

STATE OF ILLINOIS

3-16-0232

People v. Jose Cobian



APPELLATE COURT

THIRD DISTRICT

OTTAWA

At a term of the Appellate Court, begun and held at Ottawa, on the
1st Day of January in the year of our Lord Two thousand eighteen, within and
for the Third District of Illinois:

Present -

HONORABLE ROBERT L. CARTER, Presiding Justice X

HONORABLE DANIEL L. SCHMIDT, Justice X

HONORABLE VICKI R. WRIGHT, Justice

HONORABLE TOM M. LYTTON, Justice

HONORABLE MARY W. McDADE, Justice

HONORABLE MARY K. O'BRIEN, Justice X

HONORABLE WILLIAM E. HOLDRIDGE, Justice

BARBARA TRUMBO, Clerk

BE IT REMEMBERED, that afterwards on

April 20, 2018 the order of the Court was filed in the Clerk's
Office of said Court, in the words and figures following viz:

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).

No. 3-16-0232

Order filed April 20, 2018.

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF) Appeal from the Circuit Court
ILLINOIS,) of the 12th Judicial Circuit,
Plaintiff-Appellee,) Will County, Illinois,
v.)) No. 13-CF-2151
JOSE COBIAN,)) Honorable
Defendant-Appellant.) Sarah F. Jones,
) Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

Held: The potential issues did not warrant continuation of the appeal. Counsel is allowed to withdraw, and the judgment is affirmed.

Defendant, Jose Cobian, pled guilty to unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(1)(D) (West 2012)) and unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(g) (West 2012)). Pursuant to the plea, defendant received consecutive sentences of 15 years' and 6 years' imprisonment. At the hearing on the plea, defense counsel waived a hearing to determine the street value fine amount. Defendant was then

assessed a street value fine in the amount of \$482,430. Defendant did not file a motion to withdraw his guilty plea, a motion to reconsider sentence, or an appeal.

Subsequently, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)). On the State's motion, the circuit court dismissed defendant's petition. Defendant appeals.

The State Appellate Defender's Office was appointed to represent defendant in this appeal. The appointed counsel has now filed a motion indicating that the instant appeal presents no issues of merit upon which defendant could expect to obtain any relief. This motion, filed in accordance with *Pennsylvania v. Finley*, 481 U.S. 551 (1987), requests that appointed counsel be permitted to withdraw. Counsel informed defendant of his intention to withdraw. Counsel has also sent defendant a copy of his brief. Defendant has made a response, which we have considered in our disposition.

Upon review of the record, we conclude that the section 2-1401 petition was properly dismissed and that there are no arguable errors to be considered on appeal. We further find that to continue with this appeal would be wholly frivolous.

In his petition, defendant contended that the street value fine assessed against him was void. Specifically, defendant argued that the court's assessment of the fine was unconstitutional and the statute that mandated the assessment of a street value fine was void *ab initio*. According to defendant, the assessment violated the rule established in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because the statute mandating the fine allowed the court to increase defendant's sentence without a jury determining the necessary facts to calculate the fine.

First, defendant waived his *Apprendi* argument when he waived his right to a jury trial and pled guilty. See *People v. Jackson*, 199 Ill. 2d 286, 295 (2002). Our supreme court has held

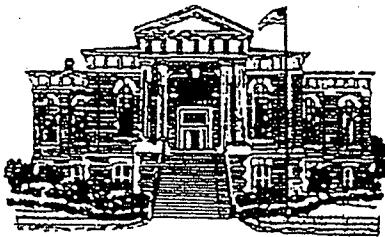
that when a defendant pleads guilty, he or she waives the right to a jury trial, and therefore, an *Apprendi*-based sentencing objection cannot be heard on appeal from a guilty plea. *Id.* at 296.

Second, the statute is not facially unconstitutional. A statute is facially unconstitutional if no set of circumstances exists under which the act would be valid. *In re C.E.*, 161 Ill. 2d 200, 210-11 (1994). The statute mandating the street value fine provides that the street value “shall be determined by the court.” 730 ILCS 5/5-9-1.1(a) (West 2016). If a defendant waived his right to a jury trial and proceeded to a bench trial, the court would be required to determine whether the State had proved all the elements of the offenses charged beyond a reasonable doubt, including the street value amount of the drugs possessed. *Id.* Consequently, a set of circumstances exists under which the street value assessment would be valid.

Accordingly, we affirm the judgment entered in the circuit court of Will County and allow the State Appellate Defender to withdraw as counsel for defendant. See *People v. Lee*, 251 Ill. App. 3d 63 (1993).

Judgment affirmed and withdrawal motion allowed.

STATE OF ILLINOIS
THIRD DISTRICT APPELLATE COURT



BARBARA TRUMBO
Clerk of the Court
815-434-5050

1004 Columbus Street
Ottawa, Illinois 61350
TDD 815-434-5068

May 24, 2018

Jose Cobian
Reg. No. M50512
Dixon Correctional Center
2600 N. Brinton Avenue
Dixon, IL 61021

RE: People v. Cobian, Jose
General No.: 3-16-0232
County: Will County
Trial Court No: 13CF2151

The court has this day, May 24, 2018, entered the following order in the above entitled case:

Appellant's Petition for Rehearing is DENIED.

Barbara A. Trumbo

Barbara Trumbo
Clerk of the Appellate Court

c: David Joseph Robinson
James William Glasgow



SUPREME COURT OF ILLINOIS

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September 26, 2018

In re: People State of Illinois, respondent, v. Jose Cobian, petitioner.
Leave to appeal, Appellate Court, Third District.
123719

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 10/31/2018.

Very truly yours,

Carolyn Taft Gosboll

Clerk of the Supreme Court

**Additional material
from this filing is
available in the
Clerk's Office.**