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2014 IL App (3d) 120589

Order filed January 13, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 9th Judicial Circuit,
)	Knox County, Illinois
Plaintiff-Appellee,)	
)	
v.)	Appeal No. 3-12-0589
)	Circuit No. 11-CF-18
JULIE A. COURSON,)	
)	Honorable Paul L. Mangieri,
Defendant-Appellant.)	Judge Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Lytton and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* The court erred when it failed to admonish defendant about the possibility of TASC probation, however, the court's error was not prejudicial and did not operate to deny defendant a fair sentencing hearing.

¶ 2 The State charged defendant Julie A. Courson with two Class 1 felony counts of theft and four Class 3 counts of forgery involving \$298,000 missing from her employer's family business. Defendant entered an open plea of guilty to one felony theft charge and four counts of forgery.

At the sentencing hearing, based on her drug addiction, defendant asked the court to place her on probation under the Drug Court Act (730 ILCS 166/1 *et seq.* (West 2010)). Based on defendant's prior felony convictions and the circumstances surrounding these offenses, the court determined probation would deprecate the seriousness of defendant's conduct and sentenced defendant to eight years in prison. The court denied defendant's motion to withdraw her guilty plea and motion to reduce sentence.

¶ 3 On appeal, defendant argues the trial court erred when it did not give her the mandatory admonishments regarding the possibility of being placed on a drug addiction probation under a different statute (20 ILCS 301/1-1 *et seq.* (West 2010)). Defendant asks this court, under the plain error doctrine, to vacate her sentence and remand the case to the trial court where defendant can elect a drug treatment probation under this other statute. We affirm.

¶ 4 BACKGROUND

¶ 5 On January 21, 2011, the State filed a six-count information charging defendant with two alternate counts of theft of \$100,000 to \$500,00, Class 1 felonies (counts I and II), and four separate counts of forgery, Class 3 felonies (counts III-VI). The court appointed public defender James Harrell to represent defendant.

¶ 6 On July 28, 2011, defendant waived her right to trial and entered an open plea to one count of theft and four counts of forgery. The State dismissed count II of the information. As to count I, the State advised the court that defendant worked in the financial department of Knoxville Leasing and Transport, Inc. (Knoxville Leasing) between January 1 and October 1, 2010. During that time period, defendant issued and cashed 198 business checks, totaling \$276,000, drawn on the account of Knoxville Leasing without authority. With respect to the

forgery counts, according to the State, defendant prepared and then cashed four separate checks, in the amounts of \$738.42, \$900, \$850, and \$850. Although each check appeared to be signed by the owner, Ron Nelson, defendant drafted and signed each check without either the approval or authorization of Nelson. According to the State, during the investigation, defendant admitted to the investigating police officers she had a problem with crack cocaine during this period.

¶ 7 After admonishing defendant regarding the possible consequences of pleading guilty to counts I, III, IV, V, and VI, pursuant to Supreme Court Rule 402 (Ill. S. Ct. R. 402 (eff. July 1, 1997)), the court accepted defendant's jury trial waiver and plea of guilty. The court ordered a presentence investigation and set the matter for a sentencing hearing.

¶ 8 The court held the sentencing hearing on October 6, 2011. The court reviewed the presentence investigation report, prepared by the probation department, and written victim impact statements. The State presented Doug Olson, who testified he was employed by Knoxville Leasing at the time of the theft and forgeries, and was also the son-in-law of one of its owners. Olson testified that defendant's theft and forgeries resulted in a monetary loss to the company of \$298,000, and caused additional losses to the company when it had to go out of business and sell off its property at approximately \$60,000 less than fair market value.

¶ 9 Pursuant to a stipulation, the defense and the State agreed Knoxville Leasing suffered damages in the amount of \$363,000 arising from defendant's criminal conduct. In lieu of the police investigator's testimony, without objection by the State, the court admitted a 45-page transcript of a November 23, 2010, interview between the investigator and defendant. Next, the defense called three character witnesses to testify on behalf of defendant: Agnes Kimbell, Raymond Kimbell, and Pastor Gary Bane.

¶ 10 The presentence investigation report documented that, in 1997, defendant gave birth to a child with cocaine in its system. The report described defendant's 2008 participation in a two-week, in-patient program at Bridgeway, Inc., after she attempted suicide by taking a large amount of Tylenol P.M., but indicated defendant did not complete the subsequent six-month outpatient treatment program as recommended by Bridgeway. The report also stated defendant had been evaluated by the Knox County Drug Court Team, as part of the presentence investigation, and that team found defendant eligible for the drug court program. According to the report, defendant's previous convictions included: a 1995 deceptive practices, a Class 4 felony; a 1996 forgery, a Class 3 felony; a 2007 retail theft, a Class 4 felony; and multiple traffic violations including four driving while license suspended charges.

¶ 11 In addition to the information contained in the presentence report, without objection, the court admitted defendant's exhibits Nos. 1-12. These exhibits consisted of character reference letters discussing defendant's growth in her church and spiritual life, her improved parenting skills with her teenage children, and her attendance at a faith-based addictions group in Galesburg, Illinois.

¶ 12 At the close of the sentencing hearing, the court considered the statutory factors in mitigation and aggravation. The court found, as a factor in mitigation, the crime did not involve serious physical injury or harm to another individual and that defendant's drug addiction factored into her commission of this crime. In aggravation, the court found defendant's action caused serious harm, although not physical harm. The court found defendant's actions "wiped out" the entire family business that had existed for 40 years. The court noted the victim impact statements showed the livelihoods of many individuals were destroyed by defendant's crimes.

Specifically, the court observed the closing of the business seriously and negatively impacted not only the owners, their children, and their extended families, but also negatively impacted several truck drivers.

¶ 13 Additionally, in aggravation, the court found defendant had a history of prior similar criminal activity including forgery and deceptive practice convictions in 1996 and a felony retail theft conviction in 2007. Finally, the court found the sentence was necessary to deter others from committing the same crime.

¶ 14 The court then specifically addressed whether defendant should be “sentenced to serve a period of probation or drug probation as its been urged and requested by the defense or whether or not [defendant] should serve a period of incarceration in the Department of Corrections [DOC].” The court then referred to the statute, stating:

“The applicable provision [730 ILCS 5/5-6-1 (West 2010)] reads that the Court shall impose a sentence of probation, and so the first - - in the first instance, that is mandatory. In the first instance it says, the Court shall, not may at its discretion. It says that the Court shall impose a sentence of probation upon offender unless having regard to the nature and circumstance of the offense and to the history, character, and condition of the offender, the Court is of the opinion that either, one, his or her imprisonment is necessary for the protection of the public or, two, probation would deprecate the seriousness of the offender’s conduct and would be inconsistent with the ends of justice.

* * *

In addition, there has been testimony that [defendant] has a drug problem. No

doubt, it's been established that the defendant has a drug problem. And in this particular case, why it was kind of on the periphery brought in that the motivation or the money went, the [\$]286,000, where it went was to fuel a crack cocaine habit, we're looking at the alleged offense occurred over a period of ten months. \$286,000 over a period of ten months to fuel a cocaine habit.

* * * I take that addiction into consideration as it relates to the history, character, and the condition of the offender.

All right. This sentence ultimately is about proportionality, proportionality of the defendant's conduct, a nonviolent crime, theft, forgery, and the impact that it had upon others.

The facts before this Court indicate that as a direct result of [defendant's] actions, a business that has been viable for a number of years is no longer in business, * * * They [the family members] weren't destroyed, but their livelihood was taken away from them. Six truck drivers had their livelihood taken away from them.

\$286,000 is way beyond fueling some type of addiction that does not cause harm or affect individual's lives. This Court sees a number of crimes and sees a number of victims, but there are very few crimes that when they are committed actually affect the course of a victim's life. This particular crime has.

Based upon those factors, the Court finds that the presumption of probation has been overcome because I believe probation would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice."

The court then sentenced defendant to serve eight years in the Department of Corrections (DOC)

for count I, and three years in DOC on each of the other four forgery counts, to run concurrent with count I. The court also ordered defendant to pay restitution in the stipulated amount of \$363,000 to Knoxville Leasing or “its successor or what remains of that company, and ordered defendant to pay court costs.

¶ 15 On October 13, 2011, defendant’s attorney filed a “Motion to Reconsider Sentence” alleging the court erred because the sentence was excessive, the court should have found incarceration would cause excessive hardship on defendant’s dependents, the court failed to place defendant on drug probation, and the court erred in finding the crime caused emotional harm because the business had “gone under” as a factor in aggravation.

¶ 16 Prior to resolving this motion, defendant filed a *pro se* “Notice of Appeal,” and asked new counsel be appointed based on potential claims of ineffective assistance of counsel. As a result, the court appointed a new public defender to represent defendant, attorney Karl Johnson, who, on March 2, 2012, filed a “Motion to Withdraw Plea of Guilty and Vacate Judgment” on grounds that the State’s first plea offer required defendant to plead guilty to only count I of the information, one of the Class 1 felony theft charges. However, according to the motion to withdraw, defendant alleged the State presented a revised offer on the date she entered her guilty pleas which required defendant to enter an open guilty plea to count I and counts III through VI. Defendant’s motion alleged she was denied effective assistance of counsel when her attorney “coerced” her into accepting the revised plea offer by telling her to plead guilty to the five counts, instead of just one count, without requesting a continuance to allow defendant time to consider the new offer. Additionally, defendant’s motion argued that the court did not admonish her about the possibility of an order to pay restitution when she pled guilty to the five counts.

¶ 17 Thereafter, on March 7, 2012, defendant's new public defender filed an "Addendum to Motion to Reduce Sentence," asking the court to consider defendant's original motion, filed on October 13, 2011, and additionally argued that defendant's sentence was "not in keeping with the defendant's past history or criminality, substance abuse history, family situation, economic status, and occupational habits; and the sentence was disproportionate to those of other similarly situated defendants."

¶ 18 On May 4, 2012, defendant also filed a "Supplemental Motion to Withdraw Plea of Guilty and Vacate Judgment." In this motion, defendant argued the court improperly relied on the State's four victim impact statements because defendant was not convicted of a "violent" crime as defined by statute, which the State and court relied "heavily" upon, thereby denying defendant due process to a fair sentencing hearing.

¶ 19 On June 14, 2012, the court held the hearing on the motion to withdraw defendant's guilty plea and her motion to reduce sentence.¹ Defendant and attorney James Harrell, defendant's first public defender, testified at that hearing. After arguments, the court denied both defendant's motion to withdraw her guilty plea, as well as her motion to reduce sentence. The court entered a written order, accordingly, on June 21, 2012. Defendant then filed a timely notice of appeal.

¶ 20 ANALYSIS

¶ 21 On appeal, the only issue raised by defendant is whether the trial court erred when it failed to admonish defendant, at the sentencing hearing, of her option to elect drug addiction

¹ Since the issues addressed in this posttrial motion are not raised by defendant in this appeal, the facts and arguments raised in this motion are omitted.

treatment (Treatment Alternatives to Street Crime or “TASC probation”) under the Alcoholism and Other Drug Abuse and Dependency Act (the Alcoholism and Drug Abuse Act) (20 ILCS 301/1-1 *et seq.* (West 2010)). Defendant requests this court to remand the case to the trial court for resentencing to give her the option to elect treatment under TASC probation, after the court denied her request for a drug court probation. The State contends the trial court did not commit error because defendant was aware of other similar drug treatment sentencing alternatives and requested the court to place her on a similar type of drug court probation, pursuant to the Drug Court Act (730 ILCS 166/1 *et seq.* (West 2010)), which the court denied.

¶ 22 We note defendant did not raise the issue regarding admonishments under the Alcoholism and Drug Abuse Act before the trial court, either at the sentencing hearing or as part of her posttrial motions. However, despite any forfeiture of this issue, defendant contends the court’s failure to provide her with these admonishments constituted plain error because the court’s error affected defendant’s substantial rights related to the second prong of a plain error analysis.

¶ 23 As a general rule, a defendant’s failure to object at trial or raise the issue in a written, posttrial motion results in waiver of that issue on appeal. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010); *People v. Nesbit*, 398 Ill. App. 3d 200, 211 (2010). Yet, the plain error doctrine allows a reviewing court to consider unpreserved or forfeited claims of error under a narrow and limited exception. Ill. S. Ct. R. 615(a) (eff. August 27, 1999); *Hillier*, 237 Ill. 2d at 545; *People v. Thompson*, 238 Ill. 2d 598, 611 (2010). To obtain relief under this doctrine, a defendant must first show that a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545; *Nesbit*, 398 Ill. App. 3d at 212.

¶ 24 If error occurred, our supreme court has held, “[I]n the sentencing context, a defendant must then show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing.” *Hillier*, 237 Ill. 2d at 545. A defendant bears the burden on both the threshold question of error and the question of whether she is entitled to relief as a result of the unpreserved error. *Id.*, *Nesbit*, 398 Ill. App. 3d at 212 (citing *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)).

¶ 25 First, we must determine whether any error occurred at the trial level. *Nesbit*, 398 Ill. App. 3d at 212. Here, it is undisputed that the presentence investigation and information presented to the court revealed defendant admitted she was addicted to crack cocaine at the time of the crimes and the evidence in this respect was not closely balanced and supported this claim. It is well-established that section 301/40-10 of the Alcoholism and Drug Abuse Act (20 ILCS 301/40-10 (West 2010)) mandates the trial judge to inform every defendant whom he knows or has reason to believe is an addict of the possibility of treatment under the Alcoholism and Drug Abuse Act. *People v. Richardson*, 104 Ill. 2d 8, 17 (1984); *People v. Livengood*, 223 Ill. App. 3d 350, 353 (1991). Although the trial judge had reason to know defendant was an addict, the record reveals the trial judge did not admonish defendant that she could request to be considered for drug treatment under a TASC probation pursuant to the Alcoholism and Drug Abuse Act. Therefore, we conclude that the trial court committed error in its failure to give defendant the admonishments required by this Act.

¶ 26 Having found error occurred, we focus on the issue as raised by defendant on appeal. Specifically, defendant claims the second prong of plain error requires a remand for a new sentencing hearing since the court’s failure to give this defendant the admonishments required by

the Alcoholism and Drug Abuse Act resulted in a denial of her substantial rights to request TASC drug treatment as a condition of TASC probation.² The second prong of a plain error analysis requires us to evaluate whether the trial court's error was so egregious as to deny the defendant a fair sentencing hearing. *Hillier*, 237 Ill. 2d at 545; *Nesbit*, 398 Ill. App. 3d at 213. However, we are mindful that, under a plain error analysis, a defendant's conviction and sentence will stand unless the defendant shows the court's error was prejudicial. See *People v. Crespo*, 203 Ill. 2d 335, 347-8 (2001).

¶ 27 It is clear from record that defendant did not request TASC probation, but did ask the court to consider the propriety of placing her on drug court probation with intensive drug treatment, in lieu of incarceration. We note the nature and the goals of the Drug Court Act and the Alcoholism and Drug Abuse Act are similar. For example, the legislative declaration propounded through the Alcoholism and Drug Abuse Act provides:

“The abuse and misuse of alcohol and other drugs constitutes a serious public health problem the effects of which on public safety and the criminal justice system cause serious social and economic losses, as well as great human suffering. It is imperative that a comprehensive and coordinated strategy be developed under the leadership of a State agency and implemented through the facilities of federal and local government and community-based agencies (which may be public or private, volunteer or professional) to empower individuals and communities through local prevention efforts and to provide intervention, treatment, rehabilitation and other services to those

² On appeal, defendant does not assert the evidence concerning her addiction, presented to or considered by the court for purposes of sentencing, was closely balanced with respect to the first prong of plain error.

who misuse alcohol or other drugs (and, when appropriate, the families of those persons) to lead healthy and drug-free lives and become productive citizens in the community.

The human, social, and economic benefits of preventing alcohol and other drug abuse and dependence are great, and it is imperative that there be interagency cooperation in the planning and delivery of alcohol and other drug abuse prevention, intervention, and treatment efforts in Illinois.” 20 ILCS 301/1-5 (West 2010).

Similarly, the “purpose” of the Drug Court Act provides:

“The General Assembly recognizes that the use and abuse of drugs has a dramatic effect on the criminal justice system in the State of Illinois. There is a critical need for a criminal justice system program that will reduce the incidence of drug use, drug addiction, and crimes committed as a result of drug use and drug addiction. It is the intent of the General Assembly to create specialized drug courts with the necessary flexibility to meet the drug problems in the State of Illinois.” 730 ILCS 166/5 (West 2010).

¶ 28 When considering whether the court's omission resulted in prejudice to this defendant, we note both drug court probation and TASC probation must be imposed by the sentencing judge as a condition of some type of probation. Our supreme court addressed the amended, mandatory language of advising defendants of the drug treatment option under the Alcoholism and Drug Abuse Act, in *People v. Richardson*, 104 Ill. 2d 8 (1984). The *Richardson* court held, “The trial judge's mandatory advice does not guarantee that the defendant will receive treatment under the Act. It merely sets into motion the further procedures specified in the statute.” *Id.* at 17.

¶ 29 In this case, in spite of the court's omission of the mandatory advice concerning TASC probation under the Alcoholism and Drug Abuse Act, the defendant's request for treatment as a condition of probation did set "into motion" the mechanism for the court to seriously consider her request for drug treatment, only as a condition of a general order of probation pursuant to the Drug Court Act. 730 ILCS 166/1 *et seq.* (West 2010). In fact, the presentence investigation report, prepared for defendant's sentencing hearing, indicated defendant was evaluated by court services and found to be eligible for probation and the treatment program she requested as outlined in the Drug Court Act. Here, the trial court carefully considered defendant's addiction and the suitability of her request to be placed on a similar type of probation in order to receive court-ordered treatment as part of a drug court program. Yet, the court found defendant should not be placed on probation at all for valid reasons stated of record.

¶ 30 Specifically, the court stated, on the record, that it was considering whether defendant should be "sentenced to serve a period of probation or drug probation as its been urged and requested by the defense or whether or not [defendant] should serve a period of incarceration in the Department of Corrections." After weighing all the evidence, the court found, "[T]he presumption of probation has been overcome because I believe probation would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice."

¶ 31 Here, based on defendant's request, the court rejected defendant's request for any type of probation combined with a stringent drug treatment program through drug court, finding that placing defendant on probation would serve to deprecate the seriousness of defendant's offenses, and would be "inconsistent with the ends of justice." Since the court rejected defendant's actual request for drug treatment as a part of drug court probation, in spite of her qualification for that

program, we conclude defendant failed to show the error, with respect to the court's lack of an admonishment concerning TASC, was prejudicial. See *Crespo*, 203 Ill. 2d at 347-8. Therefore, after our *de novo* review of the record, we hold the court's error did not operate to deny defendant a fair sentencing hearing and defendant's conviction and sentence will stand. *Id.* See also *Hillier*, 237 Ill. 2d at 545.

¶ 32

CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of Knox County is affirmed.

¶ 34 Affirmed.