2015 IL App (2d) 131243-U
No. 2-13-1243
Order filed November 23, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ROBERT BOWERS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 12-CF-817 Honorable Fernando L. Engelsma, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Schostok and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court committed no plain error in considering double hearsay in a presentencing report, as the evidence at issue was corroborated by other materials, including defendant's criminal history and statement in allocution, and defendant never denied the matter asserted.

¶ 2 Defendant, Robert Bowers, appeals his sentence of six years' incarceration for aggravated criminal sexual abuse (720 ILCS 5/11-1.60(b) (West 2012)). He contends that the trial court wrongly considered double hearsay at sentencing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was convicted of two counts of aggravated criminal sexual abuse. Evidence at trial included that defendant sent sexually suggestive text messages to his stepdaughter, P.W., and touched her breast. Defendant contended that he sent the messages to investigate whether the girl was dating a boy over 18 and that he touched her breast to see if she was pregnant.

¶ 5 A presentence investigation report showed that defendant had nine prior convictions, including several felony convictions for drug offenses, property offenses, and writing bad checks. He also had convictions in 2001 for statutory rape and statutory sodomy in Missouri. The report indicated that defendant had been arrested for those offenses on January 1, 2000. An addendum to the report contained a statement of facts prepared by the State's Attorney's office. That addendum stated that, on September 15, 2000, officers in Missouri responded to a report of sexual abuse of a child. It appears that the September 15, 2000, date was likely in error and was actually meant to be listed as 1999. The officers spoke with defendant's stepdaughter from a previous marriage, V.S., who was 10 years old. V.S. reported that defendant had sexually abused her, including fondling her breast and penetrating her vagina with his penis. She reported that defendant had been sexually abusing her for the past four years. A physical examination of V.S. showed that her vagina had been penetrated. There were no objections to the addendum, and defendant did not attack the accuracy of it.

¶ 6 Before sentencing, defendant underwent a sex-offender evaluation. The report of the evaluator, Jeffrey Martin, was submitted to the trial court. Martin reported that the convictions in Missouri were based on two incidents in which defendant digitally penetrated V.S. and later attempted intercourse with her. The report indicated that defendant gave Martin that description of the events. In regard to P.W., Martin found that defendant's conduct was consistent with

grooming behavior, which facilitates the desensitization of boundary violations and progression of sexualized interactions.

¶ 7 Using various assessments, Martin found that defendant's overall classification of risk was low and that defendant was not likely to present a significant risk to the community, provided that he was supervised under sex-offender-specific probation. However, Martin also noted that defendant's level of treatment motivation was somewhat lower than was typical with individuals seen in treatment settings. He noted evidence that defendant was satisfied with himself and saw little need to change his behavior and that defendant might not be experiencing sufficient distress to feel that treatment was warranted. Martin found that defendant reported a number of strengths that were positive indications for a relatively smooth treatment process if he were willing to make a commitment to treatment. Ultimately, Martin found that defendant was an appropriate candidate for community-based treatment, with a good prognosis for successfully completing such a program.

¶ 8 Defendant made a statement in allocution and told the court that he made "a bad choice" in 1999, but that he completed his probation and sex-offender class. He denied sexually abusing P.W., stating that he touched her only to see if she was pregnant.

¶ 9 Based on Martin's report, defendant sought a sentence of probation. The State asked that defendant be incarcerated based on his criminal history, indications in Martin's report that he had low treatment motivation, and the fact that he reoffended after his previous probation and treatment.

¶ 10 The trial court discussed the evidence in aggravation and mitigation at length. During that discussion, the court stated that it was not convinced by defendant's statement in allocution. It also stated that it was "a bit shocked" by Martin's report, adding "I'm not sure he had the facts

of the Missouri case." The court found that Martin's conclusions were not consistent with the factual circumstances, and thus it did not give extensive weight to those conclusions. The court noted defendant's criminal record of serious felonies and that the case before it was a repeat offense, and it found that defendant presented a risk of harm to young girls if placed in a position with access to them. The court sentenced defendant to six years' incarceration with two years of mandatory supervised release.

¶ 11 Defendant moved to reconsider, arguing that the court should have given more weight to Martin's recommendations. No argument was made about the addendum. The motion was denied, and defendant appeals.

¶ 12 II. ANALYSIS

¶ 13 Defendant contends that the trial court erred by considering double hearsay in the addendum at his sentencing hearing. The State argues that the trial court properly considered the evidence and that defendant forfeited his argument.

¶ 14 Defendant concedes that he did not raise the issue of double hearsay in the trial court. Generally, sentencing issues not raised in a motion to reconsider the sentence are forfeited. *People v. Yaworski*, 2011 IL App (2d) 090785, ¶ 5. However, defendant asks that we review the issue for plain error.

¶ 15 "The plain-error doctrine is a narrow and limited exception." *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). "To obtain relief under this rule, a defendant must first show that a clear or obvious error occurred." *Id.* "In the sentencing context, a defendant must then 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." *Id.* "Under both prongs of the plain-error

doctrine, the defendant has the burden of persuasion." *Id.* If the defendant fails to meet his burden, plain error will not be found. *Id.*

¶ 16 "[T]he trial court is in the best position to fashion a sentence that strikes an appropriate balance between the goals of protecting society and rehabilitating the defendant." *People v. Risley*, 359 Ill. App. 3d 918, 920 (2005). Thus, we may not disturb a sentence within the applicable sentencing range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). A sentence is an abuse of discretion only if it is at great variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Id.* at 210. In determining an appropriate sentence, relevant considerations include the nature of the crime, the protection of the public, deterrence, and punishment, as well as the defendant's rehabilitative prospects. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). The weight to be attributed to each factor in aggravation and mitigation depends upon the particular circumstances of the case. *Id.*

¶ 17 "A sentencing court has great latitude in determining the types and sources of information that will be admitted to assist in determining a sentence imposed within the statutory limits; evidence may be admitted where it is deemed relevant and reliable, and that decision is within the discretion of the sentencing court." *People v. Williams*, 272 Ill. App. 3d 868, 878 (1995). "[A] presentence report is generally a reliable source for the purpose of inquiring into a defendant's criminal history." *People v. Tapia*, 2014 IL App (2d) 111314, ¶ 45 (citing *People v. Williams*, 149 Ill. 2d 467, 491 (1992)). A defendant has an obligation to notify the sentencing court if he believes that the presentence report is deficient. *Id.*

¶ 18 "[H]earsay testimony is not *per se* inadmissible at a sentencing hearing as unreliable or as denying a defendant's right to confront accusers." *People v. Foster*, 119 Ill. 2d 69, 98 (1987).

An objection to it goes to the weight and not admissibility. *Id*. Generally, when our supreme court has approved the admission of double hearsay, at least some parts of the double hearsay have been corroborated by other evidence. *Id*. However, uncorroborated double hearsay is not inherently unreliable, and it can be admitted where the information was compiled during an official investigation and was not directly challenged. *Id*. at 98-99. A report has been deemed partially corroborated when biographical information in the report matched biographical information in other presentencing materials. See *Williams*, 272 Ill. App. 3d at 878-79. Moreover, when the defendant never directly attacked the truth of the matter asserted, the court did not abuse its discretion in considering it. *Id*. at 879.

¶ 19 Here, while the addendum contained an inconsistency concerning the date of the investigation and the arrest, it was partially corroborated in that it accurately provided defendant's name, the name of his former wife, and the fact that he formerly resided in Missouri. Other materials showed that he was arrested around that time in Missouri and eventually pleaded guilty to statutory rape and statutory sodomy. At sentencing, defendant admitted that he "made a mistake" in 1999. Moreover, defendant did not just fail to object to the addendum; he never denied the facts provided in it. Thus, the trial court's consideration of it was not a clear or obvious error. See *id*. Accordingly, there was no plain error.

¶ 20 III. CONCLUSION

The trial court did not plainly err by considering the addendum to the presentence investigation report. Accordingly, the judgment of the circuit court of Winnebago County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 21 Affirmed.