2015 IL App (4th) 130853-U

NO. 4-13-0853

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 30, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
SIDNEY C. WILLIAMS,	)	No. 09CF363
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court's denial of defendant's amended petition for postconviction relief, in the third stage of the postconviction proceeding, is not manifestly erroneous.

(2) Considered *de novo*, the evidence in the postconviction hearing fails to justify an application of the exclusionary rule and fails to establish substandard performance by either the trial counsel or by appellate counsel on direct appeal.

¶ 2 Defendant, Sidney C. Williams, who is serving a sentence of 32 years' imprisonment for unlawful possession of a controlled substance with the intent to deliver it (720 ILCS 570/401(a)(2)(A) (West 2008)), petitioned for postconviction relief, and after an evidentiary hearing, the trial court denied his amended petition. He appeals. We affirm the trial court's decision because it is not manifestly erroneous (see *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006)) and because, even when we apply a nondeferential, *de novo* standard of review to particular issues in this appeal, such as whether the evidence should have been suppressed (see

People v. Luedemann, 222 Ill. 2d 530, 542 (2006)) and whether the trial counsel and the appellate counsel on direct appeal rendered ineffective assistance (see *People v. Klein*, 2015 IL App (3d) 130052, ¶ 70), we find no substantial denial of constitutional rights (see 725 ILCS 5/122-1 (West 2012)).

¶ 3 I. BACKGROUND

¶ 4 A. The Motion for Suppression of Evidence

¶ 5 In April 2009, defendant filed a motion to suppress evidence. The evidence on this motion consisted only of police reports submitted by stipulation of the parties.

¶ 6 According to the police reports, the police approached defendant on March 1, 2009, after seeing him violate a traffic law. Before the police came over to where he was, he parked the car he had been driving and got out. He told a police officer he was on mandatory supervised release and that he lacked a valid driver's license. The police placed him under arrest for driving without a license, and the other occupant of the car, a front-seat passenger, got out of the car. A search of defendant's pants pockets yielded $238.20 in cash and six plastic sandwich bags, all of them empty. The police also searched the car and found cocaine in the center console.

¶ 7 One of the police officers was Justin M. Prosser, and in his report, he recounted the incident as follows:

> "While in my squad car, I noticed a Green Jeep Grand Cherokee *** in the westbound lane of traffic of 300 E. Green. This vehicle caught my attention, because it was traveling eastbound in reverse. The vehicle then pulled into the parking lot of Colonial Pantry, and parked by the front of the store. I exited

my squad car and began to approach the driver to speak with him about his driving. As I approached the vehicle, the driver, later identified as [defendant], exit[ed] the vehicle and start[ed] to walk toward IHOP. I told [defendant] to stop and had him come over to talk to me. I asked him why he had backed[] up, in order to park in the Colonial Pantry parking lot. I asked him for his driver's license, and he gave me an ID card. He stated his driver's license was suspended, and he was on Parole. I was then informed by [the dispatcher] that [defendant] had no valid driver's license. While speaking with [defendant], I noticed the passenger of the vehicle, later identified as Mario [Motley], was searching through the center console. Officer Butler *** then arrested [defendant] and placed him in the back of our squad car.

I then spoke with Mario [Motley], who was still in the passenger seat. I asked him if he had a valid driver's license, and he stated no. He then exited the vehicle and stated we could search him. I then searched him with his consent, and found nothing on his person[].

I was then informed by Officer Butler that he had found suspected crack cocaine in the center console of the vehicle."

¶ 8 The trial court agreed with defendant that, under *Arizona v. Gant*, 556 U.S. 332, 344 (2009), the search of the car could not be justified as a search incident to arrest: at the time of the search, neither defendant nor his passenger had access to the car, and there was no reason

to believe the car contained any evidence relevant to the offense of driving without a valid driver's license. The court also agreed with defendant that the $238.20 and six sandwich bags in defendant's pants pockets were "insufficient to establish probable cause to believe that the vehicle contain[ed] evidence of criminal activity."

¶ 9 Even so, the trial court agreed with the State that the search was lawful for the following reason. Defendant was on mandatory supervised release, as he had admitted to Prosser, and under section 3-3-7(a)(10) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-3-7(a)(10) (West 2008)), one of the "conditions" of "parole" or "mandatory supervised release" was that "the subject *** consent to a search of his or her person, property, or residence under his or her control." See *People v. Wilson*, 228 Ill. 2d 35, 52 (2008) (no reasonable suspicion was required for the warrantless search of the defendant's bedroom, given that (1) he was a parolee and (2) one of the conditions of mandatory supervised release was that he consent to such searches; these two circumstances "reduced his expectation of privacy in his residence to a level that society would not recognize as legitimate").

¶ 10 Therefore, the trial court denied defendant's motion to suppress evidence.

¶ 11 B. The Jury Trial

¶ 12 The jury trial occurred in July 2009. The State presented substantially the following evidence.

¶ 13 In the early morning of March 1, 2009, two Champaign police officers, Justin Prosser and David Butler, were sitting in their patrol car, parked in the parking lot of a convenience store. They saw a Jeep go by on East Green Street, stop, back up on the street, and pull into the parking lot. Because it was illegal to drive in reverse on a highway, the two officers

got out of their patrol car and walked over to the Jeep. As they approached, the driver of the Jeep, defendant, got out and began walking toward IHOP next door.

¶ 14 The officers stopped defendant and spoke with him about his driving. He explained he had intended to park in the parking lot of IHOP but that, upon finding that the parking lot of IHOP was blocked, he had backed up and parked by the convenience store instead. During this conversation, one of the officers requested to see defendant's driver's license. He replied that his driver's license was suspended, and he added that he was on mandatory supervised release. After confirming from a database that defendant's driver's license was indeed suspended, the officers placed him under arrest for driving without a valid driver's license.

¶ 15 In searching defendant's person, the officers found $238 in cash as well as six empty sandwich bags. This cash included a hundred-dollar bill and 5 twenty-dollar bills. Butler noted, from his training and experience as a police officer, that sandwich bags commonly were used to package narcotics. As for the twenty-dollar bills, he testified: "Most people buy crack, it's usually in a $20.00 rock. It's 2/10's of a gram."

¶ 16 While speaking with defendant, the officers noticed there was a passenger in the Jeep. As it turned out, his name was Mario Motley. When Prosser approached the Jeep, in what he described as the "very well lit" parking lot, he could see that Motley was reaching into the center console of the Jeep, between the driver's seat and the passenger's seat. Prosser testified: "I was standing, probably, it was the driver's side, rear of the vehicle, where I could see into the vehicle. I saw the passenger, what appeared to be looking through the center console of the Jeep. After Mr. Williams was secured in handcuffs, I then went around to speak with the passenger of the vehicle." Prosser further testified: "When I was looking—I'm looking through—on a Jeep, they have that big glass window in the back. I'm looking through that. I could see the center

console armrest up, and Mr. Motley positioned towards the center console, with his hands. It appeared to me like they were inside the center console."

¶ 17 Motley, who lacked a driver's license, volunteered to be searched, even though neither Prosser nor Butler had requested to search him. Prosser accepted the invitation, and Motley got out of the Jeep. Although Motley appeared to be intoxicated and his speech was a little slurred, he needed no assistance in getting out of the Jeep. A search of his person yielded no contraband.

¶ 18 While Prosser spoke with Motley, Butler searched the Jeep. The center console was closed, and Butler opened it, swinging the lid upward. Inside the console, he found what appeared to be crack cocaine: a big piece and five smaller pieces. All six pieces were in a sandwich bag, and the five smaller pieces, weighing about three grams apiece, were individually wrapped, as if for sale. The sixth piece, the bigger piece, evidently had not been broken up yet.

¶ 19 The parties stipulated that the total weight of the cocaine was 35.4 grams and that whoever had possessed it had done so with the intent to deliver it. According to Butler, the little pieces were worth about $300 apiece, and the big piece was worth about $2,500. He testified that "[a]ll together, they probably could have been broken down into approximately 150 to 30 [*sic*] pieces of crack, depending on how they broke it up."

¶ 20 The prosecutor asked Butler:

> "Q. When you looked inside the center console, were [the pieces of cocaine] underneath anything or where [sic] they on top. Tell us what you saw?
>
> A. They were on top of, I think other items were, like CD's, and the crack was sitting on top of that."

¶ 21 This cocaine, of course, was another reason to take defendant into custody, in addition to his driving with a suspended driver's license. But before Prosser transported defendant to the jail, Butler read defendant his rights and asked him some questions, there in the parking lot of the convenience store. Butler testified:

> "A. I read him Miranda rights at approximately 2:30 in the morning. He said he understood his rights and would be willing to speak with me. He said that he had just come from TK Wendell's, which is a bar in Urbana, and he knew he didn't have a valid driver's license but he drove anyway because he said the rest of his friends were intoxicated. I asked him about the drugs in the vehicle. He said it wasn't his vehicle, that it was his cousin's vehicle. And that he didn't know about the drugs in the car.
>
> Q. And did you have an opportunity to ask him any further questions?
>
> A. I did not.
>
> Q. Did you have an opportunity to ask him about the other occupant of the car?
>
> A. I did.
>
> Q. And could you tell us about that conversation.
>
> A. The last question I asked him was if the narcotics were the other person's in the vehicle. He didn't answer that question and stopped answering other questions."

See *People v. King*, 384 Ill. App. 3d 601, 610 (2008) ("[T]he State's eliciting testimony regarding defendant's silence in response to some of the questions asked during the interview, after defendant expressly waived his right to remain silent, cannot equate to a *** violation [of *Doyle v. Ohio*, 426 U.S. 610 (1976)].").

¶ 22 Because he had seen Motley reaching into the center console, where Butler subsequently found the cocaine, Prosser also placed Motley under arrest, read him his rights, and asked him for a statement. It is unclear, from Prosser's testimony, whether Motley gave a statement, but he testified that Motley was crying and that he was upset about being arrested.

¶ 23 The police took defendant and Motley to jail. In the sally port of the jail, defendant requested to be taken to the hospital because he had consumed ecstasy (methylenedioxymethamphetamine) that night and his heart was beating very fast. Prosser took defendant to the hospital, where the medical staff examined him and found him to be fit for commitment to the jail.

¶ 24 At this point, the prosecutor questioned Prosser briefly on the drug ecstasy. He asked him:

> "Q. Are you professionally familiar with a street drug that's known as ecstasy?
>
> A. Yes.
>
> Q. And could you explain what that is to the ladies and gentlemen of the jury.
>
> A. It's—it can come in a tablet form that you take. People take it at clubs. It gives them—they say you can—your heightened feelings, you can feel, they say you can feel colors and see sounds.

And I've never taken it, so I don't know, but that's what we were taught at the police academy at the U of I.

Q. And you had the opportunity to observe Mr. Williams throughout the time you dealt with him?

A. Um, hm (yes).

Q. Did he appear to be under the influence of anything?

A. Not to my knowledge. No.

Q. He was, however, cleared for return to the jail?

A. Yes, he was."

¶ 25 According to Prosser, defendant did not appear to be intoxicated that night, but Motley "possibly" was intoxicated—not to the point of stumbling around and sounding unintelligible, but he smelled of alcohol, and his speech was slurred. When the State called him as a witness, Motley admitted having a conviction of aggravated driving under the influence (DUI) as well as convictions of aggravated battery and possession of cannabis with the intent to deliver it. And like defendant, he was on mandatory supervised release at the time of the incident.

¶ 26 Motley claimed he was drunk the night of March 1, 2009. He testified in substance as follows. He had spent the evening in question drinking at a bar and then at the residence of his cousin, Robert Robinson, where he and others also played video games. Motley recounted the particular drinks he had that night. Defendant, nicknamed "Solo," was at Robinson's house; Motley was acquainted with him "from the streets," although they had no social relationship. Motley asked defendant to give him a ride to IHOP so he could get something to eat. Defendant agreed to do so. Motley had $40 in cash, enough to buy the food.

The next thing Motley knew, he was in the Jeep—he did not know whose Jeep it was; he had never been in that Jeep before—and he fell asleep. Motley testified: "After that, I was so drunk I had blanked out in the car, so I don't remember. Only thing I remember is went to IHOP, and after he—I mean, he shut the door, I just seen the police. So I just woke up after the police. He was talking to the police." Thus, according to his testimony, Motley slept during the car ride from Robinson's house to the restaurant, and he did not awaken until defendant shut the door of the Jeep after getting out at the restaurant. That is when Motley saw the police officers.

¶ 27 The prosecutor asked Motley:

> "Q. What happened next?
>
> A. The officer came to my door, asked me if I had license or ID. I gave him my ID. Then after that, he gave me my—gave my ID back, told me to step out the car. And I said—
>
> Q. Did you step out?
>
> A. Yes, ma'am.
>
> Q. What happened next?
>
> A. He had searched me. And then he came back, after that, he said he found drugs. Then that's all I remember. I never knew any drugs, never saw any drugs, anything was in the car."

¶ 28 Motley did not remember what happened after he was placed in the police car. He remembered only that when the police put him in handcuffs, he began yelling that the drugs were not his and that they were defendant's. Or he assumed the drugs belonged to defendant, because they did not belong to him. He denied ever using or selling crack cocaine.

¶ 29 On cross-examination, defense counsel asked Motley if he remembered what was in between the seats of the Jeep where he and defendant had been sitting. Motley answered:

> "A. It was, like a arm rest.
>
> Q. A console?
>
> A. Yeah, if that's what you call it, I guess. I mean, it's a arm rest, where I was putting—I laid my head and stuff on, like, where I was sleeping at.
>
> Q. All right. And speaking of this arm rest, or specifically the area in between the two seats, did you ever open that console and look around in that area?
>
> A. I don't remember. I mean, I don't remember nothing but him talking to the police, walking up. That's all I remember.
>
> Q. So you don't remember?
>
> A. No."

¶ 30 Motley remembered volunteering to be searched, but he did not remember reaching into the console. But according to his testimony, he was extremely drunk during the incident, the drunkest he had ever been, with the possible exception of his DUI.

¶ 31 At first, in her closing argument to the jury, the prosecutor took the position that Motley was telling the truth and that defendant was solely responsible for the cocaine in the Jeep. In her rebuttal argument, however, the prosecutor took the position that this case was not a "zero sum game" and that the jury did not have to choose between defendant and Motley; instead, the jury could find that the two men had joint possession of the cocaine.

¶ 32 Without objection by defense counsel, the State tendered the following pattern instruction on "possession," which the trial court subsequently gave to the jury:

> "Possession may be actual or constructive. A person has actual possession when he has immediate and exclusive control over a thing. A person has constructive possession when he lacks actual possession of a thing but he has both the power and the intention to exercise control over a thing either directly or through another person.
>
> If two or more persons share the immediate and exclusive control or share the intention and the power to exercise control over a thing, then each person has possession." Illinois Pattern Jury Instruction, Criminal, No. 4.16 (4th ed. 2000).

¶ 33 The jury found defendant guilty of unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2008)).

¶ 34 C. The Posttrial Motion

¶ 35 In August 2009, trial counsel filed a posttrial motion, in which, for the following reasons, he requested the trial court to "reconsider its ruling on the motion to suppress, vacate the conviction, or [in] the alternative order a new trial":

> "2. [The] State failed to prove the Defendant guilty of the charge against him beyond all reasonable doubt.
>
> 3. The Court erred in denying the Defendant's motion for a directed verdict of not guilty at the close of the State's evidence.

4. The verdict is based upon evidentiary facts which do not exclude every reasonable hypothesis consistent with the innocence of the Defendant.

5. The Court erred in refusing to grant the Defendant's pretrial motion to suppress, evidence which was introduced by the State at trial in violation of the Defendant's rights under the United States and Illinois Constitutions.

6. The State failed to prove every material allegation of the indictment/information/complaint beyond a reasonable doubt."

¶ 36 D. The Sentencing Hearing

¶ 37 In August 2009, after denying the posttrial motion, the trial court held a sentencing hearing. The evidence in the sentencing hearing consisted of the presentence investigation report and the testimony of two police officers: Timothy J. Atteberry and Michael K. Johnson.

¶ 38 1. *The Presentence Investigation Report*

¶ 39 a. Previous Convictions

¶ 40 According to the presentence investigation report, defendant, born on October 8, 1983, had the following previous convictions.

¶ 41 In October 1996, he was convicted of burglary to a vehicle and unlawful possession of a stolen vehicle, for which he was sentenced to two years' probation. Subsequently, the State filed a petition to revoke his probation. Count I of the petition alleged he had committed residential burglary, and count II alleged he had committed attempt (residential

burglary). Respondent admitted some of the paragraphs of the petition, whereupon he was resentenced to confinement in the juvenile division of the Department of Corrections.

¶ 42 In June 2001, defendant was convicted of leaving the scene of an accident, for which he was sentenced to 12 months' conditional discharge.

¶ 43 In August 2001, he was convicted of unlawful possession of a controlled substance with the intent to deliver it, a Class 1 felony. He was sentenced to five years' imprisonment. In June 2002, he escaped from the correctional facility and was returned to custody the same day. In January 2005, he was released on mandatory supervised release. In August 2005, he was put back in prison for violating a condition of mandatory supervised release. In February 2006, he was discharged.

¶ 44 In March 2005, in Champaign County case Nos. 05-TR-4523 and 05-TR-4524, he was convicted, "Ex parte," of "Operat[ing] an Uninsured Motor Vehicle" and "Unlicensed."

¶ 45 In June 2005, in Champaign County case Nos. 05-TR-3609, 05-TR-3610, and 05-TR-3611, he was convicted of "Operat[ing] [an] Uninsured Motor Vehicle," "Unlicensed," and "No Valid Registration."

¶ 46 In March 2006, in Champaign County case No. 05-TR-14888, he was convicted of "Driving on [a] Suspended License."

¶ 47 In April 2006, he was convicted of unlawful delivery of a controlled substance, a Class 2 felony, and was sentenced to imprisonment for seven years. In July 2008, he was released on mandatory supervised release.

¶ 48 In March 2009, he was convicted of "Unsafe Backing on [a] Roadway" and "Unlicensed."

¶ 49 All the fines, fees, costs, and restitution for these felonies and traffic offenses remained unpaid, according to the presentence investigation report.

¶ 50 b. Family Information

¶ 51 Defendant told the probation officer he was single and the father of twin daughters. He had not been ordered to pay support. His family helped support the twins. He had been incarcerated since they were less than a month old. (The probation officer wrote: "The Court should note [that] in a Pre-sentence Report filed in Champaign County case 05-CF-1329 [(the case in which defendant was convicted of the Class 2 felony, his second drug offense)], the defendant acknowledged his girlfriend at the time had just given birth to his son; however, the child's name was not listed. The defendant did not mention he had any other children during the interview for this report.")

¶ 52 Defendant further told the probation officer that the Illinois Department of Children and Family Services had removed him from his parents when he was an infant—he did not know why—and that his grandmother, Willie Williams, had adopted him. His grandmother was a " 'mother figure,' " and his relationship with her was " 'good.' " For that matter, his relationship with his parents also was " 'good,' " and they came and visited him.

¶ 53 c. Education

¶ 54 Defendant reported he was expelled from middle school because he " 'had a mental/emotional disorder and would behave bad[ly] in class.' " Ultimately, he earned his general equivalency degree (GED) in 2008 through Lincoln Community College, while he was imprisoned. "In addition to his GED, the defendant relates he earned a Certificate in Education to Careers as well as Technical Math while incarcerated," the probation officer wrote.

¶ 55 d. Employment

¶ 56 From December 2008 to January 2009, defendant was employed at United Parcel Service in Champaign.

¶ 57 From January to July 2005, he worked for Plasti-Pak in Champaign.

¶ 58 From March to April 2002, he worked at LePeep in Champaign.

¶ 59 He remarked to the probation officer that it was "hard to get a job because of [his] disorder and [his] background."

¶ 60 e. Use of Alcohol and Drugs

¶ 61 Because of his incarceration, defendant had not consumed any alcohol or drugs lately, but he reported that he first consumed alcohol at age eight and that, ever since then (except when he was incarcerated), he had been consuming six beers and a fifth of hard liquor daily. He admitted committing crimes under the influence of alcohol and that he " 'probably [drank] too much and start[ed] acting different.' " But he denied ever committing a crime for the purpose of obtaining alcohol. (The probation officer wrote: "The Court should note information contained in the Pre-sentence Report filed in Champaign County case [No.] 05-CF-1329 reflects the defendant reported he began drinking at age eleven. The defendant characterized his alcohol consumption as drinking four times per week, but never to the point of intoxication. The defendant further denied any alcohol problems.")

¶ 62 Defendant reported that every day, since the age of 10, he had smoked two blunts of cannabis and had snorted three grams of cocaine and that, since the age of 17, he had taken five pills of ecstasy every day. He realized he was addicted to drugs and that he needed help. But he denied ever committing a crime to obtain drugs. He also denied ever in his life selling illegal drugs or ever having an intention to do so. He insisted that, in each instance, the drugs in his possession were solely for his personal use.

¶ 63 The probation officer wrote:

> "Upon completion of the interview for this report, [defendant] was asked what he felt was the major problem in his life at this time. The defendant stated[:] 'Drugs and my problem of trying to get help.' Next, the defendant was asked what he has done or is willing to do to address this problem. [Defendant] responded[:] 'Ask to see if I can finally receive help. Maybe this time somebody will listen.['] The defendant was then asked how he feels about criminal behavior, for which he replied[:] 'I feel it's wrong. But people who never been through our struggle don't know what it's like. Help us!' Finally, [defendant] was asked how he feels about his current offense and possible sentence. The defendant stated[:] 'I truly feel it's wrong. I never said I'm innocent, but this time I am. I'm innocent.' "

¶ 64 2. *The Testimony of Timothy J. Atteberry*

¶ 65 A patrolman for the Champaign police department, Timothy J. Atteberry, testified to an encounter he had with defendant on August 25, 2008. (This incident happened after defendant's previous convictions of drug offenses, in Champaign County case Nos. 01-CF-1288 and 05-CF-1329, and before the incident that was the basis of his conviction in the present case.)

¶ 66 Atteberry testified that at 1:40 p.m. on August 25, 2008, he saw defendant pacing back and forth and talking on his cell phone in front of 306 East Hill Street in Champaign. This address happened to be a focal point of some problems the police had been having on that block.

So, Atteberry and his partner, Officer Sumption, parked their car and got out, to try to see what defendant was up to.

¶ 67 Sumption went to talk with someone on the porch of 306 East Hill Street, and Atteberry went to talk with defendant. Atteberry asked defendant if he had any identification. Defendant replied he had none, but he rummaged around with both hands in the front pockets of his pants and pulled out a document from the Department of Corrections, which had his photograph on it and his name. He told Atteberry this document was proof he had been released on parole. Atteberry asked defendant what he had been in prison for, and defendant replied it had been for selling drugs.

¶ 68 Atteberry talked further with defendant, taking down some biographical information for the police files, and then, in the center of the area where defendant had been pacing back and forth, against the edge of the yard of 306 East Hill Street, Atteberry saw the knotted corner of a sandwich bag. Because of the combination of circumstances—the knotted sandwich bag in defendant's immediate vicinity, defendant's having just got out of prison for selling drugs, his pacing back and forth in front of 306 East Hill Street and talking on his cell phone, and his having to rummage around his pockets with both hands to retrieve a single document—Atteberry concluded he had probable cause to search defendant's person. By then, Sumption had returned from talking with the person on the porch. When Atteberry reached out to take hold of defendant and search him, defendant ran.

¶ 69 Sumption and Atteberry ran after him. Atteberry lost sight of defendant for a moment when defendant ran in between some houses. Sumption tripped on some railroad tracks, and his handcuffs fell onto the ground. Atteberry could not keep up. Officer Standifer, however,

intercepted defendant by stopping his squad car in his path. Defendant collided with Standifer's squad car and then kept running, but Standifer pursued him on foot and apprehended him.

¶ 70 A search of defendant's pockets yielded a razor blade and a wad of cash: $500 or so, none of the denominations larger than 20. The police retraced defendant's path of flight and retrieved Sumption's handcuffs. They also found a clear sandwich bag with several rocks of what appeared to be crack cocaine in it. Instead of being rough-edged rocks, these were neatly squared, as if they had been cut with a razor blade. All together, the rocks weighed seven grams, and a field test showed a positive color reaction for cocaine.

¶ 71 No one saw defendant throw down the bag, and he never admitted possessing it or dropping it. But the bag had been found near the railroad tracks, on a direct line between Sumption's handcuffs and Standifer's squad car.

¶ 72 As for the cash, defendant claimed his girlfriends gave him money. From his experience as a police officer, however, Atteberry knew that cocaine typically was sold in increments of one-tenth of a gram for $10—which, in his thinking, explained the smaller denominations.

¶ 73 3. *The Testimony of Michael K. Johnson*

¶ 74 Michael K. Johnson testified he was a sergeant in the Champaign County sheriff's department and that he was assigned to the division of corrections. On July 11, 2009, a trustee, Enoch Motley, asked to speak with him. Enoch Motley was concerned about something another trustee, defendant, had said to him regarding his son, Mario Motley. According to what Enoch Motley had told Johnson, defendant had warned Enoch Motley that if his son testified against him, he would kill his son.

¶ 75 4. *Defendant's Statement in Allocution*

¶ 76 In his statement in allocution, defendant stated it was a lie he had threatened to kill Mario Motley.

¶ 77 He also accused the police officers of lying. He accused Atteberry of lying by representing that he momentarily lost sight of defendant during the foot chase on August 25, 2008, whereas, in reality, he was right behind defendant the whole time. He accused Prosser of lying by representing in the trial that he was the officer who had searched the car, whereas, in reality, only Butler had searched the car. Defendant regarded this discrepancy as significant because although he had told Prosser he was on parole for a drug offense, defendant never told that to Butler—and Butler was the one searching the car, even though he himself was unaware defendant was on parole. Thus, in defendant's view, the search of the car was illegal because the officer doing the searching of the car was not the officer in the know. See *United States v. Massenburg*, 654 F.3d 480, 495 (4th Cir. 2011) ("Where officers working closely together have *not communicated* pertinent information, the acting officer weighs the costs and benefits of performing the search in total ignorance of the existence of that information—it is not known to her, so it cannot enter into the calculus. Therefore, for purposes of the exclusionary rule, that additional information must be irrelevant." (Emphasis in original.)).

¶ 78 Defendant claimed he could have explained the sandwich bags in his pants pockets. He argued he was "not in the area of control" for purposes of *Gant* and that instead of possessing drugs, he possessed only sandwich bags. He complained he was being punished merely for carrying around empty sandwich bags.

¶ 79 He granted that his last two drug convictions were legitimate: that was why he pleaded guilty the last two times. But he insisted that, this time, he was not guilty. Otherwise, he would have pleaded guilty again.

¶ 80 In conclusion, defendant pointed out that he had been incarcerated all his adult life and that it was hard for a person like him to find a job or even to obtain any help. He felt he never had been given "a fair chance at freedom" and that no one in authority really understood what it was like to be him and to live his life.

¶ 81 5. *The Sentence*

¶ 82 The trial court did not see much rehabilitative potential in defendant other than his youth, but even the consideration of his youth was "attenuated greatly by his continuing to engage in criminal behavior." The court considered, in mitigation, defendant's disrupted childhood, although he had been adopted and raised by an apparently loving grandmother.

¶ 83 It seemed to the trial court that the factors in aggravation greatly outweighed the factors in mitigation. This was defendant's third offense of drug dealing, and he had committed this offense while on mandatory supervised release for his second offense of drug dealing. Six weeks after he was paroled, he was back in the drug business again. The amount of cocaine in this case, 35.4 grams, was not the maximum amount, but it was nevertheless a significant amount, enough for 177 to 354 individual uses.

¶ 84 Nothing had worked thus far; nothing had deterred defendant: not fines, not conditional discharge, not probation, not boot camp, and not even prison. Given defendant's ongoing dedication to selling drugs, the trial court felt obliged to fashion a sentence that would prevent him from setting up shop again anytime soon in the community. It appeared that he was "dedicated to recidivism" and that nothing would stop him except "removal from the customer base."

¶ 85 Pursuant to the discretionary doubling provision of section 408 of the Illinois Controlled Substances Act (Act) (720 ILCS 570/408 (West 2008)), the trial court sentenced

defendant to imprisonment for 32 years (along with fines). The normal range would have been "not less than 6 years and not more than 30 years with respect to 15 grams or more but less than 100 grams of a substance containing cocaine." 720 ILCS 570/401(a)(2)(A) (West 2008). Section 408(a) provided, however: "Any person convicted of a second or subsequent offense under this Act may be sentenced to imprisonment for a term up to twice the maximum term otherwise authorized ***." 720 ILCS 570/408(a) (West 2008).

¶ 86 E. The Motion To Reconsider the Sentence

¶ 87 In August 2009, defendant filed a motion to reconsider the sentence on the following grounds:

> "3. In light of the evidence presented to the Court, the sentence imposed in this case is excessive.
>
> 4. In sentencing the Defendant, the Court failed to follow Article I Section 2 of the Illinois Constitution, which states as follows: 'All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.'
>
> 5. Further, the Court failed to consider the following factors in mitigation within 735 ILCS 5/5-5-3.1:
>
> A. The sentence imposed is not in keeping with the Defendant's past history of criminality, mental history, family situation, economic status, education, occupational or personal habits.

B. The sentence imposed is not in keeping with alternatives available to the Court to assist the Defendant in his rehabilitation."

¶ 88 In October 2009, the trial court denied the motion to reconsider the sentence.

¶ 89 F. The Direct Appeal

¶ 90 Defendant took a direct appeal. He contended that the evidence was insufficient to support his conviction, and he also contended that his trial counsel had rendered ineffective assistance by failing to (1) object to a proposed instruction on the joint possession of narcotics and (2) prevent the police from testifying that defendant was on mandatory supervised release at the time of the incident and that he had consumed ecstasy. *People v. Williams*, No. 4-09-0808, slip opinion at 1 (April 19, 2011).

¶ 91 We affirmed the trial court's judgment, reasoning as follows:

"Looking at the evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could find the elements of the charged offense to be proved beyond a reasonable doubt. Consequently, we decline to reverse the conviction on the theory that the evidence was insufficient.

We also decline to reverse the conviction on the basis of the claimed ineffective assistance. Given the evidence at trial, the trial court was legally obliged to accept the State's proposed instruction on joint possession of narcotics, and any objection to the instruction would have been futile. Defense counsel could have had a reason for refraining from objecting to testimony that

> defendant had taken ecstasy: to put in doubt defendant's awareness of the presence of cocaine in the Jeep he was driving. Even if defense counsel should have objected to the testimony that defendant was on mandatory supervised release, or even if defense counsel should have filed a motion *in limine*, we find no reasonable probability that this omission made a difference in the outcome of the case." *Id.* at 1-2.

¶ 92 G. The Amended Petition for Postconviction Relief

¶ 93 In March 2012, defendant filed a *pro se* petition for postconviction relief.

¶ 94 In June 2012, the trial court appointed postconviction counsel.

¶ 95 In October 2012, postconviction counsel filed an amended petition for postconviction relief, which raised six claims.

¶ 96 1. *The First Claim in the Amended Petition*

¶ 97 The first claim was that the trial court had erred by denying the motion to suppress evidence. The court had relied on defendant's status as a parolee (or, to use the current nomenclature, his status as someone on mandatory supervised release), but "the search of the car was not due to [d]efendant['s] parole status but rather [was] incident to [his] arrest [and therefore] violated *Gant*." Also, "[d]efendant was not in the car[,] and thus," according to the amended petition, "the car was not property under his control" for purposes of section 3-3-7(a)(10) of the Unified Code (730 ILCS 5/3-3-7(a)(10) (West 2008)), the section requiring parolees to consent to searches as a condition of parole. Finally, according to the amended petition, "although [d]efendant statutorily consented to the search, the search *** nonetheless

[had to] be reasonable," and the search was unreasonable, considering that defendant was outside the car and had done nothing suggestive of criminal activity.

¶ 98 2. *The Second Claim in the Amended Petition*

¶ 99 The second claim was that trial counsel rendered ineffective assistance in the suppression hearing and in the trial "by not perfecting the impeachment of officers Prosser and Butler." The amended petition alleged: "At both proceedings, Prosser testified that he searched the passenger side of the car, front and back. In his police report, he never mentions searching the car. Butler testified as well that he and Prosser searched the car together. In his police report, he never mentions that Prosser assisted him in the search of the car." (Actually, no one testified in the suppression hearing. Instead, the parties stipulated to the admission of the police reports.)

¶ 100 3. *The Third Claim in the Amended Petition*

¶ 101 The third claim was that trial counsel rendered ineffective assistance in the trial by failing to object to testimony by police officers, and to an argument by the prosecutor, that defendant had fallen silent when asked whether the drugs belonged to his passenger, Mario Motley. The amended petition argued: "Defendant had the right to remain silent and his silence could not be used against him."

¶ 102 4. *The Fourth Claim in the Amended Petition*

¶ 103 The fourth claim was that trial counsel had rendered ineffective assistance by failing to "thoroughly discuss[] with [d]efendant his right to testify and [by] forcing [d]efendant to not testify." Attached to the amended petition was an affidavit by defendant, which stated that if he had taken the stand, he would have explained to the jury that the empty sandwich bags found in his pants pockets had contained ecstasy for his own personal use and that they were

unrelated to the cocaine in the car. Defendant alleged that this explanation would have resulted in his acquittal.

¶ 104 5. *The Fifth Claim in the Amended Petition*

¶ 105 The fifth claim was that appellate counsel had rendered ineffective assistance on direct appeal by failing to challenge the denial of the motion to suppress evidence (as argued in the first claim), failing to challenge the excessiveness of the sentence, and failing to argue the cumulative effect of all the errors.

¶ 106 Specifically, as to the sentence, the amended petition stated: "Defendant's prior drug convictions made him eligible for discretionary doubling from 6-30 to 6-60 years in prison." But "[t]he trial court then commented on [d]efendant['s] being a drug dealer and us[ed] the prior convictions as aggravation to impose a sentence in the doubles range." In defendant's view, this amounted to "double-enhancing his prior drug convictions as aggravation."

¶ 107 As to the cumulative effect of errors, the amended petition appeared to incorporate claims from the *pro se* petition. The amended petition reads: "Ineffective assistance of counsel of [the office of the State Appellate Defender] for not raising on appeal the issues of the trial court's denial of the Motion to Suppress outlined in paragraph 1A above, that the sentence was excessive[,] and cumulative errors. (Defendant's pro se claims 1, 6, 9[,] and 10)." The import of the parenthetical material seems to be that the first, sixth, ninth, and tenth *pro se* claims are incorporated into the amended petition. So, let us take a look at those *pro se* claims.

¶ 108 The first *pro se* claim was that appellate counsel rendered ineffective assistance on direct appeal by failing to raise the issues in "claim(s) 2, 4, 6, 8, 9, and, or 10" of the *pro se* petition. The amended petition expressly abandons the fourth and eighth *pro se* claims. That leaves the second, sixth, ninth, and tenth *pro se* claims, which the amended petition appears to

incorporate under the heading of ineffective assistance of appellate counsel. Those incorporated *pro se* claims are as follows.

¶ 109 a. The Second *Pro Se* Claim

¶ 110 The second *pro se* claim was that, even though defendant was on mandatory supervised release, the search of the car had to be reasonable, and the search was unreasonable under the circumstances. See *Wilson*, 228 Ill. 2d at 40 ("[T]he requirement for a warrant has been held unnecessary in cases involving probationers and parolees when the search is deemed reasonable.").

¶ 111 b. The Sixth *Pro Se* Claim

¶ 112 The sixth *pro se* claim was that trial counsel rendered ineffective assistance by failing to object when the trial court considered defendant's prior convictions as an aggravating factor after the court already used those prior convictions for discretionary doubling under section 408 (720 ILCS 570/408 (West 2008)). Defendant cited *People v. Saldivar*, 113 Ill. 2d 256 (1986), for the proposition that "[a] potential aggravating factor for sentencing purposes which is also a necessary element of an offense cannot be considered as an aggravating factor in sentencing a defendant."

¶ 113 c. The Ninth *Pro Se* Claim

¶ 114 The ninth *pro se* claim was that appellate counsel rendered ineffective assistance by failing to challenge the excessiveness of the sentence. According to this *pro se* claim, part of the reason why the sentence was excessive was that when arriving at the sentence, the trial court considered the following things, which it should not have considered.

¶ 115 First, the trial court commented on defendant's lack of remorse. Defendant argued in his *pro se* petition: "One can hardly be expected to be remorseful and accept responsibility for his actions for something he contends he did not do."

¶ 116 Second, defendant complained that, in sentencing him, the trial court considered traffic offenses that he could not possibly have committed, considering that he "was incarcerated during the whole year of 2006." (This complaint is a little difficult to understand, considering that, as far as we can see from the presentence investigation report, defendant never was charged with committing a traffic offense in 2006—by which we mean 2006 as the year of commission. The year of the traffic offense can be ascertained from the first two digits of the case number. It appears, from page 3 of the report, that defendant committed six traffic offenses in "05," that is, in 2005 (referring to the case numbers). The report also notes that he was on mandatory supervised release from January to August 2005.)

¶ 117 Third, defendant alleged in his *pro se* petition that "it was improper for the trial Judge to consider in aggravation an arrest which did not result in a conviction," namely, his arrest on August 25, 2008, for possessing a controlled substance with the intent to deliver it (the topic of Atteberry's testimony in the sentencing hearing).

¶ 118 d. The Tenth *Pro Se* Claim

¶ 119 In his tenth *pro se* claim, defendant alleged that the cumulative effect of trial counsel's errors deprived him of a fair trial.

¶ 120 6. *The Sixth Claim in the Amended Petition*

¶ 121 The sixth and final claim in the amended petition was a claim of actual innocence.

¶ 122 In September 2013, in the third stage of the postconviction proceeding, the trial court denied the amended petition.

¶ 123 This appeal followed.

¶ 124 II. ANALYSIS

¶ 125 A. The Claim of Voidness

¶ 126 Defendant claims that his sentence of 32 years' imprisonment is an extended term unauthorized by section 5-8-2(a) of the Unified Code (730 ILCS 5/5-8-2(a) (West 2008)) and that the sentence therefore is "void." See *People v. Arna*, 168 Ill. 2d 107, 113 (1995); *People v. Wade*, 116 Ill. 2d 1, 5 (1987) (a party may attack a void sentence at any time, directly or collaterally).

¶ 127 A void order is an ordered entered by a court without jurisdiction. *In re Haley D.*, 403 Ill. App. 3d 370, 381 (2010). It is undisputed that the trial court had personal jurisdiction over defendant. As for the other kind of jurisdiction, subject-matter jurisdiction, it comes, even in criminal cases, from article VI, section 9, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 9), as the supreme court recently held when abolishing the "void sentence rule." *People v. Castleberry*, 2015 IL 116916, ¶ 18. "Because a circuit court is a court of general jurisdiction, which need not look to the statute for its jurisdictional authority" (except in cases of administrative review (*id.* ¶ 15)), noncompliance with section 5-8-2(a) or any other statute would not make defendant's sentence void. (Internal quotation marks omitted.) *Id.* ¶ 19.

¶ 128 B. Trial Counsel's Assumption That Defendant Was Eligible for Discretionary Doubling

¶ 129 Defendant seems to suggest that trial counsel rendered ineffective assistance by "labor[ing]" under the "error" that defendant was eligible for "discretionary doubling" under section 408 of the Act (720 ILCS 570/408 (West 2008)). He argues that under *People v. Williams*, 2014 IL App (3d) 120824, ¶ 19, "an extended-term sentence is only permitted under the specific circumstances enumerated in section 5-5-3.2" of the Unified Code (730 ILCS 5/5.8.2

(West 2008)), as section 5-8-2(a) of the Unified Code (730 ILCS 5/5-8-2(a) (West 2008)) states, and he argues that insomuch as section 408 conflicts with section 5-8-2(a), section 5-8-2(a) controls because it took effect later (see *Williams*, 2014 IL App (3d) 120824, ¶ 21).

¶ 130 Because this argument is beyond the scope of the amended petition for postconviction relief, it is forfeited. "Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived," that is to say, forfeited. 725 ILCS 5/122-3 (West 2012); see also *People v. Jones*, 213 Ill. 2d 498, 508 (2004) ("[O]ur appellate court is not free, as this court is under its supervisory authority, to excuse, in the context of postconviction proceedings, an appellate waiver caused by the failure of a defendant to include issues in his or her postconviction petition."). Defendant never alleged in his amended petition that he was ineligible for discretionary doubling under section 408. In fact, he took the opposite position in his amended petition. He alleged: "Defendant's prior drug convictions made him eligible for discretionary doubling from 6-30 to 6-60 years in prison." He never alleged a nonconformance with sections 5-8-2(a) and 5-5-3.2.

¶ 131 C. Stipulating to the Police Reports in the Suppression Hearing

¶ 132 Defendant claims his trial counsel rendered ineffective assistance by stipulating to the police reports in the suppression hearing instead of taking testimony. This is another claim defendant has forfeited by omitting it from his amended petition. See 725 ILCS 5/122-3 (West 2012). The amended petition assumed, incorrectly, that the police officers testified in the suppression hearing, and the amended petition accused trial counsel of ineffective assistance for failing to impeach them during their testimony.

¶ 133 D. Failing To Correct the Presentence Investigation Report and Failing To Object to the Use of an Arrest That Did Not Result in a Conviction

¶ 134 The presentence investigation report showed a number of tickets, four of them *disposed of* in 2005 and a fifth *disposed of* in 2006. And in the sentencing hearing, Atteberry testified to arresting defendant in 2008 for possessing approximately seven grams of what appeared, from field testing, to be crack cocaine.

¶ 135 In his brief, defendant accuses his trial counsel of ineffective assistance for saying no when the trial court asked if any corrections should be made to the presentence investigation report. Defendant argues the "unpaid tickets on [page] 3 of the report from 2005 and 2006 *** are contradicted by [defendant's] incarceration for all of 2006." Also, defendant accuses trial counsel of ineffective assistance for failing to object to Atteberry's testimony regarding the arrest in August 25, 2008, an arrest that evidently had not led to a conviction. See *People v. Smothers*, 70 Ill. App. 3d 589, 591 (1979) ("In a hearing on aggravation and mitigation, arrests not resulting in conviction are not to be considered. It is otherwise as to probation.").

¶ 136 Again, these claims are forfeited because of their omission from the amended petition, which, to the extent it did not adopt allegations from the *pro se* petition, superseded the *pro se* petition. See *People v. Pinkonsly*, 207 Ill. 2d 555, 566-67 (2003); *People v. Phelps*, 51 Ill. 2d 35, 38 (1972); *Barnett v. Zion Park District*, 171 Ill. 2d 378, 384 (1996); see 725 ILCS 5/122-3 (West 2012).

¶ 137 E. The Claim of Ineffective Assistance of Appellate Counsel

¶ 138 In his brief, defendant argues that, in three ways, his appellate counsel rendered ineffective assistance on direct appeal. First, appellate counsel failed to challenge the denial of the motion for suppression of evidence. Second, appellate counsel failed to challenge the use of impermissible factors in sentencing, specifically, the traffic tickets disposed of in 2005 and 2006

and the arrest in 2008. Third, appellate counsel failed to challenge the excessiveness of the sentence. We will consider each of those contentions in turn.

¶ 139 1. *Failing To Challenge the Denial of the Motion for Suppression*

¶ 140 According to defendant, appellate counsel, on direct appeal, should have challenged the trial court's denial of his motion for suppression of evidence, and appellate counsel's failure to do so was ineffective assistance. "Whether counsel provided ineffective assistance is a mixed question of fact and law. [Citation.] Therefore, we defer to the trial court's findings of fact, but we make an independent judgment about the ultimate legal issue. [Citation.] We review *de novo* whether counsel's omission supports an ineffective assistance claim" [Citation]. (Internal quotation marks omitted.) *People v. Coleman*, 2015 IL App (4th) 131045, ¶ 66 (quoting *People v. Davis*, 353 Ill. App. 3d 790, 794 (2004)).

¶ 141 It is an undisputed fact that, on direct appeal, appellate counsel omitted any challenge to the denial of defendant's motion to suppress evidence. Therefore, we ask, *de novo*, whether this omission was "objectively reasonable." *People v. Mack*, 167 Ill. 2d 525, 532 (1995). In our *de novo* review of the record, we conclude that, in searching the car on March 1, 2009, the police relied in good faith on the law existing at the time and that, consequently, it was objectively reasonable of appellate counsel to refrain from challenging the denial of the motion for suppression of evidence. It is true, as the trial court said, that under *Gant* the search would not have been justifiable as a search incident to arrest—but at the time of the search, *Gant* did not yet exist. The search was on March 1, 2009, and *Gant* was not issued until April 21, 2009. Before *Gant*, the Supreme Court held: "So long as an arrestee is the sort of 'recent occupant' of a vehicle such as petitioner was here, officers may search that vehicle incident to the arrest." *Thornton v. United States*, 541 U.S. 615, 623-24 (2004).

¶ 142 Defendant was a " 'recent occupant' " of the vehicle when Prosser arrested him, and under *Thornton*, which was binding precedent on March 1, 2009, Prosser or Butler were justified in searching the vehicle. *Id.* Police officers could rely in good faith on *Thornton* until *Gant* came along. "Evidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule." *Davis v. United States*, _____ U.S. _____, _____, 131 S. Ct. 2419, 2429 (2011); *People v. LeFlore*, 2015 IL 116799, ¶ 31 (applying *Davis*'s good-faith exception to the exclusionary rule). Therefore, we are unconvinced that appellate counsel rendered ineffective assistance, on direct appeal, by choosing not to challenge the trial court's denial of defendant's motion for suppression of evidence. *Thornton* was still binding precedent at the time of the search, and the police were not required to predict the issuance of *Gant*.

¶ 143 2. *Failing To Challenge the Use of Inappropriate Factors in the Sentencing Hearing*

¶ 144 In defendant's view, objectively reasonable assistance on direct appeal would have entailed challenging the trial court's use of inappropriate factors in determining his sentence, namely, the traffic convictions from 2005 and 2006 and his arrest (without conviction) in 2008.

¶ 145 Actually, it was objectively reasonable of appellate counsel to refrain from raising the traffic tickets and the arrest, considering that (1) the motion to reconsider the sentence said nothing about the traffic tickets and the arrest and (2) the law was clear that sentencing issues omitted from the postsentencing motion would be regarded as forfeited on direct appeal. See 730 ILCS 5/5-4.5-50(d) (West 2012); *People v. Tyus*, 2011 IL App (4th) 100168, ¶¶ 85, 87.

¶ 146 3. *Failing To Challenge the Excessiveness of the Sentence*

¶ 147 Because of defendant's criminal history, appellate counsel could have reasonably decided it would be untenable to argue that 32 years' imprisonment was an abuse of discretion.

¶ 148 It is well established that a sentencing decision will be upheld unless it was an abuse of discretion. *People v. Perruquet*, 68 Ill. 2d 149, 153 (1977). This is the most deferential standard of review known to the law. *People v. Crane*, 195 Ill.2d 42, 50 (2001). To characterize the sentence of 32 years' imprisonment as an abuse of discretion, appellate counsel would have had to be able to argue that the sentence was clearly illogical, arbitrary, unreasonable, contrary to law, or not the product of conscientious judgment. *People v. Covington*, 395 Ill. App. 3d 996, 1002-03 (2009).

¶ 149 Given defendant's criminal history, we are unable to say it was objectively unreasonable to refrain from making the argument that the sentence was an abuse of discretion. See *Mack*, 167 Ill. 2d at 532. (Defendant points out that, in a letter to him, the lawyer appointed to represent him on direct appeal opined that the sentence was extreme. Even so, the standard is objective, not subjective (*id.*), and just because appellate counsel or, for that matter, we ourselves disagreed with the sentence, that would not necessarily make the sentence an abuse of discretion. See *Covington*, 395 Ill. App. 3d at 1002-03.) The present offense was defendant's third felony violation of section 401(a) of the Act, and he committed this violation while on mandatory supervised release for the second violation. If someone, despite punishment, keeps committing the same offense, it should be foreseeable that the punishment eventually will be, as in the present case, severe—especially if the person was on mandatory supervised release when recommitting the offense.

¶ 150 Defendant argues that, in imposing the penalty of 32 years' imprisonment, the trial court "apparent[ly] refus[ed] to consider" mitigating factors, such as defendant's youth, the

classes he took while incarcerated, his short periods of employment, and the nonviolent nature of his offenses. This argument is unconvincing. Just because the court did not give these mitigating factors the weight defendant believes they deserved, it does not follow that the court *disregarded* them. For example, the court explicitly considered defendant's youth. The court stated: "I don't see that there is any rehabilitative potential short of his youth, and that has attenuated—or is attenuated greatly by the fact that he has squandered that by committing himself to engaging in criminal behavior."

¶ 151 While admitting his recidivism, defendant argues it is a mitigating factor that his repeated offenses "neither caused nor threatened serious physical harm to another." 730 ILCS 5/5-5-3.1(a) (West 2008). It may be that selling cocaine does not cause or threaten serious physical harm within the meaning of section 5-5-3.1(a), but selling cocaine is destructive. Cocaine takes over people's lives and undermines their health. It destroys families and communities. And yet defendant has defiantly continued to sell cocaine. A reasonable appellate counsel could have decided it would be hard to argue with the trial court's description of defendant as "dedicated to recidivism." And given defendant's history of reoffending even when on mandatory supervised release, a reasonable appellate counsel could have decided it would be impossible to characterize the long prison sentence as arbitrary or devoid of conscientious judgment. See *Covington*, 395 Ill. App. 3d at 1002-03.

¶ 152 III. CONCLUSION

¶ 153 For the foregoing reasons, we affirm the trial court's judgment, and we award the State $50 against defendant in costs.

¶ 154 Affirmed.