2018 IL App (4th) 160467-U

NO. 4-16-0467

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 31, 2018
Carla Bender
4th District Appellate
Court, IL

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
NELSON OMAR LUCERO-MOLINA,	)	No. 15CF478
Defendant-Appellant.	)	
	)	Honorable
	)	Paul G. Lawrence,
	)	Judge Presiding.

JUSTICE HOLDER WHTE delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's allegations of ineffective assistance of counsel require remand for a preliminary *Krankel* inquiry. The trial court did not err in correcting defendant's sentence.

¶ 2 On appeal, defendant argues the trial court erred when it failed to conduct a preliminary *Krankel* inquiry into his *pro se* allegations of ineffective assistance of counsel. Defendant also asserts the trial court erred in increasing defendant's sentence by imposing additional fines two days after defendant's sentencing. The State concedes remand for a preliminary *Krankel* inquiry is necessary but disputes defendant's sentencing claim. We accept the State's concession and further find no error occurred when the court corrected defendant's sentence.

¶ 3 I. BACKGROUND

¶ 4 In April 2015, the State charged defendant, Nelson Omar Lucero-Molina, with 30

counts of criminal sexual assault, a Class 1 felony (720 ILCS 5/11-1.20(a)(3) (West 2012)), alleging that from October 1, 2013, through April 4, 2015, defendant knowingly committed acts of sexual penetration against M.C., who was under 18 years of age and a family member.

¶ 5 In March 2016, defendant pled guilty to counts I, XI, and XXI in exchange for the dismissal of the other 27 counts. A Spanish-speaking interpreter assisted defendant throughout the proceedings because defendant is not fluent in English. On May 3, 2016, the trial court sentenced defendant to three consecutive terms of 12 years in prison on counts I, XI, and XXI. On that same day, a supplemental sentencing order imposing fines and fees was filed. On May 5, 2016, an amended supplemental sentencing order imposing new and increased fines and fees was filed. In the amended supplemental sentencing order the trial court added on each count a $260 statutory surcharge fine, a $200 sexual-assault fine, and a $200 domestic-violence fine. The court also added on two counts a $500 sexual-assault fine.

¶ 6 On May 10, 2016, defendant filed a motion to withdraw his plea and a motion to reconsider sentence. During the hearing on his motions, defendant testified to the difficulty he encountered understanding counsel during discussions of the plea deal, despite the use of an interpreter. According to defendant, he understood the interpreter's words, but a misunderstanding occurred and it affected his decision to plead guilty.

¶ 7 Defendant relayed that when discussing his plea offer with counsel, he first asked his counsel whether he "could appeal. He said [']yes,[’] and then I found out that only the judge could accept the appeal after I signed the paperwork. He didn't tell me that before I signed." Defendant went on to represent that he would not have pled guilty had he known only the judge could accept the appeal after defendant signed the paperwork. Defendant thought that after entering a plea of guilty he could withdraw his plea as a matter of right.

¶ 8 As far as deciding whether or not to go to trial, defendant complained that he had no one to defend him because his counsel insisted he was guilty. According to defendant, his counsel pressured him into pleading guilty. When testifying about a time when plea counsel and another attorney visited him, defendant explained, "Many times they told me that I was guilty and that that was the best option to sign, that then I wouldn't have such a high sentence. And that's what they said all the time that I was with them."

¶ 9 Arguing in favor of the motion to withdraw defendant's plea of guilty, defense counsel said, "Proper procedure was followed, but the defendant did not fully understand." Defense counsel added, "It's unclear what precisely the defendant did understand, but I think it's clear he did have a misunderstanding."

¶ 10 When ruling on the motion to withdraw the plea of guilty, the trial court stated, "The issue seems to be whether or not the defendant thought he—would he have pled guilty if he knew the appeal had to be approved by the Judge. I'm not even really sure what exactly that means. [T]he Judge doesn't have to approve an appeal so far as I know, so I don't particularly understand his confusion." The court denied both of defendant's motions.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Defendant argues remand is necessary so the trial court can conduct a preliminary *Krankel* inquiry regarding his *pro se* ineffective assistance of counsel claims. Also, defendant takes issue with the court assessing additional and increased fines after imposing sentence. The State concedes the matter requires remand for a preliminary *Krankel* inquiry but disputes defendant's claim that the trial court improperly increased defendant's sentence after imposing his sentence. We accept the State's concession and otherwise agree with the State.

¶ 14 A. Standard of Review

¶ 15 When considering whether a preliminary *Krankel* inquiry was required, our review is *de novo*. *People v. Moore*, 207 Ill. 2d 68, 75, 797 N.E.2d 631, 636 (2003). Also, because the issue of the alleged increase in defendant's sentence involves statutory construction, we utilize the *de novo* standard of review. *People v. Gutman*, 2011 IL 110338, ¶ 12, 959 N.E.2d 621. Having established the appropriate standard of review, we turn to defendant's request for a preliminary *Krankel* inquiry.

¶ 16 B. Preliminary *Krankel* Inquiry

¶ 17 Defendant argues the trial court failed to conduct a preliminary *Krankel* inquiry into defendant's *pro se* allegations of ineffective assistance of counsel, pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). According to defendant, his unfamiliarity with the legal system and his need for an interpreter caused miscommunication and confusion between the trial court, counsel, and himself. Defendant points out that in spite of his express complaints, the trial court failed to preliminarily inquire into the factual basis of his *pro se* ineffective assistance of counsel allegations. Defendant seeks remand for a preliminary *Krankel* inquiry to allow the trial court to determine whether he is entitled to new counsel.

¶ 18 The State concedes defendant made express complaints about his counsel's assistance, requiring the trial court to conduct a preliminary *Krankel* inquiry. We accept the State's concession and remand with directions to the trial court to conduct a preliminary *Krankel* inquiry into the factual basis of defendant's ineffective assistance of counsel claims.

¶ 19 Under the circumstances, the trial court's obligation is clear:

> "[W]hen a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual

> basis of the defendant's claim. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should be appointed." *Moore*, 207 Ill. 2d at 77-78.

¶ 20 Here, defendant made express claims articulating his belief that he received ineffective assistance of counsel. The complaints necessitated an inquiry into their factual basis and a determination of whether the allegations warranted the appointment of new counsel. *People v. Jolly*, 2014 IL 117142, ¶ 29, 25 N.E.3d 1127. Because the trial court failed to inquire into defendant's *pro se* ineffective assistance of counsel claims, we remand for a preliminary *Krankel* inquiry so the trial court can determine whether new counsel should be appointed to argue defendant's *pro se* claims of ineffective assistance of counsel. *People v. Mourning*, 2016 IL App (4th) 140270, ¶ 25, 51 N.E.3d 1122.

¶ 21 C. Imposition of Additional Fines

¶ 22 Defendant contends the trial court erred by imposing additional fines two days after sentencing defendant because "[t]he court may not increase a sentence once it is imposed." 730 ILCS 5/5-4.5-50(d) (West 2014). Defendant suggests a trial court has the authority to reduce, but not increase, a sentence within 30 days of the imposition of the sentence. Thus, according to defendant, the trial court's imposition of additional fines improperly increased defendant's sentence.

¶ 23 In response, the State points out that because defendant raises this issue for the first time on appeal, the issue is forfeited. Also, the State asserts that since fines constitute part of a criminal sentence, omitting mandatory fines results in an illegally low sentence. We agree

with the State and find no error in the trial court's decision to impose additional fines.

¶ 24 "A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed with the circuit court clerk within 30 days following the imposition of sentence." 730 ILCS 5/5-4.5-50(d) (West 2014). Further, sentencing errors not raised in the trial court are forfeited for review. *People v. Rathbone*, 345 Ill. App. 3d 305, 308-10, 802 N.E.2d 333, 336-37 (2003). In light of defendant's failure to raise this issue in his motion to reconsider sentence, forfeiture clearly applies. *People v. Harris*, 366 Ill. App. 3d 1161, 1164, 853 N.E.2d 912, 915 (2006). Thus, we find defendant forfeited this issue. In spite of his forfeiture, defendant seeks review under the plain-error doctrine.

¶ 25 Sentencing errors are reviewable as plain error when the error involves a misapplication of law because the right to be sentenced lawfully is substantial in that sentencing affects a defendant's fundamental right to liberty. *People v. McCormick*, 332 Ill. App. 3d 491, 499, 774 N.E.2d 392, 399 (2002). However, plain-error review is not a general saving clause for alleged errors but is utilized to address serious injustices. *People v. Baker*, 341 Ill. App. 3d 1083, 1090, 794 N.E.2d 353, 359 (2003). "The plain error exception will be invoked only where the record *clearly* shows that an alleged error affecting substantial rights was committed." (Emphasis in original.) *People v. Hampton*, 149 Ill. 2d 71, 102, 594 N.E.2d 291, 305 (1992). Generally, the first step in a plain-error analysis is to determine whether a clear or obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 411 (2007). Thus, we first examine whether there was a clear or obvious error.

¶ 26 We know a trial court has the authority and jurisdiction to alter, vacate, or modify its judgment within 30 days after entry of judgment. *People v. Flowers*, 208 Ill. 2d 291, 303, 802 N.E.2d 1174, 1181 (2003). The trial court signed and filed the supplemental sentencing order on

May 3, 2016. Two days later, on May 5, 2016, the trial court altered and modified its judgment by signing and filing the amended supplemental sentencing order increasing and adding fines. Thus, the trial court's amended supplemental order entered less than 30 days after entry of judgment was within the trial court's authority and jurisdiction.

¶ 27 As to any increase in defendant's sentence, we find defendant incorrectly asked whether the trial court was authorized to increase defendant's sentence after imposition of defendant's sentence. Instead, the proper question is was the court authorized to correct defendant's sentence after imposition of defendant's sentence. We take this position based on the guidance provided by our supreme court in *People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, 72 N.E.3d 276. In *Alvarez*, 2016 IL 120110, ¶ 34, the court granted the State's petition for writ of *mandamus* where the trial court declined to impose mandatory 15-year enhancements on each count following defendant's conviction on two counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(8) (West 2008)), stemming from separate acts.

¶ 28 In ordering the trial court to impose the enhancements on both counts, the supreme court noted the State's request involved correcting defendant's sentence, not increasing defendant's sentence. *Id.* ¶ 21. In addition, the court held "only valid sentences may serve as the baseline for assessment of compliance with prohibitions against increase." *Id.* ¶ 19. The court in *Alvarez* stated, "It seems to us unreasonable to suggest that the legislature intended sections 5-4.5-50(d) and 5-5-4(a) [of the Unified Code of Corrections] to function as a bar against correction of sentences that do not comply with statutory mandates prescribed by the legislature elsewhere in the Code of Corrections." *Id.*

¶ 29 In this matter, the trial court exercised proper authority when it corrected defendant's sentence by adding and recalculating mandatory fines. The $260 statutory surcharge

fine on each of the three sexual-assault convictions was mandatory pursuant to 730 ILCS 5/5-9-1(c) (West 2014). The $200 sexual-assault fine on each of the three sexual-assault convictions was required by 730 ILCS 5/5-9-1.7(b)(1) (West 2014). The $200 domestic-violence fine on each of the three sexual-assault convictions had to be imposed under 730 ILCS 5/5-9-1.5 (West 2014). Finally, the $500 sexual-assault fines had to be assessed as directed by 730 ILCS 5/5-9-1.15(a) (West 2014).

¶ 30 The final order on fines and fees was entered within 30 days of the original sentence and added mandatory fines. Because the original sentence was otherwise illegally low, the original fines cannot serve as a baseline to assert an illegal increase in defendant's sentence. Therefore, we hold the trial court did not err by correcting defendant's sentence.

¶ 31 III. CONCLUSION

¶ 32 We remand and direct the trial court to conduct a preliminary *Krankel* inquiry into defendant's *pro se* allegations of ineffective assistance of counsel. We hold the trial court did not err by correcting defendant's sentence. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 4-2002 (West 2016).

¶ 33 Affirmed in part and remanded in part with directions.