

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2019 IL App (4th) 160899-U

NO. 4-16-0899

FILED
July 9, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
TROY RANDLE,)	No. 15CF1128
Defendant-Appellant.)	
)	Honorable
)	Robert L. Freitag,
)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* Defendant's appeal presents no meritorious issues for review. We grant OSAD's motion to withdraw and affirm the trial court's judgment.
- ¶ 2 Defendant, Troy Randle, pleaded guilty to unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2014)) pursuant to a partially negotiated plea agreement. In exchange, the State dismissed the remaining counts against defendant and capped its sentence recommendation at 15 years in prison. The trial court sentenced defendant to 15 years in prison. Defendant *pro se* filed a motion to reconsider his sentence. Defendant later filed an untimely motion to withdraw his guilty plea. At the hearing on defendant's motions, defendant withdrew the motion to withdraw his guilty plea. The court denied defendant's motion to reconsider his sentence.

¶ 3 Defendant then appealed, and the Office of the State Appellate Defender (OSAD) was appointed to represent him. On appeal, OSAD filed a motion to withdraw as appellate counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting the appeal presents no meritorious issues for review. We grant OSAD’s motion and affirm the trial court’s judgment.

¶ 4 I. BACKGROUND

¶ 5 In September 2015, the State charged defendant with five counts of delivery of a controlled substance (720 ILCS 570/401(b)(1), (c)(2) (West 2014)) (counts I-V) and one count of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2014)) (counts VI).

¶ 6 On May 20, 2016, defendant pleaded guilty to one count of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2014)) (count VI) pursuant to a partially negotiated plea agreement. Defendant also agreed to pay a \$3650 street-value fine (730 ILCS 5/5-9-1.1(a) (West 2014)). In exchange, the State dismissed the five remaining counts against defendant and capped its sentence recommendation at 15 years in prison. The trial court confirmed that defendant’s plea was knowingly and voluntarily made, and determined that a factual basis existed for the plea.

¶ 7 On July 8, 2016, the trial court sentenced defendant to 15 years in prison. The court noted that, because defendant had a prior Class X felony conviction within the last ten years, without the plea agreement in the instant case defendant could have been sentenced to an extended prison term of 6 to 60 years. See 730 ILCS 5/5-5-3.2(b)(1) (West 2014); 730 ILCS 5/5-4.5-25(a) (West 2014). The court admonished defendant, stating in part that, in order to appeal, defendant “must first file here in the trial court[,] *** within 30 days of today, a written motion

asking to have the judgment vacated, and for leave to withdraw [the] plea of guilty.” Defendant indicated that he understood. Defendant then asked, through his attorney, to file a notice of appeal that day. The court responded, “to reiterate, *** before you can appeal, you have to first file a motion to withdraw the plea and vacate the judgment. If you don’t do that in the next 30 days, you lose your right to appeal ***[.]”

¶ 8 On August 1, 2016, defendant *pro se* filed a letter that the trial court construed as a motion to reconsider his sentence. The letter stated he was “writing regarding a reconsideration in sentence” and asked the court to consider defendant’s family as well as his “regret [in] ever getting involved with drugs.”

¶ 9 On October 11, 2016, defense counsel filed a supplemental motion to reconsider the sentence. In the motion, he argued the sentence was excessive and the trial court failed to adequately consider defendant’s history, character, and rehabilitative potential.

¶ 10 On October, 12, 2016, defense counsel filed an untimely motion to withdraw the guilty plea.

¶ 11 On November 17, 2016, defense counsel filed a “first amended supplemental motion to reconsider sentence.” He again argued the sentence was excessive.

¶ 12 On November 28, 2016, at the hearing on defendant’s motions, defense counsel stated as follows: “[Defendant] does not wish to pursue the motion to withdraw his guilty plea. I’d ask that Your Honor confirm that with [defendant] ***.” The court then reviewed the procedural history of the case and explained that, in order to appeal, defendant must have “filed and have heard a motion to withdraw [the] plea of guilty because this was a negotiated plea.” The court explained that, “if [this] Court denies [the] motion to reduce the sentence[,] *** [he]

won't be able to appeal that as of right to the appellate court because [defendant] withdrew the motion to withdraw [the] plea of guilty." Defendant responded that he understood and asked to withdraw his motion to withdraw the guilty plea. The court subsequently denied defendant's motion to reconsider his sentence.

¶ 13 This appeal followed. OSAD was appointed to represent defendant on appeal and filed a motion to withdraw, alleging there are no meritorious issues for review. OSAD has attached a memorandum of law in support of that motion. The record shows service on defendant. He has not filed a response.

¶ 14 II. ANALYSIS

¶ 15 On appeal, OSAD argues no colorable argument can be made that the trial court erred in denying his motion to reconsider his sentence as excessive. Counsel contends that, pursuant to Rule 604(d), defendant cannot challenge his sentence as excessive on appeal because he failed to first file a motion to withdraw his partially negotiated guilty plea and vacate the judgment of the court.

¶ 16 Rule 604(d) states, in pertinent part, that "[n]o appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment." Ill. S. Ct. R. 604(d) (eff. July 1, 2017). When the defendant "fails to comply with the motion requirements of Rule 604(d) *** the appellate court must dismiss the appeal ***." *People v. Linder*, 186 Ill. 2d 67, 74, 708 N.E.2d 1169, 1173 (1999). Allowing a defendant to later challenge his sentence without first moving to withdraw his negotiated guilty plea would "unfairly bind[] the State to the terms of the plea agreement while giving the defendant the

opportunity to avoid or modify those terms.” *Id.*

¶ 17 In *People v. Johnson*, 2019 IL 122956, ¶ 57, ___ N.E.3d ___, our supreme court held that “a defendant who enters into a negotiated plea agreement may not challenge his sentence on the basis that the court relied on improper statutory sentencing factors.” In that circumstance, pursuant to Rule 604(d), defendant’s recourse is to seek to withdraw the plea and return the parties to the status quo instead of “abandon[ing] any argument on appeal with respect to the withdrawal of his [or her] plea.” *Id.* ¶ 47. The defendant cannot seek to “retain the State’s [sentencing] concession while freely challenging his sentence.” *Id.* ¶ 46 (citing *People v. Diaz*, 192 Ill. 2d 211, 735 N.E.2d 605 (2000)).

¶ 18 Here, defendant entered into a partially negotiated guilty plea where the parties agreed to a specific sentencing range and the State agreed to dismiss five remaining counts against him. On July 8, 2016, defendant was sentenced within the agreed upon sentencing range. Although defendant filed a timely motion to reconsider his sentence, he failed to timely file a motion to withdraw his guilty plea within 30 days after sentencing. See *id.*; see also Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016). On October 12, 2016, defendant belatedly filed a motion to withdraw his guilty plea. Defendant later withdrew that motion. Before he did so, defendant was admonished on more than one occasion that, in order to appeal, he must first file a motion to withdraw his guilty plea.

¶ 19 We find that defendant failed to move to withdraw his guilty plea as required under Rule 604(d) and, pursuant to our supreme court’s directive in *Johnson*, we may not consider on appeal the claim that his sentence was excessive. See *Johnson*, 2019 IL 122956, ¶ 57 (finding that “a defendant who enters into a negotiated plea agreement may not challenge his

sentence on the basis that the court relied on improper statutory sentencing factors.”). Accordingly, we agree with OSAD that no colorable argument can be made that the trial court erred in denying defendant’s motion to reconsider his sentence.

¶ 20

III. CONCLUSION

¶ 21

For the reasons stated, we affirm the trial court’s judgment.

¶ 22

Affirmed.