

No. 1-10-2937

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 25742
	)	
SIDNEY CARTER,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* Judgment entered on defendant's conviction of second degree murder affirmed over his claim that the trial court misapprehended the extended-term sentencing range for the offense; mittimus modified.

¶ 2 Following a bench trial, defendant Sidney Carter was found guilty of second degree murder, then sentenced to an extended term of 22 years' imprisonment. On appeal, defendant contends that this cause should be remanded for a new sentencing hearing because the trial court misapprehended the extended-term sentencing range for second degree murder. He also requests that his mittimus be corrected to reflect the offense of which he was convicted.

¶ 3 The record shows, in relevant part, that on November 26, 2007, defendant strangled his 60-year-old mother, Betty Jean Carter, to death during an alcohol-related argument in her apartment at 1859 East 71st Street, in Chicago. The trial court found defendant guilty of second degree murder, and that the victim was 60 years of age or older.

¶ 4 At sentencing, the State informed the trial court that the sentencing range for second degree murder was 4 to 20 years' imprisonment, and that it was seeking an extended-term sentence based on the age of the victim. The court then confirmed with the parties that second degree murder was a Class 1 felony "[w]ith a 20-year maximum instead of 15," and that defendant was eligible for an extended term based on the age of the victim. During this exchange, the following colloquy was had between the court, the assistant State's Attorney (ASA), and defense counsel:

"THE COURT: It says, 5-5-3.2(b) says that the following factors may be considered by the Court as reasons to impose an extended-term sentence under Section 5-8-2 on any offender, going down to Paragraph 4, when a Defendant is convicted of any felony committed against a person 60 years or older.

MS. FARMAKIS [ASA]: You're right, so he's extendable.

THE COURT: Do you agree or disagree? As they say in the business, the numbers are the numbers.

MR. MAYFIELD [defense counsel]: The numbers are the numbers.

THE COURT: You can't change them.

MS. FARMAKIS: That's correct, Judge.

THE COURT: So I guess the real mystery is, does it mean 15 to 30 or 15 to 40, is the real mystery.

MS. FARMAKIS: You mean four to 40?

THE COURT: Well, it's four to 20. So does it mean 15 to 30 or 15 to 40?

MS. FARMAKIS: Well, I don't think the maximum because the minimum – it's just double.

THE COURT: What?

MS. FARMAKIS: If he's extendable, I think he could get anywhere from four to 40. Should we figure this out?

That's how I understand extended term.

THE COURT: Well, I know. It's not. The range changes. So I suppose if you're going to give him ten, you wouldn't have to extend him now, would you?"

Thereafter, no further discussion of the applicable sentencing range occurred, and the court ultimately granted the State's request for an extended term and sentenced defendant to 22 years' imprisonment. The correct sentencing range applied to this defendant was 15 to 30 years' imprisonment. 730 ILCS 5/5-8-2(a)(3) (West 2006).

¶ 5 In this appeal from that judgment, defendant contends that he is entitled to a new sentencing hearing because the trial court misapprehended the extended-term sentencing range for second degree murder. Although he acknowledges his failure to properly preserve this issue for review (*People v. Reed*, 177 Ill. 2d 389, 394 (1997)), he claims that it may be reviewed for plain error under the second prong of the plain error rule (*People v. Quinones*, 362 Ill. App. 3d 385, 398 (2005)), and that this court should disregard the State's forfeiture argument.

¶ 6 To obtain relief under the plain error rule, defendant must show that a clear or obvious error occurred, and that the evidence at the sentencing hearing was closely balanced, or the error was so serious as to deny him a fair sentencing hearing. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Under both prongs, defendant bears the burden of persuasion; and, if he fails to meet that burden, his procedural default will be honored. *Hillier*, 237 Ill. 2d at 545.

¶ 7 Defendant claims that the trial court was under the mistaken impression that the extended-term sentencing range for second degree murder was 20 to 40 years' imprisonment where it expressed confusion as to whether the range was 15 to 30, or 15 to 40 years, and the State incorrectly asserted that the maximum term was 40 years. The State responds that the record clearly indicates that the court disagreed with the ASA's account of the sentencing range, and that there was no misunderstanding of the sentencing parameters or error.

¶ 8 As shown in the transcript of the sentencing hearing, the State informed the trial court of the sentencing range for second degree murder, and that it was seeking an extended-term sentence. The court then confirmed with the parties that second degree murder was a Class 1 felony "[w]ith a 20-year maximum instead of 15," and that defendant was, in fact, eligible for an extended term. That settled, the court sought clarification of the extended-term sentencing range for second degree murder, stating, "So I guess the real mystery is, does it mean 15 to 30 or 15 to 40, is the real mystery." At that point, the State interjected, "You mean four to 40," and the court responded, "Well, it's four to 20. So does it mean 15 to 30 or 15 to 40?" The State replied that "it's just double" and that defendant "could get anywhere from four to 40" on an extended-term sentence, but the court stated, "Well, I know. It's not. The range changes. So I suppose if you're going to give him ten, you wouldn't have to extend him now, would you?"

¶ 9 A sentencing court is presumed to know the law and apply it properly, and its sentencing determination is presumed to be proper absent an affirmative showing of error. *People v. Smith*,

176 Ill. 2d 217, 260 (1997). Here, the record shows that when the trial court questioned the length of the extended-term sentencing range for second degree murder, the State repeatedly advised that the range was 4 to 40 years. Although, as the State points out, defendant has failed to acknowledge the line that followed (see *People v. Haggard*, 332 Ill. App. 3d 46, 49-51 (2002) (stating the importance of reading a transcript in context)), the transcript clearly shows that the court expressly disagreed with that representation, stating, "Well, I know. It's not." Thereafter, no further reference was made as to the applicable sentencing range, and the court sentenced defendant to 22 years' imprisonment without objection from counsel or defendant that the issue of the applicable sentencing range was unresolved, and the sentence imposed fell within the extended-term statutory guideline of 15 to 30 years' imprisonment (720 ILCS 5/9-2(d) (West 2006); 730 ILCS 5/5-8-2(a)(3) (West 2006)). Given the absence of any showing in the record that the trial court ever stated or affirmatively relied on an incorrect extended-term sentencing range for second degree murder, and imposed a sentence within the proper guidelines, we find that defendant has failed to meet his burden of showing a sentencing error. *Smith*, 176 Ill. 2d at 260. Accordingly, we must honor his procedural default. *Hillier*, 237 Ill. 2d at 545.

¶ 10 In reaching this conclusion, we have considered *People v. Ruiz*, 312 Ill. App. 3d 49 (2000), cited by defendant, and find it readily distinguishable from the case at bar. In *Ruiz*, 312 Ill. App. 3d at 58, the trial court sentenced defendant pursuant to a sentencing act that was later held to violate the single subject rule of the Illinois Constitution. Although the sentences imposed fell within the pre-amended sentencing scheme, this court nonetheless remanded for resentencing because the trial court did not know the proper sentencing range. *Ruiz*, 312 Ill. App. 3d at 58. Here, unlike *Ruiz*, there is no such indication that the trial court misapprehended the proper sentencing range when it sentenced defendant to an extended term of 22 years' imprisonment, or cause for remandment.

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¶ 11 Defendant also requests that his mittimus be modified to reflect his conviction for second degree murder, rather than first degree murder, and the State concedes that the mittimus should be so corrected. We agree, and pursuant to our authority under Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999)), we order the clerk to modify defendant's mittimus to reflect his conviction of second degree murder (720 ILCS 5/9-2(a)(1) (West 2006)).

¶ 12 For the reasons stated, we order the clerk to modify defendant's mittimus to reflect his conviction of second degree murder, and affirm the judgment in all other respects.

¶ 13 Affirmed; mittimus modified.