

NOTICE

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2014 IL App (4th) 140063-U

NO. 4-14-0063

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 12, 2014

Carla Bender

4th District Appellate

Court, IL

In re: AUSTIN D., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 13JD110
AUSTIN D.,)	
Respondent-Appellant.)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court held (1) no clear or obvious error occurred where the record contains sufficient evidence the trial court considered (a) less restrictive alternatives to incarceration and (b) respondent's educational history; (2) no plain error occurred where the trial court failed to inquire regarding specific mental-health programs respondent participated in; (3) no clear or obvious error occurred where the trial court considered prior police contacts during sentencing; and (4) the monetary assessments imposed against the minor were not authorized by statute and were vacated.

¶ 2 In August 2013, respondent, Austin D., pleaded guilty to aggravated criminal sexual abuse. In October 2013, the trial court sentenced respondent to an indeterminate term in the Illinois Department of Juvenile Justice (DOJJ), not to exceed 7 years. In November 2013, respondent filed a motion to reconsider sentence, alleging his sentence was excessive, in part, because the trial court failed to consider less restrictive alternatives. Following a January 17, 2014, hearing on the matter, the trial court denied respondent's motion. Respondent appeals,

arguing the following: (1) his sentencing hearing failed to comport with the statutory requirements for committing juveniles to DOJJ; (2) police contacts in a social-investigation report (SIR) are unreliable and should not be considered by courts in fashioning sentences for juveniles; and (3) the fines assessed against him must be vacated because neither the circuit clerk nor the trial court had authority to impose them. We affirm in part and vacate in part.

¶ 3

I. BACKGROUND

¶ 4 On June 18, 2013, the State charged respondent in a petition for adjudication of delinquency and wardship with aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(2)(i), (g) (West 2012)), a Class 2 felony. On August 6, 2013, respondent pleaded guilty to the offense. According to the factual basis presented, in December 2012, respondent, age 15 years, pulled the 7-year-old female victim into a bathroom and exposed his penis and, on another occasion, he put his hand down her pants. Respondent pleaded guilty to aggravated criminal sexual abuse and the court adjudicated him a delinquent minor. The court scheduled the matter for sentencing and ordered a SIR and a sex-offender evaluation.

¶ 5 On October 15, 2013, a SIR prepared by a probation officer was filed with the trial court. The SIR indicated, in addition to the juvenile adjudication at issue here, respondent had been adjudicated a delinquent minor after he pleaded guilty to a 2009 battery. In the initial petition for adjudication of delinquency and wardship filed in that case, the State alleged respondent committed the offense of aggravated criminal sexual assault, but it later withdrew the petition and filed one alleging the offense of battery. Respondent subsequently pleaded guilty to the charge and was given a sentence of probation. In the battery case, respondent successfully completed 24 months' probation (which ended in June 2012), which included participation in sex-offender treatment. The SIR listed 11 prior police contacts (not including the adjudication at

issue here or the 2009 battery adjudication), most of which had been administratively closed.

The offenses listed for these police contacts included the following: (1) aggravated sexual abuse (December 25, 2012); (2) criminal damage to property and battery (May 28, 2012); (3) unlawful use of weapons and aggravated battery (May 23, 2012); (4) death investigation (May 20, 2012); (5) resisting/obstructing a peace officer and disorderly conduct (May 13, 2012); (6) criminal damage to property (January 16, 2012); (7) illegal consumption of alcohol by a minor (August 27, 2010); (8) fights/riots/brawls (March 10, 2010); (9) battery (September 9, 2008); (10) fighting (April 20, 2008); and (11) trespass to land/real property (February 27, 2005).

Under a section titled, "Prior Juvenile Court Alternative Initiative," the probation officer noted respondent had never previously been referred for participation in the Champaign County diversionary program. Based on respondent's "pattern of offending," "need for some serious counseling and intervention," and unsuccessful participation in sex-offender counseling, evidenced by the instant offense, the probation officer recommended respondent be committed to DOJJ.

¶ 6 On October 21, 2013, a sex-offender evaluation and risk assessment was filed with the trial court. After conducting an extensive interview and diagnostic tests, the evaluator concluded respondent was at a "moderate" to "moderate-high" risk to reoffend. The evaluator recommended respondent be placed on probation with the following nine conditions: respondent should (1) be monitored by a supervising officer experienced with at-risk clients; (2) comply with all requirements and regulations imposed upon him by the agency; (3) participate in sex-offender treatment with a sex-offender-management-board (SOMB)-approved therapist; (4) have no contact with the victims of either of his criminal cases; (5) have no unsupervised contact with minors under 16 years of age; (6) remain abstinent from all forms of pornography; (7) remain

abstinent from all mood-altering chemicals, including alcohol and marijuana; (8) continue his high school education; and (9) fulfill his financial obligations to the court. In the event respondent failed to comply with these conditions, the evaluator recommended probation be revoked and respondent be incarcerated.

¶ 7 At the October 23, 2013, sentencing hearing, the trial court stated it had considered the SIR, the sex-offender evaluation, and the alternative-school (READY) report tendered to the court that day. The READY report indicated respondent was receiving an "F" grade in 6 of his 8 classes and had been absent from school on 20 occasions, or 52.6% of the time, the majority of the absences having been excused by his mother. The State recommended a sentence to DOJJ based on respondent's prior sex-related offense (which was resolved by the battery adjudication), unsuccessful participation in sex-offender treatment, evidenced by the instant offense, failure of his mother to properly supervise him, and his poor grades and school attendance. Defense counsel argued for probation, pointing to his previous successful discharge from probation, his attendance at READY and pursuance of his general equivalency diploma (GED), the fact he was helping take care of his sick grandmother, he had a job at Arby's, he was involved with the "Access Initiative" program (a description of this program does not appear in the record) and had mentors to whom he spoke regularly, and he was remorseful and expressed a desire to engage in therapy.

¶ 8 The trial court stated it had "considered the reports that have been prepared, the sex[-]offender evaluation, the testimony [of the victim's mother] today, the argument and recommendations of counsel, all appropriate evidence, and all available alternatives to incarceration." The court commented respondent's mother had "excused her son for an astounding number of [school] absences" and had enabled him by leaving him alone with the

victim. The court noted, "[t]here is a treatment program in [DOJJ] for sex offenders, while they are in a restricted environment, where they won't have access to young children, and will not have the option of relapsing or not taking these lessons to heart." The court stated it had

"fully considered the evidence concerning efforts to identify a less restrictive alternative commitment to [DOJJ], including all those factors set forth in Section 5-750. I find secure confinement is necessary, and a commitment to [DOJJ] is the least restrictive alternative based on efforts that—were made to locate less restrictive alternatives to secure confinement, and those efforts were unsuccessful because the minor's behavior presents a serious danger to the public and the person or property of others."

The court continued, "I do find that reasonable efforts have been made to eliminate the need or prevent the need for the minor to be removed from the home. Those were exhausted and those were not successful." The court noted respondent had recidivated

"despite the intensive efforts that were put forth and brought to bear here to try to redirect [his] conduct. He did use those and cooperate with those and they didn't make a difference. He did it again. That's the bottom line. And there is a very real danger to young children from him. Counseling has been tried, community intervention has been tried for years and it was not successful. He was given an extraordinary opportunity to deal with this, in the other case with a misdemeanor plea, and did not take advantage of that."

The court sentenced respondent to an indeterminate term in DOJJ, which would automatically terminate in 7 years or upon attaining the age of 21, unless discharged sooner, with credit for four days served.

¶ 9 Following respondent's sentencing, the circuit imposed the following monetary assessments: (1) \$2 "States Attorney AUX"; (2) \$10 "Arrestee's Medical"; (3) \$10 "Probation Operations"; (4) \$5 "Drug Court Program"; and (5) \$10 "Police Operations."

¶ 10 On November 8, 2013, respondent filed a motion to reconsider sentence, alleging his sentence was excessive, in part, because the trial court failed to consider less restrictive alternatives to incarceration. Following a January 17, 2014, hearing on the matter, the trial court denied respondent's motion.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, respondent asserts (1) his sentencing hearing failed to comport with the statutory requirements for committing juveniles to DOJJ; (2) police contacts in SIRs are unreliable and should not be considered by courts in fashioning sentences for juveniles; and (3) the fines assessed against him must be vacated because neither the circuit clerk nor the trial court had authority to impose them.

¶ 14 A. Sentencing

¶ 15 Respondent first asserts the trial court erred in sentencing him to DOJJ because it (1) failed to consider evidence of (a) less restrictive alternatives to incarceration, (b) his educational background and mental health, or (c) the programs available for sex offenders in DOJJ; and (2) improperly considered prior police contacts in fashioning its sentence. The State contends respondent forfeited any issue as to his sentencing hearing or the trial court's

consideration of prior police contacts because he failed to contemporaneously object at the hearing.

¶ 16

1. Forfeiture

¶ 17 Generally, a criminal defendant forfeits any issue he fails to object to at trial and raise in a posttrial motion. *In re M.W.*, 232 Ill. 2d 408, 430, 905 N.E.2d 757, 772 (2009) (citing *People v. Piatkowski*, 225 Ill. 2d 551, 564, 870 N.E.2d 403, 409 (2007)). " '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.' " *Id.* (quoting *Piatkowski*, 225 Ill. 2d at 564, 870 N.E.2d at 409-10). "This same forfeiture principle applies in proceedings under the Juvenile Court Act [of 1987 (Juvenile Court Act)] [citation], although no postadjudication motion is required in such cases." *Id.* (citing *In re W.C.*, 167 Ill. 2d 307, 326-27, 657 N.E.2d 908, 918 (1995) (noting "[a] post-adjudicatory motion does not appear necessary to assist the circuit court, the parties or the reviewing court in the delinquency process. If anything, a post-trial motion requirement unnecessarily adds to that process and burdens the participants.")).

¶ 18 In his reply brief, respondent cites *In re Samantha V.*, 234 Ill. 2d 359, 368, 917 N.E.2d 487, 493 (2009), for the proposition forfeiture is applied less rigorously in delinquency proceedings. He urges this court to find the least-restrictive-alternative issue preserved because counsel did challenge it in his postsentence motion. However, in *Samantha V.*, the supreme court held, as it did in *W.C.*, while minors are not required to file postadjudication motions, they must still object at trial and a failure to do so results in forfeiture of the claim on appeal absent a showing of plain error. *Id.* Here, respondent did not object at his sentencing hearing and, thus, any issue related to his sentencing hearing is forfeited unless he can demonstrate plain error.

People v. Hillier, 237 Ill. 2d 539, 544, 931 N.E.2d 1184, 1187 (2010) (a contemporaneous objection is required to preserve a claim of sentencing error).

¶ 19

2. Plain-Error Doctrine

¶ 20

Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967) 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." The plain-error doctrine is a limited and narrow exception to the forfeiture rule. *Hillier*, 237 Ill. 2d at 545, 931 N.E.2d at 1187. This rule applies in juvenile proceedings. *M.W.*, 232 Ill. 2d at 431, 905 N.E.2d at 773. "To obtain relief under this rule, a defendant must first show that a clear or obvious error occurred." *Hillier*, 237 Ill. 2d at 545, 931 N.E.2d at 1187. "In the sentencing context, a defendant must then 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." *Id.* The defendant has the burden of persuasion under both prongs of the plain-error analysis. *Id.* Prior to determining whether plain error occurred, however, we first determine whether error occurred at all. *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1059 (2010). If clear or obvious error did not occur, no plain-error analysis is necessary. *People v. Walker*, 232 Ill. 2d 113, 124, 902 N.E.2d 691, 697 (2009).

¶ 21

a. Commitment to DOJJ

¶ 22

Respondent first asserts the trial court erred in committing him to DOJJ without first considering the necessary statutory requirements in section 5-750 of the Juvenile Court Act (705 ILCS 405/5-750 (West 2012)) for committing juveniles to DOJJ. Specifically respondent contends the trial court failed to consider (1) evidence regarding less restrictive alternatives to

incarceration, (2) his educational background and mental health, or (3) the programs available at DOJJ for juvenile sex offenders before imposing his indeterminate sentence to DOJJ.

¶ 23 Generally, a trial court's sentencing disposition is reviewed for an abuse of discretion. *In re M.Z.*, 296 Ill. App. 3d 669, 674, 695 N.E.2d 587, 591 (1998). However, because the issue here is a legal one—whether the trial court properly considered the statutory requirements of the Juvenile Court Act—we apply a *de novo* review. *People v. McSwain*, 2012 IL App (4th) 100619, ¶ 52, 964 N.E.2d 1174; see also *In re Raheem M.* 2013 IL App (4th) 130585, ¶ 45, 1 N.E.3d 86 (considering whether the trial court erred as a matter of law by not following the statutory requirements).

¶ 24 Section 5-750(1) of the Juvenile Court Act provides 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 [DOJJ], 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 [DOJJ] 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 confinement. Before the court commits a minor to [DOJJ], 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 [Child and Adolescent Needs and Strengths (CANS)].

(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 [DOJJ] that will meet the individualized needs of the minor." (Emphasis added.) 705 ILCS 405/5-750(1) (West 2012).

¶ 25

i. *Less Restrictive Alternatives*

¶ 26 Respondent first asserts his sentencing hearing failed to comport with subsection (1)(b) of the Juvenile Court Act, which requires the trial court to consider any less restrictive options to secure confinement before it may impose a DOJJ sentence. 705 ILCS 405/5-750(1)(b) (West 2012). Specifically, respondent contends "no evidence whatsoever of efforts to locate a less restrictive alternative [to incarceration] was tendered" at his sentencing hearing, making the "trial court's recitation of its reasons for sentencing [him] to DOJJ *** insufficient."

¶ 27 The overarching purpose of the Juvenile Court Act "is to secure for each minor subject hereto such care and guidance *** as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community[,] *** removing him or her from the custody of his or her parents only when his or her safety or welfare or the protection of the public cannot be adequately safeguarded without removal." 705 ILCS 405/1-2(1) (West 2012). Under the Juvenile Court Act, the goal of protecting the public is tempered with the goal of rehabilitating juveniles so they become productive adults. *In re Rodney H.*, 223 Ill. 2d 510, 520, 861 N.E.2d 623, 630 (2006). In 2012, the legislature amended the Juvenile Court Act to provide that "a juvenile shall not be sentenced to the DOJJ without evidence before the sentencing judge of less restrictive alternatives, except in the case of murder." *Raheem M.*, 2013 IL App (4th) 130585, ¶ 53, 1 N.E.3d 86.

¶ 28 In *Raheem M.*, this court stated:

"Prior to committing a juvenile to the DOJJ, a trial court must have before it evidence of efforts made to locate less restrictive alternatives to secure confinement and the court must state the reasons why said efforts were unsuccessful. This is not some *pro*

forma statement to be satisfied by including the language of the statute in a form sentencing order. Actual efforts must be made, evidence of those efforts must be presented to the court, and, if those efforts prove unsuccessful, an explanation must be given why the efforts were unsuccessful." *Id.* ¶ 50, 1 N.E.3d 86.

¶ 29 Respondent cites *Raheem M.* for the proposition that the trial court here failed to consider evidence of less restrictive alternatives, rendering the sentencing hearing fundamentally flawed. *Id.* ¶¶ 47-49, 1 N.E.3d 86. However, we find *Raheem M.* readily distinguishable from the instant case.

¶ 30 In *Raheem M.*, the respondent was sentenced to an indeterminate term in DOJJ for aggravated battery and disorderly conduct after throwing a chair that struck a teacher during a cafeteria fight. *Id.* ¶¶ 1, 4, 14, 1 N.E.3d 86. Although the respondent had prior police contacts, he had never before been charged with a criminal offense or spent time in DOJJ, and his uncle, a minister, was willing to let the respondent reside with him if sentenced to probation. *Id.* ¶¶ 12-16, 1 N.E.3d 86. On appeal, this court expressed its concern that the record "contain[ed] no evidence regarding efforts to identify a less restrictive alternative to secure confinement, either in the social history report or at the sentencing hearing." *Id.* ¶ 47, 1 N.E.3d 86. Further, "the minor was not evaluated or assessed in any manner to determine whether community-based services could eliminate any perceived need to incarcerate respondent." *Id.* Additionally, having never before been sentenced to a community-based program, the respondent had no opportunity to demonstrate compliance in such a program. *Id.* While the SIR in *Raheem M.* listed resources that were available in the community, no efforts were made to contact the organizations to determine if they would be appropriate for the respondent. *Id.* ¶ 48, 1 N.E.3d 86. Based on these

facts, this court held that despite the court's statement it had looked at alternatives to confinement, the record was devoid of any indication it had actually done so. *Id.* ¶¶ 49-50, 1 N.E.3d 86. We found the court's error to be so serious that the respondent's forfeiture of his sentencing claim was excused under the second prong of the plain-error doctrine. *Id.* ¶ 52, 1 N.E.3d 86.

¶ 31 Unlike *Raheem M.*, respondent here was adjudicated a delinquent minor for a prior criminal offense which, like the subject offense, was sexually related. In his prior case, respondent was sentenced to 24 months' probation, which included sex-offender treatment. The sex-offender evaluation noted respondent had previously completed sex-offender counseling and had been in treatment for approximately 30 months. Certainly, the trial court was able to assess respondent's compliance, or lack thereof, with community-based programs based on his prior probation sentence. The trial court also noted the sex-offender evaluation characterized respondent's risk to reoffend as "moderate" to "moderate-high." Further, no one other than respondent's mother, whom the court deemed inadequate to properly supervise respondent (and termed an "enabler"), offered to let respondent reside with them.

¶ 32 Respondent asserts the SIR failed to discuss available community programs, including intensive probation or residential sex-offender treatment, and failed to suggest that any alternatives had been investigated. Thus, he argues the probation officer's recommendation of DOJJ confinement, based primarily on respondent's need for "serious counseling and intervention," was not sufficient to warrant his incarceration in DOJJ, which is a "last resort" under the Juvenile Court Act. However, our review of the record reveals the trial court did consider alternatives to incarceration before determining a DOJJ sentence was necessary.

¶ 33 For example, the trial court considered the sex-offender evaluation and the evaluator's recommendation. Specifically, the evaluator recommended respondent be sentenced to probation with the following nine conditions: respondent should (1) be monitored by a supervising officer experienced with at-risk clients; (2) comply with all requirements and regulations imposed upon him by the agency; (3) participate in sex-offender treatment with a SOMB-approved therapist; (4) have no contact with the victims of either of his criminal cases; (5) have no unsupervised contact with minors under 16 years of age; (6) remain abstinent from all forms of pornography; (7) remain abstinent from all mood-altering chemicals, including alcohol and marijuana; (8) continue his high school education; and (9) fulfill his financial obligations to the court. In the event respondent failed to comply with these conditions, the evaluator recommended probation be revoked and respondent be incarcerated. Respondent's attorney agreed with the sex-offender evaluation that a term of probation would be appropriate, noting respondent was following his mother's rules, attending classes at READY, pursuing his GED, working at Arby's, involved with the Access Initiative program and working with counselors and mentors, and was remorseful. The probation recommended by the sex-offender evaluator, and argued for by respondent's attorney, is a less restrictive alternative that was considered by the court.

¶ 34 As this court has previously stated, "the trial court ideally 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." *In re Javaun I.*, 2014 IL App (4th) 130189, ¶ 42, 5 N.E.3d 304. As in *Javaun I.*, where the record contains evidence the court considered less restrictive alternatives to incarceration, the court's failure elicit further evidence from the parties regarding their investigation into less restrictive alternatives does not constitute

clear and obvious error. *Id.* ¶¶ 42-43, 5 N.E.3d 304. Here, the trial court was presented with less restrictive alternatives to incarceration, *i.e.*, probation with additional conditions tailored toward respondent's specific needs, which the court considered prior to sentencing respondent to the DOJJ. Thus, no clear or obvious error occurred.

¶ 35 *ii. Educational Background and Mental Health*

¶ 36 Next, respondent asserts the trial court failed to consider evidence of his educational background and mental health as required by subsections (1)(D) and (1)(E) of the Juvenile Court Act. Specifically, respondent argues although "the SIR and [sex-offender evaluation] mentioned that [he] had attended [READY], had been treated for [post-traumatic-stress disorder] and [attention deficit/hyperactivity disorder (ADHD)], and suffered from, and had been treated for, depression, no further information was tendered on any of those matters." The State does not address this argument.

¶ 37 (a) Educational Background

¶ 38 Subsection (1)(D) of the Juvenile Court Act requires the trial court to consider the "[e]ducational 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." 705 ILCS 405/5-750(1)(D)(West 2012). The record contains the READY report, which reflects respondent's grades, his absences, and his tardies. In addition to the READY report, the sex-offender evaluation also contains information regarding respondent's educational history. Specifically, it notes respondent's ADHD had contributed to his difficulties in both elementary and high school. He was expelled from middle school twice and suspended up to six times. As a result, he was placed into an alternative school system. He began high school but

due to his learning disability could not keep up. His grades suffered and he began to act out, which resulted in his expulsion and reversion back to the alternative school setting, *i.e.*, READY.

¶ 39 We note, in discussing his high school experience with the sex-offender evaluator, respondent stated he had been making positive strides in his education and had been "better about focusing on his work, staying on task and out of trouble." He told the evaluator "attendance is the key" and noted he had no desire to "blow things off" as he had seen others do. Despite what respondent indicated to the evaluator, the READY report illustrates a different picture. While respondent made the "attendance is the key" comment on September 11, 2013, the READY report reveals 20 full-day absences between August 20, 2013, and October 15, 2013. The record demonstrates the trial court was aware of the absenteeism and specifically mentioned it at sentencing. Based on these facts, the trial court did not commit a clear or obvious error as it considered respondent's educational background.

¶ 40 (b) Mental and Emotional Health

¶ 41 Subsection (1)(E) of the Juvenile Court Act requires the trial court consider, in part, the "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." 705 ILCS 405/5-750(1)(E) (West 2012). The evidence in the record indicates respondent has ADHD, for which he takes medication, and was previously diagnosed with post-traumatic stress disorder and depression.

¶ 42 Our review of the record does not indicate the trial court inquired about any services provided to respondent for his post-traumatic stress disorder and depression or his compliance with those services. Although the court's failure to inquire about any such services

might be considered error, in the context of the proceedings here it does not amount to plain error.

¶ 43 In sentencing respondent, the trial court noted respondent "does have prior diagnos[e]s that the court has considered for anxiety and depression, ADHD, and post-traumatic stress disorder." Despite not inquiring about specific mental-health programs respondent may have participated in, it is clear the court considered his diagnoses. The evidence at the sentencing hearing was not so closely balanced that inquiry into respondent's participation in mental-health programs would have changed the outcome, nor was the error so egregious as to deny respondent a fair sentencing hearing. Thus, no plain error occurred.

¶ 44 *iii. Sex-Offender Programs in DOJJ*

¶ 45 Respondent next asserts his "sentencing hearing was faulty due to insufficient evidence regarding the type of programming available in DOJJ." He points out the only evidence on this matter was the trial court's statement, "[t]here is a treatment program in [DOJJ] for sex offenders, while they are in a restricted environment, where they won't have access to young children, and will not have the option of relapsing or not taking these lessons to heart." He argues this statement (1) failed to indicate which facilities offer such sex-offender treatment and (2) is rebutted by available evidence to the contrary.

¶ 46 As noted by the State, respondent misreads section 5-750(1) of the Juvenile Court Act as requiring "evidence" regarding the type of programs available in DOJJ. Subsection (G) only requires the trial court to consider services offered by DOJJ that will meet respondent's needs. The statute contains no requirement that evidence must be presented regarding these services, and thus, the trial court's own knowledge of available services may suffice. Further, respondent does not argue the DOJJ does not offer the sex-offender treatment program

mentioned by the court, but instead argues that according to a 2013 report by the John Howard Association, the DOJJ program is not properly staffed. Not only is the report irrelevant (whether a facility is sufficiently staffed does not necessarily determine a program's availability), but it was not presented to the trial court and, therefore, it is not properly before us now. See *People v. Niezgoda*, 337 Ill. App. 3d 593, 595, 786 N.E.2d 256, 258 (2003) (disregarding materials and arguments in a brief that were not contained in the record). The trial court did not commit clear or obvious error.

¶ 47

b. Police Contacts

¶ 48 Next, respondent cites recent developments in juvenile justice "which rendered juvenile proceedings more adult-like and granted minors additional procedural protections," and he asserts "no principled reason exists for not applying the same relevance and reliability requirements for police-contact evidence in delinquency cases as is applied in adult court." Accordingly, respondent contends the trial court's consideration of his prior police contacts was improper. We disagree.

¶ 49 This court recently rejected the same argument respondent now makes in *Raheem M.*, in which we stated "the trial court is permitted to consider 'a number of factors, including prior arrests, station adjustments or curfew violations, and the social-investigation report when determining whether commitment is necessary.'" *Raheem M.*, 2013 IL App (4th) 130585, ¶ 44, 1 N.E.3d 86 (quoting *In re Nathan A.C.*, 385 Ill. App. 3d 1063, 1077, 904 N.E.2d 112, 123 (2008)). We continue to adhere to *Nathan A.C.*, and we hold the court did not err in considering respondent's prior police contacts. Thus, no clear or obvious error occurred.

¶ 50 In summary, the trial court determined that a sentence to DOJJ was appropriate based, in part, on (1) respondent's offense history; (2) his failure to successfully complete sex-

offender treatment as evidenced by the new sex offense in this case; (3) his likelihood of reoffending; (4) his inadequate parental supervision; (5) the danger he poses to young children; and (6) the lack of less restrictive alternatives to DOJJ. Based on the facts of this case, we cannot say the court abused its discretion in sentencing respondent to DOJJ.

¶ 51

B. Fines

¶ 52 Respondent's final contention is that the fines assessed against him must be vacated as neither the circuit clerk nor the trial court is authorized to assess fines against a juvenile. See *Raheem M.*, 2013 IL App (4th) 130585, ¶ 63, 1 N.E.3d 86 (accepting the State's concession that " 'none of the pertinent statutes authorized those fines for adjudicated delinquent minors in cases brought under the Juvenile Court Act.' "). In this case, the State concedes the \$10 arrestees' medical fine, \$5 drug court fine, and \$10 State Police operations fine must be vacated. The State disputes respondent's assertion that the \$2 assessment for State's Attorney records automation and the \$10 assessment for probation operations are criminal fines but, nonetheless, concedes they must be vacated because their respective statutes do not authorize their imposition on an adjudicated minor. See 55 ILCS 5/4-2002(a) (West 2012) ("\$2 fee to be paid by the defendant on a judgment of guilty or a grant of supervision for a violation of any provision of the Illinois Vehicle Code or any felony, misdemeanor, or petty offense"); 705 ILCS 105/27.3a(1.1) (West 2012) (\$10 "fee shall be paid by the defendant in any felony, traffic, misdemeanor, local ordinance, or conservation cases upon a judgment of guilty or grant of supervision").

¶ 53

We accept the State's concession and vacate the assessments identified in the preceding paragraph. We do so without the necessity of determining whether the \$2 assessment for State's Attorney records automation or the \$10 assessment for probation operations are fines.

¶ 54

III. CONCLUSION

¶ 55 For the reasons stated, we (1) affirm the respondent's DOJJ sentence and (2) vacate the monetary assessments imposed upon him.

¶ 56 Affirmed in part and vacated in part.