

No. 1-13-0073

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 14544
)	
CHARLES MILES,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justice Gordon and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's 12-year sentence for residential burglary is affirmed where the trial court did not improperly consider his uninvited entrance into the home as a basis for imposing a harsher sentence than it would otherwise have imposed.

¶ 2 Following a jury trial, defendant, Charles Miles, was convicted of residential burglary and sentenced to 12 years in prison. He appeals, asserting the trial court improperly enhanced his sentence based on its consideration of factors inherent in the offense. For the following reasons, we affirm.

¶ 3 Samira Causevic and her 13-year-old daughter, A.H., were reading in the living room of their fourth floor apartment at 1036 North Dearborn a little before midnight on August 27, 2011. Causevic's husband had left earlier that night, leaving the women alone in the apartment with the only door locked. Sometime after midnight, Causevic heard a creaking noise and then heard her bedroom door close. As Causevic started to walk toward the bedroom, she saw defendant, whom she had never seen before. Causevic asked defendant who he was and what he was doing in her apartment, and he responded, "no harm, no harm, ma'am I'm not going to do anything." Defendant then told her he thought he was in his girlfriend's apartment and the door was either unlocked or open. Before leaving through the front door, defendant spontaneously told Causevic he did not steal anything.

¶ 4 After defendant left, Causevic checked the rest of her apartment. She noticed her bedroom window, which she usually left all the way open, was only open about four inches. The screen of that window, which led out to a fire escape, was also "pulled all the way up." Causevic observed the TV from her daughter's room was on her bed, her cell phone was missing from her dresser, and her jewelry box "was a little bit messed up." A.H. observed the lights in her bedroom were on, her laptop had been moved from her desk to her bed, her cell phone was missing, and her drawer had been moved. Causevic and A.H. went to a 7-Eleven next to their building, and the store's clerk called the police. Causevic provided a physical description of defendant to the clerk.

¶ 5 Chicago police officers Michael Rowan and Jorge Garcia responded to Causevic's call. While looking around Causevic's apartment, the officers noticed a backpack on the fire escape

that did not belong to anybody in Causevic's family. The officers went through the bag and found documents bearing defendant's name. They then radioed a message, providing defendant's name.

¶ 6 Officers Steven White and Allen Lewis were on patrol when they received a radio call of a burglary in progress with a physical description of the suspect. A few minutes later, they stopped defendant, who matched the description, as he crossed in front of their car at LaSalle and Division. While they were talking to defendant, White received another message with the burglary suspect's name, Charles Miles. White confirmed defendant was Charles Miles. He then transported him to 1036 North Dearborn, where Causevic identified him from across the street as the man who had entered her apartment. Defendant was not carrying tools, cell phones, or any of the other items missing from Causevic's apartment. White and eight other officers searched the four-block area between Causevic's apartment and the location where defendant was arrested, but they did not find any cell phones. An evidence technician could not find any fingerprints in Causevic's apartment.

¶ 7 Detective John Campbell interviewed defendant at the station. After Campbell read him his *Miranda* rights, defendant agreed to speak with Campbell and initially denied committing the burglary or being in the residence. However, when Campbell told defendant the officers had recovered a backpack on the fire escape containing documents with his name on them, defendant stopped and said he would "have to think about that for a moment." He then stopped talking to Campbell except to say the bag was found outside the apartment.

¶ 8 Defendant testified that he was homeless and looking for shelter on the night of the alleged burglary. He saw an open door to the courtyard of a building and went inside to drink a beer. While sitting on the fire escape, he saw what appeared to be a vacant apartment, and he

entered that apartment to sleep inside. Less than a minute later, a light came on and a woman asked defendant how he got into the bedroom. Defendant left through the front door, telling her he did not mean any harm. He did not take anything with him, and he left his bag on the fire escape.

¶ 9 The jury found defendant guilty of residential burglary. At a later sentencing hearing, defense counsel requested a 402 conference. The trial court informed defendant that, based on his two prior burglary convictions, he was eligible for a sentence of between 6 and 30 years. The court further explained that defendant had three pending burglary cases, each of which also carried a Class X sentence of 6 to 30 years. The court told defendant that if he pled guilty to the three pending charges, it would sentence him to concurrent six-year sentences on each of those charges, to run consecutive to a sentence of nine years' imprisonment on the residential burglary conviction. Defendant declined the court's offer.

¶ 10 In aggravation, the State read a victim impact statement from Causevic. Causevic described the difficulty she and her daughter experienced after the burglary, stating they no longer felt safe in their apartment most of the time and refused to stay home alone anymore. The State also pointed out defendant was subject to a mandatory Class X sentence based on convictions in 2000 and 2001 for burglary, a 1993 conviction for possession of cannabis, and a 1992 conviction for aggravated battery with great bodily harm. In mitigation, defense counsel argued defendant lost his father in 2008, after which "his life took a downward spiral" and defendant struggled with severe drug addiction. Counsel asserted defendant had a strong support system of 15 siblings, he had obtained his GED, and he was not a violent man.

¶ 11 Defendant made a statement in allocution, denying he committed the burglary and claiming his lawyers instructed him to say he went into the home because it was a vacant apartment. The trial court told defendant it did not believe him. Defendant then stated he did not mean any harm, wanted to take responsibility for his actions, and asked for the court's mercy. Defendant said that he started drinking again and using drugs after his father died in 2008, and he was intoxicated on the night in question. He also apologized to the State and the victim.

¶ 12 The trial court stated as follows:

"I agree with you to some extent you're sort of like a friendly burglar. The lady looks up and you're in the house. Things could have been a lot worse.

I won't consider what could have happened but merely the fact that she looks up, sees you in the house, a big man, six feet tall or maybe taller than that, close to 300 pounds at the time, wearing all black. That would tend to scare someone to death almost under those circumstances, in their house with their young daughter, look up and you're there. "

The court then rejected defendant's version of events and his claim that his lawyers instructed him to make up an excuse. It noted defendant's prior criminal history and stated that, "listening to the lady in the Victim Impact Statement, how it affected her, it would affect anybody in their own house 12:00 or 1:00 o'clock in the morning, watching TV or reading a book, and look up and who is there, [defendant]." The court then made the following comments.

"Fortunately, nothing else happened. That's why I said you're kind of a friendly burglar. It could have been a whole lot worse. Like I said, I won't consider what might have been. I can understand how the woman feels about her

safety at this point. She's watching TV with her daughter or reading a book with her daughter, reading books together. Her husband and another child are not home at the time, and [she] looks up, an uninvited [person] obviously in her house, and who is there, [defendant]."

¶ 13 Thereafter, the court stated as follows.

"You're what I would pretty much describe as a congenital [*sic*] burglar. You break into places, either take stuff or try to take stuff that doesn't belong to you. It happened twice before in other thefts that don't belong to you either, and now you break into someone's apartment that actually is home at the time, yikes. And then obviously you don't take any responsibility at all. This ridiculous story, just wandered in, I wanted to sleep in the place, and then turns out cell phones are missing, two TVs moved from one room to the other, put on a bed."

The trial court then sentenced defendant to 12 years in prison, stating as follows. "I have considered the facts in aggravation and mitigation. I have considered what's in the PSI report. I have considered the defendant's prior record, the fact that he supports the family that is obvious, the statements and allocution. The defendant blames everybody else but [defendant]."

¶ 14 Defendant asked the trial court to "redo" the deal it had previously offered, which the court refused. Defendant claimed that he was confused and stated he felt "frightened because" he had "never been through this before." The court responded that "when you do bad things there are bad consequences" and that "[b]reaking in somebody's house when she is there, scared the lady to death, there is [*sic*] bad consequences." Defendant insisted he would "like to take the deal" and pleaded with the court to impose the minimum sentence, explaining his mother was ill

and he had "people out there[.]" The court responded, "No, no. When you are out there doing bad things, someone says hey, man how is your brother doing, your response would be what brother. You are in that lady's house taking stuff out of her house, someone says—it ends up whatever I can get. It's nothing about your family, brother, or anybody else. You're thinking about what [defendant] can get, that's what you're thinking."

¶ 15 Defendant filed a motion to reconsider sentence but did not include therein his contentions relating to the trial court's alleged double enhancement. At a hearing, the court denied the motion, noting the fear defendant's crime instilled in Causevic and that defendant had two prior burglary convictions. The court stated that "[i]f anything the sentence is too low." This appeal followed.

¶ 16 On appeal, defendant argues the trial court improperly considered factors inherent in the offense of residential burglary when it sentenced him to 12 years in prison. Specifically, defendant asserts the court enhanced his sentence on the basis that Causevic found defendant in her home uninvited, even though entering a home uninvited is an element of residential burglary. According to defendant, such improper consideration resulted in a harsher sentence because the court did not find any other factual bases on which to aggravate his sentence. In support of his claim, defendant relies on comments the court made during the sentencing hearing and observes the court referred to him as a "friendly burglar." We disagree with defendant and find no error occurred.

¶ 17 As defendant correctly concedes, he has forfeited review of his argument by failing to include it in his motion to reconsider sentence or object during sentencing. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010) (to preserve a claim of sentencing error, a defendant must make both

a contemporaneous objection and a written postsentencing motion raising the issue). However, we may review defendant's contentions pursuant to the plain-error doctrine. To establish plain error in the sentencing context, a defendant must show a clear or obvious error occurred and either (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious that it denied defendant a fair sentencing hearing. *Hillier*, 237 Ill. 2d at 545.

¶ 18 "Generally, a factor implicit in the offense for which the defendant has been convicted cannot be used as an aggravating factor in sentencing for that offense." *People v. Phelps*, 211 Ill. 2d 1, 11 (2004). In other words, the same factor cannot be used both as an element of the offense and as grounds for imposing a harsher sentence than might have otherwise been imposed. *Id.* at 11-12. Such dual use is often called "double enhancement." *Id.* at 12. Ordinarily, we provide great deference to a trial court's sentencing decision and will not alter it absent an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). However, as double enhancement is an issue of statutory construction, our review is *de novo*. *Phelps*, 211 Ill. 2d at 12; *People v. Morris*, 2014 IL App (1st) 130512, ¶ 51.

¶ 19 A person commits residential burglary when he knowingly and without authority enters or remains within the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft. 720 ILCS 5/19-3(a) (West 2010). "The purpose of the residential burglary statute is to impose a greater penalty for burglarizing places where there is a substantial likelihood that people might be present, as this presents a greater threat to public safety." *People v. Walker*, 212 Ill. App. 3d 410, 413 (1991). Residential burglary is a Class X felony when committed by a defendant who has two or more prior Class 2 felony convictions. 720 ILCS 5/19-

3(b) (West 2010); 730 ILCS 5/5-4.5-95(b) (West 2010). The sentencing range for a Class X felony is 6 to 30 years in prison. 730 ILCS 5/5-4.5-25(a) (West 2010).

¶ 20 Contrary to defendant's assertions, we find the trial court did not rely on his uninvited entry into the home to improperly enhance his sentence. First, while defendant asserts the court commented on his uninvited entry into the home "no less than six times," the record makes clear that some of the comments on which defendant relies were made either to refute his assertion that he did not commit the burglary or to reject his request, after the court had already imposed his sentence, to accept the previously offered deal or receive the minimum sentence.

Accordingly, these comments offer no support for defendant's argument that the court enhanced his sentence based on factors inherent in the offense.

¶ 21 Moreover, to the extent the trial court commented on defendant's uninvited entry into the home when imposing its sentence, it is clear that the court was merely considering the nature of the offense defendant committed. See *People v. Gramo*, 251 Ill. App. 3d 958, 970-71 (1993) (a trial court's reference to the defendant's entry into the victims' homes was not improper because the court was simply describing the nature of the offenses and the seriousness with which the legislature, courts, and society view them). The court's comments on defendant's uninvited entry were also made in the context of discussing the harm defendant's conduct caused, which was not only proper, but required. See 730 ILCS 5/5-5-3.2(a)(1) (West 2010) (the court shall consider as an aggravating factor that a defendant's conduct caused or threatened serious harm). Contrary to defendant's assertions, the harm discussed in this case was not that defendant entered Causevic's home, but that his entry into the apartment scared Causevic, who was home alone with her young daughter. Defendant's cited authority does not support his argument that the crime of residential

burglary was created to penalize an individual for causing fear by his unauthorized entry. See *Walker*, 212 Ill. App. 3d at 413 (residential burglary statute's purpose "is to impose a greater penalty for burglarizing places where there is a substantial likelihood that people *might be* present[.]" (emphasis added.)).

¶ 22 Defendant also argues, for the first time in his reply brief, that the trial court erroneously considered the potential harm his residential burglary created. However, points not argued in an opening brief are waived and may not be raised in the reply brief. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Moreover, defendant's contention is clearly refuted by the record, as the court stated at least twice that it would not consider what could have happened during defendant's burglary.

¶ 23 Finally, even assuming the trial court improperly considered defendant's unauthorized entry into the home as an aggravating factor, no double enhancement occurred because the alleged consideration of this factor did not result in a "harsher sentence than might otherwise have been imposed." *Phelps*, 211 Ill. 2d at 11-12 (quoting *People v. Gonzalez*, 151 Ill. 2d 79, 83-84 (1992)). The court sentenced defendant to 12 years in prison, a sentence well within the 6- to 30-year range for which he was eligible. While defendant points out the court repeatedly called him a "friendly burglar," the court also stated it had considered his criminal record, which included prior burglary convictions, and explicitly observed his failure to take responsibility for his actions. Given the presence of these factors, any alleged consideration of defendant's uninvited entrance into Causevic's home did not result in a harsher sentence. See *People v. Freeman*, 404 Ill. App. 3d 978, 996-97 (2010) (improper reliance on the victim's age did not result in a harsher sentence where the record disclosed no mitigating factors and the defendant

had prior felony convictions, had served time in adult prison, was serving a probation sentence at the time of the offense, displayed no remorse, and held a position of trust over the victim). In sum, we find no error occurred in the trial court's sentencing decision.

¶ 24 Defendant also argues counsel's failure to object at sentencing or raise the issue in his motion to reconsider sentence constituted ineffective assistance of counsel. To prove ineffective assistance of counsel, a defendant must show counsel's performance was deficient and that he suffered prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Because we have concluded no error occurred here, defendant has failed to show any deficiency in counsel's performance or demonstrate he was prejudiced by counsel's failure to object or include the issue in the post-sentencing motion.

¶ 25 For the reasons stated, we affirm the trial court's judgment.

¶ 26 Affirmed.