2015 IL App (4th) 130755-U

NO. 4-13-0755

FILED
May 18, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
JAMES A. JOHNSON,	)	No. 12CF1074
Defendant-Appellant.	)	
	)	Honorable
	)	Rebecca Simmons Foley,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Holder White and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, concluding that the defendant's forfeited sentencing claim did not warrant plain-error review.

¶ 2 In June 2013, a jury convicted defendant, James A. Johnson, of (1) delivery of a controlled substance (less than one gram of a substance containing cocaine) (count I) and (2) two counts of delivery of a controlled substance (less than one gram of a substance containing heroin) (counts II and III). 720 ILCS 570/401(d)(i) (West 2010). At a July 2013 sentencing hearing, the trial court—noting that defendant's criminal history mandated a Class X sentence under section 5-4.5-95(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-95(b) (West 2012))—sentenced defendant to 18 years on each count, to be served concurrently.

¶ 3 Defendant appeals, arguing that his 18-year sentence was excessive. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Defendant's Trial

¶ 6 Because defendant challenges only his sentence, we provide a brief summary of the evidence presented during his June 2013 jury trial.

¶ 7 Tiffany Burton testified that as a result of her arrest for delivery of cocaine, she agreed to become a confidential source for the police. On September 19, 2012, Burton met with Todd McClusky, a Bloomington police department detective, and informed him that she could buy heroin and crack cocaine from defendant. Burton explained that although defendant did not want to "work with me directly," Burton would buy drugs from defendant through Rebecca Hatcher, who had a "physical relationship" with defendant.

¶ 8 On September 26, 2012, Burton informed McClusky that she had a conversation with Hatcher about buying heroin from defendant. Burton later received a telephone call from Hatcher, confirming the heroin sale at Hatcher's apartment that afternoon. Burton recounted that after detectives drove her to a location near Hatcher's home, Burton walked to the apartment, where Hatcher and defendant were waiting. While there, defendant asked whether Burton knew anyone who was interested in buying crack cocaine. Burton called McClusky and, feigning as if she was speaking to someone else, asked if he was interested in buying crack cocaine. After that conversation ended, Burton informed defendant that her contact was an interested buyer. Burton then handed defendant $500. In exchange, defendant provided Burton 2.2 grams of heroin. Burton then left the apartment and met McClusky, who was parked on a nearby side street.

¶ 9 After delivering the heroin to McClusky, Burton called Hatcher and made arrangements to meet that evening to buy the crack cocaine defendant had mentioned. McClusky drove Burton to a bar located in downtown Bloomington and provided her $120 for the purchase.

As Burton waited outside of the bar, she observed Hatcher driving a car with defendant as a front-seat passenger. Burton entered the vehicle and, after riding a short distance, handed defendant $120. Defendant provided Burton 0.9 grams of cocaine. After exiting Hatcher's vehicle, Burton returned to McClusky and gave him the cocaine.

¶ 10 On October 4, 2012, McClusky recorded a telephone conversation between Burton and defendant in which they arranged to make another purchase of heroin. Defendant later arrived at the agreed-upon location in a van driven by someone Burton did not recognize. Burton entered the van and provided defendant $500. In return, defendant gave Burton 2.8 grams of heroin. Burton then exited the van and, shortly thereafter, delivered the heroin to McClusky.

¶ 11 Testimony from several officers provided the jury with information regarding the (1) surveillance police conducted on September 26, 2012, and October 4, 2012; (2) chain of custody and processing of evidence police seized; and (3) police procedures employed immediately before and after Burton purchased cocaine and heroin from defendant. Testimony provided by McClusky and Hatcher concerning the drug purchases that occurred on September 26, 2012, and October 4, 2012, was consistent with Burton's account. The jury also (1) saw a video recording of the drug purchases that occurred on September 26, 2012, and October 4, 2012; and (2) heard an audio recording of the October 4, 2012, telephone conversation Burton had with defendant, as well as an audio recording of the exchange that occurred in the van. The parties stipulated to the weight of the drugs police seized during the three aforementioned purchases.

¶ 12 Defendant did not present any evidence.

¶ 13 Following argument, the jury found defendant guilty on all three counts.

¶ 14 B. The Evidence Presented at Defendant's Sentencing Hearing and the Trial Court's Judgment

¶ 15 At a July 2013 sentencing hearing, the trial court considered defendant's presen-

tence investigation report (PSI), which showed, in part, the following: (1) a 1996 conviction for unlawful use of a weapon (sentenced to 1 year and 25 days in prison); (2) a 1998 conviction for possession of a controlled substance (sentenced to three years in prison and later placed on mandatory supervised release (MSR), which defendant violated within three months); (3) a 1998 conviction for domestic battery (sentenced to 24 months' conditional discharge); (4) a 1999 conviction for two counts of domestic battery (sentenced to three years in prison and later placed on MSR, which defendant twice violated); (5) a 2001 conviction for manufacture-delivery of a controlled substance (sentenced to three years in prison and later placed on MSR, which defendant twice violated); (6) a 2003 conviction for manufacture-delivery of a controlled substance (less than 15 grams of a cocaine analog) (sentenced to six years in prison and later placed on MSR, which defendant violated within eight months); (7) a 2006 conviction for mob action (sentenced to 364 days in jail); and (8) a 2009 conviction for aggravated battery (sentenced to 5 1/2 years in prison and later placed on MSR, which defendant violated within two months).

¶ 16 John Bricker, a church pastor, testified that he first met defendant three years earlier, at a bible study Bricker conducted at his home just prior to defendant's imprisonment. Thereafter, Bricker and a parishioner, Myles Singleton, visited defendant at Sheridan Correctional Center (Sheridan) "a few times." Upon defendant's return to McLean County, Bricker and Singleton visited biweekly with the intent to "minister and encourage" defendant. Based on that interaction, Bricker believed that defendant wanted "to own responsibility" for his criminal activity and "turn his life around." Bricker stated that after defendant's return to the community, he would act as defendant's support person. Bricker acknowledged that most of his interaction with defendant occurred while defendant was incarcerated.

¶ 17 Singleton testified that he first met defendant at the same time defendant met

Bricker. While defendant was incarcerated at Sheridan, Singleton wrote to and visited with defendant. After defendant's release from Sheridan, Singleton continued communicating with defendant, visiting him twice at a Chicago halfway house. Singleton noted that his intent was similar to Bricker's in that he wanted to encourage defendant by sharing the gospel. Singleton was impressed by defendant's progress, opining that defendant was "doing all of the right things." Singleton noted that defendant developed a Christian-based program entitled "Brighter Future: Changing Our Corps Beliefs," which sought to assist fellow inmates as they transitioned from prison to public life. Singleton believed that defendant was taking active steps to return to the community as a productive citizen. Singleton also acknowledged that most of his interaction with defendant occurred while defendant was incarcerated.

¶ 18 Defendant—who was then 35 years old—acknowledged that he had made past mistakes, but he was taking "certain steps" to ensure he would "become a sane person and not continue doing the same things over and over again."

¶ 19 Prior to sentencing defendant, the trial court acknowledged (1) defendant's PSI, (2) the testimony provided by Bricker and Singleton, (3) defendant's statement in allocution, and (4) counsel's arguments. Noting that both aggravating and mitigating factors existed, the court believed that the aggravating factors outweighed the mitigating factors. Specifically, the court cited defendant's criminal history as the "greatest strike" against defendant.

¶ 20 After summarizing defendant's prior criminal history, the trial court stated as follows:

> "It's important for the court to note that in this case [defendant was] discharged from parole on July 27, of 2012. This offense was alleged to have occurred about two months later. As

> noted in the PSI, as of mid-August, *** 2012, [defendant was] using cannabis on a daily basis.
>
> *** [The court tallies nine] prior felony sentences. If you count all three [convictions in this case], which is 10, 11, and 12, [defendant] is [subject to] mandatory Class X sentencing based upon his prior record to date.
>
> Tied in with that record, as the court has mentioned, are some violent offenses. The unlawful use of weapons as noted by the court, the felony domestic battery from 1999, the 1997 domestic battery[,] which was a misdemeanor offense. Also included within that category was the mob action and the aggravated battery case as noted by the court."

Thereafter, as previously noted, the court sentenced defendant to concurrent terms of 18 years on each count.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Defendant argues that his 18-year sentence was excessive. We disagree.

¶ 24 A. The Plain-Error Doctrine

¶ 25 We note that in his brief to this court, defendant—who acknowledges the forfeiture of his argument to this court because he failed to file a posttrial motion requesting the trial court's reconsideration of his sentence—nonetheless urges us to consider his claim under the plain-error doctrine.

¶ 26 "To preserve a claim for review, a defendant must both object at trial and include

the alleged error in a written posttrial motion." *People v. Thompson*, 238 Ill. 2d 598, 611, 939 N.E.2d 403, 412 (2010). Failure to do so results in the forfeiture of that claim on appeal. *Thompson*, 238 Ill. 2d at 612, 939 N.E.2d at 412. A defendant can avoid the harsh consequences of forfeiture under the plain-error doctrine. *Thompson*, 238 Ill. 2d at 613, 939 N.E.2d at 413.

¶ 27 In *People v. Rathbone*, 345 Ill. App. 3d 305, 311, 802 N.E.2d 333, 338 (2003), this court, quoting our decision in *People v. Baker*, 341 Ill. App. 3d 1083, 1090, 794 N.E.2d 353, 359 (2003), stated as follows:

> "The plain error rule may be invoked if the evidence at a sentencing hearing was closely balanced[ ] or if the error was so egregious as to deprive the defendant of a fair sentencing hearing. [Citation.] The second prong of the plain error rule should be invoked only when the possible error is so serious that its consideration is necessary to preserve the integrity and reputation of the judicial process. [Citation.] [Citation.] The rule is not a general saving clause for alleged errors but is designed to redress serious injustices." (Internal quotation marks omitted.)

"Plain-error review focuses on the fairness of a proceeding and the integrity of the judicial process." *People v. Lewis*, 234 Ill. 2d 32, 48, 912 N.E.2d 1220, 1230 (2009).

¶ 28 As a matter of convention, reviewing courts *typically* undertake plain-error analysis by first determining whether error occurred at all. *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1059 (2010). See also *People v. Bowens*, 407 Ill. App. 3d 1094, 1108, 943 N.E.2d 1249, 1264 (2011) (where this court held that "the usual first step in plain-error analysis is to determine whether any error occurred"). "If error is found, the court then proceeds to con-

sider whether either of the [aforementioned] two prongs of the plain-error doctrine have been satisfied." *Sargent*, 239 Ill. 2d at 189-90, 940 N.E.2d at 1059. In this case, however, because defendant has made no meaningful showing under either prong of the plain-error analysis, we may reject his claim without engaging in our typical first step.

¶ 29 B. Defendant's Plain-Error Claim

¶ 30 In his brief, defendant simply states that because "[s]entencing issues are regarded as matters affecting substantial rights," this court should review his claim under the plain-error doctrine. However, in *Rathbone*, 345 Ill. App. 3d at 311, 802 N.E.2d at 338, this court held that "it is not a sufficient argument for plain error review to simply state that because sentencing affects the defendant's fundamental right to liberty, any error committed at that stage is reviewable as plain error." Instead, we concluded that "[b]ecause all sentencing errors arguably affect the defendant's fundamental right to liberty, determining whether an error is reviewable as plain error requires more in-depth analysis" afforded by the aforementioned two-pronged test. *Rathbone*, 345 Ill. App. 3d at 311, 902 N.E.2d at 338. "When a defendant expects the reviewing court to bypass the forfeiture statute and address his claim, his burden of establishing plain error is more than a *pro forma* exercise." *People v. Hanson*, 2014 IL App (4th) 130330, ¶ 37, 25 N.E.3d 1.

¶ 31 In this case, defendant does not assert that (1) the evidence at sentencing was closely balanced or (2) an error deprived him of a fair sentencing hearing. Instead, defendant essentially claims that the trial court did not give sufficient weight to the mitigating factors he presented at his July 2013 sentencing hearing. Such a claim, however, directs our attention to the proper exercise of the court's discretion and not the fairness of the proceedings or the integrity of the judicial process that a plain-error analysis entails. Simply stated, defendant's sentencing

claim does not warrant plain-error review.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 34 Affirmed.