Missouri Court of Appeals
Southern District

In Division

CITY OF BRANSON WEST, Plaintiff-Respondent, v. NATASHA RICHARDSON, Defendant-Appellant.	No. SD39051 Filed: March 25, 2026

APPEAL FROM THE CIRCUIT COURT OF STONE COUNTY

Honorable Eric O. Chavez, Associate Circuit Judge

VACATED AND REMANDED WITH INSTRUCTIONS

Following a bench trial, Natasha Richardson (Defendant) was convicted of shoplifting, in violation of a city ordinance, and sentenced, *inter alia*, to 10 days in jail and two years' probation. On appeal, Defendant presents seven points, the first of which is dispositive. Point 1 contends the trial court erred by failing to appoint counsel for her as "an indigent defendant facing a sentence of incarceration." We agree. Therefore, we vacate Defendant's conviction and remand with instructions.

Factual and Procedural Background

In February 2024, Defendant was charged with one count of shoplifting, in violation of Ordinance § 210.400, of the Municipal Code of Branson West, Missouri (City).[1] The charge arose from an incident at a Dollar General store in the City.

The charged ordinance violation carries a punishment of: (1) a fine of up to $500; (2) "imprisonment in the City or County Jail not exceeding ninety (90) days"; or (3) both a fine and imprisonment. *See* City Ordinance § 100.160.A.

At a pre-trial conference in early December 2024, the trial court determined Defendant was indigent and waived her court costs. There is no discussion in the record concerning an appointment of counsel.

In May 2025, a bench trial was held. Again, there was no discussion about appointment of counsel, and Defendant represented herself. At the conclusion of the evidence, the trial court kept the record open for five days for the City to submit a certified copy of Ordinance § 210.400, which was later submitted and made part of the record.

In early June 2025, the trial court entered its judgment finding Defendant guilty as charged. The court imposed the following sentence: (1) 10 days in the county jail, which the court suspended; (2) two years of unsupervised probation; and (3) a $200 fine and

[1] All references to the City's ordinances are to versions current as of May 2025. All references to rules are to Missouri Court Rules (2025). All references to statutes are to RSMo Cum. Supp. (2019).

restitution. Defendant did not file a post-trial motion. Throughout these proceedings, the issue of appointment of counsel was not mentioned at all. This appeal followed.

Standard of Review

Because Defendant did not bring the issue of failure to appoint counsel to the trial court's attention, that allegation of trial court error is not properly preserved for our review. ***State v. Sullivan***, 640 S.W.3d 149, 158 (Mo. App. 2022). "When a defendant has not preserved a claim of error, we may exercise our discretion to review the claim for plain error [pursuant to] Rule 30.20." ***State v. Cox***, 659 S.W.3d 651, 653 (Mo. App. 2023). We will not review a claim for plain error "unless the claimed error facially establishes substantial grounds for believing that manifest injustice or miscarriage of justice has resulted." ***State v. Brandolese***, 601 S.W.3d 519, 526 (Mo. banc 2020) (internal quotation marks and citation omitted); *see* ***State v. Yount***, 642 S.W.3d 298, 300 (Mo. banc 2022). "A demonstrated violation of a defendant's right to counsel satisfies the defendant's burden to prove the manifest injustice or miscarriage of justice required by plain-error review." ***Cox***, 659 S.W.3d at 653-54; *see* ***State v. Masters***, 651 S.W.3d 863, 868 (Mo. App. 2022); ***Sullivan***, 640 S.W.3d at 159.

Discussion and Decision

Defendant's first point contends the trial court erred "by failing to appoint counsel for an indigent defendant facing a sentence of incarceration." For the following reasons, we agree.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee the right to assistance of counsel before any sentence of imprisonment can be imposed.

Argersinger v. Hamlin, 407 U.S. 25 (1972). In ***Argersinger***, the United States Supreme Court held "that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." ***Id***. at 37. "[E]very judge will know when the trial of a misdemeanor starts that no imprisonment may be imposed, even though local law permits it, unless the accused is represented by counsel." ***Id***. at 40. This right, however, does not attach when prison is an "authorized" penalty, "but not actually imposed." ***Scott v. Illinois***, 440 U.S. 367, 369 (1979). The right to counsel is only required if the defendant is *actually* sentenced to a term of imprisonment. ***Id***. at 373-74.[2]

"Missouri courts have likewise recognized that the constitutional right to counsel does not attach to a misdemeanor prosecution, even if imprisonment is a *statutorily authorized punishment* for the misdemeanor, unless a term of imprisonment is *actually imposed* on the defendant." ***State v. Reeter***, 582 S.W.3d 913, 918-19 (Mo. App. 2019) (emphasis in original); *see* ***Trimble v. State***, 593 S.W.2d 542, 545 (Mo. banc 1980) (because defendant was only "assessed a fine" and received no prison sentence, the conviction was "valid under *Argersinger* and *Scott*"); *see also* ***State v. Keeth***, 203 S.W.3d

[2] Similarly, a "suspended sentence that may end up in actual deprivation of a person's liberty may not be imposed unless the defendant was accorded the guiding hand of counsel in the prosecution for the crime charged." ***Alabama v. Shelton***, 535 U.S. 654, 658 (2002) (internal quotation marks and citation omitted). In ***Shelton***, the defendant received a suspended 30-day jail sentence and two years' unsupervised probation. ***Id***. at 658. The United States Supreme Court held that "a defendant who receives a suspended or probated sentence *to imprisonment* has a constitutional right to counsel." ***Id***. at 674 (emphasis in original).

718, 726-28 (Mo. App. 2006). In ***Keeth***, this Court summarized what the constitutional right to, or waiver of, counsel in misdemeanor cases in Missouri requires:

> It can be read to instruct a judge that when a trial begins, no imprisonment may be imposed unless the accused is represented by counsel or knowingly and intelligently waives his right to counsel in compliance with the procedural requirements of Section 600.051.

Keeth, 203 S.W.3d at 729. Similarly, § 600.042 governing public defenders requires that "[t]he director and defenders shall provide legal services to an eligible person":

> [w]ho is detained or charged with a misdemeanor which will *probably result* in confinement in the county jail upon conviction, including appeals from a conviction in such a case, *unless* the prosecuting or circuit attorney has waived a jail sentence[.]

§ 600.042.4(2) (emphasis added).[3]

Here, there was: (1) no waiver of a jail sentence by the prosecuting attorney; (2) no mention of appointment of counsel for Defendant throughout the entire record; and (3) no waiver of Defendant's right to counsel. Because the trial court sentenced Defendant to 10 days in jail (suspended) and two years' probation, Defendant's right to counsel attached to the proceedings. *See* ***Keeth***, 203 S.W.3d at 729 (defendant's right to counsel does not attach "[u]nless and until" the trial court imposes a sentence of incarceration); *see also* ***Trimble***, 593 S.W.2d at 545; ***Reeter***, 582 S.W.3d at 918-19. Further, because Defendant's "right to counsel, by its nature, inherently affects the

[3] Subpart (6) of § 600.042.4 goes on to provide, however, that "the director and the defenders shall not be required to provide legal services to persons charged with violations of county or *municipal ordinances*, or misdemeanor offenses *except* as provided in this section." § 600.042.4(6) (emphasis added).

entirety of a trial[,]" Defendant has demonstrated a violation of that right and satisfied her burden to prove the manifest injustice or miscarriage of justice required by plain-error review. ***Cox***, 659 S.W.3d at 655 (citation omitted); ***Masters***, 651 S.W.3d at 869; ***Sullivan***, 640 S.W.3d at 159. As such, the trial court plainly erred in failing to appoint counsel or obtain a knowing and intelligent waiver of Defendant's right to counsel. ***Cox***, 659 S.W.3d at 655. Defendant's first point is granted.

Accordingly, we vacate Defendant's conviction and remand the cause to the trial court for further proceedings consistent with this opinion. ***Id***. at 655; ***Sullivan***, 640 S.W.3d at 159; ***Masters***, 651 S.W.3d at 869.[4]

JEFFREY W. BATES, J. – OPINION AUTHOR

JACK A. L. GOODMAN, J. – CONCUR

MATTHEW P. HAMNER, J. – CONCUR

[4] "Because the error taints the trial which resulted in the judgment of guilt," we decline "to remand for a sentence of a fine only." ***State v. Stark***, 706 S.W.2d 899, 901 (Mo. App. 1986) (reversing the conviction and remanding for a new trial); *see also* ***State v. West***, 949 S.W.2d 914, 917 (Mo. App. 1997) (same holding); ***State v. Kilburn***, 941 S.W.2d 737, 744 (Mo. App. 1997) (same holding); ***State v. Yeargain***, 926 S.W.2d 883, 886 (Mo. App. 1996) (same holding); *compare* ***City of Kansas City v. Calon***, 767 S.W.2d 46, 49 (Mo. App. 1989) (affirming conviction but remanding to vacate sentence of six days in jail and probation after prosecutor waived "any request for incarceration" and "the trial court pressed on with implicit understanding that no sentence of imprisonment would be imposed").