

No. 1-10-2125

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 10818
	)	
CONCEPCION PADILLA,	)	Honorable
	)	Thomas P. Fecarotta, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Epstein and Justice McBride concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Judgment entered on defendant's conviction of aggravated criminal sexual abuse affirmed; defendant forfeited his challenge to the propriety of restitution ordered by the trial court.
- ¶ 2 Following a bench trial, defendant Concepcion Padilla was found guilty of aggravated criminal sexual abuse, then sentenced to four years' intensive probation and ordered to pay \$7,000 in restitution. On appeal, defendant solely contends that the trial court erred in ordering him to pay restitution where the victim's psychiatric treatment expenses were not proximately caused by his criminal conduct.

¶ 3 The record shows, in relevant part, that defendant was charged with the aggravated criminal sexual abuse of M.B., a 16-year-old girl whom he met online in a chat room hosted by the internet service provider AOL. Defendant initially introduced himself to her as an 18-year-old under the pseudonym "Hazestrider," and over the course of a few months, developed a relationship with her that she considered "like boyfriend and girlfriend."

¶ 4 In December 2008, when defendant and M.B. were planning that he stay with her over winter break, he revealed to her that he was actually 26 years old. M.B. hung up the phone on him and told her mother, who then confiscated her cell phone and forbade her to speak with defendant. Around this time, M.B. began purposely cutting herself "[a]s an unhealthy way of coping with stress," and her parents admitted her to a psychiatric facility for seven days from late January to early February 2009.

¶ 5 Sometime in February, defendant sent M.B. a phone to replace the one confiscated by her mother, and the two continued to maintain contact over AOL Instant Messenger, e-mail, and telephone. In early March 2009, they made plans for defendant to stay at M.B.'s house over the weekend of March 13, 2009, while her parents were in Florida with her sister for a cheerleading competition.

¶ 6 When that day arrived, M.B. met defendant at O'Hare airport, brought him back to her house, and led him into the basement where they began to hug. She then went into the bathroom to take a shower, closed the door, and took off her clothes. As she did so, defendant came in, and when she got into the shower, he removed his clothes and unexpectedly followed her in. She did not request or want him to accompany her into the shower. At that point, defendant "roughly" pressed her shoulders against the wall, tried kissing her and opening her legs, then inserted his penis into her vagina for about two minutes. M.B. was unable to get away because he was stronger than her. Thereafter, the two continued to engage in sexual intercourse on multiple

occasions over the course of the weekend. At the close of evidence, the court found defendant guilty of aggravated criminal sexual abuse.

¶ 7 At sentencing, the State called M.B. and her mother to read victim impact statements, and both acknowledged on cross-examination that M.B. was admitted to a psychiatric hospital in February 2009 because she threatened to commit suicide after her contact with defendant was cut off. The court ultimately sentenced defendant to four years' intensive probation, and while taking care of housekeeping matters, the following exchange occurred:

"THE COURT: – while I keep going here.

State, was there any restitution involved?

MR. DOMBROWSKI [assistant State's Attorney]: No, Judge.

THE COURT: Was there any money for counseling that was spent by the family?

MR. DOMBROWSKI: There was, Judge. I do not have that amount.

THE COURT: I want you to find out what it is.

MR. DOMBROWSKI: Yes, Judge.

\* \* \*

THE COURT: CBR to attorney.

Also as part of the sentence there was – I wanted to know what the psychiatric restitution [*sic*]. Was there any restitution amount not covered by insurance, I mean?

MR. DOMBROWSKI: Correct, Judge. Judge, the out-of-pocket expense would be \$7,000.

THE COURT: \$7,000 is ordered as restitution to the victim in the case, [M.B.] (sic) for psychiatric reimbursement. That's payable over the period of probation.

Any questions about the restitution? No, Mr. Albuquerk [defense counsel]?

MR. ALBUKERK: No, Judge.

The court then entered an order directing defendant to pay \$7,000 restitution to M.B.

¶ 8 On July, 20, 2010, defendant filed a motion to reconsider sentence asserting, *inter alia*, that there was no connection between the amount of restitution ordered and defendant's actions because the psychological treatment of M.B. occurred before the illegal sex act, and there was no proper showing of the monetary damages incurred by M.B. On July 22, 2010, the trial court denied that motion and responded to the restitution issue by stating, "The restitution, not complaining witness, was for psychological counseling, which the law allows me to do, I thought was necessary because of her tender age."

¶ 9 In this appeal from that judgment, defendant contends that the trial court erred in ordering him to pay restitution for the treatment expenses of M.B. which were incurred prior to his commission of aggravated criminal sexual abuse. He also maintains that "the State's unsubstantiated assertion of counseling expenses following its off-the-record discussion with the family" constituted insufficient evidence on which to base the restitution amount.

¶ 10 The State responds that defendant has waived this issue by failing to object to the restitution order when it was entered. In reply, defendant claims that he properly preserved this issue in a timely motion to reconsider sentence.

¶ 11 Initially, we agree with the State that defendant has not properly preserved the issue for review. To preserve a claim of sentencing error, both a contemporaneous objection and a written post-sentencing motion raising the issue are required. *People v. Hillier*, 237 Ill. 2d 539, 544

(2010). Here, defendant raised the issue in a written post-sentencing motion, but did not object to the restitution order at the sentencing hearing. Had he done so then, when the witnesses could be called, any uncertainties surrounding the amount of the restitution could have been easily resolved. However, by failing to object, defendant deprived the State of the prime opportunity to justify the award of restitution. In light of these circumstances, we find that defendant has forfeited the issue. *Hillier*, 237 Ill. 2d at 544; see also *People v. Freeman*, 404 Ill. App. 3d 978, 993-94 (2010) (finding sentencing claim forfeited where defendant made no objection at the sentencing hearing and raised the issue only in a post-sentencing motion).

¶ 12 Although, under the *Sprinkle* doctrine, forfeiture may be relaxed where the trial court oversteps its authority in the presence of the jury or when counsel was effectively prevented from objecting because it would have fallen on deaf ears, we find no such "extraordinary circumstances" in this case to do so. *People v. Thompson*, 238 Ill. 2d 598, 612 (2010). We thus heed the supreme court's admonition to apply forfeiture uniformly except in compelling situations since the failure to raise an issue risks wasting time and judicial resources. *Thompson*, 238 Ill. 2d at 612.

¶ 13 We further observe that defendant has not asserted that the trial court's restitution order was void so as to avoid the bar of forfeiture. *People v. Jackson*, 2011 IL 110615, ¶10; *Hillier*, 237 Ill. 2d at 546-47. In fact, he implicitly concedes the order is not void by arguing that "this Court could still review the validity of the restitution order under the plain error doctrine."

¶ 14 Under the plain error rule, we may review an unpreserved claim provided that defendant shows that a clear or plain error occurred, and that the evidence at the sentencing hearing was closely balanced, or the error was so serious as to deny him a fair sentencing hearing. *Hillier*, 237 Ill. 2d at 545. Under both prongs, defendant bears the burden of persuasion; and if defendant fails to meet his burden, his procedural default will be honored. *Hillier*, 237 Ill. 2d at 545.

¶ 15 Here, however, defendant has made a one-sentence argument for plain error review in his reply brief that "[e]ven if Padilla had forfeited this issue, this Court could still review the validity of the restitution order under the plain error doctrine," followed by parenthetical citations for *People v. McCormick*, 332 Ill. App. 3d 491 (2002) and *People v. Guajardo*, 262 Ill. App. 3d 747 (1994). He then goes on to explain why the trial court's entry of a restitution order was error, not plain error, and fails to argue that the evidence was closely balanced, or to explain why the error was so serious as to deny him a fair sentencing hearing. Under similar circumstances, defendant's failure to so argue has resulted in the waiver of his plain error argument on appeal. *People v. Nieves*, 192 Ill. 2d 487, 503 (2000); see also *People v. McDade*, 345 Ill. App. 3d 912, 914 (2004); *People v. Rathbone*, 345 Ill. App. 3d 305, 311-12 (2003). We are compelled to reach the same conclusion in this case and honor defendant's procedural default of the issue. *Hillier*, 237 Ill. 2d at 545-47.

¶ 16 Forfeiture aside, we note that a trial court is authorized under section 5-5-6(g) of the Unified Code of Corrections (Code) (730 ILCS 5/5-5-6(g) (West 2010)) to order defendant to pay restitution for psychiatric treatment prescribed to the victim of his aggravated criminal sexual abuse. Here, both parties have assumed that restitution was ordered by the trial court pursuant to subsections 5-5-6(a) and/or (b) of the Code (730 ILCS 5/5-5-6(a), (b) (West 2010)) even though the record does not disclose the particular subsection upon which the court relied. By doing so, they overlook the trial court's references to "psychiatric reimbursement" and "psychological counseling," indicating its possible reliance on subsection 5-5-6(g) of the Code. In sum, these circumstances reveal the importance for a party seeking review of a particular issue to take the appropriate steps to properly preserve it so that this court has an adequately compiled record to review. See *People v. White*, 2011 IL 109689, ¶ 153 (recognizing judicial restraint as principle

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of review). Defendant's failure to do so here provides further reason for honoring the procedural default of his claim.

¶ 17 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.