

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) 170089-U

NO. 4-17-0089

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 4, 2019
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
TRAVIS MICHAEL WALKER,)	No. 16CM1487
Defendant-Appellant.)	
)	Honorable
)	Lee Ann S. Hill,
)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holder White and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Pursuant to *Anders v. California*, 386 U.S. 738 (1967), the appellate court granted counsel’s motion to withdraw on direct appeal because no meritorious issues could be raised.

¶ 2 In a December 2016 bench trial, the trial court found defendant, Travis Michael Walker, guilty of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)). Defendant filed a motion for judgment of acquittal, claiming the court’s verdict was against the manifest weight of the evidence. In January 2017, the court denied defendant’s motion and sentenced him to 18 months’ conditional discharge and a stayed 180 days in jail. Defendant appealed.

¶ 3 In March 2019, the Office of the State Appellate Defender (OSAD) filed a motion to withdraw. In its brief, OSAD contends that appeal of this case presents no potentially meritorious issues for review. We agree, grant OSAD’s motion to withdraw as counsel, and affirm the trial court’s judgment.

¶ 4

I. BACKGROUND

¶ 5 On August 31, 2016, the State charged defendant with one count of domestic battery, a Class A misdemeanor (720 ILCS 5/12-3.2(a)(1), (b) (West 2014)), for knowingly and without legal justification causing bodily harm to his father, George Walker. Defendant waived his right to a jury trial, and the case proceeded to a bench trial on December 20, 2016. OSAD presented a bystander's report in the absence of a verbatim transcript from the trial and sentencing.

¶ 6 According to the bystander's report, George testified at trial that defendant approached him in an angry manner as he was cooking dinner on an outdoor grill. George said he assumed this was going to be a continuation of an argument they had a few days prior. George told defendant to leave but defendant refused. Defendant raised his fist to presumably punch George when George sprayed defendant with a can of mace. Defendant became irate and repeatedly struck George in the face and upper torso. Defendant left on foot before officers responded to the scene.

¶ 7 The two police officers who responded to the scene, Ritchie Cooper and Cory Wills, testified they observed the injuries to George and found them consistent with his description of the altercation. While the officers searched for defendant for questioning, dispatch advised that defendant had called complaining he had been battered by George. While outside of defendant's apartment, according to the report, officers "observed a shade rise in [defendant]'s apartment." They entered defendant's apartment with a key (provided by the landlord) to check on defendant's well-being. Defendant was lying on the couch watching television. The officers testified they saw no apparent injuries on defendant consistent with his reported battery.

¶ 8 Defense counsel argued self-defense, as he claimed defendant had no duty to leave the public walkway where he was maced. Despite defendant’s argument, the trial court found defendant guilty of domestic battery. After denying defendant’s motion for a judgment of acquittal or, in the alternative, for a new trial, the court sentenced defendant in accordance with the State’s recommendation—to 18 months’ conditional discharge, a stayed 180 days in jail, and an order to participate in a mental-health evaluation.

¶ 9 This appeal followed. In March 2019, OSAD filed a motion to withdraw and served a copy on defendant. On its own motion, this court granted defendant until April 8, 2019, to file a response. He has not done so.

¶ 10 II. ANALYSIS

¶ 11 OSAD contends no colorable argument challenging defendant’s conviction or sentence can be presented on direct appeal. We agree.

¶ 12 First, we address the bystander’s report submitted in lieu of a transcript of defendant’s bench trial and sentencing hearing. In the memorandum of law accompanying the motion to withdraw as counsel, OSAD states: “A bystander’s report was submitted in place of a report of proceedings for the bench trial and sentencing.” It is unclear who prepared the bystander’s report and/or the source of the information included therein. We do know “all parties involved” were served with a copy, according to the certificate of service signed by Ginnie Hilt (her involvement in this case is unknown). On January 16, 2019, the State and the circuit clerk received a copy by hand-delivery, and a copy was mailed to defendant.

¶ 13 Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005) governs the required procedure for an appellant to follow if no transcript is available for the purposes of appeal. The rule provides “the appellant may prepare a proposed report of proceedings from the best

available sources, including recollection.” Once a proposed report is prepared and served on all parties, and after all parties have had the opportunity to submit proposed changes, amendments, or additions, “the appellant shall, upon notice, present the proposed report or reports and any proposed amendments to the trial court for settlement and approval. The court, holding hearings if necessary, shall promptly settle, certify, and order filed an accurate report of proceedings. Absent stipulation, only the report of proceedings so certified shall be included in the record on appeal.”

¶ 14 We note the bystander’s report included in the record before us is violative of Rule 323(c) in at least two ways. First, the report was prepared and filed two years after the notice of appeal was filed, which is in direct contradiction of the rule requiring the same be filed within 14 days after the notice of appeal was filed. Second, the report was apparently never presented to the trial court for certification. Both violations are fatal to an otherwise viable appeal. See *Belcher v. Spillman*, 28 Ill. App. 3d 973, 974-75 (1975).

¶ 15 “To permit an appellant to proceed in an appeal upon a bystander’s report based solely upon his interpretation of the evidence and memory as to what happened during the trial, without acknowledgement by the appellee, and with complete disregard of the trial judge’s duty to settle and certify the report serves to thwart the purpose and intent of Supreme Court Rule 323(c).” *City of Pekin v. Mann*, 44 Ill. App. 3d 1, 2 (1976). This is certainly true when the report is prepared two years after trial. We presume OSAD prepared the report and then arranged for its service upon the State and defendant. However, the source of the information contained in the report is unknown; that is, OSAD was most likely not present at the trial. Counsel could have contacted the trial attorneys, court personnel, or other persons present in the courtroom and used their recollections in drafting a proposed report of proceedings as contemplated under Rule

323(c). Nevertheless, neither the State nor defendant has disputed the contents of the report. Thus, we will presume the information contained therein is inclusive and accurate.

¶ 16 By filing an *Anders* motion to withdraw as counsel in this case, OSAD has represented to this court there are no issues that could reasonably be presented on direct appeal. It is OSAD's duty, as counsel for defendant, to scour the record and zealously argue in favor of any grounds counsel believes constitute error. *In re Brazelton*, 237 Ill. App. 3d 269, 271 (1992). If, after identifying any potential argument, OSAD concludes the argument cannot reasonably be supported by the facts or the law, counsel must inform defendant and this court of this assessment and provide information to support the finding of frivolity while requesting he or she be allowed to withdraw as counsel. Here, OSAD represented to this court that a review of the record revealed no meritorious issues. To the extent the bystander's report accurately and fully represents the trial court proceedings, we agree with OSAD's assessment of the frivolity of an appeal.

¶ 17 For the first potential issue, OSAD analyzes the sufficiency of the evidence presented against defendant at trial as contained in the bystander's report. Defendant was charged with one count of domestic battery. "A person commits domestic battery if he or she knowingly without legal justification by any means *** [c]auses bodily harm to any family or household member[.]" 720 ILCS 5/12-3.2(a)(1) (West 2014).

¶ 18 Defendant's father, George, testified defendant approached him as he was cooking on his outside grill. George said defendant was yelling, so George assumed defendant intended to continue an earlier argument. George repeatedly told defendant to leave, but defendant refused because, according to defendant, he was on public property (the sidewalk), not on George's property. Defendant came closer to George and raised his arm as if to punch

George. George sprayed defendant's face with mace. Defendant became irate and repeatedly struck George in the face and upper body. Defendant did not present any evidence at trial. On this evidence, it is clear defendant committed domestic battery.

¶ 19 However, defendant argued at trial that he was authorized to be on the public sidewalk. Therefore, when George sprayed him with mace, he was authorized, according to him, to defend himself by punching George.

¶ 20 Section 7-1(a) of the Criminal Code of 2012 (Code) provides in part as follows:

“A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.” 720 ILCS 5/7-1(a) (West 2014).

¶ 21 The trial evidence, as presented in the bystander's report, demonstrated that defendant was the aggressor and George's use of mace did not place defendant at the risk of imminent death or great bodily harm. This defense does not reasonably work for defendant.

¶ 22 It appears the State sufficiently proved defendant was guilty of domestic battery for striking his father. No colorable argument could be made urging otherwise.

¶ 23 For the next potential issue, OSAD looks to defendant's sentencing hearing. The trial court sentenced defendant to 18 months' conditional discharge and a stayed 180-day jail term. Setting aside for the moment the fact that defendant has most likely served his sentence in

full, we review OSAD's position of frivolity and look to the merits of the imposition of defendant's sentence.

¶ 24 It is a well-accepted principle that reviewing courts give great deference to the trial court's decision on the length of a sentence imposed. This is so because the trial court is in a better position to observe the defendant and the proceedings and has the opportunity to weigh the factors applicable to sentencing. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010).

¶ 25 Our review of the evidence as presented in the bystander's report does not indicate the presence of any sentencing error. The trial court sentenced defendant on a Class A misdemeanor to 18 months' conditional discharge. We agree with OSAD that no colorable argument could be made that such sentence constituted an abuse of discretion.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we agree with appellate counsel that no meritorious issue can be raised on appeal. We therefore grant counsel's motion to withdraw and affirm the trial court's judgment. See *Anders*, 386 U.S. at 744.

¶ 28 Affirmed.