2025 IL App (4th) 241038-U

NO. 4-24-1038

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 30, 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
KINNETH D. CHIPMAN,	)	No. 24CF52
Defendant-Appellant.	)	
	)	Honorable
	)	John P. Vespa,
	)	Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding defendant forfeited his claim the trial court improperly considered a factor inherent in the offense as an aggravating factor by failing to raise it in a postsentencing motion and the plain error doctrine does not apply because no clear or obvious error occurred. Defendant forfeited his ineffective assistance of counsel argument by failing to raise it in his opening brief.

¶ 2 Defendant, Kinneth D. Chipman, appeals following his conviction for aggravated robbery (720 ILCS 5/18-1(b)(1) (West 2022)). On July 24, 2024, the trial court sentenced him to eight years' imprisonment. On appeal, defendant argues the court improperly considered a factor inherent in the offense as a factor in aggravation, constituting an improper double enhancement. He asks this court to reduce his sentence or vacate his sentence and remand for resentencing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 2024, a grand jury indicted defendant on one count of aggravated

robbery, a Class 1 felony (720 ILCS 5/18-1(b)(1), (c) (West 2022)), alleging he took money from the person of Amy Beecham by the use of force or threatening the imminent use of force by indicating with his actions that he was presently armed with a firearm or other dangerous weapon. The statutory sentencing range for this offense is 4 to 15 years in prison (730 ILCS 5/5-4.5-30(a) (West 2022)).

¶ 5 Defendant's jury trial occurred on May 6, 2024. The evidence established that on the evening of January 12, 2024, Beecham was working as a cashier at a BP gas station in Mapleton, Illinois. A male individual wearing a mask entered the store, went up to the counter, and demanded Beecham "give [him] the F-ing money." As she "fumbled around," the individual lifted his shirt up to display a black handgun in his waistband. Beecham gave the individual approximately $200 to $230, and he left the store. Excerpts from the gas station's surveillance video were played for the jury. Following deliberations, the jury found defendant guilty of aggravated robbery.

¶ 6 On July 24, 2024, the trial court conducted defendant's sentencing hearing. Defendant's presentence investigation report (PSI) showed a 2008 felony juvenile adjudication for burglary, a 2009 felony conviction for burglary, a 2011 felony conviction for unlawful possession of a stolen motor vehicle, and a 2020 felony conviction for aggravated fleeing or attempting to elude a peace officer. The PSI also showed four misdemeanor convictions and eight traffic offenses.

¶ 7 The State recommended a 10-year prison sentence. During its argument, the State acknowledged it was "aware that the Court cannot use the underlying facts of the case in aggravation."

¶ 8 Defense counsel requested a term of probation. In mitigation, counsel argued, "I

don't think that my client either contemplated nor caused any serious physical harm to [the victim]." She noted, based on the evidence presented at trial, the alleged firearm used in the commission of the offense was likely fake. Counsel concluded, "So that being said, I don't think there is any argument that can be made that there is any threat of a physical injury to the alleged victim."

¶ 9 In his statement in allocution, defendant informed the trial court he was participating in a reentry program and a trustee in the county jail. Additionally, he obtained a food handling license and cardiopulmonary resuscitation certification while incarcerated. Defendant stated he planned to become an emergency medical technician or welder once he was released back into the community. According to defendant, he had custody of his daughter until she was five years old and hoped to regain custody of her. He also discussed his history of working as a semitruck driver until he sustained a foot injury. In response, the State noted defendant was fired from his trustee position in the jail after multiple rule violations.

¶ 10 The trial court sentenced defendant to eight years' imprisonment. The court stated it considered the PSI, the evidence presented, the arguments of the parties, defendant's statement in allocution, the financial impact of incarceration, and the statutory factors in aggravation and mitigation. It found no statutory factors in mitigation applied. As to the statutory factors in aggravation, the court found (1) defendant's conduct threatened serious harm, (2) defendant had a history of criminal activity, and (3) the sentence was necessary to deter others from committing the same crime. The court found defendant's rehabilitative potential was "middle of the road which places him way ahead of the vast majority of people."

¶ 11 Defendant filed a motion to reconsider his sentence, which the trial court denied.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues the trial court improperly considered in aggravation a factor inherent in the offense, amounting to an improper double enhancement.

¶ 15 A. Forfeiture

¶ 16 Initially, the State argues defendant forfeited this issue because he did not raise an objection at sentencing and, although he filed a motion to reconsider his sentence, he failed to do so with sufficient specificity. Defendant maintains this sentencing claim was preserved for review in his postsentencing motion.

¶ 17 Section 5-4.5-50(d) of the Unified Code of Corrections (730 ILCS 5/5-4.5-50(d) (West 2022)) requires a defendant to preserve any sentencing issues for review in a postsentencing motion. The central purpose of a postsentencing motion "is to give the reviewing court the benefit of the trial court's judgment on the specific allegation." *People v. Johnson*, 250 Ill. App. 3d 887, 893 (1993). "Broad and general allegations in a [postsentencing] motion are inadequate to advise the court of the challenge being raised, and are inadequate to preserve an issue for appellate review." *Johnson*, 250 Ill. App. 3d at 893. Unlike other sentencing issues, however, a defendant is not required to object to the trial court's reliance on an improper factor at sentencing, as this would entail interrupting the court during its pronouncement of the sentence. *People v. Martin*, 119 Ill. 2d 453, 460 (1988). Thus, the only question here is whether defendant properly raised this issue in his postsentencing motion.

¶ 18 In the present case, defendant's motion to reconsider his sentence did not assert this claim of error with sufficient specificity to advise the trial court of the challenge being raised. Rather, the motion cursorily alleged the court "improperly weighed and considered factors in aggravation." No mention was made of an improper double enhancement or consideration of a

factor inherent in the offense. Nor did defense counsel argue this particular issue when given the opportunity to do so at the hearing on the motion. Therefore, we agree with the State that defendant forfeited this issue.

¶ 19 B. Plain Error

¶ 20 Defendant argues we can review this forfeited issue for first-prong plain error. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010). The plain error doctrine provides "a narrow and limited exception" to the rule of forfeiture. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). In the sentencing context, the reviewing court may consider an unpreserved error where "(1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Hillier*, 237 Ill. 2d at 545. The first step in this analysis is to determine whether a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545. Accordingly, this court must initially address whether defendant's claim rises to the level of clear or obvious error.

¶ 21 The parties dispute the appropriate standard of review. Defendant asserts we should review the trial court's alleged sentencing error *de novo*. The State asserts we should review whether the court abused its discretion. Generally, we review a sentence imposed by the court for an abuse of discretion. *People v. Wheeler*, 2019 IL App (4th) 160937, ¶ 39. However, whether the "court relied upon an improper factor at sentencing is a question of law reviewed *de novo*." *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 65. Because defendant alleges the court improperly applied in aggravation a factor inherent in the offense, we will review this issue *de novo*. *People v. Garcia*, 2018 IL App (4th) 170339, ¶ 31. The defendant bears the burden of affirmatively establishing the court relied upon an improper factor at sentencing. *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009).

¶ 22 In determining an appropriate sentence, a trial court may consider a defendant's criminal conduct as a factor in aggravation where the "conduct caused or threatened serious harm." 730 ILCS 5/5-5-3.2(a)(1) (West 2022). However, it is also well established that a factor inherent in the offense should not also be used as an aggravating factor in determining the sentence for that offense. *People v. Saldivar*, 113 Ill. 2d 256, 271-72 (1986). "Generally, double enhancements are prohibited because courts assume that the legislature, in designating the appropriate range of punishment for an offense, necessarily considered the factors inherent in the offense." *Garcia*, 2018 IL App (4th) 170339, ¶ 29.

¶ 23 Still, the prohibition against double enhancements does not prevent the trial court from considering "the nature and circumstances of the offense, including the nature and extent of each element of the offense as committed by the defendant." (Internal quotation marks omitted.) *Saldivar*, 113 Ill. 2d at 268-69. Even when the threat of serious harm is arguably implicit in the offense, our supreme court has held the court may properly consider the varying degrees of harm or threatened harm as an aggravating factor without running afoul of the prohibition against a double enhancement. *Saldivar*, 113 Ill. 2d at 269. In other words, "[a]nything 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.

¶ 24 To prove the offense of aggravated robbery, the State must establish (1) the defendant knowingly took property from the victim "by the use of force or by threatening the imminent use of force" and (2) "while indicating verbally or by his or her actions to the victim that he or she is presently armed with a firearm or other dangerous weapon, including a knife, club, ax, or bludgeon." 720 ILCS 5/18-1(a), (b)(1) (West 2022). Because defendant could not have been

guilty of aggravated robbery unless he used force *or* threatened the use of imminent force, we need only analyze whether (1) the trial court's consideration of the threat of serious harm was beyond the minimum conduct necessary to commit the offense and (2) the record establishes the weight the court gave to the threat of serious harm had an insignificant effect on defendant's sentence.

¶ 25 In this case, the trial court made the following comments regarding its consideration of the statutory factors in mitigation when announcing defendant's sentence:

> "THE COURT: *** I think that when I look at subparagraph 1, the defendant's criminal conduct neither caused nor threatened serious physical harm to another, I think that his criminal conduct did threaten serious physical harm to another. Wasn't that a huge part of this offense, the threat of serious physical harm? Now there is a second part to that in some people's mind, whether he could have carried it out, that's not part of this subparagraph. Right, [defense counsel]?
>
> MS. KAMP [(DEFENSE COUNSEL)]: I would disagree with that.
>
> THE COURT: Why?
>
> MS. KAMP: Because there isn't a serious threat of physical harm if there isn't an ability to carry it out in my opinion.
>
> THE COURT: Well, we—you and I will differ on that. I'm going to not find, then, that that statutory factor in mitigation applies.
>
> That was the whole thrust of him doing that. And defining the word 'that,' walking in there and lifting up the shirt showing the gun in the waistband, the point of that was to scare the clerk into not arguing with him and to scare the clerk into cooperating. And that scaring would happen due to a threat of serious physical harm, that serious physical harm being shot.

No statutory factors in mitigation apply."

The court then considered the following statutory aggravating factors, stating, "These statutory factors in aggravation apply: The defendant's conduct threatened serious harm. The defendant has a history of criminal activity. The sentence is necessary to deter others from committing the same crime." The remainder of the court's comments focused on defendant's rehabilitative potential.

¶ 26 The trial court's statements at sentencing indicate it did not consider any conduct beyond what was inherent in the offense of aggravated robbery. At trial, Beecham testified defendant displayed the alleged firearm in his waistband and demanded money from her twice. Beecham's testimony was corroborated by the store's surveillance video, which did not depict any additional threatening behavior by defendant beyond what was described by Beecham. Based on the evidence presented at trial, defendant's actions did not exceed "the baseline conduct of merely displaying a firearm and demanding money"—in other words, the minimum conduct necessary to commit aggravated robbery. *Hibbler*, 2019 IL App (4th) 160897, ¶ 79. Thus, we conclude the court treated a factor inherent in the offense as a factor in aggravation.

¶ 27 However, even when the trial court considers an improper factor at sentencing, remand is not required if it can be determined "from the record that the weight placed on the improperly considered aggravating factor was so insignificant that it did not lead to a greater sentence." *People v. Heider*, 231 Ill. 2d 1, 21 (2008). "In determining whether the trial court based the sentence on proper aggravating and mitigating factors, a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court." *Dowding*, 388 Ill. App. 3d at 943. The reviewing court may additionally consider "(1) whether the trial court made any dismissive or emphatic comments in reciting its consideration of the improper factor; and (2) whether the sentence received was substantially less than the maximum sentence

permissible by statute." *Dowding*, 388 Ill. App. 3d at 945. "There is a strong presumption that the trial court relied on proper legal reasoning in determining a sentence." *People v. Brown*, 2023 IL App (4th) 220476, ¶ 43.

¶ 28 Here, the record establishes the weight the trial court gave to the threat of serious harm was so insignificant that it did not lead to a greater sentence. When read in context, most of the court's comments as to the threat of serious harm were a response to defendant's argument the court should consider in mitigation the fact his conduct neither caused nor threatened serious physical harm. See 730 ILCS 5/5-5-3.1(a)(1) (West 2022). This was a proper sentencing consideration. After the court concluded its discussion of the statutory mitigating factors, it only briefly mentioned three statutory aggravating factors, without any emphatic comments. See *People v. Reed*, 376 Ill. App. 3d 121, 128 (2007) ("To obtain a remand for resentencing, *** [the] defendant must show more than the mere mentioning of an improper fact.").

¶ 29 We note defendant's sentence was eight years—well below the maximum sentence and certainly justified based on the other independent aggravating factors considered by the trial court, including his extensive criminal history and the need for deterrence. The State also acknowledged in its argument the court could not consider the elements of the offense as an aggravating factor. *Cf. Martin*, 119 Ill. 2d at 462 (finding the trial court relied on an improper factor where the State emphasized the improper factor and the defendant was given the maximum sentence). As such, there is no indication in the record the court improperly placed significant weight on the threat of serious harm in determining the appropriate sentence. Because we find no clear or obvious error occurred, we decline to apply the plain error doctrine.

¶ 30 C. Ineffective Assistance of Counsel

¶ 31 Finally, defendant argues, for the first time in his reply brief, that counsel rendered

ineffective assistance by failing to properly preserve the double enhancement issue for review. Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020) provides "[p]oints not argued [in the appellant's brief] are forfeited and shall not be raised in the reply brief." "Our supreme court 'has repeatedly held an appellant's failure to argue a point in the opening brief results in forfeiture under *** Rule 341(h)(7).' " *People v. Polk*, 2014 IL App (1st) 122017, ¶ 49 (quoting *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 23). Accordingly, defendant forfeited his claim of ineffective assistance of counsel.

¶ 32 III. CONCLUSION

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

¶ 34 Affirmed.