

NOTICE

Decision filed 02/11/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 120231-U

NO. 5-12-0231

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Clinton County.
	)	
v.	)	No. 09-CF-12
	)	
MICHAEL R. MEEKS,	)	Honorable
	)	William J. Becker,
Defendant-Appellant.	)	Judge, presiding.

---

PRESIDING JUSTICE WELCH delivered the judgment of the court.  
Justices Chapman and Spomer concurred in the judgment.

**ORDER**

¶ 1 *Held:* The defendant's sentence is affirmed where the trial court did not err when it issued an identical sentence to the defendant at his remanded sentencing hearing.

¶ 2 The defendant, Michael R. Meeks, appeals from the judgment imposed at his resentencing hearing, which was conducted upon remand from *People v. Meeks*, No. 5-09-0456 (2011) (unpublished order under Supreme Court Rule 23). For the following reasons, we affirm the judgment of the circuit court.

¶ 3 This case concerns the defendant's second direct appeal from his jury trial conviction for burglary. On May 20, 2009, the defendant was found guilty of two counts

of burglary (720 ILCS 5/19-1(a) (West 2008)) and one count of retail theft (720 ILCS 5/16A-3(a) (West 2008)), as a result of an incident involving an Aldi store on January 19, 2009. During the July 8, 2009, sentencing hearing, the court did not impose judgment on the retail theft conviction, but it sentenced the defendant to 20 years' imprisonment on two counts of burglary. As evidence in aggravation, the State requested that the court take judicial notice of the defendant's numerous prior convictions for various offenses. The defendant's counsel had no testimony or documentary evidence to offer in mitigation, but as statutory factors in mitigation, his counsel stated that the defendant's criminal conduct neither caused nor threatened serious physical harm to another due to the nature of the offense being a property crime, and that the defendant did not contemplate that his conduct would cause or threaten serious physical harm to another. The court noted that it did not feel any of the statutory factors in mitigation applied, and that the primary factors in aggravation were the defendant's history of prior delinquency, and that the sentence is necessary to deter others from committing the same crime. The court noted that it did not like to sentence people to the Department of Corrections, but "at some point enough is enough and [the defendant has] more than passed that point." The court found that the defendant was convicted of a Class 2 felony, but he was eligible for a Class X sentence based on a 1990 burglary conviction and a 1993 reckless homicide conviction under section 5-5-3(c)(8) of the Unified Code of Corrections (the Code) (730 ILCS 5/5-3(c)(8) (West 2008)). The court sentenced the defendant as a Class X offender based on the two prior felonies.

¶ 4 On the defendant's first direct appeal, this court vacated one count of burglary

under the one-act, one-crime analysis and found that the defendant was improperly sentenced under the Code because the 1993 reckless homicide conviction was in fact a Class 3 felony. See *People v. Meeks*, No. 5-09-0456 (2011) (unpublished order under Supreme Court Rule 23). This court remanded the cause for a new sentencing hearing, noting that it appeared from the record that the defendant had other qualifying Class X convictions to satisfy the Code.

¶ 5 A sentencing hearing was conducted pursuant to this court's remand order on February 28, 2012. With no objections from either party, the court adopted the arguments and motions from the previous sentencing hearing, which was admitted into evidence as the State's exhibit 1. The court also admitted the State's evidence in aggravation, consisting of documentation of two prior Class-2-or-greater felony convictions for the purposes of establishing the defendant's eligibility for a Class X sentence. As evidence in mitigation, the defense offered a written statement from Bianca Meeks, the defendant's daughter. The letter requested leniency from the court, stating that she did not want his grandchild to only know of the defendant in prison. The defense also offered the testimony of Laura Meeks, the defendant's ex-wife. She testified that she had been "clean" for five years and was willing to help the defendant get drug and alcohol treatment if the court's sentence provided for it. When asked whether the defendant would remain sober for the rest of his life if released from the Department of Corrections, Meeks stated that it "[d]epends on who you run into" and that the defendant needed to "stay away from everything." She stated that she thought that the court "had [the defendant's] attention," and with a new grandchild and the "right people," "[a

reduced sentence] would help him a lot more than what he's been through." The defendant then gave his statement in allocution, in which he stated that he regretted his behavior and that he understood that he had a debt to pay to society. The defendant requested leniency, noting that his acts were not crimes of violence and were without physical harm to persons.

¶ 6 Following the defendant's statement, the court stated as follows:

"In my view, nothing substantially has changed from the time we did this [*sic*] until now. The case was sent back because there were problems in creating the records to sustain the sentence. I'm going to imposed [*sic*] the same sentence, 20 years in the department of corrections, three years of mandatory supervised release with credit for all time served. There is a complete record made. If the Appellate Court thinks I've gone overboard on the sentence, I'm sure they'll send it back to me and tell me that I should have been more lenient. I set out the reasons at the previous sentencing hearing why I did what I did. The record—criminal record that you have is just too long for me to ignore. I said then I believe enough is enough and I am still of that opinion."

The court noted for the record that the references made to factors in aggravation and mitigation at the preceding hearing were adopted and incorporated for the purpose of the current hearing, and that judgment would be entered only on count II of the amended information, the burglary offense.

¶ 7 Next, the defendant's counsel requested to incorporate the arguments of previous counsel into the current hearing and added that he believed that the mitigating factors

were that the defendant's conduct neither caused nor threatened serious harm, that the defendant did not contemplate his conduct would cause or threaten serious harm to another, that "his character and attitude as expressed here today indicate that he's unlikely to commit another crime," and that imprisonment would entail excessive hardship to the defendant "which has been explained by the statement[s] [of Bianca Meeks and Laura Meeks]." The trial court concluded by noting that the defendant was eligible for day-for-day good-time credit, and while he was not going to reduce the sentence, it was a factor that he took into account in his judgment. The court told the defendant that he was "convicted and sentenced" and the sentence imposed was "the same as last time, 20 years."

¶ 8 The defendant's counsel filed a motion to reconsider his sentence on March 29, 2012, stating that the sentence was "excessive and therefore should be reduced" and that his counsel "anticipates amending that motion to reconsider sentence after receiving transcripts of the sentencing hearing." On April 6, 2012, the trial court granted the defendant's request to proceed *pro se*, and the defendant subsequently adopted the motion. At a hearing on May 20, 2012, the trial court denied the defendant's request for additional time to amend the motion. The court denied the motion, noting that "it's time for the Appellate Court to decide whether the sentence substantively is correct or not."

¶ 9 We begin by noting that the defendant admits that his motion to reconsider his sentence did not specifically raise the issue presented here on appeal, and thus the matter is waived unless reviewed under the plain error exception of Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967). *People v. Thomas*, 121 Ill. App. 3d 883, 891 (1984).

Improperly considered sentencing factors are grounds for plain error, and a reviewing court may consider all questions which appear to be plain error or affect substantial rights of a party. *People v. Martin*, 119 Ill. 2d 453, 458, 463 (1988). An unpreserved claim of error may be considered when "(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; or (2) a clear or obvious error occurred, and the error is so serious that it affected the fairness of the defendant's trial and the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Taylor*, 2011 IL 110067, ¶ 30 (citing *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005)). In both instances, the burden of persuasion remains with the defendant. *Herron*, 215 Ill. 2d at 187. However, "[t]he initial step in conducting plain-error analysis is to determine whether error occurred at all." *People v. Walker*, 232 Ill. 2d 113, 124 (2009). We find that the defendant cannot meet his burden, because the trial court's sentence was not plainly erroneous.

¶ 10 The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A reviewing court may not alter a defendant's sentence absent an abuse of discretion by the trial court. *Id.* A sentence is deemed an abuse of discretion if it is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *Id.* The defendant argues that the trial court abused its discretion by reimposing the 20-year sentence at his remand hearing, because the content and timing of the court's comments indicated prejudgment of the case; specifically, he argues that the court did not consider the new evidence in mitigation or defense counsel's

arguments in mitigation when issuing the sentence.

¶ 11 While "prejudgment is the antithesis of a fair trial," in order to show bias or prejudice by the court, the record must show that there was an active personal animosity, hostility, ill will, or distrust towards the defendant, and absent such a showing, a court will not conclude there was actual prejudice which prevented a fair hearing. *People v. Johnson*, 199 Ill. App. 3d 798, 806 (1990). Our review of the record does not reveal any prejudgment by the trial court at the defendant's hearing. The court's statement, announced *after* the defendant presented his evidence in mitigation, demonstrates that it indeed listened to the new evidence, but simply found that the new evidence did not justify a modification of the sentence. Though the defendant argues that prejudgment is implied because the court gave its sentencing decision before the defendant's counsel stated the factors in mitigation, we note that the court had, in fact, already heard this evidence. The record reflects that the court explicitly adopted the statutory factors in aggravation and mitigation from the preceding hearing after the defendant's new mitigating evidence was presented, which effectively preserved all of the defendant's previous mitigating-factor arguments and the court's corresponding findings. In his statement after the court's pronouncement, the defendant's counsel did not argue any factors that had not already been addressed either by incorporation or by the evidence presented that day. Thus, the defendant's reliance on *People v. McDaniels* is misplaced. See *People v. McDaniels*, 144 Ill. App. 3d 459, 462 (1986) (court stated that the defendant's claim of self-defense was "pretty ridiculous" before the defendant had completed her presentation of the evidence). Here, the trial court had heard all the

relevant evidence before its statement, and we therefore do not find that the timing of the court's sentencing declaration indicates prejudgment of the defendant's case.

¶ 12 Additionally, we cannot find the content of the court's statement to indicate any bias or prejudice in this instance. In fact, we note that the trial judge went to great lengths to articulate his reasoning and explain his decision—that the defendant's substantial criminal record outweighed the mitigating evidence and that the court was "still of that opinion." Thus, even considering the new evidence, the court's opinion was that 20 years' imprisonment remained the proper sentence for the defendant. We find no error with that decision, which was well within the court's discretion. We thus affirm the judgment of the circuit court.

¶ 13 Affirmed.