

DOJJ did not serve his or the public's best interests. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In April 2010, the State filed a three-count petition for adjudication of wardship against respondent, alleging two counts of aggravated battery (720 ILCS 5/12-4(b)(8) (West 2010)) (counts I and III), and one count of robbery (720 ILCS 5/18-1 (West 2010)) (count II). Respondent had another petition pending for aggravated battery in Champaign County case No. 09-JD-283 when the alleged new crimes occurred. In May 2010, respondent pleaded guilty to count III, and the State dismissed counts I and II from the present petition and the pending aggravated-battery charge in No. 09-JD-283. The trial court accepted respondent's plea and set the matter for sentencing in June 2010. Evidence introduced at respondent's sentencing hearing included the following.

¶ 5 Before the State introduced any evidence, respondent's counsel moved to exclude witnesses, specifically requesting that Neil Gebhardt be excluded because the State intended to have him testify during sentencing. The State informed the trial court it intended to introduce Gebhardt's testimony into evidence but argued there is no right to exclude witnesses during sentencing. Gebhardt was not a victim of the crime respondent pleaded guilty to but was the alleged victim of count I, which the State dismissed as part of respondent's plea. The court denied the motion and allowed Gebhardt to remain in the courtroom during sentencing.

¶ 6 Urbana police officer Tim McNaught testified he was the school resources officer for the Urbana School District. His duties included investigating any incidents occurring in or around Urbana's schools. Prior to April 2010, McNaught stated he had contacts with respondent regarding his involvement in fights at Urbana Middle School. In December 2009, McNaught

was meeting with the middle school's principal when respondent got into a fight with another student, T. B., and struck the student about the face. That incident was the basis for respondent's aggravated-battery charge in No. 09-JD-283.

¶ 7 In April 2010, McNaught was assigned to investigate a battery against another middle school student, A. B. During his investigation, McNaught discovered the parties involved in A.B.'s battery were connected to another battery under investigation involving Gebhardt. A.B. told investigators respondent struck him in the face while he was walking home from school, causing A.B. to fall to the sidewalk. Others in respondent's group then chased A.B. home. The aggravated battery to A.B. was the basis for count III of the State's petition, to which respondent pleaded guilty.

¶ 8 McNaught next followed up on the aggravated battery against Gebhardt. In talking to Gebhardt, McNaught learned Gebhardt could not identify any of his attackers, nor could he remember what happened. McNaught then spoke with Gerald J., a friend of respondent's who had been implicated in Gebhardt's aggravated battery. McNaught then testified to what Gerald J. told him, stating:

"In regards to Neil [Gebhardt], Gerald said that there—there's a group of juveniles ***. They saw Neil walking alone. *** [Gerald] said [respondent] pointed out Neil as the victim, as the only person on the street. They approached him. Another student *** picked up Neil, [and] slammed him to the ground. And Gerald, in his own words said—Gerald calls [respondent] [']rat,['] that's his nickname, and [Gerald] said 'rat stomped him, I stomped

him.' I asked, [']what you mean,['] and [Gerald] said they both stomped on his head when he was on the ground."

A member of the group then took Gebhardt's wallet, though McNaught did not know who took it. McNaught stated the attack on Gebhardt was part of a "sick game" respondent and his friend's played, the goal of which is to knock out a randomly selected victim.

¶ 9 Respondent's counsel did not object to any of McNaught's testimony.

¶ 10 On cross-examination, McNaught stated he did not witness either battery.

McNaught also stated Gerald J. was a suspect in both batteries.

¶ 11 Gebhardt testified he was walking to class at the University of Illinois, where he was an electrical engineering major, when he encountered a group of middle school students.

Gebhardt stated he did not notice anything unusual about the kids or their behavior as he passed them on the sidewalk. The next thing Gebhardt remembers is waking up in the hospital.

Gebhardt's injuries included a cut in his forehead, a fractured eye socket, a broken nose, and a fractured skull, which caused some bleeding in his brain. Though his injuries required follow-up appointments, Gebhardt stated he no longer suffered any ill effects from the battery. Gebhardt testified his medical bills from the battery totaled roughly \$23,000. The State entered two photographs of Gebhardt's injuries into evidence. Respondent's counsel objected to one photograph on foundational grounds, but the trial court overruled the objection. Respondent's counsel did not otherwise object to Gebhardt's testimony.

¶ 12 On cross-examination, Gebhardt stated he had no memory of the battery, could not identify the parties involved, and was not entirely sure exactly what happened.

¶ 13 Respondent's counsel offered a certificate of promotion from Urbana Middle

School on respondent's behalf. The certificate verified respondent successfully completed middle school and was ready and able to begin high school.

¶ 14 Respondent's presentence report listed 10 disciplinary referrals at the middle school within the past year, including detailed descriptions of the batteries to A.B. and Gebhardt in April 2010. The report also showed respondent and his mother were participating in the Parenting with Love and Limits program, which includes family counseling. The report recommended 24 months' probation in conjunction with anger management. Neither party objected to the contents of the report.

¶ 15 During argument, the State requested respondent be committed to the DOJJ because of the threat he posed to the community. In support of its request, the State cited the three unprovoked attacks against T.B., A.B., and Gebhardt, as well as numerous disciplinary actions by the middle school for fighting. Specifically, the State argued "Neil Gebhardt didn't do anything to provoke [respondent][,] and now *** he's starting off adulthood with all of these medical problems and debt." Finally, the State argued the trial court should set an example that the "knockout game" respondent and his friends participated in would not be tolerated in the community.

¶ 16 Respondent's counsel argued the State had not offered enough evidence to show respondent's involvement in the battery against Gebhardt. Counsel pointed out the only witness to the battery was Gerald J., who was "essentially a co-Defendant" in that case. Respondent's counsel also argued, though respondent had multiple police contacts, the fact that this was his first adjudication at 15 years old was a mitigating factor, as he deserved the opportunity to comply with a community-based sentence. Finally, counsel argued respondent's recent improved

behavior merited a community-based sentence and requested a sentence in accord with the 24 months' probation recommended in the presentence report.

¶ 17 Following argument, the trial court stated:

"The Court has considered all relevant information. The Court has specifically considered the best interests of the minor and of the public. The Minor Respondent has previously been adjudged to be a delinquent minor. *** The Minor Respondent will be made a ward of the court.

The Court Finds the Respondent Minor's parents are unable, for reasons other than financial circumstances alone, to *** care for, protect, train[,] or discipline the minor. And that the best interests of the public will not be served by placement under section 705 Illinois Compiled Statutes, 405/5-740.

It will be the order of the Court *** that the Minor Respondent be committed to the Illinois Department of Juvenile Justice for an indeterminate term, which will automatically terminate in five years, or upon the minor attaining the age of twenty-one years, whichever comes first."

¶ 18 In explaining its decision, the trial court went on to state:

"In regard to the evidence considered by the Court, the evidence is that [respondent] was engaged in a series of violent attacks against other individuals. And for the purpose of this

hearing, I believe the evidence is sufficient for the Court to consider the attack on Mr. Gebhardt.

Now, these of course, are serious offenses. Ones for which, if the minor was an adult, he could go to prison for up to five years. In mitigation, there's nothing in this report that indicates to me that the minor's parents are not caring parents ***. But, I do note that while all of this was going on, [respondent] was living in the home of his mother, who apparently was unable to get him to go to school when he was supposed to be there, who was unable to keep him from associating with people which he acknowledges to be negative influences on him.

Now, I do note that he did successfully complete a formal station adjustment. I notice that that preceded the incidents that we're talking about here in court. So I would have to question how much [respondent] got out of that particular episode.

* * *

[Respondent] is a person still of young age, but a person who certainly knows right from wrong and should have known when to walk away and say, [']no, I'm simply not going to be involved in that because that's wrong and I'm not doing it.[']

Now, so far, no one has been disabled for life or killed. And stomping on somebody's head could certainly produce the

latter result. And the Court feels that it needs to send a strong message that this game that's developed, of going about assaulting people just for the fun of it, is not going to be tolerated, now or at any time in the future.

Now, an indeterminate sentence means you can be at the Department of Juvenile Justice, sir, a relatively short time, or you can be there as long as the next five years. If you follow through with some of the beginnings that you've made in the recent week, and actually do what they ask you to do *** then you can be out of there in fairly short order. Otherwise not, and the choice is yours."

¶ 19 In June 2010, respondent filed his initial motion to reconsider his sentence. In July 2010, respondent filed an amended motion to reconsider his sentence, arguing (1) his sentence was excessive because (a) he pleaded guilty, (b) this was his first adjudication, (c) he never was afforded an opportunity to comply with probation, and (d) the State's evidence in aggravation was insufficient to prove that he committed additional crimes; (2) the sentence imposed was not in keeping with his age, criminal history, family situation, and economic status; and (3) the trial court failed to adequately consider alternative sentences to assist him in his rehabilitation.

¶ 20 In August 2010, the trial court again denied respondent's motion to exclude Gebhardt and his parents from the courtroom. The court then rejected respondent's motion, stating:

"As indicated at the disposition hearing, the court at that time considered all relevant information. It specifically considered the best interest of respondent and of the public. First of all, the court of course had to consider the nature of the offense for which respondent stands adjudicated, a vicious unprovoked attack on another person, a person chosen at random by respondent and his friends. The court has also considered of course the other police contacts that respondent had accumulated, more than one of those also including instances of violence."

The court went on to state that it considered respondent's improvement prior to sentencing in mitigation or his sentence would have been longer.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, respondent argues the trial court erred in (1) placing significant weight on unreliable and prejudicial hearsay testimony during sentencing, (2) allowing an improper victim-impact statement during sentencing, and (3) sentencing him to the DOJJ where it did not serve his or the community's best interests. The State argues (1) respondent's first two arguments are forfeited because he failed to object to the testimony at sentencing or to raise the issues in a posttrial motion and (2) respondent's final argument is unpersuasive because the court explicitly stated it considered respondent's and the community's best interests at sentencing.

¶ 24 A. Forfeiture

¶ 25 Respondent initially argues he preserved the issues regarding McNaught and

Gebhardt's testimony because he raised essentially the same claims with the trial court. The State argues respondent failed to sufficiently preserve the matters on appeal.

¶ 26 In criminal proceedings, both a trial objection and a written posttrial motion raising the issue are required to preserve it for appeal. *People v. Lewis*, 223 Ill. 2d 393, 400, 860 N.E.2d 299, 303 (2006). However, in juvenile proceedings, the respondent need only raise a trial objection to preserve an issue for appeal; no postadjudication motion is required. *In re Samantha V.*, 234 Ill. 2d 359, 368, 917 N.E.2d 487, 493 (2009). "[R]espondent's failure to object at trial forfeits consideration of the claimed error on appeal, unless respondent can demonstrate plain error." *Id.*

¶ 27 Respondent argues the trial court improperly considered McNaught's prejudicial, "double hearsay" testimony. However, respondent did not object to McNaught's testimony during sentencing. Instead, during argument at sentencing, respondent argued that McNaught's testimony was insufficient to tie him to the attack on Gebhardt. This argument goes to the weight of the evidence presented and not its admissibility. Further, the trial court explicitly disagreed with respondent's argument at sentencing and found McNaught's testimony sufficient to tie respondent to the assault on Gebhardt. In addition, while portions of McNaught's testimony did constitute hearsay, it never rose to the level of double hearsay and was admissible at sentencing. See *People v. Williams*, 181 Ill. 2d 297, 331, 692 N.E.2d 1109, 1127 (1998) (hearsay evidence of crimes not resulting in conviction admissible at sentencing). Because respondent failed to object to McNaught's testimony during sentencing, the issue is forfeited on appeal.

¶ 28 Respondent also argues the trial court erred in admitting a victim-impact

statement from Gebhardt during sentencing because he was not the victim of the crime for which respondent was adjudicated. However, respondent also failed to object to Gebhardt's testimony during sentencing. "The failure to object to allegedly improper victim impact evidence ordinarily results in waiver on appeal in noncapital cases." *People v. Gonzales*, 285 Ill. App. 3d 102, 104, 673 N.E.2d 1181, 1183 (1996). Respondent argues his motion to exclude Gebhardt as a witness properly preserved the issue for appeal. However, respondent did not object to the nature of Gebhardt's testimony or specifically refer to it as an improper victim-impact statement. Respondent objected before testimony was even offered, and the objection appears to have been a standard motion to exclude an expected witness from hearing the testimony of other witnesses. We conclude the motion to exclude witnesses was insufficient to preserve respondent's argument on appeal as it did not raise the same essential claim before the court. *Cf. People v. Heider*, 231 Ill. 2d 1, 18, 896 N.E.2d 239, 249 (2008) ("[W]here the trial court clearly had an opportunity to review the same essential claim that was later raised on appeal," the purpose of preserving a claim was met).

¶ 29

B. Plain-Error Review

¶ 30 Respondent argues to the extent either issue was forfeited, this court should review the issues under plain-error analysis. Respondent raised this argument for the first time in his reply brief. Ordinarily, an issue not raised in the initial appellate brief is waived pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). However, our supreme court has found that "it would be unfair to require a [respondent] to assert plain error in his or her opening brief." *People v. Williams*, 193 Ill. 2d 306, 348, 739 N.E.2d 455, 477 (2000). Therefore, we will review respondent's claims for plain error.

¶ 31 Plain-error review allows a court to rule on an issue not properly preserved, and otherwise forfeited, in either of two circumstances: (1) where it may have affected the outcome of a closely balanced case or (2) where the error was so serious it threatened the fairness of the outcome and the very integrity of the trial process. *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010). Defendant argues the current issues fall under the second prong of plain-error review. Under the second prong of plain-error review "the defendant must prove there was plain error and that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 187, 830 N.E.2d 467, 479-80 (2005). Plain-error review also applies to sentencing proceedings. See *People v. Kopczyk*, 312 Ill. App. 3d 843, 852, 728 N.E.2d 107, 114-15 (2000).

¶ 32 Here, McNaught's hearsay testimony regarding respondent's involvement in other crimes was admissible during sentencing; thus, the trial court did not err in considering it. See *Williams*, 181 Ill. 2d at 331, 692 N.E.2d at 1127 (hearsay evidence of crimes not resulting in conviction admissible at sentencing).

¶ 33 Assuming, *arguendo*, Gebhardt's testimony was erroneously admitted by the trial court, it did not rise to the level of reversible error because the court's erroneous admission of a victim-impact statement cannot supply the respondent with grounds for relief on appeal. See 725 ILCS 120/9 (West 2010) ("Nothing in this Act shall create a basis for vacating a conviction or a ground for appellate relief in any criminal case."); see also *People v. Harth*, 339 Ill. App. 3d 712, 791 N.E.2d 702 (2003). In addition, we note that the evidence introduced through both parties' testimony was included in the presentence report and was already before the court, thereby rendering its later admission harmless. See *People v. Lybarger*, 198 Ill. App. 3d 700, 703, 555

N.E.2d 1264, 1266 (1990) (harmless error where improperly admitted statement contained information included in the presentence report); see also *People v. Keyes*, 175 Ill. App. 3d 1013, 530 N.E.2d 708 (1988) (where statement may have been objectionable hearsay, it was harmless because substantially similar evidence was included in presentence report offered by State).

¶ 34 C. Respondent's Sentence to the DOJJ

¶ 35 Respondent argues the trial court abused its discretion in sentencing him to commitment in the DOJJ because the sentence did not serve respondent's or the public's best interests.

¶ 36 The trial court's decision to sentence respondent to a period of commitment in the DOJJ is reviewed for an abuse of discretion. *In re A.J.D.*, 162 Ill. App. 3d 661, 666, 515 N.E.2d 1277, 1280 (1987). A court abuses its discretion when its sentence is "arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.) *People v. Sutherland*, 223 Ill. 2d 187, 272-73, 860 N.E.2d 178, 233 (2006).

¶ 37 At a juvenile sentencing, the court is to "determine the proper disposition best serving the interests of the minor and the public," but the court may not commit a juvenile to the DOJJ without first considering a written report of social investigation. 705 ILCS 405/5-705(1) (West 2010). "The written report of social investigation shall include an investigation and report of the minor's physical and mental history and condition, family situation and background, economic status, education, occupation, personal habits, minor's history of delinquency or criminality or other matters which have been brought to the attention of the juvenile court, information about special resources known to the person preparing the report which might be

available to assist in the minor's rehabilitation, and any other matters which may be helpful to the court or which the court directs to be included." 705 ILCS 405/5-701 (West 2010). In addition, all other helpful evidence, "including oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the trial." 705 ILCS 405/5-705(1) (West 2010).

¶ 38 Here, respondent claims the trial court overemphasized the nature of the offense and ignored mitigating factors in sentencing him to the DOJJ rather than a community-based program such as probation. However, in sentencing respondent, the court specifically stated it had reviewed and considered all the relevant information before it, including the best interests of respondent and the public. The information before the court included a proper written social investigation. Respondent does not point to any errors by the court but instead argues the court erred in electing to commit respondent rather than placing him on probation. Absent any specific allegations by respondent relating to the court's decision, we assume the court properly considered and weighed all the relevant factors. See *People v. Csaszar*, 375 Ill. App. 3d 929, 948, 874 N.E.2d 255, 271 (2007) ("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 which is before it."). Based on the record, we conclude the court properly assessed the information before it and did not abuse its discretion in committing respondent to the DOJJ.

¶ 39

III. CONCLUSION

¶ 40 For the foregoing reasons, we affirm the trial court's judgment.

¶ 41 Affirmed.