2012 IL App (1st) 090662-U

SECOND DIVISION
January 31, 2012

No. 1-09-0662

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07 CR 24289
	)	
ROGER MOORE,	)	Honorable
	)	John T. Doody, Jr.,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Karnezis and Cunningham concurred in the judgment.

ORDER

Held: We hold that defendant has not satisfied his burden of persuasion under the plain error doctrine, and therefore, he has forfeited his claims on the merits regarding alleged violations of the hearsay doctrine, discovery rules, Supreme Court Rule 431(b), and his sentence of three years MSR.

¶ 1 This cause comes before us on remand from the circuit court. Defendant, Roger Moore, was found guilty by a jury of delivery of a controlled substance and sentenced to 7 years' imprisonment. 720 ILCS 570/401(d)(I) (West 2008). On March 29, 2011, we filed an opinion directing the circuit court to conduct a retrospective fitness hearing. 408 Ill. App. 3d 706, 713

(2011). In our opinion, we held that comments made by defendant to the circuit court regarding his not having received his medication before trial raised a *bona fide* doubt as to his fitness to stand trial. *Id.* at 712-13. We were concerned with "what effect, if any, defendant's failure to regularly receive his medication had on his fitness to stand trial." *Id.* at 713. On remand, the circuit court conducted a retrospective fitness hearing in which it found defendant was fit to stand trial during the relevant time period. Based on the circuit court's findings from the retrospective fitness hearing, we hold defendant was fit to stand trial during the relevant time period.

¶ 2 In our opinion filed March 29, 2011, we only addressed defendant's fitness to stand trial, which was one of several issues defendant raised. *Id.* at 707 n.1. In this order, we address the remaining issues defendant raised on appeal, which are as follows: 1) whether the State improperly introduced hearsay evidence regarding $20 in currency that was recovered from the alleged drug transaction; 2) whether the State violated the discovery rules of Illinois Supreme Court Rule 412 (Ill. S. Ct. R. 412 (eff. March 1, 2001); 3) whether the circuit court violated Illinois Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)) when addressing potential jurors; and 4) whether his sentence of mandatory supervised release (MSR) should be reduced from three years to two years.[1] Defendant did not properly preserve these issues for appeal, but urges this court to review them under the plain error doctrine. We hold that defendant has not satisfied his burden under the plain error doctrine, and therefore, he has forfeited his claims on the merits regarding alleged violations of the hearsay doctrine, discovery rules, Supreme Court Rule 431(b), and his sentence of three years MSR.

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[1]Defendant's opening brief contained another issue, whether the trial court violated *People v. Krankel*, 102 Ill. 2d 181 (1984). However, in his reply brief, he conceded that relief was precluded by our Supreme Court's decision in *People v. Jocko*, 239 Ill. 2d 87 (2010).

¶ 3 JURISDICTION

¶ 4 The circuit court sentenced defendant on March 3, 2009. The following day, defendant timely filed his notice of appeal. Accordingly, this court has jurisdiction pursuant to Article VI, Section 6 of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, §6; Ill S. Ct. R. 603 (eff. Oct. 1, 2010); Ill. S. Ct. R. 606 (eff. March 20, 2009).

¶ 5 BACKGROUND

¶ 6 Following a jury trial, defendant was found guilty of delivery of a controlled substance and sentenced to seven years imprisonment. 720 ILCS 570/401(d)(I) (West 2008). Prior to trial, the circuit court conducted a fitness hearing, the facts of which are discussed in our opinion filed March 29, 2011. 408 Ill. App. 3d at 707-10. In this order, we will only recite the facts relevant to the remaining issues on appeal.

¶ 7 Before trial, the circuit court admonished the venire. The circuit court stated to the entire venire:

> "A defendant in a criminal case is presumed to be innocent until a jury determines after deliberation that the defendant is guilty beyond a reasonable doubt. Does anyone have a problem with this rule of law?
>
> The State has the burden of proving a defendant guilty beyond a reasonable doubt. Does anyone disagree with this rule of law?
>
> A defendant does not have to present any evidence at all

and may rely upon the presumption of innocence. Does anyone disagree with this rule of law?

A defendant does not have to testify. Would anyone hold that fact that the defendant did not testify at trial against that defendant?"

¶ 8 No member of the venire answered affirmatively to any of the propositions of law as relayed by the trial judge. The jury was selected, and the trial commenced.

¶ 9 At trial, Chicago police officer Nicholas Evangelides testified that he, along with six other officers, was conducting a narcotics investigation in the area of 1507 North Latrobe in Chicago, Illinois. Officer Evangelides testified that he parked his unmarked vehicle at 1522 North Latrobe and moved to the back seat of the vehicle to conduct surveillance of the area. He testified that he had a clear view through the vehicle's tinted rear windows and that he maintained radio contact with the six other officers. Officer Evangelides saw defendant, approximately 125-135 feet away standing on the sidewalk near 1507 North Latrobe. He then saw Officer Boonserm Srisuth, who was acting in an undercover capacity, approach defendant and the two engaged in conversation. He was unable to hear defendant and Officer Srisuth, but could tell they were having a conversation by their mannerisms.

¶ 10 Officer Srisuth testified that on the day in question he had a $20 bill whose serial number had been prerecorded on a funds sheet by the Chicago Police Department. Officer Srisuth testified that he asked defendant, "You got blows?" Officer Srisuth explained that "blows" refers to heroin. Defendant replied, "How many do you want?" Officer Srisuth told defendant that he needed two bags. Defendant then handed Officer Srisuth two stapled ziploc bags containing

heroin. Officer Srisuth handed defendant the prerecorded $20 bill. After the transaction, Officer Srisuth turned and walked towards Officer Evangelides and gave him the signal indicating that a drug transaction took place. Officer Evangelides testified that he contacted his partners by radio and then saw a second individual, later identified as Joseph Boyd, approach defendant, and converse with him. The two of them then walked southbound on North Latrobe. Officer Evangelides testified he told the other officers to approach Boyd and defendant after he saw them walk away.

¶ 11 Officer Jorge Rivera testified that he and his partner, Officer Bill Smith, observed defendant and Boyd from approximately 100 feet away. Officer Rivera testified that defendant looked towards him as he handed a bill to Boyd. Officer Rivera and Officer Smith then drove up and stopped defendant and Boyd. Officer Rivera testified that he recovered a $20 bill from Boyd's right hand. He then compared the $20 bill to a copy of the prerecorded funds sheet and found that the $20 bill had the same serial number as the prerecorded bill. At the police station, Officer Rivera re-inventoried the $20 bill. The police department put the bill back into circulation without making a photocopy of it. The original funds sheet was inventoried by the Chicago Police Department; Officer Rivera destroyed his copy of the funds sheet. Officer Srisuth identified defendant as the seller of the drugs and defendant was arrested.

¶ 12 The jury found defendant guilty of delivery of a controlled substance and sentenced to 7 years' imprisonment. 720 ILCS 570/401(d)(I) (West 2008). The circuit court sentenced defendant on March 3, 2009. The following day, defendant filed his notice of appeal.

¶ 13 On March 29, 2011, this court issued its opinion remanding the cause to the circuit court to conduct a retrospective fitness hearing. 408 Ill. App. 3d at 713. On September 28, 2011, our

Supreme Court denied the State's petition for leave to appeal. On November 11, 2011, the circuit court conducted its retrospective fitness hearing and found defendant was fit to stand trial on October 15, and 16, 2008, the two days in which his trial occurred.

¶ 14 ANALYSIS

¶ 15 Defendant urges this court to address the remaining issues on their merits which were neither objected to at trial nor in a post-trial motion. A party must object both at trial and in a post-trial motion to properly preserve an issue for appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). We may address defendant's appeal of the forfeited issues on their merits only if the defendant sustains his burden of persuasion on either of the two prongs of the "plain error" doctrine. The plain error doctrine allows this court to review a forfeited claim of error that affects a substantial right in two instances: "where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence" or "where the error is so serious that the defendant was denied a substantial right, and thus a fair trial." *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005); see also Ill. S. Ct. R. 615(a) (eff. Aug. 1, 1987) ("Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court.") Under either prong, the defendant bears the burden of persuasion. *Herron*, 215 Ill. 2d at 187. Under the first prong of plain error review,

> "the defendant must prove 'prejudicial error.' That is the defendant must show both that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him. The State, of

course, can respond by arguing that the evidence was not closely balanced, but rather strongly weighted against the defendant." *Id.*

¶ 16 Under the second prong of a plain error analysis, prejudice is presumed, but "the defendant must prove there was plain error and that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *Id.* However, before addressing whether either prong of the plain error doctrine applies to defendant's claims, we must first decide whether a " 'clear or obvious' " error occurred at all. *McLaurin*, 235 Ill. 2d at 489, quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 17 Hearsay

¶ 18 Defendant argues that Officer Rivera's testimony, in which he stated he recovered a $20 bill from Joseph Boyd, and then checked the serial number from the $20 bill to confirm it matched that of the $20 bill recorded in the pre-recorded fund sheet, was inadmissible hearsay. Defendant contends Officer Rivera's testimony was inadmissible hearsay because neither Officer Rivera's copy of the prerecorded fund sheet nor the $20 bill were presented at trial. Defendant argues that the State's failure to introduce the physical evidence deprived him of the opportunity to test the accuracy of the pre-recorded funds sheet through cross-examination. The State argues that a copy of the original pre-recorded fund sheet, although not the exact copy that Officer Rivera carried on the day of the incident, had been tendered to defendant. The State also argues that no error occurred because Officer Rivera's testimony based on the pre-recorded fund sheet, if hearsay, is admissible as an exception to the hearsay rule. Defendant admits he did not object at trial to the testimony he claims is hearsay, nor did he include it in a posttrial motion. However, defendant asks this court to excuse his procedural default and review his claim on the

merits.

¶ 19 It is difficult to ascertain whether an error occurred at all because the State did not attempt to admit the pre-recorded funds sheet into evidence. Rather, Officer Rivera testified that he knew the $20 he recovered from Boyd matched the $20 Officer Srisuth had given defendant because he checked it with his copy of the pre-recorded funds sheet. Had defendant properly objected, the State could have sought to admit the copy of the pre-recorded funds sheet into evidence under either the past recollection recorded or business record exceptions to the hearsay rule. *People v. Strother,* 53 Ill. 2d 95, 101 (1972) (pre-recorded fund sheet "*may* have been hearsay evidence - - introduced to prove that the serial numbers recorded were in fact those of the currency used in the controlled purchase, it was in our opinion properly admitted under the Past Recollection Recorded exception to the hearsay rule.") (Emphasis added.); *People v. Rivas,* 302 Ill. App. 3d 421, 432 (1998) (pre-recorded funds sheet qualifies as a business record as the "document is not likely to indicate bias or prejudice against defendant.") The State's failure to admit into evidence the $20 bill is not an error in light of this court's decision in *People v. Trotter,* 293 Ill. App. 3d 617, 619 (1997), which found "there is no requirement that pre-recorded or marked funds used in a narcotics transaction be recovered for a conviction to stand." However, even if we assume that an error did occur, defendant has failed to carry his burden of persuasion under the plain error doctrine. *Herron,* 215 Ill. 2d at 187 (under either prong of the plain error doctrine, the defendant bears the burden of persuasion).

¶ 20 The nature of the crime charged illustrates why defendant cannot prevail under either prong of the plain error doctrine. Defendant was convicted of delivery of a controlled substance, which requires the delivery of narcotics. Whether money was exchanged in return for the

narcotics is not an element the State must prove. 720 ILCS 570/401 (West 2008). Officer Srisuth testified that defendant had given him narcotics, thus proving delivery. Officer Srisuth's testimony was not refuted. The $20 bill and the pre-recorded fund sheets are not material to whether defendant delivered narcotics to Officer Srisuth. Accordingly, we do not find the evidence was closely balanced or that the alleged error "alone severely threatened to tip the scales of justice against [defendant]" under the first prong of plain error analysis because the alleged improper testimony was not needed to prove the crime defendant was charged with. Defendant has failed to show prejudice under the first prong of plain error review.

¶ 21 Furthermore, defendant's contention fails under the second prong of the plain error doctrine. Defendant failed to cite any authority to show that "the error was so serious that it affected the fairness of [his] trial and challenged the integrity of the judicial process." *Herron*, 215 Ill. 2d at 187. Without supporting authority, defendant argues in his opening brief, review under the second prong of plain error is proper because "the error affected a substantial right- the right to test the reliability of the State's evidence on a central trial issue." As shown above, the $20 bill and the pre-recorded fund sheet were not a "central" issue in proving that defendant delivered narcotics to Officer Srisuth. Defendant's argument under the second prong of plain error analysis must also fail because it cannot be said that his trial was unfair based on testimony describing documents that were not material to defendant's conviction. Defendant has failed to carry his burden of persuasion under either prong of the plain error doctrine. Therefore, we can not excuse the forfeiture of this issue resulting from defendant's procedural default and plain error review is not applicable.

¶ 22 Discovery Violation

¶ 23 Defendant next contends that the State violated Supreme Court Rule 412 by failing to preserve the $20 bill confiscated by the police and the prerecorded funds sheet showing the $20 bill's serial number. Ill. S. Ct. R. 412 (eff. March 1, 2001). Specifically, defendant contends that the State violated subsections (a)(v) and (f) of Rule 412 which require disclosure upon written motion of defense counsel of "Any books, papers, documents, photographs or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained or belong to the accused[,]" and that "[t]he State should ensure that a flow of information is maintained between the various investigative personnel and its office sufficient to place within its possession or control all material and information relevant to the accused and the offense charged." Ill. S. Ct. R. 412(a)(v), (f) (eff. March 1, 2001). Defendant admits that he did not properly preserve this issue for appeal, but urges this court to excuse his procedural default under the plain error doctrine and address the issue on its merits.

¶ 24 Defendant's arguments regarding discovery violations fail for similar reasons to defendant's hearsay arguments regarding the $20 bill and the pre-recorded fund sheet. Even if the State did violate Rule 412, defendant has not carried his burden of persuasion under either prong of plain error review. Under the first prong, it cannot be said that the alleged "error alone severely threatened to tip the scales of justice against him." *Herron,* 215 Ill. 2d at 187. As discussed above, in *Trotter,* this court found that "there is no requirement that pre-recorded or marked funds used in a narcotics transaction be recovered for a conviction to stand." 293 Ill. App. 3d at 619. To prove the crime, delivery of a controlled substance, the State did not need the $20 bill or the prerecorded funds sheet. Officer Srisuth's testimony was not refuted, indicating

that the evidence of the crime was not closely balanced. Any alleged error in discovery regarding the $20 bill or the prerecorded fund sheet would not have been a severe threat to the outcome of the case. Defendant's claim fails under the first prong of plain error review.

¶ 25 Defendant's argument also fails under the second prong of plain error review. In *People v. Hobley,* 159 Ill. 2d 272, 307 (1994), our Supreme Court held that:

> "In order to promote the preservation of exculpatory evidence, there must be the possibility of a sanction where evidence is lost or destroyed. On the other hand, a defendant should not be rewarded for the inadvertent loss of a piece of evidence where other evidence sufficient to support his conviction remains. The proper balance between these competing interest can be accomplished through careful consideration of (1) the degree of negligence or bad faith by the State in losing the evidence, and (2) the importance of the lost evidence relative to the evidence presented against the defendant at trial." *Id.*

¶ 26 In this case, defendant cannot show either bad faith on the part of the State or that the lost evidence was important in his case. *Id.* Defendant has not cited any evidence in the record that shows that the State acted in bad faith. The State provided a copy of the pre-recorded funds sheet, it was just not the exact copy that Officer Rivera had in his possession on the day of the crime. Officer Rivera testified that the $20 bill was returned to circulation for future purposes. Officer Rivera testified further that they typically do not perform finger print analysis on pre-recorded funds because too many people handle the money to obtain a solid finger print. Officer

Rivera's testimony reveals his actions regarding the $20 bill and the pre-recorded fund sheets were not out of the ordinary, out of line with office procedure, or in bad faith. The $20 bill and pre-recorded fund sheet were also not important in proving defendant guilty of delivery of a controlled substance. As discussed above, the $20 bill and pre-recorded fund sheet were not material facts in finding defendant guilty. Defendant has not carried his burden of persuasion under the second prong of plain error as he has not shown "that the error was so serious that it affected the fairness of [his] trial and challenged the integrity of the judicial process." *Herron,* 215 Ill. 2d at 187. Therefore, we can not excuse the forfeiture of this issue resulting from defendant's procedural default and plain error review is not applicable.

¶ 27 Supreme Court Rule 431(b)

¶ 28 Defendant next contends that the trial court violated Supreme Court Rule 431(b), and, thus, reversal is required.[2] Ill. S. Ct. R. 431(b) (eff. May 1, 2007). Specifically, he contests whether the trial court asked the potential jurors whether they understood and accepted the *Zehr* principles. Defendant asks this court to excuse his procedural default and review his claim on the merits. Before we address whether the plain error doctrine applies to defendant's claim, we must first decide whether a " 'clear or obvious' " error occurred at all. *McLaurin,* 235 Ill. 2d at 489, quoting *People v. Piatkowski,* 225 Ill. 2d 551, 565 (2007).

¶ 29 Supreme Court Rule 431(b) states:

"(b) The court shall ask each potential juror, individually or

[2] Rule 431(b) is a codification of our Supreme Court's holding in *People v. Zehr,* 102 Ill. 2d 472, 477 (1984). The *Zehr* principles make clear that; "essential to the qualification of jurors in a criminal case is that they know that a defendant is presumed innocent, that he is not required to offer any evidence in his own behalf, that he must be proved guilty beyond a reasonable doubt, and that his failure to testify in his own behalf cannot be held against him."

> in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.
>
> The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

¶ 30 Under Rule 431(b), the trial judge may question the potential jurors individually or as a group. Ill. S. Ct. R. 431(b) (eff. May 1, 2007). The trial judge must allow "an opportunity for a response from each prospective juror on their understanding and acceptance of" the *Zehr* principles stated in Rule 431(b). *People v. Thompson*, 238 Ill. 2d 598, 607 (2010); see also *People v. Davis*, 405 Ill. App. 3d 585, 590 (2010) ("[a] trial court complies with Rule 431(b) when it admonishes the venire regarding the four *Zehr* principles and gives the venire an opportunity to disagree with them."). Additionally, there is no "magic language" a trial judge needs to use to show whether a juror understands and accepts the *Zehr* principles. *People v. Raymond*, 404 Ill. App. 3d 1028, 1056 (2010). Our review when interpreting a supreme court

rule is *de novo. People v. Saurez,* 224 Ill. 2d 37, 41-42 (2007).

¶ 31 Our review of the record shows that the trial judge did comply with Supreme Court Rule 431(b). He asked the potential jurors as a group each of the four required *Zehr* principles and then provided the jurors an opportunity to respond by stating either "Does anyone have a problem with this rule of law?"; "Does anyone disagree with this rule of law?"; or "would anyone hold the fact that the defendant did not testify at trial against the defendant?" *Thompson,* 238 Ill. 2d at 607 (trial judge must allow "an opportunity for a response from each prospective juror on their understanding and acceptance of" the *Zehr* principles stated in Rule 431(b)). Because there is no "magic language" the trial judge must use in admonishing the jury of the *Zehr* principles and their acceptance of them, we find the trial judge's statements properly conveyed the principles. *Raymond,* 404 Ill. App. 3d at 1056. Based on our review of the record, the trial court did not err in addressing the venire regarding the *Zehr* principles in Rule 431(b). Without a " 'clear or obvious' " error, plain error review is not applicable. *McLaurin,* 235 Ill. 2d at 489, quoting *Piatkowski,* 225 Ill. 2d at 565.

¶ 32 Mandatory Supervised Release

¶ 33 Lastly, defendant argues his three year MSR term must be reduced to a two year MSR term because he was convicted of a class 2 offense, delivery of a controlled substance (720 ILCS 570/401(d) (West 2008)) and by statute, a class 2 offense requires a two-year MSR term (730 ILCS 5/5-8-1(d)(2) (West 2008)). However, based on defendant's previous convictions, he was sentenced as a Class X offender to seven years in the Illinois Department of Corrections and a three year MSR term. 730 ILCS 5/5-5-3(c)(8) (West 2008). Defendant concedes that he did not raise his objections to his MSR term before the trial court, but asks this court to excuse his

procedural default. We acknowledge that a void sentence may be corrected at any time. *Ryan v. Roe*, 201 Ill. 2d 552, 557 (2002) ("a sentence which does not conform to a statutory requirement is void and may be corrected at any time"). However, we must first determine whether the trial court erred in sentencing defendant as it did before we reach the merits of defendant's contention. *McLaurin*, 235 Ill. 2d at 489, quoting *Piatkowski*, 225 Ill. 2d at 565.

¶ 34 This court has previously rejected defendant's argument and refused to change the mittimus, where a defendant was sentenced as a Class X offender with a three-year MSR term. *People v. Anderson*, 272 Ill. App. 3d 537, 541-42 (1995) (three-year MSR term found proper where defendant was sentenced as a Class X offender due to two previous Class 2 felony convictions); *People v. Smart*, 311 Ill. App. 3d 415 (2000) ("It would make little sense for the legislature to provide that Class 2 offenders eligible under section 5-5-3(c)(8) of the Code for an enhanced term of imprisonment are ineligible for an enhanced term of mandatory supervised release. As the first district recognized in *Anderson*, conduct so offensive that it justifies a longer term of imprisonment surely justifies lengthier supervision after release."); *People v. Watkins*, 387 Ill. App. 3d 764, 765-67 (2009) (agreeing with the reasoning in *Anderson* and *Smart*).

¶ 35 Defendant relies principally upon *People v. Pullen*, 192 Ill. 2d 36 (2000), in urging this court to reduce his MSR term from three to two years. In *Pullen*, our Supreme Court had "to determine the maximum aggregate sentence *when consecutive sentences are imposed* on a defendant who has committed Class 1 or Class 2 felonies but is subject to sentencing 'as a Class X offender' [citation] because of prior convictions." (Emphasis added). *Id.* at 38. Defendant in this case was not given consecutive sentences. Additionally, Defendant's reliance on *Pullen* has been specifically rejected by this court. *People v. Lee*, 397 Ill. App. 3d 1067, 1072 (2010)

("*Pullen* does not undermine our decision in *Smart*"); *People v. McKinney*, 399 Ill. App. 3d 77, 82-83 (2010) ("the statutory mandate that defendant 'shall be sentenced as a Class X offender' [citation] means that defendant shall receive a sentence that one convicted of a Class X felony would receive, *i.e.* a prison term ranging from 6 to 30 years followed by a 3-year term of MSR. *Pullen* is entirely consistent with this interpretation."); *People v. Holman*, 402 Ill. App. 3d 645, 653 (2010); *People v. Lampley*, No.1-09-0661, slip op. at 17 (Ill. App. Nov. 10, 2010) ("Unlike in *Pullen*, this case does not involve the character and classification of the convictions.")

¶ 36 Based upon the precedent set by this court regarding defendant's MSR, we find that the trial court did not err in sentencing defendant to a term of three-years MSR. Because no error occurred plain error review is not applicable. *McLaurin*, 235 Ill. 2d at 489, quoting *Piatkowski*, 225 Ill. 2d at 565.

¶ 37 CONCLUSION

¶ 38 For the foregoing reasons, we hold that defendant has forfeited his claims on the merits regarding alleged violations of the hearsay doctrine, discovery rules, Supreme Court Rule 431(b), and his sentence of three years MSR. The judgment of the circuit court of Cook County is affirmed.

¶ 39 Affirmed.