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2013 IL App (4th) 110962-U

NO. 4-11-0962

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 3, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
JEFFREY COYNE,)	No. 11CF42
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Defense counsel's motion to withdraw as counsel under *Anders v. California*, 386 U.S. 738 (1967) is allowed as no meritorious issues can be raised in this case. Defendant's conviction was the result of a guilty plea and after a motion to reconsider sentence, the only relief he may seek on appeal is from his sentencing. Defendant has served his sentence and, therefore, his appeal is moot.

¶ 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 reasons that follow, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2011, defendant, Jeffrey Coyne, entered an open plea of guilty to all four charges alleged against him, two counts of aggravated driving under the influence (625 ILCS 5/11-501(a)(1), (d)(2)(B); 5/11-501(a)(2), (d)(2)(B) (West 2010)), one count of driving while

driver's license revoked (625 ILCS 5/6-303(a) (West 2010)) and one count of theft of motor fuel (720 ILCS 5/16K-15 (West 2010)). On September 20, 2011, the trial court sentenced defendant to three years in prison on one count of the driving under the influence and treated the other as merged into it and to two years in prison, served concurrently, for the driving while revoked count. On September 22, 2011, defendant filed a motion to reconsider sentence. On October 24, 2011, the court denied this motion. This appeal followed, and OSAD was appointed to represent defendant.

¶ 5 OSAD has filed a motion to withdraw as counsel under *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), asserting no issues of arguable merit warrant appeal. The record shows service of the motion on defendant. On our own motion, we granted defendant leave to file additional points and authorities by February 21, 2013. Defendant has filed none. After examining the record in accordance with our duties under *Anders*, we affirm the trial court's judgment and grant OSAD's motion to withdraw as counsel on appeal.

¶ 6 II. ANALYSIS

¶ 7 Defendant has served his sentence in the Department of Corrections and has been released from custody. Defendant could now receive no relief from his sentence and any arguments in regard to excessive sentence or the procedure followed by the trial court in finding a sentence of probation inappropriate are moot. See *People v. Lieberman*, 332 Ill. App. 3d 193, 195, 772 N.E.2d 876, 878 (2002) ("A question is moot when no actual controversy exists or where events occur that render it impossible for the court to grant effectual relief.") No exception to the mootness doctrine exists which would render it inapplicable under these circumstances.

¶ 8 An otherwise moot issue may be addressed under the public-interest exception where the issue is of a substantial public nature, the circumstances are likely to recur and an authoritative determination is needed for future guidance. *Felzak v. Hruby*, 226 Ill. 2d 382, 393, 876 N.E.2d 650, 658 (2007). Another exception is where the complaining party would be subject to the same action again and the action challenged is of such short duration it can not be fully litigated prior to its cessation. *Id.*

¶ 9 OSAD has noted the only issues which could otherwise be argued are (1) the sentence was excessive even though it was within the statutory range and it was the minimum sentence of imprisonment which could be ordered (see 625 ILCS 5/11-501(d)(2)(B); 730 ILCS 5/5-4.5-35(a) (West 2010)) and (2) section 5-6-1(a) of the Unified Code of Corrections (730 ILCS 5/5-6-1(a) (West 2010)) requires a trial court to sentence a defendant to probation unless the court finds imprisonment is necessary for the protection of the public or probation would deprecate the seriousness of the offender's conduct. However, strict compliance with the statutory language is not required as substantial compliance is sufficient if demonstrated in the record. *People v. Cox*, 82 Ill. 2d 268, 281, 412 N.E.2d 541, 548 (1980). Neither of these issues are covered by the exceptions to the mootness doctrine.

¶ 10 After reviewing the trial court record, we find any issues in regard to defendant's sentence are moot. He has served his sentence and been released from the Department of Corrections. We grant OSAD's motion to withdraw as counsel on appeal.

¶ 11 III. CONCLUSION

¶ 12 We grant the motion to withdraw as counsel and affirm the trial court's judgment.

¶ 13 Affirmed.