

NOTICE
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2011 IL App (4th) 110252-U

Filed 12/15/11

NO. 4-11-0252

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Petitioner-Appellee,)	Circuit Court of
v.)	Vermilion County
ANGELO WILLIS,)	No. 08CF302
Defendant-Appellant.)	
)	Honorable
)	Nancy S. Fahey,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the defendant's 25-year sentence for armed robbery, concluding that although the trial court had considered an improper sentencing factor—an argument that the defendant forfeited on appeal—the defendant failed to show that the court's error was so severe that it affected the fairness of his sentencing hearing and challenged the integrity of the judicial process.
- ¶ 2 In August 2008, defendant, Angelo Willis, pleaded guilty to armed robbery (720 ILCS 5/18-2(a)(1) (West 2008)) pursuant to a negotiated plea. The trial court later sentenced defendant to 25 years in prison.
- ¶ 3 Defendant appeals, arguing that the trial court's sentence was excessive in that the court considered a factor inherent in the offense as an aggravating sentencing factor. Because we conclude that defendant failed to satisfy his burden of persuasion under the plain-error doctrine, we affirm.

¶ 4

I. BACKGROUND

¶ 5 In June 2008, the State charged defendant with (1) two counts of armed robbery (720 ILCS 5/18-2(a)(1), 18-2(a)(2) West 2008)) (counts I and II, respectively); (2) armed violence (720 ILCS 5/33A-2(a) (West 2008)); and (3) possession of a stolen firearm (720 ILCS 5/16-16 (West 2008)). In August 2008, defendant pleaded guilty to count I pursuant to a negotiated plea. In exchange for defendant's guilty plea, the State agreed to dismiss the remaining charges without making a sentencing recommendation. After determining that (1) defendant's guilty plea was knowing and voluntary and (2) a factual basis existed, the trial court accepted defendant's plea.

¶ 6 At an October 2008 sentencing hearing, defendant testified that he was a life-long resident of Chicago, was married, and had a one-year-old daughter. Defendant confirmed that he (1) had three prior felony convictions for delivery of controlled substances, specifically, cannabis, but he asserted that he did not have a violent criminal history and (2) was on probation for his most recent felony conviction. Defendant explained that after devising a plan with accomplices to rob a fast-food business based on information from a former employee, he ingested cannabis, two ecstasy pills, and alcohol. Defendant then traveled by car from Chicago to Danville to commit the armed robbery. Defendant admitted that he (1) entered the business brandishing a firearm, (2) struck an employee with that firearm because she was not "moving fast enough," and (3) removed the cash register. Defendant later expressed his remorse to the employee he struck.

¶ 7 Following arguments, the trial court stated, in part, the following:

"[T]he Court *** finds absolutely no factors in mitigation

involving [defendant].

The factors in aggravation that the Court considers is that *** defendant's conduct caused or threatened serious harm. *** [D]efendant received compensation for committing the offense. *** [D]efendant has a history of *** criminal activity and the sentence is necessary to deter others from committing the same crime.

[The Court] think[s] the most telling thing that your attorney said is that you were told it would be easy, as if that were some justification for what you did. You were told it would be easy to come down here and commit an armed robbery, like that's some justification. And your drug use is no justification in the mind of this court. *** [The Court is] not [going to] tolerate this type of activity in [the] community [because the Court] want[s] this to be a safe community *** for every[]one else that lives here." (Emphasis added.)

The court then sentenced defendant to 25 years in prison. In November 2008, defendant filed a motion to reconsider sentence, which the court later denied.

¶ 8 Defendant appealed, and this court remanded with instructions that the trial court allow defendant to file a new motion to reconsider because trial counsel failed to file a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. Jul. 1, 2006). *People v. Willis*, No. 4-08-0871 (February 20, 2009) (unpublished summary order under Supreme Court Rule

23(c)(2)).

¶ 9 In January 2011, defendant filed another motion to reconsider sentence, which the trial court later denied.

¶ 10 This appeal followed.

¶ 11 II. DEFENDANT'S SENTENCING CLAIM

¶ 12 Defendant argues that the trial court's sentence was excessive in that the court considered a factor inherent in the offense as an aggravating sentencing factor. Specifically, defendant contends that the court considered that he had "received compensation" for committing the robbery at issue. Defendant concedes that because he failed to raise this issue in his motion to reconsider sentence, he has forfeited this issue for our review. See *People v. Montgomery*, 373 Ill. App. 3d 1104, 1123, 872 N.E.2d 403, 419 (2007) (section 5-8-1(c) of the Unified Code of Corrections (730 ILCS 5/5-8-1(c) (West 2004) (now 730 ILCS 5/5-4.5-50 (d) (West 2010)) requires a defendant that challenges any aspect of his sentencing to file a written motion within 30 days of the imposition of sentence). Despite his forfeiture, defendant asserts that his procedural default may be excused by the plain-error doctrine of Illinois Supreme Court Rule 615(a) (eff. Aug. 27, 1999). We disagree.

¶ 13 A. Supreme Court Rule 615(a)

¶ 14 Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967), entitled "Insubstantial and Substantial Errors on Appeal," provides, as follows:

"Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they

were not brought to the attention of the trial court."

¶ 15

B. The Plain-Error Doctrine

¶ 16

In *People v. Bannister*, 232 Ill. 2d 52, 65, 902 N.E.2d 571, 580-81 (2008), the supreme court provided the following guidance regarding the applicability of the plain-error doctrine:

"The doctrine serves as a narrow and limited exception to the general [rule of procedural default]. [Citations.] This court will review unpreserved error when a clear and obvious error occurs and: (1) the evidence is closely balanced; or (2) that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. [Citations.] When a defendant fails to establish plain error, the result is that the procedural default must be honored. [Citation.] In addressing defendant's plain-error contention, it is appropriate to determine whether error occurred at all." (Internal quotations omitted.)

Plain error exists only when the essential fairness of a trial has been undermined, and this occurs only in instances that reveal "breakdowns in the adversary system" as distinguished from "typical trial mistakes." *People v. Rathbone*, 345 Ill. App. 3d 305, 311, 802 N.E.2d 333, 338-39 (2003). "Under both prongs, the burden of persuasion rests with the defendant." *People v. Sargent*, 239 Ill. 2d 166, 190, 940 N.E.2d 1045, 1059 (2010).

¶ 17

C. Defendant's Claim That the Plain-Error Doctrine Applies

¶ 18 In this case, both parties concede that the trial court committed error by considering the proceeds that defendant had unlawfully acquired during the armed robbery as an aggravating factor, and this court accepts their concession. See *People v. Schutz*, 201 Ill. App. 3d 154, 162-63, 559 N.E.2d 289, 294-95 (1990) (citing *People v. Conover*, 84 Ill. 2d 400, 419 N.E.2d 906 (1981) (the fact that the defendant received compensation in the form of proceeds from the armed robbery should not have been considered as an aggravating factor by the trial court at sentencing)). Given that error occurred, we turn to whether either of the two prongs of the plain-error doctrine have been implicated. See *Sargent*, 239 Ill. 2d at 189-90, 940 N.E.2d at 1059 (if error occurred, the reviewing court then considers whether either plain-error prong has been satisfied).

¶ 19 Defendant asserts that the plain error-doctrine applies under the second prong because the trial court's consideration of an aggravating factor implicit to the offense of armed robbery affected his substantial right to liberty and impinged his right not to be sentenced based on improper factors. Specifically, defendant claims that, in crafting his 25-year sentence, the weight the court placed on this improper aggravating factor was not insignificant. See *People v. Heider*, 231 Ill. 2d 1, 21, 896 N.E.2d 239, 251 (2008) (a sentence that is based on improper factors will not be affirmed unless the record shows that the weight the trial court placed on the improper aggravating factor was so insignificant that it did not lead to a greater sentence).

¶ 20 We conclude, however, that defendant has failed to meet his burden of persuasion. Here, in addition to improperly considering the proceeds of the armed robbery as a sentencing factor, the trial court properly considered in aggravation that (1) defendant's conduct caused or threatened serious harm, (2) defendant had a history of criminal activity, and (3) the

sentence was necessary to deter others from committing the same crime. Contrary to defendant's claim, the record shows that, in imposing a 25-year prison sentence, the court placed greater emphasis on the deterrence factor. Specifically, that the court was not going to tolerate this type of serious crime, which would jeopardize the safety of the community and its law-abiding citizenry. In this regard, we view the court's improper remarks at sentencing as a regrettable (but minor) trial mistake, rather than an instance that reveals a breakdown in the adversarial system that implicates the plain-error doctrine. Accordingly, we reject defendant's argument that the court's sentence was excessive because the court considered a factor inherent in the offense as an aggravating sentencing factor.

¶ 21

III. CONCLUSION

¶ 22

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

¶ 23

Affirmed.