2024 IL App (4th) 231447-U

NO. 4-23-1447

FILED
December 31, 2024
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
CHERYL L. BURKERT,	)	No. 20CF216
Defendant-Appellant.	)	
	)	Honorable
	)	William A. Yoder,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Harris and Vancil concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the sentence imposed by the trial court after revoking defendant's probation for unlawful possession of methamphetamine with intent to deliver, finding the court's sentence was properly imposed for the original offense and not as punishment for conduct while on probation.

¶ 2 In September 2020, defendant, Cheryl L. Burkert, pleaded guilty to unlawful possession of methamphetamine with intent to deliver. 720 ILCS 646/55(a)(1) (West 2020). Under the terms of the plea, she was sentenced to 30 months' probation. Thereafter, two petitions seeking to revoke defendant's probation were filed, one in February 2022, and the other in March 2023. In June 2023, defendant admitted the allegations in the second petition, with no agreement as to sentence. The trial court subsequently sentenced defendant to four years' imprisonment. Defendant filed a motion reconsider sentence, which the court denied.

¶ 3 Defendant appeals, arguing the trial court abused its discretion in resentencing her

to four years in prison because the sentence improperly punishes defendant for her conduct while on probation. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2020, the State charged defendant by indictment with unlawful possession of methamphetamine with intent to deliver (720 ILCS 646/55(a)(1) (West 2020)) and unlawful possession of methamphetamine (720 ILCS 646/60(a) (West 2020)). In September 2020, defendant pleaded guilty to unlawful possession of methamphetamine with intent to deliver and was sentenced to 30 months' probation.

¶ 6 The State filed its first petition to revoke defendant's probation on February 24, 2022. The State alleged defendant failed to (1) pay fines and costs in full by September 2021, (2) report to her probation officer from October 2020 to December 2020, February 2021 to July 2021, and September 2021 to January 2022, and (3) complete substance abuse treatment as directed. Defendant admitted she failed to complete substance abuse treatment as directed and was resentenced to probation under the original conditions.

¶ 7 The State filed a second petition to revoke defendant's probation in March 2023. In the second petition, the State alleged defendant failed to report to her probation officer from July 2022 to February 2023, and defendant failed to obtain a substance abuse evaluation "and provide proof of successful treatment if treatment as [*sic*] recommended." Defendant admitted to the allegations contained in the second petition, and the trial court set the matter for resentencing.

¶ 8 The trial court held a resentencing hearing on August 23, 2023. The State presented the testimony of probation officer Jill Baugh. Baugh testified she supervised defendant's drug screen on June 28, 2023. Defendant was instructed to report for her drug screen at 8:30 a.m. However, she did not arrive until 10:45 a.m. During the drug screen, Baugh

observed a cream-colored object in defendant's vaginal cavity. Baugh then told defendant the drug screen results would not be valid and she would have to provide a second drug screen. Defendant was given a two-hour time limit to provide the second drug screen, and further, she was instructed not to "leave the building." According to Baugh, defendant did not report for a second drug test.

¶ 9 The State provided a factual basis for the charges. It alleged that "[a]fter a controlled buy transaction with another individual, *** Normal Police had initiated a traffic stop on a vehicle" in which defendant was a passenger. Defendant indicated to police she was staying at the Quality Inn & Suites in Bloomington, Illinois. She consented to a search of her hotel room. After a search of the room, police found "13 grams of a substance that field tested positive for the presence of methamphetamine. *** In addition to that[,] police located digital scales, two digital scales ***, and packaging materials inside the room."

¶ 10 Defendant testified she was a "private care" provider. Defendant recalled the drug drop on June 28, 2023, and claimed she was wearing a "panty liner" that was mistaken for a device used to defraud a drug screen. Defendant indicated she did not return for a second drug screen because Baugh subjected her to a cavity search and defendant was "very agitated." Defendant acknowledged she failed to report to probation, but she asserted she refused to report because she "felt like *** the State breached their end of the plea agreement."

¶ 11 In sentencing defendant, the trial court stated it had considered the presentence investigation report (PSI), defendant's testimony, the recommendations of counsel, and defendant's statement in allocution.

¶ 12 The trial court began by noting the PSI was "pretty bare bones." The court reasoned, "Part of that is because the defendant, after she was sentenced *** back in 2020 to

probation for this Class I felony offense, decided that she wasn't going to show up for probation. The report itself says that the defendant reported three times in her 30-month probationary term." The court continued:

> "This Court, when [it] accepted the admission on this pre-sentence investigation, ordered [defendant] to go immediately upstairs and submit to a drug screen; she didn't. She went up about an hour later. It's only *** two floors up, so that's curious as to why somebody wouldn't go upstairs immediately if they just admitted an admission on a petition to revoke and were ordered by the Court to go upstairs and submit to a drug screen. It's interesting why somebody would take an hour to go up there. When she did go up there she didn't leave a sufficient sample to be tested and was ordered to come back the next morning. When she didn't show up the next morning at the directed time, she showed up a couple of hours late, and the result of that, regardless of why, ends up in no drug screen being tendered. And then because of the fact that Court Services suspected that this was not a legitimate sample and directed defendant to dump it out, they then told her not to leave the building and come back in two hours, within the next two hours to leave a legitimate sample and she refused. [The court] believe[s] the testimony was that she hasn't been seen since until today."

The court then noted defendant was ordered to complete a drug evaluation and treatment; however, defendant "refused to do that, and hasn't even begun three years after the fact." The court concluded:

> "It's obvious to the Court that [defendant] has no intention of complying with any term of probation unless it's convenient for her. It's apparent to the

> Court that an additional period of probation, even though it's the preferred sentence, would deprecate the seriousness of this offense and be inconsistent with the ends of justice. It's apparent to the court that the defendant's imprisonment is necessary for the protection of the public."

The court then sentenced defendant to four years' imprisonment, followed by one year of mandatory supervised release.

¶ 13 On September 14, 2023, defendant filed a motion to reconsider her sentence, arguing simply that her sentence was excessive.

¶ 14 On December 1, 2023, the trial court denied defendant's motion to reconsider, concluding it had considered all the factors in mitigation and aggravation, the PSI, defendant's "conduct while on probation and evading the Court's orders following the admission and avoiding drug screens and, in essence, doing nothing to comply with the period of probation. The Court evaluated all that evidence, determined that an additional period of probation would not be appropriate."

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues the trial court abused its discretion in resentencing her because it placed excessive weight on the conduct which led to the revocation of her probation rather than the underlying offense of unlawful possession of methamphetamine with intent to deliver (720 ILCS 646/55(a)(1) (West 2020)). Defendant acknowledges she did not properly raise this issue before the trial court, and therefore the issue is forfeited. Nonetheless, defendant asks us to review her claim under the plain error doctrine.

¶ 18 Plain error is a well-established exception to forfeiture. *People v. Sebby*, 2017 IL 119445, ¶ 48, 89 N.E.3d 675. The forfeiture rule encourages defendants "to raise issues before the trial court, allowing the court to correct its own errors." (Internal quotation marks omitted.) *People v. Johnson*, 2024 IL 130191, ¶ 40. Plain error is a narrow exception to forfeiture principles. *People v. Jackson*, 2022 IL 127256, ¶ 18, 211 N.E.3d 414. It is not "a general saving clause preserving for review all errors affecting substantial rights whether or not they have been brought to the attention of the trial court." *People v. Precup*, 73 Ill. 2d 7, 16, 382 N.E.2d 227, 231 (1978). The reviewing courts find plain error (1) when "a clear or obvious error occurred and the evidence is 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) when "a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." (Internal quotation marks omitted.) *Sebby*, 2017 IL 119445, ¶ 48. The issue defendant raises here was not in her motion to reconsider, and she does not claim ineffective assistance of counsel for failing to include it, so we can only surmise this claimed "error" is of recent genesis. Each time we, as a court of review, point out the narrow scope of plain error, the obvious forfeiture, and then proceed to engage in a plain error analysis, we encourage a continuation of this practice. Be that as it may, we do so once again, if for no other reason than to show the fallacy of defendant's claim.

¶ 19 "The initial analytical step under either prong of the plain error doctrine is determining whether there was a clear or obvious error at trial." *Sebby*, 2017 IL 119445, ¶ 49.

¶ 20 "Upon revocation of a defendant's probation, the trial court resentences the defendant to a disposition that would have been appropriate for the original offense." (Internal

quotation marks omitted.) *People v. Pina*, 2019 IL App (4th) 170614, ¶ 30, 143 N.E.3d 794. The trial court is not required to recite a detailed analysis of every mitigating factor it considered when rendering its sentencing decision. *People v. Quintana*, 332 Ill. App. 3d 96, 109, 772 N.E.2d 833, 845 (2002).

¶ 21 Defendant contends that the trial court improperly sentenced her because it erroneously relied upon her conduct while on probation. Specifically, defendant alleges the court "failed to discuss the offense for which [defendant] was being sentenced," and further, the court "did not mention any other relevant sentencing factors." She acknowledges, however, a trial court may consider a "defendant's conduct during the probationary period as evidence of the defendant's rehabilitative potential."

¶ 22 At the outset, a review of the record indicates the trial court noted it "considered all the relevant factors that a court should consider when considering what an appropriate sentence would be *in a very serious felony offense*." (Emphasis added). Further, the court went on to twice note the case for which defendant was being sentenced was a Class I felony. Thus, defendant's claim the court "failed to discuss the offense for which [defendant] was being sentenced" is belied by the record.

¶ 23 Here, the trial court expressly stated for the record its consideration of all the statutory factors in aggravation and mitigation and referenced the seriousness of the offense. "There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and the court is presumed to have considered any evidence in mitigation which is before it." *People v. Donath*, 357 Ill. App. 3d 57, 72, 827 N.E.2d 1001, 1014 (2005). The court began by noting the PSI was "pretty bare bones," due in part to the fact defendant "decided that she wasn't going to show up for probation. The report itself says that defendant reported three

times in her 30-month probationary term." Indeed, the PSI reflects defendant did not participate in the preparation of the report in any capacity. Rather, the report stated defendant "did not participate in the PSI interview," and instead, the PSI "was prepared using Probation Records, LEADS, and EJS."

¶ 24 The trial court went on to highlight defendant's failure to comply with the PSI and drug evaluation and treatment. These are valid considerations for the trial court. See *People v. Rathbone*, 345 Ill. App. 3d 305, 312, 802 N.E.2d 333, 339 (2003) ("[W]hen resentencing after a revocation of probation, trial courts are entitled to consider the defendant's conduct on probation."). "[A] trial court is not required to expressly outline its reasoning for sentencing." *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55, 8 N.E.3d 470. Thus, defendant's complaint that the court did not mention any "relevant sentencing factors" does not support a finding of error by the court.

¶ 25 Because we find no clear and obvious error by the trial court, there can be no plain error. *People v. Galarza*, 2023 IL 127678, ¶ 52, 216 N.E.3d 834. Accordingly, the issues raised on appeal have been forfeited.

¶ 26 III. CONCLUSION

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

¶ 28 Affirmed.