2018 IL App (5th) 140617-U

NO. 5-14-0617

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Randolph County.
	)	
v.	)	No. 13-CF-86
	)	
DERRICK J. TWARDOSKI,	)	Honorable
	)	Richard A. Brown,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's conviction and sentence for first-degree murder is affirmed. Although the defendant's stipulated bench trial was tantamount to a guilty plea, the defendant was sufficiently admonished pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 2012), and the circuit court did not rely on improper factors in sentencing.

¶ 2 The defendant, Derrick J. Twardoski, was charged with four counts of first-degree murder (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2012)). Following a stipulated bench trial, he was found guilty of one count of first-degree murder and sentenced to 53 years' imprisonment. He appeals the conviction, arguing that his stipulated bench trial was tantamount to a guilty plea and that the circuit court failed to properly admonish him

pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 2012). The defendant also argues that the circuit court improperly considered the victim's death and the community's outrage as aggravating factors at sentencing. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On May 10, 2013, the defendant was charged by information with four counts of first-degree murder (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2012)) for intentionally causing a house fire that killed four children, Brandon Owen, Landan Owen, Kailey Owen, and Ethan Owen. At a hearing held on August 6, 2014, the State indicated that the defendant would be waiving his right to a jury trial on count III of the State's information, which charged the defendant with causing the death of Kailey Owen, subject to a stipulated bench trial. In exchange, the State stated that it would not seek natural life imprisonment and would thereby dismiss counts I, II, and IV of the information. See 730 ILCS 5/5-8-1(a)(1)(c)(ii) (court shall sentence defendant to term of natural life imprisonment if defendant is found guilty of murdering more than one victim). The State indicated that the parties had not agreed to sentencing.

¶ 5 Accordingly, the circuit court admonished the defendant that count III alleged first-degree murder and that the evidence presented would "be by way of a stipulation, meaning there won't be any witnesses [and] that [the defendant's] attorney *** and the State's Attorney will stipulate to what the evidence will be." The defendant indicated that he understood and that he had chosen to waive his right to a jury trial. The defendant stated that no one had forced, threatened, or intimidated him to waive his right to trial by

jury, and he executed a written waiver of jury trial. The court further admonished the defendant that in stipulating to the evidence, the defendant waived his constitutional right to confront his accusers, and the defendant indicated that he understood. The circuit court admonished the defendant that he faced a minimum sentence of 20 years and a maximum sentence of 60 years in the Department of Corrections. See 730 ILCS 5/5-4.5-20 (West 2014).

¶ 6 The State proceeded to offer the following stipulation. "[O]n May 10, 2013, the defendant *** started a residential dwelling *** on fire. In the course of committing that arson, *** it totally damaged and destroyed the dwelling place of Matthew and Natasha Owen" and their child, Kailey, died as a result of injuries sustained in that fire. The State stipulated that it would offer evidence through Dr. Raj Nanduri that Kailey died as a result of injuries sustained in the fire. Defense counsel stated that "based upon *** extensive review of the discovery responses provided by the State and through *** investigation in this matter, we do concur and stipulate that that would be the evidence that would be presented by the State" and presented no evidence in defense. The circuit court thereafter admonished the defendant that he had the right to remain silent and the right to testify, and the defendant declined to testify. The defendant acknowledged that no one had forced, threatened, or intimidated him to waive his right to testify. Accordingly, the circuit court found the defendant guilty of first-degree murder as charged in count III and dismissed counts I, II, and IV.

¶ 7 At the sentencing hearing held on October 3, 2014, Donald R. Krull, captain with the Randolph County Sheriff's Office, testified that he was a member of the Southern Illinois Child Death Task Force. Captain Krull further testified to the following.

¶ 8 On April 14, 2013, the Perry County Sheriff's Office received a burglary call at the defendant's unoccupied trailer in Cutler, Illinois, wherein the defendant reported that items had been stolen. On May 8, 2013, the defendant confronted Devin Huber and his mother and stepfather, Justin Green and Amanda Powell, entering their residence to recover his stolen items. During this encounter, Devin gave the name of Matthew Owen, and the defendant stated that he was going to burn his house down. Thereafter, on May 9, 2013, on the afternoon before the fire, the defendant asked one of his daughter's friends where Matthew lived, and she described the house and area where he lived. The defendant thereafter went to two bars in Willisville, and patrons and workers of those bars indicated that the defendant was angry and stated that he was going to burn the house that night.

¶ 9 After arriving on the scene of the fire, Darrell and Christina Kempfer stated to officers that the defendant had bragged to them about setting the fire. When further interviewed, Darrell stated that the defendant had said that he had known that kids were in the house because he saw someone sleeping on the couch, a fact which was corroborated by Matthew and Natasha, who indicated that their son, Noah, had been sleeping on the couch. A child victim advocacy center agent interviewed Noah, who stated that he saw someone in the house who was wearing a mask and a black jacket. Thereafter, police recovered a jacket and mask from the defendant's mother's house.

Officers also spoke to Amber Kempfer, who stated that when she had told the defendant that there were kids in the house, the defendant had replied, "I know. They'll get them out." Amber also indicated that the defendant had in his possession a knife with which he told Amber to stab him. Captain Krull testified that the knife was circumstantially matched to the slashed tires at the murder scene.

¶ 10 Captain Krull testified that there was no indication that the Owen family had anything to do with the defendant's stolen items. Captain Krull further testified that the crime scene revealed that Kailey, age 9, and Ethan, age 12, had exited their beds and were attempting to get out of the house when they died.

¶ 11 Dr. Jagannathan Srinivasaraghavan, a forensic psychiatrist, testified that he interviewed the defendant on August 1, 2014, and on the day before the hearing. Dr. Srinivasaraghavan testified that the defendant began treatment with a mental health professional when he was 13 years old, due to suicidal and homicidal tendencies at that time, and he had been treated for mental health issues thereafter, including one month before the incident. Dr. Srinivasaraghavan testified that the defendant was physically and emotionally abused by his stepfather and his grandfather. Dr. Srinivasaraghavan testified that the defendant reported abusing alcohol, marijuana, cocaine, LSD, and psychedelic mushrooms. Dr. Srinivasaraghavan testified that as a result of a January 29, 2010, incident, in which the defendant jumped from a moving vehicle and suffered multiple skull fractures and two severe hematomas, the defendant thereafter suffered from memory problems and difficulty with higher function skills like planning and problem-solving. Dr. Srinivasaraghavan testified that the defendant's emotional status also became

much more labile, meaning he could be smiling one minute and then quickly change to crying without much reason.

¶ 12 Dr. Srinivasaraghavan testified that the defendant was mentally ill and diagnosed the defendant with major depressive disorder, recurrent, secondary to a head injury, with alcohol dependence and intellectual deterioration secondary to head trauma. Dr. Srinivasaraghavan explained that the defendant faced problems with impulse control and that his head injury and alcohol dependence exacerbated the existing personality disorder. Dr. Srinivasaraghavan testified that the defendant did not admit his guilt.

¶ 13 The defendant's presentence investigation report revealed that the defendant had a criminal history that included, *inter alia*, a felony conviction for burglary and a conviction for battery in 1998, a conviction for mob action in 1999, and a conviction for driving under the influence of alcohol in 2007. In a victim impact statement, Natasha discussed not only the overwhelming grief she felt from the death of her four children, but also the fear she and her son, Noah, felt since the fire. Natasha wrote about the anguish she feels when she considers Kailey and Ethan's last moments, considering that their locations revealed that they were awake and out of bed before they died in the fire. Matthew also wrote about his overwhelming grief and fear since the fire.

¶ 14 On October 3, 2014, in sentencing the defendant, the circuit court stated that it considered the defendant's sentence necessary to deter others from committing the same type of crime. The court noted that the defendant had a history of criminality and was a convicted felon. The court further stated that it found "that the defendant's conduct caused great serious harm to another[,] not only the victim in this case, but also the

victim's family as evidenced by the victim impact statements which the family has written and presented to the Court for the Court to have prior to sentencing." The court stated that it "could go on for a long time about this case and the anger the community feels when these events happen, but obviously, it was a senseless, despicable, [ ]reprehensible act, and for that the defendant must be sentenced to a long term in the Department of Corrections." The court stated that it had considered the nature of the offense, the attending circumstances, and the history, character, and propensities of the defendant. The court found the defendant's sentence necessary for the protection of the public and for the seriousness of the defendant's conduct. Accordingly, the circuit court sentenced the defendant to 53 years in prison, with 3 years' mandatory supervised release.

¶ 15 On October 29, 2014, the defendant filed a motion to reconsider sentence. In it, he defendant alleged that his sentence was excessive, arguing that the circuit court erred in considering the public's outrage and the death of the victim as aggravating factors. On November 7, 2014, the defendant also filed a petition to withdraw guilty plea and vacate sentence. The defendant alleged that the facts did not support a finding of guilt; that he was led to believe that he would not win in court; and that he incorrectly believed he would not be admitting to something he did not do in the stipulated bench trial. On November 21, 2014, the circuit court found that the defendant was not required to file a motion to withdraw guilty plea and could proceed with a direct appeal. On the same date, the circuit court denied the defendant's motion to reconsider sentence. On December 19, 2014, the defendant filed a timely notice of appeal.

¶ 16 ANALYSIS

¶ 17 On appeal, the defendant argues that his stipulated bench trial was tantamount to a guilty plea hearing, and as such, the circuit court was required to admonish him pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012). The defendant argues that because the circuit court failed to properly admonish him, his conviction must be vacated.

¶ 18 On appeal, "[t]he question of whether a defendant's stipulated bench trial is tantamount to a guilty plea is a question of law subject to *de novo* review." *People v. Weaver*, 2013 IL App (3d) 130054, ¶ 17; see also *People v. Horton*, 143 Ill. 2d 11, 21 (1991). "A guilty plea forfeits all nonjurisdictional defenses or defects." *Weaver*, 2013 IL App (3d) 130054, ¶ 17. A stipulated bench trial allows a defendant to avoid the forfeiture of an issue the defendant seeks to raise on appeal, *i.e.*, an issue raised in a motion to quash and suppress evidence, while still allowing the parties to proceed with the benefits and conveniences of a guilty plea procedure. *Horton*, 143 Ill. 2d at 22; *Weaver*, 2013 IL App (3d) 130054, ¶ 18.

¶ 19 Our supreme court has held that "a stipulation is tantamount to a guilty plea when one of two conditions is met: (1) the State presents its entire case by stipulation *and* defendant fails to preserve a defense; *or* (2) the stipulation concedes that the evidence is sufficient to support a guilty verdict." (Emphases in original.) *People v. Clendenin*, 238 Ill. 2d 302, 324 (2010). Thus, even though the defendant in a stipulated bench trial does not necessarily waive his right to appeal every issue that is not jurisdictional, a stipulated bench trial is tantamount to a guilty plea where these conditions are met, and the trial court must afford the defendant the protections that Illinois Supreme Court Rule 402

provides to defendants who plead guilty. *People v. Campbell*, 2015 IL App (3d) 130614, ¶ 15; *Weaver*, 2013 IL App (3d) 130054, ¶ 18; see also *Horton*, 143 Ill. 2d at 21-22. However, although such a stipulation of guilt is similar to a guilty plea, it is not merely a mislabeled guilty plea, and the trial court need not refer to it as a guilty plea. *People v. Bond*, 257 Ill. App. 3d 746, 749 (1994).

¶ 20 Illinois Supreme Court Rule 402 provides that "[i]n hearings on pleas of guilty, or in any case in which the defense offers to stipulate that the evidence is sufficient to convict," the defendant must be admonished as to the nature of the charge, the minimum and maximum sentence, the right to plead not guilty, and the consequences of the stipulation that the evidence is sufficient to convict, including the waiver of the right to trial by jury and the right to be confronted with the witnesses against him who have not testified. Ill. S. Ct. R. 402 (eff. July 1, 2012). "The purpose of Rule 402(a) admonishments is to ensure that the defendant understands the stipulation, the rights he is waiving by stipulating to the sufficiency of the evidence, and the consequences of the stipulation." *Campbell*, 2015 IL App (3d) 130614, ¶ 16.

¶ 21 "It is well settled that Rule 402 requires substantial, not literal, compliance with its provisions." *People v. Dougherty*, 394 Ill. App. 3d 134, 138 (2009); see also *People v. Burt*, 168 Ill. 2d 49 (1995) (substantial compliance satisfies due process). " 'Substantial compliance' means that although the trial court did not recite to the defendant, and ask defendant if he understood, all the components of Rule 402(a), the record nevertheless affirmatively and specifically shows that the defendant understood" what he had agreed to, the rights he had waived, and the consequences of his action. *Dougherty*, 394 Ill.

App. 3d at 138. "Illinois courts have found substantial compliance with Rule 402 where the record indicates that the defendant understandingly and voluntarily entered his plea, even if the trial court failed to admonish defendant as to a specific provision." *Id.* "There is no substantial compliance with Rule 402 and due process has been violated where a defendant pleads guilty in exchange for a specific sentence and does not receive the 'benefits of the bargain.' *People v. Whitfield*, 217 Ill. 2d 177, 186 (2005) (a defendant sentenced to a different term than the one agreed to by the State does not receive the benefits of the plea bargain)." *Id.* at 138-39. Where the facts are undisputed, the adequacy of a court's admonishments is subject to *de novo* review. *People v. Pike*, 2016 IL App (1st) 122626, ¶ 114.

¶ 22 Here, defense counsel stipulated to the State's presentation that the defendant, "without lawful justification, started a residential dwelling *** on fire," and "[i]n the course of committing that arson, *** destroyed the dwelling" and caused the death of Kailey Owen, on whose death Dr. Raj Nanduri would offer evidence. Because the State's entire case regarding the defendant's guilt was presented by stipulation and the defendant did not present or preserve a defense, the stipulation implicated fundamental due process concerns and could only be waived by the defendant personally. Moreover, the defendant's counsel's stipulation to the facts as charged in the information and read to the court, as opposed to a stipulation to factual evidence that would have been presented, was effectively a stipulation to the sufficiency of the evidence against the defendant and a corresponding finding of guilt. As such, the defendant's stipulated bench trial was

tantamount to a guilty plea, and he was entitled to the protections set forth by Illinois Supreme Court Rule 402. See *Horton*, 143 Ill. 2d at 22.

¶ 23 The defendant argues that the circuit court did not substantially comply with Rule 402 because it failed to inform him that he did not have to plead guilty, and therefore, this failure to adequately admonish him requires his conviction to be vacated. However, when the defendant entered his stipulation, the circuit court admonished the defendant of the nature of the first-degree murder charge and of the minimum sentence of 20 years and the maximum sentence of 60 years in the Department of Corrections. See 730 ILCS 5/5-4.5-20 (West 2014). The circuit court explained to the defendant that he had a right to trial where the State would have to prove his guilt beyond a reasonable doubt. The circuit court informed the defendant that pursuant to the parties' agreement, he would be waiving his right to a jury trial and his right to cross-examine witnesses. The defendant acknowledged that he had agreed to proceed before a judge acting alone and had executed a written waiver of jury trial. The circuit court further noted, and the defendant acknowledged, that the defendant was waiving his right to testify. The circuit court questioned the defendant in open court and determined that his agreement was not induced by force, threats, or inappropriate promises. The record reflects that the defendant understood the nature of the charge, his right to trial, the minimum and maximum sentence, his waiver of a right to a trial by jury, his waiver of his right to testify, and his waiver of the right to be confronted with any witnesses against him. His act was knowing and intelligent, done with sufficient awareness of the relevant circumstances and likely consequences. Accordingly, considering the circuit court's oral

admonishments, together with the defendant's written waiver, we find that the circuit court substantially complied with Illinois Supreme Court Rule 402 in admonishing the defendant.

¶ 24 Moreover, we find that the defendant was not prejudiced by the circuit court's failure to recite each item in Rule 402(a). "Failure to properly admonish a defendant does not automatically establish grounds for reversing judgment." *Dougherty*, 394 Ill. App. 3d at 139. "Whether reversal is required depends on whether real justice had been denied or whether defendant has been prejudiced by the inadequate admonishments." *Id.* "It is the defendant's burden to show prejudice." *Id.*

¶ 25 The defendant was correctly admonished as to the maximum penalty on the conviction, and his sentence did not exceed the penalty set forth in the admonishments. The terms of the parties' agreement, the dismissal of the remaining counts and the State's concession not to seek natural life, were stated to the circuit court prior to the defendant's stipulation and were adhered to. We find that real justice has not been denied and that the defendant was not prejudiced by the inadequate admonishments. See *id.*

¶ 26 The defendant also argues that the circuit court erred in sentencing him because it considered the victim's death and the community's outrage as factors in aggravation.

¶ 27 In each felony conviction, the sentencing judge must set forth his reasons for imposing the sentence entered, including any mitigating or aggravating factors specified in the Unified Code of Corrections, as well as any other mitigating or aggravating factors that the judge sets forth on the record that are consistent with the purposes of sentencing. 730 ILCS 5/5-4.5-50(c) (West 2014). In imposing a term of imprisonment, the trial court

considers, *inter alia*, the defendant's criminal history and the need to deter others from committing the same crime. 730 ILCS 5/5-5-3.2 (West 2014).

¶ 28 "A reasoned judgment as to the proper penalty to be imposed must be based upon the particular circumstances of each individual case." *People v. Saldivar*, 113 Ill. 2d 256, 268 (1986); *People v. Morrow*, 2014 IL App (2d) 130718, ¶ 12. Such judgment depends on many relevant factors, including the defendant's demeanor, habits, age, mentality, credibility, general moral character, and social environment, in addition to the nature and circumstances of the offense, including the nature and extent of each element of the offense as committed by the defendant. *Saldivar*, 113 Ill. 2d at 268-69; *Morrow*, 2014 IL App (2d) 130718, ¶ 12. Relevant factors also include the defendant's potential for reform, protection of the public, deterrence, and punishment. *Morrow*, 2014 IL App (2d) 130718, ¶ 12; *People v. Starnes*, 374 Ill. App. 3d 132, 143 (2007). " 'The trial court is in the best position to balance the appropriate factors and tailor a sentence to the needs of the case.' " *Morrow*, 2014 IL App (2d) 130718, ¶ 12 (quoting *People v. Wilson*, 257 Ill. App. 3d 670, 704 (1993)). "An isolated remark made in passing, even though improper, does not necessarily require that defendant be resentenced." *People v. Reed*, 376 Ill. App. 3d 121, 128 (2007).

¶ 29 It is well established that the trial court is presumed to know the law and apply it properly. *People v. Phillips*, 392 Ill. App. 3d 243, 265 (2009). There is thus "a strong presumption that the trial court based its sentencing determination on proper legal reasoning." *People v. Dowding*, 388 Ill. App. 3d 936, 942-43 (2009). We accordingly review the trial court's sentencing determination with great deference, and "[t]he burden

is on the defendant to affirmatively establish that the sentence was based on improper considerations." *Id*. at 943. "In determining whether the trial court based the sentence on proper aggravating and mitigating factors, a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court." *Id.*

¶ 30 The defendant contends that the circuit court improperly considered as a statutory factor in aggravation that his conduct caused serious harm to the victim. See 730 ILCS 5/5-5-3.2(a)(1) (West 2014). The defendant argues that because the causation of serious harm is implicit in the offense of murder, the trial judge improperly considered this factor.

¶ 31 A single factor cannot be used both as an element of an offense and as a basis for imposing "a harsher sentence than might otherwise have been imposed." *People v. Gonzalez*, 151 Ill. 2d 79, 83-84 (1992); see also *People v. Conover*, 84 Ill. 2d 400, 404 (1981) (a factor inherent in the offense should not be considered as a factor in aggravation at sentencing). Accordingly, when imposing a sentence for first-degree murder, "[i]t is impermissible for the circuit court to impose a more severe sentence on the ground that defendant caused the victim serious bodily harm, namely, death, because death is inherent in the offense." *People v. Benford*, 349 Ill. App. 3d 721, 734 (2004); see also *Saldivar*, 113 Ill. 2d at 271-72. "This prohibition against double enhancements is based on the assumption that, in designating the appropriate range of punishment for an offense, the legislature necessarily considered the factors inherent in the offense." *Morrow*, 2014 IL App (2d) 130718, ¶ 13. "Whether a trial court relied on an improper

factor when sentencing a defendant is a question of law, subject to *de novo* review." *Id.* ¶ 14.

¶ 32 Nonetheless, "[s]ound public policy demands that a defendant's sentence be varied in accordance with the particular circumstances of the criminal offense committed." *Saldivar*, 113 Ill. 2d at 269. "Certain criminal conduct may warrant a harsher penalty than other conduct, even though both are technically punishable under the same statute." *Id.* "Likewise, the commission of any offense, regardless of whether the offense itself deals with harm, can have varying degrees of harm or threatened harm." *Id.* "The legislature clearly and unequivocally intended that this varying quantum of harm may constitute an aggravating factor." *Id.* "While the classification of a crime determines the sentencing range, 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.) *Id.*

¶ 33 Accordingly, in sentencing a defendant on a conviction for first-degree murder, it is permissible for the trial court to consider the force employed and the physical manner in which the victim's death was brought about, thereby comprehending the degree or gravity of the defendant's conduct rather than the end result, that is, the victim's death. *Saldivar*, 113 Ill. 2d at 271; *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 128; *Benford*, 349 Ill. App. 3d at 734-35. "It is unrealistic to suggest that the court, in sentencing defendant, must avoid mentioning that someone has died or risk committing

reversible error." *Benford*, 349 Ill. App. 3d at 735. "[H]owever, where the court expressly states that it was considering the death of the victim, the court errs." *Id.*

¶ 34 Here, in sentencing the defendant, the court did not state that it was considering Kailey's death as an aggravating factor. The court stated that it considered the defendant's sentence necessary to deter others from committing the same type of crime. The court noted that the defendant had a history of criminality and was a convicted felon. The court further stated that it found "that the defendant's conduct caused great serious harm to another[,] not only the victim in this case, but also the victim's family as evidenced by the victim impact statements." The testimony at sentencing and the victim impact statements revealed that Kailey, and her brother, Ethan, had exited their beds and were attempting to exit the home when they died. In her victim impact statement, Natasha wrote about the anguish she felt when she considered Kailey and Ethan's last moments. The victim impact statements also revealed that since the house fire, Kailey's family suffered anxiety and feared for its safety. The circuit court's reference to "serious harm" did not reflect that it improperly considered Kailey's death as an aggravating factor. Instead, in determining the exact length of the defendant's particular sentence, the circuit court properly considered the circumstances and nature of the harm caused to the victim and her family, including the physical manner in which Kailey's death was brought about. *Saldivar*, 113 Ill. 2d at 269.

¶ 35 In sentencing the defendant, the court further stated that it "could go on for a long time about this case and the anger the community feels when these events happen, but obviously, it was a senseless, despicable, [ ]reprehensible act." Citing *People v. Short*, 66

Ill. App. 3d 172, 181 (1978), and *People v. Rednour*, 24 Ill. App. 3d 1072, 1077 (1974), the defendant argues that the circuit court thereby improperly considered the community's outrage as an aggravating factor. However, both *Short* and *Rednour* are inapposite. In *Short*, the appellate court reversed the circuit court's sentence where the State had questioned leading members of the community regarding their opinions on the appropriate sentence. *Short*, 66 Ill. App. 3d at 181. In *Rednour*, the appellate court concluded that the circuit court improperly considered the public's displeasure with recent burglaries, none of which were connected to the defendant, and the public clamor for stricter sentences. *Rednour*, 24 Ill. App. 3d at 1077. We have neither scenario before us.

¶ 36 Moreover, remand is unnecessary where the State can demonstrate, by matters appearing in the record, that weight placed on an improper factor was so insignificant that it did not lead to a greater sentence. *People v. Bourke*, 96 Ill. 2d 327, 332 (1983). Here, the circuit court found, as factors in aggravation, the defendant's criminal history and the need to deter others from committing similar offenses. The court properly considered the nature of the offense, the attending circumstances, and the history, character, and propensities of the defendant. The court found the defendant's sentence necessary for the protection of the public and for the seriousness of the defendant's conduct. Accordingly, the circuit court sentenced the defendant to 53 years in prison, with 3 years' mandatory supervised release. Based on a thorough review of the circuit court's remarks, we find that any alleged consideration of an improper factor was so insignificant that it did not lead to a greater sentence. Therefore, we affirm the defendant's conviction and sentence.

¶ 37 CONCLUSION

¶ 38 For the foregoing reasons, the judgment of the circuit court of Randolph County is hereby affirmed.

¶ 39 Affirmed.