clerk of this court extended the time in which to respond to the motion, informing the minor, as well as his parents or guardians, that he had an additional seven days to respond. Neither the minor nor anyone acting on his behalf filed a response by the extended deadline.

¶ 8 In her memorandum of law, counsel suggests two possible issues on appeal: (1) whether the trial court erred in denying the defense's three challenges to the State's motion to lift the stay

on the adult sentence under the EJJ statute; and (2) whether the trial court erred in granting the State's motion to lift the stay on the 26-year adult sentence. Counsel concludes that the issues do not merit relief in this court.

¶ 9 We initially note that the minor failed to file a motion to withdraw his plea within 30 days of the initial judgment order, or within 30 days of the date on which the stay of the adult sentence was lifted. In *People v. Tufte*, 165 Ill. 2d 66 (1995), the supreme court held that a defendant's admission to a violation of his conditional discharge was not the same as a guilty plea, and thus did not require the trial court to admonish defendant, pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001), of the necessity of filing either a motion to vacate the guilty plea, or a motion to reconsider the sentence, before appealing the trial court's judgment. The court explained that the filing of a motion to reconsider sentence following the revocation of the defendant's conditional discharge is merely permissible and is not a prerequisite to an appeal. *Id*. at 78. "If the defendant does not file a motion to vacate or reconsider, but rather seeks an immediate appeal, the reviewing court may consider the defendant's argument on its merits." *Id.* at 78. The revocation of a defendant's conditional discharge is substantially similar to the revocation of a defendant's probation. *Id.* at 75. They are governed by the same statutory requirements. *Id.* at 74. We find the logic and analysis in *Tufte* to be equally applicable to EJJ hearings to lift the adult sentence stay. Compliance with Illinois Supreme Court Rule 604(defendant) (eff. Dec. 13, 2005) is unnecessary. Therefore, the minor may appeal without first filing a motion to withdraw his plea. See *In the Interest of J.E.M.Y.*, 289 Ill. App. 3d 389, 390-91 (1997). Accordingly, we will address the issues raised by counsel.

¶ 10 The first motion alleged that the judgment order entered in the case did not state that the minor would have to serve a term of parole after his indeterminate commitment to IDJJ, and

therefore, the order was unconstitutionally vague. The defense argued the minor had fulfilled his juvenile sentence and therefore, the motion to lift the stay should be dismissed.

¶ 11 Pursuant to the agreed order, the minor was committed for an indeterminate period, until age 21 or the period equivalent to an adult sentence. The agreed order cites to sections 5-710(1)(b), 5-750, and 5-810(4)(i) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-710(1)(b), 5-750, 5-810(4)(i); (West 2010)). Section 5-750 states that IDJJ commitment "shall be for an indeterminate term which shall automatically terminate upon the delinquent attaining the age of 21 years unless the delinquent is sooner discharged from parole or custodianship is otherwise terminated in accordance with this Act or as otherwise provided for by law." The mittimus also states that the minor was committed to IDJJ pursuant to section 5-750 of the Act "not to exceed (a) that period for which an adult could be committed for the same act, or (b) the minor's 21st birthday, whichever occurs first." When the minor entered his guilty plea, the trial court read the agreed order to the minor and advised him that, if he committed a new crime after his release from the IDJJ that he was looking at a minimum of 26 years in prison and 3 years' mandatory supervised release for the charge of attempt first-degree murder in addition to any other crime that he might commit. The minor said that he had gone over the agreed order with his counsel, he understood it, and he had no questions. It is clear that the agreed order and the mittimus imposed an indeterminate commitment to IDJJ and that this commitment would only terminate upon order of the court, or the minor reaching age 21. The minor understood that, if he violated his juvenile sentence by committing a new offense, he would have to serve the 26-year adult sentence.

¶ 12 The second motion alleged that the imposition of the adult sentence would violate double jeopardy because the minor had served his juvenile sentence, and therefore, imposing the adult

sentence would punish the minor twice. The double jeopardy clause provides three categories of protection for a defendant, namely (1) protection against a second prosecution after an acquittal for an offense; (2) protection from a second prosecution after a conviction; and (3) protection against multiple punishments for the same offense. *People v. Gray*, 214 Ill. 2d 1, 6 (2005). Defense counsel argued that lifting the stay would constitute multiple punishments for the same offense.

¶ 13 Although there is no case law addressing whether the imposition of the adult sentence in an EJJ case implicates double jeopardy, we turn to case law addressing probation revocation hearings. The structure of the EJJ statute is very similar to the revocation of probation. *Compare* 705 ILCS 405/5-810(4) (West 2010) with 730 ILCS 5/5-6-4(e) (West 2010). The settled law in Illinois is that jeopardy does not attach at revocation hearings. See, *e.g.*, *People v. Ward*, 80 Ill. App. 3d 253, 257 (1980). A sentence imposed upon revocation of probation is not considered punishment for the offense which led to the revocation proceedings, but for the original crime. Therefore, there is no question of double jeopardy, or of being punished twice for the same offense. *Id*. at 258.

¶ 14 Likewise, the 26-year sentence in the present case was imposed for the attempt first-degree murder charge in the amended delinquency petition, not for the offenses listed in the motion to lift the stay. Thus, the imposition of the adult sentence upon the minor's violation of the juvenile sentence did not violate double jeopardy.

¶ 15 The third motion filed by defense counsel alleged that the minor did not knowingly waive his right to a jury trial when he entered his plea. In support, defense counsel pointed out that, although the agreed order indicated the minor was waiving his right to a jury, the minor did not sign that order. However, the court repeatedly informed the minor of his right to a trial and also

read the agreed order to the minor, which states that the minor "agrees to waive trial by jury." Additionally, the guilty plea form signed by the minor expressly states that the minor knows that he has the right to a trial by a jury or to a trial before a judge without a jury, whichever he chooses and that, by entering his guilty plea, there would not be a trial of any kind. The minor told the court when he entered his plea that he had reviewed the guilty plea form with his attorney, and that he had no questions about anything contained in the document.

¶ 16 Substantial compliance with Illinois Supreme Court Rule 402 (eff. July 1, 1997), not literal compliance, is all that is required to satisfy the Rule. *People v. Mehmedoski*, 207 Ill. App. 3d 275, 280 (1990). The record demonstrates substantial compliance in advising the minor of his right to a jury trial. At the hearing on the motion challenging the jury waiver, the minor testified that he understood that in juvenile cases minors do not have the right to a jury trial, except in cases such as habitual offenders or EJJ. He also testified that he read the guilty plea form before he signed it, and he was aware that it said he had a right to a trial by jury or judge.

¶ 17 Defense counsel argued that, although the agreed order indicated the minor was waiving his right to a jury, he did not understand that he was waiving his right to a jury trial at the hearing on the motion to lift the stay of the adult sentence. The minor testified that he did not know he was waiving his right to a jury trial "for an adult case" and that his attorney told him he would have to be found guilty of committing a new "case" to serve the adult sentence.

¶ 18 It is correct that, in order for the adult sentence to be imposed on the offense of attempt first-degree murder, the State had to prove that the minor committed a new offense. The minor was given this information at the guilty plea hearing, and he told the court that he understood. By statute, however, the minor did not have a right to a jury trial at the hearing on the motion to lift the stay. See 705 ILCS 450-5-810(6) (West 2010) ("After a hearing, if the court finds by a

preponderance of the evidence that the minor committed a new offense, the court shall order execution of the previously imposed adult criminal sentence"). The court told the minor that, if he violated the law and it was proved before the court that he did, he would be sentenced to "the Illinois Department of Corrections, adult prison, for a minimum of 26 years." The court read the agreed order at the guilty plea hearing, which specified that, if a petition to revoke the stay of adult sentence was filed, "and, after hearing, the Court finds by a preponderance of the evidence that the minor had committed a new criminal offense of a Class C misdemeanor or greater, the Court shall order the execution of the previously stayed sentence." The minor said that he understood the agreed order and had no questions.

¶ 19 As to the final possible issue, whether the trial court erred in granting the State's motion to lift the stay, the State bears the burden of proving the minor's commission of the new offenses. After the case was designated an extended jurisdiction juvenile prosecution, the minor entered a fully-negotiated guilty plea to one count of attempt first-degree murder in exchange for an indeterminate commitment to age 21 in the IDJJ, a stayed 26-year term of imprisonment in the DOC, and the dismissal of the remaining counts in the amended delinquency petition. The EJJ provides, and the plea agreement, as expressed in open court and in the agreed order, specifies that, if the minor committed a new offense of a Class C misdemeanor or greater before the juvenile sentence was completed, the stay on the adult sentence would be lifted. The State alleged the minor had committed new offenses of Class C misdemeanors or greater while serving his juvenile sentence (possession of a firearm (Class 3), unlawful possession of a firearm (Class 4), unlawful possession of a controlled substance (Class 4), and aggravated assault (Class A)), and alleged that the 26-year sentence should be executed.

¶ 20 The State bore the burden of proving the minor's commission of the new offenses by a preponderance of the evidence. See 705 ILCS 405/5-810(1)(b)(6) (West 2010). This standard is satisfied if the evidence established that the allegations at issue were more probably true than not true. *People v. Matthews*, 165 Ill. App. 3d 342, 344 (1988). The same standard applies to probation revocation proceedings. A trial court's decision to revoke probation will be reversed where the ruling is against the manifest weight of the evidence. A finding is against the manifest weight of the evidence if a contrary result is clearly evident. *People v. Clark*, 313 Ill. App. 3d 957, 959-60 (2000).

¶ 21 In order to lift the stay on the adult sentence, the trial court had to find that the minor had committed just one new offense of a Class C misdemeanor or greater. See 705 ILCS 405/5-810(b)(6) (Wet 2010). After an evidentiary hearing, the trial court found that the State had met its burden of proof by a preponderance of the evidence on all of the charges in the motion. Our review of the record shows that the trial court's findings were not against the manifest weight of the evidence. Thus, we agree with counsel that any argument to the contrary would be patently frivolous and without merit.

¶ 22 In summary, after carefully reviewing the record in this cause, as well as counsel's motion to withdraw and the accompanying memorandum of law, we agree with appellate counsel that any appeal would be frivolous and without merit. As no issue supports an appeal, we allow appellate counsel to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 23 Affirmed.