2020 IL App (4th) 180498-U

NO. 4-18-0498

FILED
August 20, 2020
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
BENJAMIN GUSTAFSON,	)	No. 17CF159
Defendant-Appellant.	)	
	)	Honorable
	)	Michael L. Atterberry,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant failed to make a sufficient offer of proof in order to preserve his claim that the trial court improperly excluded certain witnesses.

(2) The trial court conducted a sufficient *Krankel* inquiry.

(3) Defendant forfeited his claim that the amount of the court-ordered restitution was not supported by the evidence. However, the trial court erred by not establishing a method of payment of restitution or a deadline for payment of restitution.

¶ 2 Following a jury trial, defendant, Benjamin Gustafson, was found guilty of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2016)) and being an armed habitual criminal (*id.* § 24-1.7(a)). The trial court sentenced defendant to 24 years in prison. In a written order, the court also ordered defendant to pay $18,889 in restitution. On appeal, defendant argues: (1) the court erred by excluding certain witnesses, (2) the court failed to conduct

a sufficient *Krankel* inquiry into his posttrial allegation of ineffective assistance of counsel, and (3) the restitution payment order was deficient because the sum imposed was not supported by any evidence, the order failed to establish a method of payment, and the order failed to set a time period within which the restitution was to be paid. We affirm defendant's conviction and the judgment for restitution in the amount of $18,889 but remand this case with directions for the trial court to establish both a deadline for defendant to pay restitution and the manner in which payment should be made.

¶ 3 I. BACKGROUND

¶ 4 On February 16, 2017, the State charged defendant with one count of residential burglary (720 ILCS 5/19-3 (West 2016)) (count I). Later, the State amended the charges to include two counts of possession of a stolen firearm (*id.* § 24-3.8) (counts II and V), two counts of unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)) (counts III and VI), and two counts of armed habitual criminal (*id.* § 24-1.7(a)) (counts IV and VII). Counts I, II, III, and IV related to alleged actions of defendant on October 11, 2016, while counts V, VI, and VII related to alleged actions of defendant on January 24, 2017. On December 18, 2017, following a motion by defendant, the trial court severed the charges, and the State elected to proceed to trial first on counts III and IV. The issues in the subject appeal relate solely to counts III and IV.

¶ 5 Prior to trial, the State filed a motion *in limine* requesting that several individuals listed in defendant's discovery disclosures be barred from testifying because they "were not present and had no involvement with the facts giving rise to the alleged acts on October 11, 2016." The trial court reserved ruling on the State's motion until the conclusion of the State's case-in-chief.

¶ 6 The cause proceeded to a jury trial on May 21, 2018. The State first called James

Fisher as a witness. Fisher testified that on October 11, 2016, he returned home from work and found his house "in total disarray." According to Fisher, "[e]verything was laying on the floor. I turned around and there [were] things broken—and such." Fisher noticed the gun case in his bedroom had been destroyed and the guns that had been in it were missing. Fisher testified that guns missing from the safe included two "12-gauge shotguns," two ".410 shotguns," two ".22 rifles," a ".22 semiautomatic handgun," a ".40 Glock handgun," and a "pump-up pellet gun." In addition to the guns from the safe, Fisher noticed that two "musket-type guns," ammunition, prescription pain pills, a jewelry box containing jewelry, currency, a coat, and other "miscellaneous" items had been taken. Fisher further testified that he was acquainted with defendant and that, on two occasions prior to October 11, 2016, defendant had been to his home to pick up firewood. According to Fisher, his home was in a remote area and "unless [a person] kn[e]w where [he] live[d] or g[o]t directions from [him]," the person would be unable to find his house.

¶ 7 The State also called Taylor Hicks as a witness. According to Hicks, she first met defendant in March of 2016 and was with him on October 11, 2016. Hicks testified that, on that date, defendant, Kamden Mock, and Travis Childress came to her home. When Hicks approached the car defendant was driving, he told her to come with them "to get some guns." Hicks got in the car and defendant then drove the group to Fisher's home. According to Hicks, once the group arrived at Fisher's home, the men got out of the car and entered the house while she remained in the car and listened to the police scanner. Hicks testified that, while she waited in the car, she heard "the sound of glass breaking," and approximately five minutes later, the other three returned to the car. Hicks stated that when they returned, defendant and Childress "were both carrying guns" and Mock "was carrying a jewelry box and *** a change jar." The three placed the items in the trunk

of the car and then the group left. Hicks testified defendant next drove them "to the lev[ee]" where they divided the items stolen from Fisher's home among themselves. Defendant then drove them all to Childress's home and dropped off Childress and Mock along with the items Childress had claimed. Hicks testified that defendant next drove her to her house and carried the rest of the items into her attic. A few days later, defendant returned and removed the items.

¶ 8 On cross-examination, Hicks admitted that during the events of October 11, 2016, each member of the group, including herself, was "high on methamphetamine." Hicks further testified that she had purchased methamphetamine from defendant "a couple times."

¶ 9 During the second day of trial, the State called Mock and Childress to testify. With minor differences, both men testified consistently with Hicks. Additionally, they provided testimony about what occurred when they were inside Fisher's home. According to Mock, the three of them entered Fisher's home through the garage. After Mock explored a different part of the house, he returned to where defendant was and saw him "loading the guns in a bag." Childress testified that sometime after October 11, 2016, he "sawed down and handled" the shotguns they had taken from Fisher's house. On cross-examination, Childress testified that after he altered the ".410 shotgun[s]," "Kyle Hildenbrand *** ended up with" at least one of them.

¶ 10 After Childress testified, the State rested, and the trial court conducted a hearing on the State's motion *in limine*. At the beginning of the hearing, defense counsel informed the court that he intended to call as witnesses Brianne Carlson, Jerry Coram, Andrew Adams, and Deputy Tommy Pickett. The court then asked defense counsel for an offer of proof for the potential witnesses. In response to the court's request, defense counsel commenced a protracted and vague proffer. Defense counsel informed the court the testimony would "deflect any blame or responsibility that go with [defendant]" and, instead, would implicate Kyle Hildenbrand. Although

defense counsel's proffer consumes 18 pages of the report of proceedings, and despite multiple attempts by the court to clarify the proffer, defense counsel did not specify the anticipated testimony of each of the identified witnesses beyond indicating that a gun was found in the possession of Hildenbrand several months after the robbery. At one point during the hearing, defense counsel stated:

> "In other words, [defendant] is being charged with one of the guns that Kyle Hildenbrand was trying to get rid of—excuse me—
>
> [Andrew Adams] was trying to get rid of by way of Kyle Hildenbrand, and Tommy Pickett saw his way clear. So, in other words, if you understand, sir, he's—those—one of those guns may be a gun that [defendant] is—is charged with."

The court found "[t]he proffered testimony in the [c]ourt's judgment does not go to any issue that is relevant to this jury[,]" and granted the State's motion *in limine*.

¶ 11 Defendant testified on his own behalf. According to defendant, he did not go to Fisher's home on October 11, 2016. Defendant testified that, in September of 2016, he had shown Hicks and Hildenbrand where Fisher lived while the three of them happened to be driving by Fisher's house. Defendant further testified that the only time he had seen the guns he was charged with possessing was in late October of 2016 "at Kyle Hildenbrand's house."

¶ 12 At the conclusion of the trial, the jury found defendant guilty on counts III and IV. A presentence investigation report (PSI) was ordered, and the matter was set for sentencing.

¶ 13 On July 10, 2018, defendant filed a motion for a new trial in which he alleged, in relevant part, that "defense still believes the [trial court] erred by not allowing the defense to call 3 or 4 witnesses because the State argued that those witnesses would be irrelevant to the issues at hand."

¶ 14 A sentencing hearing was held on July 13, 2018. The trial court first noted that because count III merged into count IV, defendant was being sentenced on the armed habitual criminal conviction. The court next addressed defendant's motion for a new trial. After hearing argument from both parties, the court denied the motion, finding that during the offer of proof at trial, "[t]he [d]efense was unable to proffer any reasons to counter the State's argument that [the witnesses] *** didn't possess any evidence that would be relevant to any issue at this trial."

¶ 15 After ruling on defendant's motion, the trial court commenced the sentencing portion of the proceeding. At the beginning of the proceeding, the following colloquy between the court and defendant occurred:

> "THE COURT: And are you satisfied, as you sit here today, with the services your attorney has performed so far on your behalf?
>
> DEFENDANT: No, your Honor.
>
> THE COURT: And what are the reasons why you're not?
>
> DEFENDANT: Mr. Prizy [(defense counsel)] has lacked in the details of the case. I have asked him to use certain things that were in discovery that he never used and he never questioned the witnesses about. And I feel it had a big impact on the trial, him lacking in what I thought was substantial and things that could have swayed the jury a different way.
>
> THE COURT: Okay. And I'm interpreting what you're saying ***; that you disagreed with the strategy that your attorney chose to use in front of the jury.
>
> DEFENDANT: Yes, your Honor.
>
> * * *
>
> THE COURT: Okay. The [c]ourt finds for the record that the disagreements

and the unhappiness that [defendant] has suggested concerning his attorney are matters of trial strategy, which the law is very clear is the domain that the trial attorney makes the decisions. And I understand that, Mr. Gustafson, you disagree with the strategy employed by your counsel, but that does not rise to the level of deficient performance pursuant to the law of your counsel."

Both parties then presented evidence and made arguments. During the State's argument, the following colloquy regarding restitution occurred:

"MR. EYLER [(ASSISTANT STATE'S ATTORNEY)]: The other thing is—and it's, again, not in the PSI because the police reports are not attached, but Mr. Prizy has this, it's already been disclosed—we're requesting restitution. Mr. Prizy has the amount for the restitution, and it's joint and several as to all defendants. All are going to be responsible for that as part of the negotiation, and this defendant should be also.

THE COURT: What is the—and what is that amount?

MR. EYLER: That restitution figure is $18,889.

THE COURT: And, Mr. Prizy, what is your position with regard to that amount of restitution?

MR. PRIZY: We have no position.

THE COURT: Pardon me?

MR. PRIZY: We have no position on it. I know the [c]ourt's going to order restitution of [defendant] for a certain amount."

The State presented no evidence explaining how it arrived at the $18,889 figure. Regarding restitution, the PSI states, "A Victim Profile Form, received from the State Attorney's Office,

indicates property cost of items not recovered by police is $18,000." The referenced Victim Profile Form is not signed and does not include any receipts, estimates, bills, or other corroborating documents. Rather, it states these documents are "in [p]olice [r]eports."

¶ 16 The court ultimately sentenced defendant to 24 years in prison followed by a four-year period of mandatory supervised release. Additionally, the court ordered defendant to pay restitution. In the court's written sentencing order, defendant was ordered to pay restitution "in the total amount of $18,889.00." In the court's written Judgment of Restitution, which was incorporated into the court's sentencing order, payment of the $18,889 sum is apportioned between Fisher and an insurance company. The ordered payment to Fisher is itemized as follows: $1320 for stolen cash not covered by insurance, $690 for guns and ammunition not covered by insurance, $3169 for jewelry not covered by insurance, and $1546.04 for "misc[ellaneous] stolen items" not covered by insurance. Neither the sentencing order nor the Judgment of Restitution identifies the manner in which defendant is to pay restitution or the deadline by which defendant is to pay.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, defendant argues: (1) the trial court erred by excluding certain witnesses, (2) the court failed to conduct a sufficient *Krankel* inquiry into his posttrial allegation of ineffective assistance of counsel, and (3) the restitution payment order was deficient because the sum imposed was not supported by any evidence, the order failed to establish a method of payment, and the order failed to set a time period within which the restitution was to be paid.

¶ 20 A. Exclusion of Witnesses

¶ 21 Defendant first contends the trial court erred by excluding certain witnesses. Specifically, defendant contends the court erred in granting the State's motion *in limine* barring

the testimony of Andrew Adams, Jerry Coram, Brianne Carlson, and Deputy Tommy Pickett. According to defendant, these witnesses "could give evidence that would help the jury determine how Hildenbrand came into possession of the weapon(s), and the circumstances and motivation of Hildenbrand's attempts to sell them." Defendant claims this testimony "may have cast doubt on [defendant's] participation in the burglary and whether he ever possessed the weapons at all."

¶ 22 "When a defendant claims that he has not been given the opportunity to prove his case because the trial court improperly barred evidence, he must provide [the] reviewing court with an adequate offer of proof as to what the excluded evidence would have been." (Internal quotation marks omitted.) *People v. Pelo*, 404 Ill. App. 3d 839, 875, 942 N.E.2d 463, 493-94 (2010). The offer of proof "serves dual purposes: (1) it discloses to the court and opposing counsel the nature of the offered evidence, thus enabling the court to take appropriate action, and (2) it provides the reviewing court with an adequate record to determine whether the trial court's action was erroneous." *Id.* "Failure on the part of a defendant to make a proper offer of proof forfeits review of his challenge to the trial court's granting of a motion *in limine*." *Id.*

¶ 23 An offer of proof may be formal or informal. *Id.* When making an informal offer of proof, counsel must describe the anticipated testimony "with particularity." *Id.*

> "An offer of proof that merely summarizes the witness' testimony in a conclusory manner is inadequate. [Citation.] Neither will the unsupported speculation of counsel as to what the witness would say suffice. [Citation.] Rather, in making the offer of proof, counsel must explicitly state what the excluded testimony would reveal and may not merely allude to what might be divulged by the testimony. [Citation.] The offer serves no purpose if it does not demonstrate, both to the trial court and to reviewing courts, the admissibility of the testimony which was

foreclosed by the sustained objection." *People v. Andrews*, 146 Ill. 2d 413, 421, 588 N.E.2d 1126, 1131-32 (1992).

¶ 24 Here, defendant contends that defense counsel "presented the court with an offer of proof to demonstrate that the witnesses would testify that they received the weapons at issue in this case from a third party." While this may have been defense counsel's goal, his proffer was clearly deficient. At trial, defense counsel attempted to proffer the proposed testimony of Adams, Coram, Carlson, and Deputy Pickett in an informal offer of proof. Although the exchange between defense counsel and the court spans 18 pages of the report of proceedings, at no point did defense counsel "explicitly state what the excluded testimony would reveal." See *id.* Defense counsel failed to identify *each* witness's *specific* proposed testimony. Instead, counsel mostly lumped the witnesses together in his proffer and generically, and oftentimes confusingly, described the substance of their proposed testimony. Contrary to defendant's assertion, it is not clear from defense counsel's proffer whether the witnesses would testify that the gun or guns defendant claims were "received" by the excluded witnesses were the same ones that had been stolen from Fisher, nor is it clear who the "third party" who delivered the guns to the witnesses was. Defense counsel, in his proffer, did not even mention Coram or his proposed testimony. Absent an adequate offer of proof, we are unable to discern from the record the substance of the excluded witnesses' testimony, let alone make a determination as to its admissibility. Accordingly, defendant has forfeited review of his claim that the court erred in excluding these witnesses.

¶ 25 Even assuming, *arguendo*, that defendant's offer of proof for Adams, Carlson, and Deputy Pickett demonstrated "that the witnesses would testify that they received the weapons at issue in this case from a third party[,]" we would still find their testimony was properly excluded as being irrelevant. Defense counsel indicated Carlson would testify that on November 14, 2016,

"Hildenbrand had [a handgun], showed it to her, she held it, and then she saw where the serial markings were. They were smudged out, most of them. And she gave it back to him and said, 'This gun is stolen. I'm not interested.' " Carlson "d[id]n't know anything" about where the gun came from or how Hildenbrand had obtained it. Defendant expected Adams to testify he "had a particular .410 sawed-off shotgun" and "[Hildenbrand] possessed [certain weapons] after he got [them] from [Adams]." Defendant anticipated Deputy Pickett to testify he had arrested Adams and "recovered a weapon."

¶ 26 We find that the testimony discernible from defense counsel's offer of proof was irrelevant and, therefore, properly excluded. See Ill. R. Evid. 402 (eff. Jan. 1, 2011) ("Evidence which is not relevant is not admissible."). Whether Adams or Hildenbrand possessed a gun in November of 2016 or January of 2017 is irrelevant unless it could be established that the weapon was one of the guns stolen from Fisher's house and the weapon was never possessed by defendant. Defense counsel did not indicate the witnesses could establish either of these points. The offer of proof established only that witnesses would testify Hildenbrand possessed a handgun with missing serial numbers on November 14, 2016, and another gun in January of 2017. Defense counsel admitted Carlson could not testify that the handgun in Hildenbrand's possession was one of the guns stolen from Fisher, nor did she know where Hildenbrand had obtained the handgun. Even if we interpreted defense counsel's proffer as suggesting Adams or Deputy Pickett would testify that the gun Hildenbrand possessed in January of 2017 was one of the altered ".410 shotguns" described by Childress, the testimony still would not establish that defendant did not possess the shotgun on October 11, 2016.

¶ 27 B. Failure to Conduct a Sufficient *Krankel* Hearing

¶ 28 Defendant next contends the trial court failed to conduct a sufficient *Krankel*

hearing into his *pro se* claim of ineffective assistance of counsel. We review *de novo* the manner in which a trial court conducted a *Krankel* hearing. *In re T.R.*, 2019 IL App (4th) 190529, ¶ 81, 146 N.E.3d 692. "However, when a trial court has properly conducted a *Krankel* hearing, this court will review the trial court's determination that a defendant's claim does not demonstrate a possible neglect of the case by asking if that decision is manifestly erroneous." *People v. Lawson*, 2019 IL App (4th) 180452, ¶ 43, 139 N.E.3d 663.

¶ 29 "The sole question in a *Krankel* inquiry is whether to appoint independent counsel to represent the defendant on his *pro se* ineffective assistance claims." *People v. Rhodes*, 2019 IL App (4th) 160917, ¶ 12, 128 N.E.3d 1100. "However, the trial court is not required to automatically appoint new counsel when a defendant raises such a claim." *People v. Ayres*, 2017 IL 120071, ¶ 11, 88 N.E.3d 732. Rather, the court must conduct a preliminary inquiry "to ascertain the underlying factual basis for the ineffective assistance claim and to afford a defendant an opportunity to explain and support his claim." *Id.* ¶ 24.

> "If the court determines the claim lacks merit or pertains only to matters of trial strategy, new counsel need not be appointed and the *pro se* motion may be denied. However, if the defendant's allegations show possible neglect of the case, new counsel should be appointed to argue the defendant's claim of ineffective assistance." *People v. Taylor*, 237 Ill. 2d 68, 75, 927 N.E.2d 1172, 1175-76 (2010).

¶ 30 In the present case, defendant contends his *pro se* allegation of ineffective assistance was "an allegation that his attorney was unfamiliar with the details of the case and failed to cross-examine witnesses on those details," thus demonstrating possible neglect of defendant's case. This argument is belied by the record. Although defendant initially seemed to allege that defense counsel had been unfamiliar with defendant's case, he clarified his allegation by stating

he had "asked [defense counsel] to use certain things that were in the discovery that he never used and he never questioned the witnesses about." Thus, defendant did not assert counsel was uninformed but, rather, that he was unhappy with defense counsel's choice not to use certain evidence or to ask witnesses certain questions after being prompted to do so by defendant. Although defendant may not have agreed with defense counsel's decisions regarding what evidence to present and what questions to ask certain witnesses, they were nonetheless defense counsel's decisions to make as a matter of trial strategy and, under these circumstances, his decisions do not support a claim of ineffective assistance of counsel. See *People v. Reid*, 179 Ill. 2d 297, 310, 688 N.E.2d 1156, 1162 (1997) ("Decisions concerning which witnesses to call at trial and what evidence to present on defendant's behalf ultimately rest with trial counsel. [Citation.] As matters of trial strategy, such decision are generally immune from claims of ineffective assistance of counsel."). Accordingly, defendant's *pro se* allegation of ineffective assistance of counsel did not demonstrate possible neglect of defendant's case, and we find the trial court's *Krankel* inquiry was sufficient.

¶ 31 C. Restitution Payment

¶ 32 Defendant's final contention on appeal is that the restitution payment order was deficient because the sum imposed was not supported by any evidence, the order failed to establish a method of payment, and the order failed to set a time period within which the restitution was to be paid. Although defendant concedes this issue was not preserved for appeal, he nonetheless asserts this court may review it under the plain-error doctrine. Alternatively, he contends defense counsel rendered ineffective assistance by failing to object to the defects in the restitution payment order.

¶ 33 1. *Plain Error*

¶ 34 Forfeited claims may be reviewed under the plain-error doctrine in the sentencing context where the defendant shows 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." *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010). "In plain-error review, the burden of persuasion rests with the defendant." *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010). Here, defendant alleges that plain error is applicable because the trial court's error denied him a fair sentencing hearing. Accordingly, our review is limited to the second prong of the plain-error analysis.

¶ 35 "Generally, a trial court's determination on restitution will not be reversed absent an abuse of discretion." *People v. Ford*, 2016 IL App (3d) 130650, ¶ 26, 49 N.E.3d 954. However, "[w]hether the trial court complied with *** applicable statutory procedure is a question of law, and the standard of review is *de novo*." *People v. Luczak*, 374 Ill. App. 3d 172, 185, 869 N.E.2d 1185, 1196 (2007).

¶ 36 a. The Trial Court Did Not Commit Plain Error in Imposing $18,889 in Restitution

¶ 37 Section 5-5-6 of the Unified Code of Corrections (Code) provides that a crime victim is entitled to restitution for "out-of-pocket expenses, damages, losses, or injuries found to have been proximately caused by the conduct of the defendant ***." 730 ILCS 5/5-5-6(a) (West 2016). "[I]nsurance carriers who have indemnified the named victim *** for the out-of-pocket expenses, losses, damages, or injuries" are also entitled to restitution. *Id.* § 5-5-6(b).

> "Restitution should be determined by using the fair market value of the property at the time the property was damaged or destroyed. [Citation.] Alleged losses which are unsupported by the evidence must not be used as a basis for awarding

> restitution. [Citation.] The court must determine the actual costs incurred by the victim; a guess is not sufficient." (Internal quotation marks omitted.) *People v. Adame*, 2018 IL App (2d) 150769, ¶ 14, 94 N.E.3d 248.

¶ 38 Even assuming the trial court committed a clear or obvious error in failing to require the State to substantiate the requested amount of restitution, defendant's claim does not qualify for second-prong plain error review because he fails to explain how the court's alleged error affected the fairness of his sentencing hearing. This court has previously rejected the argument that "restitution errors constitute plain error *per se*." *People v. Hanson*, 2014 IL App (4th) 130330, ¶ 38, 25 N.E.3d 1. Rather, "[b]ecause all sentencing errors arguably affect the defendant's fundamental right to liberty, determining whether an error is reviewable as plain error requires more in-depth analysis." (Internal quotation marks omitted.) *Id.* ¶ 37. In this case, defendant asserts the court's alleged error warrants second-prong plain error review because "[a] restitution order that does not comply with the requirements of the applicable statute deprives [defendant] of the right to be fairly sentenced." Defendant fails to explain *how* the court's alleged error affected the fairness of his sentencing hearing, implying instead that any error in the restitution order automatically deprived him of a fair sentencing hearing. This cursory argument does not constitute the "more in-depth analysis" necessary to determine whether the alleged error is reviewable as plain error. See *id.*

¶ 39 Additionally, we find the documentation substantiating the $18,889 order for restitution was not so deficient that it deprived defendant of a fair sentencing hearing. Again, *Hanson* is instructive. In that case, we rejected defendant's argument that "the trial court committed plain error by accepting the State's representation that the restitution amount was $490.82 without requiring that further evidence be presented to prove the accuracy of that amount."

Id. ¶ 40. We noted,

> "perhaps the reason why the court accepted that amount was because *defendant did not contest it.* Section 5-5-6 of the [Code] does not mandate that the court fix the amount of restitution based upon any specific type of evidence, nor does the statute prohibit the parties from stipulating as to the proper amount (which is essentially what happened here when neither defendant nor his counsel contested the $490.82 figure). Given the specificity of the $490.82 figure, we doubt that the State just made up that amount without any basis for requesting it. The only alleged error is the absence of some type of auto-shop receipt or testimony in the record proving that the victim incurred $490.82 in damage to her car." (Emphasis in original.) *Id.*

Here, as in *Hanson*, defense counsel did not object when the State informed the court that the amount of restitution was $18,889. Additionally, the requested sum is a specific figure, thus making it unlikely that the State made up the amount without a basis. Moreover, in the Judgment of Restitution, the $18,889 amount due is itemized into five categories, payable to either Fisher or an insurance company. This level of specificity makes it further unlikely that the restitution ordered by the court lacked any basis.

¶ 40 Because defendant fails to explain how the trial court's alleged failure to substantiate the award of $18,889 affected the fairness of his sentencing hearing and because the alleged error was not so grave that it deprived defendant of a fair sentencing hearing, we conclude defendant's forfeited claim is not reviewable as plain error.

¶ 41 b. The Trial Court Erred by Failing to Establish a Method of Payment for the Restitution and Failing to Set a Time Period Within Which the Restitution Was to Be Paid

¶ 42 Section 5-5-6(f) of the Code states, "[T]he court shall determine whether restitution

shall be paid in a single payment or in installments, and shall fix a period of time not in excess of 5 years, *** within which payment of restitution is to be paid in full." 730 ILCS 5/5-5-6(f) (West 2016). The trial court's compliance with section 5-5-6(f) of the Code is mandatory. *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 82, 129 N.E.3d 755.

¶ 43 Defendant asserts, and the State concedes, that the trial court erred by failing to indicate in the record whether defendant was required to pay the restitution in a single payment or in installments and by failing to set a deadline for the payment, as required by Section 5-5-6(f) of the Code. We agree. Accordingly, we remand for the limited purpose of allowing the trial court to set a deadline for defendant to pay the restitution obligation and to establish the manner in which he is to pay the obligation, as required by the Code.

¶ 44 2. *Ineffective Assistance of Counsel*

¶ 45 Defendant's final contention on appeal is that defense counsel rendered ineffective assistance by failing to object to the defects in the restitution payment order. Because we have found the trial court committed plain error by failing to set a deadline for defendant to pay the restitution obligation and to establish the manner in which defendant is to pay the obligation, we address defendant's ineffective assistance claim only with respect to defense counsel's failure to request the amount of restitution imposed be substantiated.

¶ 46 "To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Domagala*, 2013 IL 113688, ¶ 36, 987 N.E.2d 767 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Specifically, "a defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the

proceeding would have been different.' " *Id.* (quoting *Strickland*, 466 U.S. at 694). "A defendant must satisfy both prongs of the *Strickland* test. However, if the ineffective-assistance claim can be disposed of on the ground that the defendant did not suffer prejudice, a court need not decide whether counsel's performance was constitutionally deficient." *People v. Griffin*, 178 Ill. 2d 65, 74, 687 N.E.2d 820, 828 (1997). "When a claim of ineffective assistance of counsel was not raised at the trial court, our review is *de novo*." *Hibbler*, 2019 IL App (4th) 160897, ¶ 88.

¶ 47 Here, defendant contends that had defense counsel objected to the lack of support for the restitution order, "the trial court would have entered a restitution order that conformed to the statute" or he would have been able to raise the deficiencies in the restitution order on appeal. Defendant makes no argument that if substantiating documentation had been produced, the restitution amount would be less than $18,889. Indeed, he makes no argument explaining how, if defense counsel had requested verification of the amount of the State's requested restitution, the amount imposed would have been any different at all. We decline to speculate that any action defense counsel could have taken would have altered the amount of the court's restitution order. See *People v. Bew*, 228 Ill. 2d 122, 135, 886 N.E.2d 1002, 1010 (2008) ("*Strickland* requires actual prejudice be shown, not mere speculation as to prejudice."). Accordingly, we find defendant has not established that he was prejudiced by defense counsel's failure to request substantiation of the amount of restitution imposed in the court's order.

¶ 48 III. CONCLUSION

¶ 49 For the reasons stated, we affirm the trial court's judgment and remand with directions.

¶ 50 Affirmed and remanded.