

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) 170580-U

NO. 4-17-0580

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 18, 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
CHARLES J. FOSTER,)	No. 16CF210
Defendant-Appellant.)	
)	The Honorable
)	Scott D. Drazewski,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Justices DeArmond and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted counsel’s motion to withdraw.

¶ 2 In February 2017, defendant, Charles J. Foster, pleaded guilty to unlawful use of a weapon by a felon (UUWF) and was sentenced to seven years in prison. Defendant filed a motion to vacate his guilty plea, which the trial court denied. In August 2017, defendant filed a notice of appeal. Later that month, the Office of the State Appellate Defender (OSAD) was appointed to represent defendant.

¶ 3 In April 2019, OSAD filed a motion to withdraw as counsel, arguing that no meritorious issue could be raised on appeal. OSAD served a copy upon defendant. Defendant was given an opportunity to respond but failed to do so. We agree with OSAD, grant its motion to withdraw, and affirm defendant’s sentence and conviction.

¶ 4 I. BACKGROUND

¶ 5

A. The Charges

¶ 6 In February 2016, the State charged defendant with two counts of UUWF, one count of possession of a defaced firearm, one count of aggravated assault, and one count of criminal damage to property. 720 ILCS 5/12-2(c)(1), 21-1(a)(1), 24-1.1(a), 24-5(b) (West 2016).

¶ 7

B. The Bench Trial and Plea Deal

¶ 8 In February 2017, defendant's case proceeded to a bench trial. Defendant stipulated that he had a robbery conviction from 2009. Guillermo Palafox testified that on February 24, 2016, defendant arrived at his residence armed with a gun that resembled an AK-47. Defendant broke a window in the front of Palafox's house. Palafox noted that he had had a physical confrontation with defendant earlier that day.

¶ 9

Maurice Cutmoe, who lived on the same street as Palafox, testified that on February 24, 2016, he saw a man carrying what looked like an automatic weapon. A police officer testified that (1) the police executed a search warrant at defendant's residence and found a semiautomatic .22-caliber rifle and (2) the serial number on the side of the gun was defaced. The trial court then continued the bench trial for scheduling reasons.

¶ 10

Two days later, the parties presented the trial court with a partially negotiated plea agreement in which defendant agreed to plead guilty to one count of UUWF in exchange for the State's dismissal of the remaining counts. The court explained to defendant that UUWF was a Class 2 felony with a specific penalty "over and above the ordinary penalty" associated with a Class 2 felony. The court further explained that (1) defendant would be subject to a term of imprisonment of 3 to 14 years, (2) he would be subject to a two-year period of mandatory supervised release (MSR), (3) he would not be eligible for probation or conditional discharge, and (4) he could be fined up to \$25,000. The court also advised defendant of his right to plead not

guilty and instead require the State to prove him guilty beyond a reasonable doubt. Defendant stated that he understood his right to a trial. The court also advised defendant of the collateral consequences of pleading guilty. Defendant told the court that no one forced, threatened, or made any promises to him to sign the plea agreement. Defendant acknowledged that his signature appeared on a form indicating he wanted to plead guilty to UUWF.

¶ 11 In support of the plea agreement, in addition to the testimony at the bench trial, the State offered a factual basis that (1) Darius Matthews would testify that defendant asked him to hide a gun on February 24, 2016, and (2) Detective Steven Moreland would corroborate that testimony.

¶ 12 The trial court found that defendant understood the nature of the charge against him, the possible penalties, and his legal rights. The court found that defendant's plea was knowing and voluntary. The court found defendant guilty of UUWF.

¶ 13 C. The Sentencing Hearing

¶ 14 In May 2017, the trial court conducted a sentencing hearing. June Weaver, defendant's mother, testified that defendant was raised by his step-grandfather, Charles Weaver, after her parental rights were terminated. She testified as to defendant's rough upbringing. She also stated that defendant was very close to Charles Weaver and that defendant helped take care of him as his health deteriorated. In aggravation, the State highlighted defendant's (1) criminal history, (2) probation violations, and (3) rule violations while incarcerated for this offense. In his statement of allocution, defendant took responsibility for his actions.

¶ 15 Defendant's permissible sentence ranged from a 3-year minimum to a 14-year maximum. See 720 ILCS 5/24-1.1(e) (West 2016). The trial court found that several aggravating factors were present such as (1) defendant's conduct threatened serious harm, (2) defendant had

a history of prior delinquency and criminal history, and (3) a tougher sentence was necessary to deter others. See 730 ILCS 5/5-5-3.2(a)(1), (3), (7) (West 2016). The court also noted defendant's difficulty complying with the rules and conditions of his probation and the McLean County jail. Based upon this, the court sentenced defendant to seven years in prison followed by two years of mandatory supervised release.

¶ 16 The trial court admonished defendant of his right to appeal. Specifically, the court told defendant that within 30 days he must file either a written motion to reconsider his sentence or a written motion to withdraw his guilty plea. The court instructed defendant to include all issues or claims of error in each motion to avoid waiver. The court advised defendant that he would have the right to appointed counsel for these motions. Defendant indicated that he understood the court's admonishments.

¶ 17 D. The Motion To Vacate and Motion To Reconsider

¶ 18 On May 17, 2017, defense counsel filed a motion to vacate in which he argued that defendant "entered into the plea of guilty without knowing and understanding the consequences of the plea." Counsel also filed a motion to reconsider sentence in which he argued that defendant's sentence was excessive. Counsel also filed a Rule 604(d) certificate.

¶ 19 In August 2017, the trial court conducted a hearing on defendant's motions. Counsel informed the court that defendant only wished to proceed on the motion to reconsider sentence. Counsel argued that defendant's sentence was excessive in light of the mitigating evidence. The State argued that the sentence was proper.

¶ 20 The trial court denied both motions. Regarding the motion to vacate, the court found that defendant was properly admonished pursuant to Rule 402 and that no manifest injustice occurred. Regarding the motion to reconsider sentence, the court reasoned that seven years

in prison was an appropriate sentence.

¶ 21 E. The Notice of Appeal

¶ 22 Later that month, defendant filed a notice of appeal, and OSAD was appointed to represent him. In April 2019, OSAD filed a motion to withdraw and served a copy upon defendant. Defendant did not file a response to OSAD's motion.

¶ 23 II. ANALYSIS

¶ 24 OSAD argues there are no meritorious issues to appeal because (1) the trial court properly admonished defendant, (2) post-plea counsel strictly complied with Rule 604(d), and (3) the trial court's sentence was not an abuse of discretion. We agree with OSAD, grant its motion to withdraw, and affirm defendant's sentence and conviction.

¶ 25 A. The *Anders*' Framework

¶ 26 The Supreme Court of the United States has set forth the procedures to be followed for an appellate attorney to withdraw as counsel. See *Anders v. California*, 386 U.S. 738, 744 (1967); see also Jack M. Bains, Termination of the Attorney-Client Relationship: How Far Must *Anders* Compliance Go?: A Survey of Decisions, 16 J. Legal Prof. 229, 239 (1991). Counsel's request to withdraw must be accompanied by a brief referring to anything in the record that could support an appeal. *In re Brazelton*, 237 Ill. App. 3d 269, 270, 604 N.E.2d 376, 377 (1992). After identifying issues that counsel could conceivably raise, counsel must then explain why these potential arguments are without merit. *Id.* at 271. A copy of this motion must be given to the defendant, who will then be given an opportunity to respond to the motion to withdraw. *Id.* at 270-71. The appellate court will then review the record to determine whether the available arguments are wholly without merit. *Id.* at 271. We hold the ultimate responsibility to determine whether an argument is without merit. *People v. Teran*, 376 Ill. App. 3d 1, 5, 876 N.E.2d 734,

738 (2007).

¶ 27 B. The Trial Court's Admonishments

¶ 28 OSAD first argues that no meritorious issue can be raised regarding the trial court's admonishment of defendant's rights. We agree.

¶ 29 In pertinent part, Illinois Supreme Court Rule 402(a) (eff. July 1, 2012) requires the trial court to admonish a defendant in open court prior to accepting a plea of guilty. The court must inform a defendant (1) of the nature of the charge, (2) of the minimum and maximum sentence, (3) that the defendant has the right to plead not guilty, and (4) that no trial of any kind will occur if defendant pleads guilty. Ill. S. Ct. R. 402(a)(1) to (4) (eff. July 1, 2012). The court must make a determination that the defendant understands these rights. Ill. S. Ct. R. 402(a) (eff. July 1, 2012). Before accepting a guilty plea, the court must ensure that the plea is voluntary by questioning the defendant personally in open court. Ill. S. Ct. R. 402(b) (eff. July 1, 2012). The court must confirm the terms of the plea agreement and determine whether any force or threats or any promises, apart from a plea agreement, were used to obtain the plea. *Id.* Finally, the court must determine whether a factual basis supports the plea agreement. Ill. S. Ct. R. 402(c) (eff. July 1, 2012). Before accepting a guilty plea, the trial court must substantially comply with Rule 402. *People v. Boykins*, 2017 IL 121365, ¶ 12, 93 N.E.3d 504. An imperfect admonishment is not reversible error unless real justice has been denied or the defendant has been prejudiced by the inadequate admonishment. *People v. Whitfield*, 217 Ill. 2d 177, 195, 840 N.E.2d 658, 669 (2005).

¶ 30 After a defendant pleads guilty, the trial court must inform a defendant that (1) he has the right to appeal, (2) prior to taking an appeal, the defendant must file a motion to reconsider his sentence or a motion to withdraw his plea of guilty within 30 days of the trial court's sentence, (3) if a defendant is indigent, a copy of the transcripts will be provided for defendant

and counsel will be appointed to assist defendant with the motions, and (4) any issues not raised in the motion shall be deemed waived. Ill. S. Ct. R. 605(b)(1) to (6) (eff. Oct. 1, 2001). The trial court need only substantially comply with the requirements of Rule 605. *People v. Dominguez*, 2012 IL 111336, ¶ 22, 976 N.E.2d 983. “So long as the court’s admonitions were sufficient to impart to a defendant the essence or substance of the rule, the court has substantially complied with the rule. The question that remains before this court, then, is whether, in this instance, the [trial] court’s admonitions imparted such notice to defendant.” *Id.*

¶ 31 In this case, regarding the Rule 402 admonitions, the trial court informed defendant about the nature of the charges, his sentencing range, and his right to plead not guilty and proceed to trial. The court also inquired to ensure that defendant’s plea was knowing and voluntary. Defendant stated that he understood his rights and that he voluntarily was pleading guilty. The court determined that defendant knowingly and voluntarily waived his right to a trial. The court, in addition to the testimony introduced at defendant’s bench trial, also heard the State’s factual basis for defendant’s guilty plea. Accordingly, the trial court substantially complied with Rule 402, and we agree with OSAD that no meritorious issue could be raised regarding this issue.

¶ 32 We likewise agree that no meritorious issue could be raised regarding the trial court’s admonishments pursuant to Rule 605 because the trial court (1) informed defendant of his right to appeal, (2) informed defendant that he would need to file a motion to reconsider sentence or a motion to withdraw his guilty plea, (3) informed defendant that counsel would be appointed to represent defendant and that transcripts would be provided at no cost, and (4) that any issues not raised in these motions would be deemed waived.

¶ 33 C. The Motion To Vacate

¶ 34 By implication, OSAD argues that no meritorious issue could be raised regarding the trial court's denial of defendant's motion to vacate his guilty plea. We agree.

¶ 35 "A defendant does not have an automatic right to withdraw a plea of guilty." *People v. Delvillar*, 235 Ill. 2d 507, 520, 922 N.E.2d 330, 338 (2009). "Rather, defendant must show a manifest injustice under the facts involved." *Id.* "The decision of the trial court will not be disturbed unless the plea was entered through a misapprehension of the facts or of the law, or if there is doubt as to the guilt of the accused and justice would be better served by conducting a trial." *Id.* "Where the defendant has claimed a misapprehension of the facts or of the law, the misapprehension must be shown by the defendant." *Id.* "The decision to grant or deny a motion to withdraw a guilty plea rests in the sound discretion of the [trial] court and, as such, is reviewed for abuse of discretion." *Id.* at 519. The trial court abuses its discretion "only where the court's ruling is arbitrary, fanciful, unreasonable, or no reasonable person would take the view adopted by the trial court." *Id.*

¶ 36 In this case, defense counsel filed a motion to vacate in which he argued that defendant "entered into the plea of guilty without knowing and understanding the consequences of the plea." Counsel later informed the trial court that defendant only wished to proceed on the motion to reconsider sentence. The trial court denied the motion to vacate after finding that defendant was properly admonished pursuant to Rule 402 and that no manifest injustice occurred. We have already concluded that defendant was properly admonished, and we likewise conclude that the trial court did not abuse its discretion by denying the motion to vacate.

¶ 37 D. Post-Plea Counsel

¶ 38 OSAD also asserts that no meritorious issue could be raised regarding whether post-plea counsel strictly complied with Rule 604(d). We agree.

¶ 39 Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016) sets forth the requirements for post-plea counsel as follows:

“The defendant’s attorney shall 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.”

¶ 40 “Counsel must strictly comply with Rule 604(d).” *People v. Richard*, 2012 IL App (5th) 100302, ¶ 10, 970 N.E.2d 35. “Compliance with supreme court rules is reviewed *de novo*.” *People v. Dismuke*, 355 Ill. App. 3d 606, 608, 823 N.E.2d 1131, 1133 (2005).

¶ 41 Here, counsel filed a motion to vacate and a motion to reconsider. Counsel also filed a Rule 604(d) certificate in which counsel certified that he consulted with defendant to ascertain his contentions of error, examined the record, and amended the motion as was necessary. Accordingly, counsel complied with Rule 604, and we agree that no meritorious issue could be raised on this issue.

¶ 42 E. The Trial Court’s Sentence

¶ 43 Finally, OSAD contends that no meritorious issue could be raised regarding the propriety of the trial court’s sentence. We agree.

¶ 44 “All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, § 11. “Criminal punishment serves four key purposes: (1) retribution, (2) deterrence,

(3) incapacitation, and (4) rehabilitation.” *People v. Wheeler*, 2019 IL App (4th) 160937, ¶ 37. “Which of these purposes predominates in a given case is a matter left to the sound discretion of the trial court.” *Id.*

¶ 45 The Unified Code of Corrections (Unified Code) (730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2016)) sets forth mitigating and aggravating factors that the trial court must consider when determining an appropriate sentence. *People v. Brunner*, 2012 IL App (4th) 100708, ¶¶ 43-45, 976 N.E.2d 27. As relevant to this case, aggravating factors include (1) the defendant’s conduct threatened serious harm, (2) the defendant’s prior criminal history, and (3) the need for deterrence. 730 ILCS 5/5-5-3.2(a)(1), (3), (7) (West 2016). A reviewing court presumes that the trial court considered all relevant aggravating and mitigating factors and will not substitute its judgment for that of the trial court merely because it could have weighed these factors differently. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11, 65 N.E.3d 419.

¶ 46 “The sentence imposed by the trial court is entitled to great deference and will not be reversed on appeal absent an abuse of discretion.” *People v. McGuire*, 2017 IL App (4th) 150695, ¶ 38, 92 N.E.3d 494. “The trial court’s imposition of a sentence is given great deference because the trial court is in the best position to consider the defendant’s credibility, demeanor, general moral character, mentality, social environment, habits, and age.” *People v. Etherton*, 2017 IL App (5th) 140427, ¶ 15, 82 N.E.3d 693. We also presume that a sentence within the statutory framework provided by the legislature is proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46, 19 N.E.3d 1070. “The trial court abuses its discretion at sentencing only when the sentence varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense.” *Wheeler*, 2019 IL App (4th) 160937, ¶ 39.

¶ 47 In this case, defendant was convicted of UUWF. Due to his prior criminal history,

his permissible sentence ranged from a 3-year minimum to a 14-year maximum. See 720 ILCS 5/24-1.1(e) (West 2016). The trial court found the following aggravating factors were present: (1) defendant's conduct threatened serious harm, (2) defendant had a history of prior delinquency and criminal history, and (3) a tougher sentence was necessary to deter others. See 730 ILCS 5/5-5-3.2(a)(1), (3), (7) (West 2016). Ultimately, the court sentenced defendant to seven years in prison followed by two years of MSR. We agree that the trial court's sentence was not an abuse of its discretion.

¶ 48

III. CONCLUSION

¶ 49 For the reasons stated, we agree with OSAD that no meritorious issue could be raised on appeal. We therefore grant OSAD's motion to withdraw as appellate counsel and affirm the defendant's conviction and sentence. *Anders*, 386 U.S. at 744.

¶ 50 Affirmed.