2015 IL App (3d) 140850-U

Order filed December 28, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0850
v.	)	Circuit No. 11-CF-1081
	)	
DEMARIUS L. WILLIAMS,	)	
	)	Honorable Kevin Lyons,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Wright concurred in part and dissented in part.

ORDER

¶ 1 *Held*: (1) Defendant's stipulated bench trial was not tantamount to a guilty plea. (2) The order requiring defendant to pay a $250 DNA analysis fee must be vacated.

¶ 2 Following a stipulated bench trial, the trial court convicted defendant, Demarius L. Williams, of unlawful possession with intent to deliver a controlled substance. On appeal, defendant argues that: (1) the trial court erred in failing to admonish him pursuant to Illinois Supreme Court Rules 402 and 605 (Ill. S. Ct. R. 402 (eff. July 1, 2012); R. 605 (eff. Oct. 1,

2001)) as his stipulated bench trial was tantamount to a guilty plea; and (2) the order requiring him to pay a DNA analysis fee must be vacated because defendant's DNA was already registered in the DNA database. We affirm in part, and vacate in part.

¶ 3 FACTS

¶ 4 On November 22, 2011, the State charged defendant by indictment with unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(c)(2) (West 2010)), and unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)). Prior to trial, defendant filed a motion to quash arrest and suppress evidence, which was denied.

¶ 5 The case proceeded to a stipulated bench trial in May 2013. The defense attorney stated:

> "Your Honor, at this time we are going to present the Court with a stipulation for purposes of a stipulated bench trial as to Count 1, unlawful possession with intent to deliver a controlled substance. Pursuant to that, the matter would be set over for sentencing on July 18th, 2013[,] at 1:30 p.m., and the parties agree to a cap of the sentence in the matter to 15 years in the Illinois Department of Corrections."

¶ 6 The State presented the following evidence: Peoria Police Officer Corey Miller would testify that on November 9, 2011, he was working with a confidential informant who indicated that he could purchase controlled substances from defendant. Officer Miller had the informant make arrangements to purchase the controlled substance, which would take place in the Kroger parking lot next to Taco Bell. The officers set up surveillance there and observed defendant arrive. Several officers boxed in defendant's vehicle while it was located in the drive-through of the Taco Bell. Defendant tried to escape through a grassy knoll, but was unsuccessful. Officer

Clint Rezac participated in removing defendant from the vehicle, searched defendant, and found a parcel containing four packages of cocaine.

¶ 7 Michelle Dierker would testify as an expert in the chemical analysis of controlled substances that she received the packages from Officer Miller in a sealed container, tested and weighted them, and found that they did contain 8.1 grams of cocaine.

¶ 8 Officer Mike Johnston would testify that he was one of the officers who responded to the Taco Bell. He pulled his vehicle in front of defendant in an attempt to stop him from leaving. He exited the vehicle, and defendant began driving towards him in an effort to escape. Officer Johnston had to flee the area to avoid being hit. He also observed defendant as he was removed from the vehicle and searched by Officer Rezac.

¶ 9 The court said:

> "I do recall the facts and the testimony that were brought out and put on the record when this was a motion to suppress, and they are consistent and expand upon what the State has already said. So are those–or is that the evidence that you're stipulating to, [defense counsel], that the parties can agree to as the stipulated bench trial?"

Defendant's attorney said, "Yes, your Honor." No argument was made.

¶ 10 The court then said: "[W]e will dismiss Count 2 on the motion of the People and enter judgment on the bill of indictment in Count 1, which is unlawful possession with intent to deliver a controlled substance, and the Court would enter a finding and judgment there." The trial court then set the case for sentencing.

¶ 11 Defendant filed a "Motion for New Trial and Motion for Judgment of Acquittal," which the trial court denied. The court sentenced defendant to 10 years in the Department of Corrections. Defendant filed a motion to reconsider sentence, which the court denied.

¶ 12 ANALYSIS

¶ 13 On appeal, defendant argues that: (1) his conviction must be reversed and remanded because his stipulated bench trial was tantamount to a guilty plea, but he was not admonished pursuant to Illinois Supreme Court Rules 402 and 605 (Ill. S. Ct. R. 402 (eff. July 1, 2012); R. 605 (eff. Oct. 1, 2001)); and (2) his DNA analysis fee must be vacated because his DNA was already registered in the DNA database.

¶ 14 When a stipulated bench trial is tantamount to a guilty plea, admonishments consistent with Illinois Supreme Court Rules 402 and 605 (Ill. S. Ct. R. 402 (eff. July 1, 2012); R. 605 (eff. Oct. 1, 2001)) must be given. *People v. Horton*, 143 Ill. 2d 11, 21 (1991). "The general rule adopted by the supreme court is that a stipulated bench trial is tantamount to a guilty plea if the defendant either: (1) stipulates that the evidence is sufficient for a finding of guilty beyond a reasonable doubt, or (2) does not present or preserve a defense." *People v. Thompson*, 404 Ill. App. 3d 265, 270 (2010). In determining whether a defendant is stipulating solely to the facts or to the sufficiency of the evidence, " '[a] stipulation is to be given its natural and ordinary meaning.' " *Horton*, 143 Ill. 2d at 21 (quoting *People v. Joe*, 31 Ill. 2d 220, 226 (1964)). The question of whether a stipulated bench trial is tantamount to a guilty plea is subject to *de novo* review. *Thompson*, 404 Ill. App. 3d at 270.

¶ 15 Here, the State recited the stipulated evidence, the judge asked if this was the evidence that defendant was stipulating to, and defendant agreed. Defense counsel did not expressly stipulate that the facts that the State presented were sufficient for a finding of guilty. Giving the

stipulation its natural and ordinary meaning, as we must, we find that defendant solely stipulated to the facts in evidence, and not the sufficiency of that evidence. See *Horton*, 143 Ill. 2d at 21. Further, there is no contention that defendant did not preserve a defense. Proceeding to a stipulated bench trial allows the defendant the convenience of guilty plea proceedings, while at the same time allowing the defendant to avoid waiving issues he seeks to preserve for appeal. *Thompson*, 404 Ill. App. 3d at 270 (citing *Horton*, 143 Ill. 2d at 22). By submitting to a stipulated bench trial, defendant was able to preserve the denial of his motion to suppress for appeal. Because defendant's stipulated bench trial was not tantamount to a guilty plea, no admonishments were necessary.

¶ 16 In coming to this conclusion, we reject defendant's contention that his stipulated bench trial was tantamount to a guilty plea because "by advising the judge that the parties had agreed to a sentencing date and a sentencing cap [citation], counsel was acknowledging that his client would be found guilty" and that "neither attorney argued the evidence to the judge, nor did the judge analyze the evidence or in any way explain his decision to find defendant guilty." The facts set out in *People v. Torres*, 279 Ill. App. 3d 599 (1996), are analogous to the instant case. In *Torres*, a stipulated bench trial was not tantamount to a guilty plea where: (1) the defense agreed with the prosecutor that the matter would be set over for sentencing following the stipulated bench trial; (2) no argument was made; and (3) the court provided no analysis, which is almost identical to the facts of defendant's stipulated bench trial. See *id.* at 600. Moreover, the defense attorney in *Torres* said, "at this time we would have a stipulated bench trial to present to the court regarding facts that would support the [*sic*], a finding of guilt." *Id.* This comment is closer to an express stipulation than any language we have here, yet, as defense

counsel in *Torres* did not explicitly state that defendant was stipulating to the sufficiency of the evidence, the stipulated bench trial was not tantamount to a guilty plea. See *id.* at 601.

¶ 17 Further, the case law defendant cites does not support his position. One of the cases defendant cites deals with an express stipulation to the sufficiency of the evidence, which we do not have here. See *Horton*, 143 Ill. 2d 11 (finding a stipulated bench trial tantamount to a guilty plea where defendant stipulated to the sufficiency of the evidence, but not where counsel conceded during closing arguments that evidence was sufficient to convict). The other case found that the stipulated bench trial was not tantamount to a guilty plea where an express stipulation did not occur. See *Thompson*, 404 Ill. App. 3d 265 (finding the stipulated bench trial was proper where there was no express stipulation to defendant's guilt, even in the absence of argument and analysis).

¶ 18 Defendant also argues that the order requiring defendant to pay a $250 DNA analysis fee must be vacated as defendant's DNA was already registered in the DNA database. See *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). The State confesses error. After reviewing the briefs and the record, we accept the State's confession and vacate the DNA analysis fee.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed in part and vacated in part.

¶ 21 Affirmed in part and vacated in part.

¶ 22 JUSTICE WRIGHT, concurring in part and dissenting in part.

¶ 23 I agree with the majority that this stipulated bench trial was not tantamount to a guilty plea. I also agree that the circuit clerk should not have assessed a $250 DNA analysis fee as a

court cost. However, I would remand the matter to the trial court rather than correcting the DNA fee in this court.

¶ 24 I am opposed to reducing the amount defendant owes by $250 because there are other significant financial undercharges that benefitted defendant, which defendant has not brought to the attention of this court. For example, the trial court did not order defendant to pay a mandatory street value fine as required by statute. 730 ILCS 5/5-9-1.1(a) (West 2010). The CJIA fine appears to have been assessed in the amount of $1, when the statute requires a $25 monetary penalty. 730 ILCS 5/5-9-1.1(e) (West 2010). The VCV fine should have been calculated at the rate of $4 for every $40 of total fines imposed for a total of more than $200, rather than the $100 sum certain that became effective in 2012, after the date of this offense. 725 ILCS 240/10 (West 2010). The trial court neglected to order defendant to pay a $100 drug trauma fine as required by statute. 730 ILCS 5/5-9-1.1(b) (West 2010). These omissions would increase the total due and do not warrant the $250 reduction in the balance due which defendant seeks on appeal.

¶ 25 In the interest of judicial economy, I also note that the trial court cannot order any defendant to pay a Crime Stoppers fine, as imposed in this case, without sentencing an offender to serve a period of probation or conditional discharge. See 730 ILCS 5/5-6-3(b)(13) (West 2010). Moreover, the date of this offense was November 9, 2011, and, in error, the court ordered defendant to pay a $20 prescription pill disposal fine that did not go into effect until January 1, 2012, after the date of this offense. See 20 ILCS 3930/9.3 (West 2012); 730 ILCS 5/5-9-1.1(d) (West 2012). I predict these two additional overcharges totaling $45 will inevitably give rise to future appeals seeking to vacate these assessments as void penalties. Hence, in the interest of judicial economy, I would vacate *all* monetary fines and costs and remand this matter with

directions for the trial court to vacate the DNA analysis fee and correct all other miscalculations in the monetary consequences imposed as part of the original sentence.

¶ 26 On remand, I would also direct the trial court to enter a supplemental order identifying the fines and costs and the statutory authority for those monetary charges imposed as part of defendant's sentence. In addition, since the drug assessment fee for a Class 1 felony is $2,000, rather than $1,035 as set out by 720 ILCS 570/411.2(a)(2) (West 2010), the court should make it clear on remand whether the $2,000 drug assessment was reduced to $1,035 by applying the $5 per diem credit or whether this amount reflects a scrivener's error. See 725 ILCS 5/110-14 (West 2010).