

No. 1-11-1155

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).

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. 08 CR 10900
)	
LEE MCCORKER,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Connors and Simon concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant did not file a motion to reconsider his sentence and did not establish plain error, he has forfeited review of his claim that his sentence is excessive, and his conviction and 50-year sentence for first degree murder are affirmed.

¶ 2 Following a jury trial, defendant Lee McCorker was convicted of first degree murder for the beating death of his girlfriend, Donald Beth Pickett. The trial court found that defendant "slaughtered" Pickett in "particularly a brutal murder," and sentenced him to a term of 50 years' imprisonment. On appeal, defendant solely contends his sentence is excessive because the trial

court failed to give adequate consideration to his mitigating evidence including his age, depression, long battle with addiction, overwhelming remorse, and the length of time since his last conviction. Defendant further argues there is no need to protect the public from him as this was a domestic dispute that would be unlikely to recur, and the 50-year sentence ignores the constitutional directive of returning an offender to useful citizenship. We find defendant has forfeited review of this issue and affirm.

¶ 3 Defendant does not challenge his murder conviction and acknowledges it is undisputed that Pickett died as a result of the injuries he inflicted upon her. Consequently, a thorough discussion of the facts of this case is unnecessary. The evidence at trial established that about 10:30 p.m. on May 11, 2008, defendant and Pickett were arguing in an alley when defendant punched Pickett in the stomach and face. Pickett fell to the ground and appeared unconscious. She was lying on her back and not moving. Defendant then braced himself against a fence with both of his hands and forcibly kicked Pickett in the face 8 to 12 times with the heel of his shoe. Defendant walked away from Pickett to a nearby garbage can and straightened his jacket. When Pickett made a gurgling noise, defendant returned to her, held onto the fence, and repeatedly stomped on her head and face with his foot another 8 to 12 times. Defendant then walked away, leaving Pickett lying on the ground in the alley in a pool of blood. Shortly before midnight, defendant went to his father and told him "I think I killed Beth." The following morning, defendant went to the police station with his father and turned himself in for Pickett's murder.

¶ 4 Pickett's injuries included a broken nose, fractured lower jaw, 12 lacerations to her face, multiple teeth knocked out of her mouth, and the hyoid bone in her neck was fractured in multiple places. Pickett also suffered multiple abrasions and bruising surrounding her face, bruising on her brain, swelling on the back of her head, and abrasions to her arms and left knee. Assistant medical examiner Valerie Arangelovich testified that Pickett's injuries were consistent with her head, face and neck being stomped on with a foot. Arangelovich opined that Pickett's

death was a homicide caused by strangulation due to blunt force trauma to her neck, and cranial cerebral injuries due to blunt force trauma to her head during an assault.

¶ 5 The sentencing hearing began with discussion of whether defendant was facing a mandatory sentence of natural life in prison as a habitual criminal based on his prior convictions for armed robbery in 1998 and aggravated criminal sexual assault in 1987*. Defendant filed a motion to preclude consideration of the 1987 conviction during sentencing in this case because that conviction was entered following a bench trial by Judge Thomas Maloney, who was subsequently convicted in federal court as part of Operation Greylord for accepting payments to "fix" cases before him during the 1980s. The trial court found that the 1987 conviction was not inherently reliable for sentencing purposes in this case and granted defendant's motion.

¶ 6 In aggravation, the State submitted three victim impact statements from Pickett's family and certified copies of defendant's prior convictions for armed robbery and aggravated criminal sexual assault. The State argued that defendant's actions were mean, vicious and violent. It further argued that defendant beat Pickett in the face and head until she was almost unrecognizable, and that he should be sentenced to life in prison.

¶ 7 In mitigation, defense counsel presented a portion of the video from defendant's interrogation by police which showed defendant crying and argued defendant was truly emotional over Pickett's death. Counsel pointed out several notations in defendant's presentence investigation report (PSI), including the fact defendant grew up with "an abusive mother and a drug-dealing father," and that he was removed from his mother's care and raised by his father due to the abuse. Counsel noted that defendant was receiving psychiatric treatment and taking two antidepressant medications. Counsel argued that defendant started using drugs when he was 17 years old, tried to stop, but began using crack cocaine again when he met Pickett. Counsel

*The statute requiring a mandatory life sentence for offenders deemed to be habitual criminals (720 ILCS 5/33B-1 (West 2008)) was repealed on July 1, 2009.

further argued that the drug and alcohol use by defendant and Pickett often led to them fighting, and that this case was the culmination of a tumultuous relationship that got out of control due to the influence of drugs.

¶ 8 In allocution, defendant apologized to Pickett's family and said he did not intend for things to turn out the way they did. Defendant said he loved Pickett, and that they often discussed getting married and having a family. Defendant explained that he and Pickett were both using drugs and alcohol, and that things "got out of hand." Defendant stated that regardless of the length of his sentence, he could not be punished enough because he no longer had Pickett in his life, and the fact that he caused her death was punishment for the rest of his life.

¶ 9 The trial court found that the jury convicted defendant based on ample evidence and that he was clearly proven guilty beyond a reasonable doubt for "particularly a brutal murder." The court described this case as a domestic situation with a horrible ending. The court expressly stated that it looked at defendant's PSI and "tried [its] hardest to find ways to look for mitigating factors here." The court stated that it took a substantial step in giving all benefit of doubt to defendant by not considering his 1987 conviction as an aggravating factor. It then noted that defendant was on probation twice in the 1980s for possession of a gun and robbery. The court found that defendant failed probation three separate times and spent significant time in prison for various offenses. The court further found that after his last release from prison, defendant became involved with Pickett and subsequently "slaughtered her." The court stated that it had an obligation to be fair to defendant, but also had an obligation to protect the public. It specifically noted that murder sentences must be served at 100%. The court concluded that defendant had led a criminal life involving considerable violence and sentenced him to a term of 50 years' imprisonment. Thereafter, the court admonished defendant of his appellate rights, including the requirement that a motion to modify his sentence would have to be filed within 30 days. Defendant did not object to his sentence, nor did he file a motion to reconsider his sentence.

¶ 10 On appeal, defendant solely contends his sentence is excessive because the trial court failed to give adequate consideration to his mitigating evidence including his age, depression, long battle with addiction, overwhelming remorse, and the length of time since his last conviction. Defendant further argues there is no need to protect the public from him as this was a domestic dispute that would be unlikely to recur. In addition, defendant asserts that the 50-year sentence is essentially a life sentence for him as he was 44 years old at sentencing, and that the sentence ignores the constitutional directive of returning an offender to useful citizenship. Defendant acknowledges he did not file a motion to reconsider his sentence, but argues his issue should be reviewed as plain error because he did not receive a fair sentencing hearing where the trial court failed to give proper consideration to his mitigating evidence.

¶ 11 A sentencing issue is forfeited on appeal where defendant failed to object during the sentencing hearing and failed to raise the issue in a post-sentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Here, defendant did not object during the sentencing hearing, nor did he file a motion to reconsider his sentence. Consequently, defendant forfeited his claim.

¶ 12 The plain error doctrine is a limited and narrow exception to the forfeiture rule. *Hillier*, 237 Ill. 2d at 545. Defendant may invoke the doctrine to overcome forfeiture if he can show that his excessive sentence amounted to plain error. *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010). However, to obtain plain error relief, defendant must first establish that a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545. Absent a reversible error, there can be no plain error. *McGee*, 398 Ill. App. 3d at 794.

¶ 13 Defendants convicted of first degree murder are subject to a sentencing range of 20 to 60 years' imprisonment. 730 ILCS 5/5-8-1(a)(1)(a) (West 2010). The trial court has broad discretion in imposing an appropriate sentence, and a sentence that falls within the statutory range will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). An abuse of discretion exists where a sentence is at great variance with the

spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). Sentencing decisions are entitled to great deference on appeal because the trial court is in a superior position to determine the appropriate sentence based on its personal observation of defendant and the proceedings, and its opportunity to weigh the relevant sentencing factors including defendant's credibility, demeanor, moral character, mentality, social environment, habits and age. *Alexander*, 239 Ill. 2d at 213. It is presumed the trial court considered the mitigating evidence contained in the record, and although defendant's potential for rehabilitation must be considered, it is not given greater weight than the seriousness of the offense. *People v. Anderson*, 325 Ill. App. 3d 624, 637 (2001). Furthermore, when the trial court determines a severe sentence is warranted, defendant's age has little import. *People v. Rivera*, 212 Ill. App. 3d 519, 526 (1991). It is not this court's function to weigh the sentencing factors differently and substitute our judgment for that of the trial court. *Alexander*, 239 Ill. 2d at 213.

¶ 14 Here, the record shows that the trial court not only considered all of the mitigating evidence presented by the defense, but also reviewed defendant's PSI and "tried [its] hardest to find ways to look for mitigating factors here." The court, however, found that a severe sentence was warranted in this case based on the seriousness of the offense where defendant "slaughtered" Pickett in a "brutal murder." The court further found that defendant spent significant time in prison for various offenses, and that he led a criminal life involving considerable violence. In light of defendant's violent criminal history, including unlawful possession of a weapon, robbery and armed robbery, the court found it had an obligation to protect the public. The trial court then imposed the 50-year sentence, which was within the statutory range and 10 years below the maximum term allowed by the statute. Accordingly, we find that defendant's sentence is not excessive and the trial court did not abuse its discretion in imposing that sentence. There being no error, the plain error doctrine cannot be invoked, and defendant's issue is forfeited.

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¶ 15 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.