NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2026 IL App (4th) 251249-U

NO. 4-25-1249

FILED
November 9, 2026
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Peoria County
DANIEL N. PACE,	)	No. 22CF864
Defendant-Appellant.	)	
	)	Honorable
	)	Stephen A. Kouri,
	)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Justices Grischow and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding (1) the trial court did not deny defendant his right to proceed *pro se*, as (a) defendant equivocated on whether he wished to represent himself and (b) to the extent he did not equivocate, the court did not force defendant to proceed with counsel when it denied defendant's request for a continuance; (2) defendant invited error as to his claim the indictment failed to allege facts supporting the charge that the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty; and (3) invited error aside, (a) there is no requirement that the facts supporting a charge that an offense was accompanied by exceptionally brutal or heinous behavior must be alleged in the charging instrument and (b) the court did not abuse its discretion in finding that what defendant did and failed to do after he burned his girlfriend was exceptionally brutal or heinous behavior indicative of wanton cruelty.

¶ 2 Defendant, Daniel N. Pace, was charged with aggravated battery, a Class X felony (720 ILCS 5/12-3.05(a)(2), (h) (West 2022)), and aggravated domestic battery, a Class 2 felony (*id.* § 12-3.3(a), (b)), after B.W., his girlfriend, was doused with vodka, set on fire, and denied medical treatment for four days. Both counts alleged that the offense was accompanied by or

performed with exceptionally brutal and/or heinous behavior indicative of wanton cruelty, which subjected defendant to an extended-term sentence (see 730 ILCS 5/5-5-3.2(b)(2) (West 2022)). At various times during the trial proceedings, defendant asked to represent himself. Most, if not all, of those requests were premised on defendant's desire to have in his possession all the discovery, some of which was protected by Illinois Supreme Court Rule 415 (eff. Oct. 23, 2020). The last time defendant asked to proceed *pro se*, at which time the case had been pending for two and a half years, defendant advised the trial court he would need several months to prepare for trial. The court denied defendant's request to proceed *pro se*, a bench trial was held, and defendant was convicted of aggravated battery and aggravated domestic battery. The aggravated domestic battery conviction merged with the aggravated battery conviction, and defendant was sentenced to an extended term of 60 years' imprisonment for the latter offense. On appeal, defendant argues (1) he was denied his right to proceed *pro se* at trial and (2) his extended-term sentence was improper because the facts used to impose a more severe sentence were not alleged in the indictment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. The Charges

¶ 5 The two count indictment charged that on or about August 19, 2022, defendant committed aggravated battery (720 ILCS 5/12-3.05(a)(2) (West 2022)) (count I) and aggravated domestic battery (*id.* § 12-3.3(a)) (count II). The aggravated battery count alleged, in relevant part, that defendant,

> "BY MEANS OF A CAUSTIC SUBSTANCE, ALCOHOL AND FIRE, KNOWINGLY CAUSED GREAT BODILY HARM OR PERMANENT DISFIGUREMENT TO [B.W.], BY BURNING HER LEGS AND TORSO, AND

SAID OFFENSE WAS ACCOMPANIED BY EXCEPTIONALLY BRUTAL OR HEINOUS BEHAVIOR INDICATIVE OF WANTON CRUELTY."

The aggravated domestic battery count alleged, in relevant part, that defendant,

"IN COMMITTING A BATTERY TO [B.W.], A FAMILY OR HOUSEHOLD MEMBER OF THE DEFENDANT, KNOWINGLY CAUSED GREAT BODILY HARM AND PERMANENT DISFIGUREMENT TO [B.W.], IN THAT HE BURNED [B.W.] ON HER LEGS AND TORSO WITH HOT LIQUID AND FIRE, AND SAID OFFENSE WAS PERFORMED WITH EXCEPTIONALLY BRUTAL AND HEINOUS BEHAVIOR INDICATIVE OF WANTON CRUELTY."

¶ 6 B. The Pretrial Proceedings

¶ 7 Defendant, who was indigent, told the trial court he wanted to be represented by counsel. An assistant public defender was appointed to represent him. Counsel told the court there was extensive discovery in the case, including multiple videos, and asked for time to review them with defendant. The court granted counsel a continuance.

¶ 8 The State served defense counsel with notice that, pursuant to Rule 415, discovery "material shall remain in [defense counsel's] exclusive custody and shall not be given to the defendant or any other person." Subsequently, an order was entered modifying this notice. It provided that, pursuant to Rule 415, "counsel for the defendant may, at counsel's sole discretion," tender discovery materials to defendant, but only after redaction of the following:

"any contact information for the witnesses, mental health counselors or victim's advocates, or other personal identifiers of such witnesses such as addresses; dates of birth; phone numbers; Social Security numbers; financing institution

> information; driver's license and state identification numbers; checking, credit, or debit card information; e-mail address or other social media contacts; or medical (except of the alleged victim) or mental health (except of the alleged victim) records and shall not contain photographs or videos of victims of sexual assault, sexual abuse, or child pornography."

¶ 9 Thereafter, while represented by counsel, defendant filed a *pro se* motion for a "Sanitized version of Discovery." In this motion, defendant sought "all witness statements[,] any official reports regarding this case[,] video's [*sic*] of body cam[era] footage[,] *** interviews[,] reports from hospitals[,] list of any physical evidence[,] and photo's [*sic*] of said evidence."

¶ 10 The trial court subsequently ordered defense counsel "to provide defendant appropriately redacted police reports and video interviews conducted at the police station." Approximately two months later, defendant, who was still represented by counsel, filed several *pro se* motions. In one motion, defendant alleged B.W., "the victim/sole witness[, was] clearly not credible." He asserted he would like to call at trial his mother, "whoms [*sic*] knowledge of the days following the incedent [*sic*] contradict the allegations stated in the indictment in regards to the acts of wanton cruelty, as [his mother h]elped the defendant to care for [B.W.'s] injuries."

¶ 11 At a future hearing, defendant told the trial court he was unhappy with the attorney appointed to represent him. He also questioned why he was being held in custody when B.W. said she lied about the incident. Further, when objecting to B.W.'s mother's presence during a police interview, defendant admitted, "[M]y lawyer came up to the jail and showed me these videos of the victim and her mother and the detective."

¶ 12 Subsequently, defense counsel refused to adopt any of the *pro se* motions defendant filed. She then advised the trial court defendant wanted to represent himself. At the

conclusion of the court's admonishments on the difficulties of proceeding *pro se*, the court told defendant he had three options. He could (1) stay with appointed counsel, (2) represent himself, or (3) hire a private attorney. Defendant said, "I'm going to stay." The court questioned, "Stay where you are?" Defendant replied, "Yes."

¶ 13 Because of restructuring in the public defender's office, a new attorney was appointed to represent defendant. New counsel filed a motion seeking additional discovery, including over 1,700 recorded phone conversations between defendant and B.W. while defendant was in jail. The matter was continued numerous times, mostly on defendant's motion and after the case had been set for trial several times.

¶ 14 On one such continuance date, defendant asked to see his "paper discovery," claiming he had "never seen it." Defendant continued, "I've been incarcerated for two and a half years almost, and I've never seen my discovery at all." Defense counsel replied he could not "vouch for the notes [from defendant's previous attorney] showing that discovery was shown" and asked to tender appropriately redacted reports to defendant. The trial court allowed defense counsel to do so.

¶ 15 Almost 2 months later, and approximately 10 days before trial, both sides answered ready for trial. The trial court asked defendant, who was present in court, if he had any questions, and defendant replied, "No, Your Honor."

¶ 16 More than one week later, both parties again answered ready for trial. Defense counsel told the trial court defendant wanted him to say the defense was not ready. When asked, defendant said, "I have been in custody for almost two-and-a-half years, and I never even seen discoveries, police reports. I never seen any paperwork at all. I'm just going off of word of mouth. And, you know, there is a lot of things that I haven't seen." The court replied, "Well, then

maybe this will help that you have the day because [defense counsel] and you can discuss what matters you have to discuss before tomorrow[’s court date].” Defense counsel interjected, “Sure.”

¶ 17 The next day, defendant advised the trial court he wanted to represent himself. He said he had asserted on the record numerous times that he had not seen any of the discovery paperwork in this case and wanted access to all of it. He claimed, “[T]hey said that they were going to get it to me, and they never did at all.” Defendant said, “That’s why I wanted to represent myself and go over everything.” Defense counsel explained,

> “[Defendant] has had access to all of the recorded interviews in this case. He has had them in his own possession for some time. I did do a motion under Rule 415(C) to redact discovery, the police reports, and provide them to him. I had a paralegal do the redactions. They needed another heavy round of redactions, but even after the first round, they were unintelligible. They really couldn’t be read when all the material required to be excised by Rule 415(C) was taken out. So I did not have her continue to redact more information out of them. And, instead, as [defendant’s first appointed counsel] did, I discussed the case with [defendant]. I have reviewed the discovery myself, but a lot of it contains sensitive medical information given the nature of the case which [Rule] 415(C) requires me to redact. So the meat of the case, if you will, had to be redacted, and the reports can’t really be read. They don’t make any sense with all the redactions.”

¶ 18 The trial court asked, “Well, when you say it was unintelligible, couldn’t read it?” Defense counsel responded,

> “You could read—I mean, about half of the words are blacked out. So you

> can't read who is saying what or what they are complaining about because a lot of that is medical information, the identity of the victim. You can infer, but it requires explanation. I have to go back and read the unredacted police reports to figure out what they are talking about, and they weren't fully redacted even at that point. So I did not feel that it was feasible to provide fully redacted reports that would [not] be of any insight into the case."

¶ 19 The trial court turned to defendant, reminding him he had the right to represent himself, and asked, "Are you saying that you want to represent yourself and you're ready for trial today, or you're not ready for trial?" Defendant replied, "I wouldn't be ready for trial. I need to go over my discovery and all the police reports, that written stuff, so I can know what I'm going against. I'm only going off what the people are telling me. So I don't know really what I'm going against." Defense counsel then reassured the court that although he had not given defendant the unredacted reports, noting, again, they "did not make any sense," defendant was given the video interviews, and "the substance of the reports [was] in those interviews."

¶ 20 After further discussions, the trial court found defense counsel "complied with his obligation to provide discovery," noting counsel advised the court the "discovery that he is required to redact doesn't make any sense once the redactions are in." The State objected to a continuance, the court again asked defendant if he was ready to go to trial *pro se* that day, and defendant said, "I can't represent myself if I don't know about all the stuff in the case."

¶ 21 Following a recess, defense counsel informed the trial court defendant wanted to waive his right to a jury and proceed with a bench trial. Given that the parties' presentation of the evidence would change with a bench trial, the court gave the parties a little over one month to prepare for trial. However, the court ordered the parties, including defendant, to appear in court

nine days later. The State asked, "And, presumably, the discovery will be to [defendant] by [then]?" Defense counsel replied, "For whatever it's worth, I will have it to him today." Defendant interjected, "And the police reports?" Defense counsel responded, "Yeah, that's what we are talking about. Now, granted, the words have to be blacked out, but I will get you what I can get you." The court asked defendant if he had any questions, and defendant answered, "No. No questions [Y]our Honor."

¶ 22 Two days later, defendant appeared in court with counsel. Defendant complained about counsel not subpoenaing a witness whom counsel found unhelpful to defendant's case. The trial court told defense counsel and defendant to resolve the issue and warned defendant it would "bring [him] back everyday[, b]ut it's not going to change that trial date." Defendant replied, "Okay."

¶ 23 Eighteen days later, defendant appeared in court and told the trial court he wanted to represent himself because there was a lack of communication between him and his attorney. Defendant then asked for "a copy of all the video recordings, all the calls, all the statements of the discoveries that the State *** has," as well as "time to go over all the discoveries." The State objected, and defense counsel advised the court he and defendant had talked a number of times and defendant had in his possession all of the videos and the redacted police reports. The court thoroughly admonished defendant about his right to represent himself, informing him extensively about the pitfalls he would face if he proceeded *pro se* in this very serious case. The court then gave defendant time to assess whether he wished to represent himself, and defendant indicated that was "[f]air." A discussion was then had about whether defendant's first appointed counsel had tendered to defendant all the videos. Defendant said she had not. It was intimated that defendant had not reviewed a police body camera video taken at the hospital. Defense counsel

told the court he would "[c]ue it up and go over it with [defendant]."

¶ 24 Ten days before trial, the trial court asked defendant whether he wished to proceed *pro se*. Defendant said he did. The court said it was not trying to talk defendant out of representing himself and then admonished him again about proceeding *pro se* and the potential penalties he faced. Defendant confirmed he understood and reiterated he wanted to represent himself. Immediately thereafter, the court asked defendant if he had any questions. Defendant asked, "Just when I do the *pro se* to get all the evidence from the State that they have against me?" The court confirmed defendant was talking about discovery and asked whether there was an issue about a video. Defense counsel responded,

> "There was—[defendant] has previously received all but one video. Under Rule 415, we're not allowed to divulge [the] victim's medical records. There is body cam[era] video, statements made by [B.W.] while in a hospital bed, and I know that [various people from the public defender's office] spoke to all of [the videos]. They've all gone over that video with [defendant]. I attempted do the same this morning. That one video he did not receive because I don't believe Rule 415 allows it while he is represented."

Defense counsel confirmed he and defendant watched a portion of the video that morning, and defendant asked, "So, I'm just—you saying I'm not supposed to receive it?" Defense counsel answered, "While you have an attorney."

¶ 25 The trial court then said it would allow defendant to represent himself and asked, "Are you ready for trial [in 10 days]?" Defendant responded, "No, [Y]our Honor. I will have to go over all the evidence against me. I need a little time to go over all of that. Probably a couple months." The State interjected, advising the court defendant received all of the discovery around

two years ago, except for the one video defense counsel just mentioned. The State argued defendant's request for a continuance to review discovery was simply a delay tactic, noting the *pro se* motions defendant filed almost two years ago showed he has had ample time to review all the discovery. The court refused to continue the trial, noting "we've been talking about discovery for the last one, or two, or three hearings where you raise you didn't have the video, but you had the other items." Defendant replied, "Yes." The court said the failure to bring this case to trial within the last two and a half years was "ridiculous," and the court was "embarrassed for the court system."

¶ 26 A discussion between the trial court and defendant then proceeded, as follows:

"[DEFENDANT]: So, I'm getting forced to go to trial? Like I said, as I go *pro se*, I need time to go over my case. I'm being forced to go [to] trial without going over my case.

THE COURT: Your choice is your choice. You're not getting a continuance. Do you want to go *pro se* or not?

[DEFENDANT]: Isn't that a violation of my rights not letting me go for my case?

THE COURT: Well, not according—I don't make an effort to violate—I don't make decisions thinking I'm violating somebody's rights. I don't think your rights are being violated.

[DEFENDANT]: But I was trying to look over my case as—with me—

THE COURT: Okay. Tell me, do you want to go *pro se* or not? You're going to trial [in 10 days].

[DEFENDANT]: Well, how can I go *pro se* if I don't have time to do

anything? You're not giving me time to go *pro se*. So I have to go—

THE COURT: How long have you been in custody?

[DEFENDANT]: For about two and a half years.

THE COURT: You haven't had time[?] Listen, I'm not debating it. You gonna answer the question or not? Do you want to go *pro se* or not?

[DEFENDANT]: I mean, I can't go *pro se* if you're not giving me time.

THE COURT: All right. Then you're not going *pro se*. You're going to trial [in 10 days].

[DEFENDANT]: So, I'm getting forced to go to trial without being able to—okay.

THE COURT: I'm showing the defendant's motion [to represent himself] is withdrawn. [In 10 days, a] bench trial.

*** We're not going to address this issue again. So, you're gonna be represented. Is that your desire?

[DEFENDANT]: Well, I have to be represented if I don't have time to go over my case *pro se*.

THE COURT: Well, you've had two and a half years to think about it. We'll see you [in 10 days for trial]."

¶ 27 C. The Bench Trial

¶ 28 Evidence presented at trial revealed defendant and B.W. suffered from alcohol and drug abuse. They met during the COVID-19 pandemic, and B.W. moved in with defendant shortly thereafter.

¶ 29 B.W. testified that, on August 19, 2022, she and defendant got into an argument;

defendant dumped vodka on her head; defendant "flicked" a lighter twice near her chest; and she "went up in flames." (Defendant and his mother testified B.W. spilled alcohol on herself and was set on fire by a crack pipe that either she attempted to light while intoxicated or defendant lit while he was distracted and "messed up.") B.W. stated she was in a "massive amount of pain" and fell to the floor. Defendant retrieved a blanket and put out the flames. B.W. was situated on a mattress on the floor and was in so much pain she could not move from the mattress.

¶ 30 No one called 911. B.W., who was without her phone, did not want to alert the authorities because she did not want defendant to get in trouble. B.W. testified defendant's mother cared for her wounds for the next several days while defendant concocted a story to explain B.W.'s injuries without implicating himself. (Defendant testified he and B.W. made up the story she relayed to the police because she did not want people to know about their drinking and drug abuse.)

¶ 31 Every day, the pain, which B.W. described as "[h]orrible," intensified. B.W. stated defendant never offered her food or a nonalcoholic beverage while she remained with him after she was burned, a claim defendant denied. Because B.W. could not move, she remained in her clothes and was forced to urinate and defecate on herself while she lay on the mattress. B.W. said, in response, defendant urinated on her, saying, "If you can pee on my stuff, I'm going to pee on you." (Defendant denied urinating on B.W.)

¶ 32 Four days later, B.W. was in and out of consciousness and in so much pain that she begged defendant to call an ambulance. B.W. asserted defendant agreed to do so only after she was able to recite the lie he fabricated concerning how she was burned. B.W. agreed to tell this lie because she was scared and did not want defendant to get in trouble. B.W. said defendant changed her clothes before the ambulance arrived.

¶ 33 B.W. was admitted to a burn unit of a hospital in Rockford, Illinois. A month later, when B.W. was stable, she was transferred to OSF Transitional Care Hospital (OSF), where examinations revealed she sustained burns on 20% to 29% of her body, with 10% to 19% of those burns classified as third-degree burns and the remaining burns designated first-degree burns. The nurse who treated B.W. at OSF explained that skin and tissue may be lost with first-degree burns, but with third-degree burns, all layers of the skin are destroyed.

¶ 34 When B.W. arrived at OSF, her burns were in various stages of healing, and she required intensive wound care and pain management. B.W. described the wound care, saying medical staff used a razor to scrape the wounds every day before placing her in a shower. Because the pain was unbearable, she frequently had to be sedated before the procedure. Pictures admitted at trial showed large open and blistered wounds on B.W.'s arm, thigh, and stomach.

¶ 35 In closing, both parties agreed that the mere fact B.W. was set on fire could not be used to find the incident was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty, as that would constitute an improper double enhancement. Rather, both parties urged the trial court to consider what happened after B.W. was burned in deciding whether the brutal or heinous enhancement applied. The State asserted "the conduct that the defendant engaged in after the fact certainly fits this enhancement." Defense counsel did not object. Defense counsel claimed,

> "[B.W.] herself said she didn't even want to go to the hospital. She did not want to involve authorities until that fourth day. I don't think that can count as brutal or heinous conduct in not overriding her decision, in attempting to care for her wounds the way that she would let [defendant] do."

¶ 36 The trial court found defendant guilty of aggravated battery and aggravated

domestic battery. In doing so, it determined B.W. was credible and defendant and his mother were not. It also "further [found] beyond a reasonable doubt that the defendant's behavior post incident was brutal and heinous, indicative of wanton cruelty."

¶ 37 Defendant filed a motion for a new trial, arguing he was not proved guilty beyond a reasonable doubt or, at a minimum, "[he] did his best to administer care (or enlist someone to do so) within the limits set by [B.W.], which is neither heinous nor cruel." Defendant did not claim he was denied his right to represent himself at trial. The trial court denied the motion for a new trial.

¶ 38 D. The Sentencing Hearing

¶ 39 During closing arguments at the sentencing hearing, the State contended,

> "[T]he brutal and heinous finding, we made it clear and the Court made it clear in its ruling, had to [do] with the four days of torture and the four days of suffering [defendant] let her have. And by calling his mother over to help treat her, but continuing to deny her appropriate medical care. That's the brutal and heinous behavior that followed the initial crime."

Defendant did not object to this argument.

¶ 40 Following the hearing, the trial court sentenced defendant to an extended term of 60 years' imprisonment on count I, *i.e.*, the aggravated battery charge. Both defendant, *pro se*, and counsel filed motions to reconsider the sentence. Neither argued the sentence was improper because the facts used to impose an extended-term sentence based on the allegation that the crime was brutal or heinous were not alleged in the indictment. The court denied counsel's motion to reconsider, and defendant filed a notice of appeal that same day.

¶ 41 This appeal followed.

¶ 42 II. ANALYSIS

¶ 43 At issue on appeal is whether (1) defendant was denied his right to proceed *pro se* at trial and (2) defendant's extended-term sentence was improper because the facts used to impose a more severe sentence were not alleged in the indictment. We address each issue in turn. However, before doing so, we must determine whether the issues defendant raises are forfeited.

¶ 44 A. Forfeiture

¶ 45 An issue raised on appeal is considered forfeited when it was not (1) objected to during the trial proceedings and (2) raised in a posttrial motion. See *People Enoch*, 122 Ill. 2d 176, 186 (1988) ("[B]oth a trial objection and a written post-trial motion raising the issue are necessary to preserve an issue for review."). Acknowledging that he failed to properly preserve the issues he raises on appeal, defendant asks us to relax the bar of forfeiture because (1) "the conduct of the trial court is at issue" and (2) the plain-error rule allows us to bypass forfeiture and consider the issues he raises.

¶ 46 Defendant cites *People v. Sprinkle*, 27 Ill. 2d 398 (1963), in support of his claim that review of the issues he raises is proper because they evolved from the trial court's improper conduct. We find *Sprinkle* inapplicable here. In *Sprinkle*, the trial court "invade[d] the province of the jury by making comments, insinuations or suggestions indicative of belief, or disbelief in the integrity or credibility of a witness." (Internal quotation marks omitted.) *Id.* at 403. This was damaging to the defendant's case because it denied him "a jury of impartial individuals[,] free from influence or intimation by the trial court as to the guilt of the defendant." *Id.* at 402. There is no such danger here. Defendant was found guilty after a bench trial, not a jury trial, and the alleged errors defendant raises do not, as in *Sprinkle*, concern the court making comments supporting or undermining the strength of defendant's case.

¶ 47 Thereafter, courts addressed what was then termed the *Sprinkle* doctrine and expanded on what the doctrine encompassed. For example, as the State notes, *People v. Hanson*, 238 Ill. 2d 74, 118 (2010), allowed for relaxation of the forfeiture rule under the *Sprinkle* doctrine "when the trial court has overstepped its authority in the presence of the jury or when counsel is effectively prevented from objecting as any objection would have fallen on deaf ears." (Internal quotation marks omitted.) Those circumstances do not exist in this case. As noted, defendant was not tried by a jury, and nothing indicates defense counsel was prevented from objecting to the court's actions. To the extent defendant was himself objecting to not being allowed to proceed *pro se*, defendant made his objection clear.

¶ 48 Alternatively, defendant argues we may review the issues he raises under the plain-error rule. "The plain error rule is a well-established exception to forfeiture principles, allowing reviewing courts discretion to excuse a defendant's procedural default." *People v. Moon*, 2022 IL 125959, ¶ 19. The rule grants

> "reviewing courts discretion to review forfeited errors under two alternative prongs: (1) when a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) when a clear or obvious error occurred and the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *Id.* ¶ 20.

Whether the plain-error rule should be invoked to bypass forfeited is a question of law that we review *de novo*. *People v. Mudd*, 2022 IL 126830, ¶ 22.

¶ 49 In deciding whether the plain-error rule applies, we first must consider "whether

there was a clear or obvious error" because, in the absence of error, there can be no plain error. *Moon*, 2022 IL 125959, ¶ 22; *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). Accordingly, we turn to the merits of this appeal to determine whether error arose.

¶ 50 B. The Merits

¶ 51 1. *The Right to Self-Representation*

¶ 52 Defendant claims, based on the trial court's denial of his request for a continuance, he was forced to abandon his right to represent himself. In addressing this issue, we find it necessary to examine (1) defendant's request to proceed *pro se* and (2) the court's denial of defendant's request for a continuance.

¶ 53 a. Request to Proceed *Pro Se*

¶ 54 "A criminal defendant has the right to self-representation under both the United States and Illinois Constitutions." (Internal quotation marks omitted.) *People v. Rogatchev*, 2026 IL App (4th) 241165, ¶ 64. To invoke this right, the defendant must "knowingly and intelligently relinquish his right to counsel," and his waiver "must be clear and unequivocal, not ambiguous." *People v. Baez*, 241 Ill. 2d 44, 115-16 (2011). "[A] knowing and intelligent choice calls for nothing less than a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *People v. Lesley*, 2018 IL 122100, ¶ 51. "The determination of whether there has been an intelligent waiver of the right to counsel must depend upon the particular facts and circumstances of each case, including the background, experience, and conduct of the accused." *Id.* "The entire record should be considered in determining whether the waiver was knowingly and understandingly made." *Id.*

> "The requirement that the request [must be] unequivocal serves to *** prevent the defendant from [(1)] appealing the denial of his right to self-representation or the

> denial of his right to counsel, and [(2)] *** manipulating or abusing the system by going back and forth between his request for counsel and his wish to proceed *pro se*." (Internal quotation marks omitted.) *Rogatchev*, 2026 IL App (4th) 241165, ¶ 64.

In assessing whether a proper waiver was made, "[c]ourts must indulge in every reasonable presumption against waiver of the right to counsel." (Internal quotation marks omitted.) *Id.* "A trial court's denial of a defendant's request to represent [himself] is reviewed for an abuse of discretion, which occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.) *Id.* ¶ 65.

¶ 55 Here, the trial court advised defendant more than once about the charges, admonished him of the sentencing ranges he faced, and warned him about the difficulties he would incur if he proceeded *pro se*. Knowing that, defendant stated he wanted to represent himself. The court had no issue with this. Rather, the court was steadfast that it would not continue the case. When defendant was told he could represent himself at trial 10 days later but that no continuance would be granted, defendant changed his mind about wanting to represent himself. This can be construed as equivocating on whether to proceed *pro se*. See *People v. Burton*, 184 Ill. 2d 1, 24-25 (1998) (finding the defendant's request to represent himself was equivocal because it was conditioned upon receiving the defense counsel's records). To the extent defendant's request to proceed *pro se* was unequivocal, the question becomes whether the denial of his request for a continuance was improper and forced defendant to forgo his right to represent himself. See *Faretta v. California*, 422 U.S. 806, 834 n. 46, 835-36 (1975) (noting that a defendant's constitutional right to self-representation is violated when he is forced to accept a

state-appointed attorney after knowingly and intelligently waiving his right to counsel and unequivocally invoking his right to represent himself; however, a "trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct").

¶ 56 b. Request for a Continuance

¶ 57 A trial court has discretion to grant or deny a motion for a continuance. *People v. Walker*, 232 Ill. 2d 113, 125 (2009). We will not upset that decision absent a clear abuse of discretion. *Id.*

> "Whether there has been an abuse of discretion depends on the facts and circumstances in each case [citation], and '[t]here is no mechanical test *** for determining the point at which the denial of a continuance *** to accelerate the judicial proceedings violates the substantive right of the accused to properly defend.' " *Id.* (quoting *People v. Lott*, 66 Ill. 2d 290, 297 (1977)).

¶ 58 That said, there are nonexclusive factors a trial court may consider in determining whether to grant a defendant's request for a continuance in a criminal case. *Id.* at 125-26. Those factors include (1) the defendant's diligence, (2) the defendant's right to a speedy trial, (3) the history of the case, (4) the complexity of the matter, (5) the seriousness of the charges, (6) docket management, (7) judicial economy, and (8) inconvenience to the parties and witnesses. *Id.*

¶ 59 Here, we cannot say the trial court abused its discretion in denying defendant's request for a continuance 10 days before trial. The record shows the case was two and a half years old; the court expressed its dissatisfaction with the case remaining pending for so long, essentially urging the parties to resolve it soon; and the court cautioned defendant it would not delay the trial any longer. This was proper. See *People v. Ward*, 208 Ill. App. 3d 1073, 1082

(1991) (recognizing that, as part of the admonishments made when a defendant waives counsel, the court should advise the defendant he "will receive no extra time for preparation" for trial). The State informed the court defendant had access to all the discovery for at least two years. This was more than an adequate amount of time for defendant to prepare for trial. See *People v. Garrett*, 104 Ill. App. 3d 178, 182 (1982) (observing the trial court did not abuse its discretion in denying the defendant a continuance when "the defendant had had more than five months with which to become familiar with his case"). Defendant's *pro se* motions filed around the time he was tendered discovery and statements in his reply brief confirm he had access to and reviewed the discovery made available to him. Given the procedural history of the case and the fact defendant had all the discovery to which he was entitled, the State suggested defendant's tactics were dilatory, which the court seemed to accept. After a lengthy exchange with the court, defendant acknowledged the case was set for trial and would not be continued. Then, after indicating he would need at least two months to prepare for trial, despite the fact he had discovery for at least two years, defendant indicated he would not proceed *pro se*. We find no error in the court's exercise of its discretion in denying defendant's request for a continuance.

¶ 60 Supporting our position is *People v. Burns*, 2012 IL App (4th) 110670. There, two days before trial, the defendant filed a motion for the appointment of new counsel or, alternatively, to proceed *pro se*. *Id.* ¶ 5. One day before trial, after the trial court admonished the defendant he could keep his current attorney or represent himself, the defendant invoked his right to proceed *pro se*. *Id.* ¶ 6. The court then warned the defendant, if he wanted to represent himself, it was not " 'gonna delay the case.' " *Id.* Given that and other admonishments, the defendant changed his mind and opted to go to trial with appointed counsel. *Id.* On appeal, this court found the trial court did not coerce the defendant to forgo his right to represent himself,

noting nothing indicated the court was " 'noticeably perturbed' " by the defendant's desire to represent himself. *Id.* ¶¶ 15, 17.

¶ 61 Such is the case here. After the trial court advised defendant it was not going to grant him a continuance if he proceeded *pro se*, it asked whether that changed defendant's mind. Defendant interpreted this as pressuring him to go to trial with counsel, an interpretation the record belies. Specifically, immediately after defendant asserted he was being "forced" to go to trial with counsel, the court said, "Your choice is your choice. You're not getting a continuance. Do you want to go *pro se* or not?" Although the court here, unlike in *Burns*, may have been " 'noticeably perturbed,' " the court's annoyance was not due to defendant exercising his right to proceed *pro se*. *id.* Rather, the record makes clear the court was bothered by the fact the case had been pending for over two years.

¶ 62 In reaching our conclusion that defendant was not denied his right to represent himself, we must comment on the fact, pursuant to the trial court's order, defense counsel had the discretion to decide what discovery to tender to defendant after it was redacted pursuant to Rule 415(c). Despite this, the record reveals defendant was given or counsel detailed all the allowable discovery in this case. To the extent defendant suggests he was entitled to unredacted discovery once he invoked his right to represent himself, we note neither defendant nor this court found authority analyzing this issue. See *People v. Pratt*, 391 Ill. App. 3d 45, 55 (2009) (merely noting the defendant was given redacted discovery once he invoked his right to proceed *pro se*). Although we found no authority specifically examining the issue, we believe defendant would not be entitled to discovery protected by Rule 415(c) if he proceeded *pro se*, as this would clearly frustrate the policy behind the rule. See *People v. Savage*, 361 Ill. App. 3d 750, 760 (2005) (stating that " '[t]he purpose of Rule 415(c) is to prevent pretrial-discovery materials from

becoming ‘matters of public availability once they had been turned over to counsel’ ” (quoting 134 Ill. 2d R. 415(c), Committee Comments, at 357)).

¶ 63 In sum, we find defendant was not denied his right to represent himself. Rather, he was allowed to proceed *pro se* and changed his mind only after the trial court denied his request for a continuance, a decision that was not an abuse of discretion. Accordingly, because we find no error, we do not consider under which prong of the plain-error rule we should examine the issue defendant raises See *Moon*, 2022 IL 125959, ¶ 23 (after finding error, “[t]he next step of plain error analysis depends on which prong of the plain error rule the defendant has invoked in seeking a review of a forfeited error”). We also find it unnecessary to consider the State’s claim defendant attempted to delay the proceedings by asking for a continuance.

¶ 64 2. *The Allegation of Facts in the Indictment*

¶ 65 The aggravated battery defendant was convicted of and sentenced on is a Class X felony, with a sentencing range between 6 and 60 years. 720 ILCS 5/12-3.05(a)(2), (h) (West 2022). An extended-term sentence may be imposed if the “[trial] court finds that the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.” 730 ILCS 5/5-5-3.2(b)(2) (West 2022). The maximum extended term that may be imposed for a Class X felony is 60 years. *Id.* § 5-4.5-25(a). Defendant was sentenced to the maximum extended term of 60 years after the court found the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.

¶ 66 Defendant argues he is entitled to a new sentencing hearing because the facts that were used to impose an extended-term sentence, *i.e.*, what happened to B.W. in the four days after she was burned, were not charged in the indictment. Defendant’s argument is premised on *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000), which provides that “any fact (other than

prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." Essentially, defendant claims more is required than simply an allegation in the indictment that the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.

¶ 67 In addressing this issue, we find it necessary to consider whether defendant invited the error. "[The invited-error] doctrine is a procedural default that is, generally, addressed before or, in some instances, in lieu of the merits of a case." *People v. Wachter*, 2026 IL App (2d) 250318, ¶ 17. Invited error " 'goes beyond mere' " forfeiture and acts as a form of estoppel precluding appellate review of even plain errors. *People v. Harvey*, 211 Ill. 2d 368, 385 (2004). Under the invited-error doctrine, "a party cannot acquiesce to the manner in which the trial court proceeds and later claim on appeal that the trial court's actions constituted error." *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 60; see *People v. Hughes*, 2015 IL 117242 ¶ 33 ("[T]he invited error rule" states that "a party cannot complain of error that it brought about or participated in."). "Simply stated, a party cannot complain of error which that party induced the court to make or to which that party consented." *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004). Whether a defendant invited an error is a question of law that this court reviews *de novo*. See *Johnson v. Ames*, 2016 IL App (1st) 162770, ¶ 19 (noting questions of law are reviewed *de novo*).

¶ 68 Here, we find defendant invited the error of which he now complains. In his *pro se* motion, defendant recognized that what transpired after B.W. was burned would be used to determine whether the crime was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. This is why defendant expressed a desire to call his mother as a witness, as she would be able to testify about how B.W. was treated after she was burned and

before she was taken to the hospital. Defense counsel, too, recognized that the exceptionally brutal or heinous allegation went to what happened to B.W. after she was burned. Defense counsel mentioned this in his closing argument and posttrial motion, and he never objected when the State argued defendant should be sentenced to an extended term based on what happened to B.W. after she was burned, as that showed the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty, as charged in the indictment.

¶ 69 Invited error aside, we observe there is no requirement that the facts supporting a charge that an offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty must be alleged in the charging instrument. Rather, all that is required is that the defendant is notified the State is seeking an extended-term sentence based on a finding that the offense was brutal or heinous, which notice can be had by charging this ground in the charging instrument. See, *e.g.*, *People v. Chambers*, 2026 IL App (4th) 250934, ¶ 101 ("Before the [trial] court could have considered imposing an extended-term sentence upon [the] defendant on the ground that the first degree murder of [the victim] was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty [citation], that ground had to be alleged in the indictment, or, before the trial began, the State had to provide [the] defendant written notification of that ground, which then had to be submitted to a trier of fact as an aggravating factor[ ] and proved beyond a reasonable doubt. (Internal quotation marks omitted.)"); *People v. Williams*, 2022 IL App (2d) 200455, ¶ 138 (providing that gruesome photographs of the victim were properly admitted because "they were highly probative in evaluating whether the offense was committed in an exceptionally brutal or heinous manner indicative of wanton cruelty, as alleged in the indictment").

¶ 70 To the extent a claim is made that the trial court abused its discretion in finding

the aggravated battery was accompanied exceptionally by brutal or heinous behavior indicative of wanton cruelty, we must disagree. See *People v. Andrews*, 132 Ill. 2d 451, 464 (1989) (providing that an abuse of discretion standard is used when deciding whether the trial court properly found the defendant eligible for an extended-term sentence based on an allegation that the offense was accompanied by brutal or heinous behavior indicative of wanton cruelty). The evidence here revealed defendant (1) left B.W. on the floor on a mattress, failing to properly treat her serious burns and intensifying pain; (2) denied her food and drink and access to her phone for four days; (3) left her to defecate and urinate on herself, never bothering to change her clothes until after an ambulance was called; (4) urinated on her for soiling herself; (5) did not seek medical treatment for B.W. until she was (a) passing out from the pain, begging defendant to call an ambulance and (b) able to relay to authorities the lie he made up to eliminate himself as a culpable party; and (6) burned and failed to properly treat B.W., such that she endured extensive wound and pain treatment for well over a month. See *People v. Nitz*, 219 Ill. 2d 400, 418-19 (2006) (defining brutal, heinous, and wanton cruelty).

¶ 71 In sum, we conclude defendant invited the error he raises. That aside, the facts supporting an allegation of brutal or heinous behavior indicative of wanton cruelty do not need to be alleged in a charging instrument. Rather, it is sufficient if the charging instrument simply alleges that the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty, a finding of which supported an extended-term sentence in this case. Because brutal or heinous behavior was alleged in the indictment here, no error arose, and the plain error doctrine cannot be invoked. See *Bannister*, 232 Ill. 2d at 65. Thus, we do not consider under which prong of the plain-error rule we should examine the issue defendant raises See *Moon*, 2022 IL 125959, ¶ 23. We also do not consider defendant's claim that trial counsel was

ineffective for not objecting to the imposition of a 60-year sentence based on facts not charged in the indictment, as, in the absence of error, counsel cannot be ineffective. See *People v. Dorsey*, 2023 IL App (1st) 200304, ¶ 67.

¶ 72 III. CONCLUSION

¶ 73 For the reasons stated, we affirm the trial court's judgment.

¶ 74 Affirmed.