

No. 1-10-0775

**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).

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	
	)	No. 90 CR 24048
	)	
RUSSELL WILLIAMS,	)	
	)	Honorable
Defendant-Appellant.	)	Kenneth J. Wadas,
	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

**ORDER**

¶1 **Held:** The circuit court acted within its discretion when it sentenced defendant to 60 years' imprisonment for first degree murder and in ordering defendant's 60-year sentence in this case to run consecutively to a 20-year sentence previously imposed in another case. The court erred in ordering defendant's 60-year sentence for first degree murder to run consecutively to his 30-year sentence for attempt murder. The court did not err when it weighed both statutory factors in aggravation and mitigation in imposing defendant's sentence.

¶2 Defendant Russell Williams was convicted of first degree murder and attempt murder. He was sentenced to natural life for first degree murder and a concurrent sentence of 30 years for attempt first degree murder. On appeal he argues: (1) the court abused its discretion in sentencing him to 60 years' imprisonment; (2) his consecutive sentences for first degree murder and attempt murder are not authorized by statute and are void; (3) the court erred in ordering his sentence in this case be served consecutively to a 20-year sentence for a previous second degree murder; and (4) the trial court improperly considered an aggravating factor inherent in the offense when imposing sentence. For the following reasons, we affirm the judgment of the court but vacate the court's order imposing consecutive sentences for first degree murder and attempt murder and remand for resentencing consistent with our directions.

¶3 BACKGROUND

¶4 On July 12, 1990, Frank Hernandez, a member of the Latin Saints, was in front of a grocery store with his friends and his eighteen-month-old son. A black vehicle drove by and Hernandez saw a passenger "thr[o]w up a pitchfork," signifying a rival gang, the Disciples. Hernandez gave the car "the finger," and turned to walk away with his son. The passenger fired several shots at Hernandez. Hernandez covered his son and fell to the ground. While on the ground, he was shot in the right buttock. Luz Fernandez, a pedestrian walking on the sidewalk with her baby was shot in the head and killed. Five other witnesses testified that they witnessed the shooting. Their testimony was consistent with Hernandez's. A jury convicted defendant of first degree murder and attempt murder.

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¶5 Defendant had a prior first degree murder conviction and was therefore sentenced to a mandatory term of life in prison for the first degree murder of Luz Fernandez. Defendant also received a concurrent term of 30 years' imprisonment for the attempt murder of Frank Hernandez.

¶6 This court affirmed defendant's conviction on appeal in *People v. Williams*, No. 1-93-2396 (1996) (unpublished order pursuant to Supreme Court Rule 23).

¶7 On February 18, 2005, defendant filed a postconviction petition wherein he alleged that he was no longer subject to a mandatory life sentence because the prior first degree murder conviction on which his life sentence was based had been reversed. Defendant had been convicted of first degree murder and attempt murder in case 91 CR 5945-02 stemming from a separate incident which occurred on August 23, 1990. He was sentenced to 45 years for first degree murder and 30 years for attempt murder. On November 9, 1998, defendant filed a postconviction petition in that case, which was granted. His convictions were subsequently reversed and he pled guilty to second degree murder. He was sentenced to 20 years' imprisonment.

¶8 On August 16, 2005, the circuit court granted the postconviction petition defendant filed in this case and vacated his life sentence for first degree murder. A resentencing hearing was held on January 15, 2010.

¶9 At the hearing, the State filed a motion to seek discretionary consecutive sentences. In aggravation, the State presented three victim impact statements from Luz Fernandez's relatives. Cynthia Chavez, Luz Fernandez's daughter, explained how hard it was for her to grow up

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without a mother and how, because she was so young when her mother was murdered, she had no memories of her. Hector Chavez, Cynthia Chavez's father and Fernandez's boyfriend at the time, stated that defendant killed the love of his life and he has experienced hurt and anger since her death. Sonya Mojica, Fernandez's mother, recalled how traumatic it was when she saw her daughter's body lying on the ground. Since her daughter's murder, her family had experienced a lot of sadness and illness. In addition to the victim impact statements, the State also presented the transcripts of the trial and sentencing hearing and presented a certified copy of defendant's conviction in 91 CR 5945-02.

¶10 In mitigation, defendant presented evidence of his accomplishments while in prison. Defendant obtained his GED in 1991 and took courses toward an associate's degree. He became a law clerk in the prison library in 2005 and earned his law clerk certificate in 2007 after attending a training program. Lorie Haves testified at the sentencing hearing that she was a paralegal assistant in the prison and supervised defendant. Haves described defendant's work as "excellent." Crystal Mason testified that she was also a paralegal assistant in the prison law library and supervised Williams. Defendant took initiative and was a good worker who was respectful, responsible, trustworthy and honest. Karen Rabidea testified that she was defendant's former counselor in prison and often saw defendant at the prison law library. She stated that defendant had a good work ethic and was intelligent. Joe Hosselton testified that he was defendant's former counselor in prison. He testified that defendant worked a variety of jobs around the prison. The defense also presented a letter from Patricia Soung, an attorney for the Bluhm Legal Clinic at Northwestern University School of Law. Soung wrote that she met with

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defendant who had expressed an interest in working with the clinic on juvenile justice issues. Soung went on to say that studies have shown that a juvenile's capacity for judgment, impulse control and risk assessment are less developed than adults and that juvenile offenders have the capacity for rehabilitation. In addition, defendant presented letters from four inmates for whom defendant served as a mentor by encouraging them to improve themselves while in prison and from four family members. Finally, defendant spoke in allocution and presented the court with a 19-page statement detailing his background and his accomplishments while in prison. Defendant told the court that he accepted responsibility for his actions and his poor decisions.

¶11 After hearing arguments in aggravation and mitigation, the circuit court stated that it had, “reviewed the presentence investigation report” and “considered the arguments of counsel on both sides.” The court further stated that it “reviewed all these letters and the documentation from the Bluhm Clinic, the victim impact statements, and I have read the transcripts of the jury trial to familiarize myself with the facts of the case as laid out back in 1993, a number of years before I even became a judge.” The court then reviewed each statutory aggravating and mitigating factor and stated whether each was “applicable” or “not applicable.” The court stated, “I give him the benefit of the doubt, but I don’t believe that the defendant is unlikely to commit another crime considering the type of premeditation involved and the complete reckless disregard for the safety of multiple people as he fired a handgun at all these people.” The court also stated that “I’m considering the defendant’s potential for rehabilitation and I’m not giving it great weight. I’m not going out there and making that statement that he’s ready to join society.” The court then sentenced defendant to 60 years for first degree murder. The court ordered defendant

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to serve his sentence consecutively to his 30-year sentence for attempt first degree murder in this case, and consecutively to his 20-year sentence for second degree murder in case No. 91 CR 5945-02. Defendant's motion to reconsider his sentence was denied. This appeal followed.

¶12

#### ANALYSIS

¶13 Defendant first contends that the trial court abused its discretion when it sentenced him to 60 years' imprisonment for first degree murder, where the court ignored powerful mitigating evidence including defendant's youth, his educational progress in prison, his attempts to make positive contributions to the community and his potential for further rehabilitation.

¶14 "It has long been established that the trial court has broad discretionary powers in choosing the appropriate sentence a defendant should receive." *People v. Jones*, 168 Ill. 2d 367, 373 (1995). A reasoned judgment as to the proper sentence to be imposed must be based upon the particular circumstances of each individual case and depends upon many factors, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). "In determining an appropriate sentence, the defendant's history, character, rehabilitative potential, the seriousness of the offense, the need to protect society and the need for deterrence and punishment must be equally weighed." *People v. Jones*, 295 Ill. App. 3d 444, 455 (1998). There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and the court is presumed to have considered any evidence in mitigation that is before it. *People v. Partin*, 156 Ill. App. 3d 365, 373 (1987). However, the trial court need not give "greater weight to the possibility of rehabilitation than to the seriousness of the offense." *Id.* at 373. The imposition of

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a sentence is a matter within the trial court's discretion, and a reviewing court has the power to disturb the sentence only if the trial court abused its discretion. *Jones*, 168 Ill. 2d at 373-74.

¶15 We reject defendant's contention that the trial judge abused his discretion in sentencing him to the maximum sentence of 60 years in prison. Defendant was convicted of first degree murder, which carried a sentencing range of 20 to 60 years in prison. Ill. Rev. Stat., 1990, ch. 38, par. 1005-8-1(a)(1). A sentence which falls within the statutory range is presumptively proper and does not constitute an abuse of discretion unless it is manifestly disproportionate to the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). Thus, it is presumed that since the 60-year sentence fell within the statutory range, it is proper.

¶16 We similarly reject defendant's contention that the trial court abused its discretion when it failed to give adequate consideration to the mitigating factors when imposing the 60-year sentence. When a sentencing hearing is conducted by a trial judge acting without a jury, "the trial judge is presumed to consider only competent and relevant evidence in determining sentence." *People v. Johnson*, 114 Ill. 2d 170, 205 (1986).

¶17 Here, defendant's claim is belied by the record. In imposing sentence, the court considered all of the information available. The court stated, "I reviewed the presentence investigation report, and I have considered the arguments of counsel on both sides. I have reviewed all these letters and the documentation from the Bluhm Clinic, the victim impact statements, and I have read the transcripts of the jury trial to familiarize myself with the facts of the case as laid out back in 1993, a number of years before I even became a judge." Moreover, the trial judge reviewed each of the statutory mitigating and aggravating factors and announced

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whether the factor was “applicable” or “not applicable” before reaching judgment. Thus, we cannot find that the court abused its discretion in sentencing defendant to a term of 60 years in prison.

¶18 Defendant next argues that consecutive sentences were improperly imposed in his case. Defendant claims that because his convictions for first degree murder and attempt murder were part of a single course of conduct, he was improperly sentenced under paragraph 8-4(b) and could not be sentenced to consecutive sentences under paragraph 8-4(a) because the attempt murder did not result in severe bodily injury. As a result, defendant urges that consecutive sentences for his convictions were not authorized by statute and are void.

¶19 We initially note that defendant has not waived this issue by failing to raise it in an earlier proceeding because a void sentence can be attacked at any time. A claim that a judgment is void is not subject to waiver and can be raised at any time, either directly or collaterally. *People v. Thompson*, 209 Ill. 2d 19, 27 (2004).

¶20 Defendant chose to be sentenced under the law that was in effect at the time of his offense. See *People v. James*, 46 Ill. 2d 71 (1970) (defendant has the right to be sentenced under either the law in effect at the time the offense was committed or the law in effect at the time of sentencing.) Paragraph 1005-8-4(a) of the Criminal Code of 1961 (Ill. Rev. Stat. 1990, ch. 38, par. 1005-8-4(a)) provided in pertinent part at that time:

"(a) The court shall not impose consecutive sentences for offenses which were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective, unless, one of the

offenses for which defendant was convicted was a Class X or Class 1 felony and the defendant inflicted severe bodily injury, or where the defendant was convicted of a violation of Section 12–13 or 12–14 of the Criminal Code of 1961, in which event the court shall enter sentences to run consecutively.

(b) The court shall not impose a consecutive sentence except as provided for in subsection (a) unless, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is of the opinion that such a term is required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record." Ill. Rev. Stat., 1990, ch. 38, par. 1005–8–4(a)(b).

¶21 In this case, the State sought consecutive sentences for first degree murder and attempt murder under paragraph 4(b), and the court sentenced defendant to consecutive sentences under paragraph 4(b). In sentencing defendant, the court stated that it had considered the nature and circumstances of the offense and concluded that consecutive sentences were necessary to protect the public. The court then sentenced defendant to a 60-year term for murder to be served consecutively to a 30-year term for attempt first degree murder.

¶22 Defendant argues that the trial court imposed consecutive sentences under paragraph 4(b) in error, because the murder of Fernandez and the attempt murder of Hernandez comprised a single course of conduct in which there was no substantial change in the nature of the criminal objective. The State argues that the court's alleged error in

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imposing consecutive sentences under paragraph 4(b) is irrelevant where consecutive sentences were proper under paragraph 4(a) because attempt murder is a triggering offense and defendant inflicted severe bodily injury to Frank Hernandez. Defendant counters that even if the offenses occurred as part of a single course of conduct, defendant did not inflict severe bodily injury on Hernandez, and therefore consecutive sentences under paragraph (a) are improper.

¶23 Section 5-8-4(a) of the Criminal Code of 1961 (formerly Ill. Rev. Stat., 1990, ch. 38, par. 1005-8-4(a)) clearly creates two exceptions to the general prohibition on consecutive sentences for offenses committed in a single course of conduct. *People v. Wittenmyer*, 151 Ill. 2d 175, 195-96 (1992). First, if one of the offenses for which defendant was convicted was a Class X or Class 1 felony and the defendant inflicted severe bodily injury, the legislature has mandated that the trial court impose consecutive sentences. Second, if the defendant was convicted of a violation of section 12-13 or 12-14 of the Criminal Code, the trial court must impose consecutive sentences. *Id.*

¶24 Before a court may consider consecutive sentences under paragraph 4(b), the court must first determine whether paragraph 4(a) applies. *People v. Sergeant*, 326 Ill. App. 3d 974, 985 (2001). Paragraph 4(a) applies to all offenses that arise out of a single course of conduct and is mandatory. Paragraph 4(b) applies only to offenses that were committed in separate courses of conduct and is discretionary, which requires the court to make a specific finding if it wishes to impose a consecutive sentence. *Id.*

¶25 The court below did not consider the mandates of paragraph 4(a) before imposing

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consecutive sentences under paragraph 4(b). Specifically, the court made no determination on the record as to whether the act of attempt first degree murder of Hernandez and the first degree murder of Luz Fernandez were offenses committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective or separate courses of conduct. The course of conduct is a question of fact for the trial court to determine. *People v. Edwards*, 259 Ill. App. 3d 151, 156 (1994). Consequently, we must remand to the trial court for a determination of whether the attempt murder of Hernandez and the murder of Fernandez were committed in a single course of conduct during which there was no change in the nature of the criminal objective. See *Sergeant*, 326 Ill. App. 3d at 989 (remanding to the trial court for a determination of whether the offenses occurred as a part of a single course of conduct where the court imposed consecutive sentences without making such a determination). If the court determines that these offenses were committed in a single course of conduct, the court must then decide whether defendant inflicted severe bodily injury on Hernandez during the commission of the attempt murder. See *Id.*, 326 Ill. App. 3d at 989. If the court finds both of these factors to be present, the court must impose a sentence on the attempt murder consecutive to the sentence for first degree murder.

¶26 Defendant next contends that the court erred in ordering that his sentence in this case be served consecutively to the 20-year sentence previously imposed for second degree murder in 91 CR 5945-02, where the two cases involved separate courses of conduct and defendant's character and accomplishments in prison demonstrate that consecutive sentences were not required for the protection of the public. Unlike the previous issue raised by defendant, the parties do not dispute

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that the offenses in the instant case and those that are the subject of case number 91 CR 5945-02 involved separate courses of conduct.

¶27 The trial court is normally the proper forum in which a suitable sentence is to be determined and the trial judge's decisions in regard to sentencing are entitled to great deference and weight. *Perruquet*, 68 Ill. 2d at 154. The review of whether a trial court's finding that consecutive sentences are necessary to protect the public is a matter of judicial discretion, and the standard of review to determine whether a sentence is excessive is whether a trial court abused that discretion. *People v. Rucker*, 260 Ill. App. 3d 659, 664 (1994).

¶28 Pursuant to paragraph 4(b), a court has discretion to impose consecutive sentences when "having regard to the nature and circumstances of the offense and the history and character of the defendant, it is of the opinion that such a term is required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record." Ill. Rev. Stat., 1990, ch. 38, par. 1005-8-4. Defendant cites *People v. O'Neal*, 125 Ill. 2d 291, 299 (1988), in support of his argument that consecutive sentences were not necessary to protect the public.

¶29 In *O'Neal*, the trial court ordered that the defendant's 40-year sentence for first degree murder to run consecutive to a 20-year sentence for rape and a 15-year sentence for aggravated kidnapping. This court modified the defendant's sentences to run concurrently citing his youth, family background, and a single prior conviction for robbery. Our supreme court affirmed, concluding that the trial court erred in finding that consecutive sentences were necessary to protect the public. *Id.* at 300.

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¶30 We find *O'Neal* distinguishable from the case at bar. In *O'Neal* the defendant murdered an individual who had been sexually abusing him and his criminal record consisted of one conviction for robbery. Here, defendant shot at Hernandez as he stood on a corner with some friends and his 18-month-old son, grazing him on the buttocks while he was on the ground shielding his son from the gunfire. Defendant also shot bullets into the head of a pregnant mother as she walked her child. In addition, defendant had a second degree murder in his background. Within a six-week period, defendant killed a pregnant mother and one man, and shot and injured two other men. We cannot find that the trial court abused its discretion in determining that consecutive sentences were warranted to protect the public from defendant.

¶31 Defendant also claims that his consecutive sentences are improper because the State did not argue in favor of consecutive sentences at the original sentencing hearing. We find this claim without merit, because when the trial court sentenced defendant, he was subject to a mandatory natural life sentence due to his prior first degree murder conviction. It was only after resentencing that consecutive sentencing based on his conviction in 91 CR 5945-02 became an issue.

¶32 Likewise, the imposition of consecutive sentences does not impermissibly enhance the length of defendant's sentence. The Illinois Supreme Court has held that the length of the individual sentence, rather than the aggregate of several terms, is critical in determining whether a sentence was improperly increased. *People v. Carney*, 196 Ill. 2d 518, 529 (2001). Consecutive sentences "cannot be combined as though they were one sentence for one offense." *Id.* at 530. Defendant was originally sentenced to natural life in prison with a concurrent term of

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30 years' imprisonment. The sentence imposed on re-sentencing is neither enhanced nor more severe than his original sentence of natural life without parole.

¶33 Last, defendant contends that the court improperly considered an aggravating factor inherent in the offense of first degree murder, namely threatening or causing serious harm. As the State notes, sentencing issues are forfeited unless the defendant both objects to the error at the sentencing hearing and raises the objection in a postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Defendant acknowledges that he forfeited this issue by failing to include it in his motion to reconsider the sentence but urges us to consider it under the plain error doctrine.

¶34 Forfeited issues relating to sentencing may be reviewed for plain error. *Id.* at 545. To establish plain error, a defendant must show either that: "(1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Id.* Defendant bears the burden of persuasion under either prong of the plain error rule. *Id.* Before we can determine whether defendant has met his burden under either prong of plain error, we must first decide whether a clear or obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶35 Defendant claims that reliance on the factor was erroneous because serious harm is inherent in the offense of first degree murder. A reasoned judgment as to the proper sentence to be imposed must be based upon the particular circumstances of each individual case and depends upon many factors, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *Perruquet*, 68 Ill. 2d at 154. "In determining an appropriate sentence, the defendant's history, character, rehabilitative potential, the seriousness of

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the offense, the need to protect society and the need for deterrence and punishment must be equally weighed." *Jones*, 295 Ill. App. 3d at 455. The imposition of a sentence is a matter within the trial court's discretion, and a reviewing court has the power to disturb the sentence only if the trial court abused its discretion. *Jones*, 168 Ill. 2d at 373-74.

¶36 At sentencing, the court indicated that it had reviewed the presentence report and considered the arguments of counsel on both sides. The court stated that it reviewed the letters and documentation from the Bluhm Clinic, and the victim impact statements. The court listed the statutory factors in mitigation and stated whether or not each factor was applicable to defendant's case. See 730 ILCS 5/5-5-3.1 (West 2010). The court then went on to list all of the factors in aggravation as outlined by statute and stated whether or not each factor was applicable. See 730 ILCS 5/5-5-3.2 (West 2010). Of the statutory factors in aggravation, the court found four to be applicable to defendant's offense. In addition to finding that defendant's conduct caused or threatened serious harm, the court also found that defendant had a history of criminal activity, the sentence was necessary to deter others from committing the same crime, and that defendant committed the offense related to the activities of an organized gang. See 730 ILCS 5/5-5-3.2 (West 2010).

¶37 We find that no error occurred in this case because the court acted within its discretion when it determined that defendant's conduct caused or threatened serious harm was a factor in aggravation applicable in this case. The court was merely following the factors outlined in the Unified Code of Corrections and made no comment on this factor other than "applicable." Moreover, as defendant concedes, a court may consider the degree of harm caused or threatened

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by defendant's conduct, even if the threat of harm is inherent in the offense. *People v. Salvidar*, 113 Ill. 2d 256, 271-72 (1986). Because no error occurred, plain error analysis is unnecessary.

¶38

#### CONCLUSION

¶39 For these reasons, we vacate defendant's consecutive sentences for first degree murder and attempt murder and remand the matter to the circuit court for resentencing on those charges in accordance with the directions herein. We affirm all others issues raised by defendant in this case.

¶40 Affirmed in part and vacated in part; cause remanded with instructions.