

2011 IL App (2d) 100216-U
No. 2—10—0216
Order filed August 3, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08—CF—4553
)	
TOMIE M. WILLIAMS,)	Honorable
)	Joseph G. McGraw,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: The defendant was proved guilty beyond a reasonable doubt of aggravated criminal sexual abuse. In addition, the trial court did not abuse its discretion in denying the defendant's request to proceed *pro se* at a pretrial hearing nor did it err in ordering the defendant to serve an indeterminate term of mandatory supervised release.

¶ 1 Following a bench trial, the defendant, Tomie Williams, was found guilty of one count of predatory criminal sexual assault (720 ILCS 5/12—14.1(a)(1) (West 2008)) and three counts of aggravated criminal sexual abuse (720 ILCS 5/12—16(c)(1)(I) (West 2008)). On appeal, the defendant argues that he was not proved guilty beyond a reasonable doubt on one count of

aggravated criminal sexual abuse. The defendant also argues that the trial court erred in (1) denying his request to proceed *pro se* at a critical stage of the proceedings and (2) failing to set a specific term of mandatory supervised release (MSR) on his sentence for predatory criminal sexual assault. We affirm.

¶ 2

I. BACKGROUND

¶ 3 On December 3, 2008, the defendant, Tomie Williams, was charged by indictment with one count of predatory criminal sexual assault (720 ILCS 5/12—14.1(a)(1) (West 2008)) and three counts of aggravated criminal sexual abuse (720 ILCS 5/12—16(c)(1)(I) (West 2008)). Count I alleged that the defendant committed an act of sexual penetration by placing his penis in the vagina of A.M., the victim. The aggravated criminal sexual abuse counts alleged that, for purposes of sexual gratification, the defendant touched the victim's buttocks with his penis (count II), touched the victim's vagina with his hand (count III), and touched the victim's hand with his penis (count IV). All counts alleged that the defendant was 17 years of age or older and that the victim was under the age of 13 at the time the alleged acts were committed.

¶ 4 On March 30, 2009, the State filed a motion to allow the victim's hearsay statements, made to a child investigator, Marisol Tischman, and recorded on DVD, into evidence pursuant to section 115—10 of the Code of Civil Procedure (the Code) (725 ILCS 5/115—10 (West 2008)). On June 1, 2009, the State amended the motion to add a request that hearsay statements made by the victim to her foster mother also be admitted at trial. At a hearing on that date, defense counsel agreed to stipulate to the foundation for the DVD recordings of the victim's statements to Tischman and to Tischman's credentials. The Stated noted that there were two DVDs: People's Exhibit No. 1, an interview on August 13, 2007, and People's Exhibit No. 2, an interview on September 22, 2008. The

trial court requested that the stipulation be reduced to writing and signed by the defendant. The parties agreed to continue the matter until the next day.

¶ 5 On June 2, 2009, defense counsel informed the trial court that the defendant did not wish to sign the stipulation and that the defendant wanted to make a motion to represent himself *pro se*. The following discussion ensued:

¶ 6 “THE COURT: All right. Mr. Williams, you may address the Court.

¶ 7 DEFENDANT ***: I ain’t going to sign those papers because I ain’t seen the DVDs yet. I don’t know who made them.

¶ 8 THE COURT: Here is the question that I pose to you. So try to pay attention, okay?

¶ 9 Why do you want to represent yourself? That’s the question that I’m asking.

¶ 10 DEFENDANT ***: I just need a new lawyer. I feel like I’m not getting represented right.

¶ 11 THE COURT: Anything else?

¶ 12 DEFENDANT ***: No, sir.

¶ 13 THE COURT: Your request is denied.”

¶ 14 The trial court then asked the defendant if he wanted to proceed *pro se* because he did not want to sign the stipulation. The defendant stated that he did not want to sign it because he did not know anything about the recorded interviews. The defendant further stated that defense counsel “don’t come to see me and talk to me about nothing.” Defense counsel responded that the defendant was aware of the statements against him and of the medical evidence. The trial court again indicated that the defendant’s request to proceed *pro se* was denied. The stipulations were not signed and the matter was continued for a 115—10 hearing.

¶ 15 On June 29, 2009, the 115—10 hearing was held. At the outset, defense counsel indicated that the defendant had seen both recorded interviews in their entirety and that she had reviewed the medical evidence with the defendant. Defense counsel stated that there was no stipulation as to Tischman’s credentials or the foundation for the DVDs of the recorded interviews. Defense counsel agreed that the trial court could watch the recorded interviews at another time rather than in court.

¶ 16 Dorothy Davis testified that she had been the victim’s foster parent since May 2008. The victim was born July 12, 1998. Prior to the victim being placed with her, she was informed that the victim had been “abused.” Sometime in the summer of 2008, while doing laundry, Davis noticed unusual stains on the victim’s underwear. Davis questioned the victim about the stains. Davis asked the victim if anyone had ever touched her “private parts.” The victim said “yes.” Davis asked who had touched her. The victim stated that her little sister’s father, “Reese,” put his hands on her private parts. The victim stated that it happened “a lot of times.”

¶ 17 Tischman testified that she was the lead forensic interviewer for the Carrie Lynn Children’s Center. The center assists in the investigation of and provides service to children that are physically or sexually abused. Tischman interviewed the victim on August 13, 2007, and again on September 22, 2008. Tischman testified as to her credentials and provided testimony to establish a foundation for the recorded interviews. She had no other conversations with the victim other than what was reflected on the recordings. Thereafter, the trial court indicated that it would review the recorded interviews at a later time and that the matter would be continued for argument and decision on the State’s 115—10 motion.

¶ 18 During the 2007 interview, the victim told Tischman that she was living with “Miss Minnie.” She did not live with her mother because the defendant had hit her mother and her siblings. The

victim stated that the defendant touched her private part. She pointed to her vagina when asked what she meant by that claim. The defendant would touch the victim while the victim's mother was at work. The defendant touched her on more than one occasion.

¶ 19 The defendant first touched the victim's privates when she was seven years old. When she was taking a bath, the defendant told her to get out of the bathroom. When she went into the hall, the defendant touched her privates with his fingers. She was not dressed because she had just got out of the bathtub. When the defendant heard others coming, he told her to get back into the tub. The defendant touched the inside of her private part and also touched her "bottom" (buttocks). No other part of the defendant's body touched her.

¶ 20 The victim claimed that the defendant had also touched her private with his hand while inside the victim's bedroom. She was standing up when the defendant touched the outside of her private part. She was not wearing clothes at the time because she was in the process of changing into her pajamas. The defendant told the victim not to tell anyone that he touched her, or else he would kill her little sister. When asked whether the defendant ever showed his penis to the victim or asked her to do anything to his privates, the victim shook her head "no."

¶ 21 The victim indicated that the last time the defendant touched her private part was when she was eight years old. On that occasion, the victim was in the living room and the defendant touched her private part with his hand over her clothes.

¶ 22 In the 2008 interview with Tischman, the victim stated that she had been living with a new foster mother, Dorothy Davis, for the past month. The victim asserted that she was nine years old and in fourth grade when the defendant last touched her. She was last touched before she was placed with her former foster parent, Miss Minnie, in the summer of 2007. Upon further questioning, the

victim said that the abuse last occurred before her ninth birthday. After she lived with Miss Minnie, she returned to live with her mother. At a later date, she went to live with Davis. No abuse occurred when the victim was at her mother's house after living with Miss Minnie. The defendant no longer lived with her mother at that time. The victim was eight years old when the abuse started, and nine years old when it ended.

¶ 23 Tischman asked the victim about what occurred the last time the defendant touched her. The victim replied that the defendant put her in her mother's room while her mother was at work and touched her private parts with his private parts and with his fingers. The defendant took off her clothes before he touched her. The defendant's privates touched the outside of her privates, but never went inside her privates. The victim stated that "white stuff" came out of the defendant's privates. The white stuff went in a tissue but never went on her.

¶ 24 The first time the defendant touched the victim, he touched her while she was on his lap inside her bedroom. The defendant touched her under her pajama pants and underwear. The defendant touched her inside her private area. The defendant said nothing to her that time. The victim further told Tischman that the defendant touched her on more than one occasion, but she was not sure how often it had happened. The victim said that the defendant made her touch his private part up and down with her hand. The defendant's privates touched her buttocks, but did not go inside her buttocks. Aside from two bedrooms inside the house, the victim was not abused anywhere else.

¶ 25 On September 2, 2009, the trial court granted the State's motion to admit the victim's out-of-court statements. The trial court found that the "time, content, and circumstances" of the victim's statements to Davis and Tischman offered "sufficient safeguards for reliability." The trial court

indicated, however, that it would only admit the hearsay statements if and after the victim testified at trial.

¶ 26 On November 30, 2009, the defendant waived his right to trial by jury and a bench trial commenced. The victim testified that she was born on July 12, 1998. She was living with her foster mother, Davis. The defendant was her mother's boyfriend and is the father of her half-sister. The victim identified the defendant in court as "Reese." The defendant touched her on her private part, her butt, and her chest. The defendant touched her before she lived with her previous foster mother, Miss Minnie. When she was placed back at her mother's house between placements with Miss Minnie and her current foster mother, Davis, the defendant did not touch her during that placement. However, she did see the defendant during that time.

¶ 27 The victim testified that on one occasion in her bedroom, the defendant touched the outside of her private part underneath her clothes with his hand. When asked how he touched her underneath her clothes, the victim initially did not respond but eventually acknowledged that it was "too tough of a question" to answer. The victim further testified that the defendant had her touch his private part with her hand and that he touched her private part with his private part. When their privates touched, the victim no longer had clothes on because the defendant had directed her to take off her clothes. The victim testified that the defendant touched her a lot of times in places that he should not have touched her. She could not remember every time because it happened a lot of times. The victim could not recall every room where such touching occurred. She did remember being touched in the living room, her bedroom, and in her mother's bedroom.

¶ 28 When the defendant touched her private part with his private part, he only touched the outside of her private part. He tried to put his private part inside her private part. When asked what

happened when he tried that, the victim did not respond. The victim acknowledged that the abuse was hard to talk about. She said it felt “weird” when the defendant tried to put his private part inside her private part. This happened more than once and in fact happened “a lot.” When asked what the defendant would say when he was touching her private parts, the victim responded that she did not want to say because it was “too tough” to answer.

¶ 29 The victim testified that the defendant touched her butt and chest with his hand. When touching her butt, the defendant only used his hand. No other part of the defendant’s body ever touched the victim’s butt. The victim did not remember what the defendant would do with his hand when he touched her butt. The victim touched the defendant’s private with her hand because he asked her to do so. When asked what the defendant would make her do with her hand on his private, the victim stated that she did not want to talk about it. However, the victim testified that she had seen a white substance come out of the defendant’s private, which he would put in a napkin and throw away. The white stuff never touched her. She did not know, did not remember, and did not want to talk about what happened before the white stuff came out. She did not tell anyone about the abuse because she was scared. She was afraid the defendant would hurt her mother. The defendant had threatened to do so and she had seen him hurt her mother and siblings in the past.

¶ 30 On cross-examination, the victim testified that she was nine years old when she went to live with Miss Minnie. After that, she lived with her mother for about five months before she was placed with Davis. Besides the victim, Miss Minnie had three other foster daughters and a foster son. The foster son was about four years old. There was no further cross-examination.

¶ 31 Davis testified at trial. Davis’s testimony largely mirrored that which she had previously given during the 115—10 hearing.

¶ 32 Thereafter, the State indicated that it wished to play the victim's recorded interviews. Defense counsel objected on the basis that the victim's trial testimony was too vague to be considered testimony under section 115—10 of the Code. Defense counsel pointed out that the victim had, several times, stated that she did not want to talk about it, it was too painful or that she did not remember. The State argued that the recordings were admissible under section 115—10 because the victim testified about what happened and was available for cross-examination. The State argued that any unresponsiveness to questions went to the victim's credibility. The trial court found that the victim had testified as to the material elements of the charged offenses and was available for cross-examination. The trial court noted that any "omission or inconsistency or unresponsiveness all goes to the weight to be accorded her testimony." The trial court overruled the defendant's objection and allowed the State to play the DVD recordings of the victim's interviews with Tischman. Defense counsel did not object to the foundation of the DVDs.

¶ 33 Dr. Raymond Davis testified that he is a pediatrician. He had extensive training and experience specific to sexual abuse and physical abuse of children. He examined the victim on September 23, 2008. The genital exam showed a defect known as a "hymenal cleft" in which there was absent or torn hymenal tissue. A normal 10-year old does not have absent or torn hymenal tissue. As such, the condition raised a high suspicion of sexual abuse. The victim's urine test and cultures revealed positive results for chlamydia, a commonly found sexually transmitted disease. Both the victim's rectal culture and vaginal culture were positive for chlamydia. Dr. Davis testified that chlamydia is consistent with a finding of sexual abuse for the victim's age group.

¶ 34 The defendant testified on his own behalf that he did not place his penis inside the victim's vagina and did not have the victim masturbate his penis. He did not place his hands on the victim's

chest nor did he place his fingers on or inside her vagina. The defendant also denied touching the victim's buttocks with any part of his body. The defendant testified that he was 31 years old.

¶ 35 The trial court found the defendant guilty of all counts. With respect to count II, the trial court acknowledged that the victim testified at trial that the defendant touched her butt only with his hands. However, in her 2008 interview with Tischman, the victim stated that the defendant touched her buttocks with his private. In light of the victim's age and the numerous events over numerous years, the trial court did not find the variation in testimony to be a "material discrepancy." The trial court stated that it was convinced beyond a reasonable doubt that the defendant knowingly touched the victim's buttocks with his penis for the purpose of sexual gratification.

¶ 36 Following the denial of his motion for a new trial, the defendant was sentenced to 25 years' imprisonment for predatory criminal sexual assault (count I). In addition, an indeterminate term of MSR, of between three years and natural life, was imposed for that count. For the three counts of aggravated criminal sexual abuse (counts II, III, and IV), the defendant was sentenced to five years' imprisonment on each count. The latter sentences were to be served concurrent to each other, but consecutive to the sentence for predatory criminal sexual assault. Following the denial of his motion to reconsider his sentence, the defendant filed a timely notice of appeal.

¶ 37

II. ANALYSIS

¶ 38 On appeal, the defendant argues that (1) he was not proved guilty beyond a reasonable doubt of aggravated criminal sexual abuse as alleged in count II, (2) the trial court erred in refusing his request to proceed *pro se* at the 115—10 hearing, and (3) the trial court erred in setting an indeterminate term of MSR on his sentence for predatory criminal sexual assault.

¶ 39 “When a court is faced with a challenge to the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *People v. Moore*, 375 Ill. App. 3d 234, 238 (2007). “The reviewing court will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses and will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant’s guilt.” *Id.*

¶ 40 To prove aggravated criminal sexual abuse (count II), the State needed to show that (1) defendant was 17 years of age or older when he (2) committed “an act of sexual conduct” with (3) a victim under the age of 13. 720 ILCS 5/12—16(c)(1)(I) (West 2008). “Sexual conduct” is “any intentional or knowing touching or fondling by the victim or the accused, either directly or through clothing, of * * * any part of the body of a child under 13 years of age * * * for the purpose of sexual gratification or arousal of the victim or the accused.” 720 ILCS 5/12—12(e) (West 2008).

¶ 41 In the present case, there was sufficient evidence to find the defendant guilty of aggravated criminal sexual abuse as alleged in count II beyond a reasonable doubt. It is undisputed that defendant was over the age of 17 and the victim was under the age of 13 when the offense occurred. Additionally, in her September 2008 statement, the victim stated that the defendant touched her butt with his penis. It is well established that the testimony of a single witness is sufficient to convict if the testimony is positive and credible, notwithstanding the fact that the testimony was contradicted by the accused. *People v. Daily*, 41 Ill. 2d 116, 120 (1968). Finally, the trial court could reasonably

infer that the defendant engaged in this act for the purpose of sexual arousal. See *People v. Ikpoh*, 242 Ill. App. 3d 365, 387 (1993) (sexual arousal may be inferred from the circumstances).

¶ 42 The defendant asserts that the victim’s 2008 hearsay statement was not properly admissible under section 115—10 because the minor did not testify at trial about the alleged penis-to-buttocks contact. Section 115—10 allows a victim’s hearsay statements to be admitted at trial if:

¶ 43 “(1) The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and

(2) The child * * * either:

(A) testifies at the proceeding; or

(B) is unavailable as a witness and there is corroborative evidence of the act

which is the subject of the statement[.]” 725 ILCS 5/115—10(b) (West 2008).

¶ 44 In arguing that the victim did not testify at trial pursuant to section 115—10(b)(2)(A), the defendant relies on *People v. Learn*, 396 Ill. App. 3d 891 (2009). In *Learn*, the defendant was charged with one count of aggravated criminal sexual abuse. *Id.* at 893. The victim was four years old. Prior to trial, the State moved to admit, pursuant to section 115—10 of the Code, out-of-court statements made by the victim to her father and two police officers. *Id.* The trial court granted the State’s motion. *Id.* at 895. At trial, the victim testified as to preliminary matters, but then began to cry and became too emotional to testify as to any alleged incidents of sexual abuse. *Id.* at 896. The trial court concluded that the victim had testified at trial pursuant to section 115—10 and allowed the victim’s out-of-court statements to be admitted as substantive evidence at trial. *Id.* at 897.

¶ 45 On appeal, a majority of this court reversed that determination and held that the victim was unavailable as a witness and did not testify for purposes of section 115—10(b)(2)(A) of the Code. *Id.* at 902. The majority reasoned:

¶ 46 “If the child is the only witness (other than hearsay reporters) who can accuse the defendant of actions constituting the charged offense, the child must testify and accuse if she is to be considered to have testified at the proceeding under section 115—10(b)(2)(A). Immaterial or general background ‘testimony’ is not sufficient.” *Id.* at 900.

¶ 47A dissenting justice determined that the victim’s testimony was sufficient to satisfy the requirements of section 115—10. *Id.* at 907 (Hudson, J., dissenting). The dissent noted that the victim never refused to respond to questioning and her testimony that she did not know of or could not recall certain events did not render her unavailable. *Id.* at 909 (Hudson, J., dissenting).

¶ 48 Here, we need not address the split in this court’s decision in *Learn* because the facts in *Learn* are distinguishable from the case at bar. In the present case, the victim testified at trial and, unlike the victim in *Learn*, provided substantive testimony as to the alleged instances of assault and abuse. The victim testified that the defendant touched the outside of her private part with his hand, that he tried to place his private part inside her private part, and that he touched her butt with his hand. The victim also testified, contrary to her 2008 statement and the allegations in count II, that no other part of the defendant’s body touched her butt. Even though defense counsel made no attempt to cross-examine the victim regarding the inconsistency in her trial testimony and her out-of-court statement with respect to the alleged penis-to-buttocks contact, she was present for cross-examination and answered all defense counsel’s questions. Defense counsel was free to point out the inconsistencies in the victim’s statements and trial testimony to the trial court. Accordingly, the

defendant had ample opportunity to confront his accuser at trial, and we find his argument that the victim's hearsay statements were not properly admitted pursuant to section 115—10 to be without merit.

¶ 49 The defendant further asserts that even if the victim's hearsay statements were admissible, the trial court erred in according greater weight to her hearsay statements than to her testimony at trial. Specifically, the defendant argues that the victim's 2008 statement was not sufficient to prove him guilty beyond a reasonable doubt because the victim denied a penis-to-buttocks contact at trial and in her 2007 statement. The defendant is correct that the victim denied a penis-to-buttocks contact at trial, in which she testified that the defendant had only touched her buttocks with his hand. Furthermore, in her 2007 statement she stated that, other than the defendant's hand, no other part of the defendant's body touched her. Nonetheless, it is the function of the trier of fact to resolve any conflicts in the evidence and to assess the credibility of the witnesses. *People v. Island*, 385 Ill. App. 3d 316, 347 (2008). Where the evidence is merely conflicting, a reviewing court will not substitute its judgment for that of the trier of fact. *People v. McBounds*, 182 Ill. App. 3d 1002, 1014 (1989).

¶ 50 In the present case, the trial court gave more weight to the victim's 2008 statement than her testimony at trial or her 2007 statement regarding the penis-to-buttocks contact. We cannot say that this was unreasonable or improbable. In her 2007 statement, the victim indicated that the defendant only touched her with his hand. However, it could be inferred from Dr. Davis's trial testimony that the victim suffered from a hymenal cleft and tested positive for a sexually transmitted disease that the alleged abuse involved more than contact with the defendant's hands. Moreover, the victim's trial testimony and 2008 statement consistently indicated that the defendant's penis touched her vagina and her hand.

¶ 51 With respect to the inconsistency in the victim’s 2008 statement and her testimony at trial regarding the alleged penis-to-buttocks contact, we note that “[t]he failure of a victim to testify at trial to specific details regarding a defendant’s sexual acts upon her is not conclusive since section 115—10 of the Code does not require every detail recited in a previous statement be corroborated by the child’s testimony at trial.” *People v. Glass*, 239 Ill. App. 3d 916, 927 (1992), *abrogated on other grounds by People v. Bole*, 155 Ill. 2d 188 (1993). “Any shortcomings in a victim’s testimony do not destroy credibility but merely affect the weight given to the testimony by the trier of fact.” *Glass*, 239 Ill. App. 3d at 927. At trial, the victim testified that the abuse was difficult to talk about and it was clear that were certain things the victim could not remember. During her 2008 interview, the victim acknowledged that it was important to tell the truth during the interview. The victim told Tischman that the defendant touched her buttocks with penis. The trial court was fully aware of the deficiencies in the victim’s trial testimony, but chose to accord more weight to her 2008 statement. As the resolution of evidentiary conflicts is for the trier of fact (*Island*, 385 Ill. App. 3d at 347), we decline to disturb the trial court’s determination. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the defendant guilty beyond a reasonable doubt on count II. See *id.* (defendant found guilty beyond reasonable doubt of sex offense even though victim’s trial testimony contradicted the charged allegations and the victim’s out-of-court statements); see also *People v. C.H.*, 255 Ill. App. 3d 315, 331-32 (1993) (defendant proved guilty beyond a reasonable doubt of sex offense based on victim’s hearsay statements even though victim could not remember the incident at trial).

¶ 52 The defendant’s second contention on appeal is that the trial court abused its discretion in denying his request to proceed *pro se* at the hearing on the State’s 115—10 motion to admit the

victim's hearsay statements. At the outset, the defendant acknowledges that he did not raise the issue in a posttrial motion and that the issue is forfeited. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve a claim for review, a defendant must both object at trial and include the alleged error in a written posttrial motion). Nonetheless, the defendant requests that we address this contention under the plain-error doctrine. See *People v. Averett*, 237 Ill. 2d 1, 18 (2010) (the plain-error doctrine can bypass normal forfeiture principles and allow a reviewing court to consider unpreserved claims of error in specific circumstances). Before reviewing this contention under the plain-error doctrine, we must first determine whether any error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 53 A defendant has a right to self-representation in criminal trials under both the United States and Illinois Constitutions. See U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8; *Faretta v. California*, 422 U.S. 806, 832 (1975); *People v. Burton*, 184 Ill. 2d 1, 21 (1998). However, a waiver of counsel must be clear and unequivocal, not ambiguous. *Burton*, 184 Ill. 2d at 21. In determining whether a defendant's request is clear and unequivocal, courts have looked at the overall context of the proceedings, including the defendant's conduct following his request to represent himself. *Id.* at 22-24. A trial court's decision on a defendant's request to represent himself *pro se* will be reversed only if the trial court abused its discretion. *People v. Rohlf*s, 368 Ill. App. 3d 540, 544-45 (2006). A trial court abuses its discretion only when its ruling is so fanciful, arbitrary or unreasonable such that no reasonable person could be found to take the view adopted by the trial court. *People v. Ortega*, 209 Ill. 2d 354, 359 (2004).

¶ 54 In the present case, the defendant's request to proceed *pro se* at the 115—10 hearing was not clear and unequivocal. At the start of the hearing on the State's 115—10 motion, defense counsel

indicated that the defendant wanted to make a motion to represent himself. When the trial court asked the defendant why he wanted to represent himself the defendant responded, “I just need a new lawyer.” The defendant’s request for a new lawyer reveals equivocation on the defendant’s part as to whether he really wished to proceed *pro se*. Moreover, the defendant’s conduct following his original request showed that he did not wish to represent himself. Hearings continued on the State’s 115–10 motion on June 29, 2009. A bond hearing was held July 9, 2009. On September 2, 2009, the trial court heard arguments on the State’s 115—10 motion. The defendant did not renew his request to proceed *pro se* at any of those hearings. Compare with *United States v. Arit*, 41 F. 3d 516, 519-20 (9th Cir. 1994) (the defendant repeatedly and forcefully asserted his right to proceed *pro se* beginning six months before trial). Accordingly, we cannot say that the trial court abused its discretion in denying the defendant’s request. Furthermore, because we find no error in the trial court’s decision, there is no plain error.

¶ 55 The defendant’s final contention on appeal is that the trial court erred in sentencing him to an indeterminate term of MSR on count I. Specifically, in its written sentencing order for predatory criminal sexual assault, the trial court ordered the defendant to serve an indeterminate MSR term of between three years and natural life. The defendant argues that the trial court was required to set a specific term of MSR and that its failure to do so rendered that portion of its sentencing order void. The defendant notes that a void order may be attacked at any time.

¶ 56 Section 5—8—1(d)(4) of the Unified Code of Corrections provides that the term of MSR for a person convicted of criminal sexual assault “shall range from a minimum of 3 years to a maximum of the natural life of the defendant.” 730 ILCS 5/5—8—1(d)(4) (West 2008). In *People v. Schneider*, 403 Ill. App. 3d 301, 308 (2010), this court, in interpreting the statute, concluded that it

required the trial court “to set a minimum of three years’ MSR with a possible maximum of natural life and then grant the Department [of Corrections] the authority to determine how long the defendant remains on MSR after three years.” This court held that the legislature specifically intended to require indeterminate MSR terms in sexual assault cases. *Id.*

¶ 57 The defendant requests that we reconsider our decision in *Schneider* and follow the decision of the Fourth District of the Appellate Court in *People v. Rinehart*, 406 Ill. App. 3d 272 (2010). The *Rinehart* court, also interpreting section 5—8—1(d)(4), found that the legislature intended for trial courts to impose a determinate term of MSR within the range provided for in that section. *Id.* at 281. We respectfully disagree with the holding in *Rinehart* and decline the defendant’s request to reconsider our decision in *Schneider*. Accordingly, we affirm the MSR term of three years to natural life on the defendant’s conviction for predatory criminal sexual assault.

¶ 58

III. CONCLUSION

¶ 59 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 60 Affirmed.