2013 IL App (4th) 120486-U

NO. 4-12-0486

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 29, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
JERMAINE L. DAVIS,	)	No. 11CF1525
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant forfeited his *pro se* ineffective-assistance-of-counsel claims where defendant failed to bring those claims to the trial court's attention.

¶ 2 Defendant forfeited his argument the trial court improperly considered a mitigating factor as an aggravating factor by failing to cite legal authority in support of his contention.

¶ 3 In September 2011, the State charged defendant, Jermaine L. Davis, by information with two counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2010)) for the death of Russell Stokes. At a February 2012 trial, a jury found defendant guilty of first degree murder. In March 2012, defense counsel filed a motion for an acquittal or, in the alternative, a motion for a new trial. That same month, defendant sent a letter addressed to the trial court, contending, *inter alia*, his trial counsel "misrepresented" him. Defendant also filed a writ of *habeas corpus*, alleging the prosecutor and his defense counsel committed perjury about the

number of days he was in pretrial custody. On March 21, 2012, the court denied defendant's posttrial motion prepared by defense counsel but did not address defendant's *pro se* documents. At a March 27, 2012, hearing, the court sentenced defendant to 60 years' imprisonment. In April 2012, defense counsel filed a motion to reconsider defendant's sentence. After a May 2012 hearing, the court denied the motion to reconsider.

¶ 4 Defendant appeals, alleging (1) his case must be remanded to the trial court due to that court's failure to conduct an inquiry into his posttrial ineffective-assistance-of-counsel claims as required by *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny; and (2) the court abused its discretion by sentencing him to 60 years' imprisonment because the court failed to apply statutory mitigating factors. We affirm.

¶ 5 I. BACKGROUND

¶ 6 A brief summary of the evidence presented at defendant's February 2012 trial follows. In September 2011, defendant and Constance Chappel were friends who were dating, but they did not live together. Chappel was also friends with Stokes and was kind of seeing him as well. On the early morning of September 16, 2011, Chappel and Stokes were engaged in a sex act at Chappel's apartment when defendant arrived there. Chappel let defendant into her apartment, and defendant stated he had seen her and Stokes. Defendant began collecting his things in Chappel's apartment. At that point Chappel's daughter awoke, and Chappel went to the bedroom to put the girl back to bed. When Chappel returned to the living room, she saw Stokes charge defendant, and defendant hit Stokes and knock him down. Chappel's daughter entered the living room, and Chappel again took the girl back to the bedroom.

¶ 7 When Chappel returned to the living room, she observed defendant pulling

Stokes's unconscious body into the hallway of the apartment building. Defendant told Chappel he would continue to hit Stokes until she told him the truth about what happened. While he was saying that, defendant was hitting Stokes. Chappel immediately said she would tell the truth, and defendant stopped hitting Stokes. Defendant then took Chappel's daughter to the residence of Timothy Pettigrew, Chappel's uncle. Pettigrew testified that, when defendant came over that morning, defendant's hands were swelled up and it looked like defendant had been in a scuffle. Defendant told Pettigrew he had been in a confrontation with Stokes and had knocked Stokes out. Defendant showed Pettigrew photographs on his cellular telephone of Stokes lying unconscious. When defendant returned to Chappel's apartment, he demanded Chappel help him move Stokes. Chappel assisted defendant in moving Stokes down the hallway and out of the apartment building. The pair left Stokes outside on the ground. Chappel also helped defendant clean up the blood in the hallway. Another resident of the apartment building eventually called the police, and they found Stokes lying on the ground with no shirt, his underwear around his knees, and his pants around his ankles. Stokes was still breathing but unresponsive. Stokes later died at the hospital. Dr. John Scott Denton, the forensic pathologist who performed Stokes's autopsy, estimated Stokes sustained 42 separate injuries cause by around 24 individual blows to different parts of Stokes's body. He opined Stokes died from multiple blunt force trauma due to injuries to his head and neck. At the time of defendant's trial, Chappel also had pending criminal charges related to Stokes's death.

¶ 8 Defendant was allowed to present Stokes's prior convictions for violent crimes, and the jury received a self-defense instruction. Moreover, in addition to first degree murder, the trial court instructed the jury on second degree murder based on sudden and intense passion as

well as the belief circumstances existed justifying the use of deadly force. After deliberations, the jury found defendant guilty of first degree murder.

¶ 9 In a March 8, 2012, letter to the trial court, defendant raised complaints about his criminal proceedings, including his frustration with defense counsel's failure to raise section 7-2 of the Criminal Code of 1961 (720 ILCS 5/7-2 (West 2010) (use of force in defense of dwelling)). The letter is file-stamped March 12, 2012, but the docket sheets do not mention the letter. On March 9, 2012, defense counsel filed a posttrial motion. On March 15, 2012, defendant filed a *pro se* writ of *habeas corpus*, which contended defense counsel committed perjury in defendant's case. The docket entry for March 15, 2012, states defendant's document was placed in the court file.

¶ 10 On March 21, 2012, defendant was present at the hearing on the posttrial motion filed by defense counsel and did not raise his complaints about counsel. The trial court denied the posttrial motion. On March 27, the trial court held defendant's sentencing hearing. Defendant was again present at court and did not raise any ineffective-assistance-of-counsel claims. The court sentenced defendant to 60 years' imprisonment for first degree murder. Defense counsel filed a motion to reconsider defendant's sentence. Defendant was present at the May 23, 2012, hearing, at which the court denied the motion to reconsider. Defendant again did not mention any complaints about defense counsel.

¶ 11 On May 24, 2012, defendant filed a timely notice of appeal in compliance with Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009), and thus this court has jurisdiction under Illinois Supreme Court Rule 603 (eff. Oct. 1, 2010).

¶ 12 II. ANALYSIS

¶ 13 A. Defendant's Ineffective-Assistance-of-Counsel Claims

¶ 14 Defendant first argues the trial court erred by failing to inquire into his posttrial ineffective-assistance-of-counsel claims and thus his case should be remanded for a *Krankel* inquiry into those claims. The State concedes this issue. However, we decline the State's concession because defendant forfeited his ineffective-assistance-of-counsel claims by not bringing them to the trial court's attention.

¶ 15 In *People v. Allen*, 409 Ill. App. 3d 1058, 1066, 950 N.E.2d 1164, 1174 (2011), the defendant filed a posttrial letter with the trial court raising ineffective assistance of counsel. The defendant did not raise his ineffective-assistance-of-counsel claims during his sentencing hearing or at the hearing on his motion to reconsider, which took place after he filed his *pro se* documents. *Allen*, 409 Ill. App. 3d at 1077, 950 N.E.2d at 1182. Quoting language from *People v. Lewis*, 165 Ill. App. 3d 97, 109, 518 N.E.2d 741, 749 (1988), this court held that, because the defendant did not raise his ineffective-assistance-of-counsel claims during his posttrial appearances, he did not bring those claims to the court's attention and thus forfeited them. *Allen*, 409 Ill. App. 3d at 1077, 950 N.E.2d at 1182.

¶ 16 We acknowledge our earlier opinion cited by the State in which we held the defendant did not forfeit his *pro se* ineffective-assistance-of-counsel claims when he failed to mention them during his statement of allocution at his sentencing hearing. See *People v. Peacock*, 359 Ill. App. 3d 326, 340, 833 N.E.2d 396, 408 (2005). However, our *Peacock* decision did not mention *Lewis* in its holding, and we have since found the reasoning in *Lewis* more persuasive. See *Allen*, 409 Ill. App. 3d at 1077, 950 N.E.2d at 1182. Additionally, we note our supreme court has refused to criticize a circuit court for failing to take action on the defen-

dant's *pro se* ineffective-assistance-of-counsel claims when the record provided no indication the court was ever made aware of the claims. See *People v. Jocko*, 239 Ill. 2d 87, 93-94, 940 N.E.2d 59, 63 (2010).

¶ 17 Here, defendant appeared before the trial court three times after he filed his *pro se* documents criticizing his trial counsel's performance and never once mentioned his claims. Further, nothing in the record suggests the court was made aware of defendant's ineffective-assistance-of-counsel claims. Accordingly, we find defendant has forfeited his *pro se* ineffective-assistance-of-counsel claims, and thus he is not entitled to a remand.

¶ 18 B. Defendant's Sentence

¶ 19 Defendant also asserts the trial court erred by failing to apply two statutory mitigating factors. The State asserts defendant has forfeited this issue by failing to raise it in his posttrial motion, and he cannot establish plain error. Defendant responds he can establish plain error because the court's error was a serious injustice.

¶ 20 The plain-error doctrine permits a reviewing court to consider unpreserved error under the following two scenarios:

> "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d

1045, 1058 (2010).

We begin our plain-error analysis by first determining whether any error occurred at all. *Sargent*, 239 Ill. 2d at 189, 940 N.E.2d at 1059. If error did occur, this court then considers whether either of the two prongs of the plain-error doctrine has been satisfied. *Sargent*, 239 Ill. 2d at 189-90, 940 N.E.2d at 1059. Under both prongs, the defendant bears the burden of persuasion. *Sargent*, 239 Ill. 2d at 190, 940 N.E.2d at 1059.

¶ 21 Section 5-5-3.1 of the Unified Code of Corrections requires a trial court to accord weight in favor of minimizing a sentence to the section's enumerated grounds, including when (1) the defendant acted under "strong provocation" and (2) "substantial grounds" tended to excuse or justify the defendant's criminal conduct but failed to establish a defense. 730 ILCS 5/5-5-3.1(a)(3), (a)(4) (West 2010). In sentencing defendant, the trial court did not find any statutory mitigating factors applied in this case. As to the nature of the offense, the court commented "the total lack of control exhibited by [defendant] when he beat Mr. Stokes to death, is something that the Court must consider when fashioning a sentence." Without citation to authority, defendant claims a complete loss of control is consistent with the aforementioned statutory mitigating factors. We disagree with defendant a total lack of control clearly establishes the two statutory mitigating factors cited by him. Thus, we find defendant has forfeited his sentencing argument for failing to cite legal authority as required by Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). See *People v. Ward*, 215 Ill. 2d 317, 332, 830 N.E.2d 556, 564 (2005) (noting a point raised in a brief but not supported by citation to relevant authority is noncompliant with supreme court rules and thus is forfeited).

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the Champaign County circuit court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 24 Affirmed.