NOTICE
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2012 IL App (4th) 110424-U

NO. 4-11-0424

FILED
November 14, 2012
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
CHARLES A. WATSON,	)	No. 10CF1955
Defendant-Appellant.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Pope and Cook concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's sentence of 15 years' imprisonment as it did not improperly consider aggravating factors as a "double enhancement" in imposing sentence.

¶ 2 On November 22, 2010, the State charged defendant, Charles A. Watson, with a November 21, 2010, armed robbery, a Class X felony (720 ILCS 5/18-2(a)(2), (b) (West 2010)), and aggravated robbery, a Class 1 felony (720 ILCS 5/18-5(a), (b) (West 2010)). In March 2011, after a trial, a jury found defendant guilty of aggravated robbery and not guilty of armed robbery. The trial court sentenced defendant to 15 years' imprisonment for aggravated robbery.

¶ 3 On appeal, defendant argues the trial court improperly twice considered aggravating factors in imposing sentencing, amounting to double enhancement. Defendant asserts the court improperly considered defendant (1) was armed and (2) committed the robbery

for monetary gain. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 At approximately 10 a.m. on November 21, 2010, a 21-year-old female student was walking down Sixth Street in Champaign, Illinois, toward the Illini Union on the campus of the University of Illinois. At the corner of Sixth and Green, a man approached her by crossing over Sixth Street (this man was never identified). The man held what appeared to the victim to be a gun beneath a brown fur hat. The victim could only see the barrel of the gun underneath the hat. Defendant approached the victim by crossing over Green Street. The first man told the victim he and his "brother" were hungry and looking for money. Seeing the gun barrel, the victim removed her wallet from her backpack and offered the men her wallet. The first man told her he only wanted cash and not credit cards. She handed her cash over to the men and the two men left together.

¶ 6 In March 2011, a jury found defendant guilty of aggravated robbery and not guilty of armed robbery. At sentencing, the State introduced a presentencing investigation report (PSI) showing a 1981 felony conviction for robbery and a 1991 felony conviction for burglary. The PSI also showed six other felony convictions. At sentencing, the trial court stated the following:

> "First of all, in aggravation, and non-statutory aggravation, this community is the home of a major university to which young people from all over the world come, who have a right to feel safe on the campus of the University of Illinois and the environs there around. The conduct of the defendant and his accomplice would serve, certainly, to make anyone uneasy, if one can be walking

> down a major sidewalk in the heart of Campustown and be the subject of what, to them was an armed robbery. Whether a gun was actually used, or whether the impression was sought to be given that a gun was used, it's not something that someone who's the victim, is going to be considering. They're going to be considering whether they're in the last moments of their life.
>
> In aggravation also, this was a crime committed for monetary gain."

Further, the court stated the appropriate sentence needed to send a message to those "who may be thinking of lying in wait and preying upon any of the university students who come here to advance their education." The court found defendant was eligible for Class X felony sentencing pursuant to section 5-4.5-95(b) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4.5-95(b) (West 2010)) (providing for Class X felony sentencing where defendant has previously been convicted of two Class 2 or greater felonies). The court's written judgment erroneously cites section 5-5-3(c)(8) of the Unified Code (730 ILCS 5/5-5-3(c)(8) (West 2008) the previous statutory citation for section 5-4.5-95(b). See Pub. Act 95-1052, § 5 (eff. July 1, 2009) (2008 Ill. Laws 4204, 4220-22) (adding 730 ILCS 5/5-4.5-95(b)). Further, the court found defendant committed this crime while on mandatory supervised release (MSR) for another felony offense (730 ILCS 5/5-5-3.2(a)(12) (West 2010)). The court sentenced defendant to 15 years' imprisonment.

¶ 7 This appeal followed.

¶ 8 II. TRIAL COURT DID NOT EMPLOY DOUBLE ENHANCEMENT BY

TWICE CONSIDERING FACTORS IN SENTENCING

¶ 9 "A sentence within statutory guidelines will only be disturbed on review if the trial court abused its discretion." *People v. Mitchell*, 395 Ill. App. 3d 161, 167, 916 N.E.2d 624, 630 (2009). A sentence is an abuse of discretion when the sentence is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000)).

¶ 10 A. Plain Error: Overview

¶ 11 Defendant concedes he did not raise his double-enhancement argument before the trial court or in a motion to reconsider sentence. He urges this court to review the alleged errors under the plain-error doctrine. Supreme Court Rule 615(a), the basis for the plain-error doctrine, provides the appellate court may review plain errors affecting substantial rights, although these errors were not brought to the attention of the trial court. Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999); *People v. Kitch*, 239 Ill. 2d 452, 461, 942 N.E.2d 1235, 1241 (2011). The plain-error doctrine is a narrow and limited exception. *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010). To show plain error in the sentencing context, a defendant must show (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. *Hillier*, 237 Ill. 2d at 545, 931 N.E.2d at 1187; *People v. Rathbone*, 345 Ill. App. 3d 305, 312, 802 N.E.2d 333, 339 (2003). Under both prongs, defendant has the burden of persuasion. *Hillier*, 237 Ill. 2d at 545, 931 N.E.2d at 1187. Defendant argues the courts alleged error exposed him to a "harsher sentence," thus evoking the second prong of plain-error review.

¶ 12 B. Did Any Error Occur?

¶ 13 We begin by determining whether any error occurred. *People v. Rios*, 2011 IL App (4th) 100461, ¶ 12, 960 N.E.2d 70, 75. A sentencing judge "is charged with fashioning a sentence based upon the particular circumstances of the individual case, including the nature of the offense and the character of the defendant." (Internal quotation marks omitted.) *People v. Lewis*, 361 Ill. App. 3d 1006, 1019, 838 N.E.2d 996, 1007 (2005). The sentencing court may not use a single factor both as an element of the defendant's crime and as an aggravating factor for imposing "a harsher sentence than might otherwise have been imposed." *People v. Gonzalez*, 151 Ill. 2d 79, 83-84, 600 N.E.2d 1189, 1191 (1992). This prohibition on double enhancement is because the legislature "necessarily took into account the factors inherent in the offense" when it prescribed the appropriate sentencing range for the offense. *Id.* at 84, 600 N.E.2d at 1191.

¶ 14 1. *Consideration of Fact Defendant's Cooffender Was Armed*

¶ 15 Defendant's claim the trial court considered he was armed as a factor in imposing sentence is unpersuasive. The court's statements referring to the firearm, taken in context, show the court's concern of the nature of the offense, the environment in which it took place, and the impact of the offense on the victim. We cannot agree with defendant the court improperly considered the audacity of defendant to commit this crime with a firearm in broad daylight on a young college student on her way to the campus student union. The court did not use this fact as a sentencing enhancing factor.

¶ 16 2. *Consideration of Fact Defendant Committed Crime for Monetary Gain*

¶ 17 Defendant's claim the trial court improperly considered that he perpetrated his crime for "monetary gain" is equally unpersuasive. We agree with defendant in *People v.*

Conover, 84 Ill. 2d 400, 404-05, 419 N.E.2d 906, 909 (1981), the supreme court held the aggravating factor "the defendant received compensation for committing the offense" (Ill. Rev. Stat. 1978 Supp., ch. 38, ¶ 1005-5-3.2, now 730 ILCS 5/5-5-3.2(a)(2) (West 2010)) only applies where the defendant received remuneration for the crime and not the taking of proceeds from a robbery. However, in *Rios*, 2011 IL App (4th) 100461, ¶ 15, 960 N.E.2d at 75-76, this court stated as follows:

> "While the proceeds of the crime are not an aggravating factor under section 5-5-3.2(a)(2), they can be proper considerations at sentencing when the proceeds relate to such things as the extent and nature of a defendant's involvement in a particular criminal enterprise, *a defendant's underlying motivation for committing the offense,* the likelihood of the defendant's commission of similar offenses in the future and *the need to deter others from committing similar crimes*." (Emphases added.)

In this case, the record shows the trial court considered defendant's motivation for the robbery was "monetary gain" and a lengthy prison sentence was needed to deter other would-be robbers from preying on students. The court's consideration that the robbery was for monetary gain was consistent with *Rios* and proper.

¶ 18 3. *Basis of Enhancement For Felony Committed*

¶ 19 Defendant's assertion he received a "harsher sentence than might otherwise have been imposed" suffers multiple fatal flaws. First, defendant could have received a 15-year sentence under Class 1 felony sentencing guidelines. A Class 1 felony is punishable by up to 15

years' imprisonment (730 ILCS 5/5-4.5-30(a) (West 2010)) and the trial court could have considered defendant's length criminal history as an aggravating factor (730 ILCS 5/5-5-3.2(a)(3) (West 2010)) in determining a 15-year sentence was appropriate under Class 1 felony sentencing guidelines. See *People v. Thomas*, 171 Ill. 2d 207, 227-29, 664 N.E.2d 76, 87-88 (1996) (rejecting similar argument where trial court sentenced the defendant, with two prior Class 2 felonies, under Class X sentencing enhancement and noting the defendant could have received 15-year prison sentence under Class 1 felony guidelines). Second, the court did not use either complained-of aggravating factor to enhance defendant's sentencing range to Class X felony sentencing. See *People v. Williamson*, 319 Ill. App. 3d 891, 902, 747 N.E.2d 26, 35 (2001) (distinguishing between a "sentencing factor" and a "sentence enhancement" (internal quotation marks omitted)). Defendant was eligible for enhanced Class X felony sentencing pursuant to section 5-4.5-95(b) of the Unified Code because of his 1981 and 1991 convictions. Any contention defendant received a sentencing enhancement by being convicted of aggravated robbery rather than robbery (720 ILCS 5/18-1(a) (West 2010)) because a firearm was used is easily rejected as he still could have received Class X sentencing due to his 1981 and 1991 felony convictions. A sentencing court has wide latitude in imposing a sentence within the statutory range (*People v. Glass*, 144 Ill. App. 3d 296, 304-05, 494 N.E.2d 886, 891 (1986)), and section 5-4.5-25 of the Unified Code authorizes a term of imprisonment of 6 to 30 years for a Class X felony (730 ILCS 5/5-4.5-25(a) (West 2010)). Defendant received a harsher sentence than he would have preferred, but he did not receive a harsher sentence than is authorized by section 5-4.5-25.

¶ 20 The trial court did not err in considering sentencing factors or imposing an

enhanced sentence pursuant to section 5-4.5-95(b) of the Unified Code.

¶ 21 III. CONCLUSION

¶ 22 We affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment as costs of this appeal.

¶ 23 Affirmed.