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SIXTH DIVISION
August 24, 2012

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 4548
)	
DERRICK LEE,)	The Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Garcia and Palmer concurred in the judgment.

ORDER

¶ 1 *HELD:* Defendant's seven-year prison term for unlawful use of a weapon by a felon was proper where he had a prior conviction for armed robbery, a forcible felony. The record demonstrated that, after the trial court provided sufficient admonishments pursuant to Supreme Court Rule 402, defendant voluntarily entered into a blind guilty plea. Defendant received effective assistance of counsel.

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¶ 2 Following the entry of a blind guilty plea, defendant, Derrick Lee, was convicted of unlawful use of a weapon by a felon (UUWF) and sentenced to seven years' imprisonment. On appeal, defendant contends: (1) the trial court improperly sentenced him; (2) the trial court erred in denying his motion to withdraw his guilty plea where he was not admonished sufficiently pursuant to Supreme Court Rule 402 (eff. July 1, 1997); and (3) his counsel was ineffective. Based on the following, we affirm.

¶ 3 **FACTS**

¶ 4 On March 4, 2010, defendant was charged with two counts of UUWF and four counts of aggravated unlawful use of a weapon. During a number of pretrial hearings, defendant sought release from jail on bond or electronic monitoring. At one of the hearings, defendant indicated that he was being abused while in custody. Those requests were denied. Defendant also requested a Treatment Alternative for Safe Communities (TASC) evaluation, which was granted. Following defendant's TASC evaluation, the clinical case manager reported that defendant was eligible for their services pending review of his criminal history.

¶ 5 At a subsequent status date, the trial court conducted a pretrial conference pursuant to Rule 402. The 402 conference, however, was terminated prematurely and the case was set for trial. Approximately four months later, defendant again requested a 402 conference. The State refused to participate, but indicated that its prior offer of four years' imprisonment in exchange for a plea of guilty remained available. The court notified defendant that a conference could not be held without the State. Defendant rejected the State's offer and advised the court that he wished to enter a blind guilty plea.

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¶ 6 On September 15, 2010, a hearing was held on defendant's plea and for sentencing. The State provided that the plea was being entered on count I, which was a Class 2 UUWF. The trial court admonished defendant regarding his rights to a jury trial. Defendant stated that he was giving up those rights and signed a written jury waiver. The trial court then admonished defendant regarding the meaning of the charge to which he was pleading guilty and the potential sentences for which he was eligible. After explaining the range of sentences, the trial court asked, "knowing all of this that I just told you, do you wish to continue with this blind plea, sir?" Lee responded, "yeah, because I can't do another day in this county. I got my teeth knocked out. I ain't even in no gang. You can get my background." The court then admonished defendant again regarding the rights he was giving up by entering a guilty plea. The court also inquired into the voluntariness of defendant's plea. Finally, the court requested a factual basis to support the plea.

¶ 7 The State offered the following factual basis. On February 23, 2010, at approximately 2:33 p.m., two officers responded to a call for a man with a gun at 6918 South Paulina in Chicago, Illinois. When the officers approached defendant to conduct a field interview, he fled. The officers gave chase, noticing that as defendant ran he grabbed the side of his body. The officers then observed defendant drop a dark item to the ground, which one of the officers recovered. The item was a loaded semiautomatic handgun. While being placed in custody, defendant said, "f*** this, I will get probation for this anyway." The State additionally presented certified copies of two prior convictions, one for armed robbery and one for possession of a controlled substance.

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¶ 8 The trial court accepted defendant's blind plea, finding that it was voluntary and supported by a factual basis.

¶ 9 The court entertained arguments in aggravation and mitigation for the purposes of sentencing. In announcing the sentence, the trial court noted that the handgun was fully loaded and the aggravating evidence outweighed the mitigating evidence. Defendant was sentenced to seven years' imprisonment.

¶ 10 On September 16, 2010, defendant filed a motion to reconsider, which the court denied. The same day, defendant filed a motion to withdraw his guilty plea. A hearing was held on October 14, 2010, during which defense counsel presented an affidavit signed by defendant. The affidavit included proposed testimony by defendant's brother indicating that defendant was forced to plead guilty because his family had been threatened. The court denied the motion indicating defendant stated he had not been threatened or forced to plead guilty during the plea hearing. This appeal followed.

¶ 11 DECISION

¶ 12 I. Sentence

¶ 13 Defendant contends the trial court erred in sentencing him to seven years' imprisonment. Specifically, defendant contends the trial court erred by (1) improperly relying on his past conviction as an element of the offense and as a double sentencing enhancement; (2) finding him ineligible for TASC probation; and (3) relying on improper factors to deny his motion to reconsider the sentence.

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¶ 14 We first address defendant's argument that the trial court erred in sentencing him on a class 2 offense for UUWF. Defendant contends the court impermissibly used his prior armed robbery conviction as an element of the offense and as a sentencing enhancement. Defendant argues that the court erred in sentencing him based on a class 2 felony where UUWF generally is considered a class 3 felony. The State responds that defendant forfeited review of his contention by failing to raise it at his sentencing hearing. In the event we consider the merits of the contention, the State argues that defendant's sentence was proper where it was not "enhanced." Defendant replies that the sentence imposed was void or, in the alternative, that we may review his contention under the doctrine of plain error.

¶ 15 Our review of the record reveals that defendant did not raise his contention at the sentencing hearing, but he did include the error in his posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124 (1988) (to preserve an error for review, a defendant must object at trial and include the alleged error in a posttrial motion). Notwithstanding, defendant challenges his sentence as void for failing to conform with statutory requirements and void sentences may be attacked at any time. *People v. Arna*, 168 Ill. 2d 107, 113, 658 N.E.2d 445 (1995). Moreover, this court may review forfeited errors under the doctrine of plain error in two narrow instances:

“First, where the evidence in a case is so closely balanced that the jury’s guilty verdict may have resulted from the error and not the evidence, a reviewing court may consider a forfeited error in order to preclude an argument that an innocent person was wrongly convicted. [Citation.] Second, where the error is so serious that defendant was denied a substantial right, and thus a fair trial, a

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reviewing court may consider a forfeited error in order to preserve the integrity of the judicial process.” *People v. Herron*, 215 Ill. 2d 167, 178-79, 830 N.E.2d 467 (2005).

However, before we can apply the doctrine of plain error, we first must find that the trial court committed error. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403 (2007).

¶ 16 This court recently considered whether a trial court imposed an impermissible double enhancement when sentencing a defendant as a class 2 felon for UUWF where the defendant had a prior burglary conviction, which is a forcible felony. *People v. Powell*, 2012 IL App (1st) 102363. The relevant law provides:

"A single factor cannot be used both as an element of an offense and as a basis for imposing a sentence harsher than might otherwise have been imposed. [Citation.] Such dual use of a single factor is often referred to as a 'double enhancement.' [Citation.] However, an exception to the prohibition against double enhancement occurs where the legislature clearly intends to enhance the penalty based upon some aspect of the crime and that intention is clearly expressed. [Citations.] To determine whether the legislature intended such an enhancement, we look to the statute itself as the best indication of the legislature's intent. [Citation.] As the issue is one of statutory construction, the standard of review is *de novo*. [Citation.]" *Id.* at ¶8.

¶ 17 The UUWF statute states that "it is unlawful for a person to knowingly possess on or about his person" any prohibited weapon, firearm, or ammunition when the person has a felony

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conviction. 720 ILCS 5/24-1.1(a) (West 2010). Section 24.1.1(e) of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/24-1.1(e) (West 2010)) provides the relevant sentencing scheme, such that "[v]iolation of this Section by a person not confined in a penal institution who has been convicted of a forcible felony *** is a Class 2 felony for which the person shall be sentenced to not less than 3 years and not more than 14 years." 720 ILCS 5/24-1.1(e) (West 2010).

¶ 18 As written, the language of the statute expresses the legislature's intent to elevate the class of felony and resulting penalty in circumstances such as that before this court, namely, when the defendant has a prior forcible felony conviction. *Powell*, 102363, ¶11. Here, defendant has a prior armed robbery conviction, which is a forcible felony. 720 ILCS 5/2-8 (West 2010).

Contrary to defendant's argument, the language of the statute does not prohibit the use of a single forcible felony to establish the prior conviction element of UUWF and to serve as a basis for elevating the felony class. See *People v. Lee*, 379 Ill. App. 3d 533, 540, 884 N.E.2d 776 (2008). We, therefore, conclude the trial court did not impermissibly sentence defendant to a double enhancement. Defendant's class 2 felony conviction was proper.

¶ 19 We next address defendant's TASC argument. Defendant concedes he failed to preserve his contention for our review by failing to object to the court's rejection of TASC probation and failed to include the alleged error in a posttrial motion. *Enoch*, 122 Ill. 2d at 186. Defendant, however, argues that the contention is reviewable under the doctrine of plain error because the court's failure to consider TASC treatment affected his substantial rights. The State responds that defendant's contention is not reviewable for plain error and, even if this court were to conduct plain error review, the trial court did not err where defendant was prohibited from receiving

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TASC probation pursuant to section 5-5-3(c)(2)(F-5) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-5-3(c)(2)(F-5) (West 2010)).

¶ 20 As stated, prior to conducting a plain error analysis, we must determine whether an error occurred at trial. *Piatkowski*, 225 Ill. 2d at 565. The question before us is one of statutory construction, which we review *de novo*. *People v. Phelps*, 211 Ill. 2d 1, 12, 809 N.E.2d 1214 (2004). We conclude the trial court committed no error in rejecting defendant's request for TASC probation. Pursuant to section 5-5-3(c)(2)(F-5) of the Code, a trial court shall not impose probation for a defendant who has violated section 24-1.1 of the Criminal Code (720 ILCS 5/24-1.1 (West 2010)). 730 ILCS 5/5-5-3(c)(2)(F-5) (West 2010). As we discussed, section 24-1.1(e) of the Criminal Code provides, in relevant part, that a defendant who is convicted of UUWF and is not imprisoned, and "who has been convicted of a forcible felony, a felony violation of Article 24 of this Code, *** or a Class 2 or greater felony under the Illinois Controlled Substances Act, the Cannabis Control Act *** is a Class 2 felony for which the person shall be sentenced to not less than 3 years and not more than 14 years." 720 ILCS 5/24-1.1(e) (West 2010). The State presented defendant's class X armed robbery conviction to support the prior conviction element of UUWF. Armed robbery is a forcible felony (720 ILCS 5/2-8 (West 2010)) and, therefore, the trial court was required to sentence defendant to prison time pursuant to section 24-1.1(e) of the Criminal Code and section 5-5-3(c)(2)(F-5) of the Unified Code.

¶ 21 Defendant additionally contends the trial court relied on improper factors in denying his motion to reconsider his sentence. In particular, defendant contends the trial court erred in relying on his armed robbery conviction, his proximity to a school when the offense was

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committed, and speculation regarding what he "might" have done with the handgun as the bases for denying his motion to reconsider his sentence.

¶ 22 It is commonly understood that a trial court's sentence will not be disturbed absent an abuse of discretion. *People v. Perruquet*, 68 Ill. 2d 149, 154, 368 N.E.2d 882 (1977). A reviewing court will not substitute its judgment for that of the trial court simply because it would have weighed differently those factors which are present before the trial court, such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Stacey*, 193 Ill. 2d 203, 209, 737 N.E.2d 626 (2000). However, "[w]here the sentencing judge relies on improper factors, including prejudice and speculation, the sentence should be vacated and the cause remanded for resentencing." *People v. Zapata*, 347 Ill. App. 3d 956, 964, 808 N.E.2d 1064 (2004). Furthermore, "the purpose of a motion to reconsider sentence is not to conduct a new sentencing hearing, but rather to bring to the circuit court's attention changes in the law, errors in the court's previous application of existing law, and newly discovered evidence that was not available at the time of the hearing." *People v. Burnett*, 237 Ill. 2d 381, 387, 930 N.E.2d 953 (2010). A trial court's decision regarding a motion to reconsider will not be disturbed absent an abuse of discretion. *People v. Reyes*, 338 Ill. App. 2d 619, 621, 788 N.E.2d 361 (2003). An abuse of discretion will not be found unless the trial court's ruling was arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Delvillar*, 235 Ill. 2d 507, 519, 922 N.E.2d 330 (2009).

¶ 23 Based on our review of the record, we find the trial court did not abuse its discretion in denying defendant's motion to reconsider the sentence. In his motion to reconsider, defendant

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argued that the trial court misapplied the law by impermissibly enhancing his sentence and relying on his prior conviction in aggravation. We previously determined that defendant's sentence did not include an impermissible double enhancement. Moreover, the record demonstrates that the trial court did not use defendant's prior conviction as an aggravating factor. Rather, pursuant to the statute, defendant's armed robbery conviction was a forcible felony which caused his UUWF charge to be elevated to a class 2 felony for which he was not eligible for probation, but instead 3 to 14 years' imprisonment. 720 ILCS 5/24-1.1(e) (West 2010).

¶ 24 In response to defendant's remaining arguments, *i.e.*, that the trial court relied on evidence not of record and improperly based its decision on speculation, we conclude the arguments have no bearing on the propriety of his sentence, as each of the alleged improper factors occurred only at the motion to reconsider that sentence. Specifically, after hearing arguments on the motion to reconsider, which included the State's mention that defendant was near a school when he was found with the handgun and defense counsel's comment that "the gun was not being used when he was arrested," the trial court said, "I don't think it's mitigating that he was caught with that gun before it was put into use. He was charged with unlawful use of a weapon by a felon. The felony charge was armed robbery, a crime of violence. He is around a school in the middle of the afternoon with a loaded 9-millimeter weapon." The trial court's comments were responsive to the arguments raised before the court. However, the trial court's sentence did not consider these factors. Rather, the record explicitly reveals that the trial court did not base its sentencing decision on defendant's proximity to a school as it was not part of the factual basis presented by the State. We, therefore, conclude the trial court's sentence was proper and the court did not

abuse its discretion in denying defendant's motion to reconsider.

¶ 25

II. Guilty Plea

¶ 26 Defendant additionally contends he is entitled to withdraw his guilty plea where: (1) the trial court failed to comply with Supreme Court Rule 402(a) and (c); (2) the trial court should not have accepted his plea when he made statements indicating his plea was involuntary in violation of Rule 402(b); and (3) the trial court erred in denying his motion to withdraw his guilty plea without providing an evidentiary hearing. Defendant concedes he failed to preserve his Rule 402 contentions for our review, but suggests the errors can be reviewed under the doctrine of plain error. *Enoch*, 122 Ill. 2d at 186; *Herron*, 215 Ill. 2d at, 178-79. Prior to conducting a plain error analysis, we must determine whether any errors occurred. *Piatkowski*, 225 Ill. 2d at 565.

¶ 27 Before accepting a guilty plea, a trial court must admonish a defendant pursuant to Rule 402. Rule 402(a) requires that a defendant be admonished concerning the nature of the charge, the minimum and maximum sentences, the right to plead guilty or not guilty, and the rights that are waived by pleading guilty. Rule 402(b) requires that the trial court ensure the guilty plea is voluntary. Rule 402(c) requires that the trial court enter the final judgment on a plea of guilty only after first determining there is a factual basis to support the plea. "The purpose of Rule 402 admonishments is to ensure that a defendant understands his plea, the rights he has waived by pleading guilty, and the consequences of his action." *People v. Dougherty*, 394 Ill. App. 3d 134, 138, 915 N.E.2d 442 (2009). Substantial, not literal, compliance with the Rule is required (*id.*); therefore, the failure to provide proper Rule 402 admonishments does not require automatic reversal (*People v. Davis*, 145 Ill. 2d 240, 250, 582 N.E.2d 714 (1991)). "Whether reversal is

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required depends on whether real justice has been denied or whether defendant has been prejudiced by the inadequate admonishment." *Id.* Consequently, when a record demonstrates the defendant's plea was voluntary and not a result of force, threats, or promises, a trial court's failure to strictly comply with Rule 402 will be deemed harmless. *People v. Sharifpour*, 402 Ill. App. 3d 100, 114, 930 N.E.2d 529 (2010).

¶ 28 We quote extensively from the record:

"THE COURT: Just one moment. Let me stop you here. [Entering a blind plea] is rare for everybody involved. First of all, you do have some constitutional rights before we get to the factual basis. You have a right to have a jury trial in this matter. Do you realize that?

DEFENDANT: Yes, ma'am.

THE COURT: Are you still waiving your right to have a jury trial, sir?

DEFENDANT: What do you mean?

THE COURT: You want to enter into a blind plea; but I do have to, I must advise you, that you have a right to have a constitutional right to have a jury trial decide your case. Now you know what kind of trial that is, a jury trial?"

Defendant answered in the negative and the court explained the components of a jury trial.

Defendant said he understood.

¶ 29 The admonishments continued:

"THE COURT: In a nutshell. Now you have a right to have that constitutional right to have that kind of trial. Are you giving that up?

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DEFENDANT: Yeah, because I wouldn't go with that anyway. If I have a trial, I would have a bench.

THE COURT: So you give up your right to a jury trial?

DEFENDANT: Yes.

THE COURT: Court accepts your oral waiver to have that jury trial. We will give you a moment to sign in writing that you are waiving your right to have a jury trial.

DEFENSE COUNSEL: Judge, may the record reflect he is signing this in open court and I am giving it to the Court.

THE COURT: This is a Class 2 felony offense that you want to blind plea to, Mr. Lee. Now the penalties that you are facing in a Class 2—for a Class 2 felony offense, the penalties, the possible sentencing range for Class 2 ranges from probation to incarceration. The incarceration range on a Class 2 felony offense is three to seven years in the Illinois Department of Corrections and that period of incarceration would be followed by two years of parole and parole is now called mandatory supervised release.

However, because of the prior Class 2 or greater convictions in your background, you could be sentenced up to 14 years in the Illinois Department of Corrections on this Class 2 felony offense. That's because of prior Class 2 or greater convictions in your back ground.

Now, knowing all of this, do you wish to continue with your blind plea not

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knowing what the offer is, not knowing what the sentence is? That's what a blind plea means. Those are the—that's the range of penalty. That's the range of sentence I just informed you of.

Knowing all of this that I just told you, do you wish to continue with this blind plea, sir?

DEFENDANT: Yeah, because I can't do another day in this county. I got my teeth knocked out. I ain't even in no gang. You can get my background.

THE COURT: No, no.

DEFENDANT: Oh, yes, yes ma'am. I will continue.

THE COURT: This is not where you get a chance to say something in elocution.

THE DEFENDANT: I'm sorry.

THE COURT: This is where you have to answer my question so I know how to proceed. Knowing all that I told you, range of penalty that you are facing, again, I ask you, do you wish to continue—

DEFENDANT: Yes.

THE COURT: —with your blind plea? All right. When you plead, sir, you give up certain constitutional rights you have and I have already informed you of your right to have a jury trial and you have chosen to waive a jury trial. Is that right, Mr. Lee?

DEFENDANT: Yeah.

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THE COURT: All right. When you plead guilty, sir, you give up your right to have trial of any kind. You give up your right to confront the witnesses at a trial and to have your attorney cross examine those witnesses.

You are giving up your right to put on a defense, a defense to this charge of unlawful use of a weapon by a felon. You are giving up a defense to that, do you understand, if you wanted to do that?

DEFENDANT: Yes, ma'am.

THE COURT: Now you are pleading guilty voluntarily, Mr. Lee?

DEFENDANT: Yeah, I'm pleading guilty.

THE COURT: Is it voluntary, however?

DEFENDANT: Yeah.

THE COURT: Did anyone force you to plead guilty to this charge?

DEFENDANT: No.

THE COURT: Did anyone threaten you in any way to have you plead guilty to this charge?

DEFENDANT: No.

THE COURT: Did anyone promise you anything in exchange for pleading guilty to this charge?

DEFENDANT: No, ma'am.

THE COURT: All right. State's attorney, could we get a factual basis."

The State complied and provided a factual basis to support the guilty plea.

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¶ 30 The admonishments continued:

"THE COURT: Mr. Lee, Court accepts your blind plea to the charge of unlawful use of weapon and the Court finds you guilty. Further, the Court finds you were advised of your rights and that you understand them; that you were advised of the nature of this charge and the possible range of sentencing.

The Court finds that your plea is voluntary; that your blind plea is voluntary and there is a factual basis to support the plea of guilty now in the record."

¶ 31 Defendant argues the trial court failed to comply with Rule 402(a) by not informing him of the nature of the charges against him and his right to plead not guilty, and by misinforming him of the applicable sentencing range. Moreover, defendant argues the trial court failed to protect his rights pursuant to Rule 402(c) where his counsel did not stipulate to the factual basis of the plea. Defendant additionally contends the trial court failed to comply with Rule 402(b) by ignoring a statement he made during the plea hearing, which demonstrated that his plea was involuntary. We address each contention in turn.

¶ 32 In relation to defendant's Rule 402(a) argument, we have reviewed the record and conclude the trial court provided sufficient admonishments. When considering whether a defendant understood the nature of the charges against him, a reviewing court may look to the entire record. *People v. Fuller*, 205 Ill. 2d 308, 323, 793 N.E.2d 526 (2008). Although the trial court did not provide the elements of the offense and, at one point, misnamed the offense as UUW, it is clear that defendant understood the nature of the charges against him. The trial court

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admonished defendant that he was charged with a class 2 felony offense of UUWF. Moreover, defendant was present in court when the State provided the indictment under which defendant was entering the blind plea, namely, "unlawful use of a weapon by a felon *** where he knowingly possessed on or about his person a firearm after having been previously convicted of the felony offense of armed robbery." In addition, the State provided a factual basis on at least three different court dates, including on the date of the plea.

¶ 33 Further, it is clear from the record that defendant was aware of his rights, such that he had a right to plead not guilty and proceed to trial. In fact, defendant originally pled not guilty at his arraignment, affirmatively demonstrating his knowledge of that right. Unlike where a defense counsel stipulates to the State's factual basis and effectively enters a plea of guilty on the defendant's behalf (*People v. Porter*, 352 Ill. App. 3d 962-, 966-67, 817 N.E.2d 1034 (2004)), there was no such stipulation here and, therefore, the court's failure to expressly state that defendant had a right to plead not guilty does not equate to defendant lacking knowledge of his right. In fact, defendant demonstrated he knew he had a right to go to trial when he acknowledged that he was giving up his right to both a jury trial and a bench trial. The record reflects that defendant stated during the jury trial waiver that "If I have a trial, I would have a bench."

¶ 34 As for the trial court's sentencing admonishment, the record demonstrates the court failed to properly admonish defendant. The trial court initially provided the sentencing range for a general class 2 felony instead of the applicable range for UUWF with a prior forcible felony. Defendant, however, was informed of the accurate prison term available, *i.e.* 3 to 14 years.

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Importantly, though, the trial court inaccurately admonished defendant that he was eligible for probation. Notwithstanding, "[t]he failure to properly admonish a defendant, alone, does not automatically establish grounds for reversing the judgment or vacating the plea." *Davis*, 145 Ill. 2d at 250.

¶ 35 In his appellate brief, defendant merely states that the erroneous admonishment was harmful because he "put himself at the mercy of the court." Then, in his response brief, defendant argues that he "took the risk of entering a blind guilty plea because he believed he might receive probation." While it is true that defense counsel requested TASC or intensive probation and defendant requested probation in his elocution, prior to sentencing it became clear to the trial court that defendant, in fact, was not eligible for TASC probation. The court so informed defendant and defendant did not raise an objection then or when the trial court entered a sentence within the permissible range from which he was admonished or in a posttrial motion. *Id.* ("a misapprehension by the defendant as to sentencing alternatives may render a guilty plea involuntary if the defendant was actually unaware of the possible punishment"). Rather, in his motion to reconsider the sentence, defendant requested a reduced 5 year sentence, making no mention of probation at all. We, therefore, do not find that real justice was denied or defendant was prejudiced by the inadequate admonishment.

¶ 36 Turning to defendant's Rule 402(c) argument, as stated, the record contains at least three instances where a factual basis was provided in support of defendant's plea. The trial court accepted the factual basis prior to accepting defendant's plea. Contrary to defendant's argument, there is no requirement that defense counsel confirm the factual basis. The trial court complied

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with the admonishment.

¶ 37 In his final argument related to faulty admonishments, defendant contends the trial court erred in accepting an involuntary plea as demonstrated by his statement that he was offering his blind guilty plea because he wanted to escape the county jail where his teeth had been knocked out.

¶ 38 The relevant law provides that, "[w]hen a defendant claims that he only pleaded guilty due to prison conditions, it does not necessarily follow that his plea was involuntary. [Citation.] Defendant must allege a specific instance of abuse, which caused him to plead guilty, and he must sufficiently establish a nexus between the alleged violence and his guilty plea. [Citation.]" *People v. Urr*, 321 Ill. App. 3d 544, 547, 748 N.E.2d 235 (2001) (citing *People v. St. Pierre*, 146 Ill. 2d 494, 507-08, 588 N.E.2d 1159 (1992)).

¶ 39 Following our review of the record, we conclude defendant's plea was voluntary. Importantly, the record reveals that defendant made a series of attempts to be released from jail and then, following his plea, when the trial court was set to enter an order for his IDOC transfer, defense counsel requested defendant be held in jail until after posttrial motions. This raises the question that if he was being harmed in jail, why did defendant request to stay there once he was finally being transferred? The record demonstrates that defendant raised a number of claims to support his repeated requests for bond reduction, electronic monitoring, and 402 conferences, including the need to take care of his family, a sick mother or grandmother, and insinuations that he was being physically hurt while in jail. The first time defendant mentioned any physical harm was on March 25, 2010 at his bond hearing when he said, "I'm not in a gang. Look at my lip and

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my head. I've been through a lot, your Honor." On the next court date, April 29, 2010, defendant requested a 402 conference after his request for electronic monitoring was denied. The 402 conference was ultimately abandoned before the trial court offered a sentence and the case was set for trial. On the next date of relevance, August 11, 2010, defendant again requested a 402 conference, but the State refused, thus the conference was not held. Then, on September 15, 2010, defendant expressed his desire to enter a blind guilty plea. The admonishments were provided as quoted above. In relevant part, after the court described the offense, sentencing range, nature of a blind plea, and rights defendant was giving up, the trial court asked defendant whether he still wished to enter his plea, at which time he said, "Yeah, because I can't do another day in this county. I got my teeth knocked out. I ain't even in no gang. You can get my background." The court then went on to ask defendant whether his plea was voluntary and made without force of threat or promises, to which defendant responded in the positive. The trial court expressly found defendant's plea was voluntary. On the next date, September 29, 2010, during a hearing on defendant's motion to reconsider the sentence, defendant counsel requested that defendant be held in jail until October 14, 2010, when a hearing on defendant's motion to withdraw his guilty plea was scheduled.

¶ 40 There are no indications in the record of conditions specifically directed at defendant to force him to plead guilty. Unlike the defendant in *Urr*, our defendant did not maintain his innocence throughout the proceeding. *Urr*, 321 Ill. App. 3d at 548. Moreover, defendant was anything but consistent in his attempts to be released from jail. *Id.* Most importantly, when asked whether he was entering his plea voluntarily, he responded in the positive. In comparison,

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the defendant in *Urr* stated that he wished to plead guilty "because [he] [had] no other choice" and, when asked if his plea was made out of his own free will, the *Urr* defendant said "I don't want to die at this point." We conclude defendant did not establish a sufficient nexus between the alleged violence and his guilty plea. *Id.* at 547.

¶ 41 In sum, the trial court did not commit error in providing defendant's Rule 402 admonishments such that a plain error analysis is justified.

¶ 42 Defendant further contends the trial court erred in denying his motion to withdraw his guilty plea without first providing an evidentiary hearing.

¶ 43 A defendant does not have an absolute right to withdraw his guilty plea. *People v. Hillenbrand*, 121 Ill. 2d 537, 545, 521 N.E.2d 900 (1988). A trial court should allow the withdrawal of a plea where doing so would correct a manifest injustice, such as where the plea was based on a misapprehension of the facts or law, there were misrepresentations made by defense counsel, there is doubt as to the defendant's guilt, or the defendant has a worthy defense for consideration. *Davis*, 145 Ill. 2d at 244. A trial court's decision whether to grant a motion to withdraw a guilty plea is within the court's discretion and will not be disturbed on appeal absent an abuse of that discretion. *People v. Manning*, 227 Ill. 2d 403, 412, 883 N.E.2d 492 (2008). We will find an abuse of discretion only where the trial court's ruling was arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *Delvillar*, 235 Ill. 2d at 519.

¶ 44 In his motion to withdraw his guilty plea, defendant claimed his plea was not voluntary

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because "Deshawn Lewis had threatened him and his family and he would be harmed unless he pled guilty." Defendant attached a personal affidavit to the motion, attesting:

"Derrick Lee received a threat from Terrell Lewis (relative of Deshawn Lewis-up on a murder case) occurred or 2 or 3 months ago via an unknown male black inmate coming from the barber shop. This inmate stated the following: 'They heard what you did on the street and they got your head.' Derrick interprets 'got your head' as they are going to kill him. The inmate told him that you better cop out and get out of this county (jail). Derrick states younger brother, Deante Lee, told him that he and his family have been threatened. Derrick's girlfriend, Shaner Wilcher, also told him that she was threatened by unknown person(s). Derrick didn't tell anyone because he doesn't trust anyone and feared for his family and his life."

¶ 45 A hearing was held on the motion. At the hearing, defense counsel argued:

"Mr. Lee is asking the court to withdraw his guilty plea in this matter. He stated that he did not make this plea voluntarily, that he had been threatened and that if he didn't plead guilty, he or his family would be harmed by a person named DeShaun Lewis.

I have attached the affidavit stating the basis of the threat. Also if his brother who is mentioned as a basis of the guilty plea *** was *** called to testify he would also state that either in July or August of 2010, Deonte Lee received a phone call from a private number.

And/or about 4:00 or 4[:]30 p.m., the caller on the other line had threatened to kill his brother, Derrick Lee. He did not recognize that voice. It was a man's voice. ***. He told his brother about this threat."

The State then responded to the arguments.

¶ 46 In denying the motion, the trial court said, "[t]his court inquired if anyone threatened you in any way and the court waited for your response and it was no. Did anyone force you to plead guilty? And the court waited for your response and the response was no." Defendant announced on the record that "DeShaun Lewis' cousin" was in the courtroom when defendant entered his plea. The trial court concluded that defendant's plea was voluntary.

¶ 47 We find the trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea. As we concluded, defendant's plea was voluntary. The allegations in his motion to withdraw, in his affidavit, and on the record were vague and inconsistent and were raised for the first time, long after they allegedly occurred. To the extent defendant argues he was entitled to an evidentiary hearing, we note that the court entertained arguments on the motion, allowing defendant to present his "new evidence." Moreover, "[a] defendant seeking to withdraw his guilty plea must plead factual allegations demonstrating the need for an evidentiary hearing." *People v. Norris*, 46 Ill. App. 3d 536, 540, 361 N.E.2d 105 (1977). There was no need for an evidentiary hearing. The arguments at the hearing and in defendant's affidavit demonstrated that defendant, his brother, and his girlfriend all received threats second-hand from unknown individuals. An evidentiary hearing would not have added anything to those allegations. Furthermore, "[a]ny intimation *** that a defendant may knowingly enter a plea

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which he believes he can later avoid, and then be heard on the subsequent challenge, does not merit our consideration." *People v. Partin*, 69 Ill. 2d 80, 84, 370 N.E.2d 545 (1977). We conclude the withdrawal of defendant's guilty plea would not correct any manifest injustice. *Davis*, 145 Ill. 2d at 244.

¶ 48

III. Ineffective Assistance Of Counsel

¶ 49 Defendant finally contends his counsel was ineffective for failing to include his allegations of error in his motions to reconsider his sentence and to withdraw his guilty plea. We need not address defendant's ineffective assistance claims where we have considered his forfeited contentions for plain error. *People v. Coleman*, 158 Ill. 2d 319, 349-50, 633 N.E.2d 654 (1994). "On a claim of ineffective assistance of counsel for failing to properly preserve issues for review, defendant's rights are protected by Supreme Court Rule 615(a), which allows a court to review unpreserved claims of plain error that could reasonably have affected the [judgment]." *Id.*

¶ 50 To the extent defendant argues his counsel was ineffective in presenting his argument that his plea was involuntary, we conclude defendant suffered no prejudice.

¶ 51 To present a claim for ineffective assistance of counsel, a defendant must demonstrate: (1) his counsel's representation fell below an objective standard of reasonableness and (2) that, but for counsel's deficient performance, the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). If a defendant cannot demonstrate he suffered prejudice such that the result of the proceedings would have been different, a reviewing court need not ascertain the efficacy of the counsel's performance. *Id.* at 694.

¶ 52 We conclude defendant cannot demonstrate he was prejudiced based on his counsel's

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failure to raise the trial court's Rule 402 admonishments and failure to request an evidentiary hearing in his motion to withdraw his guilty plea where we have determined defendant received sufficient admonishments and was not entitled to an evidentiary hearing. Defendant, therefore, cannot sustain a claim of ineffective assistance of counsel.

¶ 53

CONCLUSION

¶ 54 We affirm the judgment of the trial court. In so doing, we conclude defendant's sentence was proper, he received sufficient Rule 402 admonishments, and his guilty plea was voluntary.

¶ 55 Affirmed.