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2014 IL App (3d) 120263-U

Order filed April 29, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
A.D., 2014

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|--------------------------------------|---|--------------------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) |                                |
|                                      | ) | Appeal from the Circuit Court  |
| Plaintiff-Appellee,                  | ) | of the 14th Judicial Circuit,  |
|                                      | ) | Whiteside County, Illinois,    |
| v.                                   | ) | Appeal No. 3-12-0263           |
|                                      | ) | Circuit No. 09-CF-576          |
| ERIC J. BLACKHAWK,                   | ) |                                |
|                                      | ) | The Honorable John L. Hauptman |
| Defendant-Appellant.                 | ) | Judge, Presiding.              |
|                                      | ) |                                |

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JUSTICE McDADE delivered the judgment of the court.  
Presiding Justice Lytton concurred in the judgment.  
Justice Schmidt concurred in part and dissented in part.

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**ORDER**

¶ 1 *Held:* The trial court erred by considering factors inherent in the offense of delivery of a controlled substance as aggravating factors during sentencing, and the matter was remanded for resentencing because defense counsel was ineffective for failing to raise the issue at trial. The trial court committed plain error by imposing a street value fine not supported by the evidence and by imposing a DNA analysis fee.

¶ 2 Defendant Eric Blackhawk entered an open plea of guilty to one count of delivery of a controlled substance within 1,000 feet of a school (720 ILCS 570/407(b)(1) (West 2008)). The trial court sentenced him to 16 years of imprisonment. He appeals, arguing that in imposing his sentence, the trial court considered improper aggravating factors and otherwise imposed an excessive sentence. He also argues that the trial court erred by imposing a \$350 street value fine (730 ILCS 5/5-9-1.1 (West 2010)) and a \$200 DNA analysis fee (730 ILCS 5/5-4-3(j) (West 2010)). We vacate Blackhawk's sentence and fees and remand for resentencing.

¶ 3 **FACTS**

¶ 4 On December 21, 2009, the State filed an information charging defendant Eric Blackhawk with four counts of unlawful delivery of a controlled substance (09-CF-576). The charges stemmed from two alleged drug transactions that occurred on May 8, 2009, and May 12, 2009. On these dates, the State alleged that Blackhawk knowingly and unlawfully delivered more than 1 gram but less than 15 grams of a substance containing cocaine within 1,000 feet of a school. See 720 ILCS 570/407(b)(1) (West 2008). On September 24, 2010, the State filed separate charges against Blackhawk relating to a drug transaction that allegedly occurred on January 28, 2010 (10-CF-321).

¶ 5 On May 25, 2011, the parties informed the court that Blackhawk agreed to plead guilty to Count I of 09-CF-576 for delivery of a controlled substance within 1,000 feet of a school. Pursuant to the plea, the State would dismiss Counts II-IV of 09-CF-576 as well as 10-CF-321, although it reserved the right to present evidence regarding those offenses in aggravation at Blackhawk's sentencing.

¶ 6 The State then presented a factual basis for the plea: on May 8, 2009, the Sterling police observed a "controlled purchase" in which an undercover agent paid \$200 to Blackhawk in

exchange for substance purported to be crack cocaine. This transaction took place within 1,000 feet of St. Mary's Grade School in Sterling. The substance was forensically tested and found to contain 1.7 grams of cocaine. Blackhawk agreed that the State would present such evidence if the matter proceeded to trial.

¶ 7 After the court admonished Blackhawk, it accepted his plea of guilty as knowing and voluntary, found a sufficient factual basis existed, and entered a finding of guilty on count I. It then dismissed the other charges and continued the matter for a sentencing hearing.

¶ 8 The sentencing hearing occurred over the course of two days: October 7 and December 6, 2011. In aggravation, Sterling police officer Jason Bielema testified that he supervised the controlled purchase of cocaine from Blackhawk by an undercover citizen on May 8, 2009. This was the transaction to which Blackhawk pled guilty. Officer Bielema stated that the same undercover citizen made another controlled purchase of cocaine from Blackhawk on May 12, 2009, exchanging \$200 for 1.8 grams of crack cocaine. Another police officer, Inspector Doug Wade, testified that he supervised a controlled narcotics transaction on January 8, 2010; there, an undercover citizen bought 2 grams of cocaine from Blackhawk for \$140.

¶ 9 In mitigation, the defense presented the testimony of five witnesses. First, Bernadine Coleman testified. She was the mother of Blackhawk's girlfriend Monique, and she knew Blackhawk socially during that time. She stated that Blackhawk was a good, respectful person who went to church with her and was a father figure to her daughter's children. She did not know where Blackhawk lived or how Blackhawk made a living, however. Monique Coleman testified second. She had started dating Blackhawk in 2008. She described Blackhawk as caring and loving. She had never talked to Blackhawk about his job situation or what he was doing in Sterling. Third, Amelia Watkins testified that Blackhawk was the father of her two children,

Kyla and Erionna. Blackhawk had a good relationship with the children and they spent a lot of time together. Blackhawk also helped out financially, getting the children gifts, giving cash for their needs, and paying for Watkins's rent. If Blackhawk was incarcerated, Watkins believed it would be a financial hardship on her and the children. On cross-examination, she stated she did not know where Blackhawk got his money and "didn't really ask," but thought he worked at Burger King. Fourth, Blackhawk's daughter Kayla testified that she loved her father and was sad not to see him. Finally, Blackhawk's mother Emma Buchanan testified. For a period of time growing up, Buchanan was incarcerated and Blackhawk was in foster care. Buchanan testified that Blackhawk had a good heart and everyone relied on him, calling him a provider. She thought Blackhawk had learned his lesson and deserved a second chance. On cross-examination, she stated Blackhawk had a job but she did not know where he got all the money and "didn't ask those questions."

¶ 10 After testimony, the court heard the arguments of the parties. The State argued that the presentence investigation report showed that Blackhawk had previously been convicted of possession of a controlled substance with intent to deliver, and also had several misdemeanor drug possession offenses. Based on the evidence presented at sentencing, the State argued it was fair to conclude that Blackhawk had no legitimate source of income and was "a career drug dealer." The defense argued in mitigation that Blackhawk had a difficult childhood, had his children counting on him for support, and that Blackhawk had accepted responsibility for his actions.

¶ 11 Blackhawk also read a letter in allocution: he apologized for his conduct, accepted responsibility for his actions. He stated he planned on attending community college when he

was released and had a job waiting for him upon his release. He also wanted to become a better father and spend more time with his children.

¶ 12 After a short recess, the court announced its sentencing decision. As a factor in mitigation, it found that Blackhawk's imprisonment would entail excessive hardship to his dependents, and the court also detailed Blackhawk's difficult childhood. In aggravation, the court found that Blackhawk had a history of criminal conduct and that the sentence was necessary to deter others. Specifically, the court noted that Blackhawk was convicted of possession with intent to deliver five years prior, had now pled guilty to delivery of a controlled substance resulting from the drug transaction that occurred on May 8, 2009, and also was involved in selling illegal drugs on two other occasions. Blackhawk provided for his family's needs, but given his minimal employment history, the court found it reasonable to conclude that Blackhawk provided for his family's needs through the illicit drug trade. The court found this to be "an overwhelming factor to consider."

¶ 13 The court continued that, given Blackhawk's involvement in selling illegal drugs, Blackhawk was "clearly contributing to and profiting from the misery of others." The court stated that it regularly saw people affected by the use of illegal drugs: "I see them in court and I see the misery that they go through, that misery is caused by people like Mr. Blackhawk who deal in drugs. \*\*\* [W]hen one profits from that misery, it, it just simply cannot be ignored."

¶ 14 The court sentenced Blackhawk to a term of 16 years in the Department of Corrections, followed by three years of mandatory supervised release. It also ordered that all fines, fees, and assessments required by law be imposed. Blackhawk was assessed a \$350 street value fine and a \$200 DNA analysis fee.

¶ 15 Blackhawk filed a motion to reconsider the sentence, arguing the court imposed an excessive sentence given the mitigation evidence. The court denied this motion. The court acknowledged that “you would have to have a cold-hearted heart not to be moved by” the mitigation testimony from Blackhawk's daughter Kayla. But the court again stated that Blackhawk was profiting from the misery caused by the sale of illegal drugs, which the court found intolerable. Blackhawk then filed a timely notice of appeal.

¶ 16 ANALYSIS

¶ 17 I. Sentence

¶ 18 Blackhawk pled guilty to one count of delivery of a controlled substance within 1,000 feet of a school, which is a Class X felony with a sentencing range of 6 to 30 years. 730 ILCS 5/5-8-1(a)(3) (West 2010). Blackhawk argues that the trial court erred by imposing a 16-year term as his sentence. First, he argues that the trial court improperly considered factors implicit in the offense as aggravating factors in sentencing. He also argues that a 16-year sentence is otherwise excessive. In response, the State argues the trial court considered proper sentencing factors and acted within its discretion when imposing a 16-year sentence.

¶ 19 The trial court has great discretion in sentencing, because it is in the best position to consider a defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *People v. O'Neal*, 125 Ill. 2d 291, 298 (1988). Thus, we review the trial court's sentencing decision for an abuse of discretion. *People v. Markley*, 2013 IL App (3d) 120201, ¶ 31. A reviewing court may not substitute its judgment for that of the trial judge merely because it would have weighed the appropriate sentencing factors differently. *O'Neal*, 125 Ill. 2d at 298. In general, when the sentence falls within the statutory range for an offense, we may find an abuse of discretion only when the sentence imposed is "greatly at variance with

the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense."  
*People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 20 Despite the discretion given to the trial court in sentencing matters, it should not consider factors in aggravation that are implicit in the offense, because the legislature presumably considered such factors in setting the penalty. *People v. Conover*, 84 Ill. 2d 400, 404 (1981). When the sentencing court considers a factor inherent in the offense in aggravation, it constitutes an improper dual enhancement. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 9. "However, a factor implicit in the crime may relate to proper sentencing considerations, such as the extent and nature of a defendant's involvement in a particular criminal enterprise, a defendant's underlying motivation for committing the offense, the likelihood of the defendant's commission of similar offenses in the future and the need to deter others from committing similar crimes." *People v. M.I.D.*, 324 Ill. App. 3d 156, 159 (2001). "[W]hether a court relied on an improper factor in imposing a sentence ultimately presents a question of law to be reviewed *de novo*." *Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8.

¶ 21 Blackhawk argues that the trial court considered factors inherent in the offense in aggravation because the trial court stated that Blackhawk provided for his family through the illicit drug trade, and also stated that Blackhawk profited from the "misery" caused by drug dealing. Blackhawk contends that these statements reference two factors inherent in the offense of delivery of controlled substances: monetary compensation and harm to society. Although Blackhawk did file a motion to reconsider his sentence, that motion did not raise the argument that the judge considered factors inherent in the offense in aggravation. The failure to raise an issue in a posttrial motion ordinarily forfeits appellate review of the issue, but Blackhawk argues that we may reach the issue under the plain error rule, ineffective assistance of counsel, or

through Supreme Court Rule 604(d). Initially, we consider whether the court erred in its consideration of aggravating factors. See *People v. Thompson*, 238 Ill. 2d 598, 613 (2010) (“The first step of plain-error review is determining whether any error occurred.”).

¶ 22 Receipt of compensation and the harm caused to society by drug use are inherent in the offense of delivery of a controlled substance and should not be considered in aggravation. See *People v. Atwood*, 193 Ill. App. 3d 580, 592-93 (1990). Here, some of the judge's statements about Blackhawk providing for his family through the illicit drug trade can be construed to refer to Blackhawk's history of selling drugs. This would relate to proper sentencing considerations, such as the nature and extent of his involvement in the criminal enterprise or his history of prior criminal activity. See *M.I.D.*, 324 Ill. App. 3d at 159. However, we are deeply troubled by the trial judge's repeated references to Blackhawk profiting from the “misery” caused by illegal drug use. The judge mentioned the misery caused by drug use five times, and clearly considered this as an aggravating factor. But the harm to society caused by delivery of a controlled substance is inherent in the offense of delivery of a controlled substance and cannot be considered as an aggravating factor. *Atwood*, 193 Ill. App. 3d at 592-93. See also *People v. Maxwell*, 167 Ill. App. 3d 849, 852 (1988) (“[T]he issue of widespread harm from the use of cocaine is implicit in the crime of delivery.”). The trial judge was clearly considering only the generalized harm to society from drug use, because the State presented no evidence of any harm specifically caused by Blackhawk's conduct—the only evidence was that he was selling drugs to undercover citizens in controlled purchases. The State has not offered any argument on how the generalized harm that the trial court sees to society from illicit drug use is a proper sentencing consideration for this defendant. We therefore conclude that the court improperly considered an inherent factor in aggravation.

¶ 23 “A sentence based on improper factors will not be affirmed unless the reviewing court can determine from the record that the weight placed on the improperly considered aggravating factor was so insignificant that it did not lead to a greater sentence.” *People v. Heider*, 231 Ill. 2d 1, 21 (2008). Here, the trial court repeatedly referenced the misery caused by the sale of illegal drugs and stated “that misery is caused by people like Mr. Blackhawk who deal in drugs. \*\*\* [W]hen one profits from that misery, it, it just simply cannot be ignored.” Given the extent to which the trial court focused on this issue, we cannot determine that the consideration of this improper factor did not lead to a greater sentence. Therefore the error was prejudicial and was not harmless.

¶ 24 Because we have found reversible error, we must now decide whether to reach the issue or whether to honor Blackhawk's procedural default. Under the plain error review, we may reach an unpreserved error if a clear and obvious error occurred and either (1) the evidence is closely balanced or (2) the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). In plain error review, the burden of persuasion rests with the defendant. *Thompson*, 238 Ill. 2d at 613. Blackhawk has made no specific argument on the first prong of plain error, so we do not consider whether the evidence was closely balanced. On the second prong, he cites *People v. Martin* for the proposition that when a judge relies on improper sentencing factors it “clearly affect[s] the defendant’s fundamental right to liberty.” *People v. Martin*, 119 Ill. 2d 453, 458 (1988). But *Martin* did not hold that considering an improper factor is an error so serious that it satisfies the second prong of plain error, because it was decided on the first prong of plain error—the supreme court ruled that the evidence in that case was closely balanced. *Martin*, 119 Ill. 2d at 458. Blackhawk also cites *People v. Davis*, 175 Ill. App. 3d 1006 (1988). While the

*Davis* court did state that it “believe[d]” that the improper use of a defendant's own statements as aggravation at sentencing would constitute plain error, that statement is *dicta* because the court there found no error at all. *Davis*, 175 Ill. App. 3d at 1006. We conclude that Blackhawk has not met his burden of persuasion on this issue, and therefore we reject his plain error argument.

¶ 25 We do, however, reach this issue because trial counsel was ineffective for failing to raise the issue below and preserve it for appeal. To prevail on a claim of ineffective assistance of counsel, a defendant must show (1) that counsel's representation was objectively unreasonable, and (2) that counsel’s actions prejudiced the defendant, meaning that but for counsel’s deficient performance, there was a reasonable probability that the outcome of the proceeding would have been different. See *People v. Cunningham*, 2012 IL App (3d) 100013, ¶ 31 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). Both prongs are met here. First, it was unreasonable not to object to the trial judge’s reliance on the improper sentencing factors, and we cannot discern any strategic reason for defense counsel not to raise the issue. Second, the failure to raise this issue prejudiced defendant. Given the trial judge’s repeated reference to the improper sentencing factors, the small amount of narcotics involved in the offense, and the evidence defendant presented in mitigation, there is a reasonable probability that, had counsel raised the issue, Blackhawk would have received a lower sentence. Also, if defense counsel had properly preserved the issue for appeal, Blackhawk would have won reversal on appeal. See *supra* ¶ 23. We therefore vacate Blackhawk’s sentence and remand for resentencing.

¶ 26 II. Fines and Fees

¶ 27 Blackhawk also challenges some of the fees and fines assessed by the trial court. First, he argues that the \$350 street value fine was error because the evidence only supports a street value of \$200. Blackhawk asks that we reduce the street value fine to \$200. Although he did

not object to the fine in a posttrial motion, he again asks us to review the issue under plain error doctrine.

¶ 28 Section 5-9-1.1(a) of the Unified Code of Corrections provides that where a defendant is adjudged guilty of possession or delivery of a controlled substance, the trial court shall levy a fine at not less than the street value of the drugs seized. 730 ILCS 5/5-9-1.1 (West 2010). “ ‘Street value’ shall be determined by the court on the basis of testimony of law enforcement personnel and the defendant as to the amount seized and such testimony as may be required by the court as to the current street value of the cannabis or controlled substance seized.” 730 ILCS 5/5-9-1.1(a) (West 2010). As our supreme court has stated, the statute requires that there be an evidentiary basis for a street value fine. *People v. Lewis*, 234 Ill. 2d 32, 46 (2009). Such an “evidentiary basis may be provided by testimony at sentencing, a stipulation to the current value, or reliable evidence presented at a previous stage of the proceedings.” *Lewis*, 234 Ill. 2d at 46.

¶ 29 In this case, an evidentiary basis for the court’s assessment of a street fine was provided by the factual basis for Blackhawk’s guilty plea. The factual basis established that on May 8, 2009, Blackhawk sold 1.7 grams of cocaine to an undercover agent for \$200. Thus, the evidentiary basis only supports a street value fine of \$200. Although the State argues that the evidentiary basis was greater because the State presented evidence of other drug transactions at the sentencing hearing, this did not allow the court to impose a fine on conduct that was not related to the charge on which Blackhawk was adjudicated guilty. Because the court assessed a fine greater than the \$200 value established by the evidence, the street value fine “bore no relation” to the evidentiary basis and thus was an error that affected the integrity of the judicial process. *People v. Bond*, 405 Ill. App. 3d 449, 513-14 (2010). See also *People v. Galmore*, 382 Ill. App. 3d 531, 536 (2008) (holding that where evidence established that drugs had a value of

\$1,000 to \$1,500, it was plain error to impose a \$10,000 street value fine). Therefore, we vacate the \$350 street value fine. On remand, the court should impose a fine in the appropriate amount of \$200. See *Bond*, 405 Ill. App. 3d at 514.

¶ 30 We also find that the \$200 DNA analysis fee the court assessed against Blackhawk was error. It clearly appears in the record that Blackhawk previously submitted a DNA sample and was charged a DNA analysis fee due to a 2007 conviction. A defendant may not be charged a DNA analysis fee when his DNA is already in the state database. *People v. Marshall*, 242 Ill. 2d 285, 292 (2011). We therefore vacate the \$200 DNA analysis fee.

¶ 31 CONCLUSION

¶ 32 The judgment of the circuit court of Whiteside County is vacated in part, and the cause is remanded for proceedings consistent with this opinion.

¶ 33 Vacated in part and remanded with directions.

¶ 34 JUSTICE SCHMIDT, concurring in part and dissenting in part.

¶ 35 I concur with the majority that the trial court assessed the \$200 DNA analysis fee in error. I disagree, however, that the trial court erred when fashioning the remainder of defendant's sentence and, therefore, respectfully dissent.

¶ 36 The majority acknowledges that defendant forfeited the issue of whether the trial court improperly considered, as an aggravating factor, the misery his drug dealing caused society. The majority further concedes that defendant has not met his burden of establishing plain error. *Supra* ¶ 24. So it reaches the issue under ineffective assistance of counsel.

¶ 37 In concluding the trial judge erred when sentencing defendant, the majority employs an incorrect standard requiring the State to offer an "argument on how the generalized harm that the trial court sees to society from illicit drug use is a proper sentencing consideration for this

defendant." *Supra* ¶ 22. As Justice Lytton acknowledged in *People v. Reed*, 376 Ill. App. 3d 121 (2007), "The trial court's sentencing decision \*\*\* is presumed to be correct." *Id.* at 128. "Only where that presumption has been rebutted by an affirmative showering of error, will a reviewing court find that the trial court has abused its discretion." *Id.*

¶ 38 "Before reversing a sentence imposed by the trial court it must be clearly evident that the sentence was improperly imposed." *People v. Ward*, 113 Ill. 2d 516, 526 (1986). In attempting to make that determination, "the reviewing court should not focus on a few words or statements of the trial court" but rather determine "whether or not the sentence was improper \*\*\* by considering the entire record as a whole." *Id.* at 526-27.

¶ 39 Defendant pled guilty to the Class X felony of unlawful delivery of a controlled substance within 1,000 feet of a school, which carries a statutorily prescribed sentence of 6 to 30 years' incarceration. 730 ILCS 5/5-8-1(a)(3) (West 2010). The record reveals defendant's criminal history, which includes three prior convictions for possession of a controlled substance, as well as a prior conviction of unlawful delivery of a controlled substance in 2007 for which defendant received a six-year sentence to the Department of Corrections. Defendant was on parole on that conviction when he committed the instant infractions, which include not just the crime to which he pled guilty, but at least two more sales of cocaine.

¶ 40 The State argues that the trial judge's comments regarding the defendant "profiting from the misery of others" was a reference to the defendant's long history of engaging in drug transactions. Again, the trial judge is presumed to know the law and his sentencing decision presumptively correct. *Reed*, 376 Ill. App. 3d at 128. Nothing in the record suggests that the trial court's discussion of the phrase "profiting from the misery of others" was anything more than a comment on the extent and nature of defendant's involvement in this particular criminal

enterprise above and beyond the offense for which he stands convicted here, as well as the need to protect society from defendant: all proper factors to be considered when fashioning a sentence.

¶ 41 In *M.I.D.*, 324 Ill. App. 3d 156 (2001), this court agreed that while compensation is inherent in the offense of delivery of a controlled substance, the trial judge could properly consider "the profits from defendant's criminal enterprise as bearing on the nature of the offense" as defendant sold "a substantial amount of drugs in the Canton area over a significant period of time." *Id.* at 160. I can find no logic in the majority's analysis which acknowledges that profit and societal misery were both factors considered by the legislature when fashioning sentencing ranges, then concludes that the monetary profit one received from selling drugs over a substantial amount of time can properly be considered by a trial court, yet consideration of the societal misery one caused over the same period of time constitutes reversible error.

¶ 42 The majority then concludes that counsel's failure to challenge the trial court's reference to misery is objectively unreasonable, thereby satisfying the first prong of the *Strickland* test. *Supra* ¶ 25. I disagree. The trial court committed no error in commenting on either the monetary profits received from or societal misery caused by defendant's lengthy career in his chosen criminal enterprise. As the trial court's comments were appropriate, any challenge to them is meritless. Failing to raise meritless arguments does not render counsel's assistance constitutionally ineffective. *People v. Ward*, 187 Ill. 2d 249 (1999). More importantly, no reasonable person could conclude that the sentence would have been different had counsel objected. Undoubtedly, the trial judge would have simply explained what he meant.

¶ 43 Finally, defendant has forfeited the issue regarding the propriety of the \$350 street value fine. *People v. Lewis*, 234 Ill. 2d 32, 42 (2009). Like the defendant in *Lewis*, the defendant in the instant case "failed to object in the trial court or raise the issue in a motion to reconsider his

sentence." *Id.* Therefore, the forfeiture may only be excused if it amounts to plain error. *Id.* at 46.

¶ 44 In *Lewis*, our supreme court noted numerous times that there was not "any evidentiary basis" in the record upon which the trial court could determine the street value of the contraband. *Id.* at 46, 49. Therefore, the *Lewis* court found the issue reviewable under the second prong of the plain-error doctrine as it was "more than a simple mistake in setting the fine" and, as such, affected "the fairness of a proceeding and the integrity of the judicial process." *Id.* at 47, 48.

¶ 45 In the instant case, the trial court heard evidence indicating the defendant sold 1.7 grams of crack cocaine for \$200, which corresponded to the charge for which he pled guilty. Other evidence indicated that defendant sold 2 grams of crack cocaine for \$140 and 1.8 grams of crack cocaine for \$200. Unlike *Lewis*, in which the defendant was convicted of mere possession and the State introduced absolutely no evidence evincing the street value of the substance (*id.* at 34-49), the State did introduce evidence in this case regarding the street value of the cocaine that defendant sold.

¶ 46 Unlike the *Lewis* defendant, the defendant's argument herein is not that the State failed to introduce *any* evidence of the street value of the cocaine he sold, but that the trial court simply got the math wrong when imposing a \$350 street value fine based upon evidence which suggested the crack he sold only to be worth \$200. Getting the math wrong does not challenge the fundamental fairness of the judicial process. Such errors do not amount to plain error and are best addressed by the trial court in posttrial proceedings, not the appellate court for the first time on appeal. Since defendant chose not to raise this matter below, he has forfeited the issue.

¶ 47 In sum, I concur with the majority's decision to vacate the \$200 DNA assessment fee and dissent from its finding that the remainder of defendant's sentence is inappropriate.