2024 IL App (5th) 230010-U

NO. 5-23-0010

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. 13-CF-1221
	)	
FREDERICK LYLES,	)	Honorable
	)	Robert B. Haida,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE VAUGHAN delivered the judgment of the court.
Justices Cates and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly denied defendant's motion to withdraw his guilty plea. Defendant's plea waived any issues of procedural irregularities, the record contradicted his allegations that he failed to understand the court's admonishments, and he failed to establish plea counsel was ineffective. As any argument to the contrary would lack merit, we grant defendant's appointed counsel on appeal leave to withdraw and affirm the circuit court's judgment.

¶ 2 Defendant, Frederick Lyles, pled guilty to one count of predatory criminal sexual assault of a child. He appeals the circuit court's order denying his motion to withdraw that plea. His appointed appellate counsel, the Office of the State Appellate Defender (OSAD), concluded that there was no reasonably meritorious argument that the court erred in doing so. Accordingly, it filed a motion to withdraw as counsel along with a supporting memorandum. See *Anders v. California*, 386 U.S. 738 (1967). Defendant filed a response to OSAD's motion. After considering the record

on appeal, OSAD's supporting brief, and defendant's response, we agree that this appeal presents no reasonably meritorious issues. Thus, we grant OSAD leave to withdraw and affirm the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 Police conducted a warrantless arrest of defendant on August 6, 2013, based on allegations that defendant sexually assaulted his girlfriend's daughter. On August 8, 2013, a complaint was filed charging him with two counts of predatory criminal sexual assault of a child in violation of section 11-1.40(a)(1) of the Criminal Code of 2012 (720 ILCS 5/11-1.40(a)(1) (West 2012)), and an arrest warrant was issued. On September 6, 2013, a superseding indictment charged defendant with the same offenses. On September 13, 2013, the court conducted an arraignment on the superseding indictment. Defendant was represented by the public defender, but the record does not indicate whether defendant was personally present.

¶ 5 On April 2, 2014, the parties presented a plea agreement by which defendant would plead guilty to count II of the indictment in exchange for dismissal of count I and a recommended sentence of no more than 30 years' imprisonment. When defendant expressed some confusion about the charges, the court reviewed them with him, noting that each was subject to a maximum sentence of 60 years' imprisonment. See *id.* § 11-1.40(b)(1). Following this exchange, defendant stated that he had changed his mind and no longer wished to plead guilty.

¶ 6 On April 22, 2014, the parties presented a plea agreement with essentially the same terms as before, with the additional term that the defense could not request less than seven years' imprisonment. The court informed defendant of the nature of the charges, the minimum and maximum penalties, that he had the right to plead not guilty, was entitled to a jury or bench trial,

had the right to confront the witnesses against him, and that, if he pled guilty, he would be giving up his right to a trial. Defendant stated that he understood each admonishment.

¶ 7 Defendant affirmed that no one had promised him anything, other than the stated terms of the agreement, to induce him to plead guilty. However, the court noted that defendant hesitated in his response. Upon further inquiry, defendant stated that he had a question about presentence credit, which the court addressed. The court noted that defendant hesitated again when asked if anyone had threatened him, but defendant affirmed that he had not been threatened and was pleading guilty of his own free will.

¶ 8 When asked for a factual basis, the prosecutor asserted that the State could prove that Danielle M. lived at a specified address in East St. Louis. She was dating defendant, who occasionally spent the night with her. On July 27, 2013, she awoke and noticed that defendant was not in bed with her. She found him standing over her nine-year-old daughter, M.M., while M.M. was in bed. M.M. described to her mother, and later to an interviewer at the Child Advocacy Center, various sex acts that defendant had committed against her. In a recorded interview with police, defendant admitted "to digitally penetrating [M.M.] two times and touching her genital area with his hand on numerous occasions."

¶ 9 The court found a sufficient factual basis and found the plea voluntary. The court ordered a presentence investigation report.

¶ 10 Following a sentencing hearing, the court imposed a sentence of 18 years' imprisonment. Defendant moved to withdraw the plea. The circuit court denied the motion, but this court remanded after finding that defense counsel had not complied with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). *People v. Lyles*, No. 5-15-0238 (2017) (summary order under Illinois Supreme Court Rule 23(c)).

¶ 11 Following remand, defendant filed a *pro se* motion to withdraw the plea. At a hearing, he stated that he would "probably prefer" to represent himself. Defendant proceeded *pro se* and the court again denied the motion. On appeal, this court vacated the court's order and remanded after finding that defendant never made an unequivocal request to represent himself. *People v. Lyles*, No. 5-18-0376 (2019) (summary order under Illinois Supreme Court Rule 23(c)).

¶ 12 On remand, the court appointed defendant new counsel, who filed a first amended motion to withdraw the plea. The motion alleged that defendant's plea counsel was ineffective in that he (1) did not ensure that defendant was present at all critical stages of the proceedings, given that defendant was not present for the arraignment and plea counsel waived a preliminary hearing without notice to defendant, who was not subsequently given a copy of the indictment, causing him to be unable to prepare a defense; (2) failed to file a motion to dismiss the indictment for not being issued within 30 days pursuant to section 109-3.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/109-3.1 (West 2012)); (3) refused to file a speedy-trial demand despite defendant's repeated requests; (4) failed to communicate with defendant about discovery and the overall "process" of the case; and (5) failed to file a motion to "suppress" defendant's warrantless arrest at his residence and Danielle's consent to search the residence.

¶ 13 Defendant alleged that these errors rendered his plea involuntary in that, in their absence, he would have rejected the plea offer and insisted on going to trial. Defendant further alleged that he did not knowingly and intelligently plead guilty, in that he did not understand the charges against him, or the judge's admonishments, and did not knowingly, intelligently, or voluntarily waive his right to a trial. He also claimed that his constitutional rights were violated when he was not present at arraignment or a preliminary hearing.

¶ 14 In June 2022, postplea counsel filed a second amended motion to withdraw the plea. The allegations of ineffective assistance of counsel were the same, with an additional allegation that plea counsel incorrectly told defendant that he was eligible for an extended-term sentence. The motion further alleged that defendant's constitutional rights were violated when he "was held longer than 48 hours before being served with a warrant." The allegation was based on his August 6, 2013, arrest, and the warrant being filed on August 9, 2013.

¶ 15 The motion proceeded to hearing on September 20, 2022. At that hearing, defendant testified that he was not present at his arraignment on September 13, 2013, and was not present in court until April 2014. He stated that he did not give counsel permission to plead not guilty at the arraignment or to waive formal reading of the charges. Defendant testified that he "didn't get a chance to speak with" original plea counsel about this issue, never got responses to his letters, never spoke to him by phone, and only saw him twice at the courthouse. He stated that he never received a copy of the indictment until his first appeal and was only made aware of the nature of the charges against him at the initial plea negotiation hearing in April 2014, at which time no agreement was reached.

¶ 16 Defendant further testified that counsel refused to file a motion to dismiss based on the delayed indictment. Moreover, counsel did not file a speedy-trial demand despite repeated requests. Counsel also failed to move to suppress defendant's warrantless arrest, although the police did not have statutory authority to arrest him in his residence since he did not consent and there were no exigent circumstances. He felt he had no choice but to plead guilty, given his belief that counsel was not prepared to defend him, told him that he would get "hammered" at trial, and otherwise pressured him to accept the plea agreement. Defendant stated that another error was that

he was arrested on August 6, 2013, but the State did not file a complaint or charges until August 9, 2013, and he never received a copy of the complaint.

¶ 17 On cross-examination, defendant stated that he was never given a copy of his confession to police and that counsel only briefly described it to him. Defendant further stated that although plea counsel did not promise him a 12-year sentence, plea counsel "said that he would see to it for me not having no background that I would get no more than 12 years. So[,] I believed that influenced me to take the plea." Defendant agreed that, at the time he pled guilty, he believed it was in his best interest.

¶ 18 Original plea counsel testified that he met with defendant three or four times. He stated that he raised the issue of a speedy-trial demand with defendant but advised defendant against it for several reasons, including the State's practice of cutting off negotiations if a speedy-trial demand was made. He further stated that defendant did not specifically give him permission to waive his speedy-trial rights.

¶ 19 Counsel testified that he provided defendant with copies of the indictment and allowed defendant to read the file. He admitted that he was wrong at one point about the sentence being extended-term eligible based on defendant's criminal record, but later clarified the confusion. He did not recall telling defendant that he would not get more than 12 years, stating that he would never have made a guarantee like that. On cross-examination, counsel stated that he reviewed the discovery and found no reason to file a motion to suppress. He further stated that even if he had successfully moved to dismiss the indictment, the State would have immediately recharged defendant by information. He stated the initial success would have only been a "paper victory" and during negotiations he did not believe defendant had a viable defense.

¶ 20 Following the hearing, the circuit court took the matter under advisement. On December 30, 2022, the court issued an order denying defendant's motion to withdraw his guilty plea. Defendant timely appealed.

¶ 21 ANALYSIS

¶ 22 OSAD concludes that no reasonably meritorious argument can be raised to support defendant's claim that the court erred in denying defendant's motion to withdraw his guilty plea. OSAD first concludes that the court did not err in denying defendant's motion to the extent it alleged various due-process issues, including that (1) defendant was not present at arraignment, (2) counsel waived a preliminary hearing without defendant's consent, (3) defendant did not receive a copy of the indictment before pleading guilty, and (4) defendant was held for more than 48 hours before being served with an arrest warrant. " ' "It is well established that a voluntary guilty plea waives all non-jurisdictional errors or irregularities, *including constitutional ones*." ' " (Emphasis in original.) *People v. Jones*, 2021 IL 126432, ¶ 20 (quoting *People v. Sophanavong*, 2020 IL 124337, ¶ 33, quoting *People v. Townsell*, 209 Ill. 2d 543, 545 (2004)). As such, we agree that defendant's guilty plea waived these claims.

¶ 23 Moreover, none of these issues, on their merits, would warrant allowing defendant to withdraw his plea. "A defendant has no absolute right to withdraw his guilty plea." *People v. Hughes*, 2012 IL 112817, ¶ 32. "Rather, he must show a manifest injustice under the facts involved." *Id.* "Withdrawal is appropriate where the plea was entered through a misapprehension of the facts or of the law or where there is doubt as to the guilt of the accused and justice would be better served through a trial." *Id.* We review the denial of a motion to withdraw a guilty plea for abuse of discretion. *Id.*

¶ 24 We agree that the court did not err in denying defendant's motion to withdraw based on his absence at the arraignment hearing. "[B]oth the federal constitution and our state constitution afford criminal defendants the general right to be present, not only at trial, but at all critical stages of the proceedings, from arraignment to sentencing." *People v. Lindsey*, 201 Ill. 2d 45, 55 (2002). A defendant's absence from such proceedings, however, "is not a *per se* constitutional violation." *Id.* at 57. "Rather, a defendant's absence from such a proceeding will violate his constitutional rights only if the record demonstrates that defendant's absence caused the proceeding to be unfair or if his absence resulted in a denial of an underlying substantial right." *Id.* Defendant here never explained how his absence resulted in an unfair proceeding or a denial of an underlying substantial right. Similarly, he never argued that his absence at the arraignment resulted in a misapprehension of the facts or of the law. To the contrary, defendant was represented by counsel who entered a plea of not guilty. Moreover, as we explain in more detail below, defendant was well aware of the charges by the time of his guilty plea.

¶ 25 The court also did not err with respect to his claims that he did not consent to a waiver of his preliminary hearing and was not provided with a copy of his indictment before pleading guilty. The record does not show that the matter was ever set for a preliminary hearing that defense counsel could waive. Instead, the State obtained a superseding indictment. See 725 ILCS 5/109-3.1(b) (West 2020) (every person in custody shall receive either a preliminary hearing or an indictment within 30 days of being taken into custody). Defendant's testimony that he did not receive a copy of the indictment prior to pleading guilty was refuted by plea counsel, whose testimony the circuit court evidently credited. Furthermore, defendant acknowledged that the circuit court went over the charges at the first plea hearing, about two weeks prior to when defendant actually pled guilty. The court outlined the charges again at the second plea hearing and

defendant assured the court that he understood the charges. Thus, even if defendant was not shown the actual indictment, he cannot establish prejudice. See *People v. Johnson*, 34 Ill. 2d 202, 205-06 (1966) (although not given the proper indictments or formally read the charges, there was no prejudice where the record showed defendant knew of the charges against him).

¶ 26 Finally, the circuit court did not err in rejecting defendant's argument that he was not "served" with an arrest warrant within 48 hours. The authority on which defendant relied, *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), applies only to defendants arrested without a warrant. *Riverside* does not require that a defendant be "served" with the warrant within 48 hours; rather, it requires that there is a judicial probable cause determination within 48 hours of arrest. *Id.* at 56. The police reports attached to defendant's motion show that he was arrested sometime after 9:30 a.m. on August 6, 2013. The judge was required to make the probable cause determination before it issued and signed the arrest warrant, printed out at 9:21 a.m. on August 8, 2013. See *People v. Tisler*, 103 Ill. 2d 226, 236 (1984) ("[A] detached judicial officer must resolve the question of whether probable cause exists to justify issuing a warrant."). As such, the State obtained a probable cause determination within 48 hours of defendant's warrantless arrest.

¶ 27 OSAD next concludes there is no reasonably meritorious argument that the circuit court erred in rejecting defendant's arguments that his plea was involuntary. We agree.

¶ 28 Defendant claimed that he did not understand the charges against him, did not understand the court's admonishments, and did not knowingly, intelligently, or voluntarily waive his right to a trial. Defendant did not specifically allege what he did not understand or why his plea was involuntary, either on appeal or at the motion to withdraw the guilty plea hearing.

¶ 29 In any event, defendant's current claim is contradicted by his statements at the hearing. In response to the court's lengthy admonishments, defendant assured the court that he did understand

them and that his plea was voluntary. Defendant's argument "would require us to characterize the court's lengthy and exhaustive admonitions as merely a perfunctory or ritualistic formality; a characterization we are unwilling to make." *People v. Jones*, 144 Ill. 2d 242, 263 (1991).

¶ 30 Finally, OSAD concludes that there is no good-faith argument that the court erred in rejecting defendant's contentions that counsel's ineffective assistance rendered his plea involuntary. " 'To establish that a defendant was deprived of effective assistance of counsel, a defendant must establish both that his attorney's performance was deficient and that the defendant suffered prejudice as a result.' " *People v. Manning*, 227 Ill. 2d 403, 412 (2008) (quoting *People v. Pugh*, 157 Ill. 2d 1, 14 (1993)).

¶ 31 To establish prejudice in a guilty plea context, " 'the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.' " *People v. Valdez*, 2016 IL 119860, ¶ 29 (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). "A conclusory allegation that a defendant would not have pleaded guilty and would have demanded a trial is insufficient to establish prejudice." *Id.* Rather, the defendant " 'must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.' " *Id.* (quoting *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010))

¶ 32 Before considering defendant's specific allegations of ineffective assistance, we note that defendant's allegations of prejudice are of the type *Valdez* held insufficient. Defendant baldly asserts that had counsel undertaken or not undertaken a particular action, he would not have pled guilty and insisted on going to trial. However, he offers no reason to believe that such a decision would have been rational under the circumstances.

¶ 33 Defendant was originally charged with two counts of predatory criminal sexual assault of a child, each carrying a maximum sentence of 60 years' imprisonment. 720 ILCS 5/11-1.40(b)(1)

(West 2012). Convictions on both counts would have required that the sentences be consecutive. 730 ILCS 5/5-8-4(d)(2) (West 2012). Thus, he faced a potential aggregate sentence of 120 years in prison. However, the plea agreement with the State guaranteed a sentence of no more than 30 years and he was, in fact, sentenced to 18 years. Further, it appears that the State had a strong case. Defendant was identified by his girlfriend and her daughter, who described in detail how defendant molested the minor child on multiple occasions. Defendant confessed to the police that he did so. Further, defendant's counsel testified that, in his opinion, defendant did not have a viable defense. Thus, where defendant faced such a substantial penalty, it would be difficult to accept an argument that rejecting the State's offer would have been rational under these circumstances.

¶ 34 In any event, we agree with OSAD that defendant's specific allegations lack merit. His motion argued that plea counsel was ineffective for failing to ensure that defendant was present at all critical stages of the proceedings, including arraignment and preliminary hearing. As noted previously, defendant was aware of the charges by the time of the guilty plea. At no time does defendant explain how attending an arraignment and a preliminary hearing would have somehow made it rational to reject the plea offer and go to trial.

¶ 35 Defendant next argued that counsel should have moved to dismiss the indictment as untimely. Every person in custody for the alleged commission of a felony shall receive either a preliminary examination or an indictment within 30 days from the date he or she was taken into custody. 725 ILCS 5/109-3.1(b) (West 2012). Here, the State replaced the information with an indictment on September 13, 2013, more than 30 days after defendant's arrest. However, the Code of Criminal Procedure of 1963 also provides that "[d]ismissal of the charge upon the grounds set forth in subsections (a)(4) through (a)(11) of this Section shall not prevent the return of a new indictment or the filing of a new charge." *Id.* § 114-1(e). Thus, even if counsel had successfully

moved to dismiss the indictment, the State could have simply reindicted defendant. Accordingly, he was not prejudiced by the failure to file a motion that would essentially have been an exercise in futility. See *People v. Givens*, 237 Ill. 2d 311, 331 (2010) (counsel need not file futile motions in order to provide effective assistance).

¶ 36 Defendant's claim that counsel was ineffective for failing to file a speedy-trial demand also fails. Generally, an attorney is presumed to act on his client's authorization. *People v. Bowman*, 138 Ill. 2d 131, 142 (1990). A defendant who wishes to repudiate his attorney's failure to assert his speedy-trial rights must promptly inform the trial court. *Id.* at 143. There is no indication in the record that defendant here did so.

¶ 37 Defendant also claimed that counsel was ineffective in failing to communicate with him about discovery issues and the overall progress of the case. Counsel refuted this, testifying that he did communicate with defendant and shared discovery with him. Defendant also fails to identify anything allegedly concealed from him that would have caused him to reject the plea offer and go to trial.

¶ 38 Defendant also contended his counsel was ineffective for failing to suppress his warrantless arrest. "An attorney's decision to file or not to file a motion is regarded as a matter of trial strategy ***." *People v. Bryant*, 128 Ill. 2d 448, 458 (1989). In order to establish prejudice under *Strickland* for a failure to file a suppression motion, "the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed." *People v. Henderson*, 2013 IL 114040, ¶ 15. At the hearing, plea counsel testified that he did not file a motion to suppress because after reviewing the record, he found no grounds to file such motion. We agree.

¶ 39 The fourth amendment generally prohibits a warrantless arrest in a home. *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990). The prohibition does not apply, however, where the property owner or some third party who possesses common authority over the premises has voluntarily consented to entry. *Id.*

¶ 40 Here, police reports attached to defendant's motion to withdraw show that Danielle M. agreed to notify the police when defendant was at her home so he could be arrested and thus implicitly gave the officers authority to enter the residence for that purpose. Defendant vaguely alleged that counsel should have challenged Danielle M.'s authority to consent to a search but has not suggested any basis on which this could have been done. The factual basis showed that Danielle M. was living in the home and thus had authority to consent to its entry. See *United States v. Matlock*, 415 U.S. 164, 171 (1974) ("[W]hen the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected."). Defendant has provided no evidence to suggest that Danielle M. lacked such authority.

¶ 41 Finally, defendant contended that counsel was ineffective for incorrectly advising him that he was eligible for an extended-term sentence. Plea counsel acknowledged the mistake, explaining that he was confused because the statute defining the offense called for an enhanced, but not extended term, sentencing range. Plea counsel further testified, however, that he corrected the misimpression prior to the guilty plea. Moreover, the court advised defendant of the correct sentencing range at least twice before accepting the plea and defendant stated he understood it. Thus, defendant cannot plausibly claim that counsel's mistake affected his decision to plead guilty.

¶ 42 In his response, defendant states that he would like this court to review various issues already flagged as potential issues by OSAD, but he provides no argument beyond that presented in the court below. Importantly, with respect to his claims of ineffective assistance of plea counsel, defendant fails to explain how, absent the alleged errors, it would have been rational to reject the relatively lenient plea offer and insist on going to trial.

¶ 43 CONCLUSION

¶ 44 As this appeal presents no issue of arguable merit, we grant OSAD leave to withdraw and affirm the circuit court's judgment.

¶ 45 Motion granted; judgment affirmed.