2025 IL App (4th) 240817-U

NO. 4-24-0817

FILED
March 21, 2025
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
	)	Circuit Court of
Plaintiff-Appellee,	)	Livingston County
	)	No. 22CF256
v.	)	
	)	
PAUL R. BARTH,	)	Honorable
	)	Jennifer Hartmann Bauknecht,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Harris and Justice Grischow concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed defendant's 55-year prison sentence where (1) the trial court did not impose improper double enhancements in sentencing and (2) defense counsel complied with Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024).

¶ 2 Defendant, Paul R. Barth, entered an open plea of guilty to four counts of child pornography (720 ILCS 5/11-20.1(a)(1)(vii), (a)(2) (West 2018)). The trial court sentenced defendant to a total of 55 years in prison. Defendant appeals, arguing that we should reverse and remand for a new sentencing hearing because (1) the court imposed improper double enhancements in sentencing and (2) his counsel did not comply with Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024). For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Defendant's Charges

¶ 5 On October 28, 2022, defendant was charged by information with seven counts of child pornography (720 ILCS 5/11-20.1(a)(1)(vii), (a)(2), (a)(6) (West 2018)). These offenses consisted of three Class X felonies, three Class 1 felonies, and one Class 2 felony.

¶ 6 B. Defendant's Guilty Plea

¶ 7 On November 15, 2023, defendant and the State reached a plea agreement. Defendant agreed to plead guilty to counts I, II, V, and VI of the information in exchange for the State dismissing the other three counts. Count I alleged that in March 2018, defendant "knowingly filmed M.R., a child whom the defendant knew or reasonably should have known was under the age of 18 years old, while M.R. posed in [a] manner that involved the lewd exhibition of her genital area." Count II alleged that in March 2018, defendant "knowingly took a photograph of M.R. *** while M.R. posed in [a] manner that involved the lewd exhibition of her genital area." Count V alleged that in October 2022, defendant "possessed a photograph of *** a child whom the defendant knew or reasonably should have known was under the age of 13 years *** engaged in an act of sexual penetration." Count VI alleged that in October 2022, defendant "possessed a photograph of *** a child whom the defendant knew or reasonably should have known was under the age of 18 years *** in a pose involving the lewd exhibition of the unclothed genitals." Counts I and V were Class X felonies, and counts II and VI were Class 1 felonies.

¶ 8 The parties also reached a tentative agreement that defendant would be sentenced to 35 years in prison; however, they chose to postpone sentencing. The State provided the following factual basis for the guilty plea. On October 27, 2022, Livingston County sheriff's deputies found approximately 4,000 images of child pornography in defendant's possession, including videos and photographs of children in the community and children who were under 13 years old engaged in acts of sexual penetration. The trial court accepted defendant's guilty plea to

counts I, II, V, and VI and dismissed counts III, IV and VII.

¶ 9 The parties returned to court in January 2024. Defendant indicated he did not want to accept the tentative sentencing agreement but did want to enter an open plea. The trial court advised defendant that he faced a sentence of 20 to 90 years in prison. Defendant said he understood. The court ordered a presentence investigation report (PSI) to be prepared.

¶ 10 C. Defendant's Sentencing Hearing

¶ 11 The trial court held defendant's sentencing hearing in March 2024. Defendant had two PSIs prepared: one in 2022 and one in 2024. They revealed the following information. Defendant reported being a "full-time caretaker for his children" since 2013. Defendant had two sons who were on the autism spectrum and lived with him. They were 17 and 25 years of age in 2024. Defendant also had two daughters, a 22-year-old with cerebral palsy, who lived with defendant part-time when not attending college, and E.H., a 21-year-old who lived on her own and was married with children in 2024. Defendant stated that his oldest daughter required "constant care and supervision."

¶ 12 Defendant served in the United States Army from 1996 until 1999, when he was medically discharged. He received a disability pension from the United States Department of Veterans Affairs and also received money from his mother. Defendant reported that he takes medication for anxiety, depression, and high blood pressure. Defendant's criminal history included a Class 4 felony for misuse of a credit card and a Class A misdemeanor for theft in 2010.

¶ 13 When officers executed a search warrant on defendant's residence in October 2022, they asked defendant if he knew why they were there. Defendant replied: " 'I've been single for many years and I've tried not to have any child porn on my phone or computers but I am not sure if anything did not get filtered and made it on to my devices.' " A detective searched an external

hard drive on a nightstand next to defendant's bed and found "a total of 5,402 files consisting of a variety of underage subjects engaged in a variety of sex acts, at times alone, at times with each other, and sometimes with adults." The detective also found photographs that appeared to be taken from a camera hidden in a bathroom. The detective recognized the girl in one of the photographs, M.R., and knew she recently turned 18 years old. He noted "[a] video with a timestamp from 07-04-18 showed her fully nude in the shower." Further examination revealed a video that appeared to be defendant's daughter, E.H., undressing in her bedroom when she was approximately 15 years old. That video "appeared to have been captured by a second hidden camera." A second hard drive from defendant's bedroom was examined, and "officers located 30,604 photos or videos containing child pornography," including images of E.H. and M.R.

¶ 14 Police contacted M.R. on October 27, 2022, and advised her of what they found. She was unaware that any photos or videos had been taken of her in defendant's home and did not know how they had been taken.

¶ 15 When confronted with the evidence police found, defendant admitted that the devices belonged to him and contained child pornography. He initially denied having any images of his children. Eventually, however, he admitted that "there were images of his daughter and one of her friends and alluded to a time in his life that he was not thinking properly." Defendant admitted that he hid a camera in his daughter's bedroom and in a bathroom in his home. He also admitted to using the images of E.H. and M.R. "for sexual purposes." Defendant expressed remorse and "commented that his actions were particularly egregious as [M.R.] considered him a father-figure and saw their home as a safe haven from problems in her own family." When asked how his family reacted to his offenses, defendant described them as " 'upset, but still in contact and supportive.' " Defendant indicated that when he discussed his offenses with his daughters,

they " 'accepted it and quickly' " and said it was " 'water under the bridge.' "

¶ 16 E.H. provided the trial court with the following victim impact statement:

> "It was definitely a huge shock to hear what my dad had done. He had always seemed safe and I never imagined he was even capable of doing such a thing. I haven't sought out professional therapy, I'm unsure if I will, but it has been a consideration.
>
> Before everything came out, he was one of my favorite people in the world. My friend trusted him and it feels like a huge betrayal to both of us. I feel guilty that she was impacted, and wish I could change things so she never got involved. I know it's not my fault though.
>
> Not much has changed for me or my family, my husband and kids. I know my sister will have some more obstacles to overcome now. My little brother is with our mom now which is a big change for him. The change is that my dad is not who he made himself out to be, and I lost someone that wasn't truly there I feel."

Defendant provided six letters from community members and his oldest daughter, expressing their support for him.

¶ 17 The State recommended that defendant receive a 55-year prison sentence, arguing that several aggravating sentencing factors applied because defendant (1) had a prior felony conviction, (2) caused harm to E.H. and M.R. by placing cameras in E.H.'s bedroom and bathroom and taking videos and photographs of E.H. and M.R., and (3) showed "an intention behind his actions" by "intentionally setting up camera equipment in order to capture those images" and "navigat[ing] through the dark web to do so."

¶ 18 Defense counsel argued for the minimum sentence of 20 years, asserting that

several mitigating factors applied because defendant (1) was remorseful, (2) served his country in the Army, (3) had only one prior felony conviction, (4) was assessed to be a low-to-medium risk to reoffend, (5) pled guilty, (6) cooperated with police, and (7) had disabled children who would be harmed by a long prison sentence.

¶ 19 Defendant provided a statement in allocution, stating in part: "I feel horrible that I violated the trust of my family and friends, and I know that this is not a pattern that I would ever follow again." The trial court then stated, in relevant part:

> "I guess where I [would] normally start is that I have considered all of the factors that I am supposed to take into consideration. I cannot comment on every single factor that is set forth in the statute, that's really not practical; but there are a number of things that stand out in this case that I think deserve mentioning and weigh[ ] in aggravation and mitigation.
>
> Obviously, a very serious case as I've indicated; and one of the things that I think the State kind of alluded to and really [defense counsel] alluded to is, where does this fall in the range of child pornography. Unfortunately, we see child pornography in this community ***. And we get the reports, and we understand that there are people within this community who are looking at and downloading child pornography. But as [the State] has indicated, this is a little bit, I would say a lot more serious when, not only are you downloading and viewing a lot of child pornography, which is abhorrent to begin with, but I think it's unspeakable that you're hiding cameras in your home and filming your daughter, your daughter's friend, young girls who don't even know what's happening, for your own sexual arousal I guess is what you ultimately admitted to. *** And when you're not only

looking at it *** but you're, on top of that, you're filming, you're taking pictures; and so, this is not just a, quote, typical child pornography case, this is a little bit worse than a child pornography case. It's worse not only that you're taking pictures, but that you're taking pictures of your own daughter; so, you're in a position of trust and authority with her and her friends. And this isn't a one-time [in]discretion; this is over a period of years it appears to me, because you've pled guilty, Counts 1 and 2 go back to 2018 *** [and] 5 and 6 are from 2022. I mean, that's 4 years at least. So, this is a pattern of conduct on your part of gathering of this child pornography, really lots of child pornography and then also taking it upon yourself to just invade the safety and sanctity of the home and filming your daughter and your daughter's friend. So, when I look at child pornography, this is not a minimum case by any stretch, not even getting into the other factors the Court is to consider. But just looking at the serious nature of the offense and the circumstances surrounding these offenses tells me this is not a mandatory minimum case.

There are *** factors in mitigation, that [defense counsel] pointed out and I would agree are mitigating factors in the case. Certainly, the care that you provided for your daughter who is handicapped, *** she needs that care; and so, arguably she's a victim in this case as well because she relied on you to provide that care for her and you're just not going to be able to do that no matter what the sentence is.

And, in addition, you did serve your country ***. ***

I also have the letters that you submitted in Defendant's Group Exhibit 1, character letters. *** And I do agree with [the State] that the statement from your

daughter is very powerful. Those are very powerful words, safety, betrayal, home, trust; I mean, you just can't go back. And the other thing that I think [the State] pointed out that is just horrible is that we can't get rid of these pictures; they're out there and we can't get rid of them.

So, there's some level of mitigation in this case; but the aggravating factors clearly, strongly outweigh the mitigating factors, not only the serious nature of the charges, but deterrence of course is one of the strongest factors present in this case as well as the fact that the defendant was in a position of trust at the time with the children and that there was very real harm, real and permanent harm to the victims in this case, and I would argue to society as a whole. It's really just sickening. I'm kind of at a loss for words. And you start getting dead to this stuff when you see it over and over and over again from a court-system standpoint, but then you hear that you've done this to your own daughter, and I mean, you just think how can it get any worse and then that happens. So, the aggravating factors in this case greatly outweigh the mitigating factors."

¶ 20 The trial court sentenced defendant to 20 years each on counts I and V and 7 ½ years each on counts II and VI, to run consecutively, for a total prison sentence of 55 years.

¶ 21 D. Defendant's Motion to Reconsider His Sentence

¶ 22 In April 2024, defendant filed a motion to reconsider his sentence, arguing that his sentence was excessive and that the trial court failed to consider certain mitigating factors. The court held a hearing on the motion on May 29, 2024. At the hearing, defense counsel, who also represented defendant at his guilty plea and sentencing hearings, explained that he had not yet filed his certificate required by Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024) because he had

not yet received the transcripts from the guilty plea and sentencing hearings when he drafted the motion to reconsider. Defense counsel provided his Rule 604(d) certificate to the court and filed it on May 29, 2024. That certificate stated:

> "1. I have consulted with the Defendant in person, by mail, by phone or by electronic means to ascertain the defendant's contentions of error in the entry of the plea of guilty and in the sentence;
>
> 2. I have examined the trial court file and report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing; and
>
> 3. I have made any amendments to the motion necessary for the adequate presentation of any defects in those proceedings."

Following arguments from both parties, the trial court denied defendant's motion to reconsider his sentence.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 The Illinois Constitution provides that "[a]ll 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. "The trial court has broad discretionary powers when selecting an appropriate sentence." *People v. Garcia,* 2018 IL App (4th) 170339, ¶ 37. "An appropriate sentence must be based upon the particular circumstances of an individual case, including (1) the defendant's history, character, and rehabilitative potential; (2) the seriousness of the offense; (3) the need to protect society; and (4) the need for deterrence and punishment." *Garcia*, 2018 IL App (4th) 170339, ¶ 37.

¶ 26 Sections 5-5-3.1 and 5-5-3.2 of the Unified Code of Corrections (730 ILCS 5/5-5-

3.1, 5-5-3.2 (West 2022)) set forth mitigating and aggravating factors the trial court must consider in determining an appropriate sentence. *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 65. Aggravating factors include (1) "the defendant's conduct caused or threatened serious harm," (2) "the defendant has a history of prior *** criminal activity," (3) "the sentence is necessary to deter others from committing the same crime," and (4) "the defendant held a position of trust or supervision *** in relation to a victim under 18 years of age." 730 ILCS 5/5-5-3.2(a)(1), (3), (7), (14) (West 2022).

¶ 27 A. Double Enhancements

¶ 28 Defendant argues that the trial court relied on factors inherent in his offenses as aggravating factors in sentencing, thereby subjecting him to improper double enhancements.

¶ 29 "Generally, a factor implicit in the offense for which the defendant has been convicted cannot be used as an aggravating factor in sentencing for that offense." *People v. Phelps*, 211 Ill. 2d 1, 11 (2004). In other words, "a single factor cannot be used both as an element of an offense and as a basis for imposing 'a harsher sentence than might otherwise have been imposed.' " *Phelps*, 211 Ill. 2d at 11-12 (quoting *People v. Gonzalez*, 151 Ill. 2d 79, 83-84 (1992)). "Such dual use of a single factor is often referred to as a 'double enhancement.' " *Phelps*, 211 Ill. 2d at 12 (quoting *Gonzalez*, 151 Ill. 2d at 85).

¶ 30 "The court may, however, properly consider the nature and circumstances of the offense, including 'the nature and extent of each element of the offense as committed by the defendant.' " *People v. Hussain*, 2024 IL App (1st) 230471, ¶ 25 (quoting *People v. Brewer*, 2013 IL App (1st) 072821, ¶ 55). "The rule that a court may not consider a factor inherent in the offense is not meant to be applied rigidly, because sound public policy dictates that a sentence be varied in accordance with the circumstances of the offense." (Internal quotation marks omitted.) *People*

v. Spicer, 379 Ill. App. 3d 441, 468 (2007). While sentencing issues are typically reviewed for an abuse of discretion, the rule against double enhancement is one of statutory construction that we review *de novo*. *Hussain*, 2024 IL App (1st) 230471, ¶ 26.

¶ 31 1. *Defendant's Forfeiture*

¶ 32 Defendant acknowledges that he did not object to the trial court's alleged double enhancements at the sentencing hearing or raise the issue in his postplea motion. As a result, this issue "shall be deemed waived." Ill. S. Ct. R. 604(d) (eff. Apr. 15, 2024).

¶ 33 Nevertheless, defendant claims that we can review this issue because he was denied the effective assistance of counsel. To prove ineffective assistance of counsel, defendant must satisfy a two-pronged test. First, defendant must demonstrate that counsel's performance was deficient in that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Second, defendant must show that the deficient performance prejudiced him. *Strickland*, 466 U.S. at 687. The failure to satisfy either prong of *Strickland* will preclude a finding of ineffective assistance of counsel. *Strickland*, 466 U.S. at 687.

¶ 34 A defendant who contends that his counsel was ineffective for failing to argue an issue must show that the failure to raise the issue was objectively unreasonable and that, but for this failure, the result of the trial or sentencing hearing would have been different. *People v. Jones*, 399 Ill. App. 3d 341, 372 (2010). Where the underlying issue lacks merit, a defendant cannot establish either prong of *Strickland* because (1) "counsel's performance is not deficient for failing to raise a meritless issue" (*People v. Stone*, 2018 IL App (3d) 160171, ¶ 20) and (2) "[i]f the underlying issue is nonmeritorious, the defendant has suffered no prejudice" (*Jones*, 399 Ill. App. 3d at 372).

¶ 35 Thus, we must first consider whether the issue defense counsel failed to raise has merit. If the issue lacks merit, there is no basis for defendant's ineffective assistance of counsel claim. See *Stone*, 2018 IL App (3d) 160171, ¶ 20; *Jones*, 399 Ill. App. 3d at 372.

¶ 36 2. *Whether Error Occurred*

¶ 37 With these principles in mind, we turn to whether the trial court erred in sentencing defendant by improperly subjecting him to double enhancements.

¶ 38 "[I]n announcing its sentencing decision, the trial court is not required to refrain from any mention of the factors which constitute elements of the offense, and the mere reference to the existence of such a factor is not reversible error." *People v. Andrews*, 2013 IL App (1st) 121623, ¶ 15; see *People v. Kibayasi*, 2013 IL App (1st) 112291, ¶ 56 (stating that it is unrealistic to suggest that when sentencing a defendant, the trial court must avoid mentioning any element of the offense or risk committing reversible error); *People v. O'Toole*, 226 Ill. App. 3d 974, 992 (1992) ("[A] sentencing court need not unrealistically avoid any motion of such inherent factors, treating them as if they did not exist."). When the court mentions an element of the crime while describing the circumstances and manner in which the defendant committed the crime or within the context of discussing the seriousness of the crime, the trial court does not violate the rule against double enhancement. See *Kibayasi*, 2013 IL App (1st) 112291, ¶ 57; *Garcia*, 2018 IL App (4th) 170339, ¶ 42.

¶ 39 "There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning." *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 22. Even if a court mentions an improper sentencing factor, the defendant bears the burden of affirmatively establishing that the court's sentence was based on the improper factor. *Hibbler*, 2019 IL App (4th) 160897, ¶ 65. A reviewing court will not reverse a sentence unless it

is evident that the trial court relied on an improper factor. *Hibbler*, 2019 IL App (4th) 160897, ¶ 65. When determining if a trial court considered an inappropriate factor in sentencing, the reviewing court should not focus on a few words or sentences but must consider the record as a whole. *Andrews*, 2013 IL App (1st) 121623, ¶ 15; *Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 22. A trial court's exercise of discretion when selecting an appropriate sentence within the statutory framework provided by the legislature is not a double enhancement. *Garcia*, 2018 IL App (4th) 170339, ¶ 37.

¶ 40 a. Creation of Child Pornography

¶ 41 Defendant first argues that the trial court committed a double enhancement error when it discussed his creation of the child pornography he possessed because that was an element of his crimes. He further contends that this was "the aggravating factor that the court considered the most" when sentencing him.

¶ 42 In counts I and II, defendant pled guilty to filming and photographing M.R., whom he knew to be under the age of 18, "while M.R. posed in [a] manner that involved the lewd exhibition of her genital area." These were violations of subsection (a)(1) of the child pornography statute, which prohibits filming, videotaping, or photographing children in sexual positions and situations. 720 ILCS 5/11-20.1(a)(1) (West 2018).

¶ 43 When viewed as a whole, the trial court's statements do not reflect that the court impermissibly applied a factor inherent in the offense—creating child pornography—as an aggravating factor. In sentencing defendant, the court referred to defendant's conduct of filming his daughter and her friend when it stated: "It's worse not only that you're taking pictures, but that you're taking pictures of your own daughter; so, you're in a position of trust and authority with her and her friends." The court also opined that defendant's conduct was more serious than in a

"typical" case of child pornography that involved someone downloading photos of unknown children from the Internet because defendant's conduct involved filming his own daughter in the "sanctity of the home." However, the court's statements were made in the context of discussing the nature, circumstances and seriousness of the offense. In fact, immediately after the court made the statements above, the court concluded: "[J]ust looking at the serious nature of the offense and the circumstances surrounding these offenses tells me this is not a mandatory minimum case."

¶ 44 Sentencing courts are permitted to consider the nature and circumstances of the offense, as well as the degree and gravity of the defendant's conduct. *Hussain*, 2024 IL App (1st) 230471, ¶ 36. Because the trial court's statements regarding defendant's creation of child pornography were made while describing the circumstances and manner in which the defendant committed the offenses, as well as the degree and gravity of defendant's conduct, the court did not improperly impose a double enhancement. See *Kibayasi*, 2013 IL App (1st) 112291, ¶ 57; *Garcia* 2018 IL App (4th) 170339, ¶ 42; *Hussain*, 2024 IL App (1st) 230471, ¶¶ 32-33, 36.

¶ 45 Furthermore, in describing the nature and circumstances of defendant's offenses and the seriousness of his crimes, the trial court could properly consider that defendant's conduct exceeded the statutory elements of the crime. "Anything and everything beyond the minimum conduct necessary for the defendant to be found to have engaged in criminal behavior is entirely appropriate for a sentencing court to consider." *Hibbler*, 2019 IL App (4th) 160897, ¶ 71. The conduct to which defendant pled guilty in counts I and II was filming or photographing a child in a sexual situation or position. Here, defendant's conduct far exceeded that. Defendant installed hidden cameras in his daughter's bedroom and bathroom and filmed his daughter and her friend while they were showering and undressing. These were not elements of the crime and could be considered by the court in sentencing defendant to more than the "mandatory minimum" prison

sentence. See *Hibbler*, 2019 IL App (4th) 160897, ¶ 71.

¶ 46 Finally, defendant's contention that his filming and photographing the minors was "the aggravating factor that the court considered the most when fashioning [his] sentence" is not supported by the record. In discussing the aggravating factors, the trial court stated:

> "[N]ot only the serious nature of the charges, but deterrence of course is one of the strongest factors present in this case as well as the fact that the defendant was in a position of trust at the time with the children and that there was very real harm, real and permanent harm to the victims in this case, and I would argue to society as a whole."

Notably absent from this list of aggravating factors is the factor that defendant contends the court impermissibly relied upon "the most" in sentencing—his filming of the minors. The record reflects that the court properly considered the seriousness of defendant's offenses, as well as the statutorily authorized factors in aggravation: (1) "defendant's conduct caused or threatened serious harm," (2) "the sentence is necessary to deter others from committing the same crime," and (3) "the defendant held a position of trust or supervision." 730 ILCS 5/5-5-3.2(a)(1), (7), (14) (West 2022). Thus, defendant failed to satisfy his burden of proving that the court relied on this improper factor in sentencing. See *Hibbler*, 2019 IL App (4th) 160897, ¶ 65.

¶ 47 b. Harm

¶ 48 Defendant also argues that the trial court erred in considering as an aggravating factor that he caused harm because harm was inherent in his crimes and no evidence was presented that any victim suffered more harm than is normal in the types of crimes he committed.

¶ 49 A double enhancement occurs when a single factor is used both as "an element of an offense and as a basis for imposing 'a harsher sentence than might otherwise have been

imposed.' " *Phelps*, 211 Ill. 2d at 11-12 (quoting *Gonzalez*, 151 Ill. 2d at 83-84). An "element" of an offense is "[a] constituent part of a claim that must be proved for the claim to proceed." Black's Law Dictionary (11th ed. 2019). Harm is not an element of any child pornography offense. See 720 ILCS 5/11-20.1(a)(1)-(7) (West 2018). Thus, in a child pornography case, "that defendant's conduct threatened serious emotional harm to others" is a proper aggravating factor. *People v. Sven*, 365 Ill. App. 3d 226, 242 (2006).

¶ 50 The sentencing court may consider the harm a defendant who committed child pornography caused his victims. See *Sven*, 365 Ill. App. 3d at 243 (stating the trial court could consider that victims of child pornography felt betrayed, ashamed, violated, embarrassed, angry, guilty and fearful that "for the rest of their lives they may always fear whether someone is filming them or watching them"); *People v. Grace*, 365 Ill. App. 3d 508, 512 (2006) (stating the trial court considered "the emotional harm done to the 10-year-old child" in a criminal sexual abuse and child pornography case). A court may consider psychological harm to a victim even "without direct evidence of trauma." *People v. Reber*, 2019 IL App (5th) 150439, ¶ 94.

¶ 51 The trial court did not err in considering that defendant's conduct caused harm. The evidence presented at the sentencing hearing established that defendant harmed his daughter, E.H., by secretly placing cameras in her bedroom and bathroom and filming her. E.H. was a victim and provided a statement to the court in which she expressed betrayal, guilt, and loss. These are psychological harms that the court could consider in sentencing defendant. See *Sven*, 365 Ill. App. 3d at 243. Additionally, the court could consider "possible future psychological harm" that E.H. and M.R. may experience. See *Reber*, 2019 IL App (5th) 150439, ¶¶ 91, 93.

¶ 52 Defendant contends that the trial court should not have considered the harm he caused E.H. as an aggravating factor because (1) E.H. was not a "victim" of his charged offenses

and (2) the State presented no evidence that E.H. suffered psychological harm. We disagree with both contentions.

¶ 53 First, although defendant was not charged with filming E.H., the evidence established that he did so and admittedly used her images for "sexual purposes." Thus, E.H. is a victim, and the trial court properly considered her as such. See *People v. Rose*, 384 Ill. App. 3d 937, 941 (2008) ("[A] sentencing court routinely considers crimes of which the defendant has not been convicted, including crimes for which the defendant has not been prosecuted."). Additionally, while harm is an element of some crimes, such as aggravated battery (720 ILCS 5/12-3.05(a) (West 2022)), it is not an element of child pornography (720 ILCS 5/11-20.1(a) (West 2022)), so harm can be considered as an aggravating factor. See *Sven*, 365 Ill. App. 3d at 243. Furthermore, there was evidence presented that defendant caused psychological harm to E.H. based on her statement to the court. See *Sven*, 365 Ill. App. 3d at 243. Finally, it is reasonable to believe that both E.H. and M.R., who are now young adults, have not fully realized their psychological injuries and may experience psychological problems in the future because of defendant's conduct. See *Reber*, 2019 IL App (5th) 150439, ¶ 93 (stating the sentencing court could consider possible future psychological harm to victims because, based on its experience, child victims of sexual crimes "could experience difficulties in the future"). For all these reasons, the court did not err in considering as an aggravating factor that defendant caused harm.

¶ 54 3. *No Error Occurred*

¶ 55 The sentencing court did not apply a double enhancement in sentencing defendant. Because defendant's claim of double enhancement lacks merit, defendant was not denied the effective assistance of counsel based on his counsel's failure to raise this issue below. See *Stone*, 2018 IL App (3d) 160171, ¶ 20; *Jones*, 399 Ill. App. 3d at 372. Thus, defendant has not established

ineffective assistance of counsel.

¶ 56 B. Rule 604(d)

¶ 57 Defendant also argues that his trial counsel failed to comply with Rule 604(d) because he did not amend the motion to reconsider defendant's sentence to include the double-enhancement issue that defendant now raises on appeal.

¶ 58 Rule 604(d) provides that a defendant who pleads guilty must file a motion to reconsider the sentence within 30 days of the date of sentencing. The rule further requires the attorney representing the defendant to file a certificate "with the trial court." Ill. S. Ct. R. 604(d) (eff. Apr. 15, 2024). That certificate must assert as follows:

> "1. I have consulted with the Defendant in person, by mail, by phone or by electronic means to ascertain defendant's contentions of error in the entry of the plea of guilty and in the sentence;
>
> 2. I have examined the trial court file and report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing; and
>
> 3. I have made any amendments to the motion necessary for the adequate presentation of any defects in those proceedings." Ill. S. Ct. Rs. Art. VI Forms Appendix R. 604(d).

¶ 59 "A Rule 604(d) certificate must strictly comply with the requirements of Rule 604(d)." *People v. Higgins*, 2023 IL App (4th) 220837, ¶ 50. We review *de novo* whether counsel complied with Rule 604(d). *Higgins*, 2023 IL App (4th) 220837, ¶ 50.

¶ 60 The only timing requirement set forth by the plain language of Rule 604(d) is "that the certificate be filed 'with the trial court,' rather than on appeal." *In re H.L.*, 2015 IL 118529, ¶ 19. A Rule 604(d) certificate need not be filed prior to the filing of a postplea motion nor prior

to the hearing on such a motion. See *H.L.*, 2015 IL 118529, ¶ 25. Nevertheless, a certificate must be filed prior to the filing of any notice of appeal. *H.L.*, 2015 IL 118529, ¶ 25.

¶ 61 "[A] facially valid Rule 604(d) certificate may be refuted by the record." *People v. Curtis*, 2021 IL App (4th) 190658, ¶ 37. However, "to prevail on such a claim, a defendant must actually show the record refutes the certificate." *Higgins*, 2023 IL App (4th) 220837, ¶ 53. Where defense counsel files a facially valid Rule 604(d) certificate and the defendant claims on appeal that his counsel failed to make necessary amendments to defendant's posttrial motion, the defendant must present evidence in the record to rebut the certification. See *Curtis*, 2021 IL App (4th) 190658, ¶ 41.

¶ 62 Here, defendant concedes that his counsel filed a certificate that strictly complied with the requirements of Rule 604(d). Defendant also does not dispute that the certificate was timely because it was filed in the trial court. See *H.L.*, 2015 IL 118529, ¶ 19. However, defendant contends that his counsel violated Rule 604(d) by failing to amend defendant's motion to reconsider his sentence after he reviewed the transcripts from the sentencing hearing.

¶ 63 Rule 604(d) requires an attorney to (1) confer with the defendant, (2) review the transcripts from the trial and sentencing hearing, and (3) make "any amendments to the motion necessary for [the] adequate presentation of any defects in those proceedings." Ill S. Ct. R. 604(d) (eff. Apr. 15, 2024). Defendant does not dispute that his trial/posttrial counsel fulfilled the first two obligations under Rule 604(d) but disputes that he complied with the third requirement. He contends that his counsel was required to amend the motion to reconsider defendant's sentence to raise the issue he raises on appeal—that the trial court imposed impermissible double enhancements in sentencing. We disagree.

¶ 64 As set forth in Rule 604(d), counsel need only make amendments to a posttrial

motion that are "necessary for [the] adequate presentation of any defect" in the trial or sentencing proceedings. Ill. S. Ct. R. 604(d) (eff. Apr. 15, 2024). Because, as explained more fully above, the trial court did not improperly impose double enhancements at the sentencing hearing, double enhancement was not a "defect" counsel had to raise in defendant's motion to reconsider his sentence. See *Jones*, 399 Ill. App. 3d at 372 (stating counsel is not required to raise a nonmeritorious issue). Thus, nothing in the record refutes the contents of defense counsel's certificate.

¶ 65 Defendant argues that the facts of this case are similar to those in *People v. Love*, 385 Ill. App. 3d 736 (2008). In *Love*, comments from defense counsel, the trial court, and the prosecutor strongly suggested that defense counsel had not reviewed the transcripts from the guilty plea proceeding when she filed her Rule 604(d) certificate, and the State seemingly conceded as much on appeal. *Love*, 385 Ill. App. 3d at 737-38. Thus, the appellate court held: "[A] Rule 604(d) certificate filed before counsel has actually complied with the substantive requirements of Rule 604(d) is ineffective. Where, as here, the record impeaches the Rule 604(d) certificate, a remand for further proceedings is necessary." *Love*, 385 Ill. App. 3d at 739.

¶ 66 This case is distinguishable from *Love* because nothing in this trial court record impeaches the contents of defense counsel's Rule 604(d) certificate. Unlike defense counsel in *Love*, who seemingly filed her Rule 604(d) motion prematurely, before reviewing the relevant transcripts, defense counsel in this case waited to file his certificate until he had received and reviewed the transcripts from the guilty plea and sentencing proceedings. Thus, defendant's reliance on *Love* is misplaced.

¶ 67 Defendant has failed to present any evidence from the record to refute defense counsel's certificate asserting that he fulfilled the requirements of Rule 604(d). We accept defense

counsel's Rule 604(d) certificate as proof of compliance with the rule.

¶ 68 III. CONCLUSION

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

¶ 70 Affirmed.