2016 IL App (2d) 150113
No. 2-15-0113
Order filed February 5, 2016



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>JAMES P. STEINER,<br><br>Defendant-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court of Boone County.<br><br><br><br>No. 09-CF-22<br><br>Honorable Fernando Engelsma, Judge, Presiding. |

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PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held*: (1) The defendant's right to a jury trial was not violated; (2) the State did not fail to disclose relevant evidence; (3) the trial court did not determine the defendant's guilt prior to closing arguments; (4) he was not deprived of the effective assistance of counsel; (5) his due process rights were not violated by the State's pre-indictment delay of over 60 months and (6) his sentence was not excessive.

¶ 2 Following a bench trial, the defendant, James P. Steiner, was convicted of six counts of predatory criminal sexual assault and was sentenced to a total of 42 years' imprisonment. On appeal, the defendant argues that (1) his right to a jury trial was violated; (2) the State failed to disclose certain statements that would have undermined their theory of the case and would have

impeached the alleged victim's credibility; (3) he was deprived of a fair trial when the trial court determined his guilt before closing arguments; (4) he was deprived of the effective assistance of counsel; (5) his due process rights were violated by the State's pre-indictment delay of over 60 months and (6) his sentence was excessive. We affirm.

¶ 3 BACKGROUND

¶ 4 On January 27, 2009, the defendant was charged by complaint with three counts of aggravated criminal sexual assault (720 ILCS 5/12-14(b)(1) (West 1996)) and three counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West Supp. 1999)). He was later indicted on those charges. On January 13, 2012, the defendant was charged in a superseding bill of indictment with six counts of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 1996) and 720 ILCS 5/12-14.1(a)(1) (West Supp. 1999)). The charges alleged that the defendant had sexually abused his then minor daughter, L.S. On January 30 and 31, 2012, the trial court conducted a bench trial on the charges against the defendant.

¶ 5 L.S. was born on October 18, 1988. She testified that starting sometime in 1996 when she was in the second grade and living in Belvidere, the defendant began sexually abusing her in the morning after her mother left for her job in Chicago. The defendant would come into her bedroom, wake her up, and bring her into his bedroom. The defendant would then put his mouth on her vagina, put his penis in her mouth, and put his penis in her vagina. L.S. further testified that on certain nights, the defendant would bring her to his office at the Northern Lights store, and he would sexually abuse her at that location.

¶ 6 L.S. testified that her brothers, Nick and Tim, would be home at the time the abuse occurred in the morning, and L.S. would eat breakfast with Nick and Tim every morning after the abuse before going to school. L.S. stated that she was never told by the defendant to keep the

abuse secret, and she was never threatened not to tell anyone about the abuse. L.S. testified the abuse stopped when she was in the eighth grade, sometime in 2003.

¶ 7 On September 11, 2008, an argument occurred between the defendant and L.S. Following the argument, the defendant left home and L.S. told her mother, Cary, that she had been sexually abused by the defendant. When the defendant returned home, Cary asked him "did you inappropriately do things and touch [L.S.]"? The defendant replied "yes." Later, the defendant's son Nick asked him "if he did it"? The defendant responded that he was sorry.

¶ 8 On January 2, 2009, L.S. went to the Boone County sheriff's department and reported that she had been sexually abused by the defendant. L.S. stated that at the time the abuse occurred, she did not know that sexual abuse between a minor and an adult was wrong.

¶ 9 The defendant testified and denied ever sexually abusing L.S. The defendant denied making any statements to Cary or Nick that indicated he had sexually abused L.S.

¶ 10 The defendant's mother testified that L.S. was a friendly outgoing child who never exhibited any fear of the defendant. She also testified regarding her school volunteer training on how to spot signs of sex abuse. She testified that L.S. did not show any signs of abuse.

¶ 11 The defendant's sister testified that L.S. was happy, friendly, sociable, and outgoing during the years when the sex acts were alleged to have occurred.

¶ 12 At the close of the trial, the trial court found the defendant guilty of all six charges. The trial court found that L.S., Cary, and Nick were credible and that the defendant was not. The trial court further found that the reason L.S. had not reported the abuse sooner was because she did not know that it was wrong, and it had become a routine event.

¶ 13 On August 16, 2012, the defendant filed several posttrial motions. In one motion, he sought to dismiss the indictment against him pursuant to *People v. Gulley*, 83 Ill. App. 3d 1066

(1980). The defendant alleged that the 60- to 150-month delay between when the crimes allegedly occurred and when he was indicted violated his due process rights and caused him substantial prejudice. On September 26, 2014, the trial court denied the motion. The trial court explained that the defendant was not entitled to any relief because the delay in question could not be attributed to the State.

¶ 14 After the trial court denied the defendant's other posttrial motions, the trial court sentenced the defendant to 42 years' imprisonment. Following the denial of his post-sentencing motions, the defendant filed a timely notice of appeal.

¶ 15 ANALYSIS

¶ 16 The defendant's first contention on appeal is that he was deprived of his right to a jury trial because he was "arraigned on a superseding bill of indictment and did not execute a jury waiver *** [as] to the new charges." Further, the defendant asserts that his jury waiver as to the original charges was premised on there being a deficiency in those charges.

¶ 17 The right to a trial by jury is a fundamental right guaranteed by our federal and state constitutions. *People v. Bracey*, 213 Ill. 2d 265, 269 (2004). Under section 103–6 of the Code of Criminal Procedure of 1963 (725 ILCS 5/103–6 (West 2008)), subject to exceptions not relevant here, "[e]very person accused of an offense shall have the right to a trial by jury unless * * * [it is] understandingly waived by defendant in open court." The validity of a jury waiver turns on the particular facts and circumstances of the case. *Bracey*, 213 Ill.2d at 269. Although the trial court is not required to provide a defendant with any particular admonishment or information regarding the constitutional right to a jury trial, it has a duty to ensure that any waiver of that right is made expressly and understandingly. *People v. Rincon*, 387 Ill. App. 3d 708, 717 (2008). Regardless of whether the defendant executed a written jury waiver, the record

must show that the defendant understandingly relinquished the right to a jury trial. *Bracey*, 213 Ill. 2d at 270.

¶ 18 When a defendant executes a jury waiver and the charges are later amended, the effectiveness of the waiver depends upon whether the amendment was formal, substantive, or whether new charges were added. *People v. Frey*, 103 Ill. 2d 327, 332-33 (1984). If the changes fall into one of the latter two categories, then an additional jury waiver must be executed as it cannot be said that the defendant understandably waived his right to a jury trial on the amended charge. *People v. Hernandez*, 409 Ill. App. 3d 294, 298 (2011).

¶ 19 On January 27, 2009, the defendant was charged by complaint with three counts of aggravated criminal sexual assault (720 ILCS 5/12-14(b)(1) (West 1996)) and three counts of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West Supp. 1999)). On March 20, 2009, the defendant was charged by indictment with the same six counts. However, the indictment improperly listed the predatory criminal sexual assault charges as being pursuant to section 12-14(b)(1) rather than 12-14.1(a)(1).

¶ 20 On October 3, 2011, after being fully admonished, the defendant executed a jury waiver. Defense counsel stated that the defendant wanted the trial court to hear the case. Defense counsel did not raise any concerns regarding the indictments.

¶ 21 On December 27, 2011, prior to the start of trial, the trial court *sua sponte* noted that "the citations in the bill of indictments seem inaccurate." The trial court further stated that, despite the technical inaccuracies, the charges "fit the offense" and were not subject to dismissal for failure to state an offense. Defense counsel explained that he was aware of the problem and had intended to raise the issue "after the State's case in chief" when jeopardy would have attached. The State asserted that the charges had been properly identified in the complaint and the

discrepancy between the complaint and the indictment was a result of "typographical errors." The trial court then granted the State's motion to amend the indictment.

¶ 22 On January 13, 2012, the State filed a superseding indictment. The new indictment changed the name of the offense listed in counts I through III from aggravated criminal sexual assault to predatory criminal sexual assault and listed the correct statutory citation (720 ILCS 5/12-14.1(a)(1) (West Supp. 1999)). Counts IV through VI in the new indictment were identical to the original complaint and correctly reflected the statutory citation.

¶ 23 On January 27, 2012, the parties discussed the superseding indictment. Defense counsel stated that he had "gone over it my client," and then waived reading of the charges and possible pleadings and pleaded not guilty. On January 30, 2012, the case proceeded to trial.

¶ 24 Here, we believe that the defendant's jury waiver remained effective after the State filed a superseding indictment. Although the State changed the name of some of the charges (from criminal sexual assault to predatory criminal sexual assault) and the applicable statute (from section 12-14(b)(1) to section 12-14.1(a)(1)), the underlying alleged conduct remained the same. Thus, the changes in the superseding indictment were merely formal, not substantive, and did not constitute the filing of any new charges. Although the defendant could have requested to withdraw his jury waiver after the State filed its superseding indictment, he did not. *People v. Hollahan*, 2015 IL App (3d) 130525, ¶ 22. Rather, the defendant did not assert that he wanted a jury trial until after his bench trial was over. We believe that the defendant's failure to do raise the issue before trial now precludes him from arguing now that he really wanted a jury trial. See *Frey*, 103 Ill. 2d at 333 (a defendant is not permitted "to gamble on the outcome before the judge without a jury and then if dissatisfied make a belated demand for a jury"); see also *People v. Smith*, 11 Ill. App. 3d 423, 425 (1973) (explaining, in *dicta*, that it is proper to deny a

defendant's motion to withdraw a jury waiver if it is not filed until after the bench trial had commenced).

¶ 25 The defendant further asserts that he originally waived his right to a jury trial because he believed that his attorney would attack the indictment based on the improper statutory citations. Although the defendant raised this issue in a posttrial motion, there is nothing in the record that indicates that before trial the defendant wanted anything other than a bench trial. Indeed, defense counsel specifically stated that the defendant wanted a bench trial because he wanted Judge Engelsma to hear the case. Again, as the defendant never sought to withdraw his jury waiver before trial, he cannot belatedly do so now after trial. See *Smith*, 11 Ill. App. 3d at 425.

¶ 26 We further reject the defendant's argument that, because the State filed a superseding indictment rather than an amended indictment, his jury waiver to the original indictment was not valid as to the superseding indictment. The defendant points out that in order to obtain a superseding indictment, the State presented the issue before a different grand jury, used the testimony of a different witness, received different questions from the grand jurors, and obtained a new probable cause determination from the grand jury. The defendant argues that as he was arraigned on the new charges following the superseding indictment, he should also have been required to give an affirmative indication that he still wanted to waive his right to a jury.

¶ 27 Here, although the State chose to seek a superseding indictment rather than amend the original indictment against the defendant, the nature of the charges against the defendant always remained the same. Thus, the defendant could not have been surprised by the superseding indictment as he knew the crimes he was accused of committing from the prior indictment. Cf. *Hernandez*, 409 Ill. App. 3d at 297 (waiver of right to jury trial for domestic battery charges was not valid as to later charges for obstruction of justice because defendant cannot give a waiver for

a charge yet unknown to him). As the validity of a jury waiver ultimately turns on the particular facts and circumstances of the individual case (*id.*), the defendant's jury waiver remained valid even after the superseding indictment was filed.

¶ 28 The defendant's second contention on appeal is that his right to a fair trial was violated when the State failed to disclose a police report of an interview with the victim that occurred six years before L.S.'s complaint in the instant case.

¶ 29 A defendant's constitutional rights are violated when the State fails to disclose material evidence favorable to the defense. *Brady v. Maryland*, 373 U.S. 83, 84 (1963). Evidence is material if there is a reasonable probability that the result of the defendant's trial would have been different had the prosecution disclosed the evidence. *People v. Anderson*, 375 Ill. App. 3d 990, 1011 (2007). A reasonable probability of a differing result is one sufficient to undermine confidence in the trial's actual outcome. *People v. Thomas*, 364 Ill. App. 3d 91, 101 (2006). To succeed on a *Brady* violation, the defendant must demonstrate that (1) the undisclosed evidence is favorable to him because it is either exculpatory or impeaching; (2) the evidence was either willfully or inadvertently withheld by the State; and (3) withholding the evidence resulted in prejudice to him. *People v. Rapp*, 343 Ill. App. 3d 414, 418 (2003).

¶ 30 The report at issue is a summary of an interview of the victim conducted by the Belvidere police department in 2003 regarding a relationship between C.D., a friend of the victim's who was a minor at the time, and a person, who may or may not have been an adult. The report in pertinent part states:

> "[L.S.] was asked if C.D. ever talked to the guy about her [C.D.'s] age. [L.S.] stated that she thought that C.D. and the guy had talked about her age. [L.S.] stated [presumably

based on a comment by C.D.] that the guy had told C.D. that he could get in trouble for having sex with C.D. because of her age."

¶ 31 The defendant argues that the report "contains an affirmative statement by L.S. that she understood that sexual contact between an adult [and a] minor was a crime, and that she was aware of this at the time C.D. was being abused." As such, the defendant asserts that the 2003 statement contradicts L.S.'s testimony that she did not know the defendant's abuse of her was wrong at the time, and she only realized the impropriety in 2003. The defendant further argues that L.S.'s 2003 statement contradicts the State's theory regarding how the defendant's sexual abuse became a routine in L.S.'s life.

¶ 32 We do not believe that the 2003 police report constituted "material" evidence; therefore, it was not subject to discovery pursuant to *Brady*. The 2003 police report does not reflect a statement by L.S. It was not written by her nor does it purport to be in her words or to be signed by her. It does not convey that she believed that one could get in trouble for having sexual relations with someone because of that person's age. Rather, the report indicates that "the guy" was concerned about that. Further, contrary to the defendant's assertion, the report does not contradict the State's theory that L.S. did not report the assaults sooner because she was unaware that the defendant's actions constituted an assault. The report simply sheds no light on that issue. As such, the defendant was not deprived of his right to a fair trial due to the State's failure to disclose that document.

¶ 33 We further note that, at oral argument, defense counsel insisted that the State "hid this and they got caught" (referring to the 2003 report). The record reveals that the 2003 report was discovered by the Belvidere police department when responding to a post-trial subpoena (apparently issued by the defendant). While it is apparent that the defendant knew that L.S. had

been interviewed in C.D.'s case, the defendant failed to show that the police or prosecutors either intentionally or inadvertently withheld the report. The Boone County Sheriff conducted the investigation in the instant case, not the Belvidere police department. Also, at oral argument, defense counsel conceded that a different assistant state's attorney prosecuted C.D.'s case.

¶ 34 There are three components to a *Brady* violation: (1) the evidence must be favorable to defendant, either because it is exculpatory or impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) the suppression resulted in prejudice. See *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). Prosecutors have an obligation to make sure there is a flow of information between their office and "various investigative personnel." Ill. S. Ct. R. 412(f) (eff. Mar. 1, 2001). The State's duty under this rule applies to the investigative personnel "involved in the case." *People v. Richardson*, 48 Ill. App. 3d 307, 310 (1977). Since the Belvidere police department was not involved in the case, knowledge of the 2003 report cannot be imputed to the State. The defendant has failed to show that the 2003 report was withheld by the State.

¶ 35 The defendant's third contention on appeal is that the trial court decided, prior to closing arguments, that he was guilty. The defendant takes issue with the trial court's comment denying his post-trial motions, stating:

> "I had nothing but the presumption of innocence going into this trial. Still did up until the final witness frankly."

The defendant interprets the trial court's comment as meaning that it *only* afforded the defendant the presumption of innocence until the final witness testified. However, the trial court did not use the term "only." We note that the trial court did not prevent defense counsel from providing a closing argument. Cf. *People v. Smith*, 205 Ill. App. 3d 153, 156-57 (1990) (trial court

indicated that it did not want to hear closing arguments because it already determined that defendant was guilty). Further, the comments that the defendant complains of were made following the trial, not during. See *People v. Bofman*, 283 Ill. App. 3d 546, 552-553 (1996). The trial court's posttrial comments do not establish that the defendant was deprived of a fair trial.

¶ 36 The defendant's fourth contention on appeal is that he was deprived of the effective assistance of counsel. The defendant argues that in pursuing a strategy based on a technical defect, defense counsel abandoned the type of rigorous investigation and trial preparation which would have allowed L.S.'s credibility to be so questioned. The numerous additional pieces of evidence discovered by post-trial counsel, including photographs, expert opinion, the 2003 sex abuse report, school records, and alibi witnesses, indicate that all of these materials were available and discoverable. Had defense counsel conducted a proper investigation, the defendant argues that there is a reasonable probability that the outcome of the case would have been different.

¶ 37 In order to succeed on a claim of ineffective assistance of trial counsel, a defendant must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Enis*, 194 Ill. 2d 361, 376-77, (2000). The defendant must establish both that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the outcome of the proceeding would have differed. *People v. Little*, 335 Ill. App. 3d 1046, 1052 (2003). A reviewing court may dispose of an ineffectiveness claim on the prejudice prong alone by determining that the defendant was not prejudiced by counsel's representation. *People v. Munson*, 171 Ill. 2d 158, 184 (1996).

¶ 38 Here, all of the additional evidence that the defendant argues his defense counsel should have discovered and presented to the trial court was in fact presented to the trial court during the posttrial proceedings. In response to the additional evidence, the trial court stated:

> "And I certainly don't find any prejudice *** and that I believe is the benefit of having been the trial judge who I actually made the finding rather than a jury. I can honestly sit and consider then all of the photographs that have been submitted, all of the affidavits that have been presented, and all the arguments made.
>
> * * *
>
> [B]ut I don't find any of that would be sufficient for me to change my mind as to what I heard on *** the final date of our trial.
>
> Now, could it be presented differently? Yes. Could a different presentation change my opinion—in other words, is there some evidence that's presented to me here that I can say, now, wait a minute, if I considered this now *** would that change my opinion as to what I heard back in 2012? And I would say it would not."

Based on the trial court's comments, it is apparent that even if defense counsel had submitted the additional evidence that the defendant now argues that he should have, the outcome of the trial would not have been different. Thus, the defendant was not prejudiced by his counsel's representation. See *id.*

¶ 39 The defendant also argues that defense counsel's performance was deficient as he failed to object to the numerous leading questions the State asked L.S. Generally, leading questions may not be used by the party calling the witness. *People v. Bunning*, 298 Ill. App. 3d 725, 732 (1998). The allowance of leading questions is within the sound discretion of the trial court, and its decision will not be reversed unless the court abused that discretion and defendant has been

substantially injured as a result. *People v. Schuldt*, 217 Ill. App. 3d 534, 542 (1991). Moreover, absent some indication in the record to the contrary, a trial judge in a bench trial is presumed to have considered only competent evidence. *People v. Naylor*, 229 Ill. 2d 584, 603 (2008). Based on the record before us, we find that defendant was not substantially prejudiced when the court allowed the use of leading questions during L.S.'s direct examination. See *Schuldt*, 217 Ill. App. at 542.

¶ 40 The defendant's next contention on appeal is that his due process rights were violated when there was an over 60 month delay between when the last instance of abuse occurred and when the original indictment was brought. The defendant argues that the trial court erred in denying his motion without making a factual determination as to whether he had suffered actual prejudice as a result of the preindictment delay.

¶ 41 At oral arguments, the defendant acknowledged that he had failed to raise this issue before trial, and it is therefore forfeited. See 725 ILCS 5/114(b) (West 2008); see also *People v. Fuentes*, 172 Ill. App. 3d 874, 876 (1988) (by failing to comply with the requirement that a motion to dismiss be made in writing and in a timely fashion, defendant is deemed to have waived any ground he may have had for his motion). However, although he did not argue this in his briefs, at oral arguments he asked that we consider this issue because his trial counsel was ineffective in failing to timely raise it. Alternatively, he asked that we consider it pursuant to the plain error doctrine.

¶ 42 In denying the defendant's motion to dismiss the indictment based on preindictment delay, the trial court explained that it did it not consider L.S.'s delay in reporting the sexual abuse something to be charged against the State but rather it just went to L.S.'s credibility and the weight that would be given to her testimony at trial. The trial court's comments demonstrate

that, had defense counsel raised the issue of preindictment delay in timely fashion, it still would have denied his motion to dismiss the indictment. As such, the defendant was not prejudiced by his counsel's representation on this matter and therefore he was not deprived of the effective assistance of counsel. See *Munson*, 171 Ill. 2d at 184.

¶ 43 Under Illinois' plain error doctrine, a reviewing court may consider a forfeited claim when:

> "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and 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 strength of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

The plain error doctrine is intended to ensure a defendant receives a fair trial, but it does not guarantee every defendant a perfect trial. *People v. Johnson*, 238 Ill. 2d 478, 484 (2010). Rather than operating as a general savings clause, it is construed as a narrow and limited exception to the typical forfeiture rule applicable to unpreserved claims. *Id.* The burden of persuasion rests with the defendant under both prongs of the plain error analysis. *People v. Sargent*, 239 Ill.2d 166, 190 (2010). In most cases, the reviewing court cannot correct the forfeited error unless the defendant shows that the error was prejudicial. *People v. Thurow*, 203 Ill. 2d 352, 363 (2003). The ultimate question of whether a forfeited claim is reviewable as plain error is a question of law reviewed *de novo*. *Johnson*, 238 Ill. 2d at 485.

¶ 44 Here, as set forth above, the trial court indicated that it would not have dismissed the indictment based on preindictment delay because L.S.'s delay in reporting the abuse just went to

her credibility and how much weight should have been accorded her testimony at trial. Thus, even if the trial court should have made more specific factual findings in ruling on the defendant's motion to dismiss based on preindictment delay (see *People v. Delgado*, 368 Ill. App. 3d 661, 664-65 (2006)), the defendant has failed to carry his burden of persuasion that those additional findings would have caused the trial to change its decision. Accordingly, as the alleged error does not rise to the level of plain error, the defendant is not entitled to any relief. See *Thurow*, 203 Ill. 2d at 363.

¶ 45 The defendant's final contention on appeal is that the trial court's 42-year sentence was excessive. The defendant argues that his supposed admission to Cary that he inappropriately touched L.S. was the only evidence that could potentially corroborate L.S.'s testimony that he had sexually abused her. As such, the greatest charge that he could be convicted of would be aggravated criminal sexual abuse of a family member (720 ILCS 5/11-1.60(b) (West 1998)), a class 2 felony. He therefore argues that his sentence should be modified to that of a Class 2 felony sentence.

¶ 46 The underlying premise of the defendant's argument—that in sex offense cases a conviction can be upheld only when there is either some corroboration of the victim's testimony by some other evidence, fact, or circumstance in the case, or the victim's testimony is otherwise clear and convincing—has been repudiated by our courts for over 20 years now. In *People v. Meador*, 210 Ill. App. 3d 829, 831 (1991), the court explained:

> "While [the standard articulated by the defendant] apparently has been the 'standard' applied in most sex offense cases in the past, we are reminded of the supreme court's declaration in *People v. Pintos* 133 Ill. 2d 286 (1989), that the reasonable doubt test as set forth in *Collins* should be applied in reviewing the sufficiency of the evidence in all

criminal cases. (133 Ill. 2d at 291.) We therefore choose with this opinion to join the fourth district in rejecting the prior standard of review in reviewing the sufficiency of the evidence in sex offense cases. We too believe the clear and convincing rule has outlived its usefulness, being both arbitrary and archaic in nature. (See *People v. Roy*, 201 Ill. App. 3d 166, 185 (1990); *People v. James*, 200 Ill. App. 3d 380, 394 (1990)). In no other category of crime is the testimony of the crime victim automatically suspect and held to a different standard in order to sustain a conviction. While it has been claimed that criminal charges involving sexual conduct are easier made and harder to defend against than in other classes of charges, so as to justify the use of the clear and convincing or corroboration rule (see, *e.g.*, *People v. Nunes*, 30 Ill. 2d 143 (1964)), the truth of the matter is that accused perpetrators of sex offenses are not in fact 'subject to capricious convictions by inflamed tribunals of justice,' but rather the opposite is more often true. (See Note, The Rape Corroboration Requirement: Repeal Not Reform, 81 Yale L.J. 1365, 1373–84 (1972).) We also note we have no jury instruction in this State which requires closer scrutiny of a sex-crime victim's testimony than that of other witnesses. (See *People v. Rincon–Pineda*, 538 P.2d 247 (1975) (use of such instruction specifically repudiated); see also *Taylor v. State*, 278 N.E.2d 273 (Ind.1972); *State v. Feddersen*, 230 N.W.2d 510 (Iowa 1975); Annot., 92 A.L.R.3d 866 (1979).) Nor do we have any instruction which directs the jury to make a preliminary determination whether a sex-crime victim's testimony is clear and convincing or substantially corroborated prior to arriving at a verdict. The use of such terminology on review serves only to cause confusion. We therefore choose to follow the dictates of *Pintos* and apply the standard of *Collins* in all future sex-offense cases."

¶ 47 Here, we decline to depart from the precedent set forth in *Meador*. Further, based on our review of the record, we find that the defendant was properly convicted of six class X felonies. As the sentences for a class X felony is punishable by a sentence between 6 to 30 years for each conviction (730 ILCS 5/5-8-1(a)(3) (West 1998)), and because the sentences here were mandated to be consecutive by statute (730 ILCS 5/5-8-4(a) (West 1998)), that meant that the defendant's possible sentence was between 36 and 180 years. As the 42-year sentence that the defendant received was near the statutory minimum, we do not find that the trial court abused its discretion in sentencing the defendant. See *People v. Madura*, 257 Ill. App. 3d 735, 740 (1994) (trial court's sentence that is within statutory limits is entitled to great weight and deference).

¶ 48 Finally, we note that at oral arguments, defense counsel repeatedly insinuated that the defendant could not get a fair trial because the "local" judges were under political pressure to find everyone charged with a sex offense of a child guilty. Defense counsel also insinuated that the there was a *quid pro quo* relationship between the trial court judge and the Boone County State's Attorney wherein the State's Attorney would help the trial judge get elected to a circuit judge position in exchange for the trial judge rendering verdicts favorable to the State. Further, defense counsel suggested that the trial court's failure to timely return to the court file some of L.S.'s medical records suggested that the trial court was biased against him. Although defense counsel did not raise this argument in the defendant's briefs, and he therefore improperly raised it for the first time in oral arguments (*People v. Thomas*, 164 Ill. 2d 410, 422 (1995)), we note that he did raise this argument below when he sought to substitute a different judge for the trial court judge. There, the trial court hearing the motion, Judge Brendan Maher, found that defense counsel's allegations were based on "virtually zero evidence" and just "speculation of the rankest sort." Judge Maher pointed out that the alleged *quid pro quo* was based on Judge Engelsma's

failed campaign in 2008, which was before the defendant was indicted in 2009. Judge Maher found that defense counsel's allegations were "treading dangerously close to, if not stepping one foot over, rules governing the conduct of attorneys licensed to practice law in the state of Illinois."

¶ 49 Here, when asked to support his outrageous allegations during oral arguments, defense counsel pointed to newspaper articles in the record in which the Boone County State's Attorney cited favorably the trial judge after he would convict someone against whom she had brought charges. Defense counsel also pointed to Judge Englesma's 2008 election filings. We can infer no sinister intent from these newspaper articles and press releases. Indeed, the Boone County State's Attorney appears to routinely issue press releases regarding criminal convictions, not just in cases before Judge Englesma. See, *e.g.*, *Man Sentenced for Sexual Assault Cases*, Belvidere Daily Republican, January 20, 2016, at http://revpnews.com/?p=5306, accessed January 22, 2016 (announcing that Judge Robert C. Tobin sentenced defendant to 20 years' imprisonment for committing aggravated criminal sexual assault). As to Judge Englesma's election filings, there is nothing within them that supports even the slightest inference that his desire to be elected a circuit judge prompted him to enter into an unethical relationship with the Boone County State's Attorney. Moreover, we certainly cannot say that the trial court's handling of L.S.'s medical records demonstrates that he was biased against the defendant. As we find defense counsel's attacks on the trial court's integrity to be completely baseless, we strongly admonish him to be more circumspect in making such allegations in the future.

¶ 50 CONCLUSION

¶ 51 For the foregoing reasons, the judgment of the circuit court of Boone County is affirmed.

¶ 52 Affirmed.