

No. 13-0956

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12 CR 13685
	)	
OLLADIPUPO MAKINDE,	)	
	)	Honorable Mary Margaret Brosnahan
Defendant-Appellant.	)	Judge Presiding

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PRESIDING JUSTICE SIMON delivered the judgment of the court.  
Justices Neville and Liu concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err when it admitted "other crimes" evidence in a prosecution for violation of bail bond. All of defendant's other evidentiary objections are forfeited, but the matters raised by defendant were not errors in any event. Defendant is not entitled to relief for ineffective assistance of counsel, and the trial court did not abuse its discretion when sentencing defendant.

¶ 2 Defendant Olladipupo Makinde was charged with two counts of violating his bail bond after failing to appear in court for two felony cases pending against him. Defendant argues that the trial court improperly allowed evidence on a variety of issues which either individually or cumulatively affected his right to a fair trial. Defendant also argues that his trial counsel was

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deficient for a variety of reasons, and that the trial court relied on an improper factor when fashioning his sentence. Having considered and rejected all of defendant's arguments, we affirm.

¶ 3

### BACKGROUND

¶ 4 On September 12, 2011, Defendant Olladipupo Makinde failed to appear in court.

Defendant had two felony cases pending against him at the time and he was free on bond. The felonies were for aggravated criminal sexual assault and aggravated driving under the influence.

In a court appearance in each case, defendant was advised that it was a condition of his bond to be present in court on each scheduled date. Defendant's attorney indicated to the court that defendant was sick and requested an additional day for defendant to present himself in court.

After setting the case over to the following day and defendant still failing to appear, the trial court issued bond forfeiture warrants in each case. The trial court set another court date for October 17, 2011 at which time it would enter judgment if defendant did not appear. Copies of the forfeiture warrants were mailed to defendant's last known address. Defendant did not appear on October 17, 2011 and the trial court entered judgment on the warrants.

¶ 5 In early August of the following year, the Cook County Sheriff's Fugitive Warrants Unit received word that defendant was in custody in New York. Defendant had been arrested in Canada and turned over to authorities in New York. Officers from Cook County traveled to New York and transported defendant back to Illinois. The State charged defendant with two counts of violating a bail bond.

¶ 6 At trial, defendant claimed that he missed the September 12th court date because he was ill. He called his attending physician as a witness and the doctor testified that defendant was treated for a cold and back pain on the day he was scheduled to be in court. Defendant then elicited

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testimony that he traveled to Canada to transport his mother, who was sick, to be with his siblings. The defense's position at trial was that the State failed to prove that defendant willfully failed to appear in court. The jury convicted defendant on both counts and the trial court sentenced him to eight years in prison.

¶ 7 In this appeal, defendant argues that the trial court erred when it allowed the State to present evidence that two felony cases were pending against defendant. Defendant claims that this irrelevant, "other crimes" evidence should not have been admitted. On a motion *in limine*, the trial court ruled that the State could introduce the fact that defendant had two felonies pending, but not the nature of the felonies or the facts giving rise to them. Defendant also argues that other evidence presented by the State was prejudicial and should not have been admitted, including: that defendant used an alias, that defendant traveled to Canada, that other individuals posted bond on defendant's behalf, and the amount of his bail. Defendant contends that his trial counsel was ineffective for forfeiting review of nearly all of his evidentiary objections, and for making incorrect legal arguments to the court. In the aggregate, defendant claims that he was denied the right to a fair trial. Defendant also maintains that when sentencing him, the trial court improperly relied on the fact that he fled when the evidence did not support flight. Accordingly, defendant argues, that we should at least vacate his sentence and remand for a new sentencing hearing.

¶ 8 ANALYSIS

¶ 9 Many of defendant's contentions on appeal are that the trial court erred when it admitted certain evidence that prejudiced defendant before the jury. At trial, however, defendant did not object when the evidence on most of those matters was presented to the jury. The failure to object to the admissibility of evidence when it is introduced at trial constitutes a forfeiture of that

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objection on appeal. *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007). Moreover, other than alluding to the trial court erring for admitting other crimes evidence, defendant did not raise any of the issues he currently raises in this appeal in a posttrial motion. The failure to assert the existence of an allegedly errant ruling in a posttrial motion results in a forfeiture of that issue on appeal. *Id.* Accordingly, nearly all of the arguments defendant asserts here are forfeited. We will nonetheless examine those issues for plain error. *People v. Enoch*, 122 Ill. 2d 176, 198 (1988). Defendant did, however, raise the issue of other crimes evidence in a motion *in limine* and in his posttrial motion, so we review the rulings appurtenant to that issue for an abuse of discretion. See *People v. Denson*, 2014 IL 116231, ¶ 18 (even absent a trial objection, issues may be preserved where the defendant raises them in a motion *in limine* and again raises them in a posttrial motion); *People v. Wilson*, 214 Ill. 2d 127, 136 (2005) (the admission of other crimes evidence is reviewed for an abuse of discretion).

¶ 10 To sustain a conviction for a violation of bail bond, the state must prove beyond a reasonable doubt that: (1) the defendant forfeited bail, (2) the defendant failed to surrender within 30 days after the bail was forfeited, and (3) his failure to surrender was willful. 720 ILCS 5/32-10(a) (West 2012). Implicit in a violation of bail bond case is the fact that the defendant has or had a pending case against him. Relevant evidence is any evidence that tends to make the existence of any fact material to the determination of the case either more probable or less probable. *People v. Harvey*, 211 Ill. 2d 368, 392 (2004). In a violation of bail bond case, the fact that another case exists is relevant. Relevant evidence is admissible if the probative value of the evidence outweighs its prejudicial impact. *People v. Gonzalez*, 265 Ill. App. 3d 315, 326 (1994).

¶ 11 It is important to point out that the trial judge limited the evidence that the State could

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introduce on this issue to simply reflect *the fact* that defendant had two pending felonies. No details about the nature of the crimes were discussed at trial, and the specific charges were not even revealed. Defendant nonetheless contends that the evidence was unduly prejudicial as it was intended to show defendant's bad character.

¶ 12 Evidence of other crimes may not be introduced in an attempt to show a defendant's bad character. *People v. Walston*, 386 Ill. App. 3d 598, 609-10 (2008). However, evidence of other crimes is admissible when it is relevant to a fact material to the prosecution. *People v. Robinson*, 391 Ill. App. 3d 822, 838 (2009). Other crimes evidence may be introduced against a defendant for the purpose of showing *modus operandi*, intent, identity, motive, absence of mistake, or for any purpose other than to show the propensity to commit crime. *Walston*, 386 Ill. App. 3d at 610. A trial court must weigh the prejudicial effect of admitting the other crimes evidence against its probative value. *People v. Johnson*, 2014 IL App (2d) 121004, ¶ 47. The admissibility of other crimes evidence rests within the sound discretion of the trial court, and a reviewing court will not overturn its decision absent a "clear abuse of discretion." *Wilson*, 214 Ill. 2d at 136.

¶ 13 Here, the admission of the mere fact that defendant had two pending felonies was not overly prejudicial. Defendant's position before the jury was that his failure to appear in court was not willful—that he either did not know he needed to appear or that he did not appear because he was taking care of his mother. Meanwhile, the State wanted to show that defendant had a reason to not appear or to flee: to avoid prosecution for the felonies. Evidence of other crimes is relevant and admissible when it concerns motive, intent, or absence of mistake. *Walston*, 386 Ill. App. 3d at 610. The State introduced evidence that defendant was advised of his court dates and the State used the pending felonies as a potential explanation for defendant's failure to appear—to

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show his willful intent. The fact that defendant was charged and had appeared in court for two felonies is also indicative of defendant's knowledge that he needed to appear. There is probative value in the fact that defendant had two pending felonies that could serve to rebut defendant's theory of the case and the prejudice, if any, was negligible.

¶ 14 The prejudicial effect of the mere fact that defendant had been charged with felonies is likewise lessened where, as here, the case concerns a violation of a condition of bail. Implicit in the charge is that a defendant had previously been arrested and charged with a crime. The State was entitled to lay a factual background that demonstrated why the defendant was charged for violating his bail. The mere mention that they were felonies or serious crimes is not *per se* overly prejudicial in a way that would render the corresponding evidence inadmissible. There is no indication in the record that the evidence was introduced in an attempt to persuade the jury to convict defendant for conduct other than that directly at issue in the case or to otherwise demonstrate bad character. It was introduced in an attempt to explain the circumstances of defendant's then-current prosecution and to show why defendant might not have appeared in court in his prior cases. What the trial judge actually allowed here was less prejudicial than normal "other crimes" evidence because the State only introduced that the other cases against defendant were pending rather than *bona fide* convictions.

¶ 15 Even if admitting the evidence was somehow improper, (it was not,) the erroneous admission of other crimes evidence calls for reversal on appeal only if the evidence was a material factor in the defendant's conviction such that, without the evidence, the verdict likely would have been different. *People v. Adkins*, 239 Ill. 2d 1, 23 (2010). In the end, and as is explained in more detail below, the willfulness of defendant's failure to appear can be found in a number of ways

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from the record evidence. The trial court did not abuse its discretion by allowing the State to introduce at trial the fact that defendant had two pending felonies.

¶ 16 Defendant argues that the trial court erred when it admitted evidence of: (1) his use of an alias; (2) his travel to Canada; (3) that others posted his bond; and (4) the amount of his bond. As set forth above, all of these objections are forfeited. Nonetheless, the admission of evidence on these issues was not error in the first instance, and defendant is not entitled to relief under the plain error doctrine. All of the issues defendant raises concern circumstantial evidentiary propositions. The evidence provided possible explanations for why defendant failed or refused to appear in court, to explain the circumstances of the pending case, or to rebut defendant's theory of the case. None of these issues prejudiced defendant in a way that jeopardized his right to be tried solely on relevant, admissible evidence. The defense had the opportunity to refute or impeach the State's proffered evidence on each of these matters, and the jury was free to accept or reject them. Neither individually nor cumulatively do these issues raise concerns that defendant was denied his right to a fair trial.

¶ 17 Defendant argues that his trial counsel's failure to raise all but the other crimes issue in a posttrial motion constituted ineffective assistance of counsel because it resulted in the forfeiture of these arguments. However, defendant has not met his burden on an ineffective assistance of counsel claim where, as explained above, the admission of the complained-of evidence was not error in the first place.

¶ 18 Defendant maintains that he was denied his right to a fair trial because the evidence of willfulness was not overwhelming, and that it was "pure speculation" that he did not appear in court because he feared prosecution. Defendant concludes that, had the jury not been prejudiced

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by the other crimes evidence, it very well may have concluded that the State did not prove beyond a reasonable doubt that his failure to surrender was willful. But there was sufficient evidence, even if some is circumstantial, from which the jury could have reached its conclusion beyond a reasonable doubt. Defendant posits that he had appeared at all court dates prior to September 12, 2011, that he was confident he would not be convicted in the sexual assault case, and that the DUI charge would not have provided a motive to flee when it was a subsequent, less serious charge. But despite the opportunity to do so, defendant did not present any of these theories to the jury.

¶ 19 For purposes of the statute governing violation of bail bond, the act of failing to surrender is performed willfully when it is performed knowingly. *People v. Costa*, 2013 IL App (1st) 090833, ¶ 22. It is a question for the jury. *People v. Stroud*, 392 Ill. App. 3d 776, 799 (2009) (whether the requisite criminal intent exists is a question for the trier of fact). The willfulness of a violation of bail bond may be, and often will be, established by circumstantial evidence. *People v. Lynn*, 89 Ill. App. 3d 712, 714 (1980). Defendant concedes that he knew that he was required to appear on September 12th and that he was advised that it was a condition of his bond to appear at every court date. After advising his lawyer that he could not appear on September 12th, the lawyer advised the court that defendant needed an extra day. Defendant did not appear the next day, and his attending physician testified that defendant only had some back pain and a cold that would not have kept him from appearing in court. Then, defendant disappeared and failed to make contact until he was arrested in Canada—five months after he was required to be in court.

¶ 20 Defendant's illness did not keep him from appearing on September 12th or 13th. He did not appear on his own will. Defendant did not provide any legally viable theory or plausible explanation for his failure to appear on October 17th. Defendant, on his own accord, ceased

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making any contact with the court, despite his known obligation to do so. Defendant voluntarily left the country with the knowledge that he missed his court appearances, which he knew were a condition of his bond. All of these failures continued for five months. Cumulatively, all of these failings indicate a conscious disregard for complying with the terms of his bail. In the face of all the State's evidence, defendant offered no convincing explanation for his failure to surrender. The evidence was sufficient for the jury to find willfulness beyond a reasonable doubt. The jury could have found willfulness simply from the fact that defendant's court dates were set for approximately every two weeks while he was out on bail and then he just disappeared for five months, never inquiring about when he needed to come to court. Also, it was not as if defendant was charged for violating his bail after surrendering himself. Had he not been detained in Canada and extradited, it is unclear whether he ever would have appeared. There was no excusable failure here. Defendant had the opportunity to, and did, argue to the jury that his failure to appear was a result of a mistake or was otherwise unintentional. The jury rejected those positions and found his violation to be willful.

¶ 21 Defendant also maintains that his trial counsel was ineffective for pursuing a legally non-viable defense and for effectively conceding guilt in closing argument. At trial, defendant's attorney argued that the State did not prove that defendant's failure to appear was willful because the State did not establish that defendant knew he needed to appear. Trial counsel claimed that defendant never received notice of the October 17th court date that was mailed to his last known address. However, the State does not need to prove that proposition to succeed in a violation of bail bond case. *People v. Lawlor*, 102 Ill. App. 3d 195, 198 (1981). Trial counsel also argued that defendant had not been advised that if he failed to appear he would violate his bond, only that

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if he failed to appear he might be tried in *absentia*. That is also a misstatement of the law. However, the jury was never advised on these issues of law. The jury was never given any indication that these positions were incorrect, and the arguments are consistent with defendant's overall strategy at trial—that his failure to appear was not willful. The jury was instructed on what elements the State needed to prove to succeed in the prosecution and was admonished to only consider the evidence. The arguments were simply an attempt, albeit incorrect, to show that defendant was not culpable. No prejudice resulted, and the jury would have had no reason to draw any adverse inference from these unsuccessful arguments. Certainly defendant has not shown that, had trial counsel not made these arguments, the outcome of the trial might have been different.

¶ 22 A defendant is entitled to competent, not perfect, representation, and mistakes in trial strategy or judgment do not necessarily result in ineffective assistance. *People v. Calhoun*, 404 Ill. App. 3d 362, 383 (2010). Just exposing an error in the course of the representation is not sufficient to succeed on an ineffective assistance claim and counsel's performance is to be judged based on the totality of conduct, not from isolated incidents. *People v. Morris*, 335 Ill. App. 3d 70, 78 (2002). Here, defendant cannot show that but for counsel's mistakes there is a reasonable probability that the result of the proceedings would have been different.

¶ 23 Defendant also argues that his sentence must be vacated because the trial court improperly based the length of his sentence on an aggravating factor that was not supported by the evidence. In particular, defendant argues that the trial court improperly based its sentencing decision on the fact that defendant fled to Canada because the record evidence does not support flight where defendant left the jurisdiction months after being charged. Defendant did not raise this argument

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at the sentencing hearing nor did he include it in a posttrial motion. Thus, it is forfeited. *People v. Bannister*, 232 Ill. 2d 52, 76 (2008).

¶ 24 Forfeiture aside, defendant was sentenced to eight years in prison. The sentencing range for a conviction for violation of bail bond is between four and fifteen years in prison. 720 ILCS 5/32-10(a) (West 2012); 730 ILCS 5/5-4.5-30(a) (West 2012). A sentence that is within the sentencing range is presumed to be proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 47. Again, whether defendant fled is a question of intent that was supported by some evidence that we cannot revisit on appeal. The trial judge, and presumably the jury, came to the conclusion that defendant did flee. While defendant offers a counter-argument to suggest that he did not flee, he fails to meet his burden under plain error review. There was ample evidence and other information before the trial court at the time of sentencing that could have, within the bounds of the trial court's discretion, supported a sentence of eight years. We will only vacate a sentence that is within the sentencing range if the trial court abused its discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). Here, it did not.

¶ 25 **CONCLUSION**

¶ 26 Accordingly, we affirm the judgment of the circuit court.

¶ 27 Affirmed.