

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).

2014 IL App (4th) 120875-U
NO. 4-12-0875

FILED
January 10, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from
Plaintiff-Appellee,) Circuit Court of
v.) Woodford County
EDDIE L. BLAKES, SR.,) No. 10CF129
Defendant-Appellant.)
) Honorable
) John B. Huschen,
) Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant failed to raise his contention the trial court erred by improperly considering charges dropped pursuant to a plea agreement in aggravation at sentencing in his motion to reconsider sentence, defendant forfeits his claim of error.

¶ 2 In May 2011, defendant pleaded guilty to one count of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 2010)). In June 2011, the trial court sentenced defendant to a 15-year prison term. Defendant appeals, arguing the court improperly considered other charges against defendant dismissed pursuant to defendant's plea agreement. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2011, the State charged defendant with two counts of predatory criminal sexual assault, a Class X felony (720 ILCS 5/12-14.1(a)(1) (West 2010)), and three counts of criminal sexual assault, a Class 1 felony (720 ILCS 5/12-13(a)(3) (West 2010)). The State

alleged defendant committed acts of sexual penetration with his daughter and two stepdaughters. In May 2011, defendant pleaded guilty to one count of predatory criminal sexual assault, which alleged he placed his penis into the mouth of his then 11-year-old stepdaughter, M.S. (born February 26, 1999). In exchange for defendant's plea, the State agreed to drop the remaining charges. No agreement as to sentence was reached. After admonishing defendant of his rights and the consequences of a guilty plea, the trial court accepted the State's factual basis for the plea and set the matter for sentencing.

¶ 5 At a June 2011 sentencing hearing, a different assistant public defender represented defendant. The State presented a video recording of an interview between defendant's other stepdaughter, N.S. (born July 27, 1995), and an employee of the Child Advocacy Center. During this interview, N.S. spoke of an incident when she was approximately 10 years old in which defendant placed his penis on her vagina. N.S. stated defendant abused her on multiple other occasions but was unable to remember any details of these incidents.

¶ 6 The State also presented testimony of defendant's daughter, M.B. (born June 11, 1990). M.B. testified she was around 12 or 13 years old when defendant began entering her room at night while she was sleeping. Defendant would get into her bed and touch her "all over" while "relieving himself." M.B. testified this occurred at least 10 times over the next couple years. M.B. specifically remembered one occasion where defendant made her perform oral sex on him.

¶ 7 After the State presented its evidence, defendant testified on his own behalf. He maintained his innocence throughout his testimony, denying the incidents to which N.S. and M.B. testified. Defendant described his recent employment history. He also explained he was in need of rotator cuff surgery and he was briefly admitted to a mental hospital for extreme depression in 2006. In 2008, the defendant was diagnosed with a mild form of mental retardation "via the State

of Illinois"—apparently stemming from his previous mental health issues. Defendant volunteered at the Boy's Club of Peoria to keep his three sons and other children out of involvement with gangs and drugs. Defendant had been a member of his church for 34 years.

¶ 8 Defendant also maintained his innocence on the charge to which he pleaded guilty. According to defendant, he pleaded guilty to the one count of predatory criminal sexual assault because of pressure from trial counsel. Defendant testified trial counsel repeatedly suggested he take the State's plea offer. Defendant knew he could not be found guilty for an act he did not commit, but he pleaded guilty for fear of receiving natural life in prison if he was convicted of two Class X felonies.

¶ 9 Defendant made a lengthy statement in allocution. He stated he was finally getting to tell his side of the story. Defendant stated these criminal proceedings were initiated as part of his ex-wife's plan to completely ruin his life. Defendant again reiterated his innocence on both the charge to which he pleaded guilty and the charges dropped by the State pursuant to the partially negotiated plea agreement.

¶ 10 Following defendant's statement and arguments from both the State and defense counsel, the trial court sentenced defendant to a 15-year prison term. In doing so, the court noted its consideration of the factual basis underlying the plea agreement, the contents of the presentence investigation report, and the evidence offered in mitigation and aggravation. The trial court made specific findings regarding M.B's testimony at sentencing and the video recording of N.S.'s interview. The court found M.B.'s testimony credible. The court did not place much, if any, weight on N.S.'s interview because of her vague answers and her inability to remember details, and because the questions asked of her were suggestive. The court also noted defendant's lack of criminal history and stated that more factors in aggravation would be required to impose a sentence

on the higher end of the sentencing range.

¶ 11 In July 2011, defendant filed a motion to reconsider sentence and a *pro se* motion to vacate his guilty plea. The substance of his motion to reconsider stated as follows:

"a. The court sentenced EDDIE BLAKES, SR. to:

1. 15 years with 3 years mandatory supervised
release as to Count I—Predatory Criminal Sexual Assault;

b. Defendant believes given his minimal criminal history,
mitigating factors, that this sentence is unfair, unduly harsh, and
excessive.

WHEREFORE, Defendant respectfully requests that this
Honorable Court reconsider its sentence of June 20, 2011."

¶ 12 At a December 2011 hearing on his motions to reconsider sentence and to vacate his guilty plea, defendant withdrew his motion to vacate the guilty plea. After hearing the parties' arguments, the trial court denied defendant's motion to reconsider sentence.

¶ 13 On appeal, pursuant to an agreed motion for summary remand, this court ordered a Rule 604(d) certificate be filed with the trial court. See Ill. S. Ct. R. 604(d) (eff. July 1, 2006). On remand, defense counsel filed a certificate of compliance pursuant to Rule 604(d). This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues the trial court improperly considered the charges dismissed pursuant to his plea agreement as a factor in aggravation of his sentence. We find defendant forfeited this contention of error by not including this issue in his motion to reconsider sentence.

¶ 16 Under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), any issue not raised in a defendant's motion to reconsider sentence is forfeited on appeal. Ill. S. Ct. R. 604(d) (eff. July 1, 2006); see also *In re Angelique E.*, 389 Ill. App. 3d 430, 432, 907 N.E.2d 59, 61 (2009) ("any sentencing issues not raised in a motion to reconsider the sentence are forfeited"). One purpose of this rule is to allow the trial court "an opportunity to review a defendant's claim of sentencing error and save the delay and expense inherent in appeal if the claim is meritorious." *People v. Heider*, 231 Ill. 2d 1, 18, 896 N.E.2d 239, 249 (2008).

¶ 17 In this case, defendant's motion to reconsider states given his minimal criminal history and the presence of other mitigating factors, the trial court erred by imposing a 15-year prison term. Defendant's motion to reconsider does not mention the trial court considered improper evidence in aggravation. Further, defendant did not raise this issue at the hearing on his motion to reconsider. Defendant provided the trial court no opportunity to resolve the error of which he now complains. Thus, defendant forfeited his contention the trial court erred in considering charges dropped pursuant his plea agreement.

¶ 18 A forfeited issue may be otherwise reviewed where defendant can show the error complained of was plain error. *People v. Herron*, 215 Ill. 2d 167, 178, 830 N.E.2d 467, 475 (2005). Defendant does not raise a plain-error argument, and we decline to provide any analysis on this issue, as it is forfeited. See *People v. Moss*, 205 Ill. 2d 139, 168, 792 N.E.2d 1217, 1234 (2001).

¶ 19 Even if defendant had properly preserved his claim of error, his contention lacks merit. In *People v. La Pointe*, 88 Ill. 2d 482, 499, 431 N.E.2d 344, 351-52 (1981), the supreme court held a trial court may "properly receive proof of criminal conduct for which no prosecution and conviction ensued," so long as the information received is accurate, relevant to the

determination of a proper sentence, and the defense has an opportunity to cross-examine the witness.

¶ 20 At defendant's sentencing hearing, the trial court received proof of the charges dismissed pursuant to defendant's plea agreement through the testimony of M.B. and the video interview of N.S. The court specifically stated that it was not giving much weight to the video interview of N.S. The court found M.B.'s testimony credible. Defense counsel cross-examined M.B. We have no reason to doubt the accuracy of the information received by the trial court other than defendant's own self-serving statements maintaining his innocence. Moreover, "[t]he broadened standard governing admissibility of evidence" at sentencing "allows the State and the defendant considerable leeway in presenting evidence so long as the proffered evidence is relevant and reliable." *People v. Johnson*, 114 Ill. 2d 170, 205, 499 N.E.2d 1355, 1371 (1986).

"Uncharged criminal conduct is relevant in a sentencing determination." *People v. Ivy*, 313 Ill. App. 3d 1011, 1019, 730 N.E.2d 628, 636 (2000) (citing *People v. Flores*, 153 Ill. 2d 264, 296, 606 N.E.2d 1078, 1094 (1992)). The trial court did not improperly consider the charges dropped pursuant to defendant's plea agreement in aggravation at sentencing.

¶ 21 III. CONCLUSION

¶ 22 We affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 23 Affirmed.