

NOTICE

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NO. 4-14-0114

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 15, 2015

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
STEPHEN ORENDORFF,)	No. 12CF90
Defendant-Appellant.)	
)	Honorable
)	Scott Drazewski,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Pope and Justice Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not err in denying defendant's motion to withdraw his guilty plea where the court (1) substantially complied with Illinois Supreme Court Rule 402(a) (eff. July 1, 2012) in admonishing defendant, and (2) found defendant failed to demonstrate his hearing impairment rendered his plea unknowing or involuntary.
- ¶ 2 In December 2012, defendant, Stephen Orendorff, entered a plea of guilty to two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006)), and one count of criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2008)). During the plea hearing, the trial court incorrectly admonished defendant that he faced (1) an aggregate sentencing range of 16 to 150 years in the Department of Corrections (DOC), and (2) a two-year period of mandatory supervised release (MSR) on the criminal-sexual-assault charge. During a February 2013 sentencing hearing, the State pointed out defendant only faced a sentencing range of 16 to 75 years in DOC. The court did not admonish defendant regarding the corrected

sentencing range. The court thereafter sentenced defendant to an aggregate sentence of 48 years in DOC and, on each count, an MSR period of 3 years to life. Later that month, defendant filed a motion to withdraw his plea, which the court subsequently denied.

¶ 3 Defendant appeals, asserting (1) the trial court's incorrect admonishments failed to substantially comply with Illinois Supreme Court Rule 402(a) (eff. July 1, 2012), and (2) his hearing impairment prevented him from entering a knowing and voluntary plea. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In February 2012, a McLean County jury returned a five-count bill of indictment, charging defendant with the following sex offenses involving S.O., a minor: (1) three counts of predatory criminal sexual assault of a child occurring between May 2007 and January 2008 (720 ILCS 5/12-14.1(a)(1) (West 2006)) (counts I, II, III);, (2) one count of criminal sexual assault occurring between January 2010 and January 2011 (720 ILCS 5/12-13(a)(3) (West 2008)) (count IV); and (3) one count of criminal sexual assault of a family member occurring on January 24, 2012 (720 ILCS 5/11-1.20(a)(3) (West 2010)) (count V).

¶ 6 A. Plea Hearing

¶ 7 In December 2012, defendant entered a plea of guilty to two counts of predatory criminal sexual assault (counts II and III) and one count of criminal sexual assault (count IV). The remaining counts were dismissed as part of a partially negotiated plea agreement. Prior to defendant pleading guilty, the trial court admonished defendant as to the charges, the possible penalties, and his rights. With respect to the predatory-criminal-sexual-assault counts, the court admonished defendant those counts alleged nonprobationable Class X offenses that carried a penalty of 6 to 60 years in DOC, followed by an MSR period of three years to life. The court further stated the criminal-sexual-assault count was a nonprobationable Class 1 felony that

carried with it a possible sentence of 4 to 15 years in DOC; however, if defendant was eligible for extended-term sentencing, he would face up to 30 years in DOC. The court admonished the criminal-sexual-assault conviction carried with it a two-year MSR period. All three sentences were subject to consecutive sentencing. In other words, the court explained, defendant faced a sentencing range of 16 to 150 years in DOC. Defendant acknowledged that he understood the sentencing range. He also acknowledged he had no sentencing agreement with the State.

Defendant executed a written plea of guilty and waiver of his right to a jury trial.

¶ 8 In admonishing defendant as to his rights, the trial court asked, "Have any other promises been made to you in order to obtain the pleas of guilty other than those contained within the written plea agreement?" Defendant responded, "Yes, sir." The court then restated its question: "Tell me besides what is written on the plea agreement what promises have been made to you to obtain pleas of guilty." When defendant asked the court to repeat itself, the court again asked, "Have any other promises been made to you in order to obtain your pleas of guilty that aren't contained on the plea agreement?" Defendant responded, "No," then apologized for his misunderstanding.

¶ 9 The trial court next asked, "[h]as anyone forced you or threatened you into entering into this agreement?" Defendant responded, "Yes." Defense counsel then directed the court's attention to defendant's hearing aid, and the court repeated, "[H]as anyone forced you or threatened you into signing this document?" Defendant responded, "No, sir." The court then accepted defendant's pleas of guilty.

¶ 10 B. Sentencing Hearing

¶ 11 In February 2013, defendant's case proceeded to sentencing. During the sentencing hearing, the State pointed out defendant had been incorrectly admonished as to the

sentencing range. As to the predatory-criminal-sexual-assault counts (counts II and III), defendant faced a sentencing range of 6 to 30 years in DOC, not 6 to 60 years as admonished at the time of the plea. As to the criminal-sexual-assault count (count IV), defendant faced a sentencing range of 4 to 15 years in DOC, not 4 to 30 as previously admonished. In other words, rather than facing a sentence of 16 to 150 years, defendant faced a sentence of 16 to 75 years in DOC. The trial court did not admonish defendant regarding the amended sentencing range.

¶ 12 Following the presentation of evidence, the trial court sentenced defendant to a total of 48 years in DOC: 20 years on each count of predatory criminal sexual assault, and 8 years on the count of criminal sexual assault. The court did not mention the period of MSR; however, the sentencing order reflects the court imposed an MSR period of three years to life on each charge. After admonishing defendant regarding his right to appeal, the court asked if defendant understood his right to appeal. Defendant responded, "Yes." The court then asked, "Do you have any questions concerning your rights?" Defendant responded, "Yes." When the court again asked whether defendant had any questions regarding his right to appeal, defendant responded, "No, sir."

¶ 13 C. Postsentencing Proceedings

¶ 14 Later that month, defendant filed a *pro se* motion to modify and reduce his sentence, asserting his hearing impairment prevented him from fully understanding the trial court proceedings and the charges to which he pleaded guilty. Defendant also asserted the trial court failed to properly admonish him. Accordingly, defendant asked to withdraw his plea. In April 2013, the court appointed the public defender's office to represent defendant for purposes of his postsentencing motion. Thereafter, in January 2014, defense counsel filed an amended motion to reconsider the sentence or, in the alternative, a motion to withdraw the guilty plea. Defense

counsel alleged, in part, defendant should be permitted to withdraw his guilty plea because the court did not properly admonish him regarding the sentencing range. Defense counsel did not challenge the incorrect admonition regarding the MSR period.

¶ 15 The next month, the trial court held a hearing on defendant's motion. Defendant testified his hearing impairment made it difficult for him to understand the court proceedings on the date he pleaded guilty. He stated he was often reduced to reading lips in an attempt to understand. Upon reviewing a transcript of the proceedings, defendant said he noted "a lot" of differences between the courtroom proceedings and what he understood to be happening. When asked to provide specific differences in the transcripts, defendant stated, "I didn't understand why those testimonies came against me from my daughters." He did not provide any other specific instances in which his hearing impairment affected his understanding.

¶ 16 Defendant also recalled being admonished that he faced a possible penalty of up to 150 years in DOC. He later learned he actually faced only 75 years in DOC. Defendant testified the sentencing range played a large role in his decision to enter a guilty plea. He explained that a maximum of 75 years in DOC meant he might not have received a sentence that, for all practical purposes, meant life imprisonment. Because it was his first time in trouble, he believed the sentence he received was excessive.

¶ 17 In addition to defendant's testimony, Rick Medearis, a correctional officer at the facility in which defendant was incarcerated, testified he and other correctional officers who interacted with defendant did not perceive defendant to have difficulty in hearing and understanding their communications.

¶ 18 Following the presentation of evidence, the trial court denied defendant's motion to withdraw his guilty plea. The court found defendant did not attempt to withdraw his plea in

his *pro se* motion, but that defense counsel raised the issue in the amended motion filed pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). Moreover, the court noted only two occasions in which defendant appeared confused at the time he entered his plea, and on both of those occasions, the court asked additional questions and defendant indicated he understood. The court found its inaccurate overstatement of defendant's sentencing range worked to defendant's advantage because, rather than facing 150 years in DOC as originally admonished, defendant actually only faced 75 years. Accordingly, the court determined defendant knowingly and voluntarily entered into the plea of guilty; he simply was not happy with the sentence he received.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant argues the trial court erred in denying his motion to withdraw his guilty plea. Specifically, he asserts (1) the court's admonishments failed to comply with Illinois Supreme Court Rule 402(a) (eff. July 1, 2012), and (2) his hearing impairment prevented him from knowingly and voluntarily entering a guilty plea.

¶ 22 "[A] defendant seeking reversal of a trial court's decision denying a motion to withdraw a guilty plea must establish that (1) the guilty plea was attributable to a misapprehension of law or fact on his part; (2) he has a defense to the charge(s) worthy of consideration; or (3) there is doubt as to his guilt, and the ends of justice would be better served by a trial of the cause." *People v. Cosby*, 137 Ill. App. 3d 854, 859, 484 N.E.2d 1165, 1168 (1985). Defendant's challenge relates only to whether the guilty plea was attributable to a misapprehension of law or fact.

¶ 23 We first examine the trial court's admonishments under Rule 402(a).

¶ 24

A. Rule 402(a) Admonishments

¶ 25

Defendant first asserts the trial court's failure to substantially comply with the admonishments set forth in Illinois Supreme Court Rule 402(a) (eff. July 1, 2012) caused him to misapprehend the law and, therefore, impeded his ability to knowingly and voluntarily enter a plea of guilty. Rule 402(a) provides:

"The court shall not accept a plea of guilty or a stipulation that the evidence is sufficient to convict without first, by addressing the defendant personally in open court, informing him or her of and determining that he or she understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences;

(3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made, or to plead guilty; and

(4) that if he or she pleads guilty there will not be a trial of any kind, so that by pleading guilty he or she waives the right to a trial by jury and the right to be confronted with the witnesses against him or her; or that by stipulating the evidence is sufficient to convict, he or she waives the right to a trial by jury and the right

to be confronted with any witnesses against him or her who have not testified." Ill. S. Ct. R. 402(a) (eff. July 1, 2012).

The purpose of this rule "is to ensure defendant's understanding of the plea, the rights he is waiving by so pleading, and the results of his actions." *People v. Louderback*, 137 Ill. App. 3d 432, 435, 484 N.E.2d 503, 505 (1985).

¶ 26 Specifically, defendant asserts the trial court failed to admonish him regarding the appropriate minimum and maximum sentence pursuant to subsection (a)(2). "[T]he failure to properly admonish a defendant, standing alone, does not automatically establish grounds for reversing the judgment or vacating the plea." *People v. Delvillar*, 235 Ill. 2d 507, 520, 922 N.E.2d 330, 338 (2009). "Rather, a reviewing court focuses on whether the guilty plea was affirmatively shown to have been made voluntarily and intelligently." *Id.* Accordingly, strict compliance with the rule is not required; substantial compliance will suffice. *People v. Burt*, 168 Ill. 2d 49, 64, 658 N.E.2d 375, 382 (1995). "[A]n imperfect admonishment is not reversible error unless *** the defendant has been prejudiced by the inadequate admonishment." *People v. Whitfield*, 217 Ill. 2d 177, 195, 840 N.E.2d 658, 669 (2005). The defendant bears the burden of demonstrating he has been prejudiced by the improper admonishment. *Delvillar*, 235 Ill. 2d at 522, 922 N.E.2d at 339.

¶ 27 Here, defendant challenges the court's incorrect admonishment that (1) overstated the maximum sentence and (2) understated the MSR period for the criminal-sexual-assault count.

¶ 28 *1. Overstating the Maximum Sentence*

¶ 29 Defendant argues the trial court failed to substantially comply with Rule 402(a)(2) when it overstated the aggregate sentencing range he faced. Defendant's assertion the trial court's admonishments failed to substantially comply with Illinois Supreme Court Rule 402(a)(2)

(eff. July 1, 2012) is subject to *de novo* review. *People v. Chavez*, 2013 IL App (4th) 120259, ¶ 14, 998 N.E.2d 143.

¶ 30 On the date defendant entered his guilty plea, the trial court admonished him that he faced an aggregate sentence of up to 150 years in DOC. However, at sentencing, the State told the court defendant actually faced an aggregate sentence of up to 75 years in DOC.

Defendant asserts the court's incorrect admonishment failed to substantially comply with Rule 402(a) and, moreover, had he known he faced a sentence of 75 years, he would have proceeded to trial.

¶ 31 In support, defendant relies on several cases, including *People v. Johns*, 229 Ill. App. 3d 740, 593 N.E.2d 594 (1992), *People v. Vasquez*, 332 Ill. App. 3d 269, 772 N.E.2d 922 (2002), and *People v. Williams*, 2014 IL App (3d) 120824, 18 N.E.3d 83. We find these cases distinguishable from the present case. In *Johns*, the trial court sentenced the defendant to probation pursuant to a partial agreement whereby the parties agreed to a five-year sentence cap. *Johns*, 229 Ill. App. 3d at 741, 593 N.E.2d at 595. During the initial plea, the court failed to advise the defendant of the minimum and maximum sentences he faced. *Id.* Thereafter, when the defendant violated his probation, the court sentenced him to six years in DOC. *Id.* at 742, 593 N.E.2d at 596. The defendant appealed, asserting the court failed to substantially comply with Rule 402 because the court had not admonished him regarding the sentencing range when he initially entered his plea of guilty. *Id.* The appellate court reversed the defendant's plea of guilty, concluding the trial court's failure to admonish the defendant regarding the minimum and maximum sentences did not substantially comply with Rule 402(a)(2). *Id.* at 744, 593 N.E.2d at 597. Thus, in *Johns*, the defendant, after violating his probation, received a sentence in excess of the five-year cap, which was the maximum possible sentence of which defendant had ever been

advised. Here, the court overstated the maximum sentence but imposed a sentence within the correct sentence range. Also, while the court did not and should have directly addressed defendant regarding the correct sentencing range, defendant was present when the prosecutor stated the correct range, which was acknowledged and affirmed by the trial court.

¶ 32 In *Vasquez*, the appellate court found the trial court failed to substantially comply with Rule 402(a) when it sentenced the defendant to an agreed-upon nine-year DOC sentence but did not admonish the defendant, among other things, regarding the minimum and maximum sentencing range. *Vasquez*, 332 Ill. App. 3d at 276, 772 N.E.2d at 927. Like *Johns*, this case is distinguishable because, in the present case, defendant was admonished, though incorrectly, regarding the sentencing range he faced. Moreover, the defendant in *Vasquez* entered into a fully negotiated plea agreement, whereas here, defendant's plea was negotiated only to the extent that the remaining counts were dismissed. In addition, the defendant in *Vasquez* entered into a fully negotiated plea agreement absent the opportunity to consider much of the information Rule 402 admonishments are intended to provide. In this case, the court's 402 admonishments were complete and correct with the exception of the sentencing range, which was overstated.

¶ 33 In *Williams*, the trial court admonished the defendant he faced a sentence of up to 60 years, and it accepted the parties' agreement to cap the defendant's sentence at 25 years. *Williams*, 2014 IL App (3d) 120824, ¶¶ 4-5, 18 N.E.3d 83. However, the defendant was only eligible for a sentence of up to 30 years in DOC. *Id.* ¶ 22, 18 N.E.3d 83. The appellate court found the trial court's admonishments failed to substantially comply with Rule 402 and resulted in prejudice to the defendant because, had the defendant known he faced a sentence of only 30 years, he might have been able to negotiate a sentencing cap lower than 25 years. *Id.* ¶ 26, 18 N.E.3d 83. In other words, the defendant thought he was negotiating a 35-year reduction in his

maximum possible sentence when, in reality, he was only negotiating a 5-year reduction in the maximum possible sentence. *Id.* Here, no such sentencing cap existed, and defendant faced the full range of penalties. Thus, *Williams* is also distinguishable.

¶ 34 Defendant bears the burden of persuading this court prejudice resulted from the trial court's inaccurate admonishment. See *Delvillar*, 235 Ill. 2d at 522, 922 N.E.2d at 339; *Whitfield*, 217 Ill. 2d at 195, 840 N.E.2d at 669. Under the specific circumstances of this case, we conclude he has not met this burden. Defendant received an aggregate sentence of 48 years in DOC, well below the 75-year maximum he faced.

¶ 35 In *People v. Riegle*, 246 Ill. App. 3d 270, 275, 615 N.E.2d 1232, 1235 (1993), the trial court improperly implied the defendant faced 9 to 40 years in DOC rather than the appropriate 6- to 30-year range. This court found no prejudice existed because the trial court sentenced the defendant to 14 years in DOC, which was below the appropriate maximum sentence. *Id.* Though *Riegle* may be factually distinguishable, the principle applies to this case. In this case, defendant received an aggregate sentence of 48 years, well below the maximum possible sentence. Accordingly, defendant has failed to demonstrate prejudice.

¶ 36 Defendant's statement that he would have proceeded to trial had he known he faced 75 years rather than 150 years due to the increased possibility he would be released during his lifetime is also disingenuous, given the substantial maximum sentence he faced in either circumstance. This argument also fails to demonstrate prejudice as defendant received a sentence lower than the appropriate 75-year maximum. As the trial court found, defendant's challenge to the proceedings simply reflected defendant's dissatisfaction with the sentence imposed.

¶ 37 Although the trial court overstated the maximum sentence defendant faced, we conclude the court substantially complied with Rule 402(a) where no prejudice resulted.

¶ 38 *2. Understating the MSR Period*

¶ 39 Defendant next asserts the trial court erred in denying his motion to withdraw his plea because the court incorrectly admonished him that he faced an MSR period of two years on the criminal-sexual-assault count, but the law requires, and the court imposed, an MSR period of three years to life. See 730 ILCS 5/5-8-1(d)(4) (West 2010). Defendant failed to raise this issue before the trial court, which ordinarily results in forfeiture. *People v. Morgan*, 385 Ill. App. 3d 771, 773, 896 N.E.2d 417, 419 (2008). However, "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). To demonstrate plain error, a defendant must first demonstrate a clear or obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007). In this instance, defendant must show the court's admonishments failed to substantially comply with Rule 402(a).

¶ 40 Defendant relies on this court's decision in *Louderback* to support his assertion "[a]n accused cannot be said to have intelligently and voluntarily entered his plea of guilty, where no mention was made, at the time he entered his plea, that he would also be subject to a term of mandatory supervised release." *Louderback*, 137 Ill. App. 3d at 436, 484 N.E.2d at 505. However, we are not faced with a situation where the trial court neglected to tell defendant he was subject to a period of MSR; rather, the court understated the MSR period defendant faced.

¶ 41 Regardless, defendant cannot demonstrate he was prejudiced by the trial court's inaccurate admonishment where he pleaded guilty to two more serious counts that both carried an MSR period of three years to life. Here, defendant was informed of the proper MSR period

for the two more serious counts. Given the MSR periods on each count will merge, defendant will be required to serve the longest MSR period—three years to life. See *People v. Jackson*, 231 Ill. 2d 223, 227, 897 N.E.2d 752, 755 (2008) ("When a defendant receives consecutive sentences for multiple felonies, these sentences are treated as a single term, and the defendant serves the MSR term corresponding to the most serious offense.").

¶ 42 Defendant relies on *Whitfield*, 217 Ill. 2d at 190, 840 N.E.2d at 667, in which the supreme court found the trial court failed to substantially comply with Rule 402 by neglecting to mention the defendant was subject to a period of MSR. In *Whitfield*, the defendant entered into a negotiated plea agreement for 25 years in DOC. *Id.* at 179, 840 N.E.2d at 661. At the time, the court did not admonish the defendant a three-year period of MSR would attach to the end of his sentence. *Id.* at 180, 840 N.E.2d at 661. The supreme court concluded the trial court failed to substantially comply with Rule 402(a) because the defendant essentially received a 28-year sentence and, therefore, did not receive the benefit of his bargain. *Id.* at 190, 840 N.E.2d at 667. Here, defendant had no such bargain in place. Defendant's reliance on *People v. Kull*, 171 Ill. App. 3d 496, 498, 525 N.E.2d 1223, 1224 (1988), is similarly misplaced because, like in *Whitfield*, the trial court in *Kull* did not admonish defendant an MSR period would be added to his negotiated sentence. Thus, in both of those cases, the defendant had been denied the benefit of his bargain. By entering a plea with no negotiated sentence, defendant in this case cannot complain the court deprived him of the benefit of his bargain where no such bargain existed.

¶ 43 Because defendant has failed to demonstrate prejudice resulted from the trial court's inaccurate admonition, we conclude the court substantially complied with Rule 402(a). Thus, defendant has failed to demonstrate a clear or obvious error occurred that would require review under the plain-error doctrine. This issue is therefore forfeited.

¶ 44 Accordingly, we conclude the trial court did not err in denying defendant's motion to withdraw his guilty plea on those grounds.

¶ 45 B. Defendant's Hearing Impairment

¶ 46 Defendant next argues his hearing impairment prevented him from knowingly and voluntarily entering a guilty plea.

¶ 47 When a defendant has a hearing impairment, "it is within the trial judge's discretion to determine what reasonable measures are necessary" to assist the defendant. *People v. Kelley*, 237 Ill. App. 3d 829, 831, 604 N.E.2d 1051, 1053 (1992). "The exact manner chosen depends on the circumstances of each case." *Id.* We will not overturn the court's denial of a defendant's motion to withdraw his guilty plea absent an abuse of discretion. *Delvillar*, 235 Ill. 2d at 519, 922 N.E.2d at 338. "An abuse of discretion will be found only where the court's ruling is arbitrary, fanciful, unreasonable, or no reasonable person would take the view adopted by the trial court." *Id.*

¶ 48 Defendant relies on *People v. Shanklin*, 351 Ill. App. 3d 303, 814 N.E.2d 139 (2004), and *People v. Tapscott*, 386 Ill. App. 3d 1064, 899 N.E.2d 597 (2008), in support of his contention he suffered from an ailment that impacted his ability to understand the nature of the proceedings or assist in his own defense. However, both of those cases dealt with whether the respective defendants were mentally fit to stand trial. Nothing in the record suggests defendant in this case was mentally or physically unfit to the extent he was intellectually unable to understand the nature of the proceedings or assist in his own defense. Rather, the question here is whether his hearing impairment left gaps in his understanding of his guilty plea.

¶ 49 Defendant points to 13 occasions during the pendency of the case demonstrating his inability to hear the trial court proceedings. However, "[t]he time the plea is taken is the

crucial time and the record must clearly and affirmatively show that the plea was intelligently and understandingly made." *Johns*, 229 Ill. App. 3d at 744, 593 N.E.2d at 597. Thus, we will restrict our analysis to the date upon which defendant entered his plea of guilty.

¶ 50 When defendant entered his plea of guilty, he readily answered the majority of the court's questions. In two instances, however, defendant answered the questions posed by the trial court in such a way that the court followed up to clarify defendant's position. Defendant relies on these two instances as demonstrating his hearing impairment precluded him from entering a knowing and voluntary plea. Further analysis suggests otherwise.

¶ 51 The first indication of defendant's misunderstanding occurred when the trial court asked, "Have any other promises been made to you in order to obtain the pleas of guilty other than those contained within the written plea agreement?" Defendant responded, "Yes, sir." However, when the court repeated its question, defendant responded, "No," then apologized for his misunderstanding. A similar misunderstanding occurred when the court asked, "[h]as anyone forced you or threatened you into entering into this agreement?" Defendant responded, "Yes." After being directed to defendant's hearing aid, the court repeated the question and defendant responded, "No, sir."

¶ 52 In both instances, the court properly followed up with defendant, repeating or rephrasing his questions as needed for the defendant to hear and understand the questions. Following its inquiry into defendant's understanding, the court found defendant knowingly and voluntarily entered into the plea of guilty. Though defendant argued during the hearing on the motion to withdraw his guilty plea that he had difficulty hearing the court and had to resort to lip-reading, the court found this self-serving testimony insufficient when contradicted by the transcript of the plea hearing. In the end, the court was convinced defendant knowingly and

voluntarily entered the plea of guilty and therefore denied the motion to withdraw his guilty plea. The court determined defendant's statements to be incredible, and this court will not substitute its judgment for that of the trial court. See *People v. Kirchner*, 2012 IL App (2d) 110255, ¶ 11, 973 N.E.2d 444 (it is the trier of fact's role to determine the credibility of witnesses).

¶ 53 Further, during the hearing on the motion to withdraw his plea of guilty, defendant asserted his understanding of the plea hearing was inconsistent with the transcript of the proceedings. He testified the trial court incorrectly admonished him regarding the sentencing range and that he did not agree with the victim's statement regarding the offenses. However, he failed to specify any other aspect of the transcript that differed from his recollection to demonstrate he misapprehended the law at the time of his plea.

¶ 54 In light of defendant's ability to respond appropriately to the trial court's admonishments upon further clarification from the court, defendant has failed to demonstrate his hearing impairment caused him to act under a misapprehension of law when he entered his plea of guilty. Thus, we conclude the trial court did not abuse its discretion in denying defendant's motion to withdraw his plea.

¶ 55 III. CONCLUSION

¶ 56 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 57 Affirmed.