2024 IL App (5th) 230142-U

NO. 5-23-0142

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Union County.
	)	
v.	)	No. 19-CF-272
	)	
JEREMY M. CALVERT,	)	Honorable
	)	Timothy D. Denny,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McHANEY delivered the judgment of the court.
Justices Moore and Boie concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly denied defendant's motion to reconsider his four year sentence for aggravated battery of a police officer where that sentence was only one year above the statutory minimum, and where he had a previous felony conviction for burglary. Further, no procedural error occurred where the circuit court and defense counsel complied with applicable supreme court rules. 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, Jeremy M. Calvert, pleaded guilty to aggravated battery of a peace officer. The circuit court sentenced him to four years' imprisonment. He now appeals the denial of his motion to reconsider the sentence. His appointed appellate counsel, the Office of the State Appellate Defender (OSAD), has moved to withdraw, concluding that there is no nonfrivolous argument that the circuit court erred. See *Anders v. California,* 386 U.S. 738 (1967). Counsel has notified defendant of the motion, and this court has provided him with ample opportunity to respond.

However, he has not done so. After considering the record on appeal and OSAD's motion and supporting memorandum, we agree that this appeal presents no issue of arguable merit. Accordingly, we grant OSAD leave to withdraw and affirm the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 Defendant was initially charged with aggravated battery of a peace officer, domestic violence, and resisting a peace officer. The parties subsequently agreed that defendant would plead guilty to aggravated battery of a peace officer. In exchange, the State would dismiss the remaining counts as well as some unrelated misdemeanor and traffic cases. There was no agreement on a sentence.

¶ 5 The court admonished defendant of his rights, which he said he understood. He asserted that no threats or promises had been made to induce the plea. The prosecutor presented the following factual basis:

> "The People would call to testify Deputy Josh Schildknecht, who would testify that on October 30, 2019, this defendant, who would be identified in open court as Jeremy Calvert, was placed under arrest. That he was escorting this defendant into the jail from his squad car, at which point this defendant spit in his face, striking him with the spit in his eyes. Further, the People would put a copy of the video surveillance from the jail that would show this incident happening into evidence."

The court found the plea voluntary, found an adequate factual basis, and scheduled a sentencing hearing.

¶ 6 At sentencing, Brittany Summers, defendant's fiancée, testified that she and defendant had been together since 2018. While there had been some "bicker[ing]" in the past, everything was "calm and perfect" now, because defendant had quit drinking three years ago. They had recently

bought a house together. Summers worked full-time while defendant worked part-time as a handyman and cared for the children. She acknowledged that they had moved several times in recent years, including moving from Anna to Carterville for about six months. They moved because they wanted to "get out of this town because we just felt like we had too many run-ins with the law." While previously living in Anna, they had noticed squad cars parked down the street several nights per week and both had been stopped by the police for no apparent reason. On cross-examination, she acknowledged that defendant's period of sobriety included the night he spit in Schildknecht's eye.

¶ 7 Defendant testified that he watched the children while Summers worked, but he was currently looking for an evening job that would let him work when Summers could watch the children. He said he had started drinking at age 12 but would be okay if the court ordered him not to drink as part of a sentence, because he had already quit. He testified that his going to prison would be terrible for his son Tracy, of whom he had sole custody.

¶ 8 The presentence investigation report (PSI) showed that defendant was adjudicated delinquent in 2004. He had a 2007 burglary conviction for which he was originally sentenced to probation but, after violating it, was sentenced to three years in prison. In addition to Tracy, defendant had a daughter with Summers.

¶ 9 The court sentenced defendant to four years in prison. The court was skeptical of claims of a stable, hard-working family that was moving forward. It noted that defendant and Summers had lived in a number of homes for no more than several months at a time and that defendant had not made substantial efforts to obtain treatment, counseling, or gainful employment. It did not find allegations of police harassment to be mitigating. Finally, the court noted that the offense in question involved a battery against a law enforcement officer.

¶ 10 Defense counsel filed a motion to reconsider the sentence, which was denied. On appeal, this court summarily remanded because counsel did not file a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2017). Following remand, the court again denied the motion to reconsider. Defendant timely appeals.

¶ 11 ANALYSIS

¶ 12 OSAD concludes that there is no reasonably meritorious argument that the court erred in denying the motion to reconsider the sentence or that, after remand, counsel complied with Rule 604(d). We agree, although for different reasons.

¶ 13 Appellate counsel notes that defendant has been released on mandatory supervised release (MSR). Citing *People v. Porm*, 365 Ill. App. 3d 791, 794 (2006), counsel asserts that the issue is moot because this court may not alter the MSR term. However, *Porm* is distinguishable.

¶ 14 In *Porm*, the defendant pleaded guilty in exchange for a specific sentence but was not admonished that an MSR term would follow the prison term. On appeal, he argued that under *People v. Whitfield*, 217 Ill. 2d 177 (2005), the remedy was to shorten the prison term by the length of the MSR term, thus giving him the sentence to which he agreed. However, because he had already completed his prison term, the only "equitable remedy" was to strike the MSR term from his sentence. *Id.* at 794. The court held that the issue was moot given that the court lacked the authority to alter the MSR term. *Id.* at 794-95 (citing *Whitfield*, 217 Ill. 2d at 200-01).

¶ 15 Here, defendant is not challenging the MSR term, but the prison sentence. Where a defendant on MSR challenges the length of the prison sentence, the issue is not moot because a successful challenge could affect how long he is reincarcerated following an MSR violation. *People v. Montalvo*, 2016 IL App (2d) 140905, ¶ 14 (citing *People v. Jackson*, 199 Ill. 2d 286, 294 (2002)). Thus, the issue is not moot.

¶ 16 Nevertheless, there is no reasonably meritorious argument that the court erred in denying the motion to reconsider the sentence because the sentence was not an abuse of discretion. A reviewing court may not alter a sentence absent an abuse of discretion by the trial court. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). A sentence will be deemed an abuse of discretion if it is " 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *Id.* (quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2000)). The trial court has broad discretionary powers in imposing a sentence, and its decisions are entitled to great deference. *Id.* This is so because " '[t]he trial judge has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently.' " *Id.* (quoting *Stacey*, 193 Ill. 2d at 209).

¶ 17 Here, defendant pleaded guilty to aggravated battery of a peace officer, a Class 2 felony. 720 ILCS 5/12-3.05(d)(4)(i) (West 2018). The sentencing range for such a felony is between three and seven years in prison. 730 ILCS 5/5-4.5-35(a) (West 2020). Thus, the four-year prison term was only one year above the statutory minimum. Defendant had previously been sentenced to probation for burglary but his probation was revoked and he was resentenced to three years' imprisonment. Despite defendant's and Summers's claims of an idyllic relationship, he had been charged with battering Summers, a charge dismissed pursuant to the plea agreement. The court further noted that the offense involved a battery against a law enforcement officer. Under the circumstances, the four-year sentence was not an abuse of discretion.

¶ 18 OSAD further concludes that there is no good-faith argument that defense counsel failed to comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017). That rule provides that where an attorney files a postplea motion on behalf of a defendant, he or she must

> "file with the trial court a certificate stating that the attorney has consulted with the defendant either by phone, mail, electronic means or in person to ascertain defendant's contentions of error in the sentence and the entry of the plea of guilty, has examined the trial court file and both the report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings." *Id.*

¶ 19 Here, following remand, counsel filed a certificate closely tracking the language of the rule. Thus, there is no meritorious argument that counsel failed to comply with the rule. Although counsel elected to stand on the original motion, nothing in the record suggests that any amendments were necessary or that counsel failed to adequately present defendant's contentions.

¶ 20 CONCLUSION

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

¶ 22 Motion granted; judgment affirmed.