2015 IL App (4th) 131056-U

NO. 4-13-1056

FILED
September 1, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
JAYSON JOHNSON,	)	No. 12CF1154
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed defendant's convictions and sentences, finding (1) the trial court did not deny him his right to present a defense, (2) the State did not deprive him of a fair trial by failing to correct false testimony, and (3) his claim of ineffective assistance of counsel is better suited for postconviction proceedings.

¶ 2 In August 2013, a jury found defendant, Jayson Johnson, guilty of three counts of unlawful delivery of a controlled substance and two counts of unlawful possession with intent to deliver a controlled substance within 1,000 feet of the real property comprising a public park. In October 2013, the trial court sentenced defendant to concurrent terms of 8, 10, and 12 years in prison for the three unlawful-delivery-of-a-controlled-substance convictions and 25 years in prison on each of the unlawful-possession-with-intent-to-deliver-a-controlled-substance-within-1,000-feet-of-the-real-property-comprising-a-public-park convictions.

¶ 3 On appeal, defendant argues (1) the trial court violated his right to present a

defense, (2) the State failed to correct false testimony denying him a fair trial, and (3) defense counsel was ineffective for failing to timely surrender defendant in exoneration of his bond. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In July 2012, the State charged defendant with three counts of unlawful delivery of a controlled substance (heroin) (counts I, II, and III) (720 ILCS 570/401(d) (West 2012)), one count of unlawful possession with intent to deliver a controlled substance (heroin) (count IV) (720 ILCS 570/401(c) (West 2012)), and two counts of unlawful possession with intent to deliver a controlled substance (heroin) within 1,000 feet of the real property comprising a public park (counts V and VI) (720 ILCS 570/407(b)(1) (West 2012)). The Stated alleged the offenses occurred during the course of a series of controlled buys conducted between July 10, 2012, and July 18, 2012.

¶ 6 In July 2013, the State disclosed the name of Christopher Riggs, a confidential informant it intended to call at trial. The State indicated Riggs was originally charged with residential burglary, forgery, and burglary in Champaign County case No. 12-CF-975, but he pleaded guilty to burglary in exchange for 62 days in jail and 30 months' probation. No promises or guarantees were made to induce Riggs to cooperate with the State in defendant's case.

¶ 7 In August 2013, defendant's jury trial commenced. The State moved to dismiss count IV and indicated it would proceed on the remaining counts. The State also indicated it had just learned from Riggs the additional fact that, during the period of July 2012 when the controlled buys were being conducted, he also made an additional purchase of heroin from defendant when Riggs was not under the observation of the police.

¶ 8 Champaign County sheriff's deputy Christopher Darr testified he came into

contact with Riggs in July 2012. After getting into legal trouble, Riggs approached Darr and offered information on a drug dealer in hopes of staying out of jail. Riggs stated he could buy heroin from a black male named Blade. Riggs then agreed to participate in controlled drug buys.

¶ 9 On July 10, 2012, Darr met Riggs in a parking lot at Parkland College. Darr searched Riggs and his vehicle. Thereafter, Darr provided Riggs with $20 in prerecorded police funds and had him wear a shirt containing a concealed video camera. Riggs called Blade, and they agreed to meet at a gas station. While on the way, Darr stated Riggs turned into the parking lot of Prairie Gardens and indicated the buy location had changed. Darr watched Riggs walk over to a parked vehicle, converse with someone, and then walk back to his own vehicle. Once back at Parkland College, Riggs provided Darr with a bag of the suspected heroin. Darr later watched the video from the hidden camera and stated defendant was the individual on the video. Darr showed Riggs a picture of defendant, and Riggs identified defendant as the man he knew as Blade. Darr provided Riggs with $10 to buy minutes for his phone. The hidden camera failed to capture any portion of the hand-to-hand transaction between defendant and Riggs.

¶ 10 On July 12, 2012, Darr arranged a second controlled buy with Riggs. After meeting in the parking lot of Home Depot, Darr searched him and his vehicle, outfitted him with a camera, and provided him with $40. Riggs drove to Dollar General but defendant was not in his car. He later came out of the store and sat in the passenger seat of Riggs' vehicle. Defendant started talking about Riggs "pushing some bags" for him in Urbana. While they were talking, Riggs testified a female came up to the vehicle and told defendant she "needed two." Defendant gave her two bags in exchange for $40. After the woman left, Riggs gave defendant $40 for two bags. Defendant gave him two bags and four more, the extra for possible delivery later on. Following the transaction, Riggs gave Darr six bags of heroin, and Darr gave him $5 for gas.

The camera failed to capture any portion of the transaction with defendant.

¶ 11 On July 13, 2012, Darr arranged a third controlled buy with Riggs. They met at the Parkland College parking lot, and Darr searched Riggs and his vehicle. Darr outfitted Riggs with the hidden camera and provided him with $80. Riggs called Blade, and they agreed to meet. Riggs approached defendant's car and made an exchange with him. Once the transaction was complete, Riggs returned to the Parkland College parking lot and handed over a bag of suspected heroin. The video from the hidden camera showed defendant in the driver's seat of his vehicle.

¶ 12 On July 18, 2012, Darr, looking to arrest defendant, asked Riggs to call defendant to arrange another transaction. Riggs arranged to meet defendant in the parking lot of County Market. Darr approached defendant's vehicle, tapped on the window, and announced he was a police officer. Defendant screamed and reached for something in the center console of the car. Darr was able to pull defendant from the car. On defendant's person, Darr found two cellular phones, a knife, and over $1,200 in cash. Inside the vehicle, officers found a plastic bag holding 17 smaller bags of a white substance suspected to be heroin.

¶ 13 After defendant's arrest, Darr used a measurement wheel to measure the distance from defendant's car in the County Market parking lot to Helms Park, a public park west of County Market, and Scott Park, a public park southwest of County Market. From defendant's vehicle, the distance to Helms Park was 919.7 feet and the distance to Scott Park was 652.6 feet.

¶ 14 Later that day, police officers executed a search warrant at defendant's residence. Darr found four digital scales, six boxes of plastic sandwich bags, a photo of defendant holding a large amount of cash, a letter addressed to defendant, and heroin residue on a plate.

¶ 15 Christopher Riggs testified he ran into legal trouble in 2012 and was charged with

residential burglary, burglary, and forgery. He did not have steady work at the time and had become addicted to Vicodin. Being unable to purchase the Vicodin because of depleted funds, Riggs started purchasing heroin because it was cheaper and much stronger. After being pulled over for a traffic violation, the officer told Riggs he might be able to help himself out if he had information to provide the police. Riggs eventually came into contact with Darr and told him he could purchase heroin from a man known as Blade, who Riggs identified at trial as defendant.

¶ 16 Riggs admitted he purchased heroin from defendant outside of the controlled buys conducted by Darr. Riggs stated he bought the heroin for his personal use to help "keep the sick away." He did not tell Darr during the time of the controlled buys but did so when he was in jail.

¶ 17 On cross-examination, Riggs testified he was told not to commit any crimes while he was cooperating with the police. While he was engaging in the controlled buys with Darr, Riggs stated he purchased heroin once from defendant on his own. He stated he told Darr about that purchase while he was in jail prior to October 2012 and not the week of defendant's trial.

¶ 18 Following Riggs' testimony, defense counsel sought to call Darr to make an offer of proof as to when Riggs admitted the unauthorized drug purchase from defendant. Counsel argued if Darr testified Riggs had told him about these transactions back in September 2012, a mistrial was warranted based on the State's failure to disclose the evidence pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). If Darr testified Riggs first admitted the unauthorized drug purchase just prior to trial, counsel argued he should be allowed to call Darr for the purpose of impeaching Riggs' credibility.

¶ 19 In the offer of proof, Darr testified Riggs told him "right before the trial" that he had purchased heroin from defendant on one occasion while taking part in the controlled drug buys. Following his testimony, defense counsel withdrew his motion for a mistrial, as there was

no indication the State withheld evidence. Counsel did, however, ask to call Darr to impeach Riggs about when he confessed to the additional drug purchase because Riggs "made himself appear to the jurors more honest and more believable and more forthright than he really is."

¶ 20 The trial court denied counsel's request to call Darr to impeach Riggs, concluding it would not be proper impeachment since Riggs never denied lying to the officers and thus the only question was when he admitted lying to them.

¶ 21 The parties stipulated Illinois State Police forensic scientist Hope Erwin would testify she weighed and analyzed four exhibits. Exhibit No. 1 amounted to less than 0.1 grams of a substance containing heroin. Exhibit No. 2 amounted to 0.1 grams of a substance containing heroin. Exhibit No. 3 amounted to less than 0.1 grams of a substance containing heroin. Exhibit No. 4 amounted to 1.1 grams of a substance containing heroin.

¶ 22 The defense presented no evidence, and defendant exercised his constitutional right not to testify. Following closing arguments, the jury found defendant guilty on all counts.

¶ 23 In October 2013, defendant filed a motion for a new trial, arguing, in part, the trial court erred in refusing to allow Darr to be recalled to testify in the impeachment of Riggs. The court denied the motion.

¶ 24 At the sentencing hearing, the trial court initially found and the parties agreed defendant was entitled to 443 days of presentence credit. However, after hearing testimony in aggravation, the court realized its initial credit calculation was incorrect. The court noted defendant posted bond in this case on July 20, 2012, and he was arrested on an unrelated matter on July 31, 2012. He was never returned to custody on the instant case until the court revoked his bond on August 20, 2013. Thus, the court determined defendant was entitled to only 46 days of credit instead of 443 days.

¶ 25 Thereafter, the trial court sentenced defendant to 8 years on count I, 10 years on count II, 12 years on count III, 25 years on count V, and 25 years on count VI. The court stated counts V and VI merged and ordered all sentences to be served concurrent with one another. Defendant filed a motion to reconsider his sentence, which the court denied. This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 A. Right To Present a Defense

¶ 28 Defendant argues the trial court violated his right to present a defense by refusing to allow him to rebut Riggs' testimony with extrinsic evidence that bore directly on his testimonial credibility. We disagree.

¶ 29 "A defendant has the right to present a defense, present witnesses to establish a defense and to present his version of the facts to the trier of facts." *People v. Wright*, 218 Ill. App. 3d 764, 771, 578 N.E.2d 1090, 1095 (1991) (citing *People v. Manion*, 67 Ill. 2d 564, 576, 367 N.E.2d 1313, 1319 (1977)). Moreover, "a defendant has the right to inquire into a witness' bias, interest or motive to testify falsely." *People v. Davis*, 185 Ill. 2d 317, 337, 706 N.E.2d 473, 482 (1998). The trial "court should afford a defendant the widest latitude to establish the witness' bias or hostile motivation." *People v. Blue*, 205 Ill. 2d 1, 14, 792 N.E.2d 1149, 1156 (2001).

¶ 30 In this case, defendant's jury trial commenced on August 19, 2013. Just prior to the trial, the State made the additional disclosure that Riggs had purchased heroin from defendant on one occasion outside of the police-controlled buys. At trial, Riggs testified he confessed to Darr in late September 2012. During an offer of proof, Darr testified Riggs did not tell him about the unauthorized purchase until shortly before the August 2013 trial.

¶ 31 Defense counsel sought to call Darr to impeach Riggs about when he confessed to the unauthorized purchase. Counsel argued the evidence was relevant to Riggs' interest, motive, and bias. The State objected, claiming Darr's testimony would be irrelevant and confusing to the jury. The trial court believed counsel's argument involved "impeachment on a collateral matter" and sustained the State's objection.

> "As a general rule, any permissible kind of impeaching matter may be developed on cross-examination, since one of the purposes for cross-examination is to test the credibility of the witness. [Citation.] However, the use of extrinsic evidence to impeach the witness concerning collateral matters has been restricted to avoid confusion, undue consumption of time, and unfair prejudice. Thus, if a matter is considered collateral, extrinsic evidence may not be introduced to impeach. Instead, the cross-examiner must accept the witness' answer. [Citations.] Unless the subject of cross-examination relates to a specific relevant issue or discredits the witness as to interest or bias, it will usually be considered collateral and rebuttal testimony is inadmissible. [Citation.] While a defendant is entitled to all reasonable opportunities to present evidence which might tend to create a doubt concerning his guilt, questions concerning the character and presentation of the evidence are within the discretion of the trial court, and the exercise of that discretion will not be interfered with unless there has been an abuse resulting in

prejudice to the defendant." *People v. Columbo*, 118 Ill. App. 3d 882, 966, 455 N.E.2d 733, 793-94 (1983).

See also *People v. Sandoval*, 135 Ill. 2d 159, 181, 552 N.E.2d 726, 736 (1990) (stating "[i]mpeachment of a witness is restricted to relevant matters; a witness may not be impeached on collateral or irrelevant matters").

¶ 32 " 'A matter is collateral if it is not relevant to a material issue of the case.' " *People v. Santos*, 211 Ill. 2d 395, 405, 813 N.E.2d 159, 164 (2004) (quoting *Esser v. McIntyre*, 169 Ill. 2d 292, 305, 661 N.E.2d 1138, 1144 (1996)). "The test to be applied in determining if a matter is collateral is whether the matter could be introduced for any purpose other than to contradict." *People v. Collins*, 106 Ill. 2d 237, 269, 478 N.E.2d 267, 281 (1985).

¶ 33 Here, the evidence defendant sought to elicit from Darr was collateral and offered only to contradict Riggs' testimony. While the issue of whether Riggs purchased heroin for personal use while working as an informant was highly relevant, Riggs never denied making the purchase. Moreover, he never denied making the purchase while working as an informant and did not admit to the purchase and later attempt to retract it. Whether he told Darr about the purchase in September 2012 or August 2013 was a collateral matter and of no relevance to the ultimate issue of whether defendant sold heroin to Riggs. As the evidence was collateral, the trial court did not abuse its discretion in limiting defendant's cross-examination on that issue.

¶ 34 B. Right To a Fair Trial

¶ 35 Along with his argument that he was deprived of his right to present a defense, defendant argues the State's failure to correct Riggs' false testimony denied him a fair trial. We disagree.

¶ 36 Initially, we note defendant acknowledges trial counsel did not make an objection

at trial that the State failed to correct the false testimony. Moreover, defendant did not raise the issue in his posttrial motion. Thus, the issue is forfeited on appeal. See *People v. Hestand*, 362 Ill. App. 3d 272, 279, 838 N.E.2d 318, 324 (2005) (a defendant must object at trial and raise the issue in a posttrial motion to preserve the issue for review). Defendant, however, asks this court to review the issue as a matter of plain error.

¶ 37 The plain-error doctrine allows a court to disregard a defendant's forfeiture and consider unpreserved error when either:

> "(1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) the error was so fundamental and of such magnitude that it affected the fairness of the trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Wilmington*, 2013 IL 112938, ¶ 31, 983 N.E.2d 1015.

¶ 38 Under both prongs of the plain-error analysis, the burden of persuasion remains with the defendant. *Wilmington*, 2013 IL 112938, ¶ 43, 983 N.E.2d 1015. As the first step in the analysis, we must determine whether any error occurred at all. *People v. Taylor*, 2011 IL 110067, ¶ 30, 956 N.E.2d 431. "If error did occur, we then consider whether either prong of the plain-error doctrine has been satisfied." *People v. Sykes*, 2012 IL App (4th) 111110, ¶ 31, 972 N.E.2d 1272.

¶ 39 "It is well established that the State's knowing use of perjured testimony in order to obtain a criminal conviction constitutes a violation of due process of law." *People v. Simpson*, 204 Ill. 2d 536, 552, 792 N.E.2d 265, 278 (2001). "A conviction obtained by the knowing use of perjured testimony must be set aside if there is any reasonable likelihood that the false testimony

could have affected the jury's verdict." *People v. Page*, 193 Ill. 2d 120, 156, 737 N.E.2d 264, 283 (2000). Our supreme court has also stated these same principles "apply when the State, although not soliciting the false testimony, permits it to go uncorrected when it occurs." *People v. Barrow*, 195 Ill. 2d 506, 530, 749 N.E.2d 892, 907 (2001). Moreover, these "principles apply even where the witness' false testimony goes only to that witness' credibility." *People v. Olinger*, 176 Ill. 2d 326, 345, 680 N.E.2d 321, 331 (1997).

¶ 40 Here, the trial court determined the timing of when Riggs admitted making the unauthorized purchase to Darr was a collateral matter. "Because the misrepresentation concerned a collateral issue, there was no duty to correct it." *Columbo*, 118 Ill. App. 3d at 967-68, 455 N.E.2d at 795. Thus, we find no error occurred.

¶ 41 Even if it could be said the State failed to correct the false testimony, there is no reasonable likelihood that the testimony could have affected the jury's verdict. The jury was fully aware of Riggs' troubles with the law and his hopes of staying out of jail by acting as a confidential source. Riggs also testified to his purchase of heroin outside the controlled buys.

¶ 42 Moreover, the State's remaining evidence of defendant's guilt was overwhelming. Darr testified to searching Riggs and his vehicle prior to each of the three drug buys. Darr, or other officers, conducted surveillance of Riggs before, during, and after the transactions with defendant. Upon return, Riggs no longer had the prerecorded funds but did have bags of heroin. On the date of the arrest, officers found defendant with 17 plastic bags of heroin in his possession, packaged ready for sale. He also had two cellular phones and $1,200 in cash, both indicative of a drug dealer. A search of defendant's residence revealed 4 digital scales; over 900 plastic sandwich bags, some with missing corners; and heroin residue on a plate. See *People v. Ballard*, 346 Ill. App. 3d 532, 541, 805 N.E.2d 656, 664 (2004) (noting indicia of intent to

deliver includes large amounts of cash, cellular phones, scales, and plastic Baggies). The totality of the evidence indicates defendant was engaged in dealing heroin, and any failure on the part of the State to correct the exact timing when Riggs confessed to making an unauthorized purchase did not rise to the level of plain error.

¶ 43 C. Assistance of Counsel

¶ 44 Defendant argues defense counsel was ineffective when he failed to timely surrender him in exoneration of his bond in this case while defendant was in custody for a subsequent, unrelated offense, thereby depriving him of the opportunity to earn 379 additional days of presentence credit.

¶ 45 A defendant's claim of ineffective assistance of counsel is analyzed under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Cathey*, 2012 IL 111746, ¶ 23, 965 N.E.2d 1109. To prevail on such a claim, "a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1203 (2010). To establish deficient performance, the defendant must show his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 219, 808 N.E.2d 939, 953 (2004) (citing *Strickland*, 466 U.S. at 687-88). Prejudice is established when a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Evans*, 209 Ill. 2d at 219-20, 808 N.E.2d at 953 (citing *Strickland*, 466 U.S. at 694). A defendant must satisfy both prongs of the *Strickland* standard, and the failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *People v. Clendenin*, 238 Ill. 2d 302, 317-18, 939 N.E.2d 310, 319 (2010).

¶ 46 Section 5-4.5-100(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-

100(b) (West 2012)) states that an offender shall receive sentence credit for the number of days spent in custody as a result of the offense for which the sentence was imposed. The "statutory right to receive credit for time served is mandatory and forfeiture rules do not apply." *People v. Dieu*, 298 Ill. App. 3d 245, 249, 698 N.E.2d 663, 666 (1998).

¶ 47 Our supreme court has held "a defendant who is out on bond on one charge, and who is subsequently rearrested and returned to custody on another charge, is not returned to custody on the first charge until his bond is withdrawn or revoked." *People v. Arnhold*, 115 Ill. 2d 379, 383, 504 N.E.2d 100, 101 (1987). Thus, a defendant is "not simultaneously in custody on more than one charge until he [withdraws] his bond on the initial charges." *Arnhold*, 115 Ill. 2d at 384, 504 N.E.2d at 102.

¶ 48 In the case *sub judice*, defendant was arrested on July 18, 2012, for the charges in the instant case. Defendant posted bond and was released on July 20, 2012. On July 31, 2012, defendant was arrested in Champaign County case No. 12-CF-1234 and charged with manufacture and delivery of narcotics (720 ILCS 570/401, 407 (West 2012)). On August 19, 2013, one of defendant's attorneys moved to surrender his bond in the current case. The trial court revoked defendant's bond on August 22, 2013. Based on these dates, the court awarded defendant sentence credit of 46 days, to which defense counsel agreed.

¶ 49 On appeal, defendant argues counsel was ineffective for failing to surrender his bond in the instant case, which deprived him of 379 days of credit for time spent in simultaneous custody. Defendant cites *People v. DuPree*, 353 Ill. App. 3d 1037, 820 N.E.2d 560 (2004), and *People v. Centeno*, 394 Ill. App. 3d 710, 916 N.E.2d 70 (2009), for the proposition that counsel's performance was deficient and defendant was prejudiced by counsel's failure to timely surrender him in exoneration of the bond. In *DuPree*, 353 Ill. App. 3d at 1049, 820 N.E.2d at 570, the

Fifth District stated it "behooved" defense counsel to move to withdraw the bond posted in one case to allow the defendant to earn simultaneous credit. In *Centeno*, 394 Ill. App. 3d at 714, 916 N.E.2d at 73, the Third District found that had the defendant "received effective assistance, counsel would have moved to surrender the defendant in exoneration of his bond." In his dissent, Justice Schmidt contended the defendant's claim of ineffective assistance of counsel was not supported by the record because the record was silent regarding the defendant's or counsel's positions on whether to seek exoneration on the bond. *Centeno*, 394 Ill. App. 3d at 715, 916 N.E.2d at 74 (Schmidt, J., dissenting). Justice Schmidt believed the "[d]efendant's claim would be more appropriately addressed in a postconviction proceeding, where a sufficient record could be developed." *Centeno*, 394 Ill. App. 3d at 715, 916 N.E.2d at 74 (Schmidt, J., dissenting).

¶ 50 The State argues this court should follow its recent opinion in *People v. Blair*, 2015 IL App (4th) 130307, __ N.E.3d __. In that case, the defendant argued on appeal he was entitled to an additional 249 days of sentencing credit for time spent in custody following his arrest in an unrelated case. *Blair*, 2015 IL App (4th) 130307, ¶ 40, __ N.E.3d __. The State disagreed, arguing the defendant was only entitled to 16 days of credit. *Blair*, 2015 IL App (4th) 130307, ¶ 40, __ N.E.3d __. In the alternative, the defendant argued his trial counsel was ineffective for failing to move to withdraw his bond. *Blair*, 2015 IL App (4th) 130307, ¶ 40, __ N.E.3d __.

¶ 51 On appeal, this court, citing *Arnhold*, found the defendant was not entitled to the additional 249 days of sentencing credit. *Blair*, 2015 IL App (4th) 130307, ¶ 44, __ N.E.3d __. Addressing the claim of ineffective assistance of counsel, this court, citing the appellate defender's reliance on *DuPree* and *Centeno*, ultimately sided with Justice Schmidt's dissent in *Centeno*, and stated as follows:

> "Although we can identify no apparent reason in the record for trial counsel's failure to withdraw defendant's bond in the instant case, the lack of such evidence does not foreclose the possibility that counsel had a legitimate reason for not withdrawing defendant's bond. Thus, we decline to rule on defendant's ineffective assistance of counsel claim as it would be better brought under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2012)) where an adequate record can be developed." *Blair*, 2015 IL App (4th) 130307, ¶ 47, __ N.E.3d __.

¶ 52 Here, the record is silent on why trial counsel did not withdraw defendant's bond in the instant case. Adhering to our decision in *Blair* and its reasoning that a more adequate record can be developed in postconviction proceedings to more fully address this issue, we decline to rule on defendant's claim of ineffective assistance of counsel.

¶ 53 III. CONCLUSION

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

¶ 55 Affirmed.