THIRD DIVISION
June 10, 2015

No. 1-13-3825

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. 11 CR 18171
	)	
RANDALL BEHNING,	)	Honorable
	)	Joel Greenblatt,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment

ORDER

¶ 1 *Held*: The trial court properly admonished the defendant regarding his right to a jury trial, defendant expressed his understanding of that right and he voluntarily waived that right in open court resulting in a valid jury trial waiver. Where the evidence in the record supports a conviction for a more serious offense, conviction of a less serious offense not warranted. Because predatory criminal sexual assault, criminal sexual assault and aggravated criminal sexual abuse do not share identical elements, defendant's sentence did not violate the proportionate penalties clause.

¶ 2 Following a bench trial, defendant Randall Behning was convicted of 10 criminal sexual offenses committed against his minor stepdaughter and sentenced to a prison term of 36 years. Behning appeals claiming that the trial court failed to sufficiently admonish him of his right to a

jury trial and his mental and physical impairments precluded him from knowingly and understandingly waiving that right. Behning also argues that because his conduct embraced the less serious offense of aggravated criminal sexual abuse, he should have been convicted of that offense and not the more serious offenses of predatory criminal sexual assault and criminal sexual assault. Behning finally contends that his sentences for predatory criminal sexual assault and criminal sexual assault violate the proportionate penalties clause when those sentences are compared to the sentencing range for aggravated criminal sexual abuse. Finding no merit in any of Behning's claims, we affirm.

¶ 3 BACKGROUND

¶ 4 Behning was charged by indictment with four counts of predatory criminal sexual assault of a child (counts 1–4); two counts of indecent solicitation of an adult (counts 5 and 10); two counts of criminal sexual assault (counts 6 and 7); four counts of child pornography (counts 8, 9, 17 and 18); and six counts of aggravated criminal sexual abuse (counts 11–16). The victim, M.M., was born on May 23, 1995, and she was Behning's stepdaughter. M.M. was between 12 and 16 years old during the period of the alleged abuse. Behning was born on June 16, 1961, and was between 45 and 50 years old when the assaults occurred.

¶ 5 On May 30, 2013, Behning signed a jury waiver. During the hearing on Behning's motion to waive his right to a jury trial as to every count in the indictment, the following colloquy occurred:

> "THE COURT: If you would look up here, Mr. Behning, I would like to show you a paper. This paper is entitled jury waiver. The paper does contain the name of the case, the case number, today's date. And, sir, I direct your attention to the last line.
>
> Is that your signature?
>
> THE DEFENDANT: Yes, it is.

THE COURT: Did you read this paper before you signed it?

THE DEFENDANT: Yes, I did.

THE COURT: Sir, do you understand that you have an absolute right to a trial in front of a jury in this case?

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you know what a jury trial is?

THE DEFENDANT: Yes, I do. Yes.

THE COURT: Is it now your present intention to waive or give up your right to a trial by a jury in this case?

THE DEFENDANT: Yes, your Honor.

THE COURT: Has anybody forced you or threatened you to make this decision?

THE DEFENDANT: No, your Honor.

THE COURT: Are you at the present time under the influence of, or have you taken any alcohol, drugs, or medication of any kind?

THE DEFENDANT: No, your Honor.

THE COURT: And you understand that this is your decision; it is not the decision of your attorneys?

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: And is this, in fact, your free and voluntary decision?

THE DEFENDANT: Yes, your Honor.

THE COURT: Very well. With that, the jury waiver will be accepted by the Court and made a part of this court file."

¶ 6 The bench trial was scheduled for June 24, 2013. On the scheduled trial date, the State *nolle prosequi* two counts of predatory criminal sexual assault (counts 1 and 3) and two counts of child pornography (counts 9 and 18). Because of the sensitive nature of the subject matter of this appeal, we will summarize only the portions of M.M.'s and Behning's testimony relevant to the issues presented.

¶ 7 M.M. testified that during the early stages of her relationship with Behning, their relationship was a "fairly typical relationship between a father and daughter." In 2004, M.M. and her mother moved from Kentucky to live with Behning. Behning married M.M.'s mother in October 2008.

¶ 8 When M.M.'s mother began working the night shift around the fall of 2007, the nature of M.M.'s relationship with Behning changed and became more sexual. M.M. was 12 years old at that time and was entering the 7th grade. The change in their relationship started by Behning inviting M.M. to watch pornographic movies with him, which occurred on multiple occasions. At times when Behning invited M.M. to watch pornographic movies, he began touching her in a sexual way and performed oral sex on her. In early 2008, Behning began having sex with M.M., still 12 years old, and did so once or twice a month until after her 13th birthday.

¶ 9 During the summer before M.M. started her freshman year of high school, Behning still wanted sex, but was not actually doing anything physically to her. M.M. began bargaining with Behning by telling him that if he did not say anything sexual for a certain period of time, she would have sex with him. M.M.'s bargaining reduced the frequency of the sexual incidents, which stopped occurring when M.M. was 14 or 15 years old, but she continued bargaining with him until she was 16.

¶ 10 At the close of the State's case, Behning moved for a directed verdict on all counts, and the trial court granted the motion as to one count of indecent solicitation of an adult (count 5) and two counts of aggravated criminal sexual abuse (counts 13 and 15). Behning then testified on his own behalf.

¶ 11 Behning testified that he was honorably discharged from the Army as a disabled veteran, and is college educated, but one class short of receiving a bachelor's degree. Behning took classes at Devry University in computer information sciences with a focus on security.

¶ 12 Until August 31, 2011, the day before M.M. and her mother left the house after reporting the assaults to the police, Behning would spend approximately 60 hours a week with M.M.

¶ 13 On June 28, 2013, the trial court found Behning guilty on 10 of the 18 counts he was charged with, and ordered a presentence investigation report (PSI). On July 29, 2013, Behning filed a post-trial motion seeking reversal of the verdict or, alternatively, a new trial mainly asserting the court erred in the weight given to the testimony of witnesses and that the State failed to prove him guilty beyond reasonable doubt as to each element of predatory criminal sexual assault of a child, indecent solicitation of an adult, criminal sexual assault, child pornography and aggravated criminal sexual abuse. On September 10, 2013, the trial court denied Behning's post-trial motion.

¶ 14 According to the PSI, Behning was badly injured in a helicopter accident in 1982 while he was enlisted in the Army. Behning considers himself to be an 80% disabled veteran suffering from a long list of physical ailments. Behning received counseling on and off over a period of two years for "situational depression," but that depression had passed by the time of his incarceration. In the fall of 2007, Behning enrolled at Devry University and studied computer information sciences with a focus in security, but needs to complete one more class to earn a bachelor's degree. Behning had no prior federal or state convictions or pending charges.

¶ 15 After hearing arguments regarding sentencing, the trial court imposed the following sentences:

Count	Charge	Years' imprisonment	Class
2	Predatory criminal sexual assault (720 ILCS 5/12-14.1(A)(1)) (sexual penetration (intercourse)/victim under 18)	8 (consecutive)	X
4	Predatory criminal sexual assault (720 ILCS 5/12-14.1(A)(1)) (sexual penetration (oral)/victim under 18)	8 (consecutive)	X
6	Criminal sexual assault (720 ILCS 5/12-13(A)(3)) (sexual penetration (intercourse)/victim under 18 and family member)	6 (consecutive)	1
7	Criminal sexual assault (720 ILCS 5/12-13(A)(3)) (sexual penetration (oral)/victim under 18 and family member)	6 (consecutive)	1
8	Manufacturing child pornography (720 ILCS 5/11-20.1(a)(1)(iii)) (victim under 18 and engaged in any act of masturbation)	5 (concurrent)	1
10	Indecent solicitation of an adult (720 ILCS 5/11-6.5(a)(1)(ii)) (arranged intercourse for a person at least 17 years old and victim was between 13 and 17 years old)	5 (concurrent)	1
14	Aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i)) (sexual conduct- sexual gratification or arousal/victim under 13 years old)	5 (concurrent)	2
17	Possession of child pornography (720 ILCS 5/11-20.1(a)(6)) (victim under 18 years old and engaged in any act of masturbation)	3 (consecutive)	3

The trial court also merged two counts of aggravated criminal sexual abuse into two counts of criminal sexual assault. Behning filed a motion to reconsider the sentence asserting the trial court failed to give sufficient weight to factors in mitigation and that the court should re-sentence him to the minimum imprisonment term for the convicted offenses. The trial court denied Behning's motion to reconsider, and Behning timely appealed.

¶ 16 ANALYSIS

¶ 17 A. Jury Waiver

¶ 18 Behning claims his convictions should be reversed because the trial court tendered insufficient jury waiver admonishments, which did not allow for a knowing and voluntary waiver of his right to a jury trial. Behning acknowledges that he failed to preserve the claimed error for review, but asserts we may review his claim under the plain-error doctrine.

¶ 19 Under the plain-error doctrine of Supreme Court Rule 615(a) (Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967)), unpreserved errors are reviewable "when a clear and obvious error occurs and: (1) the evidence is closely balanced; or (2) that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). Behning asserts that whether his jury waiver was valid affects a substantial right; thus, his claim is reviewable under the plain-error doctrine. We agree. This court has routinely reviewed an unpreserved claim of an invalid jury waiver on the basis that a fundamental right is implicated. *People v. Stokes*, 281 Ill. App. 3d 972, 976 (1996) (cases cited therein); see also *People v. Bracey*, 213 Ill. 2d 265, 270 (2004); *In re R.A.B.*, 197 Ill. 2d 358, 363 (2001) (recognizing that a defendant's right to a jury trial is a fundamental right reviewable under the plain-error doctrine). Because Behning has a fundamental right to a jury trial guaranteed by our federal and state constitutions (*Bracey*, 213 Ill. 2d at 269), we will address the merits of his jury trial waiver claim.

¶ 20 The merits of Behning's claim rest on the assertion that his physical and mental limitations impacted his ability to knowingly and intelligently waive a jury trial, and that the trial court failed to sufficiently inform him of his right to a jury trial. In support of his limitations, Behning relies on the PSI report that details his physical and psychological issues. Behning also claims that the lack of a criminal history and unfamiliarity with the judicial process prevented

him from understanding and knowingly waiving his right to a jury trial. Behning further claims that the executed written jury waiver is insufficient to establish that he understood the ramifications of signing it.

¶ 21 A defendant may waive his fundamental right to a jury trial, but the waiver must be knowingly and understandingly made in open court. 725 ILCS 5/103-6 (West 2012); *Bracey*, 213 Ill. 2d at 270; *In re R.A.B.*, 197 Ill. 2d at 364. Although the trial court must ensure that a defendant's jury trial waiver was knowing and voluntary, there is no formulaic admonishment or advice the court must provide before deeming a waiver effective, and the effectiveness of the waiver rests on the facts and circumstances of each particular case. *Bannister*, 232 Ill. 2d at 66; *Tooles*, 177 Ill. 2d at 469; *Bracey*, 213 Ill. 2d at 269. The critical determination is whether a defendant waived his right to a jury trial with the fundamental understanding that his case would be decided by a judge and not a jury. *Bannister*, 232 Ill. 2d at 69. Because the facts are not in dispute, we review the legal issue of whether Behning effectively waived his right to a jury trial *de novo*. *Bracey*, 213 Ill. 2d at 270.

¶ 22 The particular facts and circumstances here support the finding that Behning's waiver of his right to a jury trial was knowing and voluntary. We first consider Behning's educational level. The record reveals that Behning earned a high school diploma and nearly completed the coursework for a bachelor's degree. Nothing in the record indicates that Behning's level of education would have prevented him from understanding that he had a right to a jury trial and was waiving that right. Behning's inexperience with the judicial system likewise does not override the evidence in the record establishing that he was capable of understanding the impact of a jury trial waiver even though he had no prior convictions. The cases Behning cites regarding the significance of his unfamiliarity with the judicial process are distinguishable because the defendants in those cases were either not represented by counsel (*People v. Sebag*,

110 Ill. App. 3d 821, 829 (1982)), used a language interpreter who may not have adequately conveyed the meaning of a jury trial (*People v. Phuong*, 287 Ill. App. 3d 988, 996 (1997)) or were not informed of the right to a jury trial at all (*People v. Mitchell*, 21 Ill. App. 3d 171, 176-77 (1974)). Similar circumstances were not present here.

¶ 23 Although Behning is physically disabled and received counseling for "situational depression," he fails to explain how those impairments would have prevented him from knowingly and understandingly waiving his right to a jury trial. Moreover, the trial court verified that Behning was not under the influence of any alcohol, drugs or medication of any kind, which could have impacted his ability to effectively waive his right to a jury trial.

¶ 24 We also note the record includes a jury waiver signed by Behning. A signed jury waiver is not conclusive proof that a defendant knowingly and understandingly waived his right to a jury, but it memorializes the defendant's decision to waive that right. *Bannister*, 232 Ill. 2d at 66; *People v. Rincon*, 387 Ill. App. 3d 708, 718 (2008). The trial court verified that Behning read the written jury trial waiver before he signed it and that it was his signature on the waiver. The trial court also verified that Behning understood that the decision to waive a jury trial was his decision, not his attorney's decision, and that his decision was made freely and voluntarily.

¶ 25 Turning to the trial court's admonishments, the trial court fully informed Behning regarding his right to a jury trial. The trial court expressly asked Behning in open court not only if he understood that he had an absolute right to a jury trial, but also if he understood what a jury trial was, and Behning responded affirmatively to both questions. Behning claims that the trial court's admonishments were insufficient because the trial court failed to inquire whether he was "promised" anything in exchange for waiving his right to a jury trial. Although the trial court did not ask Behning that specific question, Behning was asked if the decision to waive a jury trial was his free and voluntary decision, which is another way of asking whether he was induced to

waive a jury trial by "promises" made to him. Moreover, no precise formula exists regarding the admonishments to be given to a defendant regarding a jury trial waiver. *Bannister*, 232 Ill. 2d at 66; *Tooles*, 177 Ill. 2d at 469; *Bracey*, 213 Ill. 2d at 269. Contrary to Behning's assertions, the admonishments given here were more than meaningless incantations and adequately disclosed the information necessary for him to waive a trial by jury. Importantly, after the trial court's admonishments, Behning made no objection to the case proceeding to a bench trial. Finally, the passage of nearly one month between the time Behning waived his jury trial and the start of his bench trial is not a sufficient basis to conclude that his jury trial waiver was no longer valid. See *People v. Frey*, 103 Ill. 2d 327, 333 (1984) (defendant waived his right to a jury trial on October 8, 1981 and that waiver applied to a subsequent charge filed on January 27, 1982 and the bench trial held on March 18, 1982).

¶ 26 The record conclusively establishes that Behning knowingly and intelligently waived his right to a jury trial. Because Behning is challenging the validity of his jury trial waiver, he bears the burden of establishing that the waiver was invalid. *People v. Gibson*, 304 Ill. App. 3d 923, 929-930 (1999). Behning failed to meet that burden, especially where: (i) the trial court adequately admonished him regarding his right to a jury trial; (ii) he verbally waived that right in open court with the full understanding and knowledge of the right he was relinquishing; and (iii) he executed a written jury trial waiver.

¶ 27 B. Lesser-Included Offense and Sentencing

¶ 28 Behning next claims that the trial court erred in convicting him of and imposing a sentence based on the offenses of predatory criminal sexual assault and criminal sexual assault instead of the less serious offense of aggravated criminal sexual abuse because all three offenses involved the same sexual conduct. We disagree. Our review of Behning's lesser-included

offense claim is *de novo*. *People v. Kolton*, 219 Ill. 2d 353, 361 (2006); *People v. Kennebrew*, 2013 IL 113998, ¶ 18.

¶ 29 Although Behning correctly recognizes that *Kolton*, 219 Ill. 2d at 371, and *Kennebrew*, 2013 IL 113998, ¶ 47, both held that aggravated criminal sexual abuse is a lesser-included offense of predatory criminal sexual assault, those cases are inapposite. Our supreme court in *Kolton* held that no error occurred in finding the defendant guilty of aggravated criminal sexual abuse–a conviction that he was not charged with–because that offense was a lesser-included offense of the predatory criminal sexual assault charge that was alleged in the indictment. *Kolton*, 219 Ill. 2d at 356, 371. In *Kennebrew*, our supreme court likewise held that the uncharged offense of aggravated criminal sexual abuse was a lesser-included offense of predatory criminal sexual assault because the elements of that more serious offense encompassed the elements of aggravated criminal sexual abuse. *Kennebrew*, 2013 IL 113998, ¶¶ 44, 47, 48.

¶ 30 *Kolton* and *Kennebrew* also addressed whether a defendant's due process rights were violated by convicting him of an offense of which he had no notice because he was not charged with that offense. A defendant's right to notice of the charges against him is the rationale underlying the charging instrument approach. Under the charging instrument approach, the allegations in the charging instrument are analyzed to determine whether the description of the more serious offense includes a "broad foundation" or "main outline" of the less serious offense so that notice of all possible lesser-included offenses is provided to the parties allowing them to sufficiently plan their trial strategies. *Kolton*, 219 Ill. 2d at 361. Behning raises the charging instrument approach, but that approach is irrelevant here where the trial court found Behning guilty of the more serious offenses charged in the indictment. Because the evidence against Behning supported his convictions on the more serious offenses charged in the indictment, *Kolton* and *Kennbrew* are inapposite.

¶ 31 A detailed recitation of the acts Behning committed upon M.M. is not necessary, especially since Behning "pretermits challenging the sufficiency of the evidence regarding guilty *vel non*," and the evidence in the record irrefutably establishes Behning's guilt of the more serious offenses. Based on the nature of the offenses and the evidence in the record, we cannot agree that the trial court's findings that he was guilty of predatory criminal sexual assault and criminal sexual assault "were fundamentally flawed" on the basis that his conduct instead embraced aggravated criminal sexual abuse. Although Behning is correct that aggravated criminal sexual abuse may be considered a lesser-included offense of predatory criminal sexual assault, there is no authority that a defendant must be found guilty of a lesser included offense (aggravated criminal sexual abuse) when the evidence in the record firmly supports findings of guilt on the more serious offenses (predatory criminal sexual assault and criminal sexual assault). Moreover, Behning was a family member who committed multiple sexual offenses, which included sexual penetration, against M.M. beginning when she was 12 years old and continuing for several years. Finding Behning guilty of the less serious offense would not adequately reflect the severity of his conduct, which is why both predatory criminal sexual assault and criminal sexual assault are offenses separate from aggravated criminal sexual abuse.

¶ 32 In a related argument, Behning claims that his sentences violate the proportionate penalties clause because the trial court imposed sentences based on the more serious offenses of predatory criminal sexual assault and criminal sexual assault and not on the less serious offense of aggravated criminal sexual abuse. Behning concedes that this claim was forfeited for review because he failed to raise it below, but contends that this constitutional issue may be reviewed nonetheless because a challenge to a sentencing scheme as violating the proportionate penalties clause may be raised at any time in the proceedings. *People v. Guevara*, 216 Ill. 2d 533, 542 (2005). Behning's argument fails because he is not challenging the constitutionality of a statute,

but rather the trial court's application of a statute and, similar to his previous argument, he contends that he should have been sentenced for aggravated criminal sexual abuse–a Class 2 felony–instead of predatory criminal sexual assault–a Class X felony–and criminal sexual assault–a Class 1 felony.

¶ 33 To properly preserve a sentencing issue for review, a defendant must contemporaneously object and file a written postsentence motion raising the issue. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Although Behning filed a postsentence motion challenging his sentence, he failed to raise this specific claim in that motion; thus, his claim is forfeited. But we may still review this issue if Behning establishes plain error. Unpreserved sentencing errors are reviewable under the plain-error doctrine of Rule 615 where "(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." *Id*. at 545. The first step in conducting a plain-error analysis is determining whether any error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Behning does not assert that his claim is reviewable under the first prong of the doctrine; instead, he asserts that the court's error in sentencing him for the more serious offenses is so egregious that he was denied a fair sentencing hearing. Behning bears the burden of persuasion under a plain-error review. *Id.*

¶ 34 A defendant's proportionality challenge is based our state constitution providing that " '[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.' " *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005) (quoting Ill. Const. 1970, art. 1, § 11). A proportionate penalties challenge may be asserted in either of the following two ways: (1) the penalty "is cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community" or (2) "offenses with identical elements are given different sentences." *People v. Hawkins*, 409 Ill. App. 3d 564, 567-68 (2011) (citing *Sharpe*, 216 Ill. 2d at 487-88). The first method of raising a

proportionate penalty claim is not at issue here; rather, Behning advances the second method. Behning posits that (i) predatory criminal sexual assault and criminal sexual assault impose a harsher sentence than aggravated criminal sexual abuse, (ii) his conduct embraced aggravated criminal sexual abuse and (iii) he should have been sentenced based on the less serious offense. We review Behning's proportionate penalties challenge *de novo*. *People v. Taylor*, 2015 IL 117267, ¶ 11.

¶ 35 Under the identical elements test, the proportionate penalties clause is implicated only when the elements of the offenses being compared are *identical.* *Hawkins*, 409 Ill. App. 3d at 568 (quoting *People v. Graves*, 207 Ill. 2d 478, 483 (2003)). The elements of predatory criminal sexual assault, criminal sexual assault and aggravated criminal sexual abuse are as follows:

(1) *Predatory Criminal Sexual Assault* (Class X felony): the accused "was 17 years of age or over and commits an act of sexual penetration with a victim who was under 13 years of age when the act was committed." 720 ILCS 5/12-14.1(A)(1) (West 2010) (now known as 720 ILCS 5/11-1.40 (West 2014)).

(2) *Criminal Sexual Assault* (Class 1 felony): the accused "commits an act of sexual penetration with a victim who was under 18 years of age when the act was committed and the accused was a family member." 720 ILCS 5/12-13(a)(3) (West 2010) (now known as 720 ILCS 5/11-1.20 (West 2014)).

(3) *Aggravated Criminal Sexual Abuse* (Class 2 felony): the accused "commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the accused was at least 5 years older than the victim." 720 ILCS 5/12-16(d) (West 2010) (now known as 720 ILCS 5/11-1.60 (West 2014)).

¶ 36 To prevail on a proportionate penalties claim, Behning must establish that the three offenses have identical elements, but the penalties are disproportionate. *Hawkins*, 409 Ill. App.

3d at 572 (citing *Graves*, 207 Ill. 2d at 483). Before addressing whether the penalties are disproportionate, it must first be determined that the offenses have identical elements. *Id*. at 569. As reflected above, the three offenses do not have identical elements and the distinction between the offenses is plain and obvious; mainly, predatory criminal sexual assault requires the victim to be under 13 years of age and the offender to be at least 17 years of age; criminal sexual assault involves an offender who is a family member of the victim and a victim who is under 18 years of age; and aggravated criminal sexual abuse requires the victim to be between the ages of 13 and 17 and the offender to be at least 5 years older than the victim. A comparison of the offenses readily reveals that the offenses do not share identical elements; thus, Behning's claim of a proportionate penalties violation must fail. See *People v. Taylor*, 2015 IL 117267, ¶¶ 14, 16 (where two offenses have identical elements, but disparate sentences, a proportionate penalties violation occurs). Because the elements of the three offenses are not identical, it is not necessary to determine whether the different penalties imposed for each offense are unconstitutionally disproportionate as our constitution is violated only when offenses with *identical* elements are given different sentences. *Id.*; *Hawkins*, 409 Ill. App. 3d at 572 (citing *Graves*, 207 Ill. 2d at 483). Consequently, having found no error, there can be no plain error, and the trial court properly sentenced Behning based on his convictions for predatory criminal sexual assault and criminal sexual assault.

¶ 37 CONCLUSION

¶ 38 The record establishes that Behning's jury trial waiver was knowing and voluntary. No factors unique to Behning, such as his physical impairments or his lack of prior convictions, raise any doubt regarding the validity of the waiver. The evidence in the record supports Behning's convictions for predatory criminal sexual assault and criminal sexual assault precluding a conviction on the less serious offense of aggravated criminal sexual abuse. The sentences

imposed relating to his convictions for predatory criminal sexual assault and criminal sexual assault did not violate the prohibition against disproportionate penalties because those offenses do not share identical elements with the offense of aggravated criminal sexual abuse. We therefore affirm the judgment of the circuit court of Cook County.

¶ 39 Affirmed.