FIRST DIVISION
DECEMBER 28, 2015

No. 1-13-2619

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 19681
	)	
JESUS SANCHEZ,	)	Honorable
	)	Paula M. Daleo,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Liu and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: Where defendant withdrew the posttrial *pro se* motion that included a claim of ineffective assistance of counsel, the trial court did not err in failing to conduct an inquiry into the claim pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). Defendant's contention that his sentence is excessive is forfeited and does not constitute plain error. Trial counsel was not ineffective for failing to call two character witnesses at sentencing or for failing to file a motion to reconsider sentence.

¶ 2 Following a jury trial, defendant Jesus Sanchez was convicted of aggravated criminal sexual assault and sentenced to 20 years in prison. On appeal, defendant contends that the trial court failed to conduct a proper *Krankel* inquiry into his posttrial *pro se* claim of ineffective

assistance of counsel. He further contends that this court should either reduce his sentence or remand for a new sentencing hearing where his sentence is excessive and where defense counsel was ineffective for failing to call known mitigation witnesses and for failing to file a motion to reconsider sentence.

¶ 3 For the reasons that follow, we affirm.

¶ 4 At trial, the victim, G.M., testified that she first met defendant on September 8, 2012, when she went to a nightclub for a friend's birthday party. G.M. and defendant danced, exchanged phone numbers, kept in contact through phone calls and text messages, and made plans to meet at a liquor store in Berwyn on September 14, 2012. At the arranged time, G.M. drove to the store, where defendant bought a bottle of vodka. G.M. and defendant then went to a park, where they walked, talked, and sat on a bench, drinking vodka mixed with soda. Around 10 p.m., they went to a bar. Defendant purchased a drink for G.M., but she did not like it, so she bought a bottle of beer instead. G.M. and defendant danced. Eventually, defendant asked G.M. if she wanted to go to a restaurant that was open late. A friend of defendant's asked if he could get a ride home, and the three of them got up to leave the bar. However, the friend was waylaid by his girlfriend, so G.M. and defendant went to defendant's car to wait for him. At first they hugged outside the car, but then they got in the car's back seat, where they hugged, kissed, talked, and laughed. After about five minutes, the friend knocked on the car door. G.M. testified that her clothes were on and she was not engaged in any type of sexual activity with defendant at that time. Defendant and G.M. moved to the front seat, and the friend got in the back.

¶ 5 G.M. testified that defendant dropped his friend off and then said he needed to stop at his own house to get money. Defendant drove through an alley and parked inside a garage. Although

he said he would be right back, G.M. did not want to stay in the dark garage by herself, so she asked if she could use the restroom. Because she knew defendant lived with his mother and brother, she did not feel uncomfortable going inside the house. G.M. used the restroom and then found defendant in his bedroom. Defendant showed her his military uniform, hugged her, and tried to kiss her. G.M. asked defendant whether they could leave for the restaurant because she was hungry. In response, defendant grabbed her and pulled her toward the bed. G.M. testified that defendant lifted her from her waist, threw her on her back on the bed, forced himself on top of her, and grabbed both her arms near the wrist. G.M. struggled and repeatedly screamed at defendant to stop. When defendant let go of one of her hands to try to unbuckle her jeans, she used her free hand to grab her pants and try to keep them up. Defendant forced his hand inside G.M.'s underwear and forced his fingers into her vagina several times, which was painful. He also put his hands under her bra on her breasts and sucked on her neck. During the struggle, defendant put his forearm against G.M.'s neck, which made it hard for her to breathe and made her lightheaded. When G.M. started kicking the wall and screaming, defendant put his hand over her mouth and nose. Just when G.M. thought she was going to faint, she heard knocking on the door and a man asking "if everything was okay because mom had called." Defendant let go of G.M.'s mouth and nose and said yes. G.M. testified that she called out no, things were not okay and she wanted to leave. Through the door, she asked the male voice whether she could leave. The man said she could, but did not open the door or come in to help. At this point, G.M. told defendant that she was sick, had low blood pressure, and needed salt so that she would not pass out. Defendant responded, "What the fuck?" but when G.M. insisted on salt, he left the room.

¶ 6 G.M. testified that she got up and tried to buckle her pants but could not because the zipper was broken. Defendant returned to the room and poured salt in her hand. According to G.M., defendant "ke[pt] saying I fucked up, and I told him, it's okay, I want to go at this point, I just want to go. And he says -- he keeps saying I fucked up, I tried to rape you." G.M. clarified that she told defendant "it's okay" because she was trying to calm him down, but that he responded, "it's not okay cause he could have killed me," and told her about his military training. Defendant and G.M. walked toward the kitchen and the back door. G.M. asked to use defendant's phone to call a friend, but defendant refused. He told G.M. that he wanted to drive her home and did not want anyone to know his phone number or where he lived. When G.M. insisted that she wanted to call a friend, defendant offered to call her a cab. After defendant made the phone call, he tried to pull her toward the back door, but G.M. told him she did not want to leave through the back and sat down in the kitchen. Eventually G.M. and defendant went to the front porch. G.M. could see a car's headlights about a block away. As she started walking toward the car, defendant tried to pull her toward the back yard. G.M. testified that she started screaming and kicking, and that when defendant let go of her, she took off her shoes and ran to the car, which was a taxi. Once inside the taxi, G.M. borrowed a pen and wrote defendant's address on her hand.

¶ 7 After the taxi driver dropped her off at her car, G.M. used her cell phone, which she had left in her car, to call a friend. At her friend's suggestion, G.M. called 911. Police officers and paramedics arrived and G.M. told them what had happened. At that time, G.M. told the officers that she did not want to press charges because she was afraid and did not want to see defendant again. G.M. went home and went to bed. When she woke up, she hurt all over and experienced pain when she urinated. She also noticed scratches on her cheek and neck and bruises by her

wrists, so she decided to go to the emergency room and press charges. After she was examined and a sexual assault kit was collected, G.M. spoke with detectives. A few days later, she went to the police station and identified defendant in a photo array.

¶ 8 Defendant's mother testified for the State that between 2 a.m. and 4 a.m. on the day in question, she heard defendant come into their two-flat, where she lived on the first floor and her two sons lived on the second floor. About 10 or 15 minutes later, she heard two "little screams" coming from the second floor. When pressed by the prosecutor, defendant's mother acknowledged that she had told the police that what she heard was a woman screaming very loudly. Defendant's mother testified that when she heard the screaming, she called her other son "to tell [defendant] to send the girl home because I thought that -- I didn't know what was happening." She also attempted to ring the doorbell to the second floor.

¶ 9 Defendant's brother testified for the State that sometime after 2 a.m., he was "dozing off" when he heard defendant and another person coming into the house. At some point he heard a scream, so he got up and knocked on defendant's bedroom door to ask what was going on. A woman answered that she wanted to use the washroom, and he told her to go ahead. Defendant's brother then went back to his own bedroom. He never saw the woman, but heard her go into the bathroom, heard her talking about a taxi cab, and heard defendant and the woman leave through the front door. Defendant's brother also testified that his mother rang the doorbell to see what was going on, as she heard screaming, but he told her that everything was okay.

¶ 10 Adrian Contreras, a Berwyn firefighter / paramedic, testified that about 3:40 a.m. on September 15, 2012, he treated G.M., who reported that she had been assaulted. Contreras noted

slight bruising on G.M.'s neck, but her blood pressure, heart rate, and respiratory rate were normal. G.M. refused care and transport to a hospital.

¶ 11 Jenna Hill, an emergency room nurse, testified that she treated G.M. about 3:30 p.m. on September 15, 2012. She described G.M. as tearful, anxious, and scared. G.M. reported that her vagina had been penetrated by fingers and complained of vaginal pain, neck pain, and pain with urination. Hill observed bruises across G.M.'s neck and noted an abrasion on her chin.

¶ 12 Cicero police officer Jason Stroud testified that he spoke with G.M. at the hospital. G.M. related what had happened to her and gave the officer defendant's name and address. Officer Stroud noted red marks on G.M.'s wrists and red marks and bruising on her cheek and neck.

¶ 13 Officer Stroud testified that he arrested defendant on September 21, 2012. At the police station, Officer Stroud read defendant his *Miranda* rights, and then he and his partner interviewed defendant about the night in question. Defendant related to the officers that he had met G.M. at a nightclub, and after a week of texting and telephone conversations, they met at a liquor store and then went to a bar. Defendant reported that about 3 a.m., they left the bar to go to a restaurant, but stopped at his house on the way to use the restroom. After G.M. used the restroom, defendant brought her into his bedroom, where they kissed on the bed. Defendant related that he placed G.M. on the bed, held her down by her arms, and told her "now you can't leave." G.M. said, "Stop, don't," but defendant placed his forearm on her neck and began taking off her pants with his other hand. Defendant placed his hand inside her underwear and his fingers in her vagina multiple times. G.M. screamed. Defendant told her, "I can't believe I'm raping you" and "Do you know I could kill you because I was in the Army." A short time later defendant's brother knocked on the door. G.M. asked to leave, and defendant's brother said she could.

Defendant let G.M. out of the bedroom and called a cab for her. He sat with her on the front porch until the cab arrived and G.M. ran to meet it. Officer Stroud acknowledged that defendant's statement was not recorded or videotaped.

¶ 14 Assistant State's Attorney Joe DiBella testified that he spoke with defendant in the early morning hours of September 22, 2012. After DiBella gave defendant *Miranda* warnings, defendant told him he "was sorry that things went too far" and that he needed help. Defendant related that he was kissing G.M., that she did not want to go any farther and said no, and that he became angry and put his hand down her pants anyway. Defendant said that although G.M. was holding up her pants, he was able to get two fingers inside her vagina. The zipper on G.M.'s pants broke. Defendant became more frustrated and choked G.M., who told him she was going to pass out and needed salt. Defendant told DiBella that he called a cab for G.M. He did not tell DiBella about any consensual sexual acts with G.M. in the back seat of a car, and he refused to have his statement reduced to writing.

¶ 15 Other-crimes witness S.V. testified that on May 11, 2012, she was at a bar in Berwyn when she met defendant, who bought drinks for her and her friends. S.V. and defendant talked and exchanged phone numbers. When the bar closed, defendant invited S.V. and her friends to go get something to eat, but S.V. declined because she was leaving with her friends. After S.V. had been at her friends' party for a while, defendant texted and called her, asking if she wanted to go get tacos. S.V. agreed, and defendant picked her up in a car. S.V. testified that they went to a restaurant, where defendant ate. When they left the restaurant, S.V. asked defendant to drive her to a particular address to meet her friend. Defendant agreed but said he wanted to drive past his house. He then parked the car near a church and said he wanted to talk.

¶ 16 S.V. testified that after about five minutes of talking with defendant, she texted her friend and asked her to come get her. The friend called defendant, but he did not answer the phone. Instead, he grabbed S.V.'s hair and arm and started kissing her. S.V. pushed defendant away and told him that she had a boyfriend and kids and could not "do this." Defendant got more aggressive, moved on top of S.V., and started biting and sucking on her neck and shoulder while she tried to push him off. S.V. managed to crawl into the back seat, but defendant followed and kept grabbing her all over. S.V. struggled and told defendant to stop and that she wanted to get out of the car and leave. Defendant grabbed S.V.'s neck and put his forearm against her chest, which made it hard for her to breathe. S.V. continued to struggle and yell at defendant. Eventually she got the back door open and stumbled halfway out of the car. Defendant grabbed S.V. by the neck and forced her back into the car. He held her down, grabbed her breasts, and told her that he loved her and she was not going to leave. Although S.V. told defendant to stop, he pulled down her pants and put his penis inside her vagina. When defendant finished, S.V. pushed her way out of the car and ran toward the church. Defendant ran after her, stating that he loved her and wanted her to get back in the car. S.V. called her friend, but told defendant she was calling the police. He ran back to his car. S.V. wrote down the license plate number as defendant drove away.

¶ 17 S.V. called the police and spoke with them at her friend's house. She then went to the hospital, where she was examined, and the police station, where she identified defendant in a photo array. About five months later, she identified defendant in a lineup.

¶ 18 Defendant called Misael Galvez, his friend, to testify. Galvez testified that on the night in question, he was at a bar with defendant and G.M. Galvez felt like a third wheel and asked

defendant if they could leave. As the three of them were heading outside, Galvez noticed a woman he wanted to talk to, so he stayed inside while defendant and G.M. went outside. After five or ten minutes, Galvez walked out to defendant's car. He opened the back door and saw defendant and G.M. in the back seat. Both were exposed from the waist down, and G.M. was lying on top of defendant. Galvez closed the door, and shortly thereafter, defendant and G.M. got out of the car and moved to the front seat. Galvez got in the back and defendant drove Galvez home. Galvez noticed that defendant and G.M. held hands during the drive.

¶ 19 Defendant testified that he first met G.M. at a club, where they exchanged phone numbers. The two talked during the week and arranged to "hang out" the next Friday. They met at a liquor store, bought vodka, and then drove to a park, where they walked, talked, and drank. G.M. told defendant she wanted to go dancing, so defendant drove them to a bar. There, defendant ordered drinks and G.M. got a beer. After a while, defendant offered a ride home to his friend Misael Galvez, who was also at the bar. Defendant, G.M., and Galvez started to leave the bar, but a woman intercepted Galvez. Galvez told defendant and G.M. to go ahead and wait in the car. Defendant testified that he and G.M. got into the back seat because they had been kissing while they were dancing in the bar, and he wanted to "get more intimate with her in the back seat." The two kissed and took off their pants. G.M. was lying on top of defendant in the back seat when Galvez opened the door and then closed it. Defendant and G.M. put their clothes on and moved to the front seat, and Galvez got into the back seat. According to defendant, he and G.M. held hands while driving Galvez home.

¶ 20 Defendant testified that after he dropped Galvez off, he drove G.M. to his house, where he lived with his mother and brother. After G.M. used the bathroom, he showed her his military

uniform in his bedroom. Defendant then hugged and kissed G.M., who kissed him back. Defendant closed the door and the pair moved to the bed. Defendant kissed G.M.'s neck, giving her hickeys, and unbuttoned and unzipped her pants. Defendant stated that he was "fingering" G.M., which he clarified meant he put two fingers inside her vagina. He tried to pull down her pants, but they would not move. On his third attempt to pull down her pants, G.M. yelled "stop" loudly. Defendant moved back and apologized, and a few seconds later, his brother knocked on the door and asked if everything was okay. Defendant said yes, but G.M. said she needed to use the bathroom and defendant's brother told her to go ahead.

¶ 21 Defendant denied ever holding his arm against G.M.'s throat or putting his hand over her mouth and nose. He also denied that she ever complained to him that she was going to pass out and needed salt, or that he retrieved salt for her. While G.M. was in the bathroom, defendant wondered why she would come to his house at three or four in the morning and thought "because of what had happened in the car, *** maybe it was going to go a step further." When G.M. came back from the bathroom, he told her she had to leave and called her a cab. G.M. wanted to wait for the cab in the kitchen, but defendant was in a bad mood so he told her she had to wait outside. G.M. refused, so defendant picked her up by her wrists and "ended up kicking her out." As soon as they got downstairs, she got into the cab, which was down the street.

¶ 22 With regard to S.V., defendant testified that they met at a bar and exchanged phone numbers. A few hours after they had separately left the bar, defendant picked S.V. up in his brother's car. They parked across the street from his house and talked for about an hour. Eventually, they moved to the back seat of the car and had consensual sex. Defendant testified that S.V. asked him to drive her home, but he told her he could not because he had a revoked

license. Defendant offered to call her a cab. When S.V. refused the cab, he asked if she could call her friends from the bar for a ride. S.V. got upset and said, "I just gave you some pussy and you can't even give me a ride to my house? Really." In response, defendant suggested that she could stay with him overnight, and then in the morning, he could take a risk driving her home because there would not be as many police officers around to pull him over. S.V. got out of the car and walked across the street to a church. Defendant followed and tried to talk to her, but eventually got back into the car and left.

¶ 23 Defendant testified that the police "changed up" his stories and put words in his mouth. He denied making the inculpatory statements Officer Stroud and assistant State's Attorney DiBella attributed to him. He also stated that he was asked to sign a written statement but refused.

¶ 24 In rebuttal, the State called Cicero police officer Jason Stroud, who repeated his previous testimony regarding what defendant told him and assistant State's Attorney DiBella.

¶ 25 Following closing arguments and instruction, the jury found defendant guilty of aggravated criminal sexual assault.

¶ 26 At the next court date, defense counsel presented a motion for a new trial, which the trial court denied. The parties prepared to move on to sentencing. After a witness was sworn, defense counsel asked to be heard and indicated that defendant had just informed him he no longer required his attorney's services and wanted to file a *pro se* posttrial motion, but needed copies of the trial transcripts to do so. When counsel stated that he had learned about defendant's wishes just minutes ago, defendant replied, "I tried calling him but he didn't -- he never picks up. I can't get ahold of him. I was trying to tell him that before." Defendant told the trial court that he had

prepared a handwritten motion, but wanted to obtain discovery, trial transcripts, the grand jury indictment, and evidence of other crimes in order to write a typed motion and present it to the court before sentencing.

¶ 27 The trial court told defendant that he was "not getting your discovery," and that if he wished to proceed *pro se* to sentencing, then it would have to determine whether he was capable of doing so. Defendant stated, "That's exactly what I want to do, your Honor." The trial court then allowed a recess for defendant to talk with his attorney.

¶ 28 Following the recess, defense counsel informed the trial court that defendant wished to represent himself at sentencing. The court stated it would grant defendant leave to file a "supplemental motion for a new trial" and admonished defendant regarding proceeding *pro se* at a sentencing hearing. Defendant indicated that he understood, and then asked if he could receive discovery, the grand jury indictment, and his trial transcripts so that he could "give a good posttrial motion." The trial court refused, explaining that the State would be required to give him discovery for the sentencing hearing, but that the trial was over. Defendant reiterated that he wanted to have "all the evidence" for his posttrial motion. The trial court directed defendant to give it what he planned on filing that day, which was a handwritten document titled "Motion for Reconsideration of Verdict." The following exchange ensued:

> "THE COURT: This is a multi -- this is a 23-page -- it's a motion for reconsideration of a verdict. You understand that is not the proper title. It's a motion for a new trial. That's what you're filing. And based on what you've written in here, it looks to me like you sat during the trial, you had sufficient information here to file this motion for a new trial, 23 pages' worth.

I will give you time to prepare for argument on this because the State does not have a notice of this motion, and they are entitled to a notice of this motion. And then we're going to proceed. If you wish to go *pro se* to a sentencing hearing, I will order them today to give you whatever they're going to present in the sentencing hearing. But I am not going to give you trial transcripts. I'm not going to give you anything else - -

THE DEFENDANT: So how can I get that stuff?

THE COURT: Well, after sentencing I'm going to give you your appellate rights. That will tell you you have the right to appeal and the decision of the jury trial and the sentencing. And if you at that time [*sic*] to continue to go *pro se,* that's one thing. Otherwise a lawyer will be appointed for you from the State Appellate Defender, I believe. You have to file a notice of a motion, but we're not there yet. You're not filing an appeal on this trial yet. You're filing a motion for a new trial, period.

The only reason I'm allowing you to do this is because it's timely. Otherwise you would not be allowed to file this because you didn't do so within 30 days of the trial. But it's 30 days, so we will hear this motion.

THE DEFENDANT: I just basically wanted to go *pro se* because I wanted to get all the information and basically put a good report why I think I never should have been found guilty.

THE COURT: That's what an appeal is for. That's not --

THE DEFENDANT: So I can't do this before I get sentenced?

THE COURT: No. You're doing it in this motion for new trial. That's what you're doing here. But I'm not giving you trial transcripts, and I'm not giving you discovery from the trial. That's all done. That's over with.

THE DEFENDANT: So how can I get it even if I have an attorney? Is it possible for me to get my trial transcripts?

THE COURT: I'm going to say this again to you.

THE DEFENDANT: I'm saying, like, can I go get it through public record, something I can pay for?

THE COURT: When the lawyer -- if you're asking for a lawyer to be appointed on appeal -- you have to first file a notice of appeal. That is all stuff after sentencing. Notice of appeal, appointment of lawyer. The lawyer will then order all the trial transcripts.

THE DEFENDANT: And I can get copies of that or he has to keep it?

THE COURT: I'm not going to give you advice or tell you what you're going to get or not get. We are not at that stage.

THE DEFENDANT: Well, I would rather have [defense counsel] represent me for the sentencing then.

THE COURT: What about this motion you presented?

THE DEFENDANT: I guess --

THE COURT: Are you withdrawing that?

THE DEFENDANT: Yes. I will just appeal it.

THE COURT: Okay. So you don't want a copy of this -- we're not going to put this in the court file. He is withdrawing it at this time. Is that correct?

THE DEFENDANT: Yes, ma'am.

THE CLERK: I think we need to file stamp this.

[ASSISTANT STATE'S ATTORNEY]: I think we need to put a file copy and then say it's withdrawn.

THE COURT: Are you ready to proceed on the sentencing hearing?

[ASSISTANT STATE'S ATTORNEY]: Yes, your Honor.

[DEFENSE COUNSEL]: Judge, am I correct, did I hear [defendant] say he wants me to represent him on the sentencing hearing?

THE COURT: That's what I heard.

THE DEFENDANT: Yes, I do.

[DEFENSE COUNSEL]: Fine. I'm prepared to do that.

THE COURT: Okay. Then let's proceed."

¶ 29 Defendant's withdrawn handwritten motion, which is included in the record on appeal, contained the following excerpt:

"The testimony as a whole ([G.M.]'s and [S.V.]'s, although this motion will concentrate more on [G.M.]'s, as she was the complaining witness and who the defendant was on trial for) was not clear and convincing. There are many discrepancies and a lot of the testimony is unbelievable. The trial minutes (which defendant plans to request at sentencing) will show a preponderance of these instances, and although it can definitely be argued (and will be argued) in a

> subsequent motion) [*sic*] that the defendant's counsel was disgracefully ineffective in drawing more attention to these discrepancies / areas of unbelievability in the witnesses whom are testifying against the defendant's testimony and asking subsequent questions to further display the unbelievability of such testimony, the discrepancies and, hence, the unbelievability are still there and the trial minutes will blatantly show such."

¶ 30 At sentencing, Cicero police detective Manuel Velazquez testified regarding an investigation involving a sexual assault report made by P.Z. on May 29, 2011. P.Z. told Detective Velazquez that defendant danced with her at a night club and then gave her a drink that immediately made her feel highly intoxicated. Defendant pulled her out of the club and got into a taxi with her. P.Z. could not recall what happened after that, but woke up the next morning fully dressed in a bed in an unfamiliar home. She asked defendant, who was in the room, whether they had had sex, but he stated they had not. Defendant drove P.Z. to a friend's house and then P.Z. went to work. While there, she noticed pain and bruising on her chest. At a friend's recommendation, P.Z. went to a hospital. Detective Velazquez testified that medical personnel noted bruising to P.Z.'s chest and breast and redness to her cervix, and that defendant's DNA was found on vaginal swabs taken from P.Z. P.Z. subsequently identified defendant in a lineup.

¶ 31 G.M. read a victim impact statement into the record. Defendant did not call any witnesses. In argument, the prosecutor pointed out that in the presentence investigation report, defendant reported that he felt like the victim in the case and stated that he did not need sex offender counseling. Arguing that defendant cannot be rehabilitated, the prosecutor recommended a sentence of 30 years' imprisonment. In mitigation, defense counsel characterized

defendant as outspoken, but asserted that he was not beyond rehabilitation. Counsel emphasized that defendant was a veteran whose only past offenses were traffic-related, and that he was a young man with two children.

¶ 32 Defendant addressed the court, apologizing for "whatever damage" he inflicted on the victim, for being aggressive, and for "putting her through whatever she is going through." Defendant stated that he did not understand where P.Z.'s allegations were coming from. He asserted that he and P.Z. kept in touch for a month after she came to his house and suggested that phone records would prove their continued contact. Defendant concluded by stating that he was "sorry for putting everybody through all this mess."

¶ 33 The trial court sentenced defendant to 20 years in prison. In announcing sentence, the court stated that it had considered in mitigation that defendant's prior "brushes with the law" only involved driving offenses and that defendant was apologetic. In aggravation, the court noted the necessity of deterrence, the facts of the case, and the planning that was involved. The court concluded, "And while I believe that there's no sentence, quite frankly, that would be sufficient to put these women in a position where they would feel safe and trusting of anybody anymore, I don't believe that the sentence of 30 years is appropriate. However, I am going to sentence you to 20 years in the Illinois Department of Corrections at 85 percent on this case."

¶ 34 Defendant did not file a motion to reconsider sentence, but did file a timely notice of appeal.

¶ 35 On appeal, defendant's first contention is that the trial court failed to conduct a proper inquiry into his posttrial *pro se* claims of ineffective assistance of counsel, as required by *People v. Krankel*, 102 Ill. 2d 181, 187-89 (1984). He asserts that while the handwritten *pro se* motion

that he tendered to the trial court included a claim of ineffectiveness, the trial court did not ask him any questions about those claims, but rather, "indicated that [it] would hold an improper adversarial proceeding where the State would be permitted to argue against [his] *pro se* ineffective assistance (and other) claims." Defendant argues that the trial court misled him into withdrawing his motion by telling him he would be able to raise his claim on appeal without first litigating the issue in the trial court. Defendant maintains that remand for a proper *Krankel* inquiry is required.

¶ 36 When a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, *Krankel* requires that the trial court conduct an inquiry to determine the factual basis for the claim. *Krankel*, 102 Ill. 2d at 189; *People v. Moore*, 207 Ill. 2d 68, 77-79 (2003). In order to trigger such an inquiry, a *pro se* defendant is not required to do any more than bring his claim to the trial court's attention. *Moore*, 207 Ill. 2d at 79. Conversely, no inquiry is required where the defendant fails to bring his ineffective assistance claim to the attention of the trial court. *People v. Zirko*, 2012 IL App (1st) 092158, ¶ 70. Where, as here, the issue on appeal is the adequacy of the *Krankel* inquiry made by the trial court, our review is *de novo*. *Moore*, 207 Ill. 2d at 75.

¶ 37 Here, defendant raised an issue of ineffectiveness in his *pro se* posttrial motion, in which he alleged that his trial counsel "was disgracefully ineffective" for not drawing more attention to "discrepancies/areas of unbelievability" in G.M.'s and S.V.'s testimonies. The record reveals that the trial court examined the *pro se* document and noted its length and how it was titled, but did not review the document's substance. After receiving the document from defendant, the court had a lengthy discussion with the defendant regarding what he was trying to accomplish. Not once during that discussion did defendant bring to the court's attention that his *pro se* motion included

an allegation of ineffective assistance of counsel. This may be due to defendant's lack of knowledge regarding the procedural, as well as, the substance of the legal process in which he sought to act *pro se*. Nevertheless, defendant asserted that he wanted to represent himself so that he could have access to the trial transcripts. Once the trial court made it clear to defendant that he would not be provided with the trial transcripts for the purpose of representing himself posttrial, defendant withdrew his motion and expressly stated that he wanted his attorney to represent him at sentencing. Again, a review of the record shows that defendant was very focused on obtaining the trial transcripts. He seemed to align his *pro se* representation with obtaining the trial transcripts. We disagree with defendant that the trial court induced him to withdraw his *pro se* motion by telling him it would conduct an improperly adversarial hearing on his claim of ineffectiveness and that the trial court misstated the law by indicating that defendant could raise this claim on appeal. Defendant's argument assumes that the trial court was aware that his *pro se* motion included a claim of ineffective assistance of counsel. The record does not support defendant's argument.

¶ 38 We find informative this court's decision in *People v. McGee*, 345 Ill. App. 3d 693 (2003). In *McGee*, the defendant filed and then withdrew a *pro se* posttrial motion alleging numerous claims of ineffective assistance of counsel. *Id*. at 699. On appeal, the defendant argued that once the court was put on notice of his allegations of ineffectiveness, it had a duty to make a preliminary inquiry into the validity of those allegations and into the withdrawal of the motion. *Id*. This court rejected the defendant's argument, finding that "the defendant withdrew his motion and effectively prevented the trial court from any substantive review of the motion." *Id*.

¶ 39 We reach the same conclusion as the *McGee* court. Here, as in *McGee*, defendant withdrew his *pro se* posttrial motion. Defendant cannot now complain that the trial court failed to conduct a *Krankel* inquiry when he himself prevented the trial court from substantively reviewing his *pro se* posttrial motion. Nothing in the record suggests that the trial court influenced defendant in withdrawing his *pro se* motion. On the contrary, the trial court explained the procedural steps to defendant, who then decided that since he could not get the trial transcripts at that point in the proceedings he no longer wished to proceed *pro se*. In the circumstances presented here, we cannot fault the trial court for failing to conduct a *Krankel* inquiry. Accordingly, defendant's contention fails.

¶ 40 Defendant's second contention on appeal is that this court should either reduce his sentence or remand for a new sentencing hearing. He argues that his 20-year sentence is excessive in light of his background and potential for rehabilitation, and that trial counsel was ineffective for failing to call certain character witnesses in mitigation and for failing to move to reconsider sentence.

¶ 41 In support of his argument that his sentence was excessive, defendant emphasizes that he was only 27 years old at the time of sentencing, that his only prior felony conviction was for driving on a revoked license, that he has close family ties, that he has maintained steady employment, that he belongs to a church, that he is an army veteran, and that he expressed remorse for causing G.M. emotional and physical pain. Defendant also asserts that the case "boiled down to a credibility contest" between him and G.M. and S.V. with regard to whether their sexual activity was consensual.

¶ 42 Defendant acknowledges that he did not file a motion to reconsider sentence, and that therefore, his claim that the sentence is excessive has been forfeited. Nevertheless, defendant asserts that the issue may be reached as plain error.

¶ 43 Sentencing issues are forfeited for review unless the defendant both objects to the error at the sentencing hearing and raises the objection in a postsentencing motion. *People v. Powell*, 2012 IL App (1st) 102363, ¶ 7, citing *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). However, forfeited sentencing issues may be reviewed for plain error. *Powell*, 2012 IL App (1st) 102363, ¶ 7, citing *Hillier*, 237 Ill. 2d at 545. To obtain relief under the plain error doctrine in the sentencing context, a defendant must show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *People v. Wooden*, 2014 IL App (1st) 130907, ¶ 10, citing *Hillier*, 237 Ill. 2d at 545. Before we consider application of the plain error doctrine, however, we must determine whether any error occurred. *Wooden*, 2014 IL App (1st) 130907, ¶ 10; *Powell*, 2012 IL App (1st) 102363, ¶ 7. This is because " 'without error, there can be no plain error.' " *Wooden*, 2014 IL App (1st) 130907, ¶ 10, quoting *People v. Smith*, 372 Ill. App. 3d 179, 181 (2007).

¶ 44 Sentencing decisions are entitled to great deference on appeal because the trial court is in a superior position to fashion an appropriate sentence based on firsthand consideration of relevant sentencing factors, including the defendant's credibility, demeanor, moral character, mentality, social environment, habits, and age. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). We will not disturb a sentencing determination absent an abuse of discretion. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). Sentences within the permissible statutory range may be deemed the result of an abuse of discretion only where they are "greatly at variance with the spirit and purpose of

the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 45 Here, the record indicates that the trial court was well aware of the mitigating factors identified by defendant on appeal. Not only were the factors included in the presentence investigation (PSI) report, but counsel also highlighted at sentencing that defendant's defense was consent, that he was young and lived with his family, that he had served in the army, and that his criminal background only included a traffic-related offense. Where mitigating evidence has been presented, it is presumed that the trial court considered it. *People v. Sven*, 365 Ill. App. 3d 226, 242 (2006).

¶ 46 The trial court sentenced defendant to 20 years' imprisonment, a term well within the permissible Class X sentencing range of 6 to 30 years. 730 ILCS 5/5-4.5-25(a) (West 2012). Given the facts of the case, the interests of society, and the trial court's consideration of relevant aggravating and mitigating factors included in the PSI report, we cannot find that defendant's sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210. Accordingly, we find no abuse of discretion in the length of defendant's sentence. Because the trial court did not commit error in sentencing defendant, plain-error analysis does not apply. *Powell*, 2012 IL App (1st) 102363, ¶ 19. Defendant's excessive sentence argument is forfeited.

¶ 47 Anticipating our determination regarding forfeiture, defendant argues that trial counsel was ineffective for failing to call character witnesses in mitigation and for failing to file a motion reconsider sentence. Defendant asserts that counsel should have presented testimony from Mariela Villalovos and Maria Garcia, who would have testified about defendant's good character.

He maintains that counsel knew about these witnesses, since prior to trial, he sought to be allowed to have them testify regarding their consensual relationships with defendant and defendant's "gentlemanly" conduct toward them. Defendant argues that presenting the testimony of these two women would have provided a significant counter-balance to the State's evidence in aggravation and further corroborated his rehabilitative potential. Finally, defendant argues that there was no valid strategic reason for counsel to fail to file a motion to reconsider sentence, and that he was prejudiced by counsel's failure in this regard because the trial court's imposition of a 20-year sentence was an abuse of discretion.

¶ 48 To establish ineffective assistance at sentencing, a defendant must show that (1) his counsel's performance at the sentencing hearing fell below an objective standard of reasonableness; and (2) the deficient performance so prejudiced the defense as to deny the defendant a fair sentencing hearing. *People v. Perez*, 148 Ill. 2d 168, 186 (1992), citing *Strickland v. Washington*, 466 U.S. 668 (1984). If a claim of ineffectiveness may be disposed of on the ground of lack of sufficient prejudice, a reviewing court need not consider whether counsel's representation was constitutionally deficient. *Strickland*, 466 U.S. at 697. To satisfy the prejudice prong of the *Strickland* test, a defendant must demonstrate that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

¶ 49 Here, to establish prejudice, defendant would have to show that, had counsel presented two character witnesses at sentencing and/or filed a motion to reduce sentence, a reasonable probability exists that he would have received a lesser sentence. See *People v. Arbuckle*, 2015 IL App (3d) 121014, ¶ 45. Defendant has not met that burden. At sentencing, the trial court

indicated that it had *considered mitigating factors,* including defendant's insignificant criminal history and expression of remorse, as well as aggravating factors, including the facts of the case, the harm caused to G.M. and S.V., and the need to deter others from committing similar crimes. The court stated that while it believed no sentence would be sufficient to put the victims in a position where they would feel safe and trusting of anyone again, it did not believe that the maximum sentence of 30 years as requested by the State, was appropriate. The trial court thereafter imposed a sentence of 20 years, a sentence well within the permissible Class X sentencing range of 6 to 30 years. 730 ILCS 5/5-4.5-25(a) (West 2012). While we acknowledge that the sentence imposed is on the high side of the range, we cannot say that the trial court erred. This is so, even if we may have imposed a lesser sentence had we been tasked with that responsibility. Defendant has not explained why he has concluded that, if the trial court had heard positive character evidence from the two women who had once been in relationships with defendant, the court would have imposed a shorter sentence. Defendant's argument that the testimony of the two women would be a counterbalance to the State's evidence is interesting, but speculative. Accordingly, we find no reasonable probability that had counsel presented these witnesses, the trial court could have been any more lenient in its sentencing. Additionally, given our determination above that the trial court did not commit error in sentencing defendant, we also find that defendant suffered no prejudice due to counsel's failure to file a motion to reduce sentence. Defendant's claims of ineffectiveness fail.

¶ 50 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 51 Affirmed.