

NOTICE
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2013 IL App (4th) 120558-U

NO. 4-12-0558

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Coles County
THOMAS A. MILES,)	No. 10CF214
Defendant-Appellant.)	
)	Honorable
)	James R. Glenn,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, holding the trial court (1) properly ordered defendant to serve 100% of his sentence under the truth-in-sentencing provisions and (2) did not abuse its discretion in sentencing defendant to 67 years' imprisonment.

¶ 2 In September 2011, following a plea of guilty to the charge of first degree murder (720 ILCS 5/9-1(a)(1) (West 2010)), the trial court sentenced defendant, Thomas A. Miles, to a total of 67 years' imprisonment—32 years' imprisonment for first degree murder and 35 years' imprisonment for personally discharging a firearm that caused death or great bodily harm (730 ILCS 5/5-8-1(d)(iii) (West 2010)). The court also ordered defendant to serve 100% of his sentence.

¶ 3 Defendant appeals, asserting the trial court (1) erred in ordering defendant to serve 100% of his sentence and (2) abused its discretion in imposing a sentence of 67 years'

imprisonment.

¶ 4 We affirm.

¶ 5 I. BACKGROUND

¶ 6 In May 2010, the State charged defendant by information with three counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 2010)), alleging he shot and killed Calvin Crump. In June 2011, defendant entered an open plea of guilty to one count of first degree murder and the State dismissed the remaining counts. At the time defendant entered the plea of guilty, the trial court advised him of the possible sentencing penalties, which included a determinate sentence of between 20 and 60 years' imprisonment (730 ILCS 5/5-4.5-20(a) (West 2010)) and a firearm enhancement of 25 years to life imprisonment (730 ILCS 5/5-8-1(d)(iii) (West 2010)).

¶ 7 In support of the plea agreement, the State presented the following factual basis. In 2009, Stephanie Crump began dating defendant shortly after her divorce from her husband, Calvin Crump. Though Stephanie ended the relationship with defendant five months later, defendant continued to contact her, both harassing her at work and threatening to kill Calvin. In the meantime, Stephanie and Calvin reconciled and were considering remarrying. On May 9, 2010, defendant entered the Dollar General store where Stephanie was working and an altercation ensued. The police arrived and ordered defendant to leave the store, which he did. Later that evening, Calvin arrived at the parking lot of Dollar General to pick Stephanie up after work. At approximately 9 p.m., Stephanie heard a "loud boom" while closing the store. When she and another coworker went outside to investigate, they discovered Calvin lying facedown near the store entrance with a fatal shotgun wound to the chest. Numerous eyewitnesses placed defendant at the scene in a white, four-door, passenger car. Witness Dianne Peyton observed an

individual in the Dollar General parking lot hitting the windows of a truck with a shotgun, then witnessed that individual shoot Calvin at "point-blank" range.

¶ 8 After shooting Calvin, defendant returned home and attempted to commit suicide with his firearm. Though the shot was not fatal, it caused permanent disfigurement to defendant's face.

¶ 9 The trial court accepted defendant's plea of guilty and scheduled the case for sentencing. At the September 2011 hearing, the State presented testimony from Calvin's mother, who stated, since Calvin's death, she had difficulty sleeping and found herself waiting for Calvin's nightly phone call. The State then presented photographs of the crime scene and Calvin's body. Detective Sam Gaines of the Mattoon police department interviewed defendant, with permission from defendant's attorney, prior to sentencing. Defendant told the detective, on May 9, 2010, following his altercation with Stephanie at Dollar General, he went home, retrieved his shotgun, and loaded one round of ammunition. He then returned to Dollar General with the intention of committing suicide in front of Stephanie, thus causing her mental distress. When defendant arrived at Dollar General and found Calvin's vehicle in the parking lot, defendant changed his plans. According to the detective, defendant said he swung the shotgun into the windows on Calvin's car, which led Calvin to exit his vehicle. Defendant explained he pointed the shotgun at Calvin, who grabbed the end of the shotgun. When Calvin refused to release the shotgun despite defendant ordering him to do so, defendant pulled the trigger. At that point, defendant said he panicked, returned home, and loaded another round of ammunition into the shotgun. He then placed the shotgun under his chin and pulled the trigger in an attempt to commit suicide.

¶ 10 Stephanie presented a victim-impact statement to the court, in which she stated defendant "deserves life in prison for taking a life." She still worked at the same Dollar General store, which was a constant reminder that defendant took Calvin from her and their family. Due to defendant's actions, Stephanie said she was attending therapy, felt afraid of the dark, and was experiencing difficulty sleeping. In addition, the sight of blood triggered images in Stephanie's mind of Calvin bleeding to death. She also discussed how defendant's actions deprived her children of a father and role model, something she could not just "fix."

¶ 11 Defendant presented testimony from his adult daughter, who described her relationship with her father as "excellent." Although she lived in Florida, as a child she visited her father every summer and on school breaks. According to defendant's daughter, her parents, though divorced, maintained an amicable relationship. She also noted defendant had been suffering from insomnia, depression, and anxiety, conditions for which she believed he had not been properly medicated. She further noted that, since his attempted suicide, defendant's medications had been properly regulated and he was a "totally different" person.

¶ 12 Defendant's sister testified similarly, noting defendant's doctors were constantly changing his medications and did not appear to be monitoring him properly. Since his suicide attempt, she noted a "complete turnaround" in his behavior. Additionally, defendant presented several written statements from family members, who emphasized defendant's contributions to society and asserted his behavior was attributable to the medications prescribed to treat his mental illness.

¶ 13 In his written statement in allocution, defendant expressed remorse for his actions, writing, "Because of my actions of that night, a human life was taken. *** I will carry this burden

for the rest of my life, and deservedly so. *** I'm truly very, very sorry for what I have done."

The letter then went on to state that defendant went to Dollar General on the night of the shooting in order to commit suicide in front of Stephanie "to make her feel guilty about breaking up with me." He added, "When I got there, Calvin pulled in the drive right before I did, and I just started to mash [*sic*] the windows, and he grabbed the barrel of the gun and [I] panicked, pulled the trigger." The written statement ended with, "I ask for forgiveness from all that I have caused great pain and hurt and expect and deserve none." Defendant then personally addressed the courtroom, saying, "I'm truly sorry, sorry to everybody in the room, but especially for Calvin's family. I can't say that I liked him, but I didn't want to kill him. I just can't believe it."

¶ 14 In preparation for the sentencing hearing, the probation office prepared a presentence investigation report highlighting defendant's criminal and social history. Defendant had two prior misdemeanor convictions for domestic battery in 1995, for which he received and successfully completed probation. He acknowledged his guilt, expressed remorse for his actions, and understood he was going to be sentenced to prison. Defendant graduated high school and completed some college courses. He also served in the United States Marine Corp from 1986 to 1990, when he was honorably discharged. Following his discharge from the military, defendant worked in the same job for 18 years until he was charged with this offense. Prior to the offense he owned a home, but at the time of sentencing that home was in foreclosure and defendant resided with his parents. Defendant regularly attended church and volunteered at a food pantry. However, defendant also experienced depression and thoughts of suicide that persisted despite seeking counseling. Due to his suicide attempt, defendant suffered extensive facial injuries, requiring multiple surgeries to correct.

¶ 15 Following the presentation of evidence, the State recommended the court impose a sentence of 75 years' imprisonment, apportioned as 50 years' imprisonment for first degree murder and 25 years' imprisonment for the firearm enhancement. Defendant recommended the "minimum sentence."

¶ 16 The trial court sentenced defendant to serve a total of 67 years' imprisonment. Of that, the court sentenced defendant to 32 years' imprisonment for first degree murder and 35 years' imprisonment as a firearm enhancement. The court also imposed restitution of approximately \$12,000.

¶ 17 In reaching its decision, the trial court noted it considered (1) the evidence and exhibits presented, (2) the presentence investigation report, (3) the financial impact statement from the Department of Corrections, (4) Stephanie's victim-impact statement, and (5) defendant's statements. The court remarked defendant had been a productive citizen until May 2010—he had been employed for 18 years, honorably discharged from the Marines, owned a home, and maintained a relationship with his daughter. Also in mitigation, the court stated defendant led a law-abiding life for a substantial period of time. That being said, the court believed the nature of defendant's prior domestic battery convictions against his ex-wife were relevant to its sentencing decision.

¶ 18 The trial court found as a strong factor in aggravation the need to deter other distraught individuals from attempting to do harm to others after a failed relationship. The court also found it significant that defendant went to the Dollar General store with the intent to cause mental harm to Stephanie. In addition to the potential harm to Stephanie and actual harm to Calvin, the court found defendant's actions threatened serious harm to bystanders.

¶ 19 In October 2011, defendant filed a motion to reconsider sentence, asserting the sentence was excessive. Following a June 2012 hearing, the trial court denied the motion to reconsider sentence.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant asserts the trial court (1) erred in ordering defendant to serve 100% of his sentence and (2) abused its discretion in imposing a sentence of 67 years' imprisonment. We address these contentions in turn.

¶ 23 A. Firearm Enhancement

¶ 24 Defendant argues the trial court erred by ordering him to serve the entirety of his sentence at 100%, arguing he is entitled to day-for-day credit on the 35-year firearm enhancement imposed by the court. We disagree.

¶ 25 Questions of statutory interpretation, such as determining whether the firearm sentencing enhancement constitutes a separate offense from first degree murder, are subject to *de novo* review. See, e.g., *People v. Robinson*, 172 Ill. 2d 452, 457, 667 N.E.2d 1305, 1307 (1996).

¶ 26 First, we note defendant failed to raise this issue in his motion to reconsider sentence. However, that deficiency is not fatal to defendant's claim because a void sentence may be challenged at any time, in any court. *People v. Thompson*, 209 Ill. 2d 19, 25, 805 N.E.2d 1200, 1203 (2004). A void sentence is one that does not conform to statutory requirements; thus, a trial court imposing such a sentence would be entering an order beyond its inherent power and jurisdiction. *People v. Burse*, 2012 IL App (4th) 100973, ¶ 14, 970 N.E.2d 1276; *People v. Wade*, 116 Ill. 2d 1, 5, 506 N.E.2d 954, 955 (1987).

¶ 27 Defendant concedes he must serve 100% of his sentence for first degree murder. See 730 ILCS 5/3-6-3(a)(2)(i) (West 2010) (a defendant convicted of first degree murder must serve 100% of his sentence). However, he asserts the mandatory firearm enhancement constitutes a separate penal offense for the use of a firearm during the commission of first degree murder. Thus, defendant asserts, as the offense constituting the use of a firearm during the commission of first degree murder is not specifically listed under the truth-in-sentencing statute (730 ILCS 5/3-6-3 (West 2010)), the offense, by default, is subject to day-for-day sentencing credit.

¶ 28 The State, relying on *People v. White*, 2011 IL 109616, 953 N.E.2d 398, argues "first degree murder is a single offense" and that "there is no separate offense of 'armed murder' or 'enhanced murder.'" *White*, 2011 IL 109616, ¶ 26, 953 N.E.2d 398. We agree.

¶ 29 First degree murder "by use of a firearm" is not a distinct offense from first degree murder; rather, the use of a firearm during the commission of first degree murder is a question of fact from which the jury determines the *manner* in which the defendant committed the offense of murder. See *People v. Bloomingburg*, 346 Ill. App. 3d 308, 325-26, 804 N.E.2d 638, 652 (2004) ("The focus of the firearm-enhancement provision is the *manner* in which the death occurred, not the fact that it occurred." (Emphasis in original)). Generally, a person convicted of first degree murder (720 ILCS 5/9-1 (West 2010)) faces a determinate sentence between 20 and 60 years' imprisonment. 720 ILCS 5/5-4.5-20(a) (West 2010). However, that penalty is subject to enhancement under section 5-8-1 the Unified Code of Corrections (Unified Code) if the individual charged with first degree murder "personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another

person," at which point "25 years or up to a term of natural life *shall be added* to the term of imprisonment imposed by the court." (Emphasis added.) 730 ILCS 5/5-8-1(d)(iii) (West 2010).

¶ 30 The rules of statutory construction require us to give meaning to each word contained within the statute so that no language is rendered superfluous. *People v. Gutman*, 2011 IL 110338, ¶ 12, 959 N.E.2d 621. We begin by looking at the plain language of the statute with regard to the word "added." See *People v. McClure*, 218 Ill. 2d 375, 382, 843 N.E.2d 308, 312 (2006) (the best indicator of legislative intent is the plain, unambiguous language of the statute). To "add" is defined as "to join or unite so as to bring about an increase or improvement" and to "combine (numbers) into an equivalent simple quantity or number." Merriam-Webster's Collegiate Dictionary 13 (10th ed. 2000). In this instance, the requirement in section 5-8-1(d)(iii) of the Unified Code (730 ILCS 5/5-8-1(d)(iii) (West 2010)) that an enhancement of 25 years to life "shall be *added* to the term of imprisonment imposed by the court" (emphasis added) clearly serves to increase the penalty for committing first degree murder when the defendant commits the offense with a firearm; it does not create a new offense. Because the sentencing enhancement attaches to and increases the penalty for the offense of first degree murder, it logically follows that the enhancement is subject to the same truth-in-sentencing provisions as the offense to which it attaches. See *People v. Alvarado*, 2013 IL App (3d) 120467, ¶ 21, 993 N.E.2d 1122 (a sentencing enhancement is subject to the same truth-in-sentencing provision as the underlying offense).

¶ 31 We find additional support for our interpretation by looking to the current criminal Illinois Pattern Jury Instructions. Chapter 28 provides instructions regarding sentencing enhancements such as the firearm enhancements for murder cases. Illinois Pattern Jury

Instructions, Criminal, Nos. 28.00 to 28.06 (4th ed. Supp. 2009). The instructions plainly state the jury is to first determine whether the defendant is guilty of the underlying offense, *i.e.*, first degree murder, then determine whether the State has proved the factors necessary to impose the sentencing enhancement. Illinois Pattern Jury Instructions, Criminal, No. 28.04 (4th ed. Supp. 2009). Thus, the firearm enhancement is dependent upon a finding of guilt on the underlying offense; the jury could not reach the question of whether the State proved beyond a reasonable doubt the allegation that defendant personally discharged a firearm resulting in death or great bodily harm without first finding the defendant guilty of first degree murder. Accordingly, we conclude the firearm provision is an enhancement of defendant's first degree murder charge, not a separate offense, and is therefore subject to the same truth-in-sentencing provision as the underlying offense.

¶ 32 B. Whether Defendant Received an Excessive Sentence

¶ 33 Defendant next claims the 67-year sentence imposed by the trial court was excessive. The court's sentence will not be overturned absent an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010). In sentencing, it is the court's role to balance the retributive and rehabilitative purposes of incarceration. *People v. Haley*, 2011 IL App (1st) 093585, ¶ 63, 960 N.E.2d 670. The court should consider "the defendant's history, character, rehabilitative potential, the seriousness of the offense, the need to protect society and the need for deterrence and punishment." *People v. Johnson*, 2013 IL App (1st) 103361, ¶ 48, 987 N.E.2d 412 (citing *People v. Lamkey*, 240 Ill. App. 3d 435, 442, 608 N.E.2d 406, 411 (1992)). The weight given to the factors in mitigation and aggravation depends on the circumstances of each case. *People v. Toney*, 2011 IL App (1st) 090933, ¶ 64, 957 N.E.2d 939.

The reviewing court must presume the trial court properly considered the factors in aggravation or mitigation, and that presumption will not be overcome unless the complaining party presents explicit evidence to the contrary. *People v. Flores*, 404 Ill. App. 3d 155, 158, 935 N.E.2d 1151, 1155 (2010).

¶ 34 In this case, the trial court outlined the reasoning behind defendant's sentence in great detail. The court focused on the aggravating factor of deterrence so as to dissuade individuals from acting rashly out of emotional turmoil. The court also focused on defendant's intention when he arrived at Dollar General—to cause mental harm to Stephanie—an intention he fulfilled by killing her ex-husband. The fact that defendant left Dollar General and returned with a firearm with the intention of harming someone—whether himself or someone else—demonstrates a great need to protect the public from the deliberate actions of emotionally wrought individuals. Thus, it was appropriate for the court to focus on deterrence and protection of the public in considering the factors in aggravation

¶ 35 Though defendant presented evidence in mitigation, the trial court found those factors to be far outweighed by the factors in aggravation. The court recognized defendant's military service and contributions to society. Though defendant lacked recent or extensive criminal history, the court found the nature of the prior offenses relevant. Defendant demonstrated a history of violence toward his significant others upon the dissolution of the relationships by (1) committing acts of domestic battery against his ex-wife in 1995 and (2) intentionally inflicting emotional harm on Stephanie. Not only that, but defendant's actions in this instance threatened the safety of any bystanders who might have been in the general area. Thus, under the circumstances, we conclude the court's decision to impose a cumulative sentence

of 67 years' imprisonment was not an abuse of discretion.

¶ 36

III. CONCLUSION

¶ 37

For the reasons stated, we affirm the trial court's sentence. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 38

Affirmed.