

NOTICE
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2013 IL App (4th) 111119-U
NO. 4-11-1119
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
July 2, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Morgan County
CHEVUS D. JACKSON,)	No. 10CF114
Defendant-Appellant.)	
)	Honorable
)	John Schmidt,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court did not abuse its discretion in dismissing a juror for cause.
- (2) The trial court did not improperly consider compensation and the threat of harm as factors in aggravation when sentencing defendant.
- (3) The appellate court vacated the \$100 crime-stoppers fees where defendant was sentenced to prison.
- ¶ 2 On August 12, 2010, the State charged defendant, Chevus D. Jackson, by information with four counts of unlawful delivery of a controlled substance within 1,000 feet of a school, committed on June 3, 10, 16, and 23, 2010 (720 ILCS 570/401(d), 407(a)(2)(B) (West 2010)). On October 12, 2011, a jury found defendant guilty on all four counts. On December 16, 2011, the trial court sentenced defendant to eight-year terms on each count, to run concurrently, with two years of mandatory supervised release (MSR). The trial court imposed a \$100 crime-

stoppers fee for each count as part of defendant's fines and fees.

¶ 3 Defendant appeals, arguing the trial court (1) abused its discretion in dismissing a juror for cause; (2) improperly relied on factors inherent in the offense in sentencing him; (3)—if we find the previous claim defaulted—failed to properly admonish him pursuant to Illinois Supreme Court Rule 605(b)(2) (eff. Oct. 1, 2001)), requiring remand for a new sentencing hearing; and (4) improperly imposed the \$100 crime-stoppers fees where defendant was sentenced to prison. We vacate the \$100 crime-stoppers fees and affirm the judgment as modified.

¶ 4 I. BACKGROUND

¶ 5 On October 11, 2011, the trial court empaneled a jury. While the State was conducting *voir dire*, potential juror No. 110, Eric Blackburn, voluntarily told the court he was a friend of defendant's parents. Blackburn stated, "I know his family too, and I've known his parents, we grew up together, and I don't, I don't think I can make a fair and impartial judgment because the fact that I do know his parents in that regard." Shortly thereafter, defense counsel had the following exchange with Blackburn:

"[DEFENSE COUNSEL]: Even though you know Chevus' family, is that going to affect how you listen to the evidence and decide this case?"

MR. BLACKBURN: How I listen to the evidence, no, and in, making the decision it would be difficult because I know the parents and have a lot of respect , and it would be hard for me to—you know, it would be hard.

[DEFENSE COUNSEL]: Mm-hm.

MR. BLACKBURN: I want to be fair. It would be hard, because I know that is their child, and I know they're good people.

[DEFENSE COUNSEL]: Okay.

MR. BLACKBURN: But that's not to say that, you know, whatever he's done, you know, I can't judge on that, but it would be hard for me because of the fact of knowing his parents."

The State moved to have Blackburn dismissed for cause. Defense counsel objected. The trial court dismissed Blackburn from the potential juror pool, finding cause existed for his removal because, "he stated he knows the family. In his first questioning by [the State] he said [he] couldn't be fair and impartial. He said it would be hard."

¶ 6 The following day, the trial court conducted a hearing. The State presented video evidence and live testimony defendant sold a total of 1.72 grams of cocaine to Eric Fearson, a confidential informant, on four separate occasions. The property from which defendant sold the cocaine was within 1,000 feet of a school. The jury found defendant guilty on four counts of unlawful delivery of a controlled substance within 1,000 feet of a school.

¶ 7 On December 16, 2011, the trial court held a sentencing hearing. The State called Dick Heise, an inspector participating in a drug task force with the Morgan County sheriff's office, to testify. Heise identified People's exhibit No. 1 as photos (video snapshots taken from a video recording) of the cocaine purchases. The photos showed a child was present during the drug transactions and defendant sold the cocaine in exchange for money.

¶ 8 Defense counsel presented the testimony of defendant's mother, Cheryl Jackson.

Jackson testified defendant "has expressed how sorry he is for the things that he has [done]."

¶ 9 The State recommended defendant be sentenced to eight years in prison. As a factor in aggravation, the State argued "defendant's conduct caused or threatened serious harm." The State explained, "We all know dealing drugs in a community creates great potential for serious harm." As another factor in aggravation, the State argued "defendant *** received compensation" and the presentence investigation report showed defendant was "purely dealing for financial reasons."

¶ 10 Defense counsel argued, "I can see where probation is not a viable alternative here, but certainly nothing more than a four-year sentence on each count is applicable." Counsel asked the court to allow defendant's sentences to be served concurrently.

¶ 11 In sentencing defendant, the trial court found "a sentence greater than the minimum [wa]s necessary to detour [*sic*] others from this crime." Defendant's lack of a felony criminal history was a factor in mitigation. The court noted defendant's record only contained traffic violations and misdemeanors. The court also cited defendant's mother's testimony as mitigating evidence.

¶ 12 The trial court continued, "there [were] also some factors in aggravation that also [applied] to work against [defendant]." The court did not list the relevant factors in aggravation. The court found imprisonment was necessary to protect the public and because probation would deprecate the seriousness of the offense.

¶ 13 Before entering its final sentencing decision, the trial court commented on the nature and circumstances of the offense. The court voiced its discontent children were present during the transactions and how such behavior affects and influences children. The court then

made the following statements:

"Another thing that struck me is that you've had no employment and when they drug tested you, you did not have any presence of the drug in you. So it's clear to the court that you are someone that makes a living from selling narcotics.

And I'm not—I'm going to avoid getting too carried away. But the State's Attorney is absolutely correct, when you sell this stuff into our community, you affect us all. You hurt people. *** And this is the word we have heard in our community, when that happens, the fabric of our society gets torn. It gets torn and our community suffers because of it."

The court sentenced defendant to eight years' imprisonment on each count, to be served concurrently, with two years of MSR. The court imposed fines and fees, which included a \$100 crime-stoppers fee for each count.

¶ 14 After the trial court sentenced defendant, it admonished him of his right to appeal. The court explained, "prior to filing your appeal, you must file a notice of appeal. You must do that within the next 30 days. I have to advise you, that is 30 hard days. Day 31 is too late." The court asked if defendant understood, and he responded in the affirmative. The court further admonished defendant, "Now, I have to tell you that in those motions, you need to put in there every claim of error you think has been done. You need to do that. Otherwise the [a]ppellate [c]ourt may consider your claim to be waived." The court asked defense counsel if he was satisfied with the admonishments, and counsel responded he was satisfied. Counsel then asked

the court to direct the circuit clerk to file a notice of appeal. Defendant did not file any posttrial motions.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues the trial court (1) abused its discretion in dismissing a juror for cause; (2) improperly relied on factors inherent in the offense in sentencing him; (3)—if we find the previous claim defaulted—failed to properly admonish him pursuant to Rule 605(b)(2), requiring remand for a new sentencing hearing; and (4) improperly imposed the \$100 crime-stoppers fees where defendant was sentenced to prison.

¶ 18 A. Dismissal of Juror For Cause

¶ 19 Defendant first contends the trial court abused its discretion when it allowed the State's motion to dismiss Blackburn from the jury for cause. The State argues defendant has forfeited this issue as it was not included in his posttrial motion. See *People v. Shelton*, 401 Ill. App. 3d 564, 581, 929 N.E.2d 144, 161 (2010) (the defendant forfeited his argument juror was biased where the defendant failed to include the issue in his posttrial motion). We agree defendant has forfeited this issue. Nevertheless, we address the merits of defendant's contentions.

¶ 20 The purposes of *voir dire* is to eliminate from the jury those individuals who are unable or unwilling to be impartial. *People v. Johnson*, 215 Ill. App. 3d 713, 723, 575 N.E.2d 1247, 1253 (1991). "The determination of whether or not a prospective juror is impartial is within the sound discretion of the trial judge." *Johnson*, 215 Ill. App. 3d at 724, 575 N.E.2d at 1253. On review, we will not set aside the trial court's determination unless it is against the

manifest weight of the evidence. *Johnson*, 215 Ill. App. 3d at 724, 575 N.E.2d at 1253.

¶ 21 Our review of the record indicates the trial court's decision to dismiss Blackburn for cause was not against the manifest weight of the evidence. During *voir dire*, Blackburn stated, "I know his family too, and I've known his parents, we grew up together, and I don't, I don't think I can make a fair and impartial judgment because the fact that I do know his parents in that regard." Blackburn was later asked if his relationship with defendant's family would affect how [he] listen[ed] to the evidence and decide[d] th[e] case." Although Blackburn said his relationship with defendant's family would not affect how he listened to the evidence, he again expressed his concern it would be "difficult" to decide the case. Moreover, he repeatedly told the court it would be "hard" for him to be impartial. The court found cause to dismiss Blackburn. We defer to this determination.

¶ 22 Further, as the State points out, "[a] defendant's right to trial by an impartial jury does not mean that he is entitled to have a particular person serve on the jury." *People v. Watson*, 103 Ill. App. 3d 992, 997, 431 N.E.2d 1350, 1355 (1982). And any error in the jury selection process requires reversal only when the defendant has been prejudiced. See *People v. Nieves*, 193 Ill. 2d 513, 526, 739 N.E.2d 1277, 1283 (2000). Defendant has not alleged the jury was not fair or impartial; nor has he shown he was prejudiced by the jury that sat at his trial. Thus, reversal is unwarranted.

¶ 23 Finally, the State further notes reversal is not warranted because the prosecutor had all of his peremptory challenges left and likely would have used one had the trial court denied the for-cause challenge. See *People v. Beasley*, 251 Ill. App. 3d 872, 884-85, 622 N.E.2d 1236, 1244-45 (1993) (noting that the State could have used peremptory challenge to excuse

potential juror in concluding the defendant was not prejudiced by the court's error of *sua sponte* excusing a potential juror for cause).

¶ 24 B. Factors in Aggravation

¶ 25 Defendant next contends the trial court improperly relied on factors inherent in the offense in sentencing him. In particular, defendant argues the court improperly considered as aggravating factors (1) his compensation for the sale of cocaine and (2) the fact his cocaine sales caused a threat of harm to the community.

¶ 26 1. *Forfeiture*

¶ 27 Initially, the State argues defendant has forfeited this issue by failing to make an objection during sentencing. See *People v. Kitch*, 392 Ill. App. 3d 108, 118, 915 N.E.2d 29, 37 (2009) ("A defendant forfeits the appeal of a sentencing issue when he fails to (1) timely object during the sentencing hearing and (2) has failed to raise the issue in a postsentencing motion."). Defendant alleges defense counsel was not required to "interrupt the judge and point out that he was considering wrong factors in aggravation" to preserve the issue for appeal. Defendant also contends we should excuse his forfeiture because he was not properly admonished under Rule 605(b)(2). He further posits, although this court may remand for proper admonishments, it would be more appropriate to consider the merits of his arguments, citing *People v. Henderson*, 217 Ill. 2d 449, 457, 841 N.E.2d 872, 876 (2005).

¶ 28 We may excuse defendant's failure to file a postsentencing motion due to improper admonishments. See *People v. Medina*, 221 Ill. 2d 394, 412-13, 851 N.E.2d 1220, 1230 (2006) ("appellate courts may consider sentencing issues that have not been properly preserved because of inadequate Rule 605(a) admonishments"). Further, our supreme court has

concluded, to preserve a claim of error made by the trial court during sentencing, "it [is] not necessary for counsel to interrupt the judge and point out that he was considering wrong factors in aggravation." *People v. Saldivar*, 113 Ill. 2d 256, 266, 497 N.E.2d 1138, 1142 (1986).

¶ 29 Thus, although defense counsel did not object during sentencing and acquiesced in the adequacy of the admonishments, we will address defendant's sentencing issues on the merits since the trial court did not adequately inform defendant he was required to file a motion to reconsider sentence, and therefore did not properly admonish defendant under Rule 605(b)(2).

¶ 30 *2. The Sentencing Hearing*

¶ 31 During arguments at defendant's sentencing hearing, the State remarked, "The Factors this court must consider are factors in aggravation or mitigation. Certainly in aggravation, we believe, factor one, the defendant's conduct caused or threatened serious harm." The State further argued, "So certainly [defendant] received compensation, we believe that to be a second factor in aggravation." Finally, the State argued deterrence as a third aggravating factor.

¶ 32 After defendant made his statement in allocution, the trial court discussed mitigating and aggravating factors. As a factor in mitigation, the court specifically referenced defendant's criminal record and how it consisted of only "traffic and misdemeanor" offenses. Testimony from defendant's mother was an additional factor in mitigation. After speaking to mitigating factors, the court stated, "But there are also some factors in aggravation that also apply to work against you." The court, however, did not list or specifically name factors in aggravation.

¶ 33 Defendant maintains the court considered compensation as an aggravating factor and it was improper for the court to do so. We disagree the court considered compensation as a

factor in aggravation.

¶ 34 The trial court did not specifically list what factors it considered in aggravation during sentencing. However, it was not required to do so. See *People v. Griffiths*, 112 Ill. App. 3d 322, 330-31, 445 N.E.2d 521, 528 (1983) (the trial court is not required to recite each factor of mitigation or aggravation, or the evidence in support thereof, for the record). Further, although the State argued the court should consider the threat of harm and compensation as factors in aggravation, the record does not show the court heeded the State's advice.

¶ 35 Defendant is correct, receiving compensation for the delivery of a controlled substance cannot be used as an aggravating factor in sentencing a defendant for the offense of delivering controlled substances. See *People v. Atwood*, 193 Ill. App. 3d 580, 592, 549 N.E.2d 1362, 1369 (1990). However, the court was permitted to consider defendant's need for money in the sale of the cocaine as relevant to the question of whether "defendant's conduct was the result of circumstances unlikely to recur." *People v. Glass*, 98 Ill. App. 3d 641, 643, 424 N.E.2d 936, 937 (1981). The proceeds of the crime may also be considered 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." *People v. Rios*, 2011 IL App (4th) 100461, ¶ 15, 960 N.E.2d 70. Finally, the court was allowed to consider defendant's nonuse of illegal drugs to show he is "a more calculating individual who is deliberately taking advantage of others' addiction for his financial gain." *People v. Warren*, 237 Ill. App. 3d 946, 950, 605 N.E.2d 622, 625 (1992).

¶ 36 After considering the mitigating and aggravating factors, the trial court found

probation was not appropriate because it would deprecate the seriousness of the offense and imprisonment was necessary to protect the public. The court then began discussing the circumstances surrounding the offense, how the crimes were committed in the presence of children, and how those children would be affected by such behavior. Next, the court noted defendant was unemployed and did not use drugs himself. Based on these observations, it was "clear to the [c]ourt" defendant made a living from selling drugs. The court also stated defendant was the reason people in the community "continue[d] to stay addicted" to controlled substances. We conclude the court properly considered the proceeds from the sale in the context of the nature of the offense, defendant's motivation to commit the crime, and defendant's calculating character.

¶ 37 We also conclude the trial court did not improperly consider the threat of harm as a factor in aggravation. Although it is improper to consider the general harm drug-related crimes inflict upon society as a factor in aggravation, "[i]t is not improper *per se* for a sentencing court to refer to the significant harm inflicted upon society by drug trafficking." *People v. McCain*, 248 Ill. App. 3d 844, 852, 617 N.E.2d 1294, 1300 (1993). Such commentary is useful for helping defendants understand their penalties and why they have been sentenced to a particular term and encouraging rehabilitation "by providing a context in which *** defendant[s] may develop feelings of remorse." *McCain*, 248 Ill. App. 3d at 852, 617 N.E.2d at 1300.

¶ 38 The record shows the trial court's comments concerning the threat of harm to the community were not made while weighing the aggravating and mitigating factors. Prior to making the comments defendant challenges on appeal, the court explained both factors in mitigation and aggravation were shown and the court was "guided by the law" in fashioning defendant's sentence. The court then explained imprisonment was necessary to protect the public

and because probation would deprecate the seriousness of the offense. The weighing of factors in mitigation and aggravation was complete and the court had decided imprisonment was necessary. The court then commented on the nature and circumstances of the offense.

¶ 39 The record shows the trial court made the commentary that followed for the purpose of (1) helping defendant understand the seriousness of his offense, (2) encouraging his rehabilitation, and (3) understanding his sentence. The trial judge expressed his discontent with the fact children were present during the drug transactions, stating "my heart broke" because "little ones in our families look up to us." The court also emphasized defendant's behavior affects the entire community and "hurt[s]" people. Finally, the court spoke to defendant's parents and how they did "an excellent job raising [defendant]" and how defendant should be apologetic to them for his behavior. The court's commentary was proper.

¶ 40 C. Rule 605(b)(2) Admonishments

¶ 41 Defendant next argues if we were to find he defaulted on the previous claim, we should remand for a new sentencing hearing and Rule 605(b)(2) admonishments. Because we have addressed defendant's claim of sentencing errors on the merits, and have concluded such claim must fail, we need not remand.

¶ 42 D. Crime-Stoppers Fees

¶ 43 Finally, defendant argues because he was sentenced to prison, the trial court was not authorized to impose a \$100 crime-stoppers fee for each count of which he was convicted. Defendant argues a crime-stoppers fee may only be assessed when a sentence of probation, conditional discharge, or supervision is imposed. See *People v. Beler*, 327 Ill. App. 3d 829, 837, 763 N.E.2d 925, 931 (2002) (concluding a crime-stoppers fee may not be imposed when a

sentence of incarceration is imposed). The State concedes the fees were improperly imposed.

We agree the court was not authorized to impose such fees, and we vacate each \$100 fee on all four counts.

¶ 44

III. CONCLUSION

¶ 45 We vacate the \$100 crime-stoppers fees as they were improperly imposed where defendant was sentenced to prison. We otherwise affirm the trial court's judgment as modified, concluding the court (1) did not abuse its discretion in dismissing a juror for cause and (2) did not improperly consider a factor inherent in the offense when sentencing defendant. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 46

Affirmed in part as modified and vacated in part.