

NOTICE
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2011 IL App (4th) 090581-U

Filed 10/26/11

NO. 4-09-0581

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
NAZEER A. SMITH,)	No. 08CF1103
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices McCullough and Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court, at sentencing, did not abuse its discretion in (a) refusing to order a co-defendant to read a passage of prose to demonstrate his speaking voice, (b) denying expert testimony showing defendant compared favorably with others in terms of candor and insight, (c) not admitting police reports regarding conversations with the victims, (d) excluding testimony regarding prior offenses committed by three co-defendants, and (e) not giving greater weight in sentencing defendant to testimony showing the change in defendant following his parents' divorce.
- ¶ 2 (2) Defendant's 26-year sentence for home invasion (720 ILCS 5/12-11(a)(2) (West 2008)) is not excessive or an abuse of discretion.
- ¶ 3 (3) Defendant's argument his drug-court assessment and an alleged corresponding assessment under the Violent Crime Victims Assistance Act should be reduced fail as the record shows no drug-court assessment was ordered; the State demonstrates a \$20 crime victim's fine is statutorily mandated.
- ¶ 4 In January 2009, defendant, Nazeer A. Smith, entered an open plea of guilty to home invasion (720 ILCS 5/12-11(a)(2) (West 2008)), a Class X felony. He was sentenced to 26

years' imprisonment. On appeal, defendant argues (1) the trial court erred by excluding the following from his sentencing hearing: (a) a voice exemplar from a codefendant, (b) expert testimony showing he was more candid and remorseful than others, (c) police reports of conversations with the victims of the home invasion, and (d) testimony regarding previous criminal conduct by three codefendants; (2) the trial court failed to consider the effect of his parents' divorce on him as a factor in mitigation; (3) his sentence is excessive in light of his lack of criminal background, his potential for rehabilitation, and his genuine remorse; and (4) he was entitled to (a) presentence credit for time served against his fines and (b) a reduction in his drug-court assessment and the \$20 assessment under the Violent Crime Victims Assistance Act (VCVAA) (725 ILCS 240/10(b) (West 2008)) must be reduced.

¶ 5

I. BACKGROUND

¶ 6

In January 2009, defendant entered an open plea of guilty to home invasion. In entering this plea, defendant admitted, in May 2008, he:

"knowingly and without authority entered the dwelling place of Robert Rigdon and Diane Rigdon ***, knowing Robert Rigdon and Diane Rigdon to be present within the dwelling place, and intentionally caused injury to Robert Rigdon and Diane Rigdon [,and he], or one for whose conduct [he was] legally responsible, struck Robert Rigdon about the head with a handgun or similar object and tied Diane Rigdon's hands with cable ties, thereby causing injury to her hands and fingers."

In exchange for the plea, five counts against defendant were dismissed, and the parties stipulated

the evidence was sufficient for a finding "the conduct leading to the conviction for this offense resulted in great bodily harm to Robert Rigdon and Diane Rigdon and that the court enter that finding at sentencing pursuant to" section 5-4 of the Unified Code of Corrections (730 ILCS 5/5-4-1(c-1) (West 2008)).

¶ 7 At the plea hearing, the State presented the following factual basis. On May 1, 2008, defendant and three others, Isiah Evans, Chad Todd, and Jamal Williams, entered the residence of Robert and Diane. None were police officers, and all entered without authority. Before that date, the four met and discussed committing armed robbery and home invasion at the Rigdon residence with the goal of acquiring cash, property, and access to the Rigdons' two businesses in Urbana, from which they would also acquire cash and property. To learn the location of the Rigdons' residence, the four men with other individuals waited outside one of the Rigdons' businesses, watched them close the business, and followed them to their residence.

¶ 8 On May 1, 2008, the four went to the Rigdon residence after the Rigdons closed their business. The men waited at a nearby restaurant parking lot and then proceeded to the residence. Williams and Evans, "armed with handguns or similar objects," entered the garage after seeing Robert there. Authorities believe Williams repeatedly struck Robert on the head with a handgun or similar object, resulting in multiple lacerations and cuts to Robert. Some of the injuries were "severe and deep," requiring approximately 100 stitches or staples. After Robert was struck, the four entered the home. When Diane opened the garage door, she was struck with the door and pushed to the floor. One assailant tied her hands and Robert's hands with cable ties. Since this time, Diane suffered loss of feeling in at least two of her fingers. She had other side effects in her hand and wrist area. The four entered the home, and took objects

from the Rigdon home, and, under threat of force, obtained access information and the keys to the Rigdons' businesses. The four headed to Urbana, intending to enter those businesses.

¶ 9 En route to Urbana, the men realized they left the keys at the Rigdon home. They returned, picked up the keys, and left again. Shortly after leaving the scene, a deputy stopped the mens' vehicle. The deputy was not yet aware of the crime and released the men. A short time later, the deputy learned of the events at the Rigdon residence and a search for the men began.

¶ 10 Defendant pleaded guilty to the offense. A sentencing hearing was scheduled.

¶ 11 The sentencing hearing began in March 30, 2009. It was continued three times and ultimately concluded in May 2009. At the hearing, the trial court stated it had reviewed the presentencing report and victim-impact statement. Both sides presented evidence.

¶ 12 The State first called Evans. Evans testified before the events of May 1, 2008, he had been attending Parkland Community College on a basketball scholarship. Evans admitted being involved in the home invasion with defendant, Todd, and Williams. Evans became involved in the home-invasion plan because of Todd. He, since September 2007, had known Todd and Williams, who were cousins who lived together and also attended Parkland. Evans met defendant through Todd. Before May 2008, Evans met defendant only one or two times.

¶ 13 Evans testified Todd, Williams, defendant, and he entered the Rigdon residence on May 1, 2008. Todd first told Evans about his idea to "hit" the Rigdons' currency exchange in January or February 2008. At that time, only Todd, Evans, and Williams were present. They expected to make about \$50,000. Todd continued to mention the plan "every now and then." Todd decided they needed another individual. Todd asked defendant if he wanted to participate, and defendant said he did. Later, the Tuesday before May 1, 2008, all four met in the parking lot

at Todd's apartment to discuss the plan. They discussed it again at a restaurant "a little later on" and upon return to Todd's apartment.

¶ 14 Evans testified they watched from a restaurant as the currency exchange closed and then followed the Rigdons in three separate cars to the Rigdon home in St. Joseph. While following the Rigdons, the three cars alternated trailing them. A woman, Aries McNutt, drove one of the cars.

¶ 15 Evans testified, on May 1, 2008, the four and McNutt met at Todd's apartment. They took guns and plastic ties from Todd's and Williams's apartment. Defendant was the last to arrive as he was in Chicago. The five discussed how they would "go about handling the situation." The plan was that McNutt and Williams would approach the house with a story she needed a cab and Williams would force his way in. They all went to St. Joseph in two cars. First, they went to the Dairy Queen. They smoked marijuana in the parking lot, and the men drank alcohol. They were waiting for it to get dark.

¶ 16 Then, defendant, Todd, Williams, and Evans went in defendant's car by the Rigdon house. They noticed the garage door was up. Todd stated it was time. They returned to a gas station, where they met McNutt. McNutt drove Williams and Evans to the Rigdon house, while Todd rode with defendant. Evans and Williams each had a semiautomatic gun, and a .38 Special was in the car with defendant and Todd. Everyone was dressed in black. They each wore a mask, which revealed only their eyes.

¶ 17 Williams entered the garage first. He struck Robert with the gun. Evans entered next and closed the garage door. As he was closing the garage, Diane entered. Williams subdued her. Evans entered the home and opened the front door for defendant and Todd. Once

defendant and Todd were in the house, Todd secured Robert and Diane with the plastic ties. Evans stayed next to Diane telling her it would be okay. Evans cut the ties off Diane's hands upon seeing they were "a bunch of different colors" and retied her hands with ties he had. The other three ransacked and searched the house. Then, Evans saw defendant, with the .38 Special in his hand asking Robert for the keys to the business, the combination to the safe, and the alarm codes. Evans said they had five seconds to reveal this information or he would shoot them.

¶ 18 Evans testified defendant and Todd were the first to leave the house. They took handguns and Lowe's cards from the Rigdon house to McNutt's residence. Approximately 20 to 30 minutes later, Todd reentered the Rigdon house to get the keys to the currency exchange. Defendant had left them behind. Todd and defendant then left. Ten to 20 minutes later, Williams received a call. Defendant and Todd had been pulled over by the police. They told Evans and Williams to leave the Rigdon residence. McNutt picked them up and took them to Todd's and Williams's apartment.

¶ 19 On cross-examination, Evans admitted not telling the police defendant threatened Robert with the weapon. Evans testified he only met defendant "a couple times," but he knew Williams and Todd "quite a bit better." Williams was "like a big brother" to Evans. Evans testified Todd and McNutt had a relationship. McNutt would do what Todd asked her to do. Evans testified the handgun he was carrying was not loaded. He did not threaten anyone or hit anyone. Evans also did not remove any property from the Rigdon residence.

¶ 20 Evans testified during the planning for the home invasion, Todd led the discussion. He told the others what their roles would be. The plan was to keep the Rigdons separated. Evans was to watch Diane. He did not know who was supposed to watch Robert. Evans testified

someone was supposed to watch Robert, but no one did because Robert was on the ground and Evans could see him. Evans denied Williams was sitting next to Robert, pointing a gun at him, torturing and kicking him, and questioning him. Evans stated the only individual he saw point a gun at Robert was defendant. Evans further testified Todd was a member of a street gang in Chicago.

¶ 21 Evans testified he helped with a robbery of a gas station on May 19, 2008, because Williams asked him to participate. Williams asked Evans to call his cell phone when Evans saw someone leave the gas station. Evans did. Evans also saw Williams attack someone at the gas station and take money. Evans was also present at a robbery that occurred in April 2008, in which Williams struck an employee carrying money. Evans saw Williams as Williams was fleeing from another robbery in March 2008.

¶ 22 Evans testified he had not received a deal in exchange for his testimony, but he had not been sentenced yet. Evans was hoping for leniency, as he was facing a penalty of 21 to 45 years.

¶ 23 Defense counsel called Todd to testify. Todd asserted his fifth-amendment right not to testify. Defense counsel asked Todd to read a paragraph for the sole purpose of recording his manner of speech. Defense counsel stated the recording would be relevant later in the sentencing hearing. The State did not object, but Todd's counsel did. The trial court sustained the objection because Todd had asserted his fifth-amendment right. The court further held the following: "It also strikes the court that it's an in-court demonstration at this point. This is a sentencing hearing for [defendant]. I think we're getting far afield. It is an in-court demonstration. I'm not [going to] permit it."

¶ 24 The State called Robert to testify. Robert testified he was 71 years old on the date of the offense. Robert operated Golden Diamond and Pawn and his wife, Diane, operated Quick Cash Currency Exchange, two adjoining businesses. Robert testified, at dusk, on May 1, 2008, he was in the garage cleaning a firearm when men wearing black, hooded outfits with masks and gloves entered his garage. Two men attacked, while the other two stood by the garage door. One man struck Robert on his head, knocked him down, and continued to beat him. Diane came to the door from the house to the garage. Robert tried to stop the men from getting to her by lunging at them, but he was unable to do so. The men dragged Robert and Diane into the house. They pulled Robert's shirt up over his head and bound Robert and Diane with plastic ties. Robert was on the kitchen floor; Diane was on the floor in front of their washroom, approximately 8 to 10 feet from him. Robert testified he suffered several cuts or lacerations to his head and was bleeding.

¶ 25 Robert testified when he was first bound, one man approached and said he would kill him if he didn't get \$200,000. After Robert said he did not have that amount, the man said he would take \$100,000. Robert told him he did not have that amount either. The man said, "I'm gonna kill ya."

¶ 26 Robert testified the ordeal took approximately three hours. In that time, the men ransacked the house, left, and returned. One wanted to know where Robert's billfold was. Robert told him where to find it. Robert was asked if there was money in the house. The men wanted the keys to the business. Robert was told he would be killed if he did not give them the keys and the combination to the door. More than one individual threatened him. The men went through the entire house. Many items were missing, including five handguns, cash, jewelry,

Lowe's coupons, collectible knives, and binoculars.

¶ 27 Robert testified he had several sutures or staples in his head. He suffered headaches, and his injuries affected his vision and balance. In the following weeks, he continued to have headaches and vision problems, but those healed. Robert's balance problems remained, but on a lesser scale. Robert testified he became more fearful as a result of the home invasion. He feared going into a dark room and being away from his wife. The fears increased in the evening. He had gotten an alarm system for the house. They no longer went on walks in the evenings.

¶ 28 On cross-examination, Robert testified the man who first struck him gave him "several blows." When he went to protect his wife from this man, he was struck from behind by one of two men who were behind him. A third man carried a shiny handgun, possibly a revolver. This third man was hesitant in entering the garage. He waited until Robert was subdued. One man held Robert, and the other secured his wife. The third man went past them to the inside of the house.

¶ 29 The man, whom the others called "George" during the home invasion, stayed with Robert in the kitchen during the ordeal. George was armed with a semi-automatic handgun. George asked Robert questions and threatened Robert. George put his handgun in Robert's face demanding \$200,000 early in the home invasion. George also demanded the keys, the combination, and other details necessary to access the currency exchange. Robert testified the third man to enter the garage stepped over him a few times. The third man was the one who showed Robert the revolver.

¶ 30 The State next called Diane to testify. Diane testified she was 66 years old on

May 1, 2008. On May 1, 2008, between 8 and 8:30 p.m., Diane heard a thump against the wall and her husband moan in the garage. Diane opened the door to the garage. She saw blood on the wall and her husband "partially on the floor." Diane saw "several people" in hoods and masks and heard Robert yell to close the door. As Robert tried to get to Diane, one of the men grabbed her and slammed the door into her head. Diane fell. The man grabbed her and secured her hands with plastic ties. The man shouted, "Don't look at me."

¶ 31 Diane testified the men half-carried, half-dragged Robert past her to the kitchen floor. Diane was on the floor in the closet by the water heater. The men were jubilant at this time and making threats. Two men went to loot the house. One man stayed with Diane; the other stayed with Robert in the kitchen. The man who stayed with Diane was there the majority of the time. He left several times. When he did, another man stayed with her in the utility room.

¶ 32 Diane testified the hand ties caused her hands to swell. Her hands felt like they were going to explode. After about an hour, she asked that the ties be loosened. The man watching her checked with one of the other men to see if he could do so. He loosened the ties, upon putting her hands behind her back. At some point after the men left, Diane was able to escape from the plastic ties and seek help.

¶ 33 Since the home invasion, Diane has had problems with her right hand. She suffered numbness on the inside of two of her fingers, and "two digits on two of those same fingers" were numb. The problems were ongoing. In addition, since the home invasion, she could not work a keyboard or calculator properly. Diane testified she and Robert had changed their security measures. They no longer walked after dark. Both had flashbacks of the incident.

¶ 34 On cross-examination, Diane testified, after the man put her on the floor and the

others were in the house, that man grabbed Diane's throat and shouted, "Who's coming into the house tonight? So help me, God, man, woman, or child, I'll blow their [*sic*] head off." Diane testified she believed the man watching her "was the good-cop thing," while the man watching Robert was the "bad cop."

¶ 35 Diane testified when she was in the closet, she had a bag over her head. She knew four men were present. Diane heard three distinct male voices. She did not know if the fourth one spoke.

¶ 36 The defense presented evidence in mitigation. The defense called Pete Lonnie Williams. Pete testified he was a retired Chicago public school teacher and coach. Pete taught at Martin Luther King High School. He knew defendant's family. Pete did not coach defendant, but he saw him every day defendant was at the high school. Pete described defendant as a "very mild-mannered young man." He was also "very intelligent" and came from "a very controlled-type family situation." Defendant was well-respected at Martin Luther King High School. Pete never knew defendant to be violent or disrespectful. On cross-examination, Pete testified defendant had been out of high school about three years.

¶ 37 Frank Calhoun, defendant's cousin, next testified for the defense. Calhoun testified defendant was like a brother to him. Calhoun described defendant is a mild-mannered, laid back, reserved young man. Calhoun had not known defendant to do anything violent. Calhoun described a time when defendant, without compensation, drove Calhoun's wife, who could not see well at night, from North Carolina to Atlanta so she could attend a wedding. Defendant once also helped Calhoun's brother during an incident that involved an attempted carjacking of defendant's vehicle.

¶ 38 Calhoun testified after Calhoun left Chicago for college, he was not in the area often. They kept in touch over the phone and when Calhoun returned for visits. In this time, Calhoun noticed a change in defendant's behavior. Defendant, around age 16 or 17, became more reserved.

¶ 39 Kenyatta Stansberry-Butler, principal of Harper High School in Chicago, testified she had been a teacher at Dyett Middle School and defendant was one of her students. Defendant was a fun and loving student, "the joy of the classroom," who tried "to keep everybody together to make sure they were doing right." Many of the students at Dyett were poverty-level students. Most were "being raised by their grandparents." Stansberry-Butler testified she maintained contact with defendant and his family over the years. Around defendant's sophomore year, when the parents were going through a divorce, Stansberry-Butler noticed a change in defendant.

¶ 40 Defendant testified on his own behalf. Defendant, 21 years old, spent most of his childhood in the south side of Chicago. Defendant testified before third grade his family life was average. He and his younger sister, Akilah Smith, resided with both parents. When defendant was 10, his family "broke up." Defendant testified his parents argued over financial issues. Defendant's father, Mack Smith, fathered a child with another woman. When defendant was between ages 10 and 16, defendant's parents argued twice each week. The arguments were loud and sometimes slightly physical. The house was uncomfortable. During the arguments, defendant and his sister would usually leave the room. When defendant was 16, his parents divorced. Before the divorce, Mack was the breadwinner for the family. After the divorce, defendant's mother, Bernice Smith, was left with two teenage children to raise on her own. Mack, before the divorce, quit his job as a supervisor for the Chicago Transit Authority (CTA)

and began day trading in the stock market. He lost all of the money about the time defendant was 16. Defendant testified Mack did not want to divorce. Mack suggested putting off the divorce until defendant and Akilah graduated high school. Defendant agreed with this suggestion.

¶ 41 Defendant testified he felt "something was missing" after his parents' divorce. He took on the role of "the man of the household." At the end of his sophomore year of high school, defendant "turned to weed," smoking "[p]robably every day." Defendant also sold marijuana. Defendant wanted to be independent and not a financial burden on his parents. At age 16 and 17, defendant was driven by his peers and greed. Defendant also wanted to attend college. Defendant was suspended from high school for possession of marijuana.

¶ 42 Defendant testified he met Todd his junior year of high school. Todd lived in the neighborhood and came from a prosperous family. Todd got better grades than defendant. Todd initially attended college in Chicago, while defendant went to Parkland College in Champaign. Todd wanted to stay in the neighborhood. In defendant's neighborhood, a popular gang was the Hobo Street Gang. Todd was a persuasive person. Todd wanted to become, in Todd's words, "a dirty cop." Defendant testified Todd believed the Chicago police was the most powerful gang in Chicago and he could get away with more if he was a member of the police.

¶ 43 Defendant testified he pleaded guilty to the home invasion because he was guilty. Neither his relationship with Todd nor with his parents justified his participation in the crime. Defendant testified he first learned of the planned home invasion through Todd. Todd would call defendant while defendant was in college in North Carolina and tell defendant about schemes he had in Champaign. Todd told defendant how he was "gettin' away with the stuff." Todd also said he was planning to rob a currency exchange. For six months, Todd suggested numerous

times defendant be involved in the currency-exchange robbery. Eventually, defendant agreed to participate. Todd informed defendant he needed another driver. Two days before the home invasion, defendant went to Champaign.

¶ 44 Defendant testified when he went to Todd's residence, Todd, Williams, Evans, and McNutt were there. Todd was the leader. The plan was to follow the owners home, and McNutt would knock on the door. Williams and Evans were then to force entry into the home and watch the owners. Todd and defendant would then collect valuables from the home and go to the currency exchange.

¶ 45 Defendant testified the plan changed when they saw the garage door was open. Seeing the garage door open, Todd contacted Williams and Evans and told them to enter the house. After Williams and Evans were in the house, defendant entered the house through the front door. Defendant saw Robert on the floor, his head bleeding, and Williams standing over him. Defendant also saw Evans standing over Diane. Defendant proceeded to search the house for valuables. Defendant testified he found jewelry, some cash, and keys to the currency exchange. Defendant testified he spoke to Robert about the combination. Williams threatened Robert to get the information. Defendant had written down the combination and asked Robert to repeat it.

¶ 46 Defendant testified he was not carrying a gun. Todd had a silver revolver. Williams and Evans had black, semiautomatic weapons. Defendant testified he was not masked. He brought one, but gave it to Williams, who misplaced his own.

¶ 47 Defendant testified upon receiving the combination, he and Todd left the house to rob the currency exchange. On the way, defendant learned they did not have the keys. Williams

had taken the keys from defendant and held them in front of the victims, asking if they were the keys to the currency exchange. Williams did not give the keys back to defendant. Defendant and Todd returned to the house and retrieved the keys. On the way to the currency exchange, the police pulled over defendant and Williams. After the police let them go, defendant suggested not going to the currency exchange. Todd wanted to continue with the plan. Defendant, who was driving, told Todd to call McNutt and have her pick up Williams and Evans. Defendant told him, "It's over." Defendant dropped Todd off and drove home.

¶ 48 Defendant testified he had some of the Rigdons' property, jewelry, and cash, in his possession. Defendant asked a friend to hold these items for him. While incarcerated, defendant attempted to get the items back to return them.

¶ 49 Also while incarcerated, Todd told defendant he assisted in numerous robberies, burglaries, shootings, and murders. Todd told him he was the driver and a member of the Hobo Street Gang. Defendant testified these facts made defendant fearful of cooperating with the police. Defendant told the Federal Bureau of Investigations (FBI) he would give a statement but would not testify for the safety of him and his family. Defendant was afraid of Todd. Defendant admitted lying to the FBI when he said he sold the stolen goods, no guns were involved, and he did not know the names of the other men who participated. Defendant did not want to give Williams's and Evans's names because he simply wanted to confess and feared his family's safety.

¶ 50 Defendant stated he knew what he did was terrible. Defendant testified the Rigdons did not deserve what happened to them. Defendant stated, "I know I'm a better person than what I'm presenting myself as [*sic*] right now."

¶ 51 On cross-examination, defendant testified he went to college in Raleigh, North

Carolina, in 2006-07 on a baseball scholarship. Defendant attended three semesters there. During this time, Todd became involved with the Hobo Street Gang, reputed to be a violent gang. Todd and defendant continued to talk by phone. Defendant would sometimes see Todd when he was home from college. Defendant lived in Chicago while on suspension from college for cannabis. Defendant testified he was also involved in a check-fraud scheme. The scheme involved three other people and included signing fraudulent checks and attempting to deposit or cash them. Defendant believed only two or three checks were forged in this scheme.

¶ 52 Defendant testified, between the time he returned from North Carolina until the home invasion, defendant worked at a temporary service and as a security guard in a public school. Defendant was arrested for this offense, when he was driving back to college in North Carolina. Defendant testified Todd told him about robberies he was involved in, during which the victim would be struck and then robbed. Defendant said weapons were not mentioned.

¶ 53 Defendant testified guns were taken from the house. After defendant and Todd took the stolen merchandise to McNutt's house, they realized they did not have the keys to the currency exchange. The two drove back to St. Joseph. Todd went inside to retrieve the keys. As the two were pulling out of the subdivision, two deputies pulled them over. Defendant did not tell the deputies about Robert's injuries or the home invasion. Defendant drove Todd back to his residence and then returned to Chicago. Two days later, defendant was contacted by the police regarding the home invasion. Defendant told them he wanted to speak to his attorney.

¶ 54 On redirect examination, defendant testified he told his attorney to tell the State he would testify at Williams's trial.

¶ 55 Defendant then presented the testimony of David Sherrick, an investigator in the

Champaign County sheriff's office. Investigator Sherrick interviewed Evans in June 2008.

Investigator Sherrick interviewed Diane on May 2, 2008. Investigator Sherrick identified a report of his interview with Diane and stated the report was an accurate summary of his conversation with her. No cross-examination occurred.

¶ 56 Next, defendant called Curtis Apperson, an investigator in the Champaign County sheriff's office. Investigator Apperson testified he spoke with defendant regarding the home invasion. In this interview, Investigator Apperson told defendant it was in defendant's best interest to cooperate during the investigation and he believed defendant "was a good person out of the group and maybe his involvement was limited."

¶ 57 Tony Shaw, an investigator with the Champaign County sheriff's office, testified he interviewed Robert regarding the home invasion. Investigator Shaw identified the report of his interview as an accurate account. Investigator Shaw also identified the transcripts and recording of his interview of Todd. No cross-examination occurred.

¶ 58 Lawrence L. Jeckel, a physician who specialized in psychiatry and forensic psychiatry, testified he had been hired by defendant. Dr. Jeckel spent approximately 10 hours on the case and approximately an 1 1/2 hours interviewing defendant. Dr. Jeckel testified his initial impression of defendant was that he "made a reasonable attempt to be forthright." Dr. Jeckel testified he "felt a sense of tragedy for [defendant] and his wayward behavior since he was 16" and "came away feeling that [defendant] was consumed by his avariciousness" and he "had an underlying depressive component."

¶ 59 Defendant asked Dr. Jeckel if defendant's candor was "usual or unusual" in his experience in interviewing criminal defendants. The State objected, and the trial court sustained

the objection. Dr. Jeckel testified defendant expressed remorse wishing he could take the offense back and he could atone for what he had done. Defense counsel then made an offer of proof Dr. Jeckel would testify defendant's remorse was unusual. The State objected, and the trial court sustained the objection. The court held it did not matter how defendant compared to other defendants who had nothing to do with the case.

¶ 60 Dr. Jeckel opined defendant's parents' divorce was one contribution to defendant's criminal activities that began when he was 16. When asked if defendant was depressed after age 16, Dr. Jeckel testified "he's defended against depression." Dr. Jeckel testified the depression "might take the form of dysphoria, but there is a chronic underlying depression." Dr. Jeckel testified, "Dysphoria is a very unpleasant feeling of badness, feeling bad." Dr. Jeckel stated it is not the same as depression, when "one feels gloom and doom and self-loathing or feeling things are hopeless and helpless." Dr. Jeckel believed defendant's marijuana use was "in part *** to temper the dysphoria."

¶ 61 Dr. Jeckel opined defendant's feelings toward his father became "hardened." He was disappointed and angry, and experienced rebelliousness. Dr. Jeckel testified defendant had a corruptible conscience. Dr. Jeckel did not believe defendant was a violent person. When asked if defendant's participation was the result of circumstances that are unlikely to recur, Dr. Jeckel stated in part: "I believe he has a conscience to build on and that I am optimistic that he can learn a lesson from this."

¶ 62 On cross-examination, Dr. Jeckel, when asked if he was aware there had been testimony defendant threatened Robert's life to get information from him, Dr. Jeckel testified "that would be an outlier with everything that I have gathered with him." Dr. Jeckel stated "it's

hard for me to square that with everything else that I have gathered." Dr. Jeckel testified if defendant was armed with a weapon during the home invasion or threatened Robert's life, his opinion would change as to defendant's future potential for violence.

¶ 63 Dr. Jeckel testified defendant had a chronic underlying depression, best called depressive disorder not otherwise specified. Dr. Jeckel diagnosed defendant with cannabis abuse and "perhaps even dependence," as well as having both depressive and narcissistic and antisocial traits.

¶ 64 Makita Kheperu, formerly a teacher at Betty Shabazz International Charter School on the south side of Chicago, testified she met defendant when he was a preschool student. Kheperu believed defendant attended that school until sixth grade. Kheperu also knew defendant from the neighborhood. Defendant had an exceptional personality and was respectful and intelligent. Defendant's parents were "very involved" at the school.

¶ 65 Mack Smith, defendant's father, testified defendant, as a child, was outgoing, active, and energetic. He was a good leader. Mack coached defendant's basketball team. Mack and defendant spent a lot of time together in defendant's first 10 years. Around the time defendant turned 10, Bernice learned Mack had been promiscuous. Arguments occurred in the household and the subject of divorce was raised a number of times. Mack testified he told Bernice about the affair when he learned he was going to be a father with another woman. Defendant later learned of this. Mack denied that the arguments ever became physical. Mack and Bernice also argued over money. Mack was making child-support payments for the care of defendant's half-brother.

¶ 66 Mack testified, between the time defendant was 10 and 16, their relationship "was

up and down." In that time, Mack worked a lot of overtime, but continued volunteering with coaching and at the schools. Mack testified he left his job to day trade, but he lost all his money around the time defendant was 12. Mack, "not wanting to swallow [his] pride," took a less lucrative job, instead of returning to his better-paying job (at the CTA). When defendant was 16, Mack and Bernice divorced. Mack begged Bernice to wait until the children graduated from high school to get the divorce, but she could not do so.

¶ 67 Mack testified he married another woman approximately two years later. During the time defendant was between 16 and 20, Mack's and defendant's relationship was "reduced." Most of their interaction before the divorce was in the home. After the divorce, the visits dwindled. Mack was not aware defendant was smoking marijuana until defendant was caught in high school. Mack testified he believed defendant could be successful and "a very, very productive citizen."

¶ 68 Nehemiah Smith, defendant's 23-year-old cousin, testified defendant had a close relationship with his father growing up. When they were younger, Nehemiah and defendant played basketball together, and defendant's father was their coach. Defendant respected his father and did what he was told immediately. Nehemiah described defendant as "very intelligent" and generous. He called defendant a leader and stated defendant learned from his mistakes. Nehemiah had never seen defendant be cruel to other people. Nehemiah testified defendant's attitude toward his father changed near the divorce. Defendant began talking back to his father and not immediately doing what he was told. Around this time, defendant, who was a junior in high school, began smoking marijuana.

¶ 69 Akilah Smith, defendant's younger sister, testified defendant was "always over-

protective" of her. They were best friends. When their parents were going through the divorce, defendant and Akilah were in the same room as their parents argued. Akilah and defendant talked about the divorce and fights. The divorce was devastating because they were a close-knit family. The divorce negatively impacted defendant. Akilah testified defendant dealt with the missing father by finding comfort in being with "people who weren't of constructive activity." Akilah believed defendant was capable of changing.

¶ 70 Bernice Smith, defendant's mother, testified defendant was intelligent, funny, competitive, and outgoing. Defendant was president of his eighth-grade class. Defendant was an obedient child. He was closer to his father than to Bernice, though the two of them enjoyed a close relationship as well. The separation of the family had a bigger impact on defendant than on his sister. Before the divorce, defendant was admired in his neighborhood, because he resided in a household with two active parents. As the family separated, defendant became a little distant. Bernice testified the marriage changed as a result of infidelity and then financial difficulties. Mack wanted to continue with the marriage until the children finished high school. Defendant asked Bernice to do that, because he needed his father at home. Bernice could not stay in the marriage due to Mack's day trading, Mack's other child, and his quitting his job.

¶ 71 As a result of the divorce, Bernice testified she was unable to supervise defendant as well. She became aware defendant was smoking marijuana. Defendant had never been violent with her. She believed had she and Mack worked together, defendant would not be in this situation.

¶ 72 On cross-examination, Bernice testified the attempted carjacking against defendant occurred in 2006, defendant's senior year of high school.

¶ 73 Upon the close of testimony, defense counsel proposed to admit into evidence the May 2, 2008, report by Investigator Sherrick of his conversation with Diane. The State objected to its admission. The court sustained the objection, stating the following:

"I'm going to sustain the objection. You can't cross-examine a report. You can't simply submit a report into evidence. If there had been any request of that or a discussion about stipulations of that evidence, so I'm going to sustain the objection. That will not be admitted. "

¶ 74 When defense counsel proposed to admit Investigator Shaw's report of his interview of Robert on May 2, 2008, the State objected. Defense counsel emphasized the officer's testimony the report was an accurate summary. The trial court sustained the objection:

"Again, I believe while hearsay is permitted, subject to relevancy and reliability evaluations, simply submitting a report without any opportunity to cross-examine as to what's contained in the report would not be contemplated, even by the more attenuated rules of evidence for a sentencing hearing. I'm going to sustain the objection."

¶ 75 On May 27, 2009, the trial court sentenced defendant. Before pronouncing sentence, the court stated the following:

"One of the strongest factors in mitigation that is presented to this court, on this record, is the body of testimony and the letters in support and recommendation for the Defendant. It is apparent

that this Defendant came from a good family, with committed parents, who were very invested in his success. He had extended family members and continues to enjoy a network of extended family. They have been unwavering in their support throughout his life. He has a network of educators and friends. He has been supplied with a loving, appropriate, supportive childhood. Also, clearly, he had expectations for his conduct. He had involvement from parents in his life, from extended family members in his life, and he had examples on how to behave appropriately and successfully."

¶ 76 Other factors considered by the court in mitigation were defendant's youth and lack of criminality, other than some minor traffic tickets. The court noted, however, defendant received a 10-day suspension for cannabis, as well as a suspension for possession of cannabis while in college in November 2007.

¶ 77 The trial court concluded defendant "literally had everything in place to draw on and build a successful future," but "chose to throw it all away for what would be easy money." Defendant "embark[ed] with three other individuals on what was a premeditated, deliberate and vicious attack on two innocent people in their home." The court found unconvincing the emphasis on the effect of defendant's parents' divorce. While noting Dr. Jeckel called the divorce a contributing factor, the court also agreed with Dr. Jeckel's assessment it was not a sufficient cause for the defendant's criminal actions. Defendant was 16 when his parents divorced. He was not left to neglect or abuse or "to fend for himself on the streets of Chicago."

¶ 78 The trial court observed "when so many opportunities and so many resources and so many people to draw from, [defendant] chose not to use any of that." The court concluded "that is a telling predictor of whether or not his criminal conduct would be likely to recur." The court reviewed testimony available from defendant, Todd, and Evans and concluded all three portrayed "themselves as the least culpable, the most humane, the most reluctant, [and] the least involved." The court found the credibility of all of them questionable. The court concluded each person's testimony had been impeached and each had been less than candid.

¶ 79 The trial court stated it sentenced Williams to 75 years of the 90 years maximum. The court said, "This court will make it clear that if I had the only option of sentencing Mr. Williams on the home invasion with a firearm alone, with all the same evidence, this Court would have imposed a sentence that would have been in the maximum range." The court intended "to protect the public." The court compared defendant's circumstances to Williams's and found defendant's background distinguishable from Williams:

"[Defendant] has no prior convictions, although there is evidence of some illegal conduct. He pled guilty. He accepted responsibility. And he acknowledged regret and remorse. He did not engage in the same physical acts that Mr. Williams did. And he was convicted of home invasion alone, without the firearm enhancement.

On the other hand, while he was convicted of one count of home invasion, it was a count that involved two victims, and it involved injury to both of those victims. The nature and the cir-

cumstances of the crime and the evidence before the court has established that [defendant] was involved in the same criminal conduct surrounding the home invasion, including residential burglary and armed robbery. And, unlike Mr. Williams's case, in this case, there was a stipulation to evidence that would support a finding of great bodily harm with respect to the injury to Diane Rigdon, not only Robert Rigdon. *** Frankly, comparing 75 years to a range of a maximum of 30 years, I would suggest that [defendant] has received a considerable benefit of any disparity, even if the sentence were the maximum."

¶ 80 The trial court observed Todd and Evans had not yet been convicted of the offense. The court noted defendants who cooperate and testify may receive different sentences. The court found defendant initially refused and did not testify but may have eventually offered to cooperate. The court stated it was not specified when the offer was made. The court found it would be speculative to compare any sentence Todd and Evans may receive.

¶ 81 The trial court pieced together the mens' roles in the home invasion. The court concluded Williams struck Robert initially and threatened Robert. Others also threatened and struck Robert. Evans stopped Diane and subdued her and ultimately loosened her ties. Todd and defendant entered together and ransacked the house. The court stated it could not make a conclusive finding whether defendant did or did not have a gun when he entered. The court was certain defendant wore a mask when he entered, despite his saying he did not. The court concluded defendant left with a gun, because defendant stole guns from the Rigdons. The court

also found Evans's testimony whether defendant threatened Robert with a gun to be incredible. The court stated it knew defendant was in the kitchen with the purpose of gaining information from Robert. Defendant wrote down the information and got the key. He left with Todd to complete the next step of the crime while Robert laid in a pool of his own blood on the floor. The court concluded given the evidence, "there is a strong inference that [defendant] was an active part of physically and mentally coercing that information from Robert." The court also concluded Todd "was instrumental in formulating the plan, coming up with the plan and carrying it out."

¶ 82 The trial court found defendant knew of Todd's criminal involvement, but continued to remain friends "across state lines for years." The court found questionable any argument defendant was led astray by Todd's persuasiveness, given the testimony showing defendant was a leader and role model. The court was struck by the opportunities defendant had to withdraw from this planned home invasion. Defendant could have withdrawn while in North Carolina and in Chicago, when he was with his excellent parents. The court noted other opportunities along the way when defendant could have repudiated his actions, including when the police officers stopped him and questioned him separately from Todd just after they left the Rigdon residence.

¶ 83 The trial court found deterrence was a key factor in aggravation. The court wanted "to make it clear that society will not tolerate" individuals targeting "innocent, hard-working citizens." The court found in aggravation the victims were over 60. The nature and circumstances of the offense deserved, the court found, "significant and profound aggravation." The court found very little emotion during defendant's testimony, and gave weight to defendant's

expressed remorse upon concluding it was sincere. The trial court sentenced defendant to 26 years' imprisonment.

¶ 84 This appeal followed.

¶ 85 II. ANALYSIS

¶ 86 On appeal, defendant filed two briefs: his opening brief and a supplemental brief.

In his opening brief, defendant contends his sentence was excessive and a fine was improperly levied against him. In his supplemental brief, defendant challenges the trial court's decisions in excluding evidence defendant sought to introduce at the sentencing hearing and in the court's consideration of his parents' divorce. We begin with the arguments in the supplemental brief.

¶ 87 A. Request for Todd's Voice Example at Sentencing Hearing

¶ 88 In his supplemental brief, defendant first argues the trial court erred by refusing defense counsel's request Todd read a passage of prose to demonstrate his speaking voice and style of speech. Defendant, citing *Schmerber v. California*, 384 U.S. 757, 764 (1966), contends the fifth amendment does not protect an accused against compulsion to speak for identification. Defendant maintains he was prejudiced by the exclusion of such evidence because defendant contended Todd "was the soft-spoken person who guarded Diane Rigdon, not Evans, as Evans testified." Defendant maintained this evidence would have helped establish he was the last to enter the house and he did not assault or torture the Rigdons.

¶ 89 The usual rules of evidence that govern trials are relaxed at sentencing hearings. *People v. Harris*, 375 Ill. App. 3d 398, 408, 873 N.E.2d 584, 593 (2007). "The trial court may exercise wide discretion in the source and type of evidence it will use to determine the sentence." *People v. White*, 237 Ill. App. 3d 967, 969, 605 N.E.2d 720, 722 (1992). "The only requirement

for admission is that the evidence be reliable and relevant, as determined by the court within its sound discretion." *People v. Williams*, 181 Ill. 2d 297, 322, 692 N.E.2d 1109, 1123 (1998).

¶ 90 In this case, the trial court denied defendant's request for a voice exemplar from Todd. When defendant requested the exemplar, the court emphasized the fact they were in a sentencing hearing and were "getting far afield."

¶ 91 The court's decision was not an abuse of discretion. Defendant bases his argument on appeal on the fact such evidence would show Todd restrained and watched Diane, not Evans. This argument, however, has no basis in the evidence, as defendant himself testified, like Evans did, that Evans, not Todd, restrained and watched Diane. In addition, even if it could be shown Todd watched Diane as defendant now claims, such evidence would have had no bearing on the sentencing outcome as sufficient evidence showed defendant was involved in assaulting the Rigdons. First, defendant, per stipulation, admitted his conduct which led to his home-invasion conviction resulted in great bodily harm to Diane and Robert. Second, as the trial court concluded, because defendant had the keys and wrote down the necessary security codes given by Robert and both Robert and Diane testified more than one individual struck Robert, "there is a strong inference that [defendant] was an active part of physically and mentally coercing that information from Robert." Such evidence was properly characterized "far afield."

¶ 92 B. Sustaining State's Objections to Expert Answering Questions on How Defendant Compared to Other Offenders

¶ 93 Defendant next argues the trial court erred by refusing to allow Dr. Jeckel to opine defendant's candor, insight, and remorse compared favorably to other forensic subjects he had interviewed. We find no abuse of discretion.

¶ 94 Whether to admit expert testimony is a matter within a trial court's discretion. See *People v. Howard*, 305 Ill. App. 3d 300, 307, 712 N.E.2d 380, 384 (1999). A trial court should not permit expert testimony if it would not help the fact finder understand an aspect of the evidence it otherwise would not understand or if it would invade the province of the fact finder to determine witness credibility and assess the facts of the case. See *Howard*, 305 Ill. App. 3d at 307-08, 712 N.E.2d at 385. We are mindful this is a review of a sentencing hearing and evidence may be considered at a sentencing hearing if it is both relevant and reliable. *People v. Moore*, 250 Ill. App. 3d 906, 920, 620 N.E.2d 583, 593 (1993).

¶ 95 In this case, the trial court did not abuse its discretion in refusing to allow Dr. Jeckel to testify defendant exhibited more candor, insight, and remorse than other individuals he had interviewed over the years. Such testimony would have improperly invaded the trial court's role of determining witness credibility and assessing the facts and was irrelevant. Defendant had the opportunity to testify before the court and, the court had the opportunity to ascertain defendant's candor, insight, and remorse and properly assess defendant's credibility.

¶ 96 C. Denial of Defendant's Motion To Admit Police Reports

¶ 97 Defendant next argues the trial court erred by refusing to admit the police reports of investigators Sherrick and Shaw as to their conversations with Robert and Diane. Defendant maintains these reports would have shown he was the "shy guy" and "played no direct role in assaulting and torturing the Rigdons."

¶ 98 In making this argument, defendant cites no case law showing a trial court should admit at a sentencing hearing a police report when a police officer is called to the stand, asked if the report is accurate, testified the reports were summaries of the victims' statements, and not

questioned regarding specific statements within the report. At best, defendant establishes ordinary rules of evidence are relaxed at sentencing hearings (*People v. Bouyer*, 329 Ill. App. 3d 156, 163, 769 N.E.2d 145, 151 (2002)), evidence at sentencing may be admitted if it is both relevant and reliable (*Harris*, 375 Ill. App. 3d at 409, 873 N.E.2d at 594), the source and type of admissible information is virtually without limits (*People v. Rose*, 384 Ill. App. 3d 937, 941, 894 N.E.2d 156, 160 (2008)), and hearsay evidence is not *per se* inadmissible at a sentencing hearing (*Harris*, 375 Ill. App. 3d at 409, 873 N.E.2d at 594). Defendant makes no effort to explain how the cases he cited apply to his own, where the issue was not relevance or hearsay, but the lack of an opportunity to cross-examine on the reports. Defendant has forfeited this argument. See Ill. S. Ct. R. 341(h)(7) (eff. Jul. 1, 2008) ("[p]oints not argued are waived"); see also *People v. Hood*, 210 Ill. App. 3d 743, 746, 569 N.E.2d 228, 230 (1991) ("A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research."). In addition to the failure to cite relevant authority supporting his argument, defendant also fails to cite the reports and any language from those reports he deems helpful to his argument, in further violation of Illinois Supreme Court Rule 341(h)(7) (eff. Jul. 1, 2008) ("Argument *** shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.").

¶ 99 D. Trial Court's Consideration of Defendant's Allegations that
Todd Committed Other Crimes

¶ 100 Defendant next contends the trial court erred by failing to consider Todd's
statements to defendant Todd was involved in murders in Chicago as substantive evidence

instead of only for its effect on defendant's state of mind. Defendant maintains the evidence of Todd's involvement in other crimes was relevant because section 5-5-3.1(a)(5) of the Unified Code of Corrections (730 ILCS 5/5-5-3.1(a)(5) (West 2008)) states if defendant's criminal conduct was induced or facilitated by another it is a mitigating factor to be considered at sentencing.

¶ 101 When defendant was asked to testify regarding Todd's statements about other crimes he committed, the State objected on relevancy grounds. The trial court responded: "I won't consider it for the truth of the matter asserted but simply for this defendant's state of mind."

¶ 102 We find no error in this decision. Any relevancy for consideration of Todd's criminality and influence as a mitigating factor was tied solely and thus relevant only to defendant's state of mind. It did not matter in *defendant's* sentencing if Todd actually committed the other crimes, only if defendant believed Todd had committed these crimes. In sentencing defendant, the trial court did give weight to the fact Todd was instrumental in planning and completing the crime. The court, however, noted while defendant knew of Todd's criminal involvement, defendant continued to maintain his friendship with Todd over state lines. The court also found defendant was a leader and role model in the community, making it less likely Todd's persuasiveness led defendant astray. Further undermining defendant's argument Todd's criminality led defendant to committing this crime is defendant did not fear Todd to the extent defendant would not decline his offer. Defendant testified Todd had to repeatedly ask him to become involved in the home-invasion endeavor before defendant ultimately agreed and defendant, despite Todd's desire to continue with the robbery of the currency exchange, decided to end the criminal endeavor.

¶ 103 E. Trial Court's Ruling Evidence of Todd's Other Unrelated Crimes
Were Not Relevant to Sentencing Defendant

¶ 104 Defendant next maintains the trial court erred by refusing to allow Darrell Kasper, a victim of two strong-arm robberies committed by Evans, Todd, and Williams, to testify regarding those robberies. Defendant contends this testimony would have shown "Todd, an experienced organizer of the armed robberies he committed with Isaiah Evans and Jamal Williams[,] seduced [defendant] into committing" the home invasion. Defendant also maintains such testimony would have supported his testimony "he played a relatively minor role" in the home invasion while "Williams used force" and Evans was the backup to Williams, as in the armed robberies.

¶ 105 We find no error. Such testimony was irrelevant. As the trial court's comments showed at sentencing, the court heard and believed Todd was instrumental in planning the offense, Williams used force to subdue Robert, and Evans went in with Williams and subdued Diane. Kasper's testimony would have added nothing. Contrary to defendant's assertions in his supplemental brief, Kasper's testimony would not have shown Todd "seduced" defendant, an argument the trial court in its discretion rejected, and it would not have shown defendant's role in the home invasion deserved a lesser sentence than he received.

¶ 106 F. Trial Court's Consideration of Effect of Defendant's Parent's Divorce

¶ 107 Defendant next argues the trial court erroneously failed to consider the effect of his parents' divorce as a mitigating factor. Defendant contends, before the divorce, he was a good student and good citizen. Defendant emphasizes Dr. Jeckel's testimony his parents' divorce was a contributing factor that "initiated the downward spiral" to the home invasion. Defendant

contends the trial court, by stating the divorce was not a justification or excuse for his crime, was confused about the role of mitigating factors.

¶ 108 We find no abuse of discretion in the trial court's consideration of defendant's parents' divorce. The court considered the divorce and its effect on defendant, explicitly addressing the divorce issues just after discussing some of the mitigating factors it found applicable. The court found the emphasis on divorce unconvincing, noting Dr. Jeckel's conclusion the divorce was a factor but not a sufficient cause of defendant's criminal actions. As the court further found, defendant was 16 years old when his parents divorced, and he was not left to neglect or abuse or "to fend for himself on the streets of Chicago." The court did not err in not giving the divorce the mitigating weight defendant believes it deserves.

¶ 109 G. Excessive Sentence Claim

¶ 110 Defendant's original brief first contends his 26-year sentence is excessive. Defendant emphasizes his age (21), his lack of criminal background, his potential for rehabilitation, and his genuine remorse. Defendant highlights the number of individuals who testified as to his intelligence and his leadership, and the fact that over 15 people sent letters supporting defendant and attesting his character.

¶ 111 A trial court has great discretion in fashioning an appropriate sentence within the statutory guidelines. *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999). In making a sentencing determination, the court must consider the particular circumstances of the case, including "such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *Fern*, 189 Ill. 2d at 53, 723 N.E.2d at 209. On review, this court will give great deference to the judgment of the trial court; we will proceed

with "great caution," not substituting our judgment for the trial court's. *Fern*, 189 Ill. 2d at 53, 723 N.E.2d at 209; *People v. White*, 237 Ill. App. 3d at 969, 605 N.E.2d at 721-22 (observing we review excessiveness challenges under the abuse-of-discretion standard). We will not deem a sentence within statutory limits excessive unless "it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *Fern*, 189 Ill. 2d at 54, 723 N.E.2d at 210.

¶ 112 Defendant's sentence falls within the statutory guidelines. Defendant pled guilty to home invasion (720 ILCS 5/12-11(a)(2) (West 2008)), a Class X offense (720 ILCS 5/12-11(c) (West 2008)). Defendant's offense carried a potential sentence of 6 to 30 years (730 ILCS 5/5-4.5-25(a) (West 2008)). Defendant was sentenced to 26 years.

¶ 113 Defendant's sentence is not greatly at variance with the law's purpose and spirit or is manifestly disproportionate to the nature of the offense. The record shows mitigating factors in defendant's favor, including his age and lack of criminal arrests and convictions, but the aggravating factors are weighty and significant. The trial court acted within its discretion when finding the circumstances of the offense deserved significant aggravation. The victims were both over the age of 60 and were targeted in their home by four much younger, armed men. Defendant decided to participate in this offense while in college in North Carolina and drove from Chicago with the purpose of participating in the home invasion. While defendant may have been the last to enter, he knew weapons were going to be used and victims over the age of 60 were going to be subdued and restrained. Defendant participated in the planning of the home invasion and in the offense itself, continuing to ransack the house and be a part of collecting information on the currency exchange while the victim lay on the floor bleeding from his head. Defendant,

by stipulation, admitted his conduct resulted in great bodily harm. While mitigating factors exist, "a defendant's rehabilitative potential and other mitigating factors are not entitled to greater weight than the seriousness of the offense." *People v. Shaw*, 351 Ill. App. 3d 1087, 1093-94, 815 N.E.2d 469, 474 (2004). The court's sentencing decision is not an abuse of discretion.

¶ 114 H. Credit Against Fines For Time Served

¶ 115 Defendant also contends he is entitled to monetary credit against his fines for his time spent in presentence incarceration. Defendant makes two arguments here. First, defendant contends he was ordered to pay a \$5 drug-court fee. Defendant maintains, because he is entitled to \$5 credit against that fee for each day of the 344 days he spent incarcerated before sentencing, that \$5 drug-court fee is satisfied. Second, defendant maintains he was ordered to pay a fine of \$20 under the VCVAA (725 ILCS 240/10(b) (West 2008)). Defendant contends this amount must be reduced to \$0.50.

¶ 116 1. *Drug-Court Fee*

¶ 117 As to defendant's first argument, the State maintains no drug-court fee was ordered, so the first argument fails. We agree. The record shows while "DRUG COURT PROGRAM" is listed in the description column providing fees and fines, no amount is listed in the corresponding column. The document in the record cited by defendant (see appendix) fails to show a drug-court fee was imposed.

¶ 118 2. *VCVAA Fine*

¶ 119 Defendant also challenges the assessment of \$20 under the VCVAA. Defendant bases his argument this amount should be lowered on his allegation a drug-court fee was imposed. Because the record does not reveal such a drug court fee was imposed, this argument,

too, fails.

¶ 120 We note the State has established the \$20 assessment is proper. Defendant had been ordered to pay the \$200 deoxyribonucleic acid (DNA)-analysis assessment required by section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)). This assessment is a fine. *People v. Long*, 398 Ill. App. 3d 1028, 1034, 924 N.E.2d 511, 516 (2010). Under section 10(b) of the VCVAA, a fine of \$4 for every \$40 of other fines must be imposed. 725 ILCS 240/10(b) (West 2008). Applying section 10(b)'s formula to defendant's \$200 DNA-analysis fine results in a \$20 fine under the VCVAA.

¶ 121

III. CONCLUSION

¶ 122 For the stated reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 123 Affirmed.

Action Charge No 06 OF 06 00 Case 2008 CF 001103 2001 Bond Amt
 Manual Q Judge HNL Class X **SMITH NAZEER** .00

Cost Only ASA SDZ Agency 268 **CHAMPAIGN COUNTY SHERIF**
 .00 Open Paymts N Probation Use Bond Y/N Y More

Acctno	M	Description	Tot-Amount	Tot-Payment	Order Summary	
5310		DOCUMENT STORAGE X	5.00		Cost Amount	332.00
5200		AUTOMATION X	5.00		Fine Amount	.00
5220		CIRCUIT CLERK FEE X	100.00		Restitution	.00
5240		COURT SECURITY X	25.00		Other Amounts	161.87
5274		ARRESTEE'S MEDICAL X	10.00		Total Amount	493.87
5320		COURT FINANCE FEE X	50.00			
5280		STATES ATTORNEY X	40.00		Bond Used	.00
5505		VICTIMS FUND-NO FIX	20.00		Other Paymts	.00
5317		DRUG COURT PROGRAM			Total Paymts	.00
5270		SHERIFF FEES	77.00		Balance Due	493.87
5200		COLLECTION FEES	112.82			
5200		LATE FEES	49.05		Refund Amt	.00
					Bond Fees	.00
					Probation Fee	.00
					Collection Am	488.87
					F0=Collection	

Bond .00
 Order 493.87

OK Exit Cancel

4-09-0581

**SUPPLEMENT
 TO RECORD**

VOL. II

FILED
 SEP 10 2010

Clerk of the
 Appellate Court 4th Dist.

I, LINDA S. FRANK, Clerk of the Circuit Court in and for the
 County of Champaign, State of Illinois, do hereby certify that
 the foregoing is a true, correct and complete copy of the
 instrument as it appears of record and on file
 in my office, this 9 day of August, 2010

Linda S. Frank
 Clerk of the Circuit Court
 Sixth Judicial Circuit
 Champaign County, Illinois