

was convicted, he was sentenced to concurrent prison terms of 30 years each for kidnaping and aggravated battery and 10 years for attempt (escape). Defendant appeals, contending (1) the trial court abused its discretion by denying him his right to represent himself at trial; (2) his 10-year sentence for the Class 3 offense of attempt (escape) is void and the case should be remanded for resentencing; and (3) the trial court abused its discretion by sentencing him to maximum Class X sentences for kidnaping and aggravated battery. We affirm as modified and remand with directions.

¶ 3

I. BACKGROUND

¶ 4

On January 26, 2009, defendant was imprisoned at Pontiac Correctional Center, serving two four-year concurrent terms of imprisonment for aggravated discharge of a firearm and escape of a felon from a penal institution. He also had a pending case against him for theft greater than \$100,000 and less than \$500,000, and he was the subject of a federal investigation for impersonating a Federal Bureau of Investigation (FBI) agent. That night, defendant removed the pins from his cell wall holding the metal window frame to the concrete and cut the window out of his cell door. He kicked the window out, exited the cell, put the window back into place and waited for Correctional Sergeant Allen Morrison who was on duty that night. When Sergeant Morrison walked onto defendant's cell gallery, defendant attacked and subdued him. He took Morrison's clothing and equipment in order to appear to be a correctional officer and not an inmate.

¶ 5

Sergeant Morrison reported he was grabbed from behind by someone who put his arm around Morrison's throat, pulling him off his feet and rendering him unconscious. When he woke up, someone was hitting his head against the floor. He was hit in the mouth and spit out

broken teeth. His assailant removed his clothes and handcuffed him behind his back. Morrison was placed in a food elevator facedown. When Morrison yelled for help, the assailant returned and told him to quit yelling or he would spray him with pepper spray. During this attack, Morrison suffered a broken-dislocated ankle which required surgery.

¶ 6 Defendant, dressed in Morrison's uniform, encountered other correctional officers who questioned his identity. When questioned about his assignment, defendant provided answers that raised suspicion, and he was detained. Correctional officers eventually identified defendant as an inmate, secured him without resistance, and placed the facility on lockdown.

¶ 7 Correctional Officer David Jenkins, while monitoring defendant after he was caught, stated defendant admitted having attacked Morrison and stated he hoped he had not killed Morrison. Defendant admitted he got out of his cell through a broken window.

¶ 8 When defendant was interviewed by Department of Corrections investigator Larry Sims, he stated he had a pending case in Clinton County and was the subject of a federal investigation for impersonating an FBI agent while committing a theft. He anticipated receiving a 15-year to life sentence and started thinking about escaping. He then admitted removing the pins from his cell door and cutting the window out of the frame. He admitted the attack on Morrison and wearing his uniform before being caught by other guards. Defendant also admitted escaping from confinement two times previously: from a Madison County police squad car and from the Bond County jail.

¶ 9 After charges were filed against defendant in this case, Livingston County case No. 09-CF-101, several pretrial hearings were held. Many of these hearings were held in tandem with another case pending against defendant for unlawful possession of a weapon by an

inmate in a correctional center (Livingston County case No. 09–CF–76) stemming from an incident on December 6, 2008. On April 13, 2009, a first appearance was held on both cases. At that time, defendant refused to communicate with the attorney appointed to represent him in both cases.

¶ 10 On May 4, 2009, a preliminary hearing was held for both cases. At that hearing, defendant stated he never asked to be represented by the public defender and wanted to represent himself. The trial court inquired into why defendant wanted to represent himself, and he stated his appointed counsel was "insufficient in representing me." The court asked him to elaborate. Defendant stated counsel failed to ask questions at the preliminary hearing or object to hearsay. The court informed defendant the hearsay to which he referred was admissible. However, as defendant had the right to represent himself, the court would "explore" his request. The court then gave detailed admonitions about the dangers of self-representation, and defendant indicated he understood. The court asked defendant if he wanted to proceed *pro se*. Defendant responded by asking if he could possibly hire private counsel in the future. The court told defendant he could, but no other appointed counsel would be available to him.

¶ 11 The trial court then asked defendant if he wanted to proceed *pro se* and the court would proceed with its admonitions. Defendant responded by asking if a psychiatric evaluation would need to be performed to determine if he was mentally competent to represent himself. The court replied "no" and asked why defendant would think he was "mentally incompetent." Defendant answered he had medical records "to substantiate that claim" and to "substantiate why it would arouse the question." Defendant wanted to make sure that was not a problem.

¶ 12 The trial court asked defendant what would "arouse questions" in his medical

records. Defendant replied "Bipolar disorder, ADHD. They say I'm psychopathic, things of that nature." The court declined to order a psychological evaluation because defendant "clearly" understood his rights and "what's going on."

¶ 13 The trial court continued, "You know about your right to cross-examine witnesses because you questioned counsel's decision on what to cross-examine on and when to cross-examine." Defendant proceeded to interrupt the court with several outbursts of ridiculous remarks such as "I can ride my bike fast" and "The window across the street is green." The court warned him he would be removed from the courtroom if he continued to interrupt. Defendant responded "Satan's telling me to do it." The court then concluded the hearing with defendant stating "Demon. Jesus loves me." The court noted for the record defendant "clearly understands what he is saying" and he had a "smirk" on his face so his comments were intended to make a record establishing his mental unfitness when he is clearly fit. The court further stated defendant was "trying to take advantage of the system" by making statements following refusal of a mental health evaluation. The court then noted defendant was not allowed to represent himself and his attorney's appointment continued.

¶ 14 On May 29, 2009, defendant notified the trial court and the prosecutor he had requested his appointed attorney withdraw from both cases, and his letters to the attorney were filed in the court record. On June 3, 2009, the court indicated it was "only taking up" the motion Defendant filed in case No. 09-CF-76 and not the instant case. Defendant admitted his outbursts at the May 4 hearing had been "intentional" and done "[f]or no particular reason." He agreed he had made his comments to make a record for being mentally unsound. The court denied his request to represent himself in case No. 09-CF-76 as untimely as the case was set for trial the

next week. The court further noted defendant's outbursts at the May 4 hearing and determined he "is likely [to] and has engaged in serious and obstructionist misconduct in this courtroom." The record does not show the court specifically ruled on the motion to proceed *pro se* in the instant case.

¶ 15 Defendant was represented at trial by appointed counsel and was convicted as previously noted. On August 6, 2009, counsel filed, on defendant's behalf, a motion for new trial and other posttrial relief. One reason argued for granting a new trial was the improper denial of defendant's "motion to represent himself."

¶ 16 On October 5, 2009, the trial court entertained defendant's motion for a new trial prior to sentencing. Defendant's counsel argued the court erred in failing to allow defendant to represent himself; the State argued the court was justified in not allowing defendant to represent himself, and the court went over its reasons supporting its ruling not allowing defendant to represent himself. The court denied the motion for a new trial for several reasons and sentenced defendant.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Self-Representation

¶ 20 Defendant argues he invoked his constitutional right to self-representation, but the trial court denied his request and required he be represented by appointed counsel. Defendant contends this was an abuse of discretion denying him his constitutional rights and, therefore, this case should be remanded for a new trial where he can represent himself.

¶ 21 A defendant has the right to represent himself at trial. U.S. Const., amends. VI,

XIV; *Faretta v. California*, 422 U.S. 806, 819 (1975); Ill. Const. 1970, art. I, § 8; *People v. Gibson*, 136 Ill. 2d 362, 374-75, 556 N.E.2d 226, 231 (1990). When a defendant freely, knowingly and intelligently waives his right to the appointment of counsel, that waiver may only be rejected in very limited circumstances. *People v. Ward*, 208 Ill. App. 3d 1073, 1084-85, 567 N.E.2d 642, 649 (1991). While a trial court may deny a request to proceed *pro se* when it comes so late as to be disruptive or if it is solely motivated by a desire to disrupt the proceedings, the court may only prevent a defendant from representing himself when he engaged in "serious and obstructionist misconduct." *Faretta*, 422 U.S. at 834 n.46; *Ward*, 208 Ill. App. 3d at 1084, 567 N.E.2d at 649.

¶ 22 A trial court's ruling on a defendant's motion to represent himself is reviewed for abuse of discretion. *People v. Fritz*, 225 Ill. App. 3d 624, 626-27, 588 N.E.2d 307, 309 (1992). The record does not show the court ruled on defendant's request to represent himself in the instant case. However, the State, defendant, the trial court proceeded as if a ruling had been made and proceeded as if the request had been denied. Defendant continues to make an argument about an erroneous ruling on appeal. The State, on appeal, briefly mentions the apparent discrepancy from the trial court but argues (1) the instant case fits within the trial court's justification for denying a motion for self-representation, and (2) defendant has forfeited his right to self-representation for obstructing the court when it was trying to determine if his waiver of his right to counsel was freely, knowingly, and intelligently made.

¶ 23 We agree with the State. We see no need to remand this case to the trial court to make a ruling on defendant's request to represent himself. This court has held a defendant should only be denied his right to represent himself based on misconduct "in *exceptional situations*" and

such situations only arise where there is "serious and obstructionist misconduct." (Emphasis in original.) *Ward*, 208 Ill. App. 3d at 1084, 567 N.E.2d at 649 (citing *Faretta*, 422 U.S. at 834 n.46).

¶ 24 The trial court made a finding defendant engaged in serious and obstructionist conduct, and this finding supported by the record. An "exceptional" situation occurs when a defendant's behavior in the course of seeking self-representation is disruptive and justifies denying his request to proceed *pro se*. See *Ward*, 208 Ill. App. 3d at 1084, 567 N.E.2d at 649. A defendant should not be permitted to profit from his own obstructionist behavior. See *People v. Bridgewater*, 388 Ill. App. 3d 787, 799, 904 N.E.2d 171, 181 (2009). The right of self-representation is not absolute and may be forfeited if the defendant engages in serious and obstructionist misconduct. *People v. Rohlf*s, 368 Ill. App. 3d 540, 545, 858 N.E.2d 616, 621 (2006).

¶ 25 Here, defendant attempted to waive his right to counsel but it is questionable whether this was a genuine request. He tried to use the proceedings to plant error for an appeal by establishing a record concerning his mental competency. He admitted he did this intentionally. He should not be allowed to profit from such tactics and interrupting the hearing on a request to represent himself as he continued to make nonsensical remarks even after the trial court asked him "Do you want to represent yourself or not?"

¶ 26 Even an unequivocal assertion of the right to self-representation may be forfeited by behavior. See *United States v. Long*, 597 F.3d 720, 726 (5th Cir. 2010) (defendant repeated nonsensical statements during his hearing); *United States v. Brock*, 159 F.3d 1077, 1078 (7th Cir. 1998) (defendant refused to answer questions regarding whether he wished to be represented by

counsel). Defendant has forfeited his right to self-representation in this case by his behavior in court. The trial court clearly refused his request to proceed *pro se* in the other pending case, and it did not intend to let him proceed *pro se* in this case because of his behavior and his efforts to obstruct and delay the proceedings.

¶ 27

B. Void Sentence

¶ 28 The extended-term portion of defendant's 10-year sentence for attempt (escape) is void because he was convicted of higher class offenses which were part of a related course of conduct, and the trial court is authorized to impose extended-term sentences only on the offenses within the most serious class. See *People v. Bell*, 196 Ill. 2d 343, 355, 751 N.E.2d 1143, 1149 (2001); 730 ILCS 5/5–8–2(a) (West 2008). This case need not be remanded for resentencing, however, as defendant argues. Instead, we vacate the extended-term portion of the sentence on attempt (escape) and reduce it to the five-year statutory maximum authorized by the Unified Code of Corrections. See 720 ILCS 5/8–4(c)(4) (West 2008); 730 ILCS 5/5–8–1(a)(6) (West 2008); see also *People v. Peacock*, 359 Ill. App. 3d 326, 338, 833 N.E.2d 396, 406 (2005).

¶ 29

C. Class X Sentences

¶ 30 Defendant argues the trial court abused its discretion by sentencing him to serve concurrent maximum Class X sentences of 30 years each for aggravated battery and kidnaping convictions. He admits the sentences were within the enhanced statutory range permitted by statute but argues these sentences are excessive because the convictions were for Class 2 felonies with maximum unenhanced sentences of seven years of imprisonment. He also contends they are harsh in light of his youth, background, and potential for rehabilitation. Defendant asks this court to reduce his sentences to terms commensurate with the offenses and his rehabilitative

potential.

¶ 31 Criminal penalties must be proportionate to both a defendant's culpability and his potential for rehabilitation. *People v. Cox*, 82 Ill. 2d 268, 280, 412 N.E.2d 541, 547 (1980). A trial court has broad discretionary powers when imposing a sentence and its decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209, 737 N.E.2d 626, 629 (2000). While the court's decision is reviewed for abuse of discretion, a reviewing court must not substitute its judgment for the sentencing court merely because it would have weighed sentencing factors differently. *People v. Streit*, 142 Ill. 2d 13, 19, 566 N.E.2d 1351, 1353 (1991). Abuse of discretion occurs when the trial court imposes a sentence greatly at variance with the spirit and purpose of the law or which is manifestly disproportionate to the nature of the offense. *Stacey*, 193 Ill. 2d at 210, 737 N.E.2d at 629.

¶ 32 The record in this case indicates the trial court's sentencing decision was not excessive and was supported by the factors relevant to this defendant. Morrison, the prison guard who was attacked by defendant, testified at trial he was choked from behind until he lost consciousness. When he regained consciousness, defendant banged Morrison's head on the floor to make him lose consciousness again. Morrison's head was hit against the floor, including his mouth, and he spit out broken teeth; and he suffered a broken ankle, requiring surgery. Defendant was later apprehended in Morrison's uniform and admitted the attack to prison investigators. At sentencing, defendant's position was another inmate attacked Morrison and gave him Morrison's uniform without defendant knowing anything about the attack.

¶ 33 Defendant's presentence report indicated he had prior juvenile and adult convictions. He was imprisoned at the time this offense occurred for the Class 1 felony offense

of aggravated discharge of a firearm and escape of felon from a penal institution a (Class 2 felony). He was serving concurrent four-year sentences for each offense. He also had a pending Class 1 felony theft charge. While imprisoned, defendant also had 13 "major" disciplinary infractions over a 30-month period, including 4 "assaults or planned/ attempted assaults on corrections staff." Defendant also requested mental health services while imprisoned but stated it was only "as a means to attempt to escape." During the presentence investigation, defendant claimed to be an actual corrections officer who was being wrongfully held in a case of mistaken identity.

¶ 34 The prosecutor stated he rarely recommended a maximum sentence but, in this case, defendant was dangerous even in a maximum security prison setting and there was the need to deter physical attacks on corrections officers. The trial court also stated it had never imposed a maximum sentence before but found it justified in this case. The court noted defendant applied his obvious intelligence in a negative manner by disrupting court proceedings and committing a "premeditated" crime taking a long time to plan and execute. Further, the court noted strong aggravation from the "very serious harm" caused Morrison and the brutal nature of the crime and concluded deterrence was a significant factor in this case. Finally, the court also noted defendant had a prior escape from a county jail. As these offenses provided for day-for-day good-time credit, the court told defendant he was "looking at 15 years" if he could maintain good conduct.

¶ 35 Despite defendant's young age (23) and obvious intelligence (obtaining his general equivalency diploma (GED) while imprisoned), the maximum sentence was justified by the severe nature of the offenses and the need to deter attacks in escape attempts. Defendant realized his choke hold could have killed Morrison because, after being caught, he repeatedly asked

whether he killed Morrison and whether Morrison was still alive. Defendant's rehabilitative potential was questionable. He had already escaped from a county jail and was serving a prison sentence for the offense and yet had planned the extensive escape attempt for which he was convicted here. The existence of mitigating factors does not require a trial court to reduce a sentence from the maximum (*People v. Phippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001)), nor does rehabilitative potential or other mitigating factors deserve greater weight than the seriousness of an offense (*People v. Shaw*, 351 Ill. App. 3d 1087, 1093-94, 815 N.E.2d 469, 474 (2004)).

¶ 36 Defendant's maximum sentences were not at variance with the spirit and purpose of the law nor manifestly disproportionate to the nature of the offense. The trial court did not abuse its discretion by sentencing defendant to two 30-year sentences to be served concurrently.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's judgment as modified. We remand for issuance of an amended sentencing judgment reflecting defendant's sentence for attempt (escape) is the maximum five-year non-extended prison term. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 39 Affirmed as modified; cause remanded with directions.