2022 IL App (4th) 200495-U

NO. 4-20-0495

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 1, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
SEAN COURTNEY,	)	No. 18CF1257
Defendant-Appellant.	)	
	)	Honorable
	)	William A. Yoder,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court vacated and remanded for resentencing where defendant received a sentence upon the revocation of probation that exceeded the maximum sentence of which he was admonished at the time he pled guilty.

¶ 2 Defendant, Sean Courtney, pled guilty to stalking. Defendant was initially sentenced to probation. His probation was subsequently revoked, and he was resentenced to three years' imprisonment followed by four years of mandatory supervised release (MSR). Defendant appeals, arguing that his right to due process was violated when the trial court incorrectly admonished him at the time of his guilty plea that the maximum sentence for the offense was three years' imprisonment followed by one year of MSR. We vacate and remand.

¶ 3 I. BACKGROUND

¶ 4 On December 10, 2018, defendant was charged with stalking (720 ILCS 5/12-7.3(a)(2) (West 2018)).

¶ 5 On September 26, 2019, defendant pled guilty in exchange for a sentence of 30 months' probation. Before accepting the plea, the trial court admonished defendant that the offense of stalking carried a maximum penalty of one to three years' imprisonment with one year of MSR. The court stated that the minimum penalty was probation or conditional discharge. After admonishing defendant regarding his rights, the court accepted his plea and sentenced him in accordance with the plea agreement.

¶ 6 On October 22, 2019, the State filed a petition to revoke defendant's probation, which was denied.

¶ 7 On February 28, 2020, the State filed a second petition to revoke defendant's probation, alleging that defendant violated the terms of his probation by failing to report to his probation officer as directed on two occasions. After a hearing on the second petition to revoke defendant's probation, the trial court found that the State had proven by a preponderance of the evidence that defendant had violated the conditions of his probation.

¶ 8 Following a sentencing hearing on June 29, 2020, the trial court resentenced defendant to three years' imprisonment followed by four years of MSR. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant argues that he was denied his right to due process where he was incorrectly admonished at the time of his guilty plea that he faced a maximum sentence of three years' imprisonment followed by one year of MSR, and he received a sentence of three years' imprisonment and four years of MSR following the revocation of his probation.

¶ 11 Illinois Supreme Court Rule 402(a)(2) (eff. July 1, 2012) provides that the trial court shall not accept a plea of guilty without first admonishing the defendant of "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." Compliance with this rule " 'requires that a defendant be admonished that the mandatory period of parole [now called mandatory supervised release] pertaining to the offense is a part of the sentence that will be imposed.' " *People v. Whitfield*, 217 Ill. 2d 177, 188 (2005) (quoting *People v. Wills*, 61 Ill. 2d 105, 109 (1975)). MSR admonitions need not be perfect but must substantially comply with Rule 402. *People v. Morris*, 236 Ill. 2d 345, 367 (2010).

¶ 12 Improper admonishments constitute reversible error when real justice has been denied or the defendant was prejudiced by the inadequate admonishment. *People v. Davis*, 145 Ill. 2d 240, 250 (1991).

> "In situations where a defendant has entered an open plea and the trial court has admonished the defendant regarding the maximum sentence to which he would be exposed by his plea, the failure to admonish a defendant concerning the MSR is not a constitutional violation, as long as the sentence plus the term of MSR is less than the maximum sentence which defendant was told he could receive." *Whitfield*, 217 Ill. 2d at 193.

¶ 13 Here, the resentencing proceedings following the revocation of defendant's probation were tantamount to sentencing following an open plea of guilty. This is because "[a]fter a trial court revokes a defendant's probation, [the] defendant can be resentenced to any sentence which would have been appropriate for the underlying offense." *People v. Turner*, 233 Ill. App. 3d 449, 456 (1992). The trial court incorrectly admonished defendant at the time of

his guilty plea that he could be sentenced to up to three years' imprisonment followed by a term of MSR of one year when the correct MSR term was four years. The actual sentence imposed by the trial court upon the revocation of defendant's probation—three years' imprisonment followed by four years of MSR—was longer than the maximum sentence defendant was told he could receive at the time of his plea. Accordingly, the trial court's failure to admonish defendant correctly concerning the MSR term violated defendant's right to due process. See *Whitfield*, 217 Ill. 2d at 188.

¶ 14 Having found that defendant's right to due process was violated due to the inaccurate MSR admonishment, we now consider the proper remedy. Defendant argues that we should reduce his sentence to one year of imprisonment and treat his four-year term of MSR as though it began after one year of imprisonment. Defendant acknowledges that his MSR term cannot be reduced to one year in accordance with the admonishment he received at the time of his plea because the applicable statute mandates a four-year term of MSR. See 730 ILCS 5/5-8-1(d)(6) (West 2018). Defendant contends that his proposed sentence reduction is appropriate because it would comport with the sentencing statute while also mitigating the effects of the incorrect MSR admonishment. Alternatively, defendant requests that we remand the matter for resentencing.

¶ 15 Ordinarily, the proper remedy in this situation would be to vacate the guilty plea and allow the defendant to plead anew. See *People v. Harris*, 359 Ill. App. 3d 931, 936 (2005) ("If the court's failure to properly admonish a defendant results in the denial of 'real justice' or prejudice to the defendant, the reviewing court should vacate the defendant's guilty plea and allow the defendant to plead anew.").

¶ 16 However, withdrawal of the guilty plea is not an available remedy when a defendant is resentenced upon the revocation of probation. *People v. Johnson*, 2021 IL App (2d) 180775, ¶ 23. This is because the defendant may not challenge the basis underlying his or her conviction in an appeal from probation revocation proceedings. See *People v. Taylor*, 368 Ill. App. 3d 703, 707-08 (2006). See also *People v. Johnson*, 327 Ill. App. 3d 252, 256 (2002) ("When no direct appeal is taken from an order of probation and the time for appeal has expired, a reviewing court is precluded from reviewing the propriety of that order in an appeal from a subsequent revocation of that probation, unless the underlying judgment of conviction is void.").

¶ 17 Instead, as this court has held, upon the revocation of probation, "the trial court is limited in sentencing by the maximum penalty upon which the defendant had originally been admonished." *People v. Johns*, 229 Ill. App. 3d 740, 743 (1992). For example, in *Johnson*, 2021 IL App (2d) 180775, ¶¶ 4-6, the defendant pled guilty to two offenses in exchange for concurrent terms of probation. The trial court admonished the defendant that he faced a possible sentence of one to six years' imprisonment for each offense. *Id.* ¶¶ 5-6. The trial court failed to admonish the defendant that he was subject to mandatory consecutive sentencing. *Id.* ¶ 6. The defendant's probation was subsequently revoked, and he was resentenced to consecutive terms of five years' imprisonment on each offense. *Id.* ¶ 7. The *Johnson* court noted that the usual remedy of allowing the defendant to withdraw his plea was unavailable. *Id.* ¶ 23. The *Johnson* court vacated the consecutive sentences and remanded for resentencing, with the limitation that the trial court could only impose concurrent sentences. *Id.* ¶ 24.

¶ 18 Similarly, in *Taylor*, the defendant received a sentence of probation pursuant to a fully negotiated guilty plea. *Taylor*, 368 Ill. App. 3d at 704-05. The trial court failed to admonish the defendant at the time of his plea that he was subject to extended-term sentencing. *Id.* at 708.

The defendant's probation was subsequently revoked, and he was resentenced to an extended-term sentence of 10 years' imprisonment. *Id.* at 706. The *Taylor* court found the ordinary statutory remedy of permitting the defendant to withdraw his plea was unavailable. *Id.* at 708. The court held that the proper remedy was to vacate the extended-term sentence and resentence the defendant to a nonextended-term sentence. *Id.* at 708-09.

¶ 19 In the instant case, after revoking defendant's probation, the trial court could not possibly have imposed a statutorily authorized sentence of imprisonment and still have maintained consistency with the admonishments defendant received at the time of his plea. The minimum term of imprisonment allowable by statute is one year of imprisonment which must be followed by four years of MSR, yielding a combined term of imprisonment and MSR of five years. See 720 ILCS 5/12-7.3(a)(2), (b) (West 2018); 730 ILCS 5/5-4.5-45(a), 5-8-1(d)(6) (West 2018). Clearly, a one-year prison sentence plus a required four-year term of MSR would have exceeded the maximum four-year combined term of imprisonment and MSR of which defendant was actually admonished at the time of his plea.

¶ 20 We find that the proper remedy is to remand for resentencing. This remedy will give defendant and the State the opportunity to negotiate an agreed resolution suitable to both sides and acceptable to the trial court. The remedy defendant proposes in this appeal—the reduction of his sentence to one year of imprisonment followed by four years of MSR—is a reasonable one, as it comports with statutory sentencing requirements and mitigates the effects of the improper admonishment. On remand, the parties may choose to adopt this proposed reduction in defendant's prison sentence or may agree on a different resolution. In the event that the parties cannot agree, the trial court shall impose a sentence that, consistent with this order, mitigates the effects of the improper admonishments while comporting with statutory sentencing

requirements, including the requirement that any term of imprisonment must be followed by four years of MSR. See 730 ILCS 5/5-8-1(d)(6) (West 2018).

¶ 21 In reaching our holding, we reject the State's argument that *Taylor* should not be followed on the basis that that it ignores the rule that courts lack jurisdiction to consider errors in the entry of a guilty plea on appeal from the revocation of probation. The *Taylor* court did not ignore this rule; it acknowledged it. See *Taylor*, 368 Ill. App. 3d at 708 ("In a probation-revocation proceeding, the defendant may not challenge the basis of the underlying conviction."). The *Taylor* court held that the proper remedy was resentencing in accordance with the admonishments the defendant received when he pled guilty *because* the plea could not be withdrawn in probation revocation proceedings. *Id.*

¶ 22 We also reject the State's argument that *Taylor* is distinguishable because it was premised on a statute that precluded the imposition of an extended-term sentence pursuant to a guilty plea unless the defendant was admonished on the record that extended-term sentencing was a possibility. See *Taylor*, 368 Ill. App. 3d at 706-08; 730 ILCS 5/5-8-2(b) (West 2004). The State contends that there is no comparable statute barring the imposition of MSR absent an admonition.

¶ 23 While the State is correct that no comparable statute exists, we do not find this to be a consequential distinction. The precedent of Illinois courts supports the position that a defendant's right to due process is violated when he or she is not adequately admonished concerning the applicable MSR term and the term of imprisonment imposed plus the term of MSR is greater than the maximum sentence the defendant was told he or she could receive. See *supra* ¶¶ 12-13. Also, withdrawal of the guilty plea is the usual remedy for both the failure to admonish a defendant of the possibility of extended-term sentencing and the failure to admonish

a defendant of the maximum possible penalty, including the applicable MSR term. See 730 ILCS 5/5-8-2(b) (West 2020); *Harris*, 359 Ill. App. 3d at 936. Accordingly, the *Taylor* court's holding that the appropriate remedy in probation revocation sentences is resentencing in accordance with the admonishments at the time of the guilty plea is applicable to the instant case as well.

¶ 24 Because we have found that the cause should be remanded for resentencing, we need not consider defendant's alternative argument that his three-year sentence was excessive.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we vacate the trial court's order sentencing defendant to three years' imprisonment followed by four years of MSR and remand the matter for resentencing consistent with this order.

¶ 27 Vacated and remanded.