2019 IL App (2d) 190417-U
No. 2-19-0417
Order filed October 17, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re VIANCA J., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 17-D-289
	)	
	)	Honorable
The People of the State of Illinois, Petitioner-	)	Patrick Yarborough,
Appellee v. Vianca J., Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Birkett and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in committing respondent to an indeterminate term in the Illinois Department of Juvenile Justice as (1) court properly considered less restrictive alternatives to secure confinement prior to committing respondent to juvenile facility; (2) court considered all of the required statutory factors prior to finding that secure confinement was necessary; (3) sex-offender evaluation complied with requirements of Illinois Administrative Code; and (4) court was aware of the limitations as to the available research regarding female juvenile sex offenders and weighted the evidence accordingly. Moreover, since no error occurred at sentencing, trial counsel was not ineffective for failing to file a motion to reconsider sentence.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Vianca J., was charged in a delinquency petition with aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(3) (West 2016)), criminal sexual assault (720 ILCS 5/11-

1.20(a)(1) (West 2016)), and criminal sexual abuse (720 ILCS 5/11-1.50(b) (West 2016)). Following a hearing in the circuit court of Winnebago County, respondent was adjudicated a delinquent minor and sentenced to the Illinois Department of Juvenile Justice (Department) for an indeterminate period or until her 21st birthday. On appeal, respondent argues that the trial court erred in committing her to the Department. Specifically, she contends that: (1) the trial court failed to consider a less restrictive alternative to secure confinement as required by section 5-750(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-750(1)(b) (West 2016)); (2) the trial court failed to review many of the individualized factors set forth in section 5-750(1) of the Act (705 ILCS 405/5-750(1) (West 2016)) prior to finding that secure confinement was necessary; (3) the sentence was based on a faulty sex-offender evaluation; and (4) trial counsel was ineffective for failing to file a motion to reconsider sentence. We affirm.

¶ 4 II. BACKGROUND

¶ 5 On November 7, 2017, the State charged respondent (born October 17, 2002) in a delinquency petition with one count of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(3) (West 2016)), one count of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2016)), and one count of criminal sexual abuse (720 ILCS 5/11-1.50(b) (West 2016)). The charges stemmed from acts allegedly perpetrated against E.D.G. (born July 29, 2006) between April 1, 2017, and August 25, 2017, when respondent was 14 years old. Specifically, count I of the petition alleged that respondent committed an act of sexual penetration with E.D.G. by the use of force or threat of force "in that she threatened EDG with a machete and she caused bodily harm to EDG, a laceration to her anus, in that the minor caused intrusion, however slight of any part of her body, her hand into the anus of EDG [*sic*]." Count II alleged that respondent committed an act of sexual penetration with E.D.G. by the use of force or threat of force against

E.D.G. "in that said minor caused intrusion, however slight, of any part of her body, her hand, into the anus of EDG, and threatened EDG with a machete [*sic*]." Count III alleged that respondent "committed an act of sexual penetration with EDG ***, who is at least 9 years of age but under 17 years of age, caused intrusion, however, slight, of any part of her body, her hand, into the anus of EDG [*sic*]." Following a hearing on November 8, 2018, the trial court found probable cause existed to believe that respondent was delinquent. The court further found an immediate and urgent necessity to detain respondent pending further proceedings.

¶ 6 Prior to trial, the State filed a "Motion to Allow Hearsey [*sic*] Statements of E.D.G." pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2016)). Specifically, the State requested that the court enter an order allowing it to introduce through various witnesses evidence of the sexual acts allegedly perpetrated by respondent against E.D.G. Following a hearing, the trial court found that the time, content, and circumstances of the statements provided sufficient safeguards of reliability. The court therefore granted the State's motion to permit the witnesses to testify regarding statements made to them by E.D.G. On April 18, 2018, the cause proceeded to an adjudicatory hearing, at which the following evidence was adduced.

¶ 7 Xzena R. testified that she is the mother to four children, including E.D.G., who was born in July 2006. In April 2017, Xzena and her family began sharing a residence with respondent's family for financial reasons. Respondent and E.D.G. shared a bedroom in the home. In June or July, Xzena separated the minors into different bedrooms because they were not getting along. On August 25, 2017, Xzena had an argument with respondent's mother, Annette P., concerning the payment of some bills. During the argument, Xzena said her "mother's intuition" told her that respondent was molesting E.D.G. and she screamed at Annette about it. E.D.G. started

crying and said it was true. At that time, E.D.G. said that respondent fondled and touched her. Xzena could not remember if E.D.G. mentioned penetration. Xzena called the police and E.D.G.'s family moved out of the residence the same day. After the move, while doing laundry, Xzena discovered that the "crotch" had been ripped out of some of E.D.G.'s underwear. Xzena asked E.D.G. how that happened, and E.D.G. told her that respondent would climb on top of her at night, rip her underwear, and forcefully stick her hands in E.D.G.'s "crotch" and anus. E.D.G. also told Xzena that respondent threatened to slice her throat, Xzena's throat, and E.D.G.'s brother's throat if she told anyone.

¶ 8 E.D.G. eventually underwent a medical examination as part of the Medical Evaluation Response Initiative Team (MERIT) Program and an interview at the Carrie Lynn Center. Xzena said that it was after the medical examination and interview that E.D.G. began to disclose in more detail what respondent did to her. Xzena testified that E.D.G. told her that respondent "fist[ed] her in her vagina and *** in her anal area." E.D.G. also told Xzena that respondent used her as a "sex toy," taking her out in the middle of the night and trying to prostitute her or arrange threesomes with people who lived in the neighborhood. E.D.G. told Xzena that respondent did these things to support her own drug habit.

¶ 9 E.D.G. testified she and respondent shared a room, but respondent later moved into a different bedroom because they were getting into fights. E.D.G. testified that she and respondent were fighting because respondent started touching her on her "bottom parts" and "top parts." E.D.G. testified that "bottom parts" meant her "butt" and vagina and "top parts" meant her chest. E.D.G. elaborated that respondent would use her fingers to rip her underwear and touch her "bottom parts" with her fist, "forcefully go[ing] front and backwards." E.D.G. testified that this occurred more than 10 times and caused her vagina to bleed. E.D.G. denied any penetration

during the contacts. E.D.G. also testified that there was an injury where respondent touched her "butt" in that when she "would wipe, it would tear." E.D.G. said that respondent threatened her, her brother, and her mother with a machete that she showed to E.D.G. After E.D.G. informed her mom about what had happened, the police were contacted. E.D.G. did not tell the police everything that happened because she did not understand what was going on at first. E.D.G. testified that she was 10 years old when the acts occurred.

¶ 10 On cross-examination, E.D.G. testified that after she spoke to the police, she told her mother that when everyone in the residence was sleeping, respondent would put her fist in her vagina and "butt." Respondent's fist went in far enough that it made E.D.G. bleed. E.D.G. subsequently spoke to Kim Larson at the Carrie Lynn Center. E.D.G. testified that said she did not tell Larson about respondent putting her fist in E.D.G.'s "butt" because she did not think it was necessary. She also did not tell the police that respondent put her fist in E.D.G.'s "butt." When asked if she recalled the last time that respondent touched her, E.D.G. responded, "[a]bout a few weeks ago or whenever the last time [she] was [in court] *** [m]aybe a few months ago *** I don't remember."

¶ 11 Officer Andrew Kennington of the Rockford Police Department testified that on the morning of August 25, 2017, at around 6 a.m., he was dispatched to an address on the nine hundred block of North Rockton. Upon his arrival, Kennington spoke to E.D.G. E.D.G. told Kennington that she and respondent shared a bedroom and at some point, respondent initiated kissing and rubbing E.D.G.'s vagina. E.D.G. specifically indicated that there was no penetration. E.D.G. also told Kennington that this had been going on since she moved into the home. E.D.G. refused to provide any additional details. Kennington spoke to E.D.G. outside the hearing range of her mother, and he did not interview the mother.

¶ 12 Luke Salberg, a child-abuse investigator for the Illinois Department of Children and Family Services (DCFS), recounted that he was assigned to an investigation related to respondent and E.D.G. To that end, on August 25, 2017, Salberg went to the home of respondent's family and met with her parents. Salberg was given information that there was a machete in the house and he asked respondent and her parents about it. Respondent produced the machete from a drawer. As Salberg was unable to collect and retain physical pieces of evidence, he asked respondent's parents to store the weapon in a secure place.

¶ 13 Kim Larson testified that she is a forensic interviewer. Larson described a forensic interview as "a structured conversation *** done with a child in a nonsuggestive, nonleading manner in order to obtain detailed information regarding allegations of child abuse." Larson conducted a forensic interview of E.D.G. at the Carrie Lynn Center on September 6, 2017. During the interview, E.D.G. told Larson that respondent touched her approximately 50 times. Larson asked E.D.G. whether respondent placed anything inside her "butt." E.D.G. did not mention any anal penetration, but told Larson that respondent inserted her fist into E.D.G.'s vagina and then twisted her fist. E.D.G. also told Larson that there was bleeding and that her underwear was cut with a scissors. Larson's interview with E.D.G. was video recorded, and a copy of the recording was admitted into evidence.

¶ 14 Detective Janie Martin of the Rockford Police Department testified that she was assigned to investigate the case involving respondent and E.D.G. To that end, Martin attended the interview at the Carrie Lynn Center on September 6, 2017. At that time, Martin learned that there were potential pieces of physical evidence, including a machete and underwear. Martin collected two pairs of underwear from Xzena on September 28, 2017. Both pairs had holes in the crotch area when Martin received them. Early in November, Martin received information

that there was a machete that needed to be collected from respondent's home. Martin subsequently went to the residence, and Annette gave her the machete.

¶ 15 On cross-examination, Martin testified that the underwear she received from Xzena had been laundered. Martin further testified that during the interview at the Carrie Lynn Center, E.D.G. recounted that respondent had "shoved her fist so far in [E.D.G.'s vagina] it burned, hurt, and *** [respondent's] fist was bloodied." Martin did not recall E.D.G. saying that respondent had inserted her fist into E.D.G.'s buttocks. After reviewing her field notes, Martin also recalled E.D.G. telling the interviewer at the Carrie Lynn Center that there were more than 50 incidents of abuse.

¶ 16 Shannon Krueger testified that she is a pediatric nurse practitioner with the MERIT Program. Krueger testified that the MERIT Program conducts comprehensive medical examinations of children suspected of being physically or sexually abused, assists in the investigative process, and raises awareness in the community about child-abuse. Krueger testified that she has a bachelor's of science degree in nursing and was a registered nurse for 10 years before obtaining a master's of science in nursing and becoming a board-certified pediatric nurse practitioner. Krueger also spent 300 clinical hours training with a pediatric physician who is board certified in child physical and sexual abuse. Krueger was qualified as an expert in the medical area of child sexual abuse.

¶ 17 Krueger examined E.D.G. on September 25, 2017. At trial, Krueger testified that E.D.G. reported that respondent would touch her vaginal area and insert her fingers and fist into her vagina. E.D.G. told Krueger this caused significant pain and bleeding. Krueger testified that E.D.G. told her that respondent had threatened to kill her on several occasions and threatened to slit her brother's and mother's throats. Upon examination, Krueger found lacerations to both the

vagina and the anus that were in the healing stage. Although E.D.G. did not mention any anal penetration, Krueger opined that children of E.D.G.'s age have a difficult time differentiating the sensations of the vagina or the anus. The short distance between the two orifices contributes to that confusion. Krueger said E.D.G. demonstrated how respondent allegedly penetrated her by holding up four fingers and then putting her thumb outside the four fingers and making an upward motion. Krueger opined that the injuries she observed were consistent with that type of description. Krueger further opined that E.D.G.'s anus had been penetrated.

¶ 18 Following Krueger's testimony, the State rested. Respondent then moved for a directed finding, which the trial court denied. Respondent did not present any witnesses on her behalf. On July 13, 2018, following closing arguments by the parties, the trial court adjudicated respondent delinquent of the three offenses set forth in the delinquency petition. The trial court ordered a sex-offender evaluation and a social history report and continued the matter for disposition.

¶ 19 On August 10, 2018, respondent's attorney, Assistant Public Defender Michael Herrmann, filed a motion for reconsideration or a new trial. At a hearing on August 27, 2018, Herrmann indicated that he wanted to "supplement" the motion for reconsideration with the trial transcript. As such, Herrmann requested a continuance, which the trial court granted. Also on August 27, 2018, Jeffrey Sundberg, a licensed clinical social worker, filed the sex-offender evaluation.

¶ 20 In the sex-offender evaluation, Sundberg wrote that respondent "appeared to posses average cognitive abilities," demonstrated a "propensity to project blame," "was rather crude and matter-of-fact in her description of her sexual experiences and attitude," and "seemed lacking in empathic regard." Respondent appeared "largely reluctant to engage in exploratory discussion"

and "remained rather selective in her provision of information." Respondent described E.D.G. as jealous of her and "trying to start drama." Respondent claimed that E.D.G. "clinged" to her like she "wanted" respondent. Respondent denied responsibility for the offenses, a view shared by respondent's mother.

¶ 21 Sundberg reported that although respondent was without a history of prior arrest, she had "a variety of school-based behavioral difficulties" and was eventually diagnosed with "intermittent explosive disorder" by a Dr. Syad Irfan.[1] The behavioral difficulties at school included physical altercations (including one which resulted in her expulsion from middle school), "oppositional responses toward staff," and excessive absences. Respondent subsequently began to demonstrate a more generalized oppositional nature, *e.g.*, sneaking out of the family home, forwarding nude photographs to her then boyfriend, and an increased use of alcohol and illicit substances. Respondent's parents attributed her behavior to associating with "the wrong crowd" and "trying to show off." Despite these behavioral issues, respondent claimed that she had achieved above-average grades, was taking honor classes, and was on the school basketball team. Sundberg further noted that respondent had not been deemed eligible for special education services and that she was scheduled to be enrolled in the ninth grade at Roosevelt High School in the freshman transitional program.

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[1] "Intermittent explosive disorder" involves "repeated, sudden episodes of impulsive, aggressive, violent behavior or angry verbal outbursts in which [one] react[s] grossly out of proportion to the situation." *Intermittent Explosive Disorder*, Mayo Clinic, http:www.mayoclinic.org/diseases-conditions/intermittent-explosive-disorder/symptoms-causes/syc-20373921 (last visited Sept. 24, 2019).

¶ 22 Sundberg wrote that in addition to the diagnosis of "intermittent explosive disorder," for which Dr. Irfan prescribed medication, respondent underwent an assessment at Rosecrance and was diagnosed with post-traumatic stress disorder (PTSD). Rosecrance recommended traditional outpatient counseling for the condition, although Sundberg reported that respondent has never been involved in mental-health services. Sundberg also reported that respondent's father has a history of multiple arrests and respondent's paternal family had a history of alcohol and substance abuse. Respondent's father, for instance, claimed that he overdosed over 100 times. Respondent began experimenting with alcohol and marijuana at the age of 14. Respondent indicated that her alcohol consumption included drinking less than once a month with the last time being on Easter 2017. Respondent reported smoking marijuana two times a year with an increase to daily use from April through August 2017. Respondent claimed that Xzena provided her with marijuana and also gave her muscle relaxers a couple of times a year.

¶ 23 As for respondent's sexual history, the evaluation reflects that respondent's initial exposure to sexual matters was in fifth grade sex education class. In addition, respondent identified herself as bisexual, having had multiple similarly-aged sex partners of each gender. Respondent reported that she was exposed to pornographic material on her cell phone, including videos that E.D.G. downloaded to the device. Respondent disclosed that she had been victimized two times by older males. Respondent said that one of those individuals was E.D.G.'s older brother, who respondent said raped her after having her smoke a blunt laced with "something."[2]

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[2] The social-history report reflects that respondent reported the alleged assault by E.D.G.'s brother and a police report was made around Thanksgiving 2017. The detective who responded was the same detective who investigated the instant case. There is no further information on the status of respondent's claim against E.D.G.'s brother.

¶ 24 A personality assessment inventory-adolescent (PAI-A) showed "no apparent indications of possible psychopathology," but identified a number of "ongoing adjustment concerns," including that respondent is "quick to believe she is being treated unequitably," "will hold a grudge against others," "is likely to question and mistrust the motives of those around her," and "views relationships more as an opportunity than a source of enjoyment." Further, Sundberg found that respondent's responses to the PAI-A suggested that she is easily angered, has difficulty controlling her anger, and is not intimidated by confrontation. Based on the PAI-A, Sundberg opined that respondent is satisfied with herself as she is and she sees little need for changes in her behavior.

¶ 25 In the evaluation, Sundberg noted that there exists "little substantive research regarding adult female sexual offenders [citations], while seemingly less information has been written specifically of adolescent female offenders [citation]." And while there is "no clearly defined, empirically validated typology for female sexual offenders," he noted that one author has proposed three preliminary categories of adolescent female offenders: (1) sexually curious, characterized as "inexperienced, naïve, and sometimes even fearful about sexual information and activities"; (2) sexually reactive, identified as "a victim of sexual abuse" with their offenses considered "a likely reenactment of their own victimization"; and (3) repetitive abusers, defined as those who have a "significant history of chaos and family disturbance" and "has been physically and sexually abused." Based on the information available regarding respondent's offending history and her upbringing, Sundberg concluded that respondent "would not seem to 'fit' with any of [the] three categories." Nevertheless, he determined that there were factors that were "influential" regarding the offenses. Those factors were: (1) respondent's history of "interpersonally aggressive behavior," including her diagnosis of intermittent explosive disorder;

(2) respondent's sexual history, including her identification as being bisexual and her lack of sexual boundaries; (3) respondent's lack of empathic abilities; and (4) a familial history of substance abuse and the fact that many of respondent's sexual encounters appeared to involve either alcohol or some form of illicit substance. Sundberg noted that respondent's reported victimization by E.D.G.'s older brother seemingly occurred after her abuse of E.D.G. and therefore had a "questionable impact/influence" on the offenses at issue. Sundberg further opined that the offenses provided respondent "both a means to express her angers (presumably toward [E.D.G.] and her clingy nature) and her own sexual curiosity/interests."

¶ 26 Sundberg noted that a 2010 meta-analysis of 10 studies regarding adult-female-offender recidivism concluded that female sexual offenders, once they have been detected and sanctioned by the criminal justice system, tend not to re-engage in sexually offending behavior. However, based upon respondent's "seemingly entrenched" views, her position that she sees little need for changes in her behavior, her reluctance to engage in exploratory discussion, her parent's apparent support of her current denial, and her perceived ability to justify otherwise inappropriate behavior, Sundberg opined that respondent's "potential ability to sexually act-out [*sic*] is largely premised upon her opportunity/access to a possible vulnerable victim." As such, Sundberg recommended that respondent: (1) have no unsupervised or unauthorized contact with minors below the age of 12; (2) submit to an updated psychological/psychiatric examination and adhere to any prescribed regime of medication; (3) be considered for placement within a residential drug and alcohol treatment program; and (4) be re-evaluated by the court and referred for offense-specific treatment pending her successful completion of substance-abuse treatment.

¶ 27 Jennifer Montoya, a juvenile probation officer with the Winnebago County Juvenile Probation Department, filed respondent's social history report on September 14, 2018. The

details of the social history report are mostly consistent with those in the sex-offender evaluation with respect to respondent's history of delinquency, education, mental health, drug and alcohol use, and history of abuse. In addition, the social history report reflects the following. One of respondent's closest friends is currently on probation. Respondent admitted being in possession of a machete. Respondent's parents were aware she possessed the machete and instructed her to keep it hidden from the younger children residing in the family home. A risk assessment indicated that respondent "is considered a [h]igh risk regarding his [*sic*] criminal thinking and propensity to reoffend." Montoya further wrote as follows:

> "The respondent parents [*sic*] have demonstrated a history of instability by constantly having friends move in with them for financial reasons. There are allegations that the respondent parents [*sic*] provided drugs and alcohol to not only the respondent minor, but also children of friends who resided with them. The respondent parents [*sic*] tend to project blame on others and minimize the minor's delinquent behaviors. This information coupled together suggests the respondent parents [*sic*] would not place importance on the offense specific counseling services for the minor. With the respondent minor's denial of the offense, the respondent parents [*sic*] supporting her denial, lack of dependable transportation, their inability to hold the minor accountable for her actions and the information in the [sex-offender evaluation], suggest [*sic*] the respondent minor would not be successful in the community, thereby placing not only herself but others at risk of harm of her delinquent behavior."

Ultimately, Montoya concluded that respondent is unlikely to be successful on probation given the severity of the offenses, respondent's belief that there is little need for change, her denial of the offenses, and her parent's support of this denial. As such, Montoya recommended an

indeterminate sentence in the Department "where [respondent] would be given the opportunity to complete sex offender treatment, have access to drug treatment, be able to access educational services [and have] an opportunity to participate in any other services the Court deems appropriate." Montoya further opined that respondent's commitment to the Department would protect the minor and the community at large from the consequences of her delinquent actions.

¶ 28 Meanwhile, the matter was continued several more times on respondent's motions. At a hearing on November 13, 2018, Assistant Public Defender Wendell Coates informed the court that he had been appointed to replace Herrmann. At that time, Coates noted that there was a motion for reconsideration in respondent's file written by Herrmann. Coates requested a continuance, stating that he wanted to "read through [the] motion" before putting his name on it. The court granted Coates's request to continue the matter.

¶ 29 On November 14, 2018, Coates filed a motion for reconsideration or a new trial. In the motion, Coates argued that the evidence did not support "a finding of guilty" because E.D.G.'s testimony was not credible. The State filed a response to the motion. Following oral argument, the court continued the matter for a decision on the motion for reconsideration. The court also ordered an addendum to the social history report, which was filed on February 14, 2019.

¶ 30 In the addendum to the social history report, Montoya noted that respondent has been in the custody of the Winnebago County Juvenile Detention Center since early in November 2017. While pending sentencing for the offenses at issue, respondent was charged in a separate delinquency petition with one count each of battery and aggravated battery. The latter charge, to which respondent stipulated, arose from respondent striking an occupant of the detention center. Moreover, respondent has been the subject of "numerous" other "major and minor rule infractions" while in the detention center, including flooding her room, calling a staff member

"racist," instigating a fight between two other minors, making fun of other minors in detention, obstructing the view into her room, threatening a supervisor, talking without staff present, hiding one of her prescribed pills in the shower, lying to staff, and talking about sexual activities. Montoya opined that due to respondent's unwillingness to abide by the rules and regulations in a secure environment, "it is highly unlikely she would abide by much less restrictive rules in the community." Therefore, to ensure the safety of the community and respondent from the consequences of her delinquent actions, Montoya continued to recommend that respondent be committed to an indeterminate sentence in the Department.

¶ 31 On March 1, 2019, the case was called for a decision on respondent's post-adjudication motion and for disposition. In addition to the prosecutor being unavailable that date, the court indicated that the sex-offender evaluation completed by Sundberg did not include a recidivism risk level. See 20 Ill. Admin. Code §1910.150(b)(8) (2018) (requiring juvenile sex-offender evaluation to assess the juvenile in various areas, including "assessment of risk to re-offend"); 20 Ill. Admin. Code §1910.160(c)(1) (2018) (providing that the evaluation report shall describe the juvenile's "risk for re-offense"). The court continued the matter for further proceedings and ordered that a supplement to the sex-offender evaluation be prepared, including information "in regards to the level that the minor is and the level of risk to residivate [*sic*]."

¶ 32 Sundberg filed an addendum on March 14, 2019. At the outset, Sundberg reiterated that there exists "little substantive research regarding adult female sexual offenders ***, while seemingly less information has been written specifically of adolescent female sexual offenders." Sundberg further offered that "there are no theories or models specific to female adolescent sexual offending that may be used to guide the treatment process" as "little is known about the level of sexual or general recidivism, and even less about the factors linked to recidivism among

female adolescent sexual offenders." Given these limitations, Sundberg assessed respondent's recidivism risk in light of five categories commonly associated with adolescent male sexual offender risk: (1) sexual interests, attitudes, and behaviors; (2) historic antisocial/criminal behaviors/non-compliance; (3) living situation stability/positive support; (4) treatment motivation/participation/willingness to change; and (5) psychosexual functioning, *e.g.*, anger escalation, peer relations, substance abuse, education/employment issues, stress.

¶ 33 Regarding the first factor, Sundberg noted that although the offense at issue is the only documented incident of respondent's sexual misconduct, it involved an 11-year-old female acquaintance, respondent threatened physical harm to gain the victim's compliance and in an effort to suppress her possible disclosure, and the offense involved "forceful efforts." Sundberg further noted that respondent has demonstrated poorly developed sexual boundaries, admitted to having engaged in sexual relations with multiple similarly-aged individuals of both genders, and disclosed that she has been sexually victimized. Regarding the second factor, Sundberg noted that while respondent has not been deemed eligible for special education services and was without an existing history of arrest, she has demonstrated a variety of school-based behavioral difficulties, including expulsion. Moreover, while housed at the Department, respondent has continued to engage in delinquent and criminal behaviors. Regarding the third factor, Sundberg noted that respondent's father reportedly has accumulated a history of arrests in Winnebago County and has demonstrated significant problematic substance abuse. Moreover, respondent's paternal extended family has a history of alcohol and substance abuse and her parents have supported her denial of responsibility for the offenses at issue. Regarding the fourth factor, Sundberg noted that respondent denied responsibility for the offenses at issue and her PAI-A suggested she is satisfied with herself and sees little need for changes in her behavior. Moreover,

respondent presented with the propensity to project blame and was largely reluctant to engage in exploratory discussion. Regarding the fifth factor, Sundberg noted that respondent has been diagnosed with intermittent explosive disorder and has a history of physically aggressive behavior within the community and since her placement in the Department. Based on the foregoing, Sundberg concluded that respondent was at "a high risk to engage in future delinquent/aggressive behaviors" and given her "apparent tendencies, combined with her possible access to a possible vulnerable victim, her potential to sexually act-out would likely be realized."

¶ 34 On March 19, 2019, the trial court denied respondent's motion for reconsideration or for a new trial. Prior to imposing sentence, the State requested, and the court agreed, to consider reports regarding respondent's behavior in detention. The State argued that respondent should be committed to the Department for an indeterminate period of time. Coates asked the court to place respondent on a period of intensive probation. The court then asked the parties whether the Department has a program for juvenile sex offenders, and, if so, whether the program is open to female offenders. In response, the State indicated its belief that the Department still maintains treatment for sex offenders and stated that it was "not aware that females are not able to receive that treatment in any way." Coates stated that he was not aware whether the Department has treatment facilities for female sex offenders and noted that in the addendum to Sundberg's sex-offender evaluation, the author wrote that "[l]ittle is known about the level of sexual or general recidivism and even less about factors that lead to recidivism amongst female adolescent offenders." The court passed the case to allow the parties to contact the Department to determine what programs it has for juvenile female sex offenders.

¶ 35 When the case was recalled, the State noted that the Department's website lists the types of programming provided to youths as "assessments, substance abuse treatment, mental health treatment, individual and group counseling, case management, healthcare, education, chaplaincy, volunteer services, [and] leisure time services." In addition, the State spoke with NeAngela Dixon, the Department's acting chief legal counsel and ethics officer, who related that the Department does not offer sex offender treatment for female youth and would be unable to provide such programming for that population. Dixon noted, however, that the Department contracts out placements for juvenile female sex-offender treatment at Indian Oaks, although there could be a waitlist. In the meantime, the State asserted that mental-health counselors, while not possessing the expertise in sex offender counseling, could address "those things while they're looking into the more specific counseling that the minor would need." Thereafter, the court inquired whether respondent wanted to make a statement. After conferring with Coates, respondent elected to do so. The entirety of respondent's statement to the court is as follows: "If I am put on probation I will do anything that is asked of me and comply with all the rules of probation."

¶ 36 In issuing its dispositional ruling, the court noted that it must make a decision "that's in the best interest of the minor as well as taking into consideration the safety of the community." In doing so, the court reviewed the social history report and addendum thereto, the sex-offender evaluation and addendum thereto, the detention reports, the victim-impact statements, the arguments of counsel, respondent's statement to the court, and the relevant statutory factors (see 705 ILCS 405/5-750(1) (West 2016)). The court also stated that it had considered "the services available in the community as well as in the *** Department ***" and that it had balanced "whether it would be best for the community and best for the minor to be placed on a long period

of probation to be monitored by the Court and have an ability to participate in services" with "the services that are available in the *** Department *** and the safety that will be provided to others in this community while placing possibly others in the *** Department *** at risk and how quickly the minor may achieve parole based upon the amount of time that she has already served in detention." Ultimately, the court concluded that a sentence to the Department is in respondent's best interest and is the most appropriate sentence based upon the offenses committed, respondent's behavior, her need for treatment, and the need to protect the public from the consequences of respondent's criminal activity. Accordingly, the court committed respondent to the Department on count I of the delinquency petition (the other two counts having merged pursuant to the one-act, one-crime rule) to an indeterminate period or until she reaches her 21st birthday. The court further ordered that respondent receive counseling as needed, including "substance abuse counseling, mental health counseling, sex offender counseling if it's available, [and] family counseling if that's available." The court then passed the case for the parties to prepare the necessary paperwork.

¶ 37 When the court reconvened, it reviewed the order of commitment with the parties. Among other things, the order of commitment provides that commitment to the Department "is necessary to ensure the protection of the public from the consequences of the criminal activity of [respondent]," "[r]easonable efforts cannot, at this time, for good cause, prevent or eliminate the need for removal," "[r]emoval from home is in the best interests of the minor, the minor's family, and the public" and commitment to the Department "is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and those efforts were unsuccessful." Although the order of commitment does not indicate the reasons why efforts were unsuccessful, at the dispositional hearing, the court cited

respondent's "continued delinquent behavior." On May 30, 2019, this court granted respondent's motion for leave to file a late notice of appeal. Respondent filed her late notice of appeal on June 3, 2019.[3]

¶ 38 III. ANALYSIS

¶ 39 On appeal, respondent argues that, for various reasons, the trial court erred in sentencing her to the Department. Notably, she contends that: (1) the trial court failed to consider a less restrictive alternative to secure confinement as required by section 5-750(1)(b) of the Act (705 ILCS 405/5-750(1)(b) (West 2016)); (2) the trial court failed to review many of the individualized factors set forth in section 5-750(1) of the Act (705 ILCS 405/5-750(1) (West 2016)) prior to finding that secure confinement is necessary; (3) the sentence was based on a faulty sex-offender evaluation; and (4) trial counsel was ineffective for failing to file a motion to reconsider sentence. The State initially responds that respondent forfeited any sentencing issues by failing to raise them in the trial court.

¶ 40 Generally, a criminal defendant forfeits review of a claimed error if he or she does not object at trial and fails to raise the issue in a posttrial motion. *In re M.W.*, 232 Ill. 2d 408, 430 (2009). " 'This principle encourages a defendant to raise issues before the trial court, thereby allowing the court to correct its errors *** and consequently precluding a defendant from obtaining a reversal through inaction.' " *M.W.*, 232 Ill. 2d at 430 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007)). "This same forfeiture principle applies in proceedings under the Juvenile Court Act [of 1987], although no postadjudication motion is required in such cases." *M.W.*, 232 Ill. 2d at 430. As respondent acknowledges in this case, the sentencing issues she

[3] Prior to oral argument, each party filed a motion for leave to cite additional authority. We hereby grant both motions.

now raises were not preserved for appellate review via a timely objection. As such, respondent forfeited consideration of such errors on appeal unless she can demonstrate plain error. *M.W.*, 232 Ill. 2d at 430.

¶ 41 Illinois Supreme Court Rule 615(a) provides:

> "Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain 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).

The plain-error doctrine is a limited and narrow exception to the forfeiture rule (*People v. Hillier*, 237 Ill. 2d 539, 545 (2010)) and applies to juvenile proceedings (*M.W.*, 232 Ill. 2d at 431). "To obtain relief under this rule, a defendant must first show that a clear or obvious error occurred." *Hillier*, 237 Ill. 2d at 545. The party alleging plain error has the burden of persuasion and, in the sentencing context, "must *** show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Hillier*, 237 Ill. 2d at 545. Prior to determining whether plain error occurred, however, we must first determine whether any error occurred at all. *People v. Sargent*, 239 Ill. 2d 166, 189 (2010). If clear or obvious error did not occur, no plain-error analysis is necessary. *People v. Wright*, 2017 IL 119561, ¶ 87; *People v. Walker*, 232 Ill. 2d 113, 124-25 (2009).

¶ 42 The issues respondent raises on appeal are guided principally by section 5-750(1) of the Act (705 ILCS 405/5-750(1) (West 2016)). That statute provides in relevant part as follows:

> "Except as provided in subsection (2) of this Section, when any delinquent has been adjudged a ward of the court under this Act, the court may commit him or her to the

> Department ***, if it finds that (a) his or her parents, guardian or legal custodian are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor, or are unwilling to do so, and the best interests of the minor and the public will not be served by placement under Section 5-740, or it is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent; and (b) commitment to the Department *** is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement." 705 ILCS 405/5-750(1) (West 2016).

Furthermore, the Act provides that before a court commits a minor to the Department, it shall make a finding that secure confinement is necessary, following a review of the following individualized factors:

> "(A) Age of the minor.
>
> (B) Criminal background of the minor.
>
> (C) Review of results of any assessments of the minor, including child centered assessments such as the CANS [Child and Adolescent Needs and Strengths].
>
> (D) Educational background of the minor, indicating whether the minor has ever been assessed for a learning disability, and if so what services were provided as well as any disciplinary incidents at school.
>
> (E) Physical, mental and emotional health of the minor, indicating whether the minor has ever been diagnosed with a health issue and if so what services were provided and whether the minor was compliant with services.

(F) Community based services that have been provided to the minor, and whether the minor was compliant with the services, and the reason the services were unsuccessful.

(G) Services within the Department *** that will meet the individualized needs of the minor." 705 ILCS 405/5-750(1) (West 2016).

¶ 43 Typically, a trial court's sentencing disposition is reviewed for an abuse of discretion. *In re Griffin*, 92 Ill. 2d 48, 54 (1982); *In re M.Z.*, 296 Ill. App. 3d 669, 674 (1998). An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would agree with the position adopted by the trial court. *People v. Becker*, 239 Ill. 2d 215, 234 (2010). However, to the extent the issues presented concern whether the trial court complied with the statutory requirements or relied on improper factors at sentencing, we are presented with a legal question to which we apply *de novo* review. *In re Ashley C.*, 2014 IL App (4th) 131014, ¶ 22.

¶ 44 A. Less Restrictive Alternatives

¶ 45 We initially address respondent's contention that the trial court's order of commitment failed to comport with section 5-750(1)(b) of the Act (705 ILCS 405/5-750(1)(b) (West 2016)), which requires the trial court to consider any less restrictive options to secure confinement before it may sentence a delinquent to the Department. Respondent contends that no efforts to locate a less restrictive alternative to incarceration were presented at the sentencing hearing or in the social history report. Moreover, respondent insists that the court failed to consider the possibility of outpatient or other residential treatment that could be combined with psychological or psychiatric interventions. As such, respondent contends that the trial court's decision to impose an indeterminate sentence to the Department was improper. We review *de novo* whether the trial court complied with the statutory requirements. *Ashley C.*, 2014 IL App (4th) 131014, ¶ 22.

¶ 46 As noted above, the Act provides that a trial court may commit a juvenile offender to the Department only if it finds commitment to the Department is the least restrictive alternative "based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement." 705 ILCS 405/5-750(1)(b) (West 2016). These requirements ensure that the trial court treats commitment to the Department as a last resort. *In re Raheem M.*, 2013 IL App (4th) 130585, ¶ 53. Nevertheless, a trial court "need not enumerate all possible alternatives when making a disposition [citation] and the remarks of the trial judge can illustrate a consideration of alternatives." *In re J.C.*, 163 Ill. App. 3d 877, 888 (1987). We find that the trial court complied with the requirements of section 5-750(1)(b) at respondent's dispositional hearing.

¶ 47 Notably, the record reflects that the trial court had before it evidence of less restrictive options to secure confinement. For instance, in the sex-offender evaluation, Sundberg recommended that respondent: (1) have no unsupervised or unauthorized contact with minors below the age of 12; (2) submit to an updated psychological/psychiatric examination and adhere to any prescribed regime of medication; and (3) be considered for placement within a residential drug and alcohol treatment program. Sundberg further recommended that the court re-evaluate respondent's status and refer her for offense-specific treatment upon her successful completion of a substance-abuse program. Sundberg's evaluation also referenced an assessment at Rosecrance, which recommended traditional outpatient counseling. In the social history report, Montoya felt that respondent would be unsuccessful on probation given the severity of the offenses, respondent's belief that there is little need for change, her denial of the offenses, and her parent's support of this denial. For these same reasons, coupled with respondent's parents'

history of instability, their alleged provision of drugs and alcohol to respondent and other minors, their tendency to project blame on others, and their tendency to minimize respondent's behaviors, Montoya opined that respondent's parents "would not place importance on" offense-specific counseling for respondent. As a result, Montoya recommended that respondent be committed to the Department for an indeterminate sentence in order to protect the minor and the community at large from the consequences of her delinquent actions. In addition, during closing arguments, the State reiterated its request that respondent be committed to the Department for an indeterminate period while Coates asked that respondent be sentenced to intensive probation. Likewise, respondent requested that she be sentenced to probation. Thus, the court clearly had before it evidence of less restrictive options to secure confinement, including a mental-health evaluation, placement in a residential substance-abuse-treatment facility, traditional outpatient counseling, offense-specific counseling, and probation. See *In re Javaun I.*, 2014 IL App (4th) 130189, ¶ 43 (rejecting claim that trial court failed to consider less restrictive alternatives where the trial court was presented with less restrictive alternatives to incarceration).

¶ 48 The record also reflects that the trial court considered these less restrictive alternatives prior to committing respondent to the Department. The trial court expressly considered, *inter alia*, the social-history reports, the sex-offender evaluations, the addendums thereto, and the detention reports. The trial court stated that it had considered the services available in the community and the Department and balanced "whether it would be best for the community and best for the minor to be placed on a long period of probation to be monitored by the Court and have an ability to participate in services" with "the services that are available in the *** Department *** and the safety that will be provided to others in this community while placing possibly others in the *** Department *** at risk and how quickly the minor may achieve parole

based upon the amount of time that she has already served in detention." Moreover, on the order of commitment form, the court indicated that commitment to the Department "is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement." In fact, at the dispositional hearing, respondent did not identify any less restrictive alternatives to confinement that the trial court failed to consider or any other community-based alternatives to confinement that could have reasonably been imposed under the circumstances. And while respondent did request probation as an alternative disposition, Montoya provided the court with reasons why such a disposition would not be successful.

¶ 49 In addition, although the order of commitment form does not indicate the reasons why efforts to locate less restrictive alternatives to secure confinement were unsuccessful, the trial court found at the dispositional hearing that such efforts were unsuccessful "because of [respondent's] continued delinquent behavior." Indeed, although respondent did not have a history of any prior offenses, the sex-offender evaluation concluded that respondent was at "a high risk to engage in future delinquent/aggressive behaviors" and that her "potential to act-out would likely be realized" given her "apparent tendencies, combined with her possible access to a possible vulnerable victim." Likewise, the social history report indicated that respondent "is considered a [h]igh risk regarding his [*sic*] criminal thinking and propensity to reoffend." These conclusions are supported by a review of the detention reports, which paint a bleak picture of respondent's ability to follow rules and rehabilitate. Those reports reflect that between November 18, 2017, and March 17, 2019, respondent incurred at least 59 "major" infractions and 19 "minor" infractions. Among the "major" infractions listed in respondent's detention reports were flooding her room, lying to detention staff, instigating other detainees, threatening

detention staff, possessing contraband in her room, maintaining physical contact with another detainee, cursing, talking about sexual activities, hiding medication, and grabbing detention staff. In addition, respondent admitted to committing an aggravated battery by striking another minor while in detention. She was also diagnosed with intermittent explosive disorder, had a history of physically aggressive behavior, and had poorly developed sexual boundaries. The PAI-A indicated that respondent was satisfied with herself as she is and saw no need to change her behaviors. In the addendum to the social history report, Montoya opined that due to respondent's "unwillingness to abide by the rules and regulations in a secure environment, it is highly unlikely [respondent] would abide by much less restrictive rules in the community." The foregoing clearly shows that the trial court, as required by the statute, considered and rejected probation as an alternative to confinement. Moreover, based on the evidence presented, the trial court could reasonably conclude that efforts to locate alternatives to confinement were unsuccessful. See *Javaun I.*, 2014 IL App (4th) 130189, ¶ 43 (holding that trial court did not err in finding that commitment to the Department was the least restrictive alternative where the minor was convicted of a serious offense, he had a prior encounter with the juvenile court system, he showed no remorse for his crime, he had a drug problem, he could become unstable at any time, and he needed constant supervision because of his emotional and behavioral problems).

¶ 50 Respondent faults Sundberg for finding that she is at a high-risk to re-offend because there is not enough empirical evidence to support such a conclusion. We note, however, that Montoya's social history report reached the same conclusion. Respondent acknowledges as much, but insists that the social history "included a 'high risk' conclusion for re-offending—but not necessarily for re-offending for sex offenses." We find respondent's position somewhat

disingenuous given that the only offenses charged in the delinquency petition at issue were sex offenses.

¶ 51 Respondent additionally complains that nowhere in the social history is there any indication that alternative placements were investigated or considered. Ideally, "the trial court *** would have inquired whether the parties had located any residential facilities that would accept respondent and, if not, inquired into the efforts the parties made in this regard." *Javaun I.*, 2014 IL App (4th) 130189, ¶ 42. However, as the *Javaun* court found, where the record contains evidence that the trial court considered less restrictive alternatives to incarceration, the court's failure to elicit further evidence from the parties regarding their investigation into less restrictive alternatives does not constitute clear and obvious error. *Javaun I.*, 2014 IL App (4th) 130189, ¶¶ 42-43. In this case, as noted above, the trial court was presented with less restrictive alternatives to incarceration which the court considered prior to committing respondent to the Department. Accordingly, based on the record before us, we cannot say that the trial court committed error, much less plain error. See *Wright*, 2017 IL 119561, ¶ 87 (noting that where no error occurred, there can be no plain error).

¶ 52 B. Statutory Factors

¶ 53 Respondent also contends that the trial court failed to consider many of the individualized factors set forth in section 5-750(1) of the Act (705 ILCS 405/5-750(1) (West 2016)) prior to finding that secure confinement is necessary. We disagree.

¶ 54 As noted above, the individualized factors set forth in section 5-750(1) of the Act are: (1) the age of the minor; (2) the criminal background of the minor; (3) the results of any assessments of the minor; (4) the educational background of the minor; (5) the physical, mental, and emotional health of the minor; (6) community based services that have been provided to the

minor, the minor's compliance therewith, and the reason such services were unsuccessful; and (7) services within the Department that will meet the individualized needs of the minor. In this case, the trial court expressly stated that it had considered the individualized factors set forth in section 5-750(1) of the Act. Contrary to respondent's claim, the record bears this out. The trial court expressly mentioned respondent's age and noted that respondent had no prior delinquency petitions or adjudications until the offenses at issue. In addition, at the trial court's request, the State researched and reported on the types of services available from the Department for juvenile offenders such as respondent.

¶ 55 With respect to the remaining individualized factors, the court relied on information in the social history investigation, the sex-offender evaluation, the addendums to those reports, and the detention reports. See *In re Justin F.*, 2016 IL App (1st) 153257, ¶ 28 (relying on written information in record). The written reports indicate that respondent underwent an assessment at Rosecrance (where she was diagnosed with PTSD), a PAI-A, and a sex-offender evaluation. Those reports also informed the court that respondent had "a variety of school-based behavioral difficulties" at Rockford Public Schools, including physical altercations (one of which resulted in her expulsion from middle school), "oppositional responses toward staff," and excessive absences. Despite these behavioral issues, respondent claimed that she had achieved above-average grades, was taking honor classes, and was on the school basketball team. Respondent had not been deemed eligible for special education services and was scheduled to be enrolled in the ninth grade at Roosevelt High School in the freshman transitional program. The reports indicated that respondent is considered in good physical health, but has used marijuana, alcohol, and muscle relaxers. The reports also included information concerning respondent's psychiatric history and the services provided to the minor. The reports indicate that, in addition to PTSD,

respondent was diagnosed with intermittent explosive disorder, for which she was prescribed medication by Dr. Irfan. Rosecrance recommended traditional outpatient counseling for PTSD, but there is no indication that services were initiated.

¶ 56 Indeed, it is not entirely clear from respondent's brief which factor or factors the trial court purportedly failed to consider. And while respondent claims that the Department does not offer sex-offender therapy or treatment for female juvenile detainees, the record does not support this assertion. To be sure, the Department does not offer in-house treatment for juvenile female sex offenders. However, Dixon told the State that it contracts out placements for juvenile female sex offenders at Indian Oaks, pending a waitlist. This was relevant evidence of services offered by the Department that will meet the individualized needs of respondent.

¶ 57 As the foregoing establishes, there was evidence in the record concerning each of the individualized factors set forth in section 5-750(1) of the Act (705 ILCS 405/5-750(1) (West 2016)). As such, the trial court's dispositional hearing complied with section 5-750(1) of the Act, and we find no error, much less plain error. See *Wright*, 2017 IL 119561, ¶ 87.

¶ 58 C. Sex-Offender Evaluation

¶ 59 Relying principally upon provisions of the Illinois Administrative Code (Code), respondent also contends that Sundberg's sex-offender evaluation was faulty because "there was no substantial, empirical basis applicable to female juvenile sex offenders to draw the conclusions that were in the sex offender evaluation." As such, respondent contends that the trial court's reliance on the sex-offender evaluation constituted an abuse of discretion.

¶ 60 Section 5-701 of the Act (705 ILCS 405/5-701 (West 2016)) provides:

> "Any minor found guilty of a sex offense as defined by the Sex Offender Management Board Act [20 ILCS 4026/1 *et seq*. (West 2016)] shall be required as part of

> the social investigation to submit to a sex offender evaluation. The evaluation shall be performed in accordance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board." 705 ILCS 405/5-701 (West 2016).

"Sex offense" as defined by the Sex Offender Management Board Act includes the three offenses for which respondent was found delinquent. 20 ILCS 4026/10(c)(13) (West 2016) (criminal sexual assault); 20 ILCS 4026/10(c)(14) (West 2016) (aggravated criminal sexual assault), 20 ILCS 4026/10(c)(16) (West 2016) (criminal sexual abuse). The standards developed under the Sex Offender Management Board Act for sex-offender evaluations are set forth in the Code.

¶ 61 In this case, respondent directs us to part 1905 of title 20 of the Code (20 Ill. Admin. Code 1905.10 *et seq*. (2018)) in support of her claim that the Sundberg's sex-offender evaluation is flawed. Specifically, she notes that section 1905.50 of the Code dictates that:

> "1) Evaluators rely on multiple sources of information when conducting a psychosexual evaluation, preferably to include the following:
>
> * * *
>
> D) Empirically grounded general psychometric testing (*e.g.*, intellectual, diagnostic);
>
> E) Empirically grounded strategies to estimate risk of sexual and/or nonsexual recidivism; and
>
> F) When professional judgment dictates:
>
> i) Empirically grounded instruments designed to measure broad sexual, as well as offense-related, attitudes and interests;

ii) Empirically grounded, objective psychophysiological measures of sexual arousal, interests and/or preferences." 20 Ill. Admin. Code 1905.50(d)(1)(D)-(F) (2018).

In addition, she notes that section 1905.60 of the Code directs that "[e]valuators conducting risk assessments of sexual abusers use empirically supported instruments and methods (*i.e.*, validated actuarial risk assessment tools and structured, empirically guided risk assessment protocols) over unstructured clinical judgment." 20 Ill. Admin. Code 1905.60(c) (2018). According to respondent, Sundberg's sex-offender evaluation was faulty because, contrary to the dictates of these provisions of the Code, "there was no substantial, empirical basis applicable to female juvenile sex offenders to draw the conclusions that were in the sex offender evaluation."

¶ 62 At the outset, we note that the provisions of the Code cited by respondent voice only a preference for empirical evidence when an evaluator conducts a sex-offender evaluation. See 20 Ill. Admin. Code 1905.50(1) (2018) ("Evaluators [shall] rely on multiple sources of information when conducting a psychosexual evaluation, *preferably* to include the following." (Emphasis added.)); 20 Ill. Admin. Code 1905.60 (2018) (expressing a preference for "empirically supported instruments and methods *** over unstructured clinical judgment"). More significantly, however, respondent's reliance on part 1905 of the Code is misplaced because it concerns *adult* sex offender evaluation and treatment. In this case, respondent was prosecuted as a *juvenile*. See 20 Ill. Admin. Code 1910.20 (2018) (defining "juvenile" as "[a]ny minor adjudicated for a sex offense under the jurisdiction of the juvenile court"). Respondent does not cite any authority that the provisions in part 1905 apply to juvenile sex-offender evaluations. Nor does she direct us to any similar provisions in part 1910 of title 20 of the Code, which sets

forth standards for the evaluation and treatment of *juvenile* sex offenders. See 20 Ill. Admin. Code 1910.10 *et seq*. (2018).

¶ 63 Despite respondent's failure to reference part 1910 of title 20 of the Code, we examine those provisions to determine if Sundberg's evaluation complied with the relevant requirements. Section 1910.130 provides that juveniles who have been adjudicated for a sexual offense "shall have a comprehensive evaluation." 20 Ill. Admin. Code 1910.130(a) (2018). The comprehensive evaluation shall assess the juvenile in the following 12 areas: (1) cognitive functioning (including educational history); (2) personality, mental health, mental disorders; (3) social/developmental history; (4) current individual functioning; (5) current family functioning; (6) sexual background and history; (7) delinquency and conduct/behavioral issues (including substance or alcohol abuse); (8) assessment of risk to re-offend; (9) community risks and protective factors; (10) victim impact; (11) external relapse prevention strategies, including informed supervision; and (12) amenability to treatment. 20 Ill. Admin. Code. 1910.150(b) (2018). The Code requires the evaluator to "select evaluation procedures relevant to the individual circumstances of the case and commensurate with their level of training and expertise." 20 Ill. Admin. Code 1910.130(g) (2018). Section 1910.130 further provides in relevant part:

> "h) Evaluation methods shall include the use of clinical interviews and procedures, screening level tests, self-report, observational data, advanced psychometric measurements, special testing measures, examination of juvenile justice information, psychological reports, mental health evaluations, school records, details of the offense, including victim statements, and collateral information, including the juvenile's history of

sexual offending and/or abusive behavior. A combination of these shall be used to evaluate juveniles who commit sex offenses." 20 Ill. Admin. Code 1910.130(h) (2018).

¶ 64 We conclude that Sundberg's initial evaluation and the addendum thereto complied with the requirements of section 1910 of the Code. Sundberg and a colleague spent three hours with respondent on three different dates. Sundberg also met with respondent's mother for one hour. A second meeting with respondent's parents was scheduled, but they failed to appear. Sundberg also had access to various court documents, investigative reports from the Rockford Police Department, a social-history investigation, reports of respondent's progress in the Department, and a "Notification of Assessment" from Rosecrance. In addition, Sundberg spoke to Salberg from DCFS and respondent completed the PAI-A. Further, Sundberg's evaluation and the addendum thereto reference each of the 12 evaluation areas set forth in section 1910.150(b) of the Code (20 Ill. Admin. Code 1910.150(b) (2018)).

¶ 65 Respondent nevertheless argues that it was inappropriate for Sundberg to draw comparisons between her and male adolescent sex offenders. Citing various studies (see, *e.g.*, Finkelhor, David *et al.*, *Juveniles Who Commit Sex Offenses Against Minors*, OJJDP Juvenile Justice Bulletin, December 2009, https://www.ncjrs.gov/pdffiles1/ojjdp/227763.pdf (last visited Sept. 26, 2019); Rich, Phil, *Assessment of Risk for Sexual Reoffense in Juveniles Who Commit Sexual Offenses*, Sex Offender Management Assessment and Planning Initiative Research Brief, July 2015, https://www.smart.gov/pdfs/JuvenileRisk.pdf (last visited Sept. 26, 2019)), she asserts that there is insufficient empirical evidence to draw any conclusions as to risk of recidivism. However, there is no evidence that any of these studies were presented to the trial court to consider at the dispositional hearing. See *People v. Morgan*, 2015 IL App (1st) 131938, ¶ 97 (declining to consider materials that were never presented to the trial court). More importantly,

Sundberg's evaluation expressly acknowledges the lack of research in regard to the level of sexual or general recidivism amongst female adolescent sexual offenders, a fact Coates emphasized at the dispositional hearing. Indeed, in announcing its disposition, the trial court expressly recognized the limitations noted by respondent and presumptively accorded the evaluation the proper weight. See *People v. Jones*, 168 Ill. 2d 367, 373 (1995) (noting that at sentencing, the trial court is in the best position to weigh the evidence); *People v. Haley*, 2011 IL App (1st) 093585, ¶ 63 (same). Ultimately, the trial court thoughtfully considered the facts of the case and respondent's likelihood of success given the available services and support both in and out of confinement. Respondent herself recognizes that, as to recidivism, clinical data is limited, and she does not indicate what a remand will accomplish. Given that Sundberg's evaluation complied with the requirements of section 1910 of the Code and the trial court was aware of the limitations as to the available research regarding female juvenile sex offenders, we find no abuse of discretion.

¶ 66 D. Ineffective Assistance of Counsel.

¶ 67 Next, respondent argues that she received ineffective assistance of counsel due to Coates's failure to file a motion to reconsider the sentence that would have preserved for this court's review the errors identified on appeal.

¶ 68 To prevail on a claim of ineffective assistance of counsel, respondent must show that (1) trial counsel's representation fell below an objective standard of reasonableness and (2) a reasonable probability exists that, but for the error, the result of the proceeding would have been different. *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 32. To establish the second prong, respondent must show that trial counsel's deficient performance rendered the result of the underlying proceeding unreliable or fundamentally unfair. *People v. Evans*, 186 Ill. 2d 83, 93

(1999). The failure to satisfy either prong dooms the claim. *People v. Brown*, 2015 IL App (1st) 131552, ¶ 41. Because respondent has not identified any error in the trial court's sentence, any motion to reconsider would have been futile and preservation of the alleged error would not have altered the outcome of the appeal. *People v. Holmes*, 397 Ill. App. 3d 737, 745 (2010) (explaining that trial counsel is not deemed ineffective for failing to make a futile objection). Thus, respondent was not prejudiced by any failure to file a motion to reconsider sentence, and her ineffective-assistance-of-counsel claim fails.

¶ 69 IV. CONCLUSION

¶ 70 For the reasons set forth above, we affirm the judgment of the circuit court of Winnebago County.

¶ 71 Affirmed.