2018 IL App (5th) 140567-U

NO. 5-14-0567

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Clinton County.
	)	
v.	)	No. 09-CF-16
	)	
SCOTT P. ENDICOTT,	)	Honorable
	)	Dennis E. Middendorff,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the order of the circuit court of Clinton County that denied the defendant's motion to withdraw his guilty plea or, in the alternative, modify or vacate his 60-year first-degree murder sentence. No *bona fide* doubt as to the defendant's fitness existed; therefore, there was no basis for the trial court to have, *sua sponte*, ordered a fitness hearing. Moreover, the defendant's guilty plea was not the result of ineffective assistance of trial counsel, and the defendant's sentence was not excessive and did not constitute an abuse of the trial court's discretion.

¶ 2 The defendant, Scott P. Endicott, appeals the order of the circuit court of Clinton County that denied the defendant's motion to withdraw his guilty plea or, in the alternative, modify or vacate his 60-year first-degree murder sentence. For the following reasons, we affirm.

¶ 3 FACTS

¶ 4 The record on appeal in this case consists of nearly 5000 pages of documents. Accordingly, in the interest of concision, we shall state only the facts necessary to our disposition of this appeal. On February 5, 2009, the defendant was charged by information (and later by indictment) with six counts of first-degree murder for beating to death three-year-old J.S., who was the son of the defendant's then-girlfriend, Valerie Schoolfield. All six counts alleged that the defendant struck J.S., or caused him to be struck, causing the death of J.S. Counts I and II were "natural life eligible," because they alleged the defendant's murder of J.S. "was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty as set forth" by statute. Counts III and IV were "extended term eligible–60 to 100 years," because J.S. "was under 12 years of age at the time of his death as set forth" by statute. Counts V and VI included a possible sentence of 20 to 60 years in the Illinois Department of Corrections.

¶ 5 Attorney Stewart Freeman was appointed to represent the defendant. Because the possibility existed that the State would seek the death penalty, Freeman requested the appointment of capital litigation counsel, noting that he had applied to the capital litigation bar to become lead counsel, met all the requirements, but had not yet heard back from the bar. Accordingly, on March 11, 2009, attorney John J. O'Gara, Jr., was appointed to serve as lead counsel in the case. Shortly thereafter, because a second capital litigation attorney was required by statute and Freeman still had not heard back from the capital litigation bar, attorney Brian Trentman was appointed to represent the defendant as well. Discovery and trial preparations continued. On August 11, 2009, Trentman was allowed to withdraw, because Freeman had at that point been admitted to the capital litigation bar and Trentman's services were no longer required.

¶ 6 On July 15, 2010, less than one week before *voir dire* in the defendant's jury trial was scheduled to begin, the State moved, during a pretrial hearing, to file a withdrawal of its notice of intent to seek the death penalty. The trial court noted that the filing had the effect of, *inter alia*, vacating O'Gara's appointment as counsel. Once the death penalty was off the table, the defendant again faced the possibility of natural life in prison if convicted of counts I or II, the possibility of an extended term of 60 to 100 years on counts III and IV, and a sentence of 20 to 60 years on counts V and VI. Freeman continued as the sole counsel for the defendant.

¶ 7 On July 23, 2010, testimony in the defendant's jury trial began. On that day, the State presented its first seven witnesses, the final of whom was Detective Charlie Becherer of the Clinton County sheriff's department, who testified about, *inter alia*, separate cell phone records of both the defendant and Valerie Schoolfield. The records were admitted into evidence as People's Exhibit No. 15 (the defendant's cell phone records) and People's Exhibit No. 16 (Valerie Schoolfield's cell phone records). Because it was late in the afternoon, the State reserved the right to recall Detective Becherer to testify in detail about the records. The trial was recessed until the following Monday morning.

¶ 8 On Monday, July 26, 2010, when the jury trial resumed, the State presented the testimony of four additional medical witnesses, then recalled Detective Becherer to the witness stand. Detective Becherer testified in detail about his investigation of J.S.'s death, including about how the defendant became a suspect, problems with the story that was presented to authorities about how J.S. received his fatal injuries, and his interviews of the defendant and other witnesses. Following his testimony, the State again reserved the right to recall Detective Becherer to testify in detail about the cell phone records of the defendant and Valerie. Outside the presence of the jury, as the parties discussed the following day's schedule, the State indicated that it planned to begin the third day of the defendant's jury trial with Detective Becherer testifying about the text

messages and phone calls between the defendant and Valerie around the time of J.S.'s injuries and death.

¶ 9 On Tuesday, July 27, 2010, when the jury trial resumed, the trial court noted, outside the presence of the jury, that Freeman had requested and received additional time to meet with the defendant and the defendant's parents. Freeman then announced that there was "a partially-negotiated plea" in the matter. He explained that the defendant would "enter a plea of guilty, pursuant to *Alford v. North Carolina*, Your Honor, and not admit that he actually committed the crime, but that there would be enough evidence that the jury would find him guilty" of counts V and VI. After confirming the details of the plea agreement with the State, the trial court addressed the defendant directly to ensure that he understood the agreement. The defendant stated that he did. The trial court then inquired of the defendant about the defendant's age, education level, employment status prior to his arrest, ability to read and understand English, ability to hear and understand what he was being told, and whether he needed more time to meet with Freeman. The defendant answered the foregoing questions appropriately, stated that he did not need more time to meet with Freeman, had not been pressured to enter the plea agreement, had not been promised anything or threatened with anything to enter the plea agreement, and understood that although the State had the right to enter the plea agreement, the sentencing of the defendant would be "entirely up to" the trial court. When asked if he had any questions, the defendant stated, "No." He was then asked, for a second time, if he needed more time to consult with Freeman about "any of this." He answered, "No." The contents of counts V and VI were then read again to the defendant and he was asked if he understood the charges of each count. He answered that he did. He was asked if he had any questions about the charges. He answered, "No." He was asked a third time if he needed more time to consult with Freeman. He answered, "No." He was then admonished about the range of sentencing for counts V and VI, which was 20

to 60 years for each count, and told that "[t]here is no day-for-day good time as to either of these counts." He stated that he understood both the sentencing range and the fact that he would "have to serve the entire sentence" he was given under the plea agreement. He was admonished as to mandatory supervised release, and stated that he understood that as well.

¶ 10 Next, the trial court asked the defendant if he had any questions about the possible penalties he faced. The defendant answered that he did not. He was told that he was "not required to enter into any kind of plea," and that he had "an absolute right to have a trial, either by a jury or by a judge." He agreed that he understood that. Upon further questioning, he stated that he understood and had no questions about the fact that he could continue with his current trial if he so chose, and that by entering the plea, the trial would not continue and he would be waiving his right to have the jury decide if he had been proved guilty beyond a reasonable doubt. He was further admonished, in detail, about the various rights he was waiving by entering the plea agreement. He stated that he understood, and wanted to go ahead with the plea. He then pleaded guilty to count V and count VI. The trial court asked if there was a written plea. Freeman produced a document entitled "Plea of Guilty and Waiver of Jury, Pursuant to *Alford v. North Carolina*." The defendant was asked if he had "had a chance to go over this document" with Freeman. The defendant answered, "Yes." The trial court then read the document to the defendant and asked him if he understood it. The defendant answered, "Yes." He was asked if he needed "any more time to discuss" the document with Freeman. The defendant answered, "No." He was asked if there was anything about the document that he did not understand. The defendant answered, "No." He was asked if he had signed the document in open court that day, to which he answered, "Yes." He was asked if he understood that by signing it and having Freeman present it to the court, he was "in fact entering a guilty plea on these two counts." He answered, "Yes."

¶ 11 The trial court then acknowledged that the admonishments had "taken some time here," but added, "But obviously it is a big step for you, and I want to make absolutely certain you understand everything we have discussed." He then asked, "Is there anything we have discussed that you do not understand?" The defendant answered, "No." The trial court then asked if there was "anything we have discussed" that the defendant wished to talk to Freeman about further. The defendant answered, "No." The trial court stated that Freeman had to give the defendant advice, and "your parents have to talk to you and give you advice, as parents do, but the final decision in any case is on the person accused. And in this case, it is on you. You understand that?" The defendant answered, "Yes." The trial court asked, "Is this your decision?" The defendant answered, "Yes." The trial court found, on the basis of the trial proceedings to date, including the evidence admitted such as the transcripts of the text messages between the defendant and Valerie, and the testimony in previous evidentiary hearings in the case, that a sufficient factual basis existed for the defendant's guilty plea. The trial court found the defendant guilty of counts V and VI, and upon movement by the State as per the plea agreement, dismissed counts I-IV.

¶ 12 The trial court then stated, "I find further, based on [the defendant's]–not only his appearance and his answers in open court today, but his appearance and answers in previous hearings, his participation in these proceedings, that he understands the charges, the possible penalties, and his rights. And that the plea is knowingly and voluntarily made." The trial court ordered a presentence investigation (PSI) and suggested that sentencing be set "about 60 days out" so that the probation office had adequate time to consider the mitigation evidence the defense would offer. The sentencing hearing was subsequently set for September 29, 2010.

¶ 13 On August 24, 2010, Freeman filed for the defendant a motion to withdraw guilty plea, contending the defendant had been "coerced" into pleading guilty. On August 25, 2010, Freeman

filed a motion to withdraw as counsel. On September 1, 2010, the State filed an objection to Freeman's motion to withdraw as counsel, as well as a motion to strike or dismiss the motion to withdraw guilty plea. That same day, a hearing was held on the motion to withdraw as counsel. The trial court confirmed with the defendant that the defendant wanted Freeman to withdraw as his counsel. When asked why he wanted to discharge Freeman, the defendant stated, "Because I believe that he lied to me and he also lied to my parents, and I believe that he didn't exercise all my possible defenses before trial." He subsequently stated that he believed Freeman insinuated to the defendant that the defendant would "get the minimum" if he pleaded guilty. Freeman clarified that in his motion to withdraw guilty plea, he was alleging, at the request of the defendant, that it was the defendant's parents who "coerced" the defendant into pleading guilty. The trial court denied the motion to withdraw as counsel, and held in abeyance, until after the sentencing of the defendant, the motion to withdraw guilty plea.

¶ 14 On September 29, 2010, the defendant's sentencing hearing was held. With regard to the PSI, upon request by Freeman, the trial court stated it would not consider, as factors in aggravation, multiple prior arrests of the defendant that did not result in charges. The trial court also stated that it would not consider evidence of violence by other members of the defendant's family, because that evidence was not relevant to fashioning a sentence for the defendant. In aggravation, the State presented, *inter alia*, evidence of the fact that at the time the defendant murdered J.S., the defendant was out on bail in a pending misdemeanor domestic battery case in Madison County that alleged the defendant had battered J.S. on a previous occasion, and of the fact that at the time the defendant murdered J.S., there was a protective order in place that barred Valerie from allowing J.S. to be in the defendant's presence. The State then presented the live testimony of a law enforcement officer who testified that from the time J.S. was injured early on January 21, 2009, until he was taken to the hospital several hours later, the computer in J.S.'s

home was used to periodically access the internet, visiting "[p]rimarily pornographic sites," and the testimony of a relative of J.S. who presented a victim impact statement.

¶ 15 In mitigation, the defendant presented the testimony of the defendant's parents, as well as that of mitigation specialist Danielle Waller. The defendant then offered a statement in allocution. In his mitigation argument, Freeman contended that aside from the arrests the trial court had agreed not to consider, the defendant's criminal history consisted of criminal trespass to a residence, for which he received court supervision, and a conviction for disorderly conduct, as well as "some minor traffic issues dealing with speeding." Because of the defendant's "lack of priors" and purported remorse, Freeman argued the defendant should be sentenced to the minimum penalty available–20 years in prison. The State argued that the evidence showed that: (1) when J.S. was murdered, the defendant was home alone with him, despite the fact that the defendant knew he was not supposed to be in the presence of J.S.; (2) as J.S. lay dying from the beating he received from the defendant, the defendant was periodically accessing pornographic websites; (3) by the time the defendant was 22 years old, he had the aforementioned criminal history, which included 17 traffic violations and a suspended driver's license; (4) the defendant was physically abusive toward a former girlfriend; (5) the defendant had a poor school record and a poor work record, having been fired on four occasions during a four-year period, as well as mental health issues that he refused to get treatment for; (6) the text message evidence showed that the defendant and Valerie attempted to cover up the defendant's murder of J.S.; and (7) the defendant had physically abused J.S. on other occasions prior to murdering him. The State argued for the maximum sentence of 60 years in prison.

¶ 16 Following argument, the trial court stated that in considering a sentence for the defendant, there were "certain statutory factors in mitigation and aggravation" that the trial court was "required to consider." When discussing some of these factors, the trial court stated, *inter*

alia, that he found it a factor in aggravation that the defendant knew he was not to have contact with J.S., but did so anyway. The trial court also noted that it was required to consider the defendant's rehabilitative potential. The trial court subsequently stated that having weighed the factors, "this court cannot find any factors in mitigation other than the single factor that [the defendant's] prior history was not substantial." The trial court sentenced the defendant to 60 years in prison, then vacated Freeman's appointment to represent the defendant and appointed new counsel to represent the defendant on his motion to withdraw guilty plea and any amendments thereto, including amendments related to sentencing.

¶ 17 On June 21, 2012, a hearing was held on the defendant's amended motion to withdraw guilty plea. The defendant was represented by attorney Stanley Brandmeyer. Detective Becherer testified that during his second interview of the defendant, which took place on February 5, 2009, the defendant asked to be removed from the cell in the Clinton County Jail where he was being held, because the defendant was scared of being harmed by other individuals in the cell. Detective Becherer testified that when he returned the defendant to the jail after the interview, he told Correctional Officer Brian Hanson about the defendant's fear of being beaten up, and that Hanson told him he had talked to the sheriff and the matter had been taken care of. Detective Becherer testified that the defendant had not previously been harmed by other inmates, but that he later learned that after the interview on February 5, 2009, the defendant was "assaulted" by other inmates.

¶ 18 Hanson testified that as he was transporting the defendant to the February 5, 2009, interview with Detective Becherer, the defendant stated that he thought he was going to be assaulted. Hanson testified that he did not believe the defendant would be assaulted, because there had been "no indications from other inmates he was going to be assaulted," and because Hanson and other correctional officers who monitored the cameras in the jail were watching the

cameras and "everything was normal." Hanson testified that the defendant was housed in a six-person cell with five other inmates, one of whom was a federal prisoner, Peter Flores. He testified that after the defendant was returned to the cell following the interview with Detective Becherer, the defendant was assaulted by Flores. He did not recall that any other inmates were involved. He and two other officers ran to the cell to break up the fight. When they arrived, the defendant was "by his bunk on the floor laying on the concrete in a crouched position." He did not believe the defendant fought back. He then moved the defendant to a different cell, which the defendant had to himself, and asked the defendant if he needed medical attention. The defendant declined medical attention and "stated he was fine." Hanson testified that the defendant remained in isolation for the following 16 months, until his trial; sometimes the defendant was by himself in the isolation cell, other times he shared it with one other inmate, who would be someone who could not be housed in the general population because of "threats made against him, any suicidal issues, any mental concerns," or discipline issues. Hanson testified that although the defendant did not ever express to him that he was contemplating suicide, Hanson was aware of "a couple incidents where he's talked to a few counselors." He testified that he believed the defendant "tried" to "slit his wrists" on one occasion, and he believed the defendant was taking antidepressants while in the jail. He agreed with Brandmeyer's characterization that at some point during the defendant's stay in the jail, the defendant "squirreled away some of the pills that were going to be given to him" so the defendant "could take them all at one time and commit suicide."

¶ 19 On cross-examination, Hanson testified that the wrist incident took place on September 9, 2010, and that the "incident involving the pills" took place on January 13, 2010. The defendant met with a mental health professional, Jack Koch, from the Community Resource Center in Carlyle after the pill incident on January 13, 2010. Hanson testified that the defendant was not

taken to the hospital following the September 9, 2010, wrist incident because "[i]t was kind of a superficial wound" that did not require sutures, "wasn't bad enough to be seen by medical staff," and so they "just cleaned it up and [gave] him a Band-Aid." On redirect examination, Hanson testified that after the defendant pleaded guilty, he believed the defendant was placed in what Brandmeyer characterized as a "straightjacket" as a precaution, for the defendant's own safety, upon the advice of the sheriff. On recross examination, Hanson testified that he could not recall if the straightjacket day was the day the defendant pleaded guilty, or the day he attempted to cut his wrists.

¶ 20 O'Gara testified that he believed that at the time he was discharged from the case, he "had a closer relationship" with the defendant than did Freeman. He testified that prior to that, he had a mock jury that was split into two different areas and that came back with a not guilty verdict. He testified that he told the defendant that "when you do a mock jury, the verdict doesn't matter," and that he did not notice a change in the defendant's affect at that time. He explained the problems of reliability with mock juries, and testified that "[t]here were some flaws that I saw in the–in the results that we got." He testified that when the mock jury was asked to assume that the defendant was found guilty and to then determine what his sentence would be, "[a]ll the jurors voted death." O'Gara testified that on the third day of the defendant's jury trial, he received a call from Freeman, who indicated that he, the defendant, and the defendant's parents were discussing a possible plea deal "where life or extended term would be off the table and the range would be 20 to 60 years." O'Gara testified that the defendant's father told him he had been reading newspaper accounts of the trial, and that the defendant's father "was very distraught about the medical evidence and what was going on during trial and really thought it was just going very poorly." He agreed with Brandmeyer's characterization that the defendant trusted the defendant's father "completely." O'Gara testified that he presumed he was on speaker phone

during the call with Freeman, that he heard the defendant speak, and that the defendant "asked a few questions" and "was part of the conversation." O'Gara testified that when asked his opinion of the possible plea deal, he told them the State had "taken death off the table, they're taking life off the table, you got–you got a chance to get an outdate when you have a term of years."

¶ 21 With regard to the defendant's fitness to stand trial, O'Gara testified that Dr. Killian, who examined the defendant for the defense, never raised concerns about that, and that Dr. Killian's report was "to the contrary." He testified that the defendant told him that if the defendant was convicted, there would be no need for a sentencing hearing because the defendant would kill himself. He was aware that in early 2010 the defendant "accumulated some pills" but testified, "I don't know how far it got though."

¶ 22 On cross-examination, O'Gara testified that he respected Freeman's ability as an attorney, that Dr. Killian had "a very good reputation" and had "testified a number of times for the State as well as the defense [in other cases]." He testified that he believed that if either the defense's expert mitigation specialist, Danielle Waller, or Dr. Killian, had had concerns about the defendant's fitness to stand trial, they would have brought them to his attention. He testified that neither of them did so. He testified that at no point in time did he have concerns about the defendant's fitness. He testified that he was aware of "the incident of hoarding of pills," the assault on the defendant by Flores, and that Dr. Killian had diagnosed the defendant with depression. O'Gara testified that "there was nothing in there that indicated that it would have risen to the level of psychotic thoughts or behavior, nor would it have in any way impacted on his ability to understand what was going on in the nature and purposes of the proceedings, nor was there ever a time I was concerned that he was impacted mentally in some way to be able to not cooperate and work with us. I just did not see that." He testified that, "Ethically, I saw

nothing that would have allowed me to come into court and file a motion for fitness based on any *bona fide* doubt about that we had."

¶ 23 O'Gara testified that he reviewed the evidence in the case with the defendant, they discussed the difficulties in winning an acquittal for the defendant, and that the defendant told O'Gara that he believed he would be convicted. With regard to the phone call from Freeman on the day the defendant pleaded guilty, O'Gara testified he did not have any reason "to believe that anything had been hidden from [the defendant] or that he was *** in any way being coerced to plead guilty." O'Gara testified, "The impression I had was that he had had a very bad day in court the day before," and that on the third day of the trial, "[t]he text messages were yet to come" and that other evidence was to be adduced that was "not going to be helpful" to the defendant. He testified that after being told on the phone "how bad the day was before," and after having read about it in the newspaper himself, he believed it was necessary for counsel to discuss the possibility of a plea deal with the defendant so the defendant would know his options. O'Gara testified, "If you think you're going to lose this trial, you have to do a cost-benefit analysis." He testified that he told the defendant "you need to cut your losses as best as you can" and that he recommended the defendant take the deal. He testified that based on his knowledge of the case, he believed the defendant "was going to get convicted." When asked if he believed there were any deficiencies in Freeman's representation of the defendant, O'Gara testified, "None whatsoever. *** He had a complete grasp of the facts of the case. *** He had an absolute knowledge of all the concepts involved in the trial."

¶ 24 On redirect examination, O'Gara testified that although it was possible that the murder of J.S. could be blamed on Valerie, he believed a jury would convict the defendant. When asked if he told the defendant, during the phone call, that the defendant "was likely going to get 60 years," O'Gara testified, "I didn't express an opinion on any number at all." When asked if he

considered the defendant's possible defenses before advising the defendant to take the deal, O'Gara testified, "Yes." With regard to a letter from Waller that noted that Dr. Killian believed the defendant "may not" be fit to stand trial because of the defendant's "depression, excessive pessimism," O'Gara testified that the letter did not create a responsibility for Freeman to raise the issue of the defendant's fitness, because subsequent to the letter, Dr. Killian issued a report that did not state that the defendant was not fit to stand trial. He reiterated that Dr. Killian's report was "quite to the contrary," and testified that he took Dr. Killian's report to mean the defendant was depressed, but was fit.

¶ 25 Freeman testified that he believed the defendant "was somewhat depressed, but he–he understood what was going on. He–he was able to ask numerous questions, wanted things done that I ended up doing." He testified that when he met with the defendant "a few days" after the defendant pleaded guilty, the defendant "was the happiest I'd ever seen him *** it seemed like there was a huge weight lifted off his shoulders." He testified that the next time he met the defendant, which was "about a week later," the defendant's mood "was a total different story." Freeman testified that Freeman had received a "strange" call from the defendant's father, who Freeman characterized as "somewhat of a pushy individual," in which the defendant's father accused Freeman of getting the defendant's parents "to coerce their son." Freeman then visited the defendant, and although the defendant never said Freeman did anything, the defendant told Freeman that the defendant's parents "coerced him into pleading guilty." Freeman testified that he told the defendant, "come on, you know that's not true," and discussed the matter further with the defendant, but that the defendant persisted, insisting that he wanted Freeman to file a motion to withdraw guilty plea, and a motion to withdraw as his counsel.

¶ 26 With regard to the guilty plea, Freeman testified that on the morning of the third day of trial, he asked the defendant how he thought the trial was going. The defendant replied, "Like

shit." The defendant told Freeman that the defendant "knew he was going to be found guilty." Freeman testified that he asked the defendant about "a point of evidence" that Freeman thought was "pretty damning," and that the defendant could not explain the piece of evidence. He testified that he told the defendant that he thought "the evidence was pretty overwhelming in this case and that he needed to make a deal." He encouraged the defendant to "take the best deal you can possibly get and move on." He testified that the defendant told him that the defendant's father thought the defendant would be "going home" after the trial, and that he told the defendant, "I don't think that's happening." He testified that the defendant agreed with him, and asked him to speak to the defendant's father and tell him that. Freeman testified that he did so, and that to his surprise, the defendant's parents told him they thought the defendant would be found guilty. He arranged for the defendant to meet with his parents privately, then told them that he could call O'Gara "if they wanted" him to so that they could "see what happens."

¶ 27 Freeman testified that at one point, the defendant's father confronted the defendant about the same "point of evidence" Freeman had confronted the defendant about–which "dealt with the text messages" between the defendant and Valerie on the day of the murder and the days immediately after–and that when the defendant responded to his father, the defendant's father told the defendant that the defendant's answer was "not good enough." Freeman testified that the defendant's parents decided "we need to do something," which meant listening to Freeman's idea to ask the State for a plea deal. He testified that although the defendant initially did not want to plead guilty and "go away for–for a lengthy period of time," Freeman reminded him that he was looking at natural life in prison if the trial continued and he was convicted. Freeman testified, "I said 'getting out at 44 is a whole lot better than natural life.' And he said at that point, 'yeah, but I could be in there for 60 years.' I think he maybe even said 84. He did the math. *** And I said, 'well, that's a possibility.' " He testified that he informed the defendant

that "it's possible the judge could give you the lower end and it's always possible," at which point the defendant's mother told the defendant that he should plead guilty, because the parents "couldn't take it anymore." He testified that he did not believe the defendant would get 60 years in prison, but could not recall if he told that to the defendant.

¶ 28 When asked if he was aware of the defendant's "suicide attempts," Freeman testified, "I don't even know if they were considered attempts. My understanding of them was that they were sort of feigned attempts, that they weren't serious." He stated that although the defendant told him early on in the case that he would kill himself before going to prison, he thought the defendant "was at that point just trying to make 'poor me' kind of statements." He did not believe the defendant was unfit. He testified that the defendant "knew where he was, what he was, knew what he was charged with, knew what the system was all about. He was very aware of the facts of the case. He had been given a copy of the discovery. Had come up to me with numerous questions that he wanted looked into. He knew everything about this case. There was never in my mind a doubt that he was fit to stand trial in this case, even after making those statements [about killing himself rather than going to prison]."

¶ 29 On cross-examination, Freeman testified, with regard to the text messages, that as he went through them again on the night of the second day of the trial, in anticipation of the State introducing them the following day, he realized that despite the defendant's theory that Valerie could be blamed for the murder, "never once does he ask Val in those text messages, 'what did you do to [J.S.]' He never once asked." Freeman testified that he believed that if the defendant took the stand–which he believed the defendant would have to do if the trial continued–"the prosecution could eat [the defendant] alive." He testified that was because while J.S. "was dying in a hospital, he nor Val ever asked each other anything regarding to what had happened" to J.S. Freeman testified as to how he approached the State about a possible plea deal, and that once the

State spoke with the extended family of J.S. and agreed to the deal, Freeman told the defendant and his parents, "the State's agreeable to what we talked about, an *Alford* plea, 20 to 60 years." Freeman testified that he told them it was up to the trial court "as to what the possible sentence would be," but that "natural life and extended term is now off the table." He asked the defendant if he was sure he wanted to enter the plea, and the defendant stated that he was. When asked if the defendant thereafter ever seemed reluctant to enter the plea, Freeman testified, "He never ever equivocated or said he didn't want to plead guilty," until when Freeman met with him about a week later.

¶ 30 Jack Koch testified that he was a licensed clinical professional counselor at the Community Resource Center. He testified that he saw the defendant on two occasions in January 2010 in the Clinton County Jail because there were concerns that the defendant was suicidal. He agreed that during the meetings, the defendant "express[ed] optimism for the future and confidence in his attorneys," and denied that he was suicidal. He testified that he was comfortable with how the sheriff's department was handling the situation.

¶ 31 The defendant's mother, Kim Endicott, testified that the defendant became depressed in jail, and became scared after being assaulted by Flores. She testified that when she and her husband met with Freeman on the morning the defendant ended up pleading guilty, Freeman "wanted us to talk [the defendant] into taking a plea." She denied that her husband thought the trial was going poorly and that the defendant should plead guilty. She testified that because Freeman said that "at 44 you'll still have a life," she and her husband "just took it that that meant he would get 20 years." When asked if Freeman told her that the defendant could get up to 60 years in prison, she testified, "No, nothing was mentioned about 60." On cross-examination, the defendant's mother admitted that she allowed the defendant to be in the presence of J.S., alone in her home, on the day J.S. was murdered, in violation of a court order.

¶ 32 The defendant's father, Dennis Endicott, Sr., testified that the defendant's demeanor changed once he was jailed, and that he became scared after he was assaulted by Flores. He testified that on the morning the defendant ended up pleading guilty, Freeman told him that the defendant needed to plead guilty, and that Freeman said the defendant would "still have a life at the age of 44." When asked if Freeman mentioned that "the range is 20 years to 60 years, the Court could sentence him to 60 years," the defendant's father did not answer the question directly. Instead, he reiterated that Freeman said the defendant would "still have a life at 44," and that when the defendant said " 'no, I'll be an old man,' " Freeman responded, " 'no, look at your dad, he's in his 50s.' " He testified that he advised the defendant to plead guilty because "20 years was better than life in prison."

¶ 33 The defendant testified that after Flores threatened him, he became fearful, and that he became more scared after he was assaulted by Flores. With regard to the pills, he testified that he "saved 17 trazodone pills" and was waiting until he "got number 20," at which point he planned to "take them." He testified that after his entry of his plea of guilty, he tried cutting his wrists. He disagreed with the assertion that he was in a straightjacket at the time, testifying that he was wearing "a tear-proof gown." The defendant testified that Freeman began to tell him he should plead guilty "immediately after O'Gara had to leave," and explained to him that the evidence against him was overwhelming and that he "didn't have a chance" if he went to trial. He testified that on the day he ended up pleading guilty, Freeman and his parents tried to convince him to plead guilty, but he kept saying no. He testified that he would not have pleaded guilty on Freeman's advice alone, but only did so because his parents and O'Gara encouraged him to plead guilty too. He testified that he did not tell the truth to the trial court when he told the court he had not been pressured into pleading guilty. He testified that Freeman told him he "would get the minimum" which "meant 20 years." He denied that he was relieved after he pleaded guilty. He

testified that he did not believe Freeman could assist him at his sentencing hearing, because his relationship with Freeman had so badly deteriorated by that time.

¶ 34 On cross-examination, the defendant admitted that Freeman was correct when he told the defendant, on the day the defendant ended up pleading guilty, that the State still had many more witnesses to present against him. He agreed that subsequent to the assault by Flores, he had visitors at the jail, received phone calls at the jail, wrote letters, received letters, and agreed to continuances that delayed his trial. He agreed that Freeman left him alone with his parents while Freeman approached the State about the plea deal. He agreed that the trial court asked him "several times" if he needed more time to speak with Freeman about the plea deal, and that he was told by the trial court that he faced between 20 and 60 years in prison. He testified that throughout his proceedings, the trial court explained to him that he "always had a right to a jury trial." He agreed that he was in violation of a court order when he was in the presence of J.S. shortly before J.S. was murdered.

¶ 35 Subsequently, on July 23, 2012, the trial court entered an order in which it denied the defendant's request to withdraw his guilty plea, but allowed the defendant's sentencing hearing to be reopened so that the defendant could present additional evidence and argument, if he so desired. In the order, the trial court found, as to the defendant's fitness to enter his *Alford* plea, that there was "absolutely no competent evidence that he was unfit to either stand trial or plead." The trial court therefore found "that the defendant was fit to plead" when he did so. The trial court further found that there was "no reliable evidence to support [the defendant's] assertion that he was promised a specific sentence," and that the defendant's testimony, as well as that of his parents, "flies in the face of the official record." The trial court described their testimony as "contrived," and "refuted by the testimony of both [O'Gara and Freeman]." The trial court noted that the defendant was properly admonished that it was the trial court that would decide on the

defendant's sentence and that the defendant "was aware that there were no agreements as to sentence." The trial court also stated that, "[h]aving weighed the testimony of the defendant and his parents, Mr. Freeman and Mr. O'Gara, the [c]ourt finds that the defendant was not subjected to undue pressure, promise or threat by Mr. Freeman." The trial court concluded that "the defendant's guilty plea was knowing and voluntary," notwithstanding the fact that the defendant's "subsequent feelings of 'buyer's remorse' [led] him to blame first his parents and then Mr. Freeman for his decision."

¶ 36 The second sentencing hearing was held on September 25, 2012, at which three members of the defendant's family testified. At the conclusion of the hearing, the trial court commented on some of the testimony from the hearing and prior proceedings. The trial court pointed out that multiple family members knew that the defendant was not to be in the presence of J.S., but that the defendant's father, the defendant's mother, and Valerie allowed it anyway. The trial court posited that "evidence frequently cuts two directions," and that although family members testified that J.S. loved and trusted the defendant, this evidence actually hurt the defendant, "because when I view this testimony from the point of view of [J.S.,] I view it completely differently than I think the people who testified intended it to be viewed," and "what I hear is poor [J.S.]. Here is this man who he trusted." The trial court stated that it believed the previously imposed sentence was appropriate, and reaffirmed the 60-year sentence.

¶ 37 The defendant appealed, and in an unpublished summary order, this court vacated the trial court's order and remanded for further proceedings because Brandmeyer failed to file a proper certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Endicott*, 2014 IL App (5th) 120427-U, ¶¶ 12-14. On remand on October 31, 2014, Brandmeyer filed for the defendant a second amended motion to withdraw guilty plea, or in the alternative to modify or vacate the sentence. A hearing was held on the motion on November 6, 2014. No

additional evidence was presented, although new argument was put forward by both the defendant and the State. Thereafter, the trial court found as a factual matter that the defendant "never ever displayed in this court any sort of indication of unfitness." The trial court stated that in addition to the belief of both O'Gara and Freeman that the defendant was fit, "this [c]ourt never believed on its–on its own that there was any issue of [the defendant's] fitness. He always responded. He always appeared in court to be participating and I don't believe now that there was ever an issue of his fitness to stand trial. The defendant's motion is denied." This timely appeal followed. Additional facts will be provided as necessary below.

¶ 38 ANALYSIS

¶ 39 On appeal, the defendant contends the trial court erred because (1) the trial court should have, *sua sponte*, ordered a fitness hearing, (2) the defendant's guilty plea was the result of ineffective assistance of trial counsel, and (3) the defendant's sentence was excessive. We will address each of these contentions in turn.

¶ 40 In support of his contention that the trial court should have, *sua sponte*, ordered a fitness hearing, the defendant claims that his "two suicide attempts in relation to the date of his plea raised a *bona fide* doubt issue [as] to fitness" and that he "was not mentally fit to enter an *Alford* plea during his trial." The defendant contends the trial court should have considered the suicide attempts, the assault of the defendant by Flores while in the county jail, the defendant's depression, and his prescription for, and ingestion of, psychotropic medications, and concluded that a fitness evaluation was warranted. In response, the State points out that, pursuant to the holding of the Supreme Court of Illinois in *People v. Easley*, 192 Ill. 2d 307, 318 (2000), in criminal cases in this state, "a defendant is presumed to be fit to stand trial, and will be considered unfit only if, because of the defendant's mental or physical condition, the defendant is unable to understand the nature and purpose of the proceedings against him or her, or to assist in

his or her defense," and that "[a] defendant is entitled to a fitness hearing only when a *bona fide* doubt of the defendant's fitness is raised." It is the defendant, not the State, that bears the burden of proving there is a *bona fide* doubt as to fitness. See, *e.g.*, *People v. Weeks*, 393 Ill. App. 3d 1004, 1009 (2009). The State contends that in this case, the evidence before the trial court "overwhelmingly establishes that [the] defendant was able to understand the nature and purpose of the proceedings against him and that he was able to assist in his defense."

¶ 41 We agree with the State. As the State notes, during the extensive and complex pretrial, trial, and *Alford* plea proceedings in this case, there was never any indication that the defendant was not fit to stand trial. Moreover, our thorough examination of the record on appeal substantiates the State's assertion that on numerous occasions during these proceedings, including just before and during the defendant's trial and *Alford* plea, the trial court personally questioned the defendant in detail, to ensure the defendant understood what was happening, why, and how it impacted the defendant, as well as to ensure the defendant consented to the actions proposed by his attorneys. Despite being asked on multiple occasions if he was satisfied with the representation he was receiving, at no time prior to September 1, 2010, did the defendant ever express to the court dissatisfaction with his representation. During each of the numerous times he was questioned by the trial court, the defendant demonstrated that he was coherent and aware of what was going on, despite the complexity of some of the proceedings. At no time did he give answers that would lead a reasonable person to believe the defendant was unable to understand the nature and purpose of the proceedings against him, or to assist in his defense.

¶ 42 Additionally, both Freeman and O'Gara testified that they believed the defendant was fit to stand trial, and saw no indications to the contrary. The trial court was aware of Dr. Killian's report, including the fact that although the report diagnosed the defendant with depression, it did not conclude that the defendant was not fit to stand trial. Moreover, the trial court found as a

factual matter that the defendant "never ever displayed in this court any sort of indication of unfitness." The trial court stated that in addition to the belief of both O'Gara and Freeman that the defendant was fit, "this [c]ourt never believed on its–on its own that there was any issue of [the defendant's] fitness. He always responded. He always appeared in court to be participating and I don't believe now that there was ever an issue of his fitness to stand trial."

¶ 43 With regard to the defendant's claim that the trial court should have considered the defendant's "suicide attempts," the assault of the defendant by Flores while in the county jail, the defendant's depression, and his prescription for, and ingestion of, psychotropic medications, and concluded that a fitness evaluation was warranted, the State correctly notes the Illinois case law that holds that these factors do not alone create a *bona fide* doubt as to fitness. The State also correctly points out that what the defendant characterizes as his first "suicide attempt"–and what the State characterizes as the discovery of the defendant's "hoarding" of antidepressants–took place in January 2010, a full six months before the defendant pleaded guilty in July 2010. Likewise, the incident that the defendant characterizes as his second "suicide attempt"–which the State describes as an incident in which the defendant "superficially" cut his own wrist–took place in September 2010, more than a month *after* the *Alford* plea the defendant now contends he was unfit to enter into. O'Gara knew of the pill-hoarding incident, and Freeman knew of both incidents, and yet both still testified that they believed the defendant was fit to stand trial. As described in detail above, O'Gara testified that at no point in time did he have concerns about the defendant's fitness, and that with regard to the diagnosis of the defendant as depressed, "there was nothing in there that indicated that it would have risen to the level of psychotic thoughts or behavior, nor would it have in any way impacted on his ability to understand what was going on in the nature and purposes of the proceedings, nor was there ever a time I was concerned that he was impacted mentally in some way to be able to not cooperate and work with us. I just did not

see that." He testified that, "Ethically, I saw nothing that would have allowed me to come into court and file a motion for fitness based on any *bona fide* doubt about that we had." Freeman testified that the defendant "knew where he was, what he was, knew what he was charged with, knew what the system was all about. He was very aware of the facts of the case. He had been given a copy of the discovery. Had come up to me with numerous questions that he wanted looked into. He knew everything about this case. There was never in my mind a doubt that he was fit to stand trial in this case, even after making those statements [about killing himself rather than going to prison]." In short, the State is correct that there was simply no credible evidence that the defendant's depression, use of psychotropic medication, and purported attempts at self-harm impaired his capacity to understand the proceedings or to assist in his defense.

¶ 44 With regard to the assault of the defendant by Flores while in the county jail, which occurred in February 2009, and the defendant's isolation from the general jail population thereafter, there is no credible evidence that this affected his fitness either, whether at the time of the assault or many months later, when the defendant alleges he was unfit to enter his plea. To the contrary, jail counselor Koch testified that he saw the defendant on two occasions in January 2010, nearly a full year after the assault by Flores, because there were concerns that the defendant was suicidal. He agreed that during the meetings, the defendant "express[ed] optimism for the future and confidence in his attorneys," and denied that he was suicidal. Koch testified that he was comfortable with how the sheriff's department was handling the situation. It is also true, as the State contends, that the defendant consented, for strategic legal reasons that were perfectly reasonable then and remain so now, to the continuances that prolonged his stay in the county jail. The defendant's claims on appeal are highly speculative, unsupported by credible evidence, and fall far short of meeting the defendant's burden (see, *e.g.*, *Weeks*, 393 Ill. App. 3d

at 1009) of demonstrating that a *bona fide* doubt as to the defendant's fitness existed at the time he entered his plea in this case.

¶ 45 With regard to the defendant's contention that his guilty plea was the result of ineffective assistance of trial counsel, the defendant claims his plea was rendered unknowing and involuntary because he "was induced to make his plea" and because his counsel should have moved for a fitness hearing. He further claims he did not receive anything in exchange for pleading guilty. We have already rejected the notion that a fitness hearing was warranted in this case. Therefore, counsel did not err by not requesting one. In response to the defendant's claim that trial counsel "consistently and adamantly stated to [the defendant] that he would serve 20 years," the State points out that after the defendant raised this claim in 2012, the trial court "made credibility and factual findings that [the defendant] was not coerced or misinformed and his plea was knowing and voluntary."

¶ 46 Again, we agree with the State. First, it is simply not true that the defendant did not gain anything by pleading guilty. The State dropped counts I-IV in exchange for the defendant's plea of guilty to counts V and VI. The defendant faced the possibility of natural life in prison if convicted of count I or count II, and the possibility of an extended term of 60 to 100 years on counts III and IV. He faced only 20 to 60 years on the counts to which he pleaded guilty. Although the defendant now contends his 60-year sentence is tantamount to a life sentence, this too is speculative. Moreover, the State is correct in its assertion that the trial court found the testimony of the defendant, and his parents, to be "contrived," and to be "refuted" by both Freeman and O'Gara with regard to the idea that the defendant was misled into thinking he would receive only a 20-year sentence for brutally murdering J.S., a three-year-old child. The trial court also correctly admonished the defendant as to the sentencing range for counts V and VI, and the defendant showed that he understood and had no questions about the sentence he

faced. The trial court later specifically found that the defendant's plea was knowing and voluntary and not the result of coercion. The trial court did not err in doing so. As described above, prior to accepting the defendant's guilty plea, the trial court took great pains and an extensive amount of time to make sure the defendant understood what was going on, what his options were, and what the consequences of his actions would be. Moreover, the trial court subsequently stated that, "[h]aving weighed the testimony of the defendant and his parents, Mr. Freeman and Mr. O'Gara, the [c]ourt finds that the defendant was not subjected to undue pressure, promise or threat by Mr. Freeman." The trial court concluded that "the defendant's guilty plea was knowing and voluntary," notwithstanding the fact that the defendant's "subsequent feelings of 'buyer's remorse' [led] him to blame first his parents and then Mr. Freeman for his decision."

¶ 47 In support of his contention that his sentence was excessive, the defendant claims the trial court failed to adequately consider "extensive testimony concerning mitigating factors," the defendant's "young age," and whether the defendant "was able to be rehabilitated." He claims that the trial court instead "focused on the fact that [the defendant] was living with Valerie and [J.S.], in violation of a court order, but did not mention or seem to consider that Valerie, the mother of [J.S.], decided to live with the defendant in light of the alleged domestic battery." He further claims, in his reply brief, that he "had no relevant criminal history." In response, the State points out that the sentence was within statutory guidelines and was supported by the facts of this case.

¶ 48 We agree with the State. "The standard of review of sentencing issues is whether the trial court abused its discretion in handing down a sentence." *People v. Tijerina*, 381 Ill. App. 3d 1024, 1039 (2008). This court must "grant great deference to the judgment of the sentencing court as it is in the best position to 'analyze the acts constituting the crime and a defendant's

credibility, demeanor, general moral character, mentality, social environments, habits, age, and potential for rehabilitation.' " *Id.* (quoting *People v. Ramos,* 353 Ill. App. 3d 133, 137 (2004)). Although it is within the trial court's discretion to determine the significance to attach to each factor in aggravation and mitigation, this court has stressed that "the most important factor to consider is the seriousness of the offense." *Id*. We will affirm a defendant's sentence unless we conclude that "the sentence is grossly disproportionate to the nature of the offense committed." *Id*. When a sentence is within the statutory range, we presume "that the sentence was properly determined." *Id.* at 1040. We also presume the trial court considered all factors in aggravation and mitigation. *Id*. at 1041. We "may not take the trial court's findings lightly and cherry-pick from the record to support a reduction of sentence." *Id.* at 1040. With regard to mitigation evidence, "[w]hile the trial court must consider rehabilitation, the trial court does not need to give more weight to the goal of restoring the defendant to useful citizenship than it places on the seriousness of the offense." *People v. Brown*, 2017 IL App (1st) 142877, ¶ 63. Moreover, although "the trial court may not disregard mitigating evidence, it may determine the weight to attribute to such evidence." *Id*. It is the defendant's burden to show that the trial court did not consider the rehabilitative evidence and mitigating factors before it. *Id*. ¶ 64. When relevant mitigating evidence is before the trial court, "we presume the court considered it, absent some indication in the record to the contrary *other than the sentence itself*." (Emphasis added.) *Id*.

¶ 49 In this case, as the State aptly notes, there was extensive evidence as to the nature of the crime, and the seriousness of the offense, as well as evidence with regard to the rehabilitative potential of the defendant and other mitigation evidence such as his relatively minor criminal record. With regard to the seriousness of the offense, the trial court was aware of the overwhelming evidence that the defendant was responsible for the death of J.S., and had in fact murdered J.S. Indeed, at the first sentencing hearing, the State correctly noted that the evidence

showed that: (1) when J.S. was murdered, the defendant was home alone with him, despite the fact that the defendant knew he was not supposed to be in the presence of J.S.; (2) as J.S. lay dying from the beating he received from the defendant, the defendant was periodically accessing pornographic websites; (3) by the time the defendant was 22 years old, his criminal history consisted of criminal trespass to a residence, for which he received court supervision, and a conviction for disorderly conduct, as well as 17 traffic violations and a suspended driver's license; (4) the defendant was physically abusive toward a former girlfriend; (5) the defendant had a poor school record and a poor work record, having been fired on four occasions during a four-year period, as well as mental health issues that he refused to get treatment for; (6) the text message evidence showed that the defendant and Valerie attempted to cover up the defendant's murder of J.S.; and (7) the defendant had physically abused J.S. on other occasions prior to murdering him.

¶ 50 Although the defendant contends the trial court did not consider his rehabilitative potential, the State is correct in its assertion that just because one receives the maximum sentence available, that does not mean the trial court did not consider rehabilitative potential. Moreover, the State correctly notes that the trial court specifically mentioned that it was required to consider the defendant's rehabilitative potential. There is no credible evidence that the trial court did not consider it. As explained above, when relevant mitigating evidence is before the trial court, "we presume the court considered it, absent some indication in the record to the contrary *other than the sentence itself*." (Emphasis added.) *Brown*, 2017 IL App (1st) 142877, ¶ 64. The defendant has presented no credible evidence other than his sentence itself. The defendant has failed to meet his burden to show that the trial court did not consider the rehabilitative evidence and mitigating factors before it. *Id*.

¶ 51 The defendant also claims that the trial court erred because it "focused on the fact that [the defendant] was living with Valerie and [J.S.], in violation of a court order, but did not mention or seem to consider that Valerie, the mother of [J.S.], decided to live with the defendant in light of the alleged domestic battery." This is not true. In fact, the trial court pointed out that multiple family members knew that the defendant was not to be in the presence of J.S., but that the defendant's father, the defendant's mother, and Valerie allowed it anyway. The trial court did not ignore Valerie's wrongdoing in this case, or try to minimize the fact that she, like the defendant's parents, failed to adequately protect J.S. from the defendant.

¶ 52 The defendant also claims that the trial court erred when it posited that "evidence frequently cuts two directions," and that although family members testified that J.S. loved and trusted the defendant, this evidence actually hurt the defendant, "because when I view this testimony from the point of view of [J.S.,] I view it completely differently than I think the people who testified intended it to be viewed," and "what I hear is poor [J.S.]. Here is this man who he trusted." The defendant has cited no authority for the proposition that the trial court is not allowed to comment in such a manner on evidence that was adduced by the defendant himself and that was properly before the trial court. We are aware of no such authority either. The record is clear that the trial court considered all appropriate factors in mitigation, as well as the nature of the crime and the seriousness of the offense, and fashioned a sentence that was not excessive and was not an abuse of the trial court's discretion. There was no error.

¶ 53 CONCLUSION

¶ 54 For the foregoing reasons, we affirm the order of the circuit court of Clinton County that denied the defendant's motion to withdraw his guilty plea or, in the alternative, modify or vacate his 60-year first-degree murder sentence.

¶ 55 Affirmed.