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2015 IL App (3d) 130511-U

Order filed July 20, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-13-0511
	)	Circuit No. 10-CF-500
DOMINICK M. SANDERS,	)	Honorable
Defendant-Appellant.	)	Kevin Lyons, Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices Carter and O'Brien concurred in the judgment.

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**ORDER**

¶ 1 *Held:* (1) The trial court improperly considered a factor inherent in the offense of first degree murder during sentencing, but this unpreserved error is not reversible under the plain error doctrine. (2) The defendant's DNA fee is vacated, and the remaining costs are reversed and remanded with directions.

¶ 2 A jury found the defendant, Dominick M. Sanders, guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2010)), aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)), aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1) (West 2010)), aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1) (West 2010)), and unlawful

possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)). After a hearing, the trial court sentenced the defendant to 45 years' imprisonment for first degree murder, plus a 25-year firearm enhancement, and a consecutive term of 25 years' imprisonment for aggravated battery with a firearm. The court also sentenced the defendant to concurrent terms of 10 years' imprisonment for aggravated discharge of a firearm and 7 years' imprisonment for aggravated unlawful use of a weapon.<sup>1</sup> No sentence was entered on the unlawful possession of a weapon by a felon count.

¶ 3 On appeal, the defendant argues that: (1) the trial court erred when it considered a factor inherent in the offense during sentencing, overemphasized the defendant's nonviolent criminal history, and failed to consider the defendant's relative youth during sentencing; and (2) his DNA fee must be vacated because his DNA was previously registered, and his cost assessments are subject to multiple errors. We affirm in part, vacate in part, and remand with direction.

¶ 4 **FACTS**

¶ 5 The evidence at the defendant's jury trial showed that Nick Renfro and his brother, Davon, got into an argument with Willie Wilson and a second individual named "Willard" or "Willis." The argument escalated into a physical altercation. After the fight, Nick's and Davon's mother, Joyce Renfro, got into an argument with a woman named "Patrice" who was the mother of Wilson's child. Patrice summoned the defendant who came out of a nearby apartment. The defendant was dressed in black and started shooting an automatic firearm. Nick pushed Joyce into her apartment, and Joyce received a gunshot wound to the leg. Nick was shot in the back and died on the way to the hospital. A forensic pathologist testified that Nick had received

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<sup>1</sup> On appeal, the defendant does not challenge his sentences for aggravated discharge of a firearm and aggravated unlawful use of a weapon.

several gunshot wounds, the most significant of which was one to the back of the upper right shoulder. The fragments of the round struck Nick's right lung, aorta, and esophagus and caused massive bleeding.

¶ 6 The jury found the defendant guilty of all of the charges and that the defendant had personally discharged a firearm that proximately caused the death of another person. Thereafter, the cause proceeded to a sentencing hearing.

¶ 7 After the parties presented their arguments on the sentencing alternatives, the trial court considered the factors in aggravation and mitigation. In aggravation the trial court stated:

"[A]mong other things, the defendant's conduct did cause or threaten serious harm. It may be inherent in the actual fact that he committed a murder, but it did occur, and that the defendant has a history of prior delinquency of criminal activity. And that the sentence is necessary to deter others from committing the same crime, and that the defendant was convicted of a felony while he was serving a period of probation."

In mitigation, the court said that it had "a hard time to find anything." The court sentenced the defendant to 45 years' imprisonment for first degree murder, plus an additional 25-year firearm enhancement, and a consecutive term of 25 years' imprisonment for aggravated battery with a firearm. The trial court also sentenced the defendant to concurrent terms 10 years' imprisonment for aggravated discharge of a firearm and 7 years' imprisonment for aggravated unlawful use of a weapon. No sentence was entered on the unlawful possession of a weapon by a felon count.

¶ 8 The defendant filed a motion to reconsider sentence arguing that he did not have a history of significant criminal activity that would justify such a long sentence and he had a strong

possibility of rehabilitation given his young age. After a hearing, the court denied the defendant's motion. The defendant filed a notice of appeal.

¶ 9

## ANALYSIS

¶ 10

### I. Sentence

¶ 11

#### A. Double Enhancement

¶ 12

The defendant argues that the trial court improperly considered that his conduct caused or threatened harm, a factor inherent in the offense of first degree murder, while sentencing the defendant. The defendant acknowledges that he did not properly preserve this issue for appellate review, but contends that it is reversible under the second prong of the plain error doctrine. The defendant does not argue that this issue may be reversed under the first prong of the plain error doctrine.

¶ 13

To overcome a claim of forfeiture, we must determine whether the alleged errors can be reviewed under the plain error doctrine. The first step of plain error review is to determine whether a clear and obvious error occurred. *People v. Rippatoe*, 408 Ill. App. 3d 1061, 1066 (2011). If we find that an error occurred, we must then determine whether the error was reversible. *Id.* Here, the defendant argues that the error was reversible under the second prong of the plain error analysis. Under the second prong, an unpreserved error is reversible when that error is so fundamental and of such magnitude that it affected the fairness of the trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 14

Generally, a trial court may not consider as an aggravating factor in sentencing a fact that is inherent in the offense with which defendant was charged. *People v. Thomas*, 171 Ill. 2d 207, 226-27 (1996). This rule is not meant to apply rigidly because public policy dictates that a

sentence be varied in accordance with the circumstances of the offense. *People v. Cain*, 221 Ill. App. 3d 574, 575 (1991). The court may consider the nature and circumstances of an offense, including the nature and extent of each element of the offense as committed by defendant. *People v. James*, 255 Ill. App. 3d 516, 532 (1993). The cause must be remanded for resentencing where a reviewing court is unable to determine the weight given to an improper factor. *People v. Beals*, 162 Ill. 2d 497, 509 (1994). Remand is unnecessary where a reviewing court can determine from the record that the trial court placed insignificant weight upon the improper aggravating factor. *Id.* at 509-10.

¶ 15 Here, the trial court stated, in aggravation, that defendant's conduct did cause harm and acknowledged that this fact was inherent in the offense of murder, but reasserted that the conduct "did occur." Because the court noted this improper factor, acknowledged that it was inherent in the offense, and then indicated that it was still considering the factor in aggravation, the court erroneously gave improper weight to the double enhancing factor.

¶ 16 Defendant argues that the court's error was reversible under the second prong of the plain error doctrine because consideration of an improper factor in aggravation affected his fundamental right to liberty. *People v. Reed*, 376 Ill. App. 3d 121, 128 (2007). We disagree.

¶ 17 Our supreme court has equated the second prong of the plain error analysis with structural error. *People v. Thompson*, 238 Ill. 2d 598, 613-14 (2010). Under this analysis, "automatic reversal is only required where an error is deemed 'structural,' *i.e.*, a systemic error which serves to 'erode the integrity of the judicial process and undermine the fairness of the defendant's trial.'" *People v. Glasper*, 234 Ill. 2d 173, 197-98 (2009) (quoting *People v. Herron*, 215 Ill. 2d 167, 186 (2005)). The supreme court has found structural error to exist in only a limited class of cases, such as a complete denial of counsel, trial before a biased judge, racial

discrimination in the selection of a grand jury, denial of self-representation at trial, denial of a public trial, and a defective reasonable doubt instruction. *Thompson*, 238 Ill. 2d at 609.

¶ 18 Here, we conclude that the trial court's consideration of a factor inherent in the offense of first degree murder is not reversible under the second prong of the plain error rule. Considering a factor inherent in the offense of first degree murder was not part of the limited class of errors which our supreme court has considered structural and reversible under the second prong. Furthermore, after reviewing the sentencing proceedings, we conclude that the trial court's consideration of the improper factor did not challenge the integrity of the judicial process. Therefore, we do not find that this sentencing error is reversible under the second prong of the plain error doctrine.

¶ 19 B. Factors in Aggravation and Mitigation

¶ 20 The defendant also argues that his sentence was the result of an abuse of discretion because the trial court overemphasized his nonviolent criminal history and failed to consider his relative youth in sentencing. We disagree.

¶ 21 The defendant's sentence may not be altered on review absent an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203 (2000). "A sentence which falls within the statutory range is presumptively proper and does not constitute an abuse of discretion unless it is manifestly disproportionate to the nature of the offense." *People v. McFadden*, 2014 IL App (1st) 102939, ¶ 51. We give great deference to the trial court's sentencing decision as the trial court is in a better position to determine the appropriate sentence. *Reed*, 376 Ill. App. 3d at 127. We presume that the trial court considered all mitigating evidence absent some indication, other than the sentence itself, to the contrary. *People v. Marlow*, 303 Ill. App. 3d 568, 572 (1999). This presumption cannot be overcome without affirmative evidence that the sentencing court failed to

consider factors in mitigation. *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010).

¶ 22 The defendant argues that his first degree murder and aggravated battery with a firearm sentences were excessive. The sentencing range for first degree murder is 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a) (West 2010). The instant defendant discharged a firearm that caused the victim's death during the commission of the offense, and therefore was subject to an additional term of 25 years' imprisonment. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010). The sentence range for aggravated battery with a firearm is 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2010).

¶ 23 The defendant's first degree murder and aggravated battery with a firearm sentences fell within the respective sentencing ranges, and therefore, were presumptively proper. See *McFadden*, 2014 IL App (1st) 102939. Although the trial court did not consider the defendant's age on the record as a factor in mitigation, this information was contained in the defendant's presentence investigation report (PSI). The report also included the defendant's lengthy history of prior criminal convictions, which the court noted in aggravation. Thus, we presume that the trial court considered all of this evidence in reaching its sentencing determination. See *Marlow*, 303 Ill. App. 3d at 572. The record also does not indicate that the trial court ignored or overemphasized either of these factors. Therefore, we conclude that the defendant did not overcome the presumption that the trial court adequately considered the factors in mitigation and aggravation. See *Flores*, 404 Ill. App. 3d at 158. The defendant's first degree murder and aggravated battery with a firearm sentences were not the result of an abuse of discretion.

¶ 24 II. Fines and Fees

¶ 25 A. DNA Fee

¶ 26 Section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2012))

authorizes the trial court to order the taking, analysis and indexing of a defendant's DNA, and the payment of a \$250 analysis fee, only where a defendant is not currently registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). When a defendant is already registered in the database as a result of a prior felony conviction, the trial court is without authority to order a subsequent DNA analysis and fee. *Id.*

¶ 27 Here, the PSI states that the defendant's DNA was registered on November 26, 2008. Therefore, in July 2013, when the defendant's sentence was entered in the instant case, the defendant's DNA had already been registered with the State Police. Based on this record, we vacate the defendant's duplicate DNA analysis fee.

¶ 28 B. Assessments

¶ 29 The defendant also argues that his case payment sheet includes several errors, including the omission of his \$5-per-day presentence incarceration credit. The defendant therefore asks this court to vacate the costs assessed and remand the cause for the proper entry of an order enumerating fines and fees, and granting him appropriate *per diem* credit.

¶ 30 In *People v. Hunter*, 2014 IL App (3d) 120552, ¶ 9, this court was faced with a similar posttrial imposition of unspecified costs. We noted that the trial court had not entered a written order assessing costs until one month after defendant's motion to reconsider sentence. *Id.* ¶ 16. As a result, neither defendant nor the State had an opportunity to raise any issue with the costs. *Id.* We concluded that "[w]ithout a sum certain set out in the judgment order, we cannot be confident regarding the specific amounts the court intended to *order* this defendant to pay" and remanded the cause to the trial court with directions to review, correct the costs summarized in the clerk's cost sheet, and incorporate the correct amount of all financial charges into a written order that identified the amount and nature of each charge. (Emphasis in original.) *Id.* ¶ 17.

¶ 31 In the instant case, the trial court did not verbally impose any specific fines, fees or costs. In a written order, the court entered a judgment for an unspecified amount of costs, and on appeal, the record was supplemented with a form entitled "History Payments." This form shows multiple coded assessments that total \$4,494.85. Neither the record nor the supplemental record contains an index that describes the coded assessments or provides statutory citations. As a result, we are unable to discern whether the assessments were fines imposed without authority by the circuit clerk or were erroneously calculated. See *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56 (fines imposed by the circuit clerk are void from their inception). Therefore, we vacate all of the fines and fees imposed and remand the cause with the following directions: (1) the trial court shall expressly impose any and all fines; (2) the circuit clerk shall specifically name each individual fee imposed; (3) all of the fines and fees imposed shall be entered in a written order; (4) the written order shall not include any codes or abbreviations; (5) the written order shall provide statutory authority for each individual fine and fee imposed; and (6) the trial court shall calculate and offset the defendant's fines by the appropriate amount of \$5-per-day presentence incarceration credit. See 725 ILCS 5/110-14 (West 2012).

¶ 32 CONCLUSION

¶ 33 The judgment of the circuit court of Peoria County is affirmed in part and vacated in part; cause remanded with direction.

¶ 34 Affirmed in part and vacated in part; Cause remanded with direction.