ILLINOIS OFFICIAL REPORTS

Appellate Court

***People v. Crenshaw*, 2012 IL App (4th) 110202**

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL CRENSHAW, Defendant-Appellant.
District & No.	Fourth District Docket No. 4-11-0202
Filed	August 29, 2012
Rehearing denied	September 28, 2012
Held (*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*)	Defendant's postconviction petition alleging that his counsel's failure to advise him that probation was not available for criminal sexual assault affected defendant's willingness to engage in plea bargaining was properly dismissed, since the record showed defendant refused to admit he was guilty.
Decision Under Review	Appeal from the Circuit Court of Brown County, No. 09-CF-5; the Hon. Diane M. Lagoski, Judge, presiding.
Judgment	Affirmed.

Counsel on Appeal	Michael J. Pelletier, Karen Munoz, and Catherine K. Hart, all of State Appellate Defender's Office, of Springfield, for appellant. Mark J. Vincent, State's Attorney, of Mt. Sterling (Patrick Delfino and Robert J. Biderman, both of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE COOK delivered the judgment of the court, with opinion. Presiding Justice Turner and Justice Steigmann concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Michael Crenshaw, who is serving an eight-year prison term for criminal sexual assault, appeals from the trial court's denial of his postconviction petition following a third-stage evidentiary hearing. He argues the court erred in rejecting his claim that his trial counsel provided ineffective assistance by failing to advise him that probation was not an available sentence for criminal sexual assault, affecting his willingness to engage in plea negotiations. We disagree and affirm.

¶ 2 I. BACKGROUND

¶ 3 After a bench trial, the trial court found defendant guilty of criminal sexual assault, a Class 1 felony (720 ILCS 5/12-13(a)(3), (b)(1) (West 2008)). Defendant committed an act of sexual penetration with his daughter, H.H., who was then 15 years old. The court sentenced defendant to eight years' imprisonment. This court affirmed on direct appeal. *People v. Crenshaw*, 2011 IL App (4th) 090908, 959 N.E.2d 703.

¶ 4 While his direct appeal was pending, in March 2010, defendant filed a *pro se* petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2008)), which counsel amended. In November 2010, the trial court entered a partial dismissal of defendant's postconviction petition, discharging several claims. However, the court found defendant's ineffective-assistance claim alleged a possible constitutional violation that would warrant relief. In that claim, defendant alleged his trial counsel was ineffective in failing to admonish him that he would be ineligible for probation if found guilty of criminal sexual assault. Defendant asserted this failure affected his position in plea negotiations. The proceedings advanced to an evidentiary hearing.

¶ 5 At the February 2011 hearing, defendant and his stepmother testified to a conversation in which defense counsel communicated a plea offer from the State of six months of

probation and six months in county jail. According to defendant's recollection, defense counsel advised defendant that the favorable offer reflected a weakness in the State's case. Defendant testified had he known probation was not available as a sentence for criminal sexual assault, he would have considered plea options more seriously. However, defendant acknowledged that he informed his attorney he was unwilling to plead guilty to an offense that he did not commit, that would require him to register as a sex offender, or that would cost him his job as a corrections officer. In response to a question whether he had "underst[ood] this offense to be probationable," defendant stated, "I didn't understand. Only thing I knew was I didn't commit the crime and I wasn't going to admit to doing what I was accused of." He recalled that his attorney informed him the range of sentences for criminal sexual assault was 6 to 15 years in prison.

¶ 6 Defendant's trial attorney testified that he never received a specific plea offer from the State, but spoke with defendant about possible plea bargaining as "an alternative to the potential of going to prison for 4 to 15 years." He explained the possibility of pleading guilty to a lesser offense. Defendant expressed that he was not interested in a plea bargain. According to defense counsel, defendant maintained throughout these discussions that "he wasn't going to be pleading guilty to something that he didn't do" and "wasn't interested in pleading to something where he'd be losing his job." Instead, defendant hoped he would be acquitted at trial.

¶ 7 In addition to this testimony, the trial court considered transcripts of the pretrial proceedings. These transcripts showed that, at his initial appearance, defendant was admonished that criminal sexual assault carried a potential penalty of 4 to 15 years in prison and mandatory supervised release. At two subsequent pretrial hearings, defendant was admonished that, in addition to the possible prison sentence and mandatory supervised release, a fine of up to $25,000 was also a possible penalty. Probation was never mentioned as a possible sentence for criminal sexual assault.

¶ 8 The trial court rejected defendant's ineffective-assistance claim and denied his postconviction petition. It found that defendant was not prejudiced by not knowing he would be ineligible for probation if convicted because defendant would have rejected any plea offer that required him to admit guilt.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Defendant argues the trial court erred in finding he was not denied the effective assistance of counsel. He maintains he was harmed in the plea-bargaining process by his defense counsel's failure to advise him that he could not receive a probationary sentence for criminal sexual assault. We disagree.

¶ 12 The Post-Conviction Hearing Act sets forth a procedure for correcting substantial constitutional violations that resulted in the defendant's conviction. 725 ILCS 5/122-1(a)(1) (West 2008). At an evidentiary hearing on a postconviction petition, "the defendant bears the burden of making a substantial showing of a constitutional violation." *People v. Pendleton*, 223 Ill. 2d 458, 473, 861 N.E.2d 999, 1008 (2006). Where, as here, fact-finding and

credibility determinations are involved in the trial court's disposition of a postconviction petition, we will not reverse unless the court's decision is manifestly erroneous. *Id.* A decision is manifestly erroneous if error is "clearly evident, plain, and indisputable." (Internal quotation marks omitted.) *People v. Morgan*, 212 Ill. 2d 148, 155, 817 N.E.2d 524, 528 (2004).

¶ 13 A defendant's constitutional right to the effective assistance of counsel extends to aspects of the plea-bargaining process. *Hill v. Lockhart*, 474 U.S. 52, 56-57 (1985). While no defendant has a constitutional right to a plea bargain, a defendant does have the right to effective assistance of counsel in any plea negotiations the State actually chooses to enter. See *People v. Curry*, 178 Ill. 2d 509, 530, 687 N.E.2d 877, 887-88 (1997). To make out a claim for ineffective assistance of counsel, a defendant must show that (1) defense counsel's performance was so deficient that it "fell below an objective standard of reasonableness" and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984). Generally, to show he was prejudiced by ineffective assistance of counsel in plea bargaining, a defendant must establish a reasonable probability that, but for deficiencies in his legal counsel, he would have accepted a plea carrying a lesser sentence than he received. *Curry*, 178 Ill. 2d at 531, 687 N.E.2d at 888.

¶ 14 The trial court's judgment in this case was not manifestly erroneous. Defendant failed to show either element of ineffective assistance of counsel. Counsel's performance was not deficient because he satisfied his duty of advising defendant of the range of possible nonmonetary penalties accompanying criminal sexual assault. The court supplemented this advice with admonishments mentioning that a prison sentence would entail a term of mandatory supervised release and that a possible sentence could include a fine. In addition, counsel advised defendant that pleading guilty to a lesser offense would possibly allow defendant to receive a sentence less severe than the minimum four-year prison term. Nevertheless, defendant refused to allow defense counsel to engage in plea negotiations. Unlike *Curry*, 178 Ill. 2d at 528-29, 687 N.E.2d at 887, on which defendant relies, defendant's attorney made no "unequivocal, erroneous, misleading representations" (internal quotation marks omitted) regarding the consequences of forgoing plea negotiations. We are not inclined to find that counsel's omission of any mention of probation in discussions of possible penalties amounted to deficient performance, especially since it is unclear defendant suffered the misbelief that he would be eligible for probation if convicted–it is unclear from defendant's postconviction testimony that the possibility of probation ever entered into defendant's mind until after he was sentenced to prison.

¶ 15 Further, the alleged deficiency in trial counsel's performance could not have affected the outcome of defendant's prosecution. With no specific plea offer for a lighter sentence on the table, defendant cannot show a reasonable probability that he would have received a more favorable sentence if not for the alleged defects in his counsel's performance. In *Curry*, for example, the defendant rejected a plea offer on erroneous advice from his attorney; the supreme court found he was prejudiced by his counsel's deficient performance when his sentence following trial was more severe than the sentence offered in the plea bargain. *Id.* at 531, 533, 687 N.E.2d at 888-89. Here, however, defendant's claim that he would have

been more inclined to engage in plea bargaining had he known probation was not an available sentence is insufficient since he was not entitled to a plea. The trial court found no credible evidence that the State did offer or would have offered a deal for less than eight years' imprisonment.

¶ 16 Moreover, defendant's assertion that he would have been more inclined to pursue a deal is undermined by his stated unwillingness to admit guilt. Defendant was disinclined to admit guilt for an offense he believed he did not commit, especially since it would require him to register as a sex offender and would probably cost him his job. These concerns and a hope for acquittal, not a consideration of the possibility of a harsh sentence, led defendant to reject plea bargaining as a defense strategy. Unlike *Curry*, the trial court in this case noted that the evidence of defendant's guilt was close due to weaknesses in the State's evidence. *Cf. id.* at 532-33, 687 N.E.2d at 888-89 (the defense presented at trial was not so strong as to support the State's argument that defendant would have rejected a plea offer even if his counsel had not provided ineffective assistance). The court's conclusion that he would have rejected a plea bargain even if he knew probation was unavailable is not manifestly erroneous. At any rate, defendant's assertion does not rise to the level required to show prejudice–that he would have accepted a specific, real plea bargain but for his counsel's deficient performance.

¶ 17 III. CONCLUSION

¶ 18 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment as costs of this appeal.

¶ 19 Affirmed.