2025 IL App (4th) 240946-U

NO. 4-24-0946

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 27, 2025
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Peoria County
DEMETRIUS D. DRUMMOND,	)	No. 23CF1016
Defendant-Appellant.	)	
	)	Honorable
	)	Paul P. Gilfillan,
	)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Presiding Justice Harris and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court (1) affirmed defendant's convictions for unlawful possession of a weapon by a felon, a Class 2 felony (720 ILCS 5/24-1.1(a) (West 2022)), and reckless discharge of a firearm, a Class 4 felony (*id.* § 24-1.5(a)), finding the trial court's failure to admonish defendant that his sentences could be consecutive before he waived his right to an attorney did not constitute plain error; (2) upheld section 24-1.1(a) of the Criminal Code of 2012, finding it did not violate either the second amendment of the United States Constitution (U.S. Const., amend. II) or article I, section 22 of the Illinois Constitution (Ill. Const. 1970, art. I, § 22); (3) found a victim impact statement read at sentencing did not require resentencing, even if the defendant was not convicted of a "violent crime"; and (4) vacated defendant's six-year prison sentence for reckless discharge of a firearm and imposed a three-year sentence, where the State conceded that the offense was not eligible for extended-term sentencing.

¶ 2 After representing himself at trial, defendant, Demetrius D. Drummond, was convicted of one count of unlawful possession of a weapon by a felon (UPWF), a Class 2 felony (720 ILCS 5/24-1.1(a) (West 2022)), and one count of reckless discharge of a firearm, a Class 4 felony (*id.* § 24-1.5(a)). The trial court sentenced him to consecutive nine- and six-year prison

sentences. He appeals his convictions. He first claims that when he waived his right to counsel, the court failed to admonish him that it could impose consecutive sentences. He further claims that Illinois's UPWF statute is unconstitutional. If we uphold his convictions, he also challenges his sentences, arguing that the trial court improperly heard a victim impact statement at sentencing, even though he was not convicted of a violent crime, and that the court wrongly imposed an extended-term sentence for his reckless discharge of a firearm conviction.

¶ 3 We vacate defendant's six-year sentence for reckless discharge of a firearm and impose a three-year sentence. Otherwise, we affirm.

¶ 4 I. BACKGROUND

¶ 5 In December 2023, the State charged defendant with one count of UPWF and one count of reckless discharge of a firearm. Defendant pleaded not guilty, and the trial court appointed the public defender to represent him. The court set a preliminary trial date of April 29, 2024.

¶ 6 At a hearing on April 17, 2024, the trial court asked if the defense was ready for trial. Defense counsel responded that he was not ready because he was still reviewing the State's voluminous discovery responses. He represented that defendant told him that "under no circumstances was he willing to waive his right to a speedy trial," and that he would prefer to represent himself at the trial on April 29, 2024, rather than accept a continuance. Defendant himself insisted to the court, "I'm ready to go to trial." The court told him this was "[t]otally unwise," and stated, "This is, in layman's terms, crazy." Defendant responded, "I know, but my life [is] on the line." The court told defendant, "Let's come back tomorrow. You sleep on this overnight."

¶ 7 The next day, defense counsel reiterated that he would need a continuance to represent defendant, and defendant again insisted on proceeding to trial. Exasperated, the trial court emphasized that defense counsel had only six weeks to review a lot of material, including

over 20 hours of video evidence. Despite this, defendant insisted he did not want the public defender as his attorney if he needed a continuance. He added that he would accept defense counsel's assistance as long as there was no continuance. Defense counsel did not "feel comfortable proceeding to trial" without additional time to prepare, so defendant told the court he wanted to proceed *pro se*.

¶ 8 The trial court confirmed that defendant knew he had the right to an attorney, free of charge, and the right to represent himself. Defendant confirmed he knew this. The court reviewed the charges, explaining that count I, UPWF, was a Class 2 felony, with possible penalties of 3 to 14 years imprisonment, without the possibility of probation, and count II, reckless discharge of a firearm, was a Class 4 felony, with possible penalties of 1 to 6 years' imprisonment. Defendant said he understood. The court inquired further to confirm defendant's understanding, asking if defendant understood that he would lose the opportunity to consult with an attorney about potential defenses. Defendant said he understood. The court asked, "Is it your free, full and voluntary decision to represent yourself?" Defendant answered, "Yes." The court found defendant knowingly, voluntarily, and understandingly waived his right to an attorney, so it allowed defense counsel to withdraw.

¶ 9 The evidence at trial concerned a house party at a residence on Thrush Street in Peoria, Illinois, on the night of October 28, 2023. The State relied on video recordings from a Ring doorbell camera from that night. The recordings showed people gathered outside a house. A man fired a handgun into the air multiple times, and people began to flee. One person, later identified as Kobe Johnson, appeared to crouch down in front of a parked car. Someone else got into the car and drove away, driving over Johnson and leaving him lying in the middle of Thrush Street. The shooter and one other person got into a pickup truck and drove away, steering around the prone

body in the street. Johnson died from his injuries that night. Through its remaining evidence, including testimony from Peoria Police Department Detective Scott Hulse, a recording of an interview with Detrick Harris, the driver of the pickup truck, and phone records recovered from Harris's and defendant's cell phones, the State sought to establish that defendant was the shooter in the video. The State also introduced a certified copy of defendant's 2017 felony conviction for UPWF. Defendant, representing himself, called no witnesses. The trial court found defendant guilty on both counts.

¶ 10 Defendant's presentence investigation report (PSI) detailed his criminal background, including a 2003 conviction for residential burglary when he was a juvenile, for which he was sentenced to probation. His probation was revoked multiple times after a series of violations. His other convictions included possessing a firearm without a valid firearm owner's identification card, possession of a controlled substance, aggravated unlawful use of a weapon, and two other separate convictions for UPWF. The PSI reported that the mothers of at least two of his children had sought child support from him in court, but he was not ordered to provide child support because he lacked any income. Three character references wrote letters on defendant's behalf.

¶ 11 Attached to the PSI was a letter from Latoya Woods, Johnson's mother. The letter stated:

> "Hello my name is Latoya Woods the mother of Kobe Jamal Johnson whose life was taken on the morning of 10/28/23[.] Kobe is my 1st born he was and is still liked and loved by many[.]
>
> Kobe loved his family and his children very much[.] He also loved fishing and raising animals such as dogs[,] lizards[,] snakes[,] turtles[,] you name it.

Kobe leaves behind 3 children[,] which one of his sons was born in March of this year and due to the circumstances he will never get to meet him.

Kobe's passing has affected a lot of people in many different ways. As for me being his mother[,] my life won't ever be the same[.] I barely sleep some days[.] I don't eat[.] My performance at work has changed i[']m angry at the world most days and some days I feel like i[']m losing my mind in the worse way ever. As far as his children go they know Kobe hasn't been around but they are too young to really understand the reality of it all. All they know is he is in the sky. [A]nd his son knows he was hit by a car.

I would like to say to you Demetrius not for one moment do I think you would of thought that such a tragic event would happen on the morning of 10/28/23 but unfortunately when you reckless discharge of a firearm you never know the outcome of the situation.

So from today and the rest of my life I will mourn the loss of my son. Although I know whatever your sentencing may be it won't bring my son back but every day that you are away Kobe will be a constant reminder of why you are there.

Thank you Judge for allowing me to read this I am Kobe[']s] voice."

¶ 12 At sentencing, defendant was represented by the public defender. The trial court noted that it received the PSI, as well as the letters in support of defendant. The court asked, "Does the State have any formal evidence in aggravation?" The State answered, "We do, Judge. The mother of Kobe Johnson would like to read her victim statement." Addressing Woods, the court said, "I'm asking you, and what we've all agreed that you can do is to read your letter verbatim from the stand. So would you agree not to add, subtract to that and read it just as you've written?"

She answered, "Yes." Neither attorney objected, and Woods read her written letter in court.

¶ 13 During arguments, the State commented that Woods was "very gracious to the defendant" in saying that he probably did not intend for anyone to die. However, the State argued that "bad choices lead to bad consequences. And we all are responsible for the result of our own acts." The State described the crowded street on the night of the shooting, pointing out the danger of firing a gun there. The State emphasized defendant's criminal history, including multiple probation revocations after his conviction for residential burglary as a juvenile. He was convicted of multiple firearm offenses, including aggravated unlawful use of a weapon. He committed a firearm offense while he was on parole for a previous offense. The State further highlighted his "large number of children" and his lack of support for them. The State also emphasized that Johnson died because of defendant's actions, and the letters in support of defendant did not reflect this side of his character. The State asked for the maximum penalty allowed and asked for consecutive sentences.

¶ 14 Defense counsel emphasized that defendant did not contemplate that his conduct would lead to Johnson's death. He had never been convicted of or charged with a violent crime. He felt remorse for what happened, and he had substance abuse issues. Defense counsel asked for a sentence of six years for reckless discharge of a firearm and six years for UPWF, with the sentences to run concurrently.

¶ 15 The trial court agreed that defendant did not intend for anyone to die or contemplate the harm his conduct would cause, and this was a factor in mitigation. Nevertheless, it still found, as an aggravating factor, that defendant's conduct caused or threatened serious harm. The court also found defendant's criminal history was an aggravating factor. It noted that "his criminal history as an adult is extensive. It's one thing after another." The court told defendant that, although

none of his prior convictions were for crimes of violence, "[i]f you walk around with a gun and use a gun enough, someone is going to get hurt, directly or indirectly, and that's what happened here." The court found a strong basis for consecutive sentences because defendant could not "conform [himself] with the laws of society," especially gun laws, adding that it could not conclude that defendant was unlikely to commit further gun-related crimes in the future.

¶ 16 Regarding the letters supporting defendant, the trial court noted that it was good that defendant had a loving and caring family, but those family members only saw one side of defendant. They did not see defendant firing a gun at a party.

¶ 17 Addressing Woods's letter, the trial court commented:

> "[T]he State is also correct, how she was very gracious in her statements. But by reading the letter and hearing the comments, the pain of Ms. Woods certainly came through loud and clear. The impact this has had on Mr. Johnson's survivors is significant. Unfortunately, when you reckless discharge of a firearm, you never know the outcome of the situation. 'Thank you, Judge, for allowing me to read this; I am Kobe's voice.' "

¶ 18 The trial court found that consecutive sentences were necessary for the sake of protecting the public, including the "freedom to assemble and to go places, even in late night hours without the fear of being harmed by the direct or indirect effects of a gun, and given the defendant's criminal history." The court determined that probation was not appropriate for defendant's reckless discharge conviction, adding, "that offense is about as egregious as the offense can be when the result is a person's death." The court sentenced defendant to consecutive terms of nine years' imprisonment on count I, UPWF, and six years' imprisonment on count II, reckless discharge of a firearm.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 A. Rule 401 Admonishment

¶ 22 Defendant first asks us to vacate his convictions and remand for a new trial, arguing the trial court failed to properly admonish him pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before he waived his right to an attorney. Criminal defendants have "both the right to the assistance of counsel and the correlative right to proceed without counsel." *People v. Wright*, 2017 IL 119561, ¶ 39. A defendant's waiver of the right to counsel must be voluntary, knowing, and intelligent. *Id.* Rule 401(a) further specifies:

> "The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:
>
> (1) the nature of the charge;
>
> (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and
>
> (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court." Ill. S. Ct. R. 401(a) (eff. July 1, 1984).

Strict compliance with Rule 401(a) is not always necessary for an effective waiver of counsel, and substantial compliance is sufficient when the record demonstrates that the defendant's waiver was knowing and voluntary and the defendant was not prejudiced. *Wright*, 2017 IL 119561, ¶ 41. The proper interpretation of a supreme court rule is a question of law, which we review *de novo*. *People*

v. Snyder, 2011 IL 111382, ¶ 21.

¶ 23 Defendant contends that the trial court failed to substantially comply with Rule 401(a) because it neglected to admonish him that it could impose consecutive sentences. When defendant told the court he wished to represent himself at trial, the court reminded defendant that he was charged with a Class 2 felony, UPWF, and a Class 4 felony, reckless discharge of a firearm. The court also admonished defendant on the possible penalties if he were convicted—3 to 14 years' imprisonment for the Class 2 felony and 1 to 6 years' imprisonment for the Class 4 felony. But the court did not tell defendant that his sentences could be consecutive. Defendant further argues he was actually prejudiced by the court's omission, because the court eventually imposed consecutive sentences totaling 15 years' imprisonment, more than the statutory maximum for defendant's most serious offense. According to defendant, the court failed to substantially comply with Rule 401(a), so we should reverse.

¶ 24 However, defendant acknowledges that he did not preserve this issue. He did not object when the trial court admonished him, and, after his conviction, his attorney failed to raise this issue in a posttrial motion. See *People v. Sebby*, 2017 IL 119445, ¶ 48. However, he asks us to review this issue under the plain error doctrine, which

> "allows a reviewing court to consider unpreserved error when (1) 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) 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." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

Defendant contends that because the right to counsel is a fundamental constitutional right (see U.S. Const., amend. VI), the trial court's noncompliance with Rule 401(a) affected the integrity of the judicial process, constituting second-prong plain error.

¶ 25 In *People v. Ratliff*, 2024 IL 129356, the supreme court rejected this argument. There, the defendant chose to dismiss his appointed attorney and defend himself against the State's charge of robbery. *Id.* ¶¶ 3-4. After the trial court denied several of the defendant's motions, he pleaded guilty, and the court sentenced him to 15 years' imprisonment. *Id.* ¶ 6. On appeal, the defendant claimed that the trial court failed to comply with Rule 401(a). The supreme court upheld his conviction and sentence, finding that the defendant had not raised this issue in an objection or posttrial motion, and Rule 401(a) violations do not constitute second-prong plain error. *Id.* ¶ 20. The court explained that although Rule 401(a) is a " 'safeguard that is designed to help ensure that the defendant is afforded an important constitutional right' [citation], the rule is tangential to the constitutional right itself." *Id.* ¶ 44 (quoting *People v. Jackson*, 2022 IL 127256, ¶ 33). The court concluded, "Because a Rule 401(a) violation is not akin to structural error, such a violation, if not raised in a postplea or posttrial motion, is not cognizable as second-prong plain error but only as first-prong plain error." *Id.* ¶ 46.

¶ 26 Defendant does not rely on the first prong of the plain error doctrine, but only the second prong, so *Ratliff* clearly forecloses defendant's claim. In his reply brief, defendant acknowledges *Ratliff*, but he contends that the State failed either to cite *Ratliff* in its own brief or to argue that defendant forfeited or waived his claim. He urges us to find that the State forfeited any reliance on *Ratliff* and reverse his convictions. See *People v. Jones*, 2018 IL App (1st) 151307, ¶ 47 ("The State may forfeit a claim of forfeiture by failing to raise it."); see also *People v. Bahena*,

2020 IL App (1st) 180197, ¶ 29.

¶ 27 We decline to do so. First, "forfeiture is a limitation on the parties and not the reviewing court, and we may overlook forfeiture where necessary to obtain a just result or maintain a sound body of precedent." *People v. Holmes*, 2016 IL App (1st) 132357, ¶ 65. Second, *Ratliff* is a supreme court opinion that is directly on point, and the opinion was only just issued during the briefing schedule in this case. Especially for the sake of maintaining a sound body of precedent, we decline to ignore it. See *id.* Finally, defendant himself first raised the issue of plain error review in his opening brief and conceded that he failed to preserve this issue. Then, in its response, the State observed, "Defendant acknowledges that this issue was not preserved and asked that it be reviewed under plain error." The State denied that any error occurred, rather than discussing either prong of the plain error doctrine, but it clearly recognized that defendant failed to preserve his claim, as defendant admitted. Given this context, we follow *Ratliff* and find that any alleged error is not reviewable under the second prong of plain error review. Accordingly, we deny defendant's request to reverse his convictions.

¶ 28 B. UPWF

¶ 29 Defendant next claims that his UPWF conviction violates the United States and Illinois Constitutions. We review the constitutionality of a statute *de novo*. *People v. Webb*, 2019 IL 122951, ¶ 7.

¶ 30 The second amendment states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. This amendment guarantees an individual right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). In *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010), the United States Supreme Court held that the due process clause of the fourteenth

amendment (U.S. Const., amend. XIV) incorporates this right against the states. Then, in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022), the Court held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." It further explained, "Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.' " *Id.* (quoting *Konigsberg v. State Bar of California*, 366 U.S. 36, 50 n.10 (1961)).

¶ 31 Defendant first claims that the statute under which he was convicted, section 24-1.1(a) of the Criminal Code of 2012 (720 ILCS 5/24-1.1(a) (West 2022)), violates the second amendment. We disagree. Relying on the United States Supreme Court's clear statements in *Bruen* that the second amendment protects only the rights of "law-abiding citizens," we have repeatedly held that the second amendment permits a prohibition on felons possessing firearms. *Bruen*, 597 U.S. at 71; see *People v. Baker*, 2023 IL App (1st) 220328, ¶ 37; *People v. Brooks*, 2023 IL App (1st) 200435, ¶ 105; *People v. Mobley*, 2023 IL App (1st) 221264, ¶¶ 27-28. Defendant urges us to deviate from these decisions, but we decline to do so. Instead, we follow their holdings that section 24-1.1(a) does not violate the second amendment.

¶ 32 Defendant also argues that section 24-1.1(a) violates article I, section 22 of the Illinois Constitution, which states, "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed." Ill. Const. 1970, art. I, § 22. Defendant contends that, because this provision uses the phrase "individual citizen," it must guarantee a "broader, more explicit, and more specific personal right than the Second Amendment does." Defendant claims that the drafting history of article I, section 22, indicates that it confers an individual, not a collective, right. Indeed, based in part on this drafting history, our supreme court

acknowledged that article I, section 22, was "intended to broaden the scope of the right to arms from a collective one applicable only to weapons traditionally used by a regulated militia [citation] to an individual right covering a wider variety of arms." *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483, 491 (1984). Defendant claims that even if the second amendment does not protect felons, article I, section 22, does.

¶ 33 The State contends that even if article I, section 22, otherwise would encompass felons, the opening phrase, "Subject only to the police power" (Ill. Const., 1970, art. I, § 22), allows the state to regulate the possession of firearms by felons. Other panels of the appellate court have upheld section 24-1.1(a) based on this phrase. In *People v. Travis*, 2024 IL App (3d) 230113, ¶ 16, the defendant appealed his convictions for unlawful use of a weapon by a felon (UUWF), arguing those convictions violated both the United States and Illinois Constitutions. After finding the UUWF statute consistent with the second amendment, the appellate court turned to defendant's challenge under article I, section 22. The court found:

> "While it is well established that a state may impose greater protections under its state constitution and may not reduce its protections below the minimum required by the federal constitution [citation], defendant presents no compelling argument that Illinois has elected to impose greater protections, nor does our independent review find this to be the case." (Emphasis omitted.) *Id.* ¶ 42.

The court concluded that the UUWF statute was "a proper exercise of the state's police power, which allows the state to exert, through legislation, control over the dangers posed by firearms and the people who might use them to do harm." *Id.* ¶ 43. In *People v. Boyce*, 2023 IL App (4th) 221113-U, ¶ 18, we reached a similar conclusion, explaining:

> "Although defendant cites *Kalodimos*, he makes no coherent argument why the

> police power to regulate gun possession does not permit regulating the possession of firearms by felons. Accordingly, we find section 24-1.1 is a proper exercise of police power, and thus defendant has not shown that section violates the Illinois Constitution on its face or as applied to him."

The State urges us to apply the same reasoning here.

¶ 34 Defendant responds that we should not follow *Travis* because the use of the police power to prohibit felons possessing firearms is inconsistent with *Bruen*, which rejected any "means-end scrutiny" in favor of the "history and tradition" test. See *Bruen*, 597 U.S. at 19-22.

¶ 35 We find section 24-1.1(a) does not violate article I, section 22. Certainly, article I, section 22, guarantees an individual right to keep and bear arms. But that right is subject to the state's police power. In *Kalodimos*, the supreme court observed that it "has long recognized that the police power comprehends laws 'restraining or prohibiting anything harmful to the welfare of the people.' " *Kalodimos*, 103 Ill. 2d at 496 (quoting *People v. Warren*, 11 Ill. 2d 420, 425 (1957)). We agree with *Travis* that a ban on felons possessing firearms fits squarely within the state's police power. *Travis*, 2024 IL App (3d) 230113, ¶ 43; see *People v. Kelley*, 2024 IL App (1st) 230569, ¶ 25 (holding that a ban on felons possessing firearms did not violate article I, section 22, because the state's control over the possession and use of firearms under the police power "has long included 'prohibitions on the possession of firearms by felons' (Internal quotation marks omitted.) ") (citing *McDonald*, 561 U.S. at 786; *Heller*, 554 U.S. at 626-27); *Boyce*, 2023 IL App (4th) 221113-U, ¶ 18. Furthermore, we are not persuaded that *Bruen*'s history and tradition test compels a different result. Our supreme court has not adopted this test in interpreting article I, section 22. Moreover, since the second amendment does not apply to defendant, our interpretation of article I, section 22, cannot conflict with *Bruen*. We find section 24-1.1(a) to be consistent with

article I, section 22, so we affirm defendant's conviction for UPWF.

¶ 36 C. Sentencing Statement

¶ 37 Defendant also challenges his sentences. He claims that the trial court erred by allowing Woods to read a victim impact statement at his sentencing hearing and considering her statement at sentencing. When a sentence falls within the statutory limits, we review a trial court's sentencing determinations for an abuse of discretion. *People v. Minter*, 2015 IL App (1st) 120958, ¶ 147. "However, when a trial court considers an improper factor in aggravation, the trial court abuses its discretion." *Id.* Whether a trial court relied on an improper factor at sentencing is a question of law, which we review *de novo*. *People v. Larson*, 2022 IL App (3d) 190482, ¶ 29. "It is well established that where a sentencing hearing is conducted before the trial judge instead of a jury, 'the trial judge is presumed to consider only competent and relevant evidence in determining sentence.' " *People v. Ashford*, 168 Ill. 2d 494, 508 (1995) (quoting *People v. Morgan*, 112 Ill. 2d 111, 144 (1986)). Indeed, "there is a strong presumption that the trial court's sentence was based on proper legal reasoning, and a reviewing court should consider the record as a whole rather than a few isolated statements." *People v. Musgrave*, 2019 IL App (4th) 170106, ¶ 55. "A defendant bears the burden to affirmatively establish that his sentence was based on an improper factor." *Id.*

¶ 38 Defendant acknowledges that he failed to preserve this issue, but he asks us to reverse under the second prong of plain error review. He claims that the improper reading of Woods's statement was an error so serious that it affected the fairness of the sentencing hearing and challenged the integrity of the judicial process. See *Piatkowski*, 225 Ill. 2d at 565. Defendant bears the burden of persuasion on appeal. *People v. Raney*, 2014 IL App (4th) 130551, ¶ 41.

¶ 39 The Rights of Crime Victims and Witnesses Act (Act) states:

"A crime victim shall be allowed to present an oral or written statement in any case

> in which a defendant has been convicted of a violent crime or a juvenile has been adjudicated delinquent for a violent crime after a bench or jury trial, or a defendant who was charged with a violent crime and has been convicted under a plea agreement of a crime that is not a violent crime as defined in subsection (c) of Section 3 of this Act." 725 ILCS 120/6(a) (West 2022).

Furthermore, the Act's definition of "violent crime" includes "any felony in which force or threat of force was used against the victim." *Id.* § 120/3(c)(1).

¶ 40 Defendant argues that he was not convicted of a violent crime. Defendant did not threaten or direct force at Johnson. Instead, he fired his gun into the air. Therefore, according to defendant, his conviction for reckless discharge of a firearm does not qualify as a "violent crime." Defendant claims that the Act did not authorize the trial court to hear Woods's statement and consider it as a factor at his sentencing. He acknowledges that Woods's statement was also included in the PSI, and he does not challenge this inclusion. Instead, he argues only that the court should not have allowed Woods to read her statement at the sentencing hearing.

¶ 41 Neither party discusses the particular concerns that arise for appeals implicating the Act. Section 9 of the Act states, "Nothing in this Act shall create a basis for vacating a conviction or a ground for relief requested by the defendant in any criminal case." 725 ILCS 120/9 (West 2022). Similarly, article I, section 8.1(e), of the Illinois Constitution states, "Nothing in this Section or any law enacted under this Section shall be construed as creating (1) a basis for vacating a conviction or (2) a ground for any relief requested by the defendant." Ill. Const. 1970, art. I, § 8.1(e). Our supreme court has held that a defendant generally may not obtain appellate relief on the basis of improper victim impact statements at sentencing, although if improper evidence admitted at sentencing is "so unduly prejudicial that it renders the trial fundamentally unfair, the

Due Process Clause of the Fourteenth Amendment provides a mechanism for relief." *People v. Richardson*, 196 Ill. 2d 225, 233 (2001) (quoting *People v. Mitchell*, 152 Ill. 2d 274, 338 (1992)); see *Payne v. Tennessee*, 501 U.S. 808, 825 (1991).

¶ 42 We find that the reading of Woods's statement at sentencing did not challenge the integrity of the judicial process under the second prong of plain error review or render the sentencing fundamentally unfair under the due process clause. First, as noted above, defendant does not challenge the inclusion of Woods's statement in the PSI, but only her reading of the statement at the hearing. Therefore, the trial court could properly rely on the content of her statement. See *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 56 ("We emphatically reaffirm that the trial court may rely on all of the information in the unobjected to PSI to the extent it believes it is relevant and reliable." (Emphasis omitted.)). Second, the trial court's statement that "we've all agreed" that Woods could read her statement verbatim suggests that defense counsel agreed to allow Woods to read her statement. Admittedly, the record does not contain any conversation where defense counsel expressed this agreement. But defense counsel also did not object to this statement from the court.

¶ 43 More importantly, we do not find Woods's statement itself to be sufficiently prejudicial to warrant reversal. Addressing defendant, Woods said:

> "[N]ot for one moment do I think you would have thought that such a tragic event would happen on the morning of 10/28/23. But unfortunately when you reckless discharge of a firearm, you never know the outcome of the situation.
>
> So from today and the rest of my life I will mourn the loss of my son. Although I Know whatever your sentencing may be it won't bring my son back. But every day that you are away, Kobe would be a constant reminder of why you

are there."

The State only briefly referred to Woods's statement in its argument, commenting that Woods was "very gracious to the defendant" by acknowledging he did not intend to cause her son's death. The State did not otherwise rely on Woods's statement, focusing instead on the facts of defendant's offense, his prior convictions, especially his history of committing crimes with guns, his lack of support for his children, and Johnson's death. See *Raney*, 2014 IL App (4th) 130551, ¶ 49 (finding that an improper victim impact statement was not reversible error, in part because the State did not rely on that statement for its sentencing argument). The trial court agreed that Woods's statement was especially "gracious." Considering the State's and the court's comments and the content of Woods's statement, we do not find that her statement was " 'so unduly prejudicial that it render[ed] the sentencing hearing fundamentally unfair.' " *Id.* ¶ 46 (quoting *People v. Harth*, 339 Ill. App. 3d 712, 715 (2003)).

¶ 44 Most importantly, we are not persuaded that the court imposed a longer sentence because Woods read her statement. The court's sentencing decision was comprehensive, addressing the PSI, defendant's criminal history, the letters in support of defendant, defendant's lack of intent to harm anyone, and Johnson's death. The court especially emphasized defendant's criminal history and his failure to "conform [himself] with the laws of society." Although the court discussed Woods's statement in one paragraph, we do not believe this amounts to a denial of due process. See *People v. Merrick*, 2012 IL App (3d) 100551, ¶ 39 ("The trial court referred to the victim impact statements in one paragraph of an otherwise lengthy oral sentencing order. Moreover, the defendant put forth substantial evidence that the trial court carefully considered. Accordingly, we believe that the defendant was not deprived of due process at his sentencing hearing."). Therefore, we find that Woods's reading of her statement does not constitute reversible

error.

¶ 45 D. Extended-Term Sentence

¶ 46 Finally, defendant contends that the trial court erroneously found his Class 4 felony conviction eligible for extended-term sentencing. Generally, "[e]xtended-term sentences may be imposed only for offenses within the most serious class of offense of which a defendant is convicted." *People v. Moore*, 2018 IL App (2d) 160277, ¶ 36; 730 ILCS 5/5-8-2(a) (West 2022). However, extended-term sentences may be imposed "on separately charged, differing class offenses that arise from unrelated courses of conduct." *People v. Coleman*, 166 Ill. 2d 247, 257 (1995). Offenses arise from "unrelated courses of conduct" if there is a "substantial change in the nature of [defendant's] criminal objective." (Internal quotation marks omitted.) *People v. Bell*, 196 Ill. 2d 343, 351 (2001).

¶ 47 Here, defendant contends there was no substantial change in the nature of his criminal objective because he simply fired a gun into the air and left. He asks us to reduce his sentence for reckless discharge of a firearm to three years' imprisonment, the statutory maximum for a nonextended Class 4 felony. See 730 ILCS 5/5-4.5-45(a) (West 2022). Although he failed to preserve this issue, "[t]he imposition of an unauthorized sentence affects substantial rights," so he asks us to review it under the second prong of plain error review. *People v. Hicks*, 181 Ill. 2d 541, 545 (1998).

¶ 48 The State agrees that defendant's possession of a firearm and reckless discharge of that firearm were related, and there was no change in his criminal objective. Therefore, the State concedes that defendant's conviction for reckless discharge was not eligible for extended-term sentencing. The State also concedes that the unauthorized sentence was plain error.

¶ 49 We accept the State's concession. The proper remedy here is to vacate the improper

extended-term sentence and impose the maximum nonextended term. *People v. Brusaw*, 2023 IL 128474, ¶¶ 32-33. The maximum sentence for defendant's Class 4 felony is three years' imprisonment. See 730 ILCS 5/5-4.5-45(a) (West 2022). Therefore, we vacate defendant's six-year sentence for reckless discharge, and we impose a three-year term.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we vacate defendant's six-year sentence for reckless discharge of a firearm and impose a three-year sentence, and we otherwise affirm the trial court's judgment.

¶ 52 Affirmed in part and vacated in part.