

NOTICE
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2012 IL App (4th) 110835-U

Filed 5/11/12

NO. 4-11-0835

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
DEANNA L. HENSON,)	No. 06CF1403
Defendant-Appellant.)	
)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Where, in denying defendant's postplea motion, the trial court considered defendant's argument the court failed to take into account defendant's physical and mental conditions in determining extraordinary circumstances, a review of the court's sentencing ruling does not indicate the court abused its discretion in interpreting its own sentencing ruling.

¶ 2 Where the trial court noted it considered all of the evidence and arguments presented to it, including defendant's physical and mental conditions and the crime was a very serious one, the trial court did not abuse its discretion in sentencing defendant to four years' imprisonment.

¶ 3 Defendant, Deanna L. Henson, appeals her four-year prison sentence, asserting the trial court erred by (1) not considering her mental and physical conditions in its extraordinary-circumstances analysis and (2) finding no extraordinary-circumstances existed to warrant probation in defendant's case. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On October 16, 2006, defendant was driving her Kia Optima when she crossed the centerline and struck a Dodge Caravan driven by Mary Callahan. Defendant had one passenger in her vehicle, Debra Woith, and Callahan had her five-year-old son with her. All four passengers were taken to the hospital, where Woith died. Hospital tests on defendant's blood showed she had a blood alcohol concentration level of 0.146. In the crash, defendant suffered a permanent injury to her hip, and Callahan sustained a permanent injury to her ankle. After observation, Callahan's son was cleared of any injury.

¶ 6 Two days later, the State charged defendant with two counts of aggravated driving under the influence (DUI) (625 ILCS 5/11-501(d)(1)(F) (West 2006) (text as amended by Pub. Act 94-0113, § 5 (eff. Jan. 1, 2006) (2005 Ill. Laws 1548, 1555), and Pub. Act 94-0609, § 5 (eff. Jan. 1, 2006) (2005 Ill. Laws 4382, 4388))). In February 2010, pursuant to a plea agreement, defendant pleaded guilty to one count of aggravated DUI, and the court dismissed the second count. The plea agreement was open as to sentencing.

¶ 7 In May 2010, the presentence investigation report was filed, which contained defendant's version of the crash. Defendant stated Woith had been her best friend for 24 years. The report noted that, in January 2007, defendant had pleaded guilty to failure to notify of damage to an unattended vehicle and received 12 months of court supervision. In January 2008, defendant was discharged from court supervision, and the case was dismissed. Moreover, the presentence investigation report stated defendant has been diagnosed with bipolar disorder with severe depression and attempted suicide in 2009. Defendant was receiving treatment from Dr. Gil Abelita and was on seven daily medications for her mental-health issues. Further, at the time of the report, defendant was having difficulty walking without crutches. Last, in March 2010,

defendant participated in an alcohol assessment, which concluded she was of high risk classification and recommended substance-abuse treatment.

¶ 8 Also, in May 2010, defendant filed a commentary on sentencing factors, to which she attached a letter from Dr. Abelita, noting his concern that, if defendant was imprisoned, she would deteriorate rapidly. Defendant also attached a December 2009 mental-impairment questionnaire; medical records related to her 10 surgeries for her hip injury; and a November 20, 2009, letter from Dr. Leo Whiteside. Dr. Whiteside's letter indicated defendant had a hard time doing her own personal care due to pain and lack of mobility. Defendant was unable to travel due to risk of infection and fracture and would probably need another surgery. In his opinion, it could be a long time before defendant is able to work again and be functional. In June 2010, defendant filed a supplemental commentary, attaching photographs showing defendant's scar and memorial to Woith.

¶ 9 The State also submitted six victim-impact statements by Woith's relatives and Callahan. In ruling on defendant's motion to strike the victim impact statements, the trial court noted it would disregard any improper content contained in the letters.

¶ 10 On June 2010, the trial court held defendant's sentencing hearing. Callahan testified she had four surgeries on her ankle and still had very little movement in it. Her ankle was painful and would likely have to be fused. Terry Henson, defendant's husband, testified about defendant's ongoing medical problems with her hip that had included many surgeries and infections. Her injured leg was 2 1/2 inches shorter and "her left foot [was] indexed out at about 45 degrees." Terry also discussed defendant's mental-health issues. Her current medications keep her calm, but when she runs out, she returns to her depression and remains in bed for a

couple of days. She also "recesses" around the time of the accident and holidays. Terry noted defendant had taken responsibility for the accident and had no desire to drive a car. He also testified defendant's medications cost around \$1,000 per month and her surgeries in the local area had cost \$50,000 apiece and her surgeries by Dr. Whiteside had cost \$100,000 apiece. Defendant made a statement in allocution and apologized for all of the pain she had caused.

¶ 11 After hearing the parties' arguments, the trial court found no extraordinary circumstances existed to warrant probation and sentenced defendant to four years' imprisonment.

¶ 12 On July 8, 2010, defendant filed a motion to reconsider or reduce her sentence. After a December 15, 2010, hearing, the trial court denied defendant's motion. Defendant appealed, and this court remanded the cause for compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Henson*, No. 4-10-1036 (July 28, 2011) (dispositional order remanding the cause to the trial court).

¶ 13 On September 9, 2011, defense counsel filed an amended certificate pursuant to Rule 604(d), and the trial court again heard and denied defendant's postplea motion. On September 12, 2011, defendant filed a notice of appeal listing the sentencing judgment and the court's December 2010 ruling on defendant's postplea motion. On February 14, 2012, defendant filed a motion for leave to file a late notice of appeal that listed the September 9, 2011, judgment, which this court granted. The late notice of appeal was filed in the trial court on February 22, 2012.

¶ 14 II. ANALYSIS

¶ 15 A. Jurisdiction

¶ 16 The State asserts this court lacks jurisdiction over this appeal because defendant's

notice of appeal refers only to the date of the sentencing judgment and the first ruling on defendant's postplea motion, and thus the notice is untimely because it does not list the trial court's second ruling on the postplea motion. Defendant disagrees, asserting the history of this appeal indicates the deficiency is one of form rather than substance. She further argues the error was cured by her late notice of appeal, which this court granted her leave to file in February 2012.

¶ 17 Our supreme court has emphasized a reviewing court's duty to ascertain its jurisdiction before considering the appeal's merits. See *People v. Lewis*, 234 Ill. 2d 32, 36-37, 912 N.E.2d 1220, 1223 (2009); *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213, 902 N.E.2d 662, 664 (2009); *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008). Thus, the State's questioning of our jurisdiction raises a threshold issue. See *Lewis*, 234 Ill. 2d at 37, 912 N.E.2d at 1223.

¶ 18 "The timely filing of a notice of appeal is both jurisdictional and mandatory." *Secura Insurance Co.*, 232 Ill. 2d at 213, 902 N.E.2d at 664. If defendant fails to perfect a properly filed notice of appeal, the reviewing court lacks jurisdiction and must dismiss the appeal. *Smith*, 228 Ill. 2d at 104, 885 N.E.2d at 1058.

¶ 19 Our supreme court has explained when a notice of appeal is sufficient to confer jurisdiction as follows:

"We note that, while a notice of appeal is jurisdictional, it is generally accepted that such a notice is to be construed liberally.

[Citations.] The purpose of a notice of appeal is to inform the prevailing party in the trial court that the other party seeks review

of the judgment. [Citations.] Accordingly, notice should be considered as a whole and will be deemed sufficient to confer jurisdiction on an appellate court when it fairly and adequately sets out the judgment complained of and the relief sought, thus advising the successful litigant of the nature of the appeal. [Citation.]

Where the deficiency in notice is one of form, rather than substance, and the appellee is not prejudiced, the failure to comply strictly with the form of notice is not fatal. [Citation.]" (Internal quotation marks omitted.) *Smith*, 228 Ill. 2d at 104-05, 885 N.E.2d at 1058-59.

¶ 20 In *Lewis*, 234 Ill. 2d at 35-36, 912 N.E.2d at 1223, our supreme court addressed a State's allegation the notice of appeal was insufficient to confer jurisdiction where the notice of appeal listed the judgment appealed from as a motion to suppress and the defendant sought to appeal the street-value fine. In rejecting that argument, the supreme court noted the defendant's notice of appeal accurately identified the offense and sentence, and by leaving blank the "Nature of order appealed from, other than conviction" line, the defendant indicated he was appealing his conviction. *Lewis*, 234 Ill. 2d at 38, 912 N.E.2d at 1224. The *Lewis* court explained that, while the notice of appeal listed the date of the order or judgment as an order denying a motion to suppress, the notice indicated the defendant was appealing his conviction. *Lewis*, 234 Ill. 2d at 38, 912 N.E.2d at 1224. Thus, when considered as a whole and construed liberally, the notice sufficiently identified the challenged judgment and informed the State of the nature of the appeal. *Lewis*, 234 Ill. 2d at 39, 912 N.E.2d at 1225.

¶ 21 Later, in a case similar to *Lewis*, the supreme court again rejected the State's jurisdictional challenge, in which the State asserted the two notices of appeal were both deficient because they did not note the defendant's *pro se* posttrial motions. *People v. Patrick*, 2011 IL 111666, ¶ 19, 960 N.E.2d 1114, 1119. In its analysis, the supreme court noted "[t]he State does not argue it was prejudiced in any way by the notices of appeal and it does not appear that there was any prejudice." *Patrick*, 2011 IL 111666, ¶ 27, 960 N.E.2d at 1120.

¶ 22 In this case, while the notice of appeal does not state the offense as in *Lewis*, it lists, for the date of order, "[s]entencing, June 8, 2010." The notice also lists defendant's four-year sentence that is at issue here. Moreover, like *Lewis*, the "nature of order" line is blank, indicating defendant was appealing his conviction. *Lewis*, 234 Ill. 2d at 38, 912 N.E.2d at 1224. Further, the State has not alleged any prejudice by the notice of appeal stating the date of the trial court's first ruling on the postplea motion as opposed to the second ruling. Defendant's argument on appeal addresses the sentencing judgment, and the State responds to that argument. Accordingly, we find that, when considered as a whole and construed liberally, the notice of appeal sufficiently identified the sentencing judgment as the judgment being appealed and informed the State of the nature of the appeal.

¶ 23 To the extent the State is suggesting the timeliness of an appeal must be determined from only the information on the notice of appeal for the notice of appeal to be sufficient, it has failed to cite any authority in support of that assertion. Thus, the State has forfeited this issue. See Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006) (failure to cite authority forfeits argument). In this case, the record on appeal clearly shows the notice of appeal was timely filed. Additionally, the supreme court has emphasized "[t]he timely filing of a notice of appeal is the only

jurisdictional step for initiating appellate review." *Patrick*, 2011 IL 111666, ¶ 20, 960 N.E.2d at 1119. Accordingly, any deficiencies in defendant's jurisdictional statement in his brief would not deprive this court of jurisdiction. Moreover, we do not find the deficiencies in the jurisdictional statement warrant dismissal of the appeal for failure to comply with Illinois Supreme Court Rule 341(h)(4) (eff Sept. 1, 2006).

¶ 24 Accordingly, this court has jurisdiction over this appeal under Rule 604(d) (eff. July 1, 2006). Since we have found the initial notice of appeal conferred jurisdiction on this court, we need not address whether leave to file the late notice of appeal was properly granted.

¶ 25 B. Extraordinary Circumstances

¶ 26 1. *Failure To Consider Defendant's Medical Situation*

¶ 27 Defendant first asserts the trial court erred when it excluded her medical situation from its evaluation as to whether extraordinary circumstances existed to warrant probation. Specifically, she contends the trial court's exclusion is contrary to the sentencing provision for aggravated DUI and asserts this issue is a matter of statutory construction. The State argues defendant has forfeited this issue by failing to raise it with enough specificity in her postplea motion. See *People v. Coleman*, 391 Ill. App. 3d 963, 971, 909 N.E.2d 952, 960 (2009) (stating "[a] posttrial motion must alert the trial court to the alleged error with enough specificity to give the court a reasonable opportunity to correct it"). Since our supreme court has instructed us to begin our review of a case by determining whether any issues have been forfeited (see *Smith*, 228 Ill. 2d at 106, 885 N.E.2d at 1059), we first address the State's forfeiture argument.

¶ 28 In *Coleman*, 391 Ill. App. 3d at 971, 909 N.E.2d at 960, the defendant's posttrial motion stated: "The [c]ourt erred in overruling defendant's objection to the admission of

[People's] exhibit [No.] 2, the 926 grams of cocaine.' " On appeal, the defendant argued "the trial court erred in admitting People's exhibit No. 2 into evidence because he produced evidence that Dailey tampered with, or altered, the exhibit and the State failed to rebut the evidence of tampering, making the chain of custody insufficient." *Coleman*, 391 Ill. App. 3d at 970, 909 N.E.2d at 960. This court concluded the defendant's statement in his posttrial motion was sufficiently specific to alert the trial court of the alleged error, and thus forfeiture was not applicable. *Coleman*, 391 Ill. App. 3d at 971, 909 N.E.2d at 960.

¶ 29 Here, defendant asserted in his postplea motion the trial court erred "when finding that there were no exceptional circumstances that justified probation." In making his argument the court erred in finding no extraordinary circumstances at the September 2011 hearing on the postplea motion, defense counsel argued, *inter alia*, the court did not properly consider defendant's mental and physical conditions as part of its exceptional-circumstances analysis. Thus, like *Coleman*, we find defendant's postplea motion was sufficient to alert the trial court of the alleged error and note the error on appeal was clearly before the trial court. Accordingly, the issue is not forfeited.

¶ 30 As to the merits of defendant's argument, the State agrees the applicable statute does not limit what a trial court can consider in determining extraordinary circumstances but asserts the record does not support defendant's claim the court actually excluded her physical and mental conditions from the scope of its consideration. Thus, defendant's issue actually involves an interpretation of the trial court's order. Neither party addresses the standard of review for that type of interpretation. In this case, the trial court has already considered this issue in denying defendant's postplea motion. Since a trial court is in the best position to interpret its own orders,

a reviewing court will not reverse a court's interpretation of its own order unless the record clearly shows an abuse of discretion. *Wilson v. Humana Hospital*, 399 Ill. App. 3d 751, 762, 926 N.E.2d 821, 831 (2010). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000).

¶ 31 In this case, the trial court sentenced defendant under section 11-501(d)(2) of the Illinois Vehicle Code, which provides, in pertinent part, the following:

"Aggravated driving under the influence *** [(section 11-501(d)(1)(F) of the Illinois Vehicle Code)] is a Class 2 felony, for which the defendant, unless the court determines that extraordinary circumstances exist and require probation, shall be sentenced to *** a term of imprisonment of not less than 3 years and not more than 14 years if the violation resulted in the death of one person[.]" 625 ILCS 5/11-501(d)(2) (West 2006) (text as amended by Pub. Act 94-0113, § 5 (eff. Jan. 1, 2006) (2005 Ill. Laws 1548, 1555), and Pub. Act 94-0609, § 5 (eff. Jan. 1, 2006) (2005 Ill. Laws 4382, 4388)).

In sentencing defendant to four years' imprisonment, the trial court stated the following:

"While it took very compelling arguments with regard to your mental condition, your physical condition, I have considered those issues, I have considered them as they are factors of mitigation, factor number twelve, but in light of the sentencing options

available to this Court, the Court's hands are tied. The Court does not find that there are extraordinary circumstances that exist that would allow me to place you on probation for this particular offense, so I therefore must sentence you to the Department of Corrections."

¶ 32 In interpreting a trial court's order, the reviewing court must consider the entire context in which the order was entered, "with reference to other parts of the record including the pleadings, motions and issues before the court and the arguments of counsel." *Williams v. Ingalls Memorial Hospital*, 408 Ill. App. 3d 360, 372, 944 N.E.2d 421, 433 (2011); see also *People v. Ward*, 113 Ill. 2d 516, 526-27, 499 N.E.2d 422, 425-26 (1986) (noting that, in determining whether a trial court improperly imposed a sentence, a reviewing court does not focus on a few words or statements of the trial court but, rather, considers the entire record as a whole). We construe the order in a reasonable manner so as to give effect to the trial court's apparent intention. *Williams*, 408 Ill. App. 3d at 372-73, 944 N.E.2d at 433.

¶ 33 Defendant contends this court should consider the trial court's language in light of the State's arguments (1) defendant's medical condition is not an extraordinary circumstance because it was caused by defendant's drunk driving and (2) the court's consideration of extraordinary circumstances should be limited to the events immediately surrounding the crash. She also notes the following statements by the prosecutor:

"In this case you have to determine if an extraordinary circumstance exists, and if not, the sentence is three to fourteen years in the Department of Corrections. Again, you are given that

range for a reason, to consider all the factors in aggravation and mitigation, and I do not believe there are any factors in mitigation that occurred in this case."

¶ 34 We agree with the State the trial court's language does not indicate it excluded defendant's medical and physical conditions from its extraordinary-circumstances analysis. The court did not state it agreed with the State's arguments (1) defendant's mental condition should not be an extraordinary circumstance because it was caused by her drunk driving and (2) the extraordinary-circumstances analysis should be limited to events immediately surrounding the crash. Moreover, the fact the court expressly found defendant's physical and mental conditions were factors of mitigation in determining a sentence of imprisonment (730 ILCS 5/5-5-3.1(a)(12) (West 2006)) does not mean it did not consider them in determining whether extraordinary circumstances existed. If the court followed the State's above-quoted argument as alleged by defendant, the court determined extraordinary circumstances before it addressed the factors in aggravation and mitigation, and thus the fact the court listed the conditions as a factor in mitigation does not suggest the court declined to consider them in determining extraordinary circumstances. We note the fact the court discussed the mitigating factor first does not mean it had not already found no extraordinary circumstances existed. Accordingly, we find the trial court did not abuse its discretion in denying the postplea motion as to this issue.

¶ 35 *2. Failure To Find Extraordinary Circumstances*

¶ 36 Defendant also argues the trial court erred by finding extraordinary circumstances to warrant probation did not exist. This court has construed such a claim as an excessive-sentence argument. See *People v. Winningham*, 391 Ill. App. 3d 476, 484, 909 N.E.2d 363, 370

(2009). Accordingly, we address whether the trial court abused its discretion by imposing the four-year prison term. See *Winningham*, 391 Ill. App. 3d at 484, 909 N.E.2d at 370.

¶ 37 This court has applied the following standard of review for an excessive-sentence argument:

"[T]he range of sentences permissible for a particular offense is set by statute. [Citation.] Within that statutory range, the trial court 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. [Citation.] The sentencing judge is to consider all matters reflecting upon the defendant's personality, propensities, purposes, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding. [Citations.]

[A] sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. [Citations.] A reviewing court must afford great deference to the trial court's judgment regarding sentencing because that court, having observed the defendant and the proceedings, is in a far better position to consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits than a reviewing court, which must rely on a

cold record. [Citation.] Thus, [i]n considering the propriety of a sentence, the reviewing court must proceed with great caution and must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently [citation], and it may not reduce a defendant's sentence unless the sentence constitutes an abuse of the trial court's discretion. [Citation.]"

(Internal quotation marks omitted.) *Winningham*, 391 Ill. App. 3d at 484-85, 909 N.E.2d at 370-71.

¶ 38 Before we begin our analysis of defendant's sentence, we address the State's argument we should disregard the materials in defendant's appendix that are not included in the record on appeal and were not presented to the trial court. "It is a basic principle of appellate law that a court of review is prohibited from considering matters outside the record on appeal." *People v. Stewart*, 179 Ill. 2d 556, 567, 689 N.E.2d 1129, 1134 (1997) (Bilandic, J., dissenting); see also *Allstate Insurance Co. v. Kovar*, 363 Ill. App. 3d 493, 499, 842 N.E.2d 1268, 1273 (2006) (generally, a party may not rely on matters outside the appellate record to support his or her position on appeal). When a party's brief fails to comply with this prohibition, the reviewing court may strike the entire brief or disregard the inappropriate material. *Kovar*, 363 Ill. App. 3d at 499, 842 N.E.2d at 1273. Citing *Jackie Cab Co. v. Chicago Park District*, 366 Ill. 474, 479-80, 9 N.E.2d 213, 216 (1937), defendant asserts we should consider the law review article and organizational reports because they serve to support common knowledge about Illinois prisons. If it is common knowledge, then this court is aware of the matter and does not need the extra material. In her reply brief, defendant also asks us to take judicial notice of reports generated by

the Department of Corrections because they are public documents. However, defendant did not ask the trial court to do so. With the new appendix materials, defendant is essentially asking us to rehear her sentencing. This court will not do that, and thus we will disregard any material not included in the record on appeal.

¶ 39 As to the merits of defendant's sentencing, the trial court expressly stated it had considered all of the evidence presented by the parties, the presentence investigation report, defendant's two sentencing commentaries, the financial impact of incarceration, the issue of substance-abuse treatment, defendant's argument as to alternatives to prison, the victim-impact statements, and defendant's statement in allocution. The court noted defendant's medical and physical conditions were factors in mitigation and the need to deter others from committing the same crime was a factor in aggravation. While defendant has significant mental and physical conditions, the fact remains defendant's crime not only killed a person but permanently injured another. The imposition of a four-year sentence shows the court carefully weighed the sentencing considerations in this case. Accordingly, we conclude the trial court did not abuse its discretion by imposing a four-year sentence, which is only one year over the minimum, for this very serious crime.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we affirm the Sangamon County circuit court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 42 Affirmed.