

In January 2010, defendant filed a notice of appeal, and the trial court appointed the office of the State Appellate Defender (OSAD) to serve as his attorney. In December 2010, OSAD moved to withdraw, attaching to its motion a brief in conformity with the requirements of *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by January 21, 2011, but defendant has not done so. After examining the record and executing our duties in accordance with *Anders*, we grant OSAD's motion and affirm the trial court's judgment.

OSAD contends that the record shows no meritorious issues that can be raised on appeal, and an appeal from the trial court's denial of defendant's motion to reconsider his sentence would be frivolous. Specifically, OSAD contends (1) the indictment sufficiently charged defendant with unlawful possession of a controlled substance with the intent to deliver, (2) the court substantially complied with Illinois Supreme Court Rule 402 (eff. July 1, 1997) when it determined defendant's guilty plea was knowing and voluntary, (3) the court did not abuse its discretion in sentencing defendant to eight years in prison, (4) defense counsel's certificate filed pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) was sufficient, (5) the

court did not abuse its discretion in denying defendant's motion to reconsider sentence, and (6) the court did not err in ordering defendant to pay an \$800 drug-street-value fine, a \$2,000 drug-treatment-assessment fee, a \$100 drug-trauma-center-fund fine, a \$100 drug-laboratory-analysis fee, and a \$200 DNA-analysis fee.

We find the indictment sufficiently charged defendant with unlawful possession of a controlled substance with the intent to deliver.

According to section 111-3(a) of the Code of Criminal Procedure of 1963 (Criminal Procedure Code) (725 ILCS 5/111-3(a) (West 2008)), the charging instrument must specifically set forth the name of the offense, the statutory provision alleged to have been violated, the nature and elements of the offense charged, the date and county where the offense occurred, and the name of the accused. When the sufficiency of a complaint is challenged for the first time on appeal, a reviewing court should consider the complaint sufficient "if it apprised the accused of the precise offense charged with sufficient specificity to prepare his defense and allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct." *People v. Pujoue*, 61 Ill. 2d 335, 339, 335 N.E.2d 437, 440 (1975).

Under section 401 of the Illinois Controlled Substances Act (Substances Act) (720 ILCS 570/401 (West 2008)), "it is unlawful for any person knowingly to manufacture or deliver, or

possess with intent to manufacture or deliver, a controlled substance."

Here, the indictment stated that on or about January 26, 2009, in Bloomington, McLean County, Illinois, defendant committed the offense of unlawful possession of controlled substance with the intent to deliver in violation of section 401(c)(2) of the Substances Act (720 ILCS 570/401(c)(2) (West 2008)), by knowingly and unlawfully possessing, with the intent to deliver, more than 1 gram but less than 15 grams of a substance containing cocaine, a controlled substance.

The indictment met the requirements of section 111-3(a) of the Criminal Procedure Code by (1) identifying the particular offense and statutory provision that defendant was charged with violating, (2) setting forth the nature and elements of the offense charged, (3) stating the date and county where the offense occurred, and (4) stating the name of the accused. Because the indictment was sufficient under section 111-3(a) of the Criminal Procedure Code, no colorable argument can be made that the information failed to state an offense.

We also find that no colorable argument can be made that the trial court failed to comply with Illinois Supreme Court Rule 402 (eff. July 1, 1997) when it determined defendant's guilty plea was knowing and voluntary.

Pursuant to Rule 402(a), the trial court must admonish

the defendant regarding (1) the nature of the charge, (2) the minimum and maximum sentences prescribed by law, (3) his right to plead not guilty, persist in a plea of not guilty, or to plead guilty, and (4) the rights he will waive by entering a plea of guilty. Additionally, before a court may accept a guilty plea, it must, under Rule 402(b), (1) determine if the guilty plea is voluntary and (2) personally question defendant in open court to confirm the terms of the plea agreement or, if no plea agreement exists, to ensure no force, threats, or promises were used to obtain the plea. Finally, under Rule 402(c), the court must determine that a factual basis exists for the plea.

Here, the trial court complied with the requirements of Rule 402. Defendant was fully admonished as to the nature of the charge, the sentencing range of 4 to 15 years' imprisonment, and the rights he waived by entering a guilty plea. Additionally, the court questioned defendant and determined his guilty plea was voluntary. The court also determined that defendant understood no agreement had been made regarding the sentence to be imposed, except for the agreement regarding fines, fees, and costs. Further, the court found a factual basis supported defendant's guilty plea. In particular, the State informed the court that defendant admitted, after his arrest, to being involved in illegal cocaine activity and sales, and defendant was identified as the supplier of the cocaine sold to the police informant.

The trial court substantially complied with the requirements of Rule 402. Accordingly, no colorable argument can be made that the court failed to comply with Rule 402 when it determined defendant's guilty plea was knowing and voluntary.

We also find that the trial court did not abuse its discretion in sentencing defendant to eight years in prison.

Unlawful possession of a controlled substance with the intent to deliver is a Class 1 felony (720 ILCS 570/401(c) (West 2008)), which is punishable by 4 to 15 years' imprisonment (730 ILCS 5/5-8-1(a)(4) (West 2008)). "Determination of the sentence to be imposed is a matter of judicial discretion, and where a sentence is within statutory limits, the trial court's decision will not be disturbed absent an abuse of that discretion." *People v. Conley*, 118 Ill. App. 3d 122, 133, 454 N.E.2d 1107, 1116 (1983).

At the sentencing hearing, the trial court noted, as factors in mitigation, the following facts: (1) this offense was defendant's first felony conviction, (2) defendant's criminal conduct did not cause or threaten serious physical harm, (3) defendant had made important contributions in his community, and (4) defendant's young age. However, the court noted the following as factors in aggravation: (1) defendant's history of prior delinquency and adult criminal activity was significant, (2) incarceration was necessary to deter others from committing

the crime, and (3) defendant's failure to take responsibility for his actions. After considering these aggravating and mitigating factors, the testimony presented by both sides, the presentence report, and defendant's criminal history, the court sentenced defendant to 8 years' imprisonment with credit for 92 days served.

Because defendant's sentence was within the sentencing range for a Class 1 felony, and the court did not rely on improper factors when imposing defendant's sentence, no colorable argument can be made that the court abused its discretion in fashioning an appropriate sentence for defendant.

OSAD argues that defense counsel's Rule 604(d) certificate was sufficient. We agree.

Supreme Court Rule 604(d) (eff. July 1, 2006) requires defense counsel to attach a certificate to any motion to reconsider sentence stating

"the attorney has consulted with the defendant *** to ascertain defendant's contentions of error in the sentence or the entry of the plea of guilty, has examined the trial court file and report of proceedings of the plea of guilty, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings."

The certificate filed by defense counsel stated that counsel (1) consulted with defendant in person and by mail to ascertain his contentions of error in the imposition of his sentence, (2) examined the trial court file and the guilty-plea and sentencing report of proceedings, and (3) made any necessary amendments to the motion to reconsider. Thus, defense counsel's Rule 604(d) certificate complied with the requirements of Rule 604(d), and no colorable argument can be made that the certificate is insufficient.

Additionally, OSAD argues that the trial court did not abuse its discretion in denying defendant's motion to reconsider sentence. We agree.

"A trial court's ruling on a motion to reconsider sentence will not be disturbed absent an abuse of discretion." *People v. Kane*, 404 Ill. App. 3d 132, 139, 935 N.E.2d 1116, 1121 (2010).

In May 2009, defendant filed a motion to reconsider sentence, arguing the sentence imposed was excessive, and the trial court failed to consider the mitigation factors. In denying defendant's motion to reconsider his sentence, the trial court considered defendant's young age, the seriousness of the offense for which defendant was being sentenced, and his criminal history. The court explained that defendant's guilty plea "was definitely a sign of mitigating significance," but it did not

believe defendant's sentence was inappropriate. After the court denied his motion, defendant stated that he believed the court had imposed an appropriate sentence, and he had not asked his counsel to file the motion to reconsider sentence on his behalf. Based on this record, no colorable argument can be made that the court abused its discretion in denying defendant's motion to reconsider sentence.

Finally, OSAD argues the trial court did not err in ordering defendant to pay an \$800 drug-street-value fine, a \$2,000 drug-treatment-assessment fee, a \$100 drug-trauma-center-fund fine, a \$100 drug-laboratory-analysis fee, and a \$200 DNA-analysis fee.

Under section 5-9-1.1(a) and 5-9-1.1(b) of the Unified Code of Corrections (730 ILCS 5/5-9-1.1(a), (b) (West 2008)), a street-value fine and a \$100 drug-trauma-center-fund fine shall be imposed when a defendant is found guilty of possession or delivery of a controlled substance. Additionally, under section 411.2 of the Substances Act (720 ILCS 570/411.2(a)(2) (West 2008)), a \$2,000 drug-treatment-assessment fee shall be imposed for a Class 1 felony conviction under the Substances Act. Also, when a defendant has been found guilty of an offense in violation of the Substances Act, a \$100 drug-laboratory-analysis fee shall be imposed. 730 ILCS 5/5-9-1.4(b) (West 2008). Finally, any person required to submit a DNA sample for analysis is required

to pay a \$200 DNA-analysis fee. 730 ILCS 5/5-4-3(j) (West 2008).

Because defendant pleaded guilty to unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(c)(2) (West 2008)), a Class 1 felony, the trial court correctly assessed the \$800 drug-street-value fine, the \$2,000 drug-treatment-assessment fee, the \$100 drug-trauma-center-fund fine, the \$100 drug-laboratory-analysis fee, and the \$200 DNA-analysis fee. Accordingly, no colorable argument can be made that the court abused its discretion in its assessment of the fines and fees.

Additionally, the trial court awarded defendant \$5-per-day credit against his fines for time spent in custody pursuant to section 110-14(a) of the Criminal Procedure Code (725 ILCS 5/110-14(a) (West 2008)). Because defendant was incarcerated from January 26, 2009, to April 27, 2009, the court awarded defendant a \$460 credit for the 92 days spent in custody. Accordingly, the court properly granted the \$5-per-day credit against defendant's fines.

For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

Affirmed.