2014 IL App (4th) 120961-U

NO. 4-12-0961

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 15, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
DANIELLE N. PAUL-FRANKLIN,	)	No. 11CF742
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The office of the State Appellate Defender's motion to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), is allowed because no meritorious issues can be raised on appeal.

¶ 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 In May 2011, the State charged defendant by information with one count of theft, a Class 3 felony (720 ILCS 5/16-1(a)(1)(A), (b)(4) (West 2010)), for exerting unauthorized control with the intent to permanently deprive the owner of the use or benefit of appliances

having a total value in excess of $500. In September 2011, defendant pleaded guilty pursuant to a fully negotiated plea agreement and was sentenced to 30 months' probation, two days in the Champaign County correctional center (for which she was given credit), and ordered to pay certain fines, fees, and restitution. Defendant was given a $10 credit toward her fines for time spent in pretrial custody. As part of the agreement, defendant's probation in another case (Champaign County case No. 10-CF-443) was terminated unsuccessfully.

¶ 5 In April 2012, the State filed a petition to revoke defendant's probation in this case, alleging defendant (1) failed to report to the probation office as directed on seven occasions; (2) failed to attend and complete the Cognition Works anger-management program or obtain a mental-health evaluation as directed; and (3) willfully failed to pay all financial obligations as ordered. Following a July 2012 hearing on the matter, the trial court found that defendant had violated the terms of her probation. In August 2012, the court sentenced defendant to 30 months in prison, with credit for two days spent in pretrial custody.

¶ 6 In August 2012, defendant filed a motion to reconsider sentence which the trial court denied.

¶ 7 In October 2012, a timely notice of appeal was filed and OSAD was appointed to represent defendant. In October 2013, 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 November 25, 2013, 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.

¶ 8 II. ANALYSIS

¶ 9 OSAD contends that no meritorious issues can be raised on appeal. Specifically, OSAD asserts no colorable argument can be made regarding the following: whether (1) the State proved defendant violated the terms of her probation; (2) defendant should have been sentenced to Treatment Alternatives to Street Crimes (TASC) probation; (3) the sentence was excessive; (4) the restitution, fines, and fees were authorized by statute; or (5) defendant received full credit for time served.

¶ 10 A. Probation Violation

¶ 11 OSAD first concludes no colorable argument can be made that the State failed to prove defendant violated the terms of probation.

¶ 12 "A probation revocation proceeding is in the nature of a civil proceeding arising in the wake of a previous conviction and sentence of probation, and the [State must prove a] violation of previously imposed conditions of probation" by a preponderance of the evidence. *People v. Williams*, 303 Ill. App. 3d 264, 267, 707 N.E.2d 729, 731 (1999). We review the trial court's findings in a probation revocation proceeding under the manifest weight of the evidence standard. *Id.*

¶ 13 The evidence presented at defendant's revocation hearing established she (1) failed to report to the probation office as directed; (2) was terminated from the court-ordered anger-management program for failure to attend classes; (3) failed to obtain a mental-health evaluation as ordered; and (4) failed to pay court-ordered court costs. Based on this evidence, the trial court found that defendant violated the conditions of her probation. We agree with OSAD no colorable argument can be made that the court's finding was against the manifest weight of the evidence.

¶ 14 B. TASC Probation

¶ 15 OSAD next concludes no colorable argument can be made as to whether defendant should have been sentenced to TASC probation.

¶ 16 Under the TASC program, "[a]n addict or alcoholic who is charged with or convicted of a crime *** who has not been previously convicted of a violation of [the Use of Intoxicating Compounds Act] may elect treatment" under the Alcoholism and Other Drug Abuse and Dependency Act. 20 ILCS 301/40-5 (West 2010). Specifically, an offender who suffers from alcoholism may elect to be sentenced to probation with substance-abuse treatment as an alternative to traditional sentencing, unless one of several disqualifying factors is present. 20 ILCS 301/40-10(a) (West 2010). Upon election, the trial court shall order the defendant to undergo an examination to determine whether she suffers from alcoholism or other drug addiction and would likely be rehabilitated through treatment. 20 ILCS 301/40-10(b) (West 2010). Based on the examination, if the court determines the defendant suffers from alcoholism or other drug addiction that would benefit from treatment, it shall order the defendant placed on probation under the supervision of a designated program. *Id.* We review a trial court's determination of a defendant's eligibility for TASC for an abuse of discretion. *People v. Gernant*, 242 Ill. App. 3d 833, 835, 610 N.E.2d 722, 723-24 (1993).

¶ 17 In this case, the TASC report submitted to the trial court indicated defendant met the criteria for TASC probation based on a diagnosis of "alcohol dependency in early full remission." However, the August 2012 report also noted "her recent history of drinking is minimal" and that "she last drank on St. Patrick's Day." The presentence investigation report, prepared that same month, indicated defendant (1) drinks two mixed drinks every two or three months; (2) last consumed alcohol on St. Patrick's Day 2012; (3) denied having ever committed a crime while under the influence of alcohol or to acquire alcohol; and (4) did not believe alcohol

was problematic for her and was cautious of her alcohol consumption because her mother was a recovering alcoholic.

¶ 18 Based on the evidence that defendant "rarely drinks," last consumed alcohol on St. Patrick's Day, and failed to comply with prior conditions of probation, the trial court found that defendant would not benefit from TASC treatment. We agree with OSAD no colorable argument can be made that the court's determination was an abuse of discretion.

¶ 19 C. Excessive Sentence

¶ 20 Next, OSAD suggests no colorable argument can be made that defendant's sentence was excessive.

¶ 21 A trial court's sentencing decision is entitled to great deference as the trial court is generally in a better position to determine an appropriate sentence based on the individual facts and circumstances of each case. *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341. We review a trial court's sentencing decision for an abuse of discretion. *Id.* "If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." (Internal quotation marks omitted.) *Id.* (quoting *People v. Hensley*, 354 Ill. App. 3d 224, 234-35, 819 N.E.2d 1274, 1284 (2004), quoting *People v. Kennedy*, 336 Ill. App. 3d 425, 433, 782 N.E.2d 864, 871 (2002)).

¶ 22 Here, defendant was convicted of theft over $500, a Class 3 felony punishable by between two and five years in prison (720 ILCS 5/16-1(a)(1)(A), (b)(4) (West 2010)). Defendant's prior criminal history includes (1) a trespass-to-motor-vehicle adjudication as a juvenile, (2) three convictions for driving on a suspended license, and (3) a felony conviction for misuse of a credit card. Further, she has a history of failing to comply with the conditions of

probation. After considering the aggravating and mitigating factors (both statutory and nonstatutory), the trial court determined a prison sentence was necessary. The court resentenced defendant to 30 months in prison—a sentence that is at the low end of the statutory range. We find no colorable argument can be made that the trial court abused its discretion in sentencing defendant to 30 months in prison as the sentence is neither manifestly disproportionate to the nature of the offense or greatly at variance with the spirit and purpose of the law.

¶ 23 D. Restitution, Fines, and Fees

¶ 24 OSAD next concludes no colorable argument can be made regarding the restitution, fines, and fees defendant was ordered to pay.

¶ 25 We review a trial court's imposition of fines and fees *de novo*. *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 23, 979 N.E.2d 1030.

¶ 26 At the time of her initial sentence of probation, defendant was ordered to pay a $10 local anti-crime assessment (crime stoppers) fee (730 ILCS 5/5-6-3(b)(13) (West 2010)); restitution in the amount of $1,583.27 (730 ILCS 5/5-5-6 (West 2010)); a violent crime victims assistance fund fee (725 ILCS 240/10(b) (West 2010)); a $25-per-month probation service fee (730 ILCS 5/5-6-3(I) (West 2010)); and a $200 genetic-marker-grouping-analysis fee (730 ILCS 5/5-4-3(j) (West 2010)). These monetary obligations are authorized by statute and were agreed to by defendant. We find no colorable argument can be made to the contrary.

¶ 27 E. Credit for Time Served

¶ 28 Last, OSAD concludes no colorable argument can be made that defendant did not receive full credit for time served in custody.

¶ 29 We review *de novo* whether a defendant is entitled to additional credit for time spent in pretrial custody. *People v. McCreary*, 393 Ill. App. 3d 402, 408, 915 N.E.2d 745, 749-

50 (2009). A "defendant is entitled to one day of credit for each day (or portion thereof) that [s]he spends in custody prior to sentencing, including the day [s]he was taken into custody." *People v. Ligons*, 325 Ill. App. 3d 753, 759, 759 N.E.2d 169, 174 (2001). Additionally, "[a]ny person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated upon application of the defendant." 725 ILCS 5/110-14(a) (West 2010).

¶ 30 In this case, defendant was arrested on May 16, 2011, and she posted bond on May 17, 2011. She was properly granted two days' sentence credit and a $10 credit against her fines. We find no colorable argument can be made to the contrary.

¶ 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.