2017 IL App (1st) 151602-U

No. 1-15-1602

Order filed September 11, 2017

First Division

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 5533
	)	
ANTHONY BUCHANAN	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction and sentence for aggravated battery with a firearm are affirmed as the State proved beyond a reasonable doubt that he knowingly and voluntarily discharged the firearm and the trial court did not abuse its discretion in sentencing him to 11 years' imprisonment.

¶ 2 Following a bench trial, defendant Anthony Buchanan[1] was convicted of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West Supp. 2013)) and sentenced to 11 years' imprisonment. Defendant appeals his conviction, arguing that the State failed to prove beyond a reasonable doubt that he knowingly and voluntarily discharged the firearm. Alternatively, defendant argues that his sentence is excessive in light of his community involvement, the age of his prior convictions, and his rehabilitative potential. For the reasons set forth herein, we affirm the judgment of the trial court.

¶ 3 Defendant was charged by indictment with four counts of attempt first degree murder and one count of aggravated battery with a firearm. Defendant waived his right to a jury trial, and the case proceeded to a bench trial.

¶ 4 Jermaine Myles testified that, on March 3, 2014, he went to a party at which he smoked marijuana and consumed two beers and a "cup or two" of vodka. Later that evening, Myles left the party and went to a barbershop located at 92nd Street and Stony Island Avenue to see if the owner, whom he identified in-court as defendant, wanted to buy bootleg CDs or DVDs. Myles had known defendant for 20 years and went to his barbershop almost every day to sell CDs and DVDs to defendant's customers. As he approached the building, he observed the lights inside the shop being turned off, and he saw someone walk to the back of the barbershop. When he got to the front door, he noticed that it was locked. He knocked on the front window until defendant walked to the front door. Myles told defendant that he had new CDs and DVDs to show him. Defendant responded by asking Myles what he had and letting him into the building.

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[1] Although the parties in their briefs, and the transcript, use the spelling "Buckhanan," the notice of appeal filed by defendant spells his last name as "Buchanan." In the interest of consistency, we also use the spelling "Buchanan."

¶ 5 Myles walked into the barbershop. He took off his backpack containing his CDs and DVDs and set it down on the floor. He did not see anything in defendant's hands. He bent down to take items out of the bag. Defendant was standing five and a half or six feet from Myles. When he stood up and turned toward defendant to show him what he retrieved from the book bag, he "instantly fell" to the ground. He gasped for air and "kept losing consciousness." He noticed that he was not able to move his body and did not feel any pain. Myles heard defendant ask another person "[i]s he dead? Is he dead?" He remembered a "sheet or something" being placed over him and being dragged outside. As Myles felt blood flow onto his face, he realized that he had been shot in the neck. Being unable to move, Myles lay on the ground and called for help until an ambulance arrived. At the hospital, Myles told police officers that defendant shot him. After signing a photo spread advisory form, Myles identified defendant as the man who shot him.

¶ 6 Myles spent nearly six months in the hospital. There, he received physical therapy, occupational therapy, and speech therapy in order to relearn how to talk and breathe on his own. As a result of the shooting, he is paralyzed from the chest down and has limited use of his arms. Myles identified various pictures of the barbershop and pictures of the sweatshirt he was wearing at the time of the shooting which was covered in blood and contained bullet holes.

¶ 7 Officer Jason Venegas testified that, on March 3, 2014, he responded to a call of a person shot and observed the victim receiving medical attention. At the hospital, Myles told Venegas that he had been shot by the owner of the barbershop.

¶ 8 Maurice Miller testified that he was a taxi driver who regularly drove defendant from his barbershop to his home in Harvey, Illinois. On March 3, 2014, defendant called Miller for a ride

and requested to be picked up at the intersection 92nd Street and Stony Island Avenue. As he was driving toward that intersection, Miller received a second call from defendant, who told him to pick him up at "111th or 113th" Street and Vincennes Avenue. When Miller picked defendant up at the new location, defendant told him to drive to the barbershop. As Miller drove by the barbershop, he observed multiple police cars and yellow crime scene tape. He slowed down and asked defendant if he wanted to go in. Defendant replied that he was not going to go in. Miller told defendant that, because he was the owner of the barbershop, the police would probably want to talk to him. Defendant again indicated that he did not want to stop, and Miller drove defendant home.

¶ 9 Detective Edward Killeen testified that he arrived at the barbershop to investigate the shooting. Using his flashlight, he looked through the front window of the shop and saw a cartridge casing and a "drop of blood" near the front entrance. He identified photographs of the blood and the casing. At some point, defendant arrived on the scene, signed a consent to search form, and opened the door so that police could enter the shop. Inside, officers found a live bullet on a desk in the "side office." The officers were not able to find a firearm in the barbershop. Killeen identified photographs of the sidewalk outside of the building, where officers found an orange and black backpack containing CDs and DVDs. The photographs also displayed "apparent pools of blood" on the sidewalk.

¶ 10 On cross examination, Killeen testified that the cartridge casing that he saw near the front of the shop was practically in arms reach of the threshold of the door. He also stated that he saw only "a drop" of blood and did not see any blood "drag trails" inside the shop. Killeen did not see or recover a sheet from the scene.

¶ 11 Sergeant Michael Murzyn testified that, on March 3, 2014, he arrived at the crime scene and observed "some blood drops" and a shell casing inside of the doorway of the shop. After receiving defendant's contact information from tenants who lived in apartments above the barbershop, Murzyn was able to contact defendant and asked him to come to the scene to open the shop. When defendant arrived, he signed a consent to search form and let officers into the building. Murzyn testified that officers were unable to find a gun, but found a live .38 caliber round in the office of the barbershop. After receiving information from officers at the hospital who had spoken to the victim, defendant was placed into custody.

¶ 12 The State then proceeded by way of stipulation. First, the parties stipulated that Officer Mike Davis would testify that he collected and inventoried evidence from the scene, including gunshot residue (GSR) swabs from both of defendant's hands. Second, the parties stipulated that Mary Wong of the Illinois State Police Crime Lab would testify that she analyzed the GSR swabs and would opine that defendant "discharged a firearm, contacted a PGSR-related item, or had the left hand in the environment of a discharged firearm." Third, the parties stipulated to defendant's business license for the barbershop. Fourth, the parties stipulated that Dr. Thomas of Christ Hospital would testify that he treated Myles for a gunshot wound to the neck, which struck his cervical vertebrae and resulted in paralysis of the lower extremities. After entering crime scene photographs into evidence, the State rested its case-in-chief.

¶ 13 Defendant testified that he owned a barbershop located at 92nd and Stony Island Avenue. At 11 p.m. on the night of March 3, 2014, defendant was working in the back office of the barbershop when he heard loud banging on the window in front of the building. He testified that his shop had been robbed in the past, so he thought somebody was trying to break in. He

retrieved a gun from under his desk and left the office. The main room of the barbershop was dark and was only illuminated by the streetlights outside the building. He testified that he saw two hooded individuals standing outside of the front door and the front window of the building. Defendant ran to the door, and recognized the man standing at the door as Myles. Defendant had known Myles since "the early 90's" and frequently allowed him to sell CDs and DVDs in his barbershop. Defendant opened the door and Myles came through the door. Defendant testified that Myles was either "stumbling or reaching" and came through the door "forcefully." Defendant raised his hands up to block Myles "from coming in on him," the two collided, and the gun in defendant's hand discharged inadvertently. Defendant stated that he never "intentionally pulled the trigger."

¶ 14 Myles fell to the floor and defendant thought that he was dead. Defendant shook Myles and "freaked out" when he did not respond. Defendant believed that the other man that he saw through the front window had run away. Defendant left the barbershop through the back door and entered a taxi cab that had been waiting outside. When the cab driver expected defendant to pay him for the time that he had been waiting, defendant exited the cab and called another cab driver named "Maur." Maur picked defendant up and drove him home. At his home, defendant told his wife what had happened, and his wife drove him back to the barbershop. En route to the barbershop, defendant received a phone call from Sergeant Murzyn. When defendant arrived at the barbershop, he signed a consent to search form and gave Murzyn the keys to the shop.

¶ 15 On cross-examination, defendant testified Myles had fallen in the doorway, "halfway in and halfway out" of the door. When he attempted to pick Myles up, Myles "rolled over backward out the door." He denied carrying him anywhere. He testified that he had placed the gun back in

the office before leaving the barbershop. When showed a picture of the office and asked where he had set the gun, defendant testified he "was not sure" if he had placed the gun in the room or on the table. When further pressed, defendant stated that he could not really say where he had put the gun because he was too nervous about the situation but that he did not hide the gun. Defendant stated that he had panicked and that he regretted leaving the shop without calling an ambulance or the police. When he returned to the barbershop, he did not volunteer any information to the police, but signed a consent to search form. Defendant denied telling officers that he had "left the shop with Jeremy around 10:30 p.m." or that he had left the shop through the front door.

¶ 16 Defendant then proceeded by way of stipulation. The parties stipulated that the medical records manager of Advocate Christ medical center would testify that Myles had a blood alcohol content (BAC) of .143 when he arrived at the hospital.

¶ 17 In rebuttal, the State introduced into evidence a certified copy of defendant's 2009 conviction for aggravated DUI. The State also called Detective Thomas Lieber, who testified that defendant told him that he had left the shop with a man named Jeremy at 10:30 p.m. and that he had left through the front door.

¶ 18 The trial court found defendant guilty of aggravated battery with a firearm but not guilty of attempt first degree murder. The court stated that defendant's testimony was "all over the place" and that he contradicted himself multiple times. It noted that defendant's explanation about where he left the gun was contradicted by police testimony that a gun was not found during the search in the barbershop. The court stated that defendant "did not proceed like a man

innocent of what just happened" and noted that "guns don't go off by themselves unless it was somehow found to be on, like, a hair trigger."

¶ 19 The trial court denied defendant's motion for a new trial, which argued that his testimony demonstrated that the shooting was accidental and that he did not have the mental state necessary to sustain a conviction of aggravated battery with a firearm. In denying the motion, the court stated that it "took its decision very seriously" and would stand by the credibility assessments it had made. The case then proceeded to a sentencing hearing.

¶ 20 In aggravation, the State recounted the injuries that Myles had sustained and the state of paralysis that he was still experiencing. It also recounted defendant's criminal history, which included a 1996 conviction for possession of a firearm in public for which he had been sentenced to 30 months' probation, which was terminated unsatisfactory; a 2003 conviction for armed robbery for which he was sentenced to 8 years' imprisonment; and a 2009 conviction for aggravated DUI for which he had been sentenced to 30 months' probation, which was terminated unsatisfactory. The State recommended a sentence "well above" the minimum 6-year term.

¶ 21 In mitigation, Kenneth Williams testified that he owned a barber college and had known defendant since 2005 when defendant was a student at the college. Since that time, Williams had served as a mentor for defendant. Defendant was involved in the community and volunteered as part of a program that provides free haircuts to students returning to school. Williams described defendant as hardworking and compassionate, and stated that he would allow defendant to work at his barber college after he was released from prison.

¶ 22 Defense counsel emphasized the age of defendant's prior convictions. He also noted that in the 10 years following his release from prison, defendant had gotten married, started a

business, and been an "exemplary citizen." Counsel argued that defendant was a "definite candidate for rehabilitation" and that the minimum sentence would be fair given the facts of the case. In allocution, defendant expressed his concern for Myles and his family and requested that the court have compassion and mercy on him because he never intended to shoot Myles.

¶ 23 The trial court sentenced defendant to 11 years' imprisonment. The court noted that defendant's criminal background contained cases that involved guns and violence and that his terms of probation were terminated unsatisfactory.

¶ 24 On appeal, defendant first argues that the State failed to prove beyond a reasonable doubt that he knowingly and voluntarily shot Myles.

¶ 25 The due process clause of the fourteenth amendment protects defendants against conviction in state courts except upon proof beyond a reasonable doubt of every fact necessary to constitute the charged crime. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979). When a court reviews the sufficiency of evidence, it must determine " 'whether the record evidence could *reasonably* support a finding of guilt beyond a reasonable doubt.' " (Emphasis in original.) *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004) (quoting *Jackson*, 443 U.S. at 318). A reviewing court must decide whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Lloyd*, 2013 IL 113510, ¶ 42. This means that we must draw all reasonable inferences from the record in favor of the prosecution, and that " '[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.' " *Id.* (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)). " 'Under this standard, the reviewing

court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence.' " *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 61 (quoting *People v. Ross*, 229 Ill. 2d 255, 272 (2008)). A conviction may be sustained on circumstantial evidence alone. *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 10.

¶ 26 In Illinois, a person commits the offense of battery if he or she knowingly, and without legal justification, causes bodily harm to another individual. 720 ILCS 5/12-3(a) (West 2014). A person commits aggravated battery with a firearm when, in committing a battery, he or she knowingly discharges a firearm and causes injury to another person. 720 ILCS 5/12-3.05(e)(1) (West Supp. 2013). Here, defendant does not dispute that the gun that he was holding discharged and caused bodily harm to Myles. Rather, he argues that the State failed to prove beyond a reasonable doubt that the discharge of the firearm was a voluntary act or was done knowingly. A material element of every offense is a voluntary act. 720 ILCS 5/4-1 (West 2014). "The criminality of defendant's conduct depends on whether he acted knowingly or intentionally, or whether his conduct was accidental. Determining whether the conduct was knowing or intentional, or was accidental, [is] the responsibility of the trier of fact." *People v. Robinson*, 379 Ill. App. 3d 679, 684-85 (2008). "When presented with conflicting versions of events from witnesses, it is the trial court's responsibility to determine the credibility of those witnesses and to determine which version to believe." *People v. Flemming*, 2015 IL App (1st) 111925-B, ¶ 58.

¶ 27 Myles testified that defendant let him into the barbershop so that he could show defendant the new DVDs and CDs that he had. Myles walked into the barbershop and put his backpack on the ground. Myles testified that defendant was five and a half feet away from him

when he stood up, turned around, and was shot in the neck. He then recounted how defendant placed a sheet over his head and dragged him outside. Defendant testified that he left the barbershop without calling for an ambulance or the police. Maurice Miller testified that, when he picked defendant up at a location several blocks from the barbershop, defendant asked him to drive by the barbershop. When Miller saw police at the barbershop, he asked defendant if he wanted to stop to talk to them. Defendant decided not to stop, and told Miller to drive him home.

¶ 28 Although defendant testified that the gun went off accidently after Myles collided with him on his way into the shop, the trial court was not required to accept his explanation of events. The court specifically stated that it did not find defendant to be credible. Defendant's testimony about leaving the gun in the shop was contradicted by the fact that the officers did not find a gun at the shop. Defendant's testimony that he had a dispute with another taxi driver was contradicted by Miller's testimony that defendant told him to pick him up at the 92nd and Stony Island before defendant called him back and changed the pickup location to Vincennes Avenue. Further, defendant was impeached by Detective Lieber, who testified that he spoke with defendant on the night of the shooting and that defendant told him that he had left the barbershop at 10:30 p.m. with a person named Jeremy. The trial court noted that defendant did "not proceed like a man innocent of what just happened." See *People v. Moore*, 2015 IL App (1st) 140051, ¶ 26 ("Evidence of flight is admissible as tending to demonstrate a defendant's consciousness of guilt"). Viewed in the light most favorable to the State, the evidence presented at trial is sufficient for a rational trier of fact to determine that defendant knowingly discharged the firearm toward Myles.

¶ 29 Defendant argues that Myles' "memory of the events was likely tainted by intoxication" as his BAC was .143. However, the trial court was aware of this evidence and heard counsel's arguments regarding how his intoxication altered his perception of the incident and made it likely that he stumbled into defendant. The court heard similar arguments during the hearing on defendant's motion for a new trial, but decided to stand by the "assessments of the evidence and the credibility of the witnesses" that it made before reaching its verdict.

¶ 30 Defendant's arguments essentially ask this court to ignore the credibility determinations made by the trial court and retry him on a cold record. As noted above, this is not the proper function of a court reviewing a sufficiency of the evidence claim. See *Daheya*, 2013 IL App (1st) 122333, ¶ 61 (quoting *Ross*, 229 Ill. 2d at 272) ("'Under this standard, the reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence.'"). As none of the State's evidence is "so unreasonable, improbable or unsatisfactory" that it creates reasonable doubt of defendant's guilt, we affirm his conviction for aggravated battery with a firearm.

¶ 31 Defendant next argues that his 11-year sentence is excessive in light of his community involvement, the relative age of his prior convictions, and his rehabilitative potential. Initially, defendant concedes that he failed to preserve this issue by filing a motion to reconsider sentence in the trial court. See *People v. Enoch,* 122 Ill.2d 176, 186 (1988) (To preserve a claim for review, a defendant must both object at trial and include the alleged error in a written posttrial motion). Defendant argues, however, that we may review his claims under the first prong of the

plain error doctrine. Alternatively, defendant claims that we can review the claim because his trial counsel was ineffective for failing to file a motion to reconsider sentence.

¶ 32 Generally, a sentencing issue is forfeited unless the defendant both objects to the error at the sentencing hearing and raises the objection in a postsentencing motion. *People v. Nowells*, 2013 IL App (1st) 113209, ¶ 18. However, forfeited claims related to sentencing may be reviewed for plain error. *Id.* (citing *People v. Hillier*, 237 Ill. 2d 539, 544 (2010)). The plain error doctrine allows a reviewing court to consider unpreserved error when a clear or obvious error occurred and (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant or (2) that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Nowells*, 2013 IL App (1st) 113209, ¶ 18. Under either prong of the plain error doctrine, the burden of persuasion remains on the defendant. *Id*. at ¶ 19. A reviewing court conducting plain error analysis must first determine whether an error occurred, as "[w]ithout reversible error, there can be no plain error." *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010).

¶ 33 The Illinois Constitution requires that a trial court impose a sentence that reflects both the seriousness of the offense and the objective of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. In reaching this balance, a trial court must consider a number of aggravating and mitigating factors, such as defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). Although the trial court's consideration of mitigating factors is required, it has no obligation to recite each factor and the

weight it is given. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11. Absent some indication to the contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 34 Ultimately, because a trial court is in the superior position to weigh the aggravating and mitigating factors, its sentencing decision is entitled to great deference and we review a sentence within statutory limits for an abuse of discretion. *People v. Busse*, 2016 IL App (1st) 142941, ¶ 20; *Alexander*, 239 Ill. 2d at 212-13. In reviewing a defendant's sentence, this court will not reweigh these factors and substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *Busse*, 2016 IL App (1st) 142941, ¶ 20. When a sentence falls within the statutory range, it is presumed to be proper, and " 'will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.' " *People v. Brown*, 2015 IL App (1st) 130048, ¶ 42 (quoting *People v. Fern*, 189 Ill.2d 48, 54 (1999)).

¶ 35 Here, we find that the trial court did not abuse its discretion in sentencing defendant to 11 years' imprisonment. In this case, defendant was convicted of aggravated battery with a firearm, a Class X felony with a sentencing range of 6 to 30 years' imprisonment. 720 ILCS 5/12-3.05(e)(1), (h) (West Supp. 2013); 730 ILCS 5/5-4.5-25(a) (West 2014). Accordingly, the 11-year sentence imposed by the trial court falls within the permissible statutory range and, thus, we presume it is proper. *Wilson*, 2016 IL App (1st) 141063, ¶ 12.

¶ 36 Defendant does not dispute that his sentence is within the statutory range for a Class X offense and therefore is presumed to be proper. Rather, he argues the nature of his offense, the age of his prior convictions, and his community involvement merit a reduction of his sentence or

remand for a new sentencing hearing. He argues that he has a strong potential for rehabilitation as he has a degree in cosmetology, has been a barber for nine years, and owned a barbershop.

¶ 37 As noted above, we presume that the trial court considered all factors in mitigation. See *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. "To rebut this presumption, defendant must make an affirmative showing that sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. Defendant has failed to make such a showing, as the record reveals that the court was in receipt of this information when it made its sentencing determination. The court presided over defendant's trial, and was thus aware of the nature of his case. The details of defendant's prior convictions were contained in the PSI, and both parties argued about the significance of his criminal background. The court heard the testimony of mitigation witness Kenneth Williams, who told the court that defendant participated in a program which offered free haircuts to students returning to school. Williams also testified that defendant was hardworking and compassionate, and that he would be willing to give defendant a job upon his discharge from incarceration.

¶ 38 As the record reflects that all of these factors were either contained in defendant's PSI or argued by counsel in mitigation, defendant is essentially asking us to reweigh the sentencing factors and substitute our judgment for that of the trial court. As noted above, this we cannot do. See *Busse*, 2016 IL App (1st) 142941, ¶ 20 (a reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently). Even if we were to weigh these factors differently, we cannot say that the trial court erred in sentencing defendant to 11 years' imprisonment, a term five years higher than the minimum sentence. Aggravated battery with a firearm is a serious offense which, in this case, resulted in the

paralysis of Myles. See *People v. Saldivar*, 113 Ill. 2d 256, 269 (1986) ("While the classification of a crime determines the sentencing range, the severity of the sentence depends upon the degree of harm caused to the victim and as such may be considered as an aggravating factor in determining the exact length of a particular sentence"). Further, defendant's criminal background contains cases involving guns and violence, as well as terms of probation that were terminated unsatisfactory. See *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009) (finding that a defendant's "criminal history alone" could warrant a sentence "substantially above the minimum").

¶ 39 As we find no error, there can be no plain error. Accordingly, defendant's excessive sentence claim is forfeited.

¶ 40 Defendant alternatively argues that his attorney was ineffective for failing to file a motion to reconsider sentence in the trial court. "To show ineffective assistance of counsel, a defendant must demonstrate that 'his attorney's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.' " *People v. Simpson*, 2015 IL 116512, ¶ 35 (quoting *People v. Patterson*, 192 Ill. 2d 93, 107 (2000)). A reasonable probability is defined as "'a probability sufficient to undermine confidence in the outcome.'" *Id.* (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). A defendant must satisfy both prongs of this test, and a failure to satisfy either prong precludes a finding of ineffectiveness. *Id.*

¶ 41 Defendant's ineffective assistance claim fails, as he has failed to satisfy the prejudice prong of the *Strickland* test. An attorney will not be deemed ineffective for a failure to file a futile motion. *People v. Stewart*, 365 Ill. App. 3d 744, 750 (2006). As we have determined that

no error occurred, defendant cannot establish that he was prejudiced by his counsel's failure to raise this claim in a motion to reconsider sentence.

¶ 42 For the forgoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 43 Affirmed.