

NOTICE  
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2013 IL App (4th) 120255-U  
NO. 4-12-0255  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
August 22, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
STEVEN E. TAYLOR,	)	No. 11CF379
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.  
Justice Pope concurred in the judgment.  
Justice Holder White dissented.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to an aggregate prison term of 92 years where defendant's crime was exceptionally brutal and depraved.

¶ 2 Following a December 2011 trial, a jury found defendant, Steven E. Taylor, guilty of home invasion, armed robbery, and aggravated criminal sexual abuse. In January 2012, the Champaign County circuit court sentenced defendant to consecutive prison terms of 45 years for home invasion, 40 years for armed robbery, and 7 years for aggravated criminal sexual abuse.

¶ 3 On appeal, defendant asserts his aggregate 92-year sentence is excessive considering the mitigating factors present in his case. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On March 11, 2011, the State charged defendant by information with two counts

of home invasion (720 ILCS 5/12-11(a)(1), (a)(2) (West 2010) (text of section effective until July 1, 2011)) and one count of armed robbery (720 ILCS 5/18-2(a)(1) (West 2010)). Later that month, the State charged defendant by information with a fourth count, aggravated criminal sexual abuse (720 ILCS 5/12-16(a)(3) (West 2010) (text of section effective until July 1, 2011)). Prior to trial, the State dismissed one of the home-invasion counts.

¶ 6 The trial court commenced defendant's jury trial on December 5, 2011. The victim, N.K., who was a 79-year-old widow at the time of the offense, gave the following testimony. On the evening of Friday, January 21, 2011, she was at her residence when she heard a knock on her door. Outside stood a black male, approximately 18 or 19 years old, wearing a hood. N.K. stated the black male, later identified as defendant, introduced himself as "Steve" and then asked for "Jack Brown." N.K. told him she did not know anyone by that name but directed defendant to a house down the street. N.K. turned back inside, only to realize defendant had followed her inside the home.

¶ 7 Once defendant entered the residence, he requested money. In response, N.K. gave him \$5. N.K. testified defendant held a knife or blade in his hand. After taking N.K.'s money, defendant demanded N.K.'s jewelry. Defendant nudged N.K. toward her bedroom, at which time he ransacked the bedroom and searched her jewelry box. N.K. later discovered a jar of change, \$60 or \$70 in cash, her watch, and her wedding band missing from the residence.

¶ 8 After searching the jewelry box, defendant ordered N.K. to remove her clothing. N.K. complied, removing her shirt and pushing her bra down to expose her breasts. Defendant then rubbed his penis between her breasts four or five times. After defendant turned away, N.K. started to dress herself, at which time defendant stated he planned to tie N.K.'s hands together

and place her in the closet. N.K. testified she attempted to conceal a cellular telephone (cell phone) on her person, but defendant noticed it and grabbed the cell phone from her. He then struck her on the left side of the face.

¶ 9 At that point, defendant grabbed N.K., tied her hands together with a telephone cord, and pushed her into the closet. Defendant then pushed a heavy cabinet in front of the door to prevent N.K.'s escape. Although N.K. eventually freed her hands, she was unable to escape from the closet. Police discovered N.K. in the closet the following Monday afternoon after receiving a call from her mailman. Emergency personnel transported N.K. to the hospital.

¶ 10 Dr. Victor Escobar, an oral maxillofacial surgeon, testified that, from the incident, N.K. suffered fractures of the orbital socket, maxilla bone, and zygomatic arch. The left side of her face showed significant deformity and swelling, and her left eye had partially fallen into her sinus cavity. Repairing the damage required surgery, which consisted of placing 5 titanium plates and 50 titanium screws on the left side of N.K.'s face.

¶ 11 At the conclusion of the trial, the jury returned with guilty verdicts on all counts and signed special verdict forms finding the victim was over the age of 60.

¶ 12 On January 9, 2012, the trial court held defendant's sentencing hearing. In aggravation, the State called David Smysor, an investigator for the Urbana police department, who testified defendant became a suspect in this case when Leon Hopkins, an inmate in the county jail, reported having conversations with defendant while defendant was in custody on an unrelated charge. During those conversations, Hopkins indicated defendant admitted his guilt, with defendant stating he was looking for jewelry in the home. Defendant allegedly explained to Hopkins he was drinking and using drugs on the date of the incident. Hopkins also told Smysor

defendant had an article about the incident in his belongings at the jail. Once Hopkins conveyed this information to Smysor, Smysor obtained a deoxyribonucleic (DNA) acid sample that linked defendant to the offense. The State also tendered a victim impact statement from N.K.

¶ 13 Defendant presented evidence in mitigation. Defendant's mother, Josae Ann Craig, explained defendant had mental-health diagnoses, such as bipolar disorder, that required treatment with medication. She further stated defendant's grandparents raised defendant until they passed away, at which time defendant entered foster care. While in foster care, defendant was transferred to several different facilities due to behavioral issues. For approximately one year prior to defendant's arrest, he resided with his sister in Urbana. Defendant's mother also stated the following about defendant:

"He was trying to get his GED [(general equivalency degree)].

Actually [defendant] is a smart child. He's very intelligent. You

know, he just made a mistake like we all do in life, make a mis-

take. \*\*\* But he's not a bad kid. You know, he don't have no

background. I never saw him interact with people, you know, tryin'

to do wrong to people or tryin' to hurt anybody."

She asserted defendant's family would support him if the court fashioned a sentence which would allow his release from prison.

¶ 14 Defendant's sister, Antoinette Marie Williams, testified defendant resided with her prior to his arrest. Previously, they had been separated into different foster homes since they were 12 or 13 years old. Defendant's sister described their relationship as a normal brother-sister relationship with arguments but no violence. She described defendant growing up as always

being hyper and having trouble sitting down. When he would take medication for the hyperactivity he would become sad. Williams would rather have seen defendant hyper. She further testified defendant was not a bad person, describing him as "fixable." Moreover, defendant's sister also noted defendant had developed a close relationship with his young niece, spending time with her and buying things for her.

¶ 15 William Mermelstein, defendant's former court-appointed special advocate (CASA), testified he followed defendant through the foster-care system. He stated he spent six months trying to track defendant through his various foster placements, noting defendant "was pretty much never in one place long enough to settle in, get to school, get any sort of positive reinforcement." Mermelstein described defendant's experience in the foster-care system as follows:

"[T]he foster system was not kind to him. He didn't fit in very well. He did have anger issues. He had trouble with most of the families. But there was always a spark of goodness. He could be as charming as anyone I've ever met. He could be as helpful. His bad points. He would lie. He would steal things, if [*sic*] opportunity. But this whole thing was totally out of character with anything that I ever saw. It was always anger. It was always retaliation. If somebody dissed his manhood or something like that, they would get in a fight."

Mermelstein told the trial court he would provide support for defendant upon defendant's release from prison.

¶ 16 Finally, defendant's girlfriend, Erica Johnson, testified she had a young child with defendant. She also offered to do anything to help support defendant upon his release from prison.

¶ 17 Defendant made a statement in allocution, apologizing for his actions and asking the trial court for another chance. The State recommended consecutive prison sentences of 40 years for home invasion, 40 years for armed robbery, and 5 years for aggravated criminal sexual abuse. Defendant asked the court to fashion a sentence that would eventually allow for defendant's release.

¶ 18 In making its ruling, the trial court stated it considered the following:  
"the presentence report, the victim impact statement, the evidence introduced and the testimony of the witnesses, the testimony that was introduced at trial, all relevant statutory factors, including, but not limited to, the nature and circumstances of the offense, the evidence and applicable factors in aggravation and mitigation, the character, history and rehabilitative potential of the Defendant, his statement in allocution and the arguments and recommendations of counsel."

It noted defendant was 20 years old and described defendant's criminal history as not extensive but significant in that two of his prior offenses were for battery. Defendant's juvenile adjudication for battery resulted in an unsuccessful discharge from probation, despite several opportunities for successful completion. Similarly, his adult supervision for battery resulted in an unsuccessful discharge. Defendant also had a conviction for criminal damage to property,

occurring shortly before his arrest on the present case.

¶ 19 The trial court stated defendant had been in and out of foster care, but noted defendant's sister was also in foster care, "yet she was able to maintain a stable law-abiding life." The court conceded the limitations of the foster-care system but also pointed out some of defendant's difficulties resulted from his disruptive behavior. Despite defendant's family's assertion that defendant was not a bad person, the court remarked his family did not know him well due to lengthy separations. The court found that, other than defendant's mental-health background and difficult childhood, no significant factors in mitigation existed.

¶ 20 Conversely, the trial court determined strong factors in aggravation existed. The court noted defendant had a child he could not support, never obtained a GED, and never sought employment. Moreover, the court highlighted the brutality of the crime and the need for deterrence. The court expressed particular concern the offense occurred at the elderly victim's home, stating "[t]hat is certainly the one place where every citizen has the right, not only to expect but to demand, to be safe and secure, free from harm and the predations of individuals knocking on her door." The most egregious aggravating factor to the court arose from the nature and circumstances of the offense itself, in which the defendant took advantage of a frail woman. The court described defendant's actions as "depraved," "demeaning," "appalling," and "revolting." It further noted the following:

"He had to know that this tiny woman would not be able to get out of that death trap. And that's exactly what it was designed to be. That is a complete indifference to another person's suffering and to their life and to their very ability to survive. And what he

did in essence was inflict a potential death sentence on [N.K.]."

¶ 21 The trial court continued, "It's the Court's belief \*\*\* he did not care. His goal was to keep her quiet. If she died in the process, that would only further his purpose." Moreover, the court found defendant showed no remorse until the sentencing hearing, despite the severe injuries inflicted upon the victim. Defendant inflicted both physical and emotional injuries, the court noted, adding defendant's theft of the victim's wedding band constituted even more insult.

¶ 22 The trial court found defendant presented a "very, very real risk to the public. And the public has an absolute right to be protected from that, and the Court has a responsibility to ensure that this community will be safe from his actions and his predations." The court determined defendant committed serious bodily injury to N.K. and imposed consecutive prison sentences of 45 years for home invasion, 40 years for armed robbery, and 7 years for aggravated criminal sexual abuse.

¶ 23 Defendant filed neither postsentencing motions nor a notice of appeal within the initial 30 days following his sentencing. On March 14, 2012, defendant filed a *pro se* notice of appeal in the trial court, without seeking leave to file such with this court as required by Illinois Supreme Court Rule 606(c) (eff. Mar. 20, 2009). Despite that defect, the trial court appointed the office of the Appellate Defender (OSAD) to represent defendant on his appeal. On May 21, 2012, OSAD filed with this court a motion for leave to file a late notice of appeal. The next day, this court granted defendant's motion, and defendant filed his late notice of appeal.

¶ 24 II. ANALYSIS

¶ 25 Initially, the State questions this court's jurisdiction, asserting defendant filed an insufficient motion for leave to file a late notice of appeal under Illinois Supreme Court Rule

606(c) (eff. Mar. 20, 2009). The consensus of a majority of the Fourth District Appellate Court is that, when this court has granted a defendant leave to file a late notice of appeal, we will not revisit that decision after the case has been submitted for decision. Thus, we decline to revisit the matter here.

¶ 26 Turning to the merits of the appeal, defendant asserts his sentence is excessive, contending the trial court failed to consider various mitigating factors. Defendant recognizes he failed to raise his contentions in a motion to reconsider his sentence, and thus asks us to consider his arguments under the plain-error doctrine, or in the alternative, in determining whether he was denied effective assistance of counsel by counsel's failure to file a motion to reconsider defendant's sentence.

¶ 27 The plain-error doctrine permits a reviewing court to consider unpreserved error under the following two scenarios:

"(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or  
(2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010).

We begin our plain-error analysis by first determining whether any error occurred at all. *Sargent*, 239 Ill. 2d at 189, 940 N.E.2d at 1059. If error did occur, this court then considers whether either

of the two prongs of the plain-error doctrine has been satisfied. *Sargent*, 239 Ill. 2d at 189-90, 940 N.E.2d at 1059. Under both prongs, the defendant bears the burden of persuasion. *Sargent*, 239 Ill. 2d at 190, 940 N.E.2d at 1059.

¶ 28 With excessive-sentence claims, this court has explained appellate review of a defendant's sentence as follows:

"A trial court's sentencing determination must be based on the particular circumstances of each case, including factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Generally, the trial court is in a better position than a court of review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case. [Citation.] Thus, the trial court is the proper forum for the determination of a defendant's sentence, and the trial court's decisions in regard to sentencing are entitled to great deference and weight. [Citation.] Absent an abuse of discretion by the trial court, a sentence may not be altered upon review. [Citation.] If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341 (quoting *People v. Hensley*, 354 Ill.

App. 3d 224, 234-35, 819 N.E.2d 1274, 1284 (2004)).

¶ 29 Here, defendant acknowledges his sentence falls within the statutory range. However, he contends the trial court failed to adequately consider as mitigating factors the following: his young age (19 years old at the time of the offense), lack of a prior felony conviction, and mental condition. The transcript of defendant's sentencing hearing demonstrates the trial court did consider those factors at sentencing. Defendant is essentially asking us to reweigh the factors considered by the trial court, which we do not have the power to do. See *People v. Alexander*, 239 Ill. 2d 205, 214-15, 940 N.E.2d 1062, 1067 (2010).

¶ 30 As to the factors noted by defendant, this court has long emphasized youth and rehabilitation are not entitled to greater weight than the other factors. See *People v. West*, 54 Ill. App. 3d 903, 909, 370 N.E.2d 265, 270 (1977) ("The day is long past when this court, or any court, should quiver like a pole-axed blancmange at the mention of youth and rehabilitation. These are proper considerations in the fixing of sentences, but they are not the sole elements.") Here, defendant's deplorable actions in this crime cast a strong shadow of a doubt on his rehabilitative potential. Moreover, while defendant lacked a prior felony, his misdemeanor crimes involved acts of violence against others. With defendant's cold-hearted and brutal actions against an elderly woman, we find no error with the trial court not treating defendant's criminal record as a mitigating factor. As to defendant's mental condition, the trial court noted defendant had been found fit and had been "capable" and "at times manipulative" during the proceedings. Our supreme court has repeatedly held "evidence of a defendant's mental or psychological impairments may not be inherently mitigating, or may not be mitigating enough to overcome the evidence in aggravation." *People v. Thompson*, 222 Ill. 2d 1, 42-43, 853 N.E.2d 378, 402 (2006).

In this case, the evidence in aggravation was extensive.

¶ 31 Generally, when sentencing a defendant, the most important factor a court considers is the seriousness of the offense. *People v. Evans*, 373 Ill. App. 3d 948, 968, 869 N.E.2d 920, 938 (2007). Defendant's crime was reprehensible and depraved. We have included a lengthy background in this order to show how inhumane and vile defendant's actions were and how the trial court arrived at its lengthy sentence. If not for the victim's strong will to live, defendant would have been guilty of murder. Defendant's atrocities warrant a lengthy sentence.

¶ 32 Defendant cites numerous cases where the defendant's lengthy sentence is reduced by the reviewing court. This court has stated "sentencing is emphatically an individual matter and prior authority is of little assistance." *West*, 54 Ill. App. 3d at 910, 370 N.E.2d at 271. That is particularly true here with the nature of the crime and the trial court's ability to observe defendant's demeanor and other characteristics during the proceedings.

¶ 33 Accordingly, we find the trial court did not abuse its discretion in sentencing defendant. Since we have found no error with defendant's sentences, defendant cannot establish plain error or ineffective assistance of counsel based on defense counsel's failure to file a motion to reconsider defendant's sentence.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the Champaign County circuit court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 36 Affirmed.

¶ 37 JUSTICE HOLDER WHITE, dissenting.

¶ 38 Regarding the State's suggestion that we do not have jurisdiction, the majority indicates "we will not revisit that decision after the case has been submitted for decision." *Supra*

¶ 25. I do not agree with this position. Therefore, I respectfully dissent.

¶ 39 In my view, the majority's position conflicts with long-standing precedent which holds a lack of appellate court jurisdiction cannot be waived. *People v. Schram*, 283 Ill. App. 3d 1056, 1060, 672 N.E.2d 1237, 1240 (1996). Moreover, the appellate court has a *sua sponte* duty to consider our jurisdiction, whether or not the parties raise the issue. *Rothert v. Rothert*, 109 Ill. App. 3d 911, 918, 441 N.E.2d 179, 183 (1982), *People v. Williams*, 274 Ill. App. 3d 793, 796, 655 N.E.2d 470, 473 (1995).

¶ 40 Once the trial court enters final judgment, the appellate court possesses jurisdiction for 30 days, requiring only that a party file a notice of appeal in order to invoke that jurisdiction. Ill. S. Ct. R. 606(a). After 30 days, the appellate court loses jurisdiction unless the appellant takes action that allows the appellate court to reassert jurisdiction. See Ill. S. Ct. R. 606(c). Sixty days after final judgment, the only way a party can regain appellate jurisdiction is to file a motion for leave to file a late notice of appeal with attached affidavit which makes a showing that (1) the appeal has merit and (2) the failure to file a timely notice of appeal "was not due to appellant's culpable negligence." Ill. S. Ct. R. 606(c). The rule is clear—if a party fails to follow the procedures set forth in Rule 606(c), this court cannot regain jurisdiction to address arguments on the merits.

¶ 41 Here, defendant failed to file an affidavit to show (1) the appeal has merit and (2) the failure to file a timely notice of appeal "was not due to appellant's culpable negligence." Ill. S.

Ct. R. 606(c).

¶ 42 Therefore, I would dismiss the appeal for lack of jurisdiction.