SECOND DIVISION
March 31, 2015

No. 1-13-0368

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the Circuit Court
	)	of Cook County
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10 CR 3460
	)	
GEORGE TOLBERT	)	Honorable
	)	William Timothy O'Brien
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Simon and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in admitting other-crimes evidence of a prior burglary. The trial court substantially complied with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) when defendant discharged appointed counsel before his sentencing hearing. Defendant's sentence is not excessive. Defendant's mittimus and fines and fees are corrected.

¶ 2 Following a jury trial, defendant George Tolbert was convicted of attempt residential burglary (720 ILCS 5/19-3) (West 2010). Defendant was sentenced to a term of 25 years'

imprisonment. On appeal, defendant argues that the trial court abused its discretion in admitting other-crimes evidence, that he is entitled to a new sentencing hearing because the trial court failed to comply with Supreme Court Rule 401(a) (eff. July 1, 1984) and that his 25-year sentence for attempt residential burglary is excessive.[1] Defendant also argues that his mittimus and his fines and fees need to be corrected. For the following reasons, we affirm as modified.

¶ 3 BACKGROUND

¶ 4 Pretrial Proceedings

¶ 5 On February 19, 2010, the State charged defendant with one count of attempt residential burglary for knowingly and without authority attempting to enter Leah Shales' apartment with the intent to commit a theft therein on January 25, 2010.

¶ 6 On April 8, 2010, at arraignment, defendant indicated that he wished to proceed *pro se*. On that date, the trial court admonished defendant of his right to an attorney, the nature of the offense and the sentencing range. The following exchange occurred:

"THE COURT: Do you understand that you do have the right to be represented by an attorney. I have appointed the Public Defender to represent you.

DEFENDANT: That's correct.

THE COURT: You said you don't want the Public Defender.

DEFENDANT: Yes, yes.

THE COURT: You do have the right to represent yourself, however, before I allow you to do so, I must inform you of certain things.

[1] In his opening brief, defendant argued that the trial court failed to comply with Supreme Court Rule 431(b). However, defendant withdrew this argument in his reply brief. We therefore will not consider it.

First, you are charged with the offense of attempt residential burglary. That is a Class 2 offense and the range in sentencing for that offense is 3 to 7 years in the Illinois Department of Corrections. Now, I briefly recall what your background is. State, do you have his updated sheet?

ASSISTANT STATE'S ATTORNEY: Yes.

THE COURT: Is he extendable or is he Class-X eligible?

ASSISTANT STATE'S ATTORNEY: Judge, he is mandatory Class X, burglary conviction.

THE COURT: So if certain aggravating factors were shown being your prior criminal history, if you were convicted of this offense, then what you are looking at is a possible sentence of 6 to 30 years in the Illinois Department of Corrections with a period of mandatory supervised release of up to 3 years. Because you would be sentenced as a Class X offender, you would have no chance at probation or any period of probation and or I can fine you up to $25,000; do you understand that?

DEFENDANT: Yes, sir, Your Honor."

¶ 7 On November 2, 2010, the State filed a motion to introduce proof of other-crimes evidence. The State initially sought to introduce other-crimes evidence from seven of defendant's prior convictions, but withdrew its request to admit other-crimes evidence from six of the seven cases, ultimately seeking to introduce other-crimes evidence from a 1999 residential burglary that defendant pled guilty to. In that case, Amy Forrestal was asleep and woke up to defendant standing in her apartment, next to her couch, rummaging through her purse. The State argued that this other-crimes evidence was admissible to prove *modus operandi*, common scheme or design, intent, and motive because in both the prior 1999 offense and the charged

offense, defendant was found with keys to the entry door and apartments located at 3130 N. Lake Shore and both victims lived at that same address. The trial court granted the State's motion, after a hearing, finding that its prejudicial nature was outweighed by its probative value and that it was admissible to prove common scheme or design, *modus operandi*, and intent.

¶ 8 At the March 10, 2011, hearing on defendant's motion for substitution of judge, defendant was again admonished as to his right to have an attorney, but defendant indicated that he was going to represent himself after consulting with a public defender. During the hearing, the following exchange occurred:

"THE COURT: Now, before we get further on to that, you do know that that is a Class 2 felony.

DEFENDANT: Unclassified Class 2 sentence.

THE COURT: Well, it's called a Class 2 felony. And just so we're clear, and I'm sure that you know this, but I'm going to make sure that we're all clear, Class 2 felony has a sentencing range – and I don't know your background – so the general sentencing range would be probation not to be longer than 4 years. You could receive between 3 and 7 years. If you have certain background, you could receive between 7 and 14 years. And if you have prior Class – is he Class X?

ASA: I don't have –

THE COURT: If you have more than 2 prior Class 2s in your background, then the sentencing range is 6 to 30. Now I'm sure they went over that with you, but I'm not familiar with – is he Class X?

ASA: He is.

THE COURT: 6 to 30 would be the sentencing range.

DEFENDANT: Okay.

THE COURT: So you know all that. Now, when you go upstairs, if you decide you'd like an attorney to represent you, then they'll appoint an attorney to represent you."

Defendant's motion for substitution of judge was denied.

¶ 9 On a subsequent court date, defendant was admonished for a third time on the applicable sentencing range during the following dialog:

"DEFENDANT: Afternoon, your Honor. First of all, I want to get something clear for the record. Your Honor, why was the State's Attorney coming in back there and telling me that if I take this to jury trial that I can get up to about 20 years or better on this case if I exercise my constitutional rights of taking this to a jury trial. Now, I wasn't expecting to hear anything like that. I don't expect to talk to the State's Attorney.

ASA: Okay. I told him it was 6 to 30. He could get around 20 years with his record.

DEFENDANT: I just want that for the record.

THE COURT: Okay. I think the – I believe we've been through it in terms of admonishing Mr. Tolbert.

That upon conviction, [defendant], if you are convicted and it goes to sentencing, based upon your criminal background the sentencing range is 6 to 30 years.

DEFENDANT: Okay."

¶ 10 Trial Testimony

¶ 11 At trial, Ismet Latic, the maintenance supervisor at 3130 N. Lake Shore, testified that there had been recent complaints in the building about missing items. Latic testified that on December 4, 2009, he observed a man he later identified as defendant, standing at the door of an apartment that he knew defendant did not live at. Latic called the police and gave them copies of surveillance video.

¶ 12 Leah Shales, a student at a local university, testified that on January 25, 2010, at approximately 1 p.m., she was home alone at her studio apartment, unit 605, at 3130 N. Lake Shore Drive in Chicago. Shales had noticed that over the prior month some items had gone missing from her apartment, including an iPod, a box containing $50 in change, and a watch. On January 25, 2010, she typically would have been in class, but she was sick and decided to stay home. While studying, Shales heard the lock on her apartment door "pop." Recognizing the noise, Shales ran to the door because she lived alone and was the only person with a key to the apartment. Shales testified that she secured the door with her right hand, pushed up against the door, and looked out of the peephole and saw a man she later identified as defendant. Shales testified that defendant looked down towards the doorknob while Shales held the doorknob in place. Through the peephole, Shales saw defendant step back and walk away briefly, but then reappear at her door. Shales banged on the door to let defendant know she was home. Defendant left abruptly, and Shales called the management office to report the incident.

¶ 13 Shales waited in her apartment for about five minutes before one of the maintenance workers arrived at her apartment and escorted her to the office. When she got to the office, she spoke with additional building personnel. The police were called. Later, when Shales' locks were inspected, it was discovered that the internal locking mechanism had been damaged so that

the lock could be opened with several different keys. The keyhole was bigger than usual and therefore any key could open the lock. Latic checked the surveillance cameras from that day but did not see anyone in the video. There were no cameras on Shales' floor or in the two stairwells. The next day, Shales met with Officer Nano Guardi, and identified defendant in a photo lineup as the offender. Officer Guardi informed the assigned detective of the identification, and the assigned detective contacted defendant's parole agent.

¶ 14 Officer Christine Alessi arrived at the scene and was escorted to Shales' apartment. Shales relayed what happened to Officer Alessi, and stated that she would "absolutely" be able to identify the suspect. Shales described defendant as being 6-feet-tall, African American, with afro-style hair with a little bit of grey, in his 50s or 60s, approximately 165 pounds, wearing a brown leather jacket, black t-shirt, and light blue jeans.

¶ 15 Detective Gillespie testified that defendant was apprehended at the Pacific Garden Mission on February 2, 2010. Defendant was searched and in his possession, officers found a key ring that contained eight keys. One of the keys on the key ring opened the entryway doors and the exterior doors at 3130 North Lake Shore Drive. Officers also recovered additional keys from defendant's possession. Defendant had 33 keys along with several small manila envelopes, each one marked with a number. One of the envelopes was marked with the notation "605."

¶ 16 Prior to the State's introduction of Amy Forrestal's testimony, the trial court admonished the jury that other-crimes evidence would be received on the issues of defendant's identification and intent, and that it may be considered only for those limited purposes. Forrestal testified that on January 15, 1999, she lived at 3130 N. Lake Shore, apartment 1705. Forrestal testified that at about 3:20 a.m., she was asleep on her futon couch when she woke up to rumbling noises. Forrestal testified that she saw defendant going through her purse, and that she had a clear view

of defendant due to the light emitting from Lake Shore Drive and the adjacent hallway. Forrestal testified that she saw defendant face to face for about five seconds, and that they made eye contact right before she screamed for her boyfriend, who was asleep in another area of the apartment. Forrestal later learned that defendant had a key to her apartment. On January 28, 1999, Forrestal identified defendant in a lineup.

¶ 17 At the conclusion of the evidence, the trial court instructed the jury that they may only consider the other-crimes evidence for the limited purposes of defendant's identification and intent. The trial court granted defendant's request to provide the jury with an instruction for the lesser included offense of criminal damage to property. The jury found defendant guilty of attempt residential burglary. It is from this judgment that defendant now appeals.

¶ 18 Posttrial Proceedings

¶ 19 After judgment was entered on the verdict, the trial court asked defendant if he wanted counsel appointed for post-trial motions and sentencing. Defendant initially agreed, and counsel was assigned, but defendant changed his mind at a subsequent court date. When defendant decided that he wanted to again proceed *pro se*, he was readmonished that he was entitled to have appointed counsel, that there may be unintended consequences of self-representation, and that he would not be able to raise a claim of ineffective assistant of counsel on appeal. Defendant stated that he understood, and the trial court granted his request to proceed *pro se*. Defendant was not readmonished of the nature of the charge and the minimum and maximum sentence available based on his background. Defendant subsequently filed a motion for a new trial, which was denied. The trial court imposed a term of 25-years' imprisonment. Defendant timely appeals.

¶ 20 ANALYSIS

¶ 21 Defendant first argues that the trial court erred by admitting Forrestal's testimony that defendant had burglarized her apartment at 3130 North Lake Shore 11 years prior to the charged offense.

¶ 22 Generally, evidence of crimes other than those charged is inadmissible. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). The risk presented by other-crimes evidence is that the trier of fact might convict a defendant merely because he is a bad person, rather than evaluating the defendant's guilt or innocence as to the charged crime. *Id*. However, other-crimes evidence may be admitted if it is relevant "for any purpose other than to show the defendant's propensity to commit crimes." *People v. Wilson*, 214 Ill. 2d 127, 135 (2005). A trial court's ruling on the admissibility of other-crimes evidence is reviewed for an abuse of discretion. *Id*. at 136. An abuse of discretion occurs when the ruling is arbitrary, fanciful, unreasonable, or when no reasonable person would adopt the trial court's view." *People v. Ward*, 2011 IL 108690, ¶21.

¶ 23 In this case, defendant argues that evidence of his residential burglary of Amy Forrestal's apartment in 1999 was improperly admitted because it was "exceedingly prejudicial where it involved the same crime as the charged offense and was extraordinarily remote in time." Defendant further argues that Forrestal's testimony was not significantly probative on the purported bases of admissibility because there were significant distinctions between the manner in which the prior and charged offenses were carried out.

¶ 24 When considering whether other-crimes evidence was improperly admitted, we look to whether the probative value of such evidence is outweighed by its prejudicial effect. *Donoho*, 204 Ill. 2d at 183. Factors to consider when conducting a balancing test between the probative value and prejudicial effect of other-crimes evidence include "(1) the proximity in time

to the charged or predicate offense; (2) the degree of factual similarity to the charged or predicate offense; or (3) other relevant facts and circumstances." *Id*.

¶ 25 The first factor in balancing the probative and prejudicial value of the other-crimes evidence — proximity in time — admittedly did not weigh in favor of admission. However, there is no bright-line rule about when a crime is too distant in time to be admitted; instead, the proximity in time must be evaluated on a case-by-case basis and is a factor in determining the other crime's probative value. *Id*. at 183–84.

¶ 26 The second factor to be considered in the balancing test is the degree of factual similarity between the two crimes. In order for other-crimes evidence to be admissible, there must be some "threshold similarity" to the charged crime. *Donoho*, 204 Ill. 2d at 184. If the other-crimes evidence is being used to show *modus operandi* or that the charged offense was part of a common scheme or design, the level of similarity between the charged offense and the other crime must be high; "[t]he two offenses must share such distinctive common features as to earmark both acts as the handiwork of the same person." *People v. Illgen*, 145 Ill. 2d 353, 372–73 (1991). If, however, the evidence is being used for some other purpose, such as the absence of an innocent frame of mind or identity, "mere general areas of similarity will suffice" for the evidence to be admissible. *Id.* at 373; *Donoho*, 204 Ill. 2d at 184 (the use of other-crimes evidence to show propensity allowed by section 115–7.3 requires only "mere general areas of similarity" between the past offense and the charged offense to be admissible). Additionally, because "no two independent crimes are identical," the presence of some differences does not defeat admissibility. *Donoho*, 204 Ill. 2d at 185. However, an increase in factual similarity leads to an increase in the probative value of the other-crimes evidence. *Id*. at 184.

¶ 27 Defendant argues that the second factor of the balancing test—the degree of factual similarity—did not weigh in favor of admission of the other-crimes evidence. In support of this argument, he lists several differences between the residential burglary of Forrestal and the attempt residential burglary of Shales, such as the day of the week, the time of day in which the offenses were committed, and the difference in the floors of the building where each offense was committed.

¶ 28 The State argues that there were many similarities between the two offenses, such as the same building, 3130 North Lake Shore Drive, defendant's committing the crimes at a time where he believed he would go undetected, and defendant's use of a key to gain entry, after damaging the internal mechanisms of the door handle. We find that the second statutory factor, the degree of factual similarity to the charged offense, weighed in favor of admission of Forrestal's testimony as other-crimes evidence. The differences highlighted by defendant are miniscule in light of the overall glaring similarities, that defendant habitually roamed around inside 3130 North Lake Shore, at times when he believed that tenants would either be gone or asleep, and gained unauthorized entry by the use of a key.

¶ 29 Further, based on our review of the record, we find that the third and final factor, the other relevant facts and circumstances, weighed in favor of admission. In weighing this factor in favor of admission, we note that the other-crimes evidence was not presented in a way that the jury would tend to convict the defendant on the sole basis that he was a bad person deserving punishment. See *People v. Boyd*, 366 Ill. App. 3d 84, 94 (2006) (other-crimes evidence, though relevant, must not become a focal point of the trial). In the instant case, the evidence of the 1999 residential burglary was not presented in such a way as to be the focal point of the evidence against defendant.

¶ 30 We note that defendant argues on appeal that the "defense theory was that Shales' version of the events was unbelievable, and that her identification testimony was unreliable." With defendant's identification at issue, the evidence in this case showed that defendant was attempting to gain access to Shales' apartment at 3130 North Lake Shore Drive at a time that she usually would have been out. Shales later learned that defendant had a key for her apartment. Shales had a clear view of defendant through the peephole and later identified him at a lineup. The other-crimes evidence established that Forrestal lived in the same apartment building as Shales. Defendant was present in that same building at 3 a.m. when occupants are normally sleeping, gained access to Forrestal's apartment with a key and rummaged around until observed. The other-crimes evidence is sufficiently similar, without being overshadowing, to establish identity and intent to commit theft in this case. Thus, after considering the three balancing factors, we conclude that a reasonable person would take the view adopted by the trial court, specifically, that the probative value of the other-crimes evidence outweighed its prejudicial effect. Accordingly, we hold that the trial court did not abuse its discretion in admitting the other-crimes evidence at trial.

¶ 31 Even assuming, *arguendo*, that the trial court erred in admitting Forrestal's testimony at trial, we find such error to be harmless. Improper introduction of other-crimes evidence is harmless error when a defendant is neither prejudiced nor denied a fair trial based upon its admission." *Johnson*, 406 Ill. App. 3d at 818 (finding trial court's error in admitting other-crimes evidence as harmless, where the outcome of the trial would not have been different in the absence of the other-crimes evidence).

¶ 32 Shales testified in detail at trial as to how defendant, whom she had positively identified before trial at a lineup, attempted to burglarize her apartment. The jury also heard testimony

from Ismet Latic, the building's maintenance supervisor, who testified that he saw defendant snooping around the building approximately two months earlier on December 4, 2009, and turned over surveillance video to police showing defendant on the second floor on that date. Moreover, when defendant was arrested, a plethora of incriminating items were recovered from him, including 33 keys with numbered manila envelopes that purported to correspond with apartment unit numbers in Shales' and Forrestal's apartment building, including Shales' apartment number 605. Given the strength of the evidence presented against the defendant, in conjunction with the fact that the State did not put undue emphasis on the other-crimes evidence, we cannot say that the outcome of the trial would have been different had Forrestal's testimony been excluded. Therefore, even assuming that the trial court erred in admitting Forrestal's testimony as other-crimes evidence, such error was harmless.

¶ 33 In a related argument, defendant claims that the trial court heightened the damage caused by Forrestal's testimony where the instruction to the jury ensured that the jurors failed to consider other-crimes testimony for the limited purposes it was admitted. More specifically, defendant argues that the trial court erroneously instructed the jury that the other-crimes evidence was admissible only to prove "identification and intent," because identity was irrelevant.

¶ 34 Although the trial court initially ruled, at the hearing on the State's motion to admit other-crimes evidence, that Forrestal's testimony was admissible to establish absence of mistake, intent, common design and *modus operandi*, the trial court for some unexplained reason instructed the jury that the other-crimes evidence was being offered only for identification and intent. Nevertheless, we reject defendant's argument regarding the improper jury instruction where defendant's identification and intent were clearly at issue in this case given that defendant's theory of defense was that he was not the perpetrator and had been wrongly

identified. It is rudimentary that the charged crime and the other-crimes evidence have to be connected and a major factor of the connection is the identity of the offender. Having the 1999 incident in evidence without connecting defendant to it would be nonsensical. The value of the 1999 incident here is to establish identity, presence, theft, manner of entry and familiarity with the building. As such, Forrestal's testimony was clearly probative in establishing defendant's identification and intent where she testified, similar to Shales, that defendant entered her apartment unlawfully and without authorization. Her testimony, in addition to Shales', regarding defendant's possession of keys to both apartments connects defendant, by identity, to both crimes. Forrestal, like Shales, was able to get a clear view of defendant before he fled and both were able to positively identify defendant. We note that based on the record before us, the evidence could have been properly received, and the jury could have also properly considered Forrestal's testimony to establish *modus operandi* or common design in conjunction with establishing defendant's identity.

¶ 35 Defendant next argues that the trial court failed to substantially comply with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before permitting him to represent himself at sentencing. Rule 401(a) requires that before the trial court permits a defendant in a criminal trial to represent himself, the court must admonish the defendant about (1) the nature of the charges against him, (2) the minimum and maximum penalties the court could impose, and (3) his right to counsel. Ill. S.Ct. R. 401(a) (eff. July 1, 1984).

¶ 36 In this case, after the jury returned its guilty verdict, defendant indicated that he desired counsel for posttrial motions and sentencing. After a public defender was appointed, defendant changed his mind. The court readmonished defendant as to the rules of filing motions, that he would not be treated any differently because he was not an attorney, and that he would not be

able to raise ineffective assistance of counsel as a claim in any potential appeal. The State concedes that the trial court failed to readmonish defendant as to the nature of the charges and the sentencing range but argues that defendant is not entitled to a new sentencing hearing here because he was previously admonished as to the nature of his offense and the possible sentencing range three separate times on different occasions prior to sentencing in substantial compliance with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). Therefore, any waiver of counsel was made knowingly and voluntarily.

¶ 37 Admonishments do not require strict, technical adherence to Illinois Supreme Court Rule 401(a), but substantial compliance is required. *People v. Langley,* 226 Ill. App. 3d 742, 749 (1992). Absent at least substantial compliance, a defendant's wavier is ineffective. *Id*.

¶ 38 Defendant relies primarily on *People v. Cleveland*, 393 Ill. App. 3d 700, 702 (2009) overruled in part on other grounds in *People v. Jackson,* 2011 IL 110615. In *Cleveland*, the defendant discharged his counsel before trial. The trial court properly admonished the defendant in accordance with Illinois Supreme Court Rule 401(a) before permitting him to represent himself at trial. After the trial, the defendant requested the assistance of counsel, and the court appointed the public defender. At the hearing on the post-trial motion, the defendant fired his counsel. The court reminded the defendant that he could have the assistance of counsel, and the court offered to appoint counsel for the defendant. When the defendant declined the offer, the trial court, without any further admonishments, permitted the defendant to proceed *pro se*.

¶ 39 The *Cleveland* court found that the trial court had substantially readmonished the defendant only about the availability of appointed counsel to represent the defendant. Because the trial court had not reminded the defendant of the nature of the charges against him or the

range of available sentences, the *Cleveland* court found the waiver of counsel for sentencing ineffective, and therefore the court remanded for resentencing, reasoning:

> "Under these circumstances, * * * defendant's earlier admonishments simply cannot suffice for substantial compliance when defendant waived counsel a second time. * * * If the initial admonishments could be applied to defendant's second waiver of counsel and constitute substantial compliance with Rule 401(a), then the rule requiring defendant to be readmonished would make no sense." *Id*.

The *Cleveland* court held:

> "[T]he trial court was required to readmonish defendant upon his second request to waive counsel. While this second set of admonishments does not require strict, technical adherence to Supreme Court Rule 401(a), substantial compliance is required. [Citation.] Absent at least substantial compliance, defendant's waiver is ineffective." *Cleveland*, 393 Ill. App. 3d at 709.

¶ 40 We do not disagree with this court's holding in *Cleveland* but find the facts of this case more akin to *People v. Phillips*, 392 Ill. App. 3d 243 (2009). In *Phillips*, the trial court admonished the defendant, who had decided to represent himself, about the minimum and maximum sentence but did not admonish him regarding the nature of the charges and his right to have counsel appointed as required by Illinois Supreme Court Rule 401(a). On appeal, the defendant sought a new sentencing hearing for the court to comply with Illinois Supreme Court Rule 401(a). *Id*. at 262.

¶ 41 This court acknowledged that the defendant was not properly admonished according to

Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), but found substantial compliance nonetheless. This court noted that the defendant had been completely admonished on two prior occasions prior to trial. This court also reasoned that there was no evidence to suggest that defendant failed to understand the charges against him. In addition, this court found that because defendant had been represented by appointed counsel, he knew he had a right both to counsel in general and appointed counsel due to being indigent. Finally, the court reasoned that the defendant had extensive experience with the court system. *Id*. at 263-64.

¶ 42 Similarly here, after the court had appointed counsel at defendant's request, the court did not restate the nature of the charges against defendant or the range of sentences available when defendant, for the second time in this case, told the court he wanted to discharge his appointed counsel and appear *pro se*. The court readmonished defendant, advising him that he was entitled to have appointed counsel, that there may be unintended consequences of self-representation, and that "if I don't rule in your favor and I uphold your conviction and sentence" he would not be able to raise a claim of ineffective assistant of counsel on appeal. There is no dispute the court in this case did not advise defendant when he decided to proceed *pro se* posttrial that, due to his record, he would face sentencing for a Class X crime, with a minimum of 6 years and a maximum of 30 years in prison. However, similar to our ruling in *Phillips*, we find the court substantially complied with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) and resentencing is not warranted.

¶ 43 In the instant case, defendant was properly admonished pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), *three times* prior to trial and prior to the admonishment at issue. In the three prior admonishments, defendant was told of the charges, the possible penalties and about his right to have counsel appointed. In addition, given defendant's *pro se* performance

there is nothing in the record to suggest that defendant failed to understand the charges against him. In fact, defendant vigorously defended the elements of the crime and challenged the evidence against him and, when viewed with the numerous pretrial motions defendant prepared and argued, defendant clearly possessed a degree of legal sophistication that evidences his awareness and knowledge of the nature of the offense such that a fourth admonishment about the nature of the offense or the potential sentencing range was not required. Finally, it is clear from the record that defendant had experience with the court system and had even represented himself in a prior case before the same trial judge. Given the particular circumstances of this case, we find there was substantial compliance with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984).

¶ 44 Defendant next argues that his 25-year sentence is excessive. A trial court has broad discretionary powers in choosing the appropriate sentence a defendant should receive. *People v. Jones*, 168 Ill. 2d 367, 373 (1995). A reasoned judgment as to the proper sentence to be imposed must be based upon the particular circumstances of each individual case and depends upon many factors, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). "In determining an appropriate sentence, the defendant's history, character, rehabilitative potential, the seriousness of the offense, the need to protect society and the need for deterrence and punishment must be equally weighed." *People v. Jones*, 295 Ill. App. 3d 444, 455 (1998). There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and the court is presumed to have considered any evidence in mitigation that is before it. *People v. Partin*, 156 Ill. App. 3d 365, 373 (1987). The imposition of a sentence is a matter within the trial court's discretion, and a reviewing court has the power to disturb the sentence

only if the trial court abused its discretion. *Jones*, 168 Ill. 2d at 373-74.

¶ 45 We find no abuse of discretion in this case. At sentencing, the court was advised that defendant was eligible for a Class X sentence based on his criminal history. 720 ILCS 5/5-5-3(c) (West 2010). In imposing sentence, the court indicated that it had considered the evidence at trial, the presentence investigation, the evidence offered in aggravation and mitigation and the statutory factors in aggravation and mitigation. See 730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2010). Furthermore, defendant's 25-year sentence fell within the statutory range of 6 to 30 years' imprisonment and is therefore presumptively proper. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007); 720 ILCS 5/5-5-3(c) (West 2010). In view of the defendant's criminal history which shows that, since 1984, he has eight residential burglary convictions, one armed robbery conviction, one felony UUW by a felon conviction, four criminal trespass to land convictions and two theft convictions , we cannot say the trial court abused its discretion finding defendant "to be a menace and a danger" and that "a very high sentence is needed in order to protect society from him because nothing he does seems to stop, lessons are not learned, serious crimes continue to be committed by him" when imposing a 25-year sentence.

¶ 46 Defendant requests this Court to correct the mittimus so that it reflects his conviction for one count of Class 2 attempt residential burglary. Defendant argues and the State concedes that defendant's mittimus incorrectly reflects that he was convicted of a Class 1 attempt residential burglary. We agree with defendant that his mittimus should be corrected to reflect the proper judgment entered by the circuit court. *People v. Hill*, 408 Ill. App. 3d 23, 32 (2011) We thus direct the clerk of the circuit court to amend the mittimus to reflect defendant's conviction for a Class 2 attempt residential burglary. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995); Illinois Supreme Court Rule 615(b)(1).

¶ 47 Lastly, defendant argues that he was erroneously ordered to pay $459 in court assessments, and that in total, he should be ordered to pay $415. Defendant asserts that the $459 amount was the result of a miscalculation, and the amount due prior to the application of any credits was $445. Defendant further claims that the $30 Children's Advocacy Center fee is a fine, and therefore, he is entitled to a $5 per day pre-sentence credit against the $30 due. The State concedes, and we agree, that the original assessment of $459 was the result of a miscalculation, and that defendant is entitled to a $30 credit for this Children's Advocacy Center fee. We thus direct the clerk of circuit court to amend the total amount of court assessments to $415.

¶ 48 CONCLUSION

¶ 49 Accordingly, for the reasons set forth above, we affirm the judgment of the trial court but order defendant's fines and fees reduced from $459 to $415, and order that his mittimus be corrected.

¶ 50 Affirmed as modified.