

**NOTICE**

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2015 IL App (4th) 140146-U

NO. 4-14-0146

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

December 10, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
TERRENCE M. DICKERSON,	)	No. 11CF15
Defendant-Appellant.	)	
	)	Honorable
	)	Craig H. DeArmond,
	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Steigmann and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court committed no error in resentencing defendant upon revocation of his probation.

¶ 2 Defendant, Terrence M. Dickerson, pleaded guilty to retail theft over \$300 (720 ILCS 5/16A-3(a) (West 2010)) and the trial court sentenced him to probation. His probation was subsequently revoked and he was resentenced to four years in prison. Defendant filed a motion to reconsider his sentence, which the court denied. He appeals, arguing he is entitled to a new sentencing hearing because the court erroneously imposed a sentence based on (1) his conduct while on probation rather than the original offense to which he pleaded guilty and (2) speculative findings that were unsupported by the evidence at the resentencing hearing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 6, 2011, the State charged defendant with retail theft over \$300 (720 ILCS 5/16A-3(a) (West 2010)), alleging he took a Dell computer valued in excess of \$300 from Walmart without paying. On June 18, 2012, defendant pleaded guilty to the charged offense in exchange for a sentence of probation and the dismissal of charges against him in two other pending cases. On August 29, 2012, the trial court sentenced him to 24 months' probation. At defendant's request, the court also allowed him to reside with his mother in Marion County, Indiana. Beginning in September 2012, Indiana authorities agreed to provide "courtesy supervision" of defendant's probation.

¶ 5 On December 20, 2012, the State filed a petition to revoke defendant's probation. It alleged he violated the conditions of his probation by (1) failing to submit to drug testing as ordered on five specific occasions in October and November 2012, and (2) testing positive for opiates on October 17, 2012. On February 20, 2013, defendant admitted the allegation that he tested positive for opiates and the State's remaining allegation was withdrawn. The parties made no agreement as to defendant's sentence.

¶ 6 On August 30, 2013, the trial court conducted defendant's resentencing hearing. It noted that, on March 29, 2013, a presentence investigation report had been filed in the matter. Both parties indicated they had an opportunity to review the report and the State asserted it had no other evidence. The report showed defendant had a lengthy criminal history that included a juvenile adjudication for burglary and multiple juvenile adjudications for theft and residential burglary. His adult criminal history included misdemeanor convictions for resisting a peace officer (1988), disorderly conduct (1989), mob action (1989), reckless conduct (1990), possession of cannabis (two convictions in 1991), domestic battery (1996 and 2005), battery (2005), and

interfering with the reporting of a crime (2005), as well as felony convictions for possession of a controlled substance (two separate convictions in 1993), attempted possession of a controlled substance with intent to deliver (1992), delivery of a controlled substance (1996), and possession of a narcotic drug/cocaine (2005). Defendant had been sentenced to probation on multiple occasions, had previously had his probation revoked, and had served terms of imprisonment in both the Illinois and Indiana Department of Corrections. Additionally, defendant had numerous convictions for traffic-related offenses.

¶ 7 The presentence investigation report further showed that defendant was the father of nine children, ranging from 10 to 28 years of age. With respect to drug use, defendant reported taking Vicodin on one occasion without a prescription and snorting heroin one time in 1999 because he thought it was powder cocaine. Defendant asserted he first tried cocaine at the age of 17 and last used cocaine in April 2012. According to the report, defendant stated "he use[d] cocaine 'anytime I can get a couple of dollars in my pocket' " and asserted he was stealing so that he could continue using cocaine. Defendant reported that "he used to have a substance abuse problem but not at the current moment." He stated he underwent substance-abuse treatment and counseling through Gateway while imprisoned in Illinois but did not believe he currently needed any substance-abuse treatment or counseling.

¶ 8 At sentencing, defendant testified on his own behalf, stating he was 44 years old and had undergone a lengthy battle with drug addiction. He testified he was addicted to heroin and Vicodin. He denied using cocaine as described in the presentence investigation report, asserting he did not "know where [the probation department] got that from." Defendant acknowledged that he had not done very well when placed on probation in the case at bar and had contin-

ued to use heroin. He requested "another opportunity at probation," asserting he was currently "clean" for the first time. Defendant also maintained that he had previously asked for drug treatment. Specifically, while on probation, he asked both his Indiana and Illinois probation officers to "put [him] in rehab and send [him] to Decatur," where treatment was free. Defendant testified his probation officers refused and one "wanted [him] to go to [a treatment facility] in Indianapolis," where he would have been required to pay \$1,700.

¶ 9 Following defendant's testimony, the parties presented their recommendations to the trial court. The State recommended a five-year prison sentence. It asserted a sentence of probation was not appropriate based on defendant's criminal history and his performance while previously on probation in the case. Defendant's counsel asked the court to impose either another period of probation or the minimum term of imprisonment. Defendant provided a statement in allocution, asserting he "want[ed] to stay clean and \*\*\* get the help that [he] need[ed]."

¶ 10 Ultimately, the trial court resentenced defendant to four years in prison. It noted defendant had a 29-year criminal history and "barely got started" with his probation sentence before the State filed its petition to revoke. The court then set forth a detailed description of defendant's criminal history, which it stated included "a 2012 retail theft [conviction] that [defendant was] facing sentencing for now." It further stated as follows:

"It's hard to envision that you've been sentenced that many times and drug treatment hasn't either been ordered or offered on any occasion. But as you indicated, you went to Gateway and you completed a Gateway program while in the Department of Corrections.

Now, I do kinda get the—I get the argument that seeking treatment on your own can be an issue if it's not court ordered because then you probably have to pay for it. But you've had a multitude of opportunities to ask for drug treatment during all of these cases and get it ordered. I hazard a guess that if at a time during any of [sic] one of these sentences you would have said, 'Judge, I need drug treatment,' if they're not sending you to the Department of Corrections, I'd wager more than likely they're going to make it a condition of your probation.

Unfortunately, the only time that you decide, 'Okay, I want the drug treatment now,' is when here we are. *You're facing a re-sentencing in a retail theft* that you had already gotten probation for and for which you have violated within a couple of months.

[Defense counsel] says, 'Yeah, he's got priors, but come on.' Well that's kinda the whole idea. Yeah, you have priors. You have lots of priors over an extended period of time. You can't very well go backwards now and say, 'Well, okay, because I say I want drug treatment now, now I should get probation.' We've been down that road.

From August 29th of [2012] to today you could have gotten drug treatment. Now, maybe not the residential you were talking about because, you know, it wasn't my choice to move to Indiana.

You chose to go to Indiana. Okay. I understand that. \*\*\* I can understand Marion County not agreeing to send you to a drug treatment facility in Decatur because that's out of state. They don't really have any arrangement with them to provide their drug treatment. Decatur isn't likely to be taking people from out of state for free. They're just not going to do it. And if they don't have drug treatment available over in Marion County, Indiana, I'm surprised; a county of that size. We're talking about Indianapolis. I guess what you're saying is Indianapolis, Indiana, has no available court-ordered residential treatment for drugs. I guess it's possible, but I find it highly unlikely.

I guess the problem boils down, [defendant], it's too little too late. \*\*\*

I guess there's another thing that sticks out. You're telling me, 'Okay. I got it now. I'm ready.' But apparently at no time did you think that [your children] deserved a dad that wasn't an addict. For you, you're ready to do it. But at no time during the time that you have now had nine children have you felt that they needed a father that wasn't an addict; and that's pretty selfish.

You want it now for you. But I'm willing to bet you that at any given time any one of these kids would have said, 'Boy, I wish you'd get some treatment, Dad.' But it was never enough for the

first three, five, seven, or nine children for you to decide to change. But it is now. That's really a very selfish thing. 'I didn't give these kids a father because I was too busy getting high. I love you, son. I love you, daughter. But I don't love you that much. I loved heroin more.'

Taking into consideration all the factors in aggravation and mitigation, it's the judgment and sentence of the court that you'll be sentenced to the Illinois Department of Corrections for a period of four years." (Emphasis added.)

¶ 11 On September 18, 2013, defendant filed a motion to reconsider his sentence. He asked "that the Court reconsider and sentence [him] to a period of probation." Specifically, defendant argued as follows:

"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. The sentence imposed is not in keeping with the Defendant's past history or criminality, mental history, family situation, economic status, education, occupational or personal habits."

¶ 12 On December 19, 2013, the trial court conducted a hearing on defendant's motion to reconsider. Initially, defendant's counsel elected to stand on the written motion. However,

upon inquiry by the court regarding why the imposed sentence was inappropriate, counsel noted evidence was presented at defendant's sentencing that he had a serious and lifelong battle with drug addiction. Counsel argued that, although the court might find a prison sentence appropriate due to defendant's criminal history, defendant's position was that a period of probation should be considered given his history of drug addiction.

¶ 13 The trial court denied defendant's motion to reconsider. In reaching its decision, the court, again, noted and described defendant's lengthy criminal history. It further stated as follows:

"[Defendant] advised the probation officer at the time of the writing of the [presentence investigation] report that although he feels that he use[d] to have a substance abuse problem, he did not have one currently and did not need substance abuse treatment or counseling. It was the opinion of the Court that the reference for the need for substance abuse treatment was less motivated by a desire for treatment than it was motivated by a desire to avoid another prison sentence.

Based upon the Defendant's criminal history, his lack of success on probation, The Court is of the opinion that the sentence is appropriate."

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant argues he is entitled to a new sentencing hearing because



the trial court relied upon improper sentencing considerations when resentencing him to four years in prison. Specifically, defendant argues the court committed error by (1) basing its sentencing decision on his conduct while on probation and not considering the original offense to which he pleaded guilty, *i.e.*, retail theft, and (2) making speculative findings that defendant (a) had been offered multiple opportunities to receive drug treatment in the past, (b) could have entered a drug-treatment program while on probation in the case at bar, and (c) loved heroin more than he loved his children.

¶ 17 Initially, the State maintains defendant forfeited his claimed sentencing errors by failing to raise them with the trial court. Defendant disagrees, arguing the issues were properly preserved for review because he argued in his motion to reconsider that the court sentenced him without considering the "seriousness of the offense" and imposed a sentence not in keeping with his past history, family situation, and personal habits.

¶ 18 When a defendant wishes to challenge his sentence following a plea of guilty, he must first file a motion to reconsider his sentence within 30 days after the sentence is imposed. Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). On appeal, "any issue not raised by the defendant in the motion to reconsider the sentence \*\*\* shall be deemed waived." Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013).

"Requiring a written post-sentencing motion will allow the trial court the opportunity to review a defendant's contention of sentencing error and save the delay and expense inherent in appeal if they are meritorious. Such a motion also focuses the attention of the trial court upon a defendant's alleged errors and gives the ap-

pellate court the benefit of the trial court's reasoned judgment on those issues. *People v. Reed*, 177 Ill. 2d 389, 394, 686 N.E.2d 584, 586 (1997).

¶ 19 On appeal, defendant raises specific claims that the trial court improperly sentenced him based on (1) his conduct during probation without considering his underlying conviction for retail theft and (2) various speculative findings that were unsupported by the evidence. However, in his motion to reconsider, defendant made only very general assertions of error, which were insufficient to alert the court that defendant was claiming that it "considered improper factors at sentencing." Additionally, at the hearing on his motion to reconsider, defendant similarly failed to raise his claimed sentencing errors with the court, asserting only that the court failed to give due consideration to his history of drug addiction. Given these circumstances, we agree with the State and find defendant's claims have been forfeited for purposes of review.

¶ 20 Defendant asks that, in the event forfeiture applies, we review his sentencing claims under the plain-error doctrine. "[S]entencing errors raised for the first time on appeal are reviewable as plain error if (1) the evidence was closely balanced or (2) the error was sufficiently grave that it deprived the defendant of a fair sentencing hearing." *People v. Ahlers*, 402 Ill. App. 3d 726, 734, 931 N.E.2d 1249, 1256 (2010). "However, the plain-error doctrine is not a general savings clause, to be used as a means by which to preserve all errors affecting substantial rights that have not been brought to the trial court's attention." *Ahlers*, 402 Ill. App. 3d at 734, 931 N.E.2d at 1256. A court must begin its "plain-error analysis by first determining whether any error occurred at all" and "[i]f error did occur, [it] then considers whether either of the two prongs of the plain-error doctrine has been satisfied." *People v. Rios*, 2011 IL App (4th) 100461,

¶ 12, 960 N.E.2d 70. A "[d]efendant has the burden of persuasion under both prongs of plain error." *People v. Raney*, 2014 IL App (4th) 130551, ¶ 41, 8 N.E.3d 633.

¶ 21 In this case, defendant pleaded guilty to retail theft over \$300, a Class 3 felony. 720 ILCS 5/16A-3(a), 16A-10(3) (West 2010). Class 3 felonies carry a sentencing range of two to five years' imprisonment. 730 ILCS 5/5-4.5-40(a) (West 2010). As stated, the trial court re-sentenced defendant to four years in prison.

¶ 22 "When imposing sentence, a trial court must balance a defendant's rehabilitative potential with the seriousness of the offense." *People v. Harris*, 2015 IL App (4th) 140696, ¶ 54, 32 N.E.3d 211. "Each sentencing decision must be based on the particular circumstances of the case and the court must consider factors such as 'the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age.' " *Harris*, 2015 IL App (4th) 140696, ¶ 54, 32 N.E.3d 211 (quoting *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999)). "A trial court is given great deference when making sentencing decisions, and if a sentence falls within the statutory guidelines, it will not be disturbed on review unless the court abused its discretion and the sentence is manifestly disproportionate to the nature of the case." *People v. Grace*, 365 Ill. App. 3d 508, 512, 849 N.E.2d 1090, 1093-94 (2006). Additionally, we note "[a] court is not required to expressly outline every factor it considers for sentencing." *Harris*, 2015 IL App (4th) 140696, ¶ 57, 32 N.E.3d 211.

¶ 23 On appeal, defendant contends the trial court sentenced him based on his conduct during probation, "never considered his original offense" of retail theft when determining his sentence, and failed to "explain how [his] sentence related to his underlying conviction." He also maintains the court made speculative findings related to his drug use and ability to seek treat-

ment that were unsupported by the evidence. Defendant argues the court's consideration of such "improper factors at sentencing" is reviewable under the second prong of the plain-error doctrine—which requires that the error was sufficiently grave that it deprived the defendant of a fair sentencing hearing—because such errors unjustly affect a defendant's fundamental right to liberty.

¶ 24 Here, we find the trial court committed no error. First, the record refutes defendant's contention that the court "never considered his original offense" of retail theft when determining his sentence. Specifically, it shows at least two instances during the sentencing hearing when the court expressly noted it was sentencing defendant for the underlying offense of retail theft, thereby indicating the court's consideration of that offense. Second, we note "a trial court is not required to expressly outline its reasoning for sentencing." *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55, 8 N.E.3d 470. Thus, defendant's complaint that the court failed to "explain how [his] sentence related to his underlying conviction" does not support a finding of error by the court.

¶ 25 Further, "when resentencing after a revocation of probation, trial courts are entitled to consider the defendant's conduct on probation." *People v. Rathbone*, 345 Ill. App. 3d 305, 312, 802 N.E.2d 333, 339 (2003). Therefore, the trial court's consideration of defendant's continued drug use while on probation in the instant case was appropriate and not an "improper factor" as suggested by defendant on appeal. Additionally, in *Rathbone*, 345 Ill. App. 3d at 312, 802 N.E.2d at 339, this court found the defendant's assertion that his conduct on probation was an improper sentencing factor was more accurately characterized as a claim "that the trial court gave a proper factor undue weight." We held "[s]uch a claim addresses the trial court's exercise

of its discretion, not the fairness of the proceedings or the integrity of the judicial process" and, therefore, "d[id] not warrant plain error review." *Rathbone*, 345 Ill. App. 3d at 312, 802 N.E.2d at 339. To the extent defendant in this case argues the court gave undue weight to his conduct on probation, we also find plain-error review unwarranted.

¶ 26 Finally, with respect to defendant's contention that the trial court made speculative findings regarding his drug addiction and ability to seek treatment, we also find no error. When reviewing the sentencing hearing in its entirety, the record clearly shows the court's comments were intended to address defendant's recommendation at sentencing—that he receive a sentence of probation so that he could have an opportunity to seek drug treatment—and convey the court's belief that defendant's asserted desire for drug treatment was not genuine. In fact, when addressing the issue of defendant's drug addiction at the hearing on his motion to reconsider, the court expressly stated it believed that defendant's "reference for the need for substance abuse treatment was less motivated by a desire for treatment than it was motivated by a desire to avoid another prison sentence." We find the record supports the court's finding. In particular, it shows defendant provided information regarding his drug use and need for treatment at the time his presentence investigation report was prepared that was inconsistent in several respects with his testimony at sentencing.

¶ 27 Moreover, even assuming, *arguendo*, that the trial court committed error by making speculative findings as to defendant's drug use and ability to seek treatment, defendant has failed to meet his burden of establishing the error was sufficiently grave that it deprived him of a fair sentencing hearing. In this instance, defendant received a sentence that was well within the applicable sentencing range. Additionally, defendant had a significant criminal history involving

numerous felony convictions, previous unsuccessful attempts at probation, and prior terms of imprisonment. In the case at bar, defendant was initially sentenced to probation on August 29, 2012, but, by October 17, 2012, he had already committed a probation violation. Finally, the court's comments at the hearing on defendant's motion to reconsider show it considered proper sentencing factors, including defendant's criminal history and his lack of success on probation.

¶ 28

### III. CONCLUSION

¶ 29 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.

¶ 30 Affirmed.