2013 IL App (4th) 110632-U

NO. 4-11-0632

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 19, 2013
Carla Bender
4th District Appellate
Court, IL

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | Vermilion County |
| GARETY D. WOODRICH, | ) | No. 07CF282 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | Claudia S. Anderson, |
| | ) | Judge Presiding. |

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held*: We grant appointed counsel's motion to withdraw under *Anders v. California*, 386 U.S. 738 (1967), and affirm the trial court's judgment where no meritorious issues could be raised on appeal as to whether (1) the probation revocation admonishments comported with due process, (2) the State proved the probation violation by a preponderance of the evidence, (3) the trial court properly denied defendant's motion to dismiss the petition to revoke probation pursuant to the Interstate Detainer Agreement (730 ILCS 5/3-8-9, art. III(a) (West 2010)), and (4) defendant's three-year prison sentence was not an abuse of discretion.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. For the following reasons, we grant OSAD's motion and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 On May 4, 2007, the State charged defendant, Garety D. Woodrich, with four

counts of forgery (720 ILCS 5/17-3(a)(2) (West 2006)) for signing credit card slips in the name of another person.

¶ 5 In July 2007, defendant pleaded guilty to one count of forgery in exchange for a sentence of probation, terms and conditions open, and dismissal of the remaining three charges, with the understanding he could be ordered to pay restitution on all four charges. Prior to accepting defendant's guilty plea, the trial court advised defendant as follows:

> "Each of these charges is a Class 3 Felony so each of them is punishable by two to five years in the penitentiary with one year of mandatory supervised release [(MSR)]. If there were aggravating factors present or extended term sentencing it could be five to ten years in the penitentiary with one year of [MSR]. Up to two and a half years on probation and up to a $25,000 fine."

The court further admonished defendant of his right to a jury or bench trial, right to an attorney, right to cross-examine witnesses and present his own defense, and right not to testify. Defendant was also informed if the State was unable to prove its case beyond a reasonable doubt, the charges would be dismissed. After receiving these admonishments, defendant stated he understood he was giving up these rights by entering into a plea agreement and responded no one had made any additional promises to him nor was anyone forcing him to enter into the plea agreement. After hearing the factual basis for the plea, the court accepted defendant's guilty plea and entered judgment against him on one count of forgery; the other three counts of forgery were dismissed.

¶ 6 At the September 5, 2007, sentencing hearing, the trial court sentenced defendant

to 30 months' drug court probation, 150 hours of public service work, restitution in the amount of $553.79, and 180 days' work release, which was stayed pending compliance with probation.

¶ 7 On November 30, 2007, the State filed a petition to revoke defendant's probation, alleging he violated the conditions of probation by leaving the State of Illinois without permission and failing to comply with curfew conditions. A warrant was issued for his arrest. On April 13, 2011, defendant entered a blind admission, admitting he left the State of Illinois. Prior to his admission, the trial court admonished defendant he could be resentenced to 2 to 5 years in prison followed by a 1 year term of MSR, or if eligible for extended-term sentencing, he could be sentenced to 5 to 10 years in prison. The court also informed defendant he had a right to a hearing on the petition during which the State would have to prove the allegations by a preponderance of the evidence, the right to be represented by an attorney, and the rights to confront and cross-examine witnesses and present his own defense. After hearing the factual basis, the court accepted defendant's admission.

¶ 8 On May 16, 2011, defendant filed a motion to withdraw his admission and dismiss the petition to revoke probation pursuant to the Agreement on Detainers Act (730 ILCS 5/3-8-9 (West 2010)). On June 23, 2011, the trial court denied the motion.

¶ 9 Also on June 23, 2011, the trial court resentenced defendant to three years in prison with credit for 208 days' time served.

¶ 10 In July 2011, a notice of appeal was filed and OSAD was appointed to represent defendant. In September 2012, OSAD moved to withdraw, attaching to its motion a brief in conformity with the requirements of *Anders v. California*, 386 U.S. 738 (1967). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave

to file additional points and authorities by October 22, 2012, but defendant has not done so. After examining the record and executing our duties in accordance with *Anders*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 11 II. ANALYSIS

¶ 12 OSAD contends the record shows no meritorious issues can be raised on appeal. Specifically, OSAD asserts the following: (1) the probation revocation admonishments comported with due process; (2) the State proved the probation violation by a preponderance of the evidence; (3) the trial court properly denied defendant's motion to dismiss the petition to revoke probation pursuant to the Interstate Detainer Agreement (730 ILCS 5/3-8-9, art. III(a) (West 2010)); and (4) defendant's three-year prison sentence was not an abuse of discretion.

¶ 13 A. Probation Revocation Admonishments

¶ 14 OSAD first concludes no colorable argument can be made over whether the probation revocation admonishments given by the trial court comported with due process. We agree.

¶ 15 Illinois Supreme Court Rule 402A(a) (eff. Nov. 1, 2003) requires a court to address defendant in open court, informing him and determining he understands the following:

> "(1) the specific allegation in the petition to revoke probation, conditional discharge or supervision;
>
> (2) that the defendant has the right to a hearing with defense counsel present, and the right to appointed counsel if the defendant is indigent and the underlying offense is punishable by imprisonment;

(3) that at the hearing, the defendant has the right to confront and cross-examine adverse witnesses and to present witnesses and evidence in his or her behalf;

(4) that at the hearing, the State must prove the alleged violation by a preponderance of the evidence;

(5) that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, there will not be a hearing on the petition to revoke probation, conditional discharge or supervision, so that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, the defendant waives the right to a hearing and the right to confront and cross-examine adverse witnesses, and the right to present witnesses and evidence in his or her behalf; and

(6) the sentencing range for the underlying offense for which the defendant is on probation, conditional discharge or supervision."

Substantial compliance with these requirements is sufficient to satisfy due process. *People v. Ellis*, 375 Ill. App. 3d 1041, 1046, 874 N.E.2d 980, 983 (2007). Whether a trial court substantially complied with the admonishment requirements presents a legal question, which we review *de novo*. *People v. Bowens*, 407 Ill. App. 3d 1094, 1104, 943 N.E.2d 1249, 1261 (2011).

¶ 16 In this case, the trial court thoroughly complied with all admonishment requirements. The court informed defendant of the allegations in the petition, his right to a hearing

where the State would be required to prove the allegations by a preponderance of the evidence, the right to confront and cross-examine witnesses as well as present his own defense, ensured defendant understood the rights he was giving up by admitting the petition, and notified him of the applicable sentencing range. Thus, no colorable argument can be made the probation revocation proceedings failed to comport with due process.

¶ 17 B. Sufficiency of the Evidence

¶ 18 OSAD next concludes no colorable argument can be made as to whether the State met its burden of proving defendant violated his probation by a preponderance of the evidence. *People v. Crowell*, 53 Ill. 2d 447, 451, 292 N.E.2d 721, 723 (1973); 730 ILCS 5/5-6-4.1(c) (West 2010). We agree.

¶ 19 When reviewing whether the evidence is sufficient to support a defendant's conviction, we must determine "whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the defendant guilty" by a preponderance of the evidence. *People v. Reher*, 361 Ill. App. 3d 697, 700, 838 N.E.2d 206, 209 (2005). It is the responsibility of the fact finder to judge the weight of the evidence, assess the credibility of the witnesses, and draw any reasonable inferences. *People v. Ramos*, 316 Ill. App. 3d 18, 22, 735 N.E.2d 1094, 1098 (2000).

¶ 20 Here, in its petition to revoke defendant's probation, the State alleged defendant violated probation by leaving the State of Illinois without permission and failing to comply with curfew conditions. At the probation revocation hearing, defendant admitted he left the State of Illinois. This admission is supported by defendant having been charged with October 2007 offenses committed in the State of Iowa. After hearing the factual basis, the trial court accepted

defendant's admission and entered judgment. Based on this evidence, no colorable claim can be made the State failed to state a sufficient factual basis or the court's judgment in accepting defendant's admission was in error.

¶ 21 C. Interstate Detainer Agreement

¶ 22 OSAD next contends no colorable argument can be made the trial court erred when it failed to dismiss the State's petition to revoke probation pursuant to the Interstate Detainer Agreement. We agree.

¶ 23 The Interstate Detainer Agreement (Agreement) is a compact adopted by the United States and 48 states, including Illinois. *People v. Adams*, 2012 IL App (5th) 100088, ¶ 10, 969 N.E.2d 553. The Agreement establishes procedures for resolving one state's outstanding charges against a prisoner in another state. *People v. Davis*, 356 Ill. App. 3d 940, 942, 827 N.E.2d 518, 519 (2005). Whether the Agreement applies to probation revocation proceedings is a question of law and is reviewed *de novo*. *People v. Torres*, 289 Ill. App. 3d 513, 516, 682 N.E.2d 261, 263 (1997).

¶ 24 The Agreement provides, in pertinent part, as follows:

> "(a) Whenever a person has entered upon a term of imprisonment in a penal or correction institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting

officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for a good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance." 730 ILCS 5/3-8-9, art. III(a) (West 2010).

¶ 25 In *Carchman v. Nash*, 473 U.S. 716, 725 (1985), the United States Supreme Court stated as follows:

> "The language of the Agreement therefore makes clear that the phrase 'untried indictment, information or complaint' in Art. III refers to criminal charges pending against a prisoner. A probation-violation charge, which does not accuse an individual with having committed a criminal offense in the sense of initiating a prosecution, thus does not come within the terms of Art. III. Although the probation-violation charge might be based on the commission of a criminal offense, it does not result in the probationer's being 'prosecuted' or 'brought to trial' for that offense. Indeed, in the context of the Agreement, the probation-violation charge generally will be based on the criminal offense for which the probationer already was tried and convicted and is serving his sentence in the sending State."

Because the Agreement does not apply to probation revocation petitions, no colorable argument can be made the trial court erred in denying defendant's request to dismiss the petition to revoke pursuant to the Agreement.

¶ 26 D. Defendant's Sentence Was Not Excessive

¶ 27 Last, OSAD asserts no colorable argument can be made the trial court abused its discretion in sentencing defendant to three years in prison. We agree.

¶ 28 "A trial court is given great deference when making sentencing decisions, and if a sentence falls within the statutory limits, it will not be disturbed on review unless the trial court abused its discretion and the sentence was manifestly disproportionate to the nature of the case." *People v. Thrasher*, 383 Ill. App. 3d 363, 371, 890 N.E.2d 715, 722 (2008) (citing *People v. Grace*, 365 Ill. App. 3d 508, 512, 849 N.E.2d 1090, 1093-94 (2006)). "When a sentence of probation has been revoked, the trial court 'may impose any other sentence that was available *** at the time of the initial sentencing.' " *People v. Somers*, 2012 IL App (4th) 110180, ¶ 21, 970 N.E.2d 606 (quoting 730 ILCS 5/5-6-4(e) (West 2008)).

¶ 29 In this case, the trial court resentenced defendant to three years in prison for forgery. In resentencing defendant, the court stated as follows:

> "Well, I think that, you know, aside from everything else, which is certainly heart tugging—I mean, the Court has great sympathy and compassion for the fact that you have had the life that you've had, that you really don't have anyplace to go, and you certainly seem to be well-spoken and have a handle on what you want to say and how you want to say it. I have to look at this

> presentence report though and consider—take into consideration the previous convictions that you've had. The difficulties that you've had in making it to court, and complying with court orders for appearance or for that matter, complying with probation orders."

Further, the court gave defendant the opportunity to postpone sentencing until a later date so his biological mother or foster parent could be present and affirm for the court they were willing to allow defendant to live with them. Although defendant was informed the court "might consider some form of probation" if it knew defendant had a place to live, defendant decided to proceed with sentencing immediately, knowing he would be resentenced to prison.

¶ 30 Forgery is a Class 3 felony punishable by a nonextended term of two to five years in prison. 720 ILCS 5/17-3(d) (West 2006); 730 ILCS 5/5-8-1(a)(6) (West 2006). Nothing in the record indicates the trial court considered any improper factors when resentencing defendant, nor does the record support a claim the sentence was disproportionate to the offense. Thus, no colorable argument can be made the trial court abused its discretion in resentencing defendant to three years in prison.

¶ 31 III. CONCLUSION

¶ 32 After reviewing the record consistent with our responsibilities under *Anders*, we agree with OSAD that no meritorious issues can be raised on appeal, and we grant OSAD's motion to withdraw as counsel for defendant and affirm the trial court's judgment.

¶ 33 Affirmed.