

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).

FILED
August 22, 2019
Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 170077-U
NOS. 4-17-0077, 4-18-0252 cons.
IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	
Plaintiff-Appellee,	)	Appeal from
v. (No. 4-17-0077)	)	Circuit Court of
CASSARIOUS M. MEEKS,	)	Champaign County
	)	No. 15CF1783
)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.
-----)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v. (No. 4-18-0252)	)	Champaign County
CASSARIOUS M. MEEKS,	)	No. 16CF1434
Defendant-Appellant.)	
Defendant-Appellant.	)	Honorable
	)	Roger B. Webber,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices Knecht and Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not err in denying defendant’s motion to withdraw his guilty plea. The appellate court further remanded pursuant to Illinois Supreme Court Rule 472(e) (eff. May 17, 2019) for defendant to file a motion regarding his presentence custody credit.
- ¶ 2 On February 3, 2016, defendant, Cassarious M. Meeks, pleaded guilty to a Class 4 felony in case No. 15-CF-1783 and was sentenced to probation. The trial court subsequently revoked defendant’s probation and while admitted to bail awaiting resentencing, defendant was

charged with a Class 4 felony in case No. 16-CF-1434. On October 31, 2016, the trial court resentenced defendant to 68 months' imprisonment in case No. 15-CF-1783.

¶ 3 On July 12, 2017, the court admonished defendant that, pursuant to section 5-8-4(d)(9) of the Unified Code of Corrections (Corrections Code) (730 ILCS 5/5-8-4(d)(9) (West 2016)), any sentence imposed in case No. 16-CF-1434 would be mandatorily consecutive to his 68-month sentence in case No. 15-CF-1783. Defendant pleaded guilty and the trial court sentenced him to 42 months' imprisonment with the sentences to be served consecutively.

¶ 4 Defendant filed a motion to withdraw his guilty plea and vacate the judgment. He asserted that his decision to plead guilty was involuntary because the trial court's erroneous admonition that his sentence was mandatorily consecutive forced him to plead guilty. The trial court denied defendant's motion.

¶ 5 On appeal, defendant argues (1) the trial court erred in denying his motion to withdraw his guilty plea and (2) he is entitled to additional presentence custody credit.

¶ 6 I. BACKGROUND

¶ 7 On December 18, 2015, the State charged defendant by information with domestic battery with a prior domestic battery conviction (count I) (720 ILCS 5/12-3.2(a)(2) (West 2014)) and unlawful possession of a controlled substance (count II) (720 ILCS 570/402(c) (West 2014)), both Class 4 felonies, in case No. 15-CF-1783. On February 3, 2016, defendant pleaded guilty to count I in exchange for the State's agreement to dismiss count II, and the trial court sentenced him to 18 months' probation.

¶ 8 In July 2016, the State filed a petition to revoke defendant's probation, alleging he committed several technical violations. On August 12, 2016, the trial court conducted a hearing on the State's motion. At the hearing, defendant admitted and stipulated to the allegations in the

petition to revoke. Subsequently, the trial court revoked defendant's probation, continued the cause for sentencing, and released defendant on his own recognizance.

¶ 9 On October 20, 2016, while admitted to bail and awaiting sentencing in case No. 15-CF-1783, the State charged defendant by information with criminal trespass to residence (720 ILCS 5/19-4(a)(2) (West 2014)), a Class 4 felony, in case No. 16-CF-1434.

¶ 10 On October 31, 2016, the trial court conducted a sentencing hearing in case No. 15-CF-1783 and sentenced defendant to 68 months' imprisonment. Defendant filed a motion to reconsider sentence, which the trial court denied. On January 31, 2017, defendant filed a timely amended notice of appeal (docketed in this court as case No. 4-17-0077).

¶ 11 On February 21, 2017, the State filed notice that it intended to seek to have any sentence in case No. 2016-CF-1434 served consecutively to the 68-month sentence imposed in case No. 15-CF-1783. The State argued consecutive sentences were mandatory pursuant to section 5-8-4(d)(9) of the Corrections Code (730 ILCS 5/5-8-4(d)(9) (West 2014)) or, in the alternative, that the trial court should exercise its discretion to impose consecutive sentences pursuant to section 5-8-4(c)(1) of the Corrections Code (730 ILCS 5/5-8-4(c)(1) (West 2014)) "as necessary to protect the public from further criminal conduct by [d]efendant." The following month, the trial court heard the arguments of counsel relating to the applicability of the mandatory-consecutive-sentencing provision (730 ILCS 5/5-8-4(d)(9) (West 2014)). Without ruling on the provision's applicability, the trial court arraigned defendant on the possibility of mandatory consecutive sentencing and discretionary consecutive sentencing.

¶ 12 On July 12, 2017, the trial court again addressed the consecutive-sentence issue. The court ruled that the mandatory-consecutive-sentencing provision did apply to defendant's case. The court reasoned as follows:

“I believe under the language of the statute which indicates that if a defendant after—following conviction of a felony is admitted to bail and commits a new offense while on bail, it is mandatory consecutive. The sentence to probation and subsequent violations, whether they be technical or new offenses, does not undo the prior conviction, and I believe that after the defendant admitted the petition to revoke on August 12th, he is in the same situation as if he had been convicted at a jury trial or pled guilty for an open sentence prior to having an opportunity at probation. In short, he’s been convicted of a felony and is awaiting sentencing.

So it is my belief and the ruling would be that he would be subject to mandatory consecutive sentencing. As both attorneys have pointed out, even if the Appellate Courts were to reverse that decision and tell me that he is not subject to mandatory consecutive sentencing, he could be subjected to discretionary [consecutive] sentencing.”

¶ 13 The next day, in open court, defendant agreed to plead guilty to criminal trespass to residence (720 ILCS 5/19-4(a)(2) (West 2014)) in exchange for the State’s agreement to cap its sentencing recommendation at 48 months’ incarceration. Before accepting defendant’s plea, the trial court admonished him that any sentence it imposed would be mandatorily consecutive to his 68-month sentence in case No. 15-CF-1783.

¶ 14 On August 16, 2017, the trial court sentenced defendant to 42 months’ imprisonment, consecutive to his sentence in case No. 15-CF-1783. The court elaborated on its decision to impose consecutive sentences:

“I had previously found that because [defendant] was waiting resentencing on a felony and out on bond, that I believe any sentence in this case must be mandatorily consecutive to 15-CF-1783. However, even absent that finding, I do find that having regard to the nature and circumstances of this offense, as well as the history and character of the defendant, I am of the opinion that a consecutive sentence is necessary to protect the public ***.”

¶ 15 Defendant filed a motion to reconsider sentence, which the trial court denied, and defendant appealed. This court remanded the cause to the trial court for the filing of an Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) certificate, the opportunity to file a new post-plea motion, if necessary, a new hearing and ruling on the motion, and strict compliance with Rule 604(d).

¶ 16 On remand, defendant filed a motion to withdraw his guilty plea and vacate the judgment. Defendant asserted that his decision to plead guilty was involuntary where the trial court erroneously determined the mandatory-consecutive-sentencing provision applied, forcing him to plead guilty. The trial court denied defendant’s motion to withdraw his guilty plea. The court reasoned that its prior ruling determining the applicability of the provision was correct:

“My view of the plain meaning of that statute is that the petition to revoke probation does not change the prior case from a felony conviction to some other unknown status. Once a petition to revoke probation has been proven or admitted to by the Defendant, if he’s out on bail, he’s out on bail awaiting sentencing for the underlying felony offense.”

¶ 17 Defendant appealed (docketed in this court as case No. 4-18-0252). We allowed defendant’s motion to consolidate his appeals.

¶ 18

II. ANALYSIS

¶ 19 On appeal, defendant argues (1) the trial court erred in denying his motion to withdraw his guilty plea and (2) he is entitled to additional presentence custody credit.

¶ 20

A. Motion to Withdraw Guilty Plea

¶ 21 Defendant argues the trial court erred in denying his motion to withdraw his guilty plea. He contends that his plea was not knowing and intelligent because the trial court incorrectly admonished him that, pursuant to section 5-8-4(d)(9) of the Corrections Code (730 ILCS 5/5-8-4(d)(9) (West 2016)), his sentence would be mandatorily consecutive to the sentence imposed in case No. 15-CF-1783.

¶ 22

A defendant does not have an absolute right to withdraw a guilty plea. *People v. Hughes*, 2012 IL 112817, ¶ 32, 983 N.E.2d 439. “Generally, the decision to grant or deny a motion to withdraw a guilty plea rests in the sound discretion of the circuit court and, as such, is reviewed for abuse of discretion.” *Id.* However, when an issue involves statutory interpretation, our review is *de novo*. *People v. Glisson*, 202 Ill. 2d 499, 504, 782 N.E.2d 251, 254 (2002).

¶ 23

Section 5-8-4(d)(9) of the Corrections Code states the following: “If a person admitted to bail following conviction of a felony commits a separate felony while free on bond ***, then any sentence following conviction of the separate felony shall be consecutive to that of the original sentence for which the defendant was on bond ***.” 730 ILCS 5/5-8-4(d)(9) (West 2016). Defendant asserts this provision did not apply to his case because he “was not admitted to bail following the conviction of a felony; rather, he was admitted to bail awaiting resentencing on a probation revocation.”

¶ 24

“The primary rule of statutory construction is to give effect to legislative intent by first looking at the plain meaning of the language.” *Davis v. Toshiba Machine Co., America*, 186

Ill. 2d 181, 184, 710 N.E.2d 399, 401 (1999). “Where the language of a statute is clear and unambiguous, a court must give it effect as written, without reading into it exceptions, limitations or conditions that the legislature did not express.” (Internal quotation marks omitted.) *Garza v. Navistar International Transportation Corp.*, 172 Ill. 2d 373, 378, 666 N.E.2d 1198, 1200 (1996).

¶ 25 The language of section 5-8-4(d)(9) is clear and unambiguous. Here, the trial court properly concluded that consecutive sentencing was mandatory. Defendant, admitted to bail following conviction of a felony (domestic battery with a prior domestic battery conviction (720 ILCS 5/12-3.2(a)(2) (West 2014))) committed a separate felony (criminal trespass to residence (720 ILCS 5/19-4(a)(2) (West 2014))) while free on bond. Thus, the clear and unambiguous language of the statute applies to defendant’s sentence. Although defendant was initially sentenced to probation, when the trial court revoked his probation and admitted him to bail, he was admitted to bail awaiting resentencing following conviction of domestic battery with a prior domestic battery conviction, a Class 4 felony. As the trial court noted, “the petition to revoke probation does not change the prior case from a felony conviction to some other unknown status.” To accept defendant’s argument would be to read into the statute an exception not expressed by the legislature, namely, that if a person admitted to bail following conviction of a felony commits a separate felony while free on bond then the sentences shall be consecutive, except when there has been an unsuccessful attempt at probation following the initial felony conviction. Accordingly, because the trial court properly admonished defendant that his sentence was mandatorily consecutive, defendant’s guilty plea was knowing and intelligent and the trial court did not abuse its discretion in denying his motion to withdraw his guilty plea.

¶ 26 B. Presentence Custody Credit

¶ 27 Defendant also argues that he is entitled to additional presentence custody credit.

¶ 28 Pursuant to Illinois Supreme Court Rule 472 (eff. May 17, 2019), we decline to address defendant's argument. Rule 472 states the following:

“(a) In criminal cases, the circuit court retains jurisdiction to correct the following sentencing errors at any time following judgment and after notice to the parties, including during the pendency of an appeal, on the court's own motion, or on motion of any party:

* * *

(3) Errors in the calculation of presentence custody credit ***[.]

* * *

(c) No appeal may be taken by a party from a judgment of conviction on the ground of any sentencing error specified above unless such alleged error has first been raised in the circuit court.

* * *

(e) In all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.” Ill. S. Ct. R. 472(a)(3), (c), (e) (eff. May 17, 2019).

The record shows defendant failed to raise the alleged presentence custody credit error in the trial court. Accordingly, since defendant attempts to raise a sentencing error covered by Rule 472(a)(3) for the first time on appeal, we remand to the trial court to allow him to file a motion

pursuant to Rule 472. In doing so, we express no opinion regarding the merits of defendant's claim.

¶ 29

III. CONCLUSION

¶ 30

For the reasons stated, we affirm the trial court's judgment. However, we remand this case to the trial court where defendant may raise his contentions of error in sentencing as set forth in Supreme Court Rule 472.

¶ 31

Affirmed and remanded.