

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2016 IL App (3d) 140480-U

Order filed April 20, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 13th Judicial Circuit, Bureau County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0480
BILLY J. STRADER,)	Circuit No. 13-CF-41
Defendant-Appellant.)	Honorable Cornelius J. Hollerich, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not consider a factor inherent in the offense in sentencing defendant.
- ¶ 2 Defendant, Billy J. Strader, appeals from his sentence of 12 years' imprisonment, arguing that the trial court erroneously considered a factor inherent in the offense in sentencing defendant. We affirm.

¶ 3 **FACTS**

¶ 4 After a bench trial, the trial court found defendant guilty of one count of aggravated driving under the influence of alcohol (625 ILCS 5/11-501(d)(1)(C) (West 2012)) for driving a vehicle while under the influence of alcohol and involving the vehicle in a motor vehicle crash that resulted in great bodily harm to Ashley Weber, which defendant's driving while under the influence of alcohol proximately caused.

¶ 5 The evidence at trial established that on April 4, 2013, defendant, Weber, Steven Kiser, and Jonathan Buckman had been drinking for several hours and decided to drive from Princeton to Tiskilwa. Angela Heuer arrived prior to their departure and decided to go with them. Defendant, Weber, Kiser, and Buckman were intoxicated. Defendant was driving and Weber was in the middle of the backseat. Defendant veered slightly off the road. There was conflicting testimony about whether Weber had kicked defendant before he veered. Defendant briefly corrected his course, but then lost control of the vehicle.

¶ 6 The car was found 100 yards from the road. Buckman and Weber had been ejected from the car. Divot marks showed that the car had flipped over three times. Beer cans were scattered around the scene, both inside and outside the car. Some of the cans were full and some were empty. Defendant was still in the driver's seat and smelled of alcohol. He slurred his words when speaking to the paramedics and police. He appeared to be intoxicated, though no sobriety tests were performed. Once he arrived at the hospital, defendant's serum alcohol level was 0.25, which, when converted, would be a blood alcohol concentration of 0.211 or 0.219, depending on the conversion factor used.

¶ 7 Both Kiser and Weber sustained serious injuries. Kiser had to receive physical therapy to walk, had permanent vision impairment, and impaired cognitive ability. Weber's injuries included: a fractured skull with subdural and extradural hemorrhage; fractured lumbar vertebrae

without spinal cord injury; fractures to the sacrum, coccyx, and jaw; extraction of 14 teeth; and permanent mental impairment. Weber was in a wheelchair and had to live in a nursing home.

¶ 8 At a sentencing hearing, the State presented victim impact statements from Weber and her mother as evidence in aggravation. Weber's statement said that the accident "changed [her] life dramatically." She stated that she had a permanent brain injury and may never walk on her own again. She cannot live alone and requires 24-hour care as she needs someone to help her and remind her to do everyday tasks. She cannot care for her son. After the accident, she did not recognize any of her family or friends, and it took months to gain back that recognition. She had to relearn how to talk, feed herself, go to the bathroom, and stand with a walker. Her mother had to write the letter as she was left handed and could no longer use her left hand.

¶ 9 The statement from Weber's mother further detailed the injuries that Weber sustained. She described what it was like seeing Weber in the hospital in a coma and how she had to be put on a ventilator, have a feeding tube inserted, and have a hole drilled in her skull to drain fluid in her brain. She had to have a plate and screws put in her jaw. She was not able to say her first words until the end of July. Weber will never be able to live a normal life. Weber's mother was depressed and stressed due to the large financial burden from Weber's medical bills. She lost her job as she had to care for Weber.

¶ 10 The State asked the court to consider defendant's prior criminal record, the high blood alcohol level, the financial impact on the victims, the permanent disability to Weber, as well as the injuries to the other occupants of the vehicle. The State asked that defendant be sentenced to the maximum 12 years' imprisonment.

¶ 11 As evidence in mitigation, defendant called several witnesses who testified that defendant was a hard worker and a good person, but he suffered from a serious alcohol problem.

Defendant presented a series of written letters that established the same. Defendant also presented a written statement, expressing remorse for the incident and stating that he was attending Alcoholics Anonymous meetings and planned to continue to do so.

¶ 12 Defendant's attorney stated, "[Weber's] injuries alone would put this at a 12-year sentence," but the legislature gave the court the ability to consider other factors to mitigate the sentence. The defense asked the court to consider: (1) the fact that all the individuals in the car were drinking together and chose to get in the car; (2) the testimony that Weber kicked defendant, which may have caused the accident; and (3) defendant's serious alcohol problem. The defense asked the court to sentence defendant to six to eight years' imprisonment and for the court to recommend a substance abuse program.

¶ 13 The court acknowledged that defendant had an alcohol problem, but noted that defendant was 44 years old, had alcoholism for a long time, and had not really dealt with it. The court said it had a hard time giving the disease much weight when defendant had been strongly urged many times to seek treatment, but had not done so. The court said there was disagreement about whether Weber actually kicked defendant, but, even so, the speed the vehicle was traveling and other factors indicated that "the accident would have happened almost regardless of what was going on inside the car."

¶ 14 Next, the court said:

"Looking at the factors in aggravation, the first one is that the defendant's conduct caused or threatened serious harm. There is no doubt in my mind that the defendant's conduct caused serious harm. That is—that was an issue where we've dealt with the proximate cause aspect of the case. But it appears to me that the

evidence established probable cause pretty clearly and the extent of the harm has been documented."

The court also considered defendant's prior criminal history and the necessity of deterrence.

¶ 15 The court then said:

"I've considered all of the factors. I have a list of them that I keep in terms of reviewing them for a sentencing hearing. I've looked at all of them, and I've considered all of them to the extent that they might apply here.

I've considered the victim impact statement, and I am not sure what comment to make about that or whether it requires comment. There is probably no pain like the pain of a parent watching either the death of a child or an injury that is going to fundamentally alter forever someone's life, a child's life. Probably no pain quite like that. Nothing I can do in this case is going to change that. But to the extent that there is an injury of that degree, I certainly am considering that."

¶ 16 The court said that it gave the case a great deal of thought and that the State's position was a reasonable one, stating:

"[I]n looking at the injury in the case, looking at the defendant's prior record, looking at the defendant's prior prison sentences, looking at the offenses for which he was sentenced to prison, and looking at virtually an adult lifetime of alcohol abuse, including

downing a bottle of booze on the day he is reporting to jail, it's hard to find something that is truly mitigating about the situation."

¶ 17 The court concluded by saying, "After considering all the factors in aggravation, mitigation, the Presentence Investigation Report, the victim impact statement, the testimony at trial, it's the order and judgment of the court that the defendant *** is sentenced to the Department of Corrections for 12 years."

¶ 18 Defendant filed a motion to reconsider sentence, solely arguing that the court failed to consider and give appropriate weight to certain factors in mitigation. The court, again, considered "the evidence that was presented at the trial and the nature of the injuries, the circumstances of the accident," as well as all of the evidence in mitigation and aggravation, and denied defendant's motion.

¶ 19 ANALYSIS

¶ 20 On appeal, defendant contends that the trial court erred in considering a factor inherent in the offense—great bodily harm to the victim—in sentencing defendant. Because the court merely considered the *degree* of the harm suffered by the victim, which may be considered as an aggravating factor even when great bodily harm is inherent in the offense, we uphold defendant's 12-year sentence.

¶ 21 Defendant concedes that he did not preserve this issue for review, but asks this court to review the issue as a matter of plain error. "[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 (2010). Defendant contends that the second prong applies. However,

"[t]he first step of plain-error review is determining whether any error occurred." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 22 "The appellate court defers to the trial court's decisions concerning sentencing and presumes that the trial court considered only appropriate factors in sentencing, unless the record affirmatively shows otherwise." *People v. Kelley*, 2015 IL App (1st) 132782, ¶ 93 (quoting *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002)). "Sentencing 'requires careful consideration of all factors in aggravation and mitigation, including, *inter alia*, the defendant's age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education, as well as the nature and circumstances of the crime and of defendant's conduct in the commission of it.'" *Id.* ¶ 94 (quoting *Quintana*, 332 Ill. App. 3d at 109). Though "the trial court may search anywhere within reasonable bounds for facts which may serve to aggravate or mitigate the offense" (*People v. Reed*, 376 Ill. App. 3d 121, 128 (2007)), a trial court may not consider a factor inherent in the offense as an aggravating factor in sentencing. *People v. Phelps*, 211 Ill. 2d 1, 11 (2004). As the legislature already considered all inherent factors when determining an appropriate sentencing range for the offense, considering the factor again when sentencing results in an improper double enhancement. *People v. Conover*, 84 Ill. 2d 400, 404-05 (1981). However, "the severity of the sentence depends upon the *degree of harm* caused to the victim and as such may be considered as an aggravating factor in determining the exact length of a particular sentence, *even in cases where serious bodily harm is arguably implicit in the offense for which a defendant is convicted.*" (Emphases in original.) *People v. Saldivar*, 113 Ill. 2d 256, 269 (1986); see also *People v. Rennie*, 2014 IL App (3d) 130014, ¶ 29 ("The degree of harm to a victim may be considered as an aggravating factor even in cases where serious bodily harm is implicit in the offense."). "In determining the correctness

of a sentence, the reviewing court should not focus on a few words or statements made by the trial court, but is to consider the record as a whole.' " *Reed*, 376 Ill. App. 3d at 128 (quoting *People v. Fort*, 229 Ill. App. 3d 336, 340 (1992)).

¶ 23 Here, the record shows that the trial court considered all the applicable aggravating and mitigating factors, the victim impact statements, defendant's character testimony and statement in allocution, and the arguments of counsel. Considering the record as a whole, the statements the court made regarding the victim's injury showed that the court considered the degree of harm to the victim and the hardship the injury had on her and her family. Such a consideration is not improper. Therefore, the trial court did not abuse its discretion in sentencing defendant.

¶ 24 In coming to this conclusion, we reject defendant's argument that "the record makes clear that the trial court focused upon the mere existence of the statutory factor of harm to the victim in this case rather than the specific degree of harm." In support of this proposition, defendant says that *Saldivar*, 113 Ill. 2d at 271-72, "expressly prohibited a trial court from focusing merely on the 'end result of the defendant's conduct,' as opposed to 'the degree or the gravity of the defendant's conduct.'" Defendant's argument improperly parses out the record. Considering the record as a whole, as we must, the record makes clear that the court considered all the evidence, which included evidence of the degree of the victim's injuries. It was not necessary for the court to make an express finding of the degree of harm or elaborate on the injuries.

¶ 25 As we find that no error occurred, we need not consider defendant's plain error argument.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Bureau County.

¶ 28 Affirmed.