

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) 100163-U

Filed 7/22/11

NO. 4-10-0163

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
JEREMY M. DYSON,	)	No. 09CF599
Defendant-Appellant.	)	
	)	Honorable
	)	Holly F. Clemons,
	)	Judge Presiding.

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

**ORDER**

- ¶ 1 *Held:* The trial court did not err by considering a letter written by defendant's eight-year-old son, which was offered by defendant in mitigation, as evidence reflecting negatively on defendant.
- ¶ 2 In April 2009, the State charged defendant, Jeremy M. Dyson, with driving while license revoked, a Class 4 felony (625 ILCS 5/6-303(a), (d) (West 2008) (text of section effective until June 1, 2009)). In November 2009, defendant pleaded guilty to the charge. The next month, the trial court held a sentencing hearing, at which defendant presented, *inter alia*, a letter from his eight-year-old son as mitigation evidence. In sentencing defendant to 66 months' imprisonment, the court highlighted defendant's extensive criminal history and noted the impropriety of defendant involving his young son in his sentencing hearing.
- ¶ 3 Defendant appeals, asserting the trial court improperly considered "its personal

opinion and unreliable, unsupported assumption about [defendant]'s parenting skills" as a factor in aggravation. We affirm.

¶ 4

#### I. BACKGROUND

¶ 5 The State's information alleged that, on April 4, 2009, defendant drove a maroon Jimmy on a public highway at a time when his license to drive was revoked and he had a prior conviction for driving while his license was revoked (*People v. Dyson*, No. 05–CF–1410 (Cir. Ct. Champaign Co.)). Defendant's prior convictions also made him eligible for an extended-term sentence of three to six years' imprisonment. See 730 ILCS 5/5–5–3.2(b)(1) (West 2008) (text of section as amended by P.A. 95–85 and P.A. 95–942, effective until July 1, 2009); 730 ILCS 5/5–8–2(a)(6) (West 2008) (text of section effective until July 1, 2009). On November 10, 2009, defendant entered an open plea of guilty to the charge, which the trial court accepted.

¶ 6 On December 21, 2009, the trial court held defendant's sentencing hearing. The only evidence the State presented was defendant's driving abstract. Defendant submitted several exhibits, including a letter from his eight-year-old son. Defendant also presented the testimony of his sister, Ashley Kamphaus; his mother, Jackie Martin; and Ranada Burton, the mother of his three children.

¶ 7 Kamphaus testified that, in the past few years, defendant had become a better father and more of a well-rounded person. Defendant plays with his children and helps support the children financially. Martin also testified that, in recent years, defendant had grown up a lot and tried to become a better person and father. He spends quality time with his children and assists Martin with things since she is disabled. Burton testified she and defendant had dated since 2000. She too had noticed a change in defendant's behavior. Defendant communicates

better and is there for his family more. Defendant also now has a job and helps pay the bills. If defendant was gone for a significant period of time, it would be very hard on Burton financially as he helps pay the bills and care for the children so she can work more.

¶ 8 The State recommended defendant receive the statutory maximum penalty of six years' imprisonment based on defendant's extensive criminal history and the fact he had already received two prison sentences. The State also highlighted the fact defendant was on mandatory supervised release when he committed the offense at issue. Defendant requested the statutory minimum penalty of 30 days and one year of probation. Defense counsel emphasized the fact defendant pleaded guilty and made efforts to improve his life since his release from prison in 2008. Defense counsel also noted the financial hardship defendant's family would endure if he was sent to prison.

¶ 9 Defendant spoke in allocution and apologized for his actions. He emphasized the improvements he had made recently in his life and asked for leniency.

¶ 10 After hearing all of the evidence and arguments, the trial court began by observing defendant's extensive criminal history at 28 years old. The court reviewed each of defendant's crimes and his failure to comply with sentencing orders. After describing defendant's criminal history as "absolutely abominable," the court stated the following:

"I find it absolutely offensive that [defendant] would even begin to think that he should have an eight year old write a letter to the Court asking the Court not to place his father in jail. This Court has handled juvenile abuse and neglect cases for the majority of its career on the bench and to ask an eight year old to write a letter to

the Court so placing in the mind of this child that he may bear some responsibility for his dad's position and whether or not he wrote the letter well enough to determine whether or not his child is going [*sic*] or his father is going to go to jail is absolutely an abusive thing.

[Defendant], the discussion about your maturity and your— apparently your ability to be a good father was all lost when the Court read Defendant's Exhibit 1. This is an absolute abomination. To use your child as a part of this sentencing hearing, I just don't understand it. I don't agree with it, and I think it's absolutely horrible that you put Jordan in this position."

The court then noted defendant's last two sentences had been prison terms of two and six years. The court stated defendant had left it with little choice since he had blown off and not complied with the court's orders in the majority of his community-based sentences. The court did not believe defendant had changed, except for the fact he had been able to hold down a job for a little while. The court then sentenced defendant to 66 months' imprisonment.

¶ 11 After defendant received his sentence, defense counsel informed the trial court she had advised defendant it would be acceptable to forward his son's letter to the court. The court declined to address the matter, noting oral motions to reconsider were prohibited by supreme court rules.

¶ 12 On January 19, 2010, defendant filed a motion to reconsider his sentence, asserting the court erred by (1) giving too much weight in aggravation to defendant's prior record

and deterrence, (2) using defendant's son's letter in aggravation when it was offered for mitigation, (3) giving too little weight to defendant's evidence of mitigation, and (4) imposing an excessive sentence. Defense counsel filed the certificate mandated by Illinois Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 13 On February 26, 2010, the trial court held a hearing on defendant's motion to reconsider. Defense counsel informed the court defendant had his son write the letter with her knowledge and consent. She voiced concern the letter was considered in aggravation, and thus defendant was penalized for her mistake.

¶ 14 After hearing the parties' arguments, the court denied defendant's motion. The court again emphasized defendant's young age and extensive criminal history, which included four misdemeanor convictions, five traffic misdemeanor convictions, and two felony convictions. It also noted defendant committed this offense while on mandatory supervised release from his six-year prison term. As to the child's letter, the court commented it was a factor to consider but "not an overriding factor in the Court's decision, in rendering this sentence." The court then cited three cases regarding what courts may consider in determining a defendant's sentence. See *People v. Helm*, 282 Ill. App. 3d 32, 34, 669 N.E.2d 111, 113 (1996); *People v. Fort*, 229 Ill. App. 3d 336, 341, 592 N.E.2d 1205, 1209 (1992); *People v. Traina*, 230 Ill. App. 3d 149, 156-57, 595 N.E.2d 635, 640 (1992). The court found defendant's having his son write the letter showed his lack of judgment and irresponsibility. The court also noted that, while defendant was trying to show his responsibility for the child, the "act in itself spoke volumes to this Court."

¶ 15 On March 1, 2010, defendant filed a notice of appeal in compliance with Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009). Thus, this court has jurisdiction under Rule

604(d).

¶ 16

## II. ANALYSIS

¶ 17 On appeal, defendant seeks the reduction of his sentence or a new sentencing hearing, asserting the trial court improperly considered "its personal opinion and unreliable, unsupported assumption" about defendant's parenting skills and that error contributed in large part to defendant's sentence. The State asserts defendant has forfeited his issue by failing to raise it in the trial court. Defendant responds (1) his issue is not forfeited because it is related to the arguments trial counsel made in the trial court, and (2) even if it is forfeited, we should consider the matter under the plain-error doctrine (Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967)).

¶ 18

Since defendant has asserted plain error, we need not initially address forfeiture because our first step is the same regardless, *i.e.*, determining whether any error occurred at all. See *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1059 (2010) (noting the first step in conducting a plain-error analysis is whether any error occurred).

¶ 19

This court has explained appellate review of a defendant's sentence as follows:

" 'A trial court's sentencing determination must be based on the particular circumstances of each case, including factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Generally, the trial court is in a better position than a court of review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case. [Citation.] Thus, the trial court is the proper forum for the determination of a defen-

dant's sentence, and the trial court's decisions in regard to sentencing are entitled to great deference and weight. [Citation.] Absent an abuse of discretion by the trial court, a sentence may not be altered upon review.' " *People v. Hensley*, 354 Ill. App. 3d 224, 234, 819 N.E.2d 1274, 1284 (2004) (quoting *People v. Kennedy*, 336 Ill. App. 3d 425, 433, 782 N.E.2d 864, 871 (2002)).

Additionally, a "trial court cannot ignore pertinent mitigating factors." *People v. Ryan*, 336 Ill. App. 3d 268, 274, 783 N.E.2d 187, 192 (2003). Moreover, the sentencing court is "not limited to considering statutory aggravating factors but may consider any factor consistent with the statute that would tend to aggravate the offense." *Ryan*, 336 Ill. App. 3d at 274, 783 N.E.2d at 192.

¶ 20 One does not need to be a judge in neglect and abuse cases to know that involving a child in legal proceedings can cause harm to a child. Defendant putting his eight-year-old son in a potentially harmful situation by having him write a letter to the court requesting defendant not go to jail negatively reflects on, *inter alia*, defendant's general moral character and his parenting abilities, which defendant raised at his sentencing hearing. Contrary to defendant's assertion, trial counsel's approval of defendant submitting the letter does not negate the impact on defendant's character since he is the child's parent. Thus, we conclude the court's determination the letter reflected poorly on defendant's judgment, responsibility, maturity, and parenting ability was not based on erroneous, personal opinion, but rather, on common knowledge.

¶ 21 Moreover, we disagree with defendant the court ignored the statutory mitigating factor that imprisoning defendant would entail excessive hardship on his dependents (see 730 ILCS 5/5-5-3.1(a)(11) (West 2008)). The court indicated the mitigation evidence relating to

defendant's maturity and the ability to be a good father was "lost" by the letter. At the sentencing hearing, defendant had presented evidence showing he had matured and became more responsible and a better father. The evidence was of recent progress as defendant had been in prison as recently as 2008. Thus, the court's "lost" statement shows weighing of defendant's mitigation evidence as to the changes he made in his lifestyle, not the ignoring of the statutory mitigation factor regarding hardship to dependents.

¶ 22 Additionally, contrary to defendant's allegations, the trial court never found defendant was an abusive parent. The court only found the act of having the child write the letter was abusive. The court also did not label defendant a bad parent. It just found the evidence relating to defendant's recent progress in being a better parent was "lost" due to the letter. Defendant's mitigating evidence was already questionable because the improvements in his life had been relatively recent.

¶ 23 Last, the record does not demonstrate the trial court sentenced defendant close to the maximum penalty because of the letter. The court's statements at both the sentencing hearing and the hearing on the motion to reconsider are to the contrary. Further, defendant had an extensive criminal history, committed the crime while on mandatory supervised release, and had not complied with the requirements of community-based sentences, and his last sentence was a six-year prison term. The record contains ample evidence supporting a sentence at or near the maximum.

¶ 24 Accordingly, we find the trial court did not err in (1) construing the letter against defendant and (2) considering in general the evidence at defendant's sentencing hearing. Thus, under both standard review and plain-error review, defendant's argument fails.

¶ 25

### III. CONCLUSION

¶ 26 For the reasons stated, we affirm the Champaign County circuit court's judgment.

As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 27 Affirmed.