2025 IL App (4th) 240381-U

NO. 4-24-0381

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 14, 2025
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Knox County
DONALD A. DENNISTON,	)	No. 21CF65
Defendant-Appellant.	)	
	)	Honorable
	)	Andrew J. Doyle,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Doherty and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed defendant's sentence.

¶ 2 In August 2023, a jury found defendant, Donald A. Denniston, guilty of (1) aggravated arson, a Class X felony (720 ILCS 5/20-1.1) (West 2020)), (2) first degree murder (*id.* § 9-1(a)(3)), and (3) arson, a Class 2 felony (*id.* § 20-1) for setting fire to Katrina Hainline's residence in Galesburg, Illinois, on February 14, 2021, causing her death. In December 2023, the trial court sentenced defendant to 45 years in prison.

¶ 3 Defendant appeals, arguing that the trial court erred by considering an improper factor in aggravation while imposing his sentence—namely, " 'the loss of life of the victim.' " We disagree and affirm defendant's sentence.

¶ 4 I. BACKGROUND

¶ 5 A. The Charges

¶ 6 In February 2021, the State initially charged defendant by way of information with (1) aggravated arson, a Class X felony (*id.* § 20-1.1), and (2) first degree murder (*id.* § 9-1(a)(3)). The State later amended the information, charging defendant with (1) aggravated arson, a Class X felony (*id.* § 20-1.1), (2) first degree murder (*id.* § 9-1(a)(3)), and (3) arson, a Class 2 felony (*id.* § 20-1). The charges alleged generally that defendant knowingly set fire to the residence of Hainline, causing her death.

¶ 7 B. The Jury Trial

¶ 8 In August 2023, the trial court conducted defendant's jury trial. The evidence at trial established the following.

¶ 9 Between 12:20 and 12:30 a.m., on February 14, 2021, defendant purchased a gas can and gasoline from a Circle K gas station on East Main Street in Galesburg, Illinois. He then walked about two blocks to Hainline's residence, where she lived with Boyd Black, at 261 Pine Street. At around 12:38 a.m., defendant set fire to the house. According to Darrin Clayton, an expert in fire investigation who investigated the fire's origin and cause, the fire was started using an accelerant, such as gasoline, at the front interior of the home. Surveillance footage showed defendant quickly exiting the front door to the house as a large plume of fire ignited behind him. Defendant then ran down the front porch stairs and onto the street, away from the house.

¶ 10 Kari Rupert, a neighbor across the street, saw the fire through her security cameras and ran across the street to 261 Pine Street. She heard screams from a man and woman and saw Black in a window above the roof of the front porch surrounded by flames. Black jumped onto the roof of the porch and then fell onto the front yard. Rupert dragged Black away

from the fire into the street; smoke was emanating from him. Rupert continued to hear a woman scream, which she estimated lasted "a minute or two."

¶ 11 A different neighbor called the authorities, and Galesburg police officers arrived at the scene within a few minutes. They called out for Hainline, but there was no response. Hainline had died in the fire as a result of carbon monoxide intoxication due to the inhalation of smoke and soot.

¶ 12 Ultimately, the jury found defendant guilty of all counts—(1) arson, (2) aggravated arson, and (3) first degree murder. Defendant did not file a motion for a new trial.

¶ 13 C. The Sentencing Hearing

¶ 14 In December 2023, the trial court conducted defendant's sentencing hearing. At the start of the hearing, the court stated that it had received and reviewed the presentence investigation report (PSI). The court asked if the parties had received the report and whether they had any additions or corrections to the PSI; the parties replied in the negative.

¶ 15 1. *The PSI*

¶ 16 The PSI contained, among other things, information about defendant's mental health and criminal history. At the time of the sentencing hearing, defendant was 40 years old.

¶ 17 His criminal history included (1) a misdemeanor for possession of cannabis in 2001, (2) felony drug convictions in 2002, 2003, and 2008, (3) a felony conviction for criminal drug conspiracy in 2003, (4) a misdemeanor conviction for resisting/obstructing a peace officer in 2007, and (5) arson to real property in 2016, for which he was sentenced to four years in prison.

¶ 18 Defendant's health history showed that in 2015, he was ordered to attend McFarland Mental Health Center in Springfield, Illinois, for seven months, and in 2022, he "was

in Chester Mental Health Center in Chester, Illinois for a little over four months." He "attended Bridgeway in 2019 and 2020 for mental health issues. He was diagnosed with schizophrenia and anxiety disorder."

¶ 19 Neither party presented any further evidence in aggravation or mitigation.

¶ 20 2. *The Parties' Arguments*

¶ 21 The State recommended that defendant receive a sentence of 55 years in prison, noting defendant's history of delinquency and criminal activity. The State emphasized the gruesome nature of the offense, stating, in part, the following:

> "Judge, you've heard the evidence in this case. You were the presiding judge over this case, and you heard how—and you saw how the defendant purchased the gasoline, purch—and then walked down in the middle of the night to set the—to set the fire that he did, and that the victim in this case did not die immediately; that she was screaming as a result of the flames as—that were essentially taking her life; that essentially—and although we're not arguing that it was torture as intended as—with a capital T as stated under the statute, it was torturous; and that the defendant, as the evidence presented in this case, that he essentially walked into the building, not just simply onto the porch but into the room—front room itself, and would have seen that people lived there, set the fire; and that he then immediately ran from the—the—the setting, knowing full well the criminality and the wrongness of what he had done."

¶ 22 Defendant argued that a minimum sentence was appropriate because (1) he did not contemplate that his conduct would cause serious physical harm to another and no evidence was introduced to show that he intended to hurt anyone and (2) at the time of the offense, he

"was suffering from a serious mental illness which was insufficient to establish an insanity defense but which substantially impaired [his] ability to understand the nature of his act or conform his conduct to the requirements of the law." He noted that the PSI showed that he had been diagnosed with schizophrenia.

¶ 23 Defendant did not give a statement in allocution.

¶ 24 3. *The Victim Impact Statement*

¶ 25 The State then called Lucinda Sopher, the victim's older sister, to present her victim impact statement. She testified, in part, as follows:

> "On February 14th, 2021, [defendant] set a fire at 261 Pine Street that killed my sister *** and hastened the death of our father, Larry E. McKee. Katrina's death was without a doubt the cruelest and [most] cold-blooded thing one person could do to another, to burn to death. Unable to escape her death—unable to escape, her death was slow and terror filled. Conscious the whole time, her brain was the last to go.
>
> Our father was in Gulf Breeze at our sister Brenda's house when he was diagnosed with cancer and had begun treatment. I went down to see him for his birthday, January 30th, 2021, when the freak cold spell hit. It was there that my son called me and told me that—what had happened on Pine Street. *** When [I] told [my] parents what had happened, they were devastated. I swear the light in my dad's eyes dimmed and he had to go to his room and lay down. He broke down and cried. He was Captain Larry E. McKee, United States Marine Corps, retired. Three terms—three tours in Vietnam, a tour in Cambodia, and a tour in Laos. He was broken. He kept saying if he had just come home after the cancer

diagnosis, he could have saved her. Katrina would have been safe if only he had gone home. Dad steadily went downhill after that and died *** December 22nd, 2021. Parents should not have to bury their child.

[Defendant] robbed our family of two lives. Katrina has a great-granddaughter she only saw once. Lilliana McKee was just a couple of weeks old. Lilliana will never know how much love has—was destroyed by [defendant]. She's now almost four."

¶ 26 Following her testimony, the trial court took a short recess to review the evidence, arguments, and a second written victim impact statement by Rupert.

¶ 27 4. *The Trial Court's Sentence*

¶ 28 The trial court sentenced defendant to 45 years in prison, explaining as follows:

"The Court during the recess reviewed the [PSI] again as well as the victim impact statements ***. The Court has also considered *** the evidence that was presented at trial, the report, the history, character and attitude of the defendant, as well as the evidence and arguments of the parties; considered the statutory factors of aggravation and mitigation and the nature of the offense.

***

Given the factors in aggravation and mitigation, again, the Court has reviewed those. I am going to sentence the defendant to a term of 45 years in the Department of Corrections followed by 3 years[']] MSR. Obviously, this primarily has to do with the defendant's criminal history as well as the loss of life of the victim here in this case, taking into consideration the impact that it's had on family and friends of the victim."

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 Defendant appeals, arguing that the trial court erred by considering an improper factor in aggravation while imposing his sentence—namely, " 'the loss of life of the victim.' " We disagree and affirm defendant's sentence.

¶ 32 Defendant concedes that he forfeited this issue for review both by failing to object when it arose in the trial court and by failing to raise it in a motion to reconsider his sentence. See *People v. Johnson*, 2024 IL 130191, ¶ 40 (requiring a defendant to object to and raise the alleged error in a posttrial motion to avoid forfeiture). However, he contends that we may consider his claim under the plain error doctrine. *Id.* ¶ 42.

¶ 33 We note that after appellate counsel filed defendant's briefs on appeal, counsel filed a motion to withdraw the argument that the trial court's alleged consideration of an improper factor during sentencing constituted second-prong plain error, which we ordered taken with the case. In that motion, counsel noted that the supreme court held in *Johnson* that a trial court's consideration of an improper factor in aggravation while imposing a sentence is "not subject to review under the second prong of the plain error rule." *Id.* ¶ 96.

¶ 34 We thank appellate counsel for his careful consideration of the effect *Johnson* had on the claims in this case and his decision to request withdrawal of an argument he concluded lacked merit. We agree with counsel's assessment and grant the motion to withdraw his argument regarding second-prong plain error.

¶ 35 Accordingly, we discuss only whether the trial court's alleged consideration of an improper factor during sentencing amounted to first-prong plain error.

¶ 36 A. The Plain Error Doctrine

¶ 37 The plain error doctrine allows reviewing courts to consider a forfeited error if the error falls under one of the following two prongs:

> "(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 the 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." *People v. Moon*, 2022 IL 125959, ¶ 20.

¶ 38 The usual first step in a plain error analysis is to determine whether a clear and obvious error occurred. *Johnson*, 2024 IL 130191, ¶ 44. That is true because if there is no error, then there can be no plain error. *People v. Tolliver*, 2021 IL App (1st) 190129, ¶ 36. "However, similar to the analytical framework we use to review a claim of ineffective assistance of counsel [citation], the first step of plain-error analysis is merely a matter of convention," and we may begin the analysis in any order. (Internal quotation marks omitted.) *People v. Bowens*, 407 Ill. App. 3d 1094, 1108 (2011). If either prong of the plain error doctrine is not met, then a defendant's plain error claim fails. *Id.*

¶ 39 B. This Case

¶ 40 Here, defendant argues that (1) the trial court committed clear and obvious error by considering the loss of life of the victim "as a primary reason for imposing more than double the minimum prison term" for his sentence for first degree murder and (2) the evidence at the sentencing hearing was closely balanced because of the mitigating evidence and lack of aggravating evidence.

¶ 41 Defendant's argument that the trial court committed clear and obvious error is based on the following statement by the court when it sentenced defendant:

> "Obviously, this [sentence] primarily has to do with the defendant's criminal history as well as the loss of life of the victim here in this case, taking into consideration the impact that it's had on family and friends of the victim."

¶ 42 Although it is true that the trial court must not consider an element that is inherent in the offense as an aggravating factor when sentencing a defendant, the court " 'need not unrealistically avoid any mention of such inherent factors, treating them as if they did not exist.' " *People v. Brown*, 2019 IL App (5th) 160329, ¶ 18 (quoting *People v. O'Toole*, 226 Ill. App. 3d 974, 992 (1992)). In the context of the present case—a first degree murder case—that inherent element is defendant's causing the death of another person, which if relied on by the trial court, defendant claims, would be error. See 720 ILCS 5/9-1(a)(3) (West 2020)).

¶ 43 We determine whether the trial court based the sentence on an improper aggravating factor by looking at "the record as a whole, rather than focusing on a few words or statements by the trial court." *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009). Here, the explanation the court gave for its 45-year sentence was brief, and defendant seizes on that brevity when making his claim that the trial court based its decision primarily on the fact that the victim died. However, the court's mention of the victim's loss of life was immediately preceded by defendant's criminal history and followed by "taking into consideration the impact that it's had on family and friends of the victim."

¶ 44 Put simply, the trial court stated that its decision was based primarily on (1) defendant's criminal history and (2) the effect defendant's conduct had on the victim's family and friends. Neither of those factors are an element inherent to murder. See *People v. Kelley*,

2019 IL App (4th) 160598, ¶ 117 ("[T]he grief of surviving family members, though a common result of murder, is not implicit in murder itself."). Given the victim's older sister's impassioned victim impact statement and defendant's criminal history—which included a recent four-year prison sentence for arson—it is not surprising that these two factors were on the court's mind as it explained defendant's sentence.

¶ 45 Because we conclude that the trial court committed no error at defendant's sentencing hearing, there was no clear and obvious error, and defendant's plain error argument fails.

¶ 46 III. CONCLUSION

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

¶ 48 Affirmed.