

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (4th) 100240-U

Filed 8/8/11

NO. 4-10-0240

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Adams County
COREY D. PHILLIPS,)	No. 09CF495
Defendant-Appellant.)	
)	Honorable
)	Mark A. Drummond,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Presiding Justice Knecht and Justice Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant forfeited his right to appeal the correctness of the 30-year prison sentence imposed by the trial court, and we affirm.
- ¶ 2 Defendant, Corey D. Phillips, appeals the February 2010 judgment of the trial court sentencing him to 30 years in prison. Defendant argues the trial court abused its discretion when it sentenced him to the maximum nonextended penalty allowed by statute. We affirm.
- ¶ 3 In December 2009, a jury convicted defendant of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)), a Class X felony. In February 2010, the trial court sentenced defendant to 30 years in prison, with credit for 196 days served from August 13, 2009, to February 24, 2010, the maximum nonextended sentence authorized by statute (730 ILCS 5/5-4.5-25(a) (West Supp. 2009) (6 to 30 years)). The court further ordered defendant to reimburse the county \$5,000 for appointed counsel and to pay \$2,768.86 restitution. This appeal

followed.

¶ 4 Defendant was charged with aggravated battery with a firearm in connection with a shooting that occurred in August 2009. The evidence at trial showed the following.

¶ 5 Defendant was involved in an altercation with the victim outside the victim's home. The victim initiated the altercation when he struck defendant in the head with his fist. During the altercation, defendant pulled out a handgun and fired four shots in close proximity to the victim. Two of the bullets struck the victim in the leg and passed through, causing minor injuries to the victim. Defendant then fled the area on foot. The next day, defendant turned himself in to police and was charged with aggravated battery with a firearm. The jury found defendant guilty.

¶ 6 At sentencing, the trial court received a presentencing investigation report (PSI) that showed defendant had an extensive and violent criminal history. Defendant was previously convicted of armed robbery and criminal sexual assault, both Class X felonies, in 1987 in St. Clair County, Illinois. Defendant received concurrent 20-year prison sentences on those charges. Defendant was later convicted of a felony-drug-trafficking charge, attempt (second degree murder), and unlawful use of a weapon in Missouri in 1998 and was sentenced to 10 years in prison. Further, defendant was arrested and charged with unlawful possession of a controlled substance in Adams County case No. 09-CF-9 in January 2009, and he was out on bond on that charge when the underlying crime was committed. (The possession charge was still pending when defendant was convicted of the underlying crime.)

¶ 7 During argument at the sentencing hearing, defense counsel pointed out that defendant had received his general equivalency degree, helped support his mother, and had not

severely injured the victim though he could have had he wanted to, and he argued that those facts should be considered in mitigation. The State asked for the maximum 30-year sentence allowed by statute due to (1) defendant's extensive criminal history and (2) the danger of severe injury to the victim and others arising from defendant's actions. Defendant refused the opportunity to make a statement on his own behalf. The trial court went through each mitigating and aggravating factor and found several aggravating and very few mitigating factors applied, and it sentenced defendant to 30 years in prison. This appeal followed.

¶ 8 The State notes that defendant raises the issue of abuse of discretion in sentencing for the first time on appeal. Generally, any objection to sentencing not raised in a postsentencing motion is forfeited by the defendant. 730 ILCS 5/5-4.5-50(d) (West 2008) ("A defendant's challenge to the correctness of a sentence *** shall be made by a written motion filed *** within 30 days following the imposition of sentence."); see also Ill. S. Ct. Rs. 605(b)(2), (b)(6) (eff. Oct. 1, 2001); *People v. Reed*, 177 Ill. 2d 389, 686 N.E.2d 584 (1997). Defendant does not dispute that he failed to raise the issue properly but instead contends the issue should be reviewed for plain error under Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967).

¶ 9 Defendant asserts under *People v. Baaree*, 315 Ill. App. 3d 1049, 1050, 735 N.E.2d 720, 722 (2000), "sentencing issues are regarded as matters affecting the defendant's substantial rights and are thus excepted from the doctrine of waiver." However, this court, in *People v. Rathbone*, 345 Ill. App. 3d 305, 310-11, 802 N.E.2d 333, 338 (2003), specifically declined to follow the First District's reasoning in *Baaree*. This court, in *Rathbone*, 345 Ill. App. 3d at 312, 802 N.E.2d at 339, instead found plain-error analysis must be conducted. Plain-error review allows a court to rule on an issue that was not properly preserved, in two circumstances:

(1) where it may have affected the outcome of a closely balanced case or (2) where the error was so serious it threatened the fairness of the outcome and the very integrity of the trial process. *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010). Under the second prong of plain-error analysis, this court has found any claim that "addresses the trial court's exercise of its discretion, not the fairness of the proceedings or the integrity of the judicial process" does not warrant review. *Rathbone*, 345 Ill. App. 3d at 312, 802 N.E.2d at 339. However, "[t]he first step of plain-error review is determining whether any error occurred." *Thompson* 238 Ill. 2d at 613, 939 N.E.2d at 413. We first consider whether the trial court made an error in sentencing defendant.

¶ 10 Defendant offers no evidence to show that the trial court committed any error in sentencing him to the maximum sentence allowed. The evidence before the court at sentencing showed several aggravating factors were present while there was very little in the way of mitigation. The evidence at sentencing was not closely balanced, and the first prong of plain-error analysis does not apply. Likewise, the second prong of plain-error analysis is inapplicable where the "error" complained of was a matter within the court's discretion and did not implicate the fundamental procedures and fairness of the trial process. Because no error occurred, we need not proceed with any further analysis under the plain-error doctrine.

¶ 11 Defendant is challenging the correctness of his sentence. Such a challenge must be raised in a posttrial motion within 30 days of sentencing or it is forfeited on appeal. Because defendant failed to raise the issue in a posttrial motion, he has forfeited his right to appeal the sentence imposed by the trial court in this instance. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 12 We note the trial court was required by section 5–8–4(d)(9) of the Unified Code of Corrections (730 ILCS 5/5–8–4(d)(9) (West 2008)) to order this sentence to run consecutive to any sentence imposed on the unlawful-possession-of-a-controlled-substance charge (No. 09–CF–9) for which he was free on bond when he shot the victim in this case. However, that charge remained pending at the time of sentencing herein.

¶ 13 Affirmed.