2025 IL App (4th) 240378

NO. 4-24-0378

FILED
January 2, 2025
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JEREMY L. TIBBS, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Tazewell County No. 22CF10 Honorable Christopher R. Doscotch, Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court, with opinion.
Justices Zenoff and DeArmond concurred in the judgment and opinion.

OPINION

¶ 1 In January 2023, a jury convicted defendant, Jeremy L. Tibbs, of one count of unlawful possession of less than five grams of methamphetamine (720 ILCS 646/60(a) (West 2022)). The trial court sentenced defendant to 9 months of conditional discharge and 90 days in jail, pending a remission hearing. The court ordered defendant to perform 60 hours of community service as a condition of discharge.

¶ 2 At the remission hearing, before the State had the opportunity to present evidence, defendant admitted he failed to complete community service but asked the trial court to not sentence him to jail based on his efforts to comply. The State did not produce evidence but stated defendant's discharge officer reported she did not have proof of any service hours being completed. The court then ordered defendant to serve the 90-day sentence. Defendant appeals, arguing the remission hearing did not comply with due process because the State was relieved of

its burden to prove he failed to complete community service and he was deprived of the ability to confront and cross-examine the discharge officer. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 26, 2023, a jury found defendant guilty of unlawful possession of less than five grams of methamphetamine. On April 27, 2023, the trial court sentenced defendant to 9 months of conditional discharge and 90 days in jail, with the jail time held in remission. Among the special conditions of discharge, the court ordered defendant to complete 60 hours of community service. At the sentencing hearing, the court told defendant he must complete the 60 hours of community service in 9 months and, if he did not do so, he would be required to serve the stayed jail term. The court scheduled a remission hearing for January 26, 2024.

¶ 5 At the beginning of the remission hearing, before the State was offered the chance to present evidence, defense counsel tendered an undated letter from Jason Edwards to the trial court. The letter stated Edwards was a board member with an organization that planned for defendant to perform work cleaning and maintaining property. However, due to weather, a board meeting was postponed and funding for the project was not yet available. Edwards stated the organization would like to help defendant move forward with a healthy lifestyle.

¶ 6 After submitting the letter, defense counsel stated:

> "I briefly explained to [defendant] that remission as my understanding of law is an all or nothing proposition. It's either done or it's not. This isn't payment. It's not done. I anticipate, therefore, the Court's going to order that he be taken into custody instanter to serve his sentence. However—I'll make your record, [defendant]. However, [defendant] is asking the Court to not impose the sentence because he believes his efforts of trying to get it done were sufficient for the Court to—what

else do you want to say, [defendant]?"

¶ 7 Defendant then described to the trial court his failed attempts at obtaining and completing community service. For example, he attempted to work at a golf course, but the probation office did not allow him to do so. He also attempted to complete community service hours with a service organization, but it could offer only one hour of work per week. Defendant also attempted to work for the City of West Peoria picking up garbage but was not allowed to do so because of snow. Defendant's inquiry to the Peoria Park District went unanswered. He also attempted to work with Habitat for Humanity. Defendant stated Edwards's agency had community service hours available for him, but the agency still needed to approve the hours. Defendant stated he knew it was his responsibility to complete the hours but argued he made a substantial effort to do so.

¶ 8 In response, the State said "we ask the Court deny remission. [Defendant] had nine months. I talked with Conditional Discharge Officer Melissa Barnett. She hasn't had proof of any hours being completed." The trial court replied "Well, I mean, we pretty much heard that anyway so all right."

¶ 9 The trial court denied remission and ordered defendant to serve the stayed 90 days in jail. On April 23, 2024, defendant finished serving the jail term, and his conditional discharge terminated.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues the remission hearing did not comply with due process because the State was relieved of its burden to prove he violated his conditional discharge and he was denied his right to confront and cross-examine Barnett. Defendant acknowledges he failed to

object in the trial court but asks this court to review the matter for plain error. Meanwhile, the State argues the matter is moot, forfeited, or lacks merit.

¶ 13 A. Mootness

¶ 14 The State first argues defendant's appeal is moot because he has already served his 90-day jail sentence. Defendant agrees the matter is moot but asks that we review the matter under the public interest exception to the mootness doctrine.

¶ 15 "A case on appeal becomes moot where the issues presented in the trial court no longer exist because events subsequent to the filing of the appeal render it impossible for the reviewing court to grant the complaining party effectual relief." *Jackson v. Board of Election Commissioners*, 2012 IL 111928, ¶ 28, 975 N.E.2d 583. Here, while defendant asks this court to reverse and remand for a new remission hearing, it is undisputed defendant completed his sentence on April 23, 2024. Thus, because he has already completed his sentenced, this court cannot grant defendant "effectual relief." *Jackson*, 2012 IL 111928, ¶ 28. Accordingly, his appeal is moot. *Jackson*, 2012 IL 111928, ¶ 28.

¶ 16 However, the public interest exception to the mootness doctrine permits review when the interests involved are of the appropriate magnitude or immediacy. *In re Shelby R.*, 2013 IL 114994, ¶ 16, 995 N.E.2d 990. "Application of this exception, which is narrowly construed, requires a clear showing of each of the following criteria: (1) the question presented is of a public nature; (2) an authoritative determination of the question is desirable for the future guidance of public officers; and (3) the question is likely to recur." *Shelby R.*, 2013 IL 114994, ¶ 16.

¶ 17 Defendant argues the issue of a denial of due process due to the State being relived of its burden of proof at a remission of conditional discharge hearing is an issue of first impression. Citing this court's disposition in *People v. Bradford*, 2023 IL App (4th) 220848-U, ¶ 19, he

contends issues of due process at a remission hearing are of a public nature, resolution of the issue is important and will guide prosecutors and defense attorneys in how to properly conduct remission hearings, and the question is likely to recur, as remission hearings are not uncommon.

¶ 18 We agree. Accordingly, we consider defendant's arguments regarding the alleged due process deficiencies in his conditional discharge remission hearing.

¶ 19 B. Due Process

¶ 20 Defendant argues he was denied due process because the trial court (1) relieved the State of its burden to prove he failed to complete community service and (2) denied him of his right to confront the witnesses against him by accepting the State's hearsay statement that Barnett said she did not have proof defendant completed any community service hours.

¶ 21 Defendant recognizes he forfeited the issues by failing to object at the time of the hearing or otherwise raise the issues in the trial court. However, he asks this court to review the matter for plain error.

¶ 22 "To preserve a purported error for consideration by a reviewing court, a defendant must object to the error at trial and raise the error in a posttrial motion. [Citation.] Failure to do either results in forfeiture." *People v. Sebby*, 2017 IL 119445, ¶ 48, 89 N.E.3d 675. The plain-error doctrine allows a reviewing court to review a forfeited error that is clear and/or obvious when (1) the evidence in a case was so closely balanced that the error alone threatened to tip the scales of justice against the defendant regardless of the seriousness of the error or (2) the error was so serious it affected the fairness of the defendant's trial and challenged the integrity of the judicial process regardless of how close the evidence was in the case. *Sebby*, 2017 IL 119445, ¶¶ 49-51. The defendant bears the burden of persuasion under both prongs of the rule. *People v. Solis*, 2019 IL App (4th) 170084, ¶ 29, 138 N.E.3d 247.

¶ 23 Defendant contends second-prong plain error applies because the error was so serious it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. However, before establishing plain error occurred, a defendant must first establish there was a clear or obvious error to begin with. See *Sebby*, 2017 IL 119445, ¶ 49. For the reasons that follow, we conclude no error occurred here.

¶ 24 A claim of the denial of due process is reviewed *de novo. People v. Bradley*, 2017 IL App (4th) 150527, ¶ 13, 85 N.E.3d 591. In *People v. Tipton*, 88 Ill. 2d 256, 261, 430 N.E.2d 1023, 1026 (1981), the Illinois Supreme Court addressed the question of the amount of procedural protections afforded at a remission hearing in order to comport with principles of due process. Two defendants were involved. Defendant Tipton's "imprisonment order was unequivocal, and nothing in the probation order even hinted at the possibility of remission." *Tipton*, 88 Ill. 2d at 266. As for the second defendant, Richardson, "the court specified in the original order of probation a definite date upon which [he] was to appear at which the court would consider remission of all or part of the delayed imprisonment." *Tipton*, 88 Ill. 2d at 266. Regarding what would satisfy due process in either situation, the court explained:

> "[T]here are in our judgment distinct differences between the legitimate expectations of those facing terms of delayed imprisonment set as unequivocal conditions of probation at the time of sentencing and those *** whose terms of delayed imprisonment are expressly subjected to the results of a remission hearing fixed in the order imposing the imprisonment. The former have no reason to expect remission; the latter have been encouraged to believe that they may escape imprisonment by complying with the other conditions of probation. As to them, legitimate expectations of a hearing

> similar to that provided by section[ ] 5-6-4(b) and (c) [of the Unified Code of Corrections (Ill. Rev. Stat. 1979, ch. 38, ¶ 1005-6-4(b), (c))] have been raised under *** due process considerations *** with the right to notice, counsel, and to present relevant evidence." *Tipton*, 88 Ill. 2d at 267-68.

¶ 25 While *Tipton* did not specifically address the burden of proof or the right to confront witnesses, it invoked protections afforded to revocation of probation or conditional discharge under section 5-6-4(c) of the Unified Code of Corrections (730 ILCS 5/5-6-4(c) (West 2022)). That section provides, at a revocation of conditional discharge, "The State has the burden of going forward with the evidence and proving the violation by the preponderance of the evidence. The evidence shall be presented in open court with the right of confrontation, cross-examination, and representation by counsel." 730 ILCS 5/5-6-4(c) (West 2022).

¶ 26 Based on the reference in *Tipton* to section 5-6-4(c), we hold defendants at remission hearings are entitled to protections similar to those of that section, including the requirement the State carry the burden of proof and the defendant be afforded the right to confront and cross-examine witnesses. However, we find no error occurred here, because defendant admitted he failed to complete the required community service, thus rendering it unnecessary for the State to present proof.

¶ 27 In *People v. Beard*, 59 Ill. 2d 220, 319 N.E.2d 745 (1974), a case involving revocation of probation, defendant's counsel admitted the defendant failed to report to his probation officer, which was the only factual matter at issue. The trial court then revoked the defendant's probation. On appeal, the defendant contended he was denied due process and should have been admonished regarding the effect of counsel's admission. Our supreme court disagreed, stating,

> "The only factual matter involved in the revocation proceeding was [defendant's] failure to report to his probation officer, which could only be explained by his Federal detention and subsequent conviction in August, 1969. The fact that defendant's counsel admitted these facts eliminated a minimal necessity of proof which the State would ordinarily have been required to introduce. Defendant cannot claim that he was prejudiced by his counsel's admission nor can he claim that justice was denied." *Beard*, 59 Ill. 2d at 227.

¶ 28 Based on *Beard*, the Appellate Court, First District, held, "Once a defendant admits the grounds for violation of probation through a stipulation, that admission eliminates the minimal necessity of proof which the State is required to produce, and the defendant cannot claim that justice was denied." *People v. Felton*, 69 Ill. App. 3d 684, 686, 387 N.E.2d 1094, 1096 (1979). We agree and adopt that view by analogy here. Thus, applying *Beard* and *Felton*, where a defendant admits to the facts at a remission hearing that the State would have otherwise been required to prove, such that the admission eliminates the necessity of proof which the State is required to produce, the defendant cannot claim that justice was denied. This was the case here.

¶ 29 At the remission hearing, before the State had any opportunity to offer evidence, defendant's counsel admitted defendant failed to complete the required community service hours, noting the letter submitted and his discussion with defendant that, because "It's not done," counsel anticipated the trial court would order defendant to be taken into custody to serve his sentence. Defendant then chose to proceed to attempt to persuade the court to not impose the jail sentence based on his failed attempts to comply. Because defendant's admission eliminated the minimal necessity of proof that the State would ordinarily have been required to introduce, there was no dispute whatsoever that defendant had not completed his community service hours. Thus,

defendant cannot claim he was denied due process based on a failure of the State to nevertheless prove the facts he already admitted.

¶ 30 Likewise, there was no necessity to cross-examine Barnett, who the State noted had said she did not have proof of any community service hours being completed. Defendant's failure to complete community service was already proven by his own admission, making any consideration of Barnett's statement meaningless. Indeed, the trial court recognized as much, stating, "Well, I mean, we pretty much heard that anyway so all right." Thus, the record is clear the court did not take the State's remark as meaningful evidence against defendant that would have had any effect on the outcome of the proceeding. We also note defendant has not claimed any denial of due process based on lack of admonitions concerning the effect of his admission. Given defendant's strategy to admit he failed to complete community service, which was the only fact at issue, and instead plead for leniency, he cannot now claim he was denied due process by the court's failure to nevertheless require the State to formally present evidence and allow cross-examination based on that evidence. As such, there was no error. Because there was no error, there likewise was no plain error.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment.

¶ 33 Affirmed.

Decision Under Review:	Appeal from the Circuit Court of Tazewell County, No. 22-CF-10; the Hon. Christopher R. Doscotch, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Christopher McCoy, and Elliott A. Borchardt, of State Appellate Defender's Office, of Elgin, for appellant.
Attorneys for Appellee:	Kevin E. Johnson, State's Attorney, of Pekin (Patrick Delfino, David J. Robinson, and Timothy J. Londrigan, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.