2014 IL App (5th) 130558-U

NO. 5-13-0558

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 10-CF-762
	)	
JAMES ROBINSON,	)	Honorable
	)	John Baricevic,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Welch and Justice Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's admonition in the guilty plea and sentencing were sufficient, as defendant indicated he had no questions about the charges and the sentences were within the agreed-upon cap.

¶ 2 This appeal concerns a partially negotiated plea entered into by defendant, James Robinson, in which he pleaded guilty to two counts of attempted first-degree murder in exchange for the State's dismissal of three Class X felony charges: aggravated vehicular hijacking, aggravated kidnapping, and armed robbery (720 ILCS 5/33A-2 (West 2010)). The State also agreed to cap its requested sentence on each of the two counts of attempted first-degree murder at 24 years' imprisonment. Defendant was sentenced to 24-year and

18-year sentences in the Department of Corrections, to run consecutively, with 3 years of mandatory supervised release. Defendant now appeals the judgment of the trial court.

¶ 3 On appeal defendant alleges the guilty plea he entered was not made knowingly and voluntarily because he did not understand he would be unable to challenge his sentence on appeal. Defendant also contends the trial court judge did not substantially comply with Supreme Court Rule 402 (eff. July 1, 2012) and advise him of the nature and elements of the charges against him.

¶ 4 We disagree with defendant's allegations and agree with the judgment of the trial court. Defendant's argument that the guilty plea he entered was not made knowingly and voluntarily is mistaken because the guilty plea resulted in a sentence under the State's agreed-upon cap. As to defendant's argument that the trial court judge did not substantially comply with Rule 402, the rule does not require as extensive an admonition as defendant argues. For the following reasons, we affirm the judgment of the trial court.

¶ 5 BACKGROUND

¶ 6 Defendant was charged with five counts: two counts of attempted first-degree murder, aggravated vehicular hijacking, aggravated kidnapping, and armed robbery. At approximately 3:45 a.m. on the morning of August 1, 2010, Monica Reaka was walking toward her home from her apartment complex's parking lot after arriving home from work. At said time, defendant approached Reaka and pointed what appeared to be gun at her. Reaka offered defendant money and her car. After Reaka gave defendant approximately $220 cash, defendant told Reaka to get into the trunk of her car, but Reaka

told defendant there was no room for her to get into the trunk and gave defendant an additional $220 cash.

¶ 7 Defendant took Reaka's cell phone and told her to get in the front seat of her car. Defendant started driving Reaka's car with Reaka in the front seat and later pulled the car over. Defendant told Reaka to get into the trunk of the car, which Reaka did. Defendant gave Reaka her cell phone and started driving again. Reaka dialed 9-1-1 from inside the trunk of the car. The car eventually stopped and the trunk was opened, at which time Reaka saw a second man with a black nylon over his face. Reaka was then pulled out of the trunk and taken to a wooded area where she was stabbed multiple times by defendant. While defendant was stabbing Reaka, the other man strangled her until she passed out. After regaining consciousness, Reaka saw a police car and ran towards it. Defendant was arrested the next day.

¶ 8 A guilty plea hearing took place on April 8, 2011, at which defendant pleaded guilty to two counts of attempted first-degree murder in exchange for the State's dismissal of three counts of aggravated vehicular hijacking, aggravated kidnapping, and armed robbery. The State also agreed to cap its requested sentence on each count of attempted first-degree murder at 24 years' imprisonment.

¶ 9 In his statement of allocution, defendant said he did not want to kill Reaka and that he gave her cell phone back to her so she could call 9-1-1. Defendant said he "sacrificed [his] life for her and her children," and if it was not for him, "she would be under a house somewhere rotting and none of us would be in this courtroom today."

¶ 10 The trial court judge presiding over the sentencing stated it was defendant's fault Reaka was in the trunk of her car, and defendant had the opportunity to let Reaka go before meeting his codefendant but decided otherwise. Defendant was subsequently sentenced to a 24-year term, an 18-year term of imprisonment to run consecutively, and 3 years of mandatory supervised release.

¶ 11 Defendant filed a *pro se* motion to withdraw his plea and vacate his sentence. Defense counsel moved to withdraw the plea, claiming it was not made voluntarily and knowingly because defendant was confused, and also moved to reconsider the sentence.

¶ 12 New counsel represented defendant at the motion to withdraw guilty plea hearing. At this hearing, defendant testified he was never informed that if he agreed to a sentencing cap he would be unable to challenge his sentence. Defendant also testified the original counsel never visited him in jail before the plea, and counsel's lack of preparation contributed to his decision to plead guilty. Defendant further indicated he knew the State dismissed three charges as part of the plea agreement, and knew he could have been sentenced up to 150 years' imprisonment if convicted of all five charges.

¶ 13 Plea counsel also testified at the hearing. Defense counsel asked plea counsel, "Did you explain to Mr. Robinson that when he agrees to a cap, that he would be unable or the possibility that he would be unable to ask for a reduction in his sentence?" Plea counsel responded, "I don't think I ever discussed whether or not he could come back and ask for a reduction of his sentence at all." Plea counsel indicated he "advised [defendant] that the decision of the judge at that time was final, and that this was a decision that the judge was going to make, and there wasn't any way out of it at that time."

¶ 14 Defense counsel argued the plea was not made knowingly and voluntarily because defendant did not understand he would be unable to challenge his sentence, and argued the sentences imposed were excessive. The court denied defendant's motion to withdraw guilty plea and motion to reduce sentence.

¶ 15 Defendant appealed the trial court's denial of his motions. This court remanded for further proceedings because counsel failed to strictly comply with Supreme Court Rule 604(d) (eff. Feb. 6, 2013). *People v. Robinson*, 2013 IL App (5th) 120117-U.

¶ 16 New counsel filed a Rule 604(d) certificate. At the hearing on remand, defendant testified his original counsel was ineffective and that he accepted the plea agreement because counsel was not prepared. The State asked the trial court to take judicial notice of the file and renewed its previous arguments. New counsel argued the guilty plea defendant entered into was involuntary due to the original counsel's ineffective representation. New counsel also argued defendant's sentence was excessive.

¶ 17 The trial court denied defendant's motion to withdraw guilty plea, stating that defendant's allegations "do not rise to the level of incompetency of counsel." The trial court also denied defendant's motion to reduce sentence, finding the motion was not properly before the court because the partially negotiated plea agreement included a sentencing cap. This appeal followed.

¶ 18 ANALYSIS

¶ 19 On appeal, defendant asserts he should be permitted to withdraw his guilty plea because the plea he entered was not knowingly and voluntarily made, contending the court failed to advise him that the plea agreement would preclude him from the

opportunity to challenge his sentence. Defendant also alleges the plea he entered was not knowingly and voluntarily made because the trial court judge did not substantially comply with Rule 402 and inform defendant of the nature and elements of the charges against him.

¶ 20 The State asserts defendant's claim that the guilty plea he entered was not knowingly and voluntarily made should be rejected because the trial court did not abuse its discretion in denying defendant's motion to withdraw guilty plea, as the Illinois Supreme Court has held a defendant who accepts a plea agreement with a sentencing cap agrees to be sentenced within that cap. The State also asserts defendant's claim that the trial judge did not substantially comply with Rule 402 should be rejected because the rule does not require a circuit judge to inform a defendant of the nature and elements of the crimes to which the defendant is pleading guilty. We agree with the State and affirm the judgment of the trial court.

¶ 21 Defendant entered into a partially negotiated plea agreement in which the State dismissed three counts and agreed to cap its sentencing request at 24-year terms of imprisonment per remaining count. The 24-year cap the State agreed to was less than the statutory maximum of 30 years. 720 ILCS 5/8-4(a), 9-1 (West 2008). Defendant was then sentenced to a 24-year term and an 18-year term of imprisonment to run consecutively, with 3 years of mandatory supervised release, a sentence less than the cap to which he agreed.

¶ 22 A trial court's decision whether to allow a defendant to withdraw a guilty plea to correct injustice is reviewed under an abuse of discretion standard. *People v. Baez*, 241

Ill. 2d 44, 110, 946 N.E.2d 359, 398 (2011). A defendant does not have an automatic right to withdraw a plea of guilty, but instead must show a "manifest injustice" under the facts involved. *Baez*, 241 Ill. 2d at 110, 946 N.E.2d at 398. The trial court's decision will not be disturbed unless the plea was entered through a "misapprehension of the facts or of the law" or if the guilt of the accused is in doubt and justice would be better served by conducting a trial. *People v. Delvillar*, 235 Ill. 2d 507, 520, 922 N.E.2d 330, 338 (2009).

¶ 23 As the State indicates, "In the absence of substantial objective proof showing that a defendant's mistaken impressions were reasonably justified, subjective impressions alone are not sufficient grounds on which to vacate a guilty plea." *People v. Artale*, 244 Ill. App. 3d 469, 475, 612 N.E.2d 910, 915 (1993). The defendant bears the burden of proving that his or her mistaken impression was objectively reasonable under the circumstances existing at the time of the plea. *People v. Spriggle*, 358 Ill. App. 3d 447, 451, 831 N.E.2d 696, 700 (2005).

¶ 24 The Illinois Supreme Court has held that a defendant who pleads guilty in exchange for a cap on the length of his or her sentence cannot file a motion to reconsider that sentence if it is imposed within the range of the cap without first moving to withdraw the guilty plea. *People v. Linder*, 186 Ill. 2d 67, 68, 708 N.E.2d 1169, 1170 (1999).

¶ 25 *Linder* involved a defendant charged with three counts of armed robbery, one count of aggravated vehicular hijacking, and one count of armed violence. The defendant agreed to plead guilty to one count of armed robbery and one count of aggravated vehicular hijacking after the State agreed to dismiss the other charges and indicated it would not seek a sentence in excess of 15 years.

¶ 26 The plea agreement was accepted by the trial court and the defendant was sentenced to concurrent 11-year terms of imprisonment. The defendant subsequently filed a motion to reconsider his sentence even though it was within the agreed-upon range, and the motion was denied. The defendant then appealed, claiming he was entitled to a new sentencing hearing because his attorney failed to file the certificate required by Rule 604(d) before the hearing on his motion to reconsider.

¶ 27 The court in *Linder* stated:

> "By agreeing to plead guilty in exchange for a recommended sentencing cap, a defendant is, in effect, agreeing not to challenge any sentence imposed below that cap on the grounds that it is excessive. [Citation.] While the defendant may not like the sentencing court's ultimate disposition, that is a risk he assumes as part of his bargain. A defendant who is unwilling to accept that risk should not agree to a cap rather than a fixed term. Where the sentence imposed is within the agreed upon cap, *** allowing the defendant to seek reconsideration of his sentence without also moving to withdraw his guilty plea unfairly binds the State to the terms of the plea agreement while giving the defendant the opportunity to avoid or modify those terms." *Linder*, 186 Ill. 2d at 74, 708 N.E.2d at 1172-73.

¶ 28 The court in *Linder* cited *People v. Evans*, 174 Ill. 2d 320, 332, 673 N.E.2d 244, 250 (1996): "[F]ollowing the entry of judgment on a negotiated guilty plea, even if a defendant wants to challenge only his sentence, he must move to withdraw the guilty plea and vacate the judgment so that, in the event the motion is granted, the parties are returned to the *status quo*." The court in *Linder* reached its conclusion by reasoning that

where a defendant pleads guilty to certain charges in exchange for the State's dismissal of other charges and recommends a specific sentence, allowing the defendant to challenge only his sentence violates basic contract law principles. *Linder*, 186 Ill. 2d at 72, 708 N.E.2d at 1172. The court further stated: "the defendant would be attempting to hold the State to its part of the bargain while unilaterally reneging on or modifying the terms he had previously agreed to accept." *Linder*, 174 Ill. 2d at 72, 708 N.E.2d at 1172.

¶ 29 It is well established that a defendant who agrees to a potential range of sentences implicitly concedes that a sentence imposed within the range cannot be excessive. *People v. Catron*, 285 Ill. App. 3d 36, 37, 674 N.E.2d 141, 142 (1996). In this case defendant concedes that a defendant who pleads guilty in exchange for either a specific sentence or for a sentence that is not to exceed a cap has no right to attempt to appeal the sentence alone. Defendant indicates the only way a defendant can appeal from a fully negotiated plea or partially negotiated plea is by filing a motion to withdraw his guilty plea.

¶ 30 Defendant argues he should be permitted to withdraw his guilty plea because the plea was not entered into voluntarily and knowingly, contending he did not understand he would be unable to challenge his sentence on appeal by agreeing to a sentencing cap. We disagree.

¶ 31 A guilty plea must be voluntarily, knowingly, and understandingly entered and the record must affirmatively disclose that this was done. *People v. Daubman*, 190 Ill. App. 3d 684, 693, 546 N.E.2d 1079, 1085 (1989). Supreme Court Rule 402 was adopted for

the purpose of assuring that a guilty plea is intelligently, understandingly, and voluntarily made. *People v. Thurston*, 25 Ill. App. 3d 900, 902, 324 N.E.2d 1, 3 (1975).

¶ 32 The court looks to the requirements of Rule 402 when determining whether a plea is voluntary. Rule 402(b) provides:

> "The court shall not accept a plea of guilty without first determining that the plea is voluntary. If the tendered plea is the result of a plea agreement, the agreement shall be stated in open court. The court, by questioning the defendant personally in open court, shall confirm the terms of the plea agreement, or that there is no agreement, and shall determine whether any force or threats or any promises, apart from a plea agreement, were used to obtain the plea." Ill. S. Ct. R. 402(b) (eff. July 1, 2012).

¶ 33 In the instant case, the record indicates defendant understood he agreed to be sentenced within the State's recommended cap. There is no indication any force or threats were used to obtain the plea. Defendant was sentenced to 18-year and 24-year terms of imprisonment to run consecutively. The two terms of imprisonment are within the range of sentences defendant agreed upon with the State in his guilty plea. As noted above, a defendant who agrees to a potential range of sentences implicitly concedes that a sentence imposed within that range cannot be excessive. Defendant's claim that he did not understand he would be unable to appeal his sentence appears to be an attempt to escape the consequences of a bargain. Accordingly, defendant cannot successfully argue the plea he entered was not made knowingly and voluntarily or that the sentence imposed was excessive.

¶ 34 The second issue defendant raises on appeal alleges the trial court judge did not substantially comply with Rule 402. Defendant alleges the trial court judge failed to determine that defendant understood the nature and elements of the charges against him.

¶ 35 Defendant indicates due process requires that a plea of guilty must be shown to be voluntary and intelligent before it can be accepted. *Boykin v. Alabama*, 395 U.S. 238, 245 (1969). Defendant claims he should be allowed to withdraw his guilty plea and reenter it with a complete understanding of the consequences of the plea and the nature and elements of the charges against him because his due process rights were violated. We disagree with defendant, as Rule 402 does not require as extensive an admonition as defendant argues.

¶ 36 To determine whether a plea is entered into knowingly and voluntarily, the Illinois Supreme Court Rules require the court to admonish the defendant on the nature of the crime charged, the sentencing range, and the rights the defendant forfeits as a result of pleading guilty. Ill. S. Ct. R. 402 (eff. July 1, 2012).

¶ 37 Rule 402(a) provides:

> "The court shall not accept a plea of guilty or a stipulation that the evidence is sufficient to convict without first, by addressing the defendant personally in open court, informing him or her of and determining that he or she understands the following:
>
> (1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences;

(3) that the defendant has the right to not plead guilty, or to persist in that plea if it has already been made, or to plead guilty; and

(4) that if he or she pleads guilty there will not be a trial of any kind, so that by pleading guilty he or she waives the right to a trial by jury and the right to be confronted with the witnesses against him or her; or that by stipulating the evidence is sufficient to convict, he or she waives the right to a trial by jury and the right to be confronted with any witnesses against him or her who have not testified." Ill. S. Ct. R. 402(a) (eff. July 1, 2012).

¶ 38 As noted, Rule 402(a) requires a court to substantially comply with certain admonitions prior to accepting a defendant's plea of guilty. *People v. Baker*, 133 Ill. App. 3d 620, 622, 479 N.E.2d 372, 373 (1985). However, literal compliance is not required. *Baker*, 133 Ill. App. 3d at 622, 479 N.E.2d at 373. Substantial compliance is that which assumes the beneficial effect of the rule will be achieved. *People v. Morris*, 24 Ill. App. 3d 1049, 1050, 322 N.E.2d 582, 583 (1974). An imperfect admonishment does not require reversal unless actual justice has been denied or prejudice resulted from the inadequate admonishment. *People v. Medina*, 221 Ill. 2d 394, 407, 851 N.E.2d 1220, 1227 (2006).

¶ 39 Defendant asserts he was not advised by the trial court of the nature and elements of the charges against him. Specifically, defendant contends the judge did not discuss

any of the elements of the offenses to which he was pleading guilty, did not read the indictments to defendant, and did not ask the defense counsel whether he had explained the elements of the charges to defendant.

¶ 40 The facts in the instant case are similar to those presented in *People v. Barker*, 83 Ill. 2d 319, 415 N.E.2d 404 (1980). *Barker* involved a defendant who moved to vacate his guilty pleas to two counts of attempted murder. One of the issues the defendant argued was that the trial court's failure to admonish him with respect to the requisite "intent to kill" rendered his plea involuntary. *Barker*, 83 Ill. 2d at 329, 415 N.E.2d at 409.

¶ 41 The court in *Barker* held that the trial court's failure to admonish the defendant with respect to the "intent to kill," an essential element of attempted murder, did not render the defendant's guilty pleas involuntary. The court reasoned that the trial court's admonishment was adequate in light of the fact that the defendant acknowledged he had no question as to what was meant by the indictment and the defendant agreed with the State as to the factual basis for the plea.

¶ 42 In the instant case, a conversation took place between the trial court judge and defendant during the guilty plea hearing, in which the court stated to defendant:

> "Q. You are currently charged with aggravated vehicular hijacking, aggravated kidnapping, two counts of attempt first[-]degree murder, and one count of armed robbery. Do you have any questions about those charges?"
>
> A. No, sir."

Defendant claims this conversation is insufficient to prove defendant understood the nature and elements of the two attempted first-degree murder charges to which he was pleading guilty. We disagree.

¶ 43 As noted in *Barker*, an admonishment is deemed adequate when a defendant acknowledges he has no questions concerning the indictment. Also, defendant concedes to pleading guilty to two counts of attempted first-degree murder in exchange for the State's dismissal of three counts and the State's sentence cap request to not exceed 24 years. Because defendant acknowledged no questions concerning the charges against him at the plea disposition and he agreed to the factual basis for the plea, the trial court's admonishment was proper.

¶ 44 Defendant indicates the United States Supreme Court's decision in *Bradshaw v. Stumpf*, 545 U.S. 175 (2005), should guide the outcome of this case. Defendant points out "[w]here a defendant pleads guilty to a crime without having been informed of the crime's elements, the standard is not met and the plea is invalid." *Stumpf*, 545 U.S. at 183 (citing *Henderson v. Morgan*, 426 U.S. 637 (1976)).

¶ 45 In *Stumpf*, the United States Supreme Court found that the court of appeals erred in concluding the defendant's plea of guilty to aggravated murder was invalid because the defendant was unaware of the specific intent element of the charge. The Supreme Court determined the defendant's attorneys represented on record that they had explained to their client the elements of the aggravated murder charge, and the defendant had confirmed the representation to be true.

¶ 46 The Court in *Stumpf* reasoned:

"While the court taking a defendant's plea is responsible for ensuring 'a record adequate for any review that may be later sought,' *Boykin v. Alabama*, 395 U.S. 238, 244 (1969) (footnote omitted), we have never held that the judge must himself explain the elements of each charge to the defendant on the record. Rather, the constitutional prerequisites of a valid plea may be satisfied where the record accurately reflects that the nature of the charge and the elements of the crime were explained to the defendant by his own, competent counsel." *Stumpf*, 545 U.S. at 183.

¶ 47 Defendant distinguishes the instant case from *Stumpf*. Defendant asserts unlike in *Stumpf* where the record indicated the defendant's attorneys explained the elements of the charge to the defendant, the record in the instant case does not indicate defendant's counsel explained the elements of the two attempted murder charges to defendant. Defendant indicates the voluntary, knowing, and intelligent standard for a plea is not met and the plea is rendered invalid when a defendant "pleads guilty to a crime without having been informed of the crime's elements." *Stumpf*, 545 U.S. at 183. Defendant claims his plea is invalid because he was never informed by the trial court judge or his counsel of the elements of the charges against him.

¶ 48 However, defendant's claim is inconsistent with Illinois law. Courts have repeatedly held such claims to be without merit because "the trial court is not required to apprise a defendant of the elements of the crimes with which he is charged before accepting a guilty plea." *People v. Jackson*, 199 Ill. 2d 286, 296, 769 N.E.2d 21, 27 (2002). Defendant also indicated he had no questions about the charges.

¶ 49 Defendant concedes that a court's admonition complies with Rule 402(a) by naming the offense, and the court does not need to inform a defendant of the essential elements of the charge. This is precisely what happened in the instant case. Accordingly, the trial court's admonition complied with Rule 402(a) even without apprising defendant of the elements of the charges against him.

¶ 50 CONCLUSION

¶ 51 For the reasons stated herein, the judgment of the circuit court of St. Clair County is affirmed.

¶ 52 Affirmed.