NOTICE
Decision filed 09/21/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250075-U

NOS. 5-25-0075, 5-25-0076 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	White County.
	)	
v.	)	Nos. 22-CF-101, 22-CF-185
	)	
BELINDA A. VOGT,	)	Honorable
	)	T. Scott Webb,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McHANEY delivered the judgment of the court.
Justices Boie and Hackett concurred in the judgment.

ORDER

¶ 1 *Held*: Reversible error did not occur during the sentencing of the defendant. Because no argument to the contrary would have arguable merit, appellate counsel is granted leave to withdraw, and the judgments of the circuit court of White County are affirmed.

¶ 2 The defendant, Belinda A. Vogt, is presently incarcerated in the Illinois Department of Corrections (IDOC), following her open pleas of guilty in two separate cases, which led to two separate appeals. We have consolidated her appeals for decision on our own motion. The Office of the State Appellate Defender (OSAD) was appointed as the defendant's counsel in both appeals. OSAD has concluded that each appeal lacks arguable merit for the same reason, and, on that basis, has filed motions for leave to withdraw as counsel, pursuant to *Anders v. California*, 386 U.S. 738 (1967), along with supporting memoranda of law. OSAD properly served the defendant with notice

in each appeal. This court gave the defendant the opportunity to file responses to OSAD's motions. The defendant has not filed a response in either appeal. Having considered OSAD's *Anders* motions and memoranda, and the entire record on appeal in each case, this court agrees with OSAD's assessment. We therefore grant OSAD's motions to withdraw, and we affirm the judgments of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On May 23, 2022, the defendant was charged by information in White County case No. 22-CF-101 with three criminal offenses. Count I alleged that on or about May 20, 2022, the defendant committed the offense of unlawful use of property, a Class 2 felony, in that she knowingly used a motor vehicle "to help in the violation of possession of methamphetamine." Count II alleged that on or about that same date, the defendant committed the offense of unlawful possession of methamphetamine, a Class 3 felony, in that she "knowingly possessed less than 5 grams of methamphetamine or a substance containing methamphetamine." Count III alleged that on or about that same date, the defendant committed the offense of unlawful possession of paraphernalia, a Class A misdemeanor, in that she "knowingly possessed a straw with methamphetamine residue, an item of drug paraphernalia, with the intent to use the straw to ingest methamphetamine into her body."

¶ 5 On June 8, 2022, the defendant's bond in 22-CF-101 was reduced from $50,000 to $10,000. That same day, she posted bond and was released from custody. On October 4, 2022, the defendant was charged by information in White County case No. 22-CF-185 with two additional criminal offenses. Count I alleged that on or about September 24, 2022, the defendant committed the offense of aggravated battery, a Class 3 felony, in that, while in a public place of accommodation, she intentionally caused bodily harm to the victim when "she grabbed her by the throat." Count II

alleged that on that same date, the defendant committed the offense of aggravated battery, a Class 3 felony, in that she intentionally caused bodily harm to the same victim when she "strangled" the victim.

¶ 6 On March 14, 2023, the defendant appeared in court with counsel to enter pleas of guilty to certain counts in the two aforementioned cases. The State informed the circuit court that the terms of the plea agreement were that in 22-CF-101, the defendant would enter an open plea of guilty to count I, and that in 22-CF-185, the defendant would enter an open plea of guilty to count II. The State presented the circuit court with a signed plea of guilty and waiver of jury trial for each case, both of which the defendant acknowledged signing, and both of which she stated she understood. She agreed that no "threats or promises" had been made to induce her to sign the documents, and that no one was "making" her enter the agreements. The circuit court informed the defendant that, with regard to sentencing, the State and the defendant would each make recommendations to the court, but that ultimately the court would "be the one that will make that decision." The defendant stated that she understood, and the circuit court advised the defendant of the range of penalties she faced under the plea agreement, and that the circuit court had the discretion to make any sentences in the case consecutive to one another. The defendant again stated that she understood.

¶ 7 The State then presented the factual basis for each plea, stating, with regard to 22-CF-101, that "if that case were to go to trial, the State would call Officer Lucas who we believe would testify that on or about May 20, 2022, he was on routine patrol when he pulled a vehicle over for a suspended registration." Officer Lucas would testify that the defendant was a passenger in the car, and that after the driver was arrested because his license was suspended, Officer Lucas took an inventory of the car before having it towed. While so doing, Officer Lucas "found multiple cut

straws with white residue that, due to his experience, he believed were used in inhaling methamphetamine," and that thereafter "[t]he straws tested positive for methamphetamine."

¶ 8 The factual basis presented by the State in 22-CF-185 was that "if we were to go to trial, the State would be calling Officer Matthew Long, who we believe would testify on or about September 24, 2022, he was on routine patrol when he was dispatched to the local Huck's due to a dispute that was ongoing." The State continued that Officer Long would testify that the victim told him that she and the defendant "got into a verbal argument" which "escalated" to the point that the defendant "put her hands around [the victim's] neck, restricting her breathing." The circuit court accepted the factual basis in each case, and set sentencing for June 12, 2023.

¶ 9 Following multiple continuances, the defendant's sentencing hearing was held on January 29, 2024. At the outset of the hearing, the circuit court noted that the case was set for sentencing in 22-CF-101 and 22-CF-185, and for resentencing in 19-CF-96, a case that is not presently on appeal. Defense counsel stated that she had received the presentence investigation report, had reviewed it with the defendant, and did not have any corrections or concerns about it. The State agreed that no corrections were needed. The circuit court heard argument, including factors in aggravation from the State, and factors in mitigation from the defense. The State argued that, based on the defendant's prior history, "it would appear that she is not capable of completing probation." The State recommended a sentence of "a term of imprisonment of 10 years on each count, and those be served concurrently."

¶ 10 Defense counsel argued that the defendant had "several instances" of successful probation or supervision in her past. She argued that the defendant's traumatic background helped explain her substance abuse issues, and that "10 years is too much." Defense counsel asked, "for the minimum sentence in each case," and that the sentences "run concurrently."

¶ 11 The circuit court stated that the defendant had "a history of prior delinquency or criminal activity," and that the court had "probably been dealing with [the defendant] for close to 20 years." The circuit court stated that as a factor in aggravation, the court found that a sentence was "necessary to deter others from committing the same crime." The court noted that the defendant was on probation when she committed the offenses in these cases, which led the circuit court to state that it did "not have any faith whatsoever that" the defendant would be able to comply with probation. The court acknowledged that the defendant had "been dealt a bad hand" in some areas of her life, but that although some other people who are dealt bad hands "figure out a way to deal with that and *** survive in society," the defendant had given the court "zero indication that [she could] do that."

¶ 12 The circuit court stated that it had given the defendant "more opportunity than *** anybody else ever before," but that although the circuit court liked the defendant, and "always looked fondly upon" her, the court would not give her any additional chances. In the resentencing case—19-CF-96—the circuit court sentenced the defendant to three years in IDOC, as well as prior fines and costs that were already ordered in that case. In case No. 22-CF-101, the circuit court sentenced the defendant to five years in IDOC, to run consecutively to her sentence in 19-CF-96. In case No. 22-CF-185, the circuit court sentenced the defendant to five years in IDOC, to be served concurrently with her sentence in 22-CF-101, which meant that it too would be consecutive to the sentence in 19-CF-96. The circuit court thereafter admonished the defendant as to the appeal rights it believed applied to her case. Also on January 29, 2024, a mittimus was filed in each case that was consistent with the circuit court's oral sentencing pronouncement, and that stated that each sentence was to be served at 50%.

¶ 13 The defendant filed *pro se* notices of appeal in each case. On November 8, 2024, this court issued summary orders in appeal Nos. 5-24-0344 and 5-24-0346, in which we granted the defendant's motion for summary relief in each case, and remanded to the circuit court to give proper postplea admonishments, because we found the circuit court had inadvertently admonished the defendant as to the appeal rights applicable to negotiated plea agreements, not to open pleas of guilty. At a hearing held on December 16, 2024, the circuit court properly admonished the defendant of her appeal rights. On January 14, 2025, the defendant, through counsel, filed a motion to reconsider her sentence in each case. She also filed a motion to vacate judgment and withdraw her guilty plea in each case, but subsequently she withdrew those motions.

¶ 14 A hearing was held on February 3, 2025, at which the defendant adduced testimony in support of her motions to reconsider her sentences. In argument, defense counsel asked the circuit court to reconsider the defendant's five-year sentences, and stated that "any reduction *** would be something that would be very much appreciated." The State argued that the current sentences were "well within the range that the legislature *** allotted," and should not be changed.

¶ 15 The circuit court stated that the defendant looked and sounded good, and was probably "better" than she had been in years. The circuit court recounted its prior experiences with the defendant, and her multiple drug-related cases, then stated, "I would say that but for me sending you to prison, you would still be in a very bad place." The circuit court stated that it believed the defendant's sentences had "done pretty well of getting you to where you're at," and the court would not reconsider them. The court thereafter admonished the defendant as to her appeal rights.

¶ 16 Also on February 3, 2025, defense counsel filed a certificate, pursuant to Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024), in which counsel stated that she had (1) consulted with the defendant in person to ascertain the defendant's contentions of error in the entry of her plea of

guilty, and her sentence, in each case; (2) examined the circuit court file and report of proceedings of the plea of guilty, and the report of proceedings of the sentencing hearing, in each case; and (3) made any necessary amendments to the postplea motions in each case. The defendant again filed *pro se* notices of appeal in each case, and these timely appeals followed.

¶ 17 II. ANALYSIS

¶ 18 As noted above, in each appeal OSAD has filed an *Anders* motion to withdraw as counsel. In the legal memorandum that accompanies each motion, OSAD raises the same three potential issues: (1) whether defense counsel properly complied with Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024), (2) whether the defendant's sentences are excessive, and (3) whether consecutive sentences were permissible in these cases. However, OSAD concludes that none of these potential issues have arguable merit. For the reasons that follow, we agree with OSAD. We therefore grant OSAD's motions to withdraw, and we affirm the judgments of the circuit court.

¶ 19 With regard to the first potential issue, as OSAD points out, the Rule 604(d) certificates filed in each case by defense counsel on February 3, 2025, "track the rule's requirements nearly verbatim." We agree with OSAD that there is therefore no claim of arguable merit that OSAD could raise with regard to defense counsel's strict compliance with the rule in this case.

¶ 20 With regard to the second potential issue, we agree with OSAD that any claim that the defendant's sentences in these cases are excessive would be without arguable merit. It is axiomatic that in Illinois, the imposition of a sentence following a conviction is left to the sound discretion of the circuit court, and a reviewing court will not alter the circuit court's sentence unless the circuit court has abused its discretion. *People v. Etherton*, 2017 IL App (5th) 140427, ¶ 15. A circuit court's denial of a defendant's motion to reconsider sentence is also reviewed for an abuse of discretion. *People v. Kane*, 404 Ill. App. 3d 132, 139 (2010). "The abuse of discretion standard

has been viewed as the most deferential standard of review available with the exception of no review at all." *Etherton*, 2017 IL App (5th) 140427, ¶ 15. We give such great deference to the circuit court because it "is in the best position to consider the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *Id.* We will not find an abuse of discretion unless the circuit court's sentencing decision is arbitrary, fanciful, or unreasonable, or unless no reasonable person would take the view adopted by the circuit court in its decision. *Id.* ¶ 26. We may not overturn a sentence merely because we might have weighed the pertinent statutory factors differently. *Id.*

¶ 21 It is equally axiomatic that sentences are presumed to be proper, and that if a circuit court's sentence "falls within the statutorily prescribed range, it will not be found to be excessive or an abuse of discretion unless the sentence greatly varies from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." *Id.* ¶ 28. We have held that the spirit and purpose of the law are promoted if the circuit court's sentence reflects the seriousness of the offense, while also giving sufficient consideration to the defendant's rehabilitative potential. *Id.* Moreover, "if mitigating evidence is presented at the sentencing hearing, a reviewing court presumes the [circuit] court took that evidence into consideration, absent some contrary evidence." *Id.* ¶ 29. There is no requirement that the circuit court recite or assign a value to each factor presented at the sentencing hearing, and the defendant bears the burden to affirmatively establish that a sentence was based on improper considerations. *Id.*

¶ 22 In these cases, as OSAD notes, the defendant's sentences were well within the permissible statutory ranges, and there is nothing in the record to suggest the circuit court applied improper factors or otherwise erred in fashioning its sentences. As OSAD further notes, the defendant contended in her motions to reconsider that the circuit court placed too much emphasis on the

defendant's failed drug tests, but it is not improper for a circuit court to consider a defendant's past behavior while on probation as part of the court's analysis of the defendant's rehabilitative potential. See, *e.g.*, *People v. Witte*, 317 Ill. App. 3d 959, 963 (2000). Likewise, it is clear that the circuit court considered the mitigation evidence presented by the defendant—that she was participating in programs while in IDOC, and had options for programs when she was released from IDOC—because the circuit court commented that the defendant looked and sounded good, and was probably "better" than she had been in years. Thereafter, the circuit court recounted its prior experiences with the defendant, and her multiple drug-related cases, then stated, "I would say that but for me sending you to prison, you would still be in a very bad place." The circuit court added that it believed the defendant's sentences had "done pretty well of getting you to where you're at," and the court would not reconsider them. We agree with OSAD that the circuit court's decisions do not support a claim that the defendant's sentences were excessive.

¶ 23 With regard to the third potential issue, OSAD is correct that any claim that consecutive sentences were not permissible in these cases would be without arguable merit. First, OSAD is correct that the defendant has waived any such claim, because it was not included in her motion to reconsider her sentence in either case. *People v. Ratliff*, 2024 IL 129356, ¶¶ 26, 48. Second, OSAD is correct that any claim of ineffective assistance of counsel based upon the failure to include such a claim in the motions to reconsider sentence would fail, because the defendant cannot show that she was prejudiced by the failure to raise the issue. *Strickland v. Washington*, 466 U.S. 668, 687-94 (1984) (holding that a defendant must show both that counsel's performance was deficient, and that the defendant was prejudiced by the deficient performance).

¶ 24 Pursuant to section 5-8-4(c)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(c)(1) (West 2022)), the defendant was eligible for permissive consecutive sentences in these cases "[i]f,

having regard to the nature and circumstances of the offense and the history and character of the defendant, it is the opinion of the court that consecutive sentences are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record." It is true that in this case, the circuit court did not explicitly set forth in the record any finding that the consecutive sentences were required to protect the public from further criminal conduct by the defendant. However, this court has consistently held that when imposing permissive consecutive sentences, the circuit court is not required to recite the specific language of section 5-8-4(c)(1)—which previously was contained in section 5-8-4(b)—as long as the record shows that the consecutive sentences were motivated by the circuit court's belief that the public's protection required them. See, *e.g.*, *People v. Buckner*, 2013 IL App (2d) 130083, ¶¶ 35-37; *People v. Span*, 337 Ill. App. 3d 239, 241 (2003); *People v. Allen*, 268 Ill. App. 3d 947, 950 (1994); *People v. Dorosz*, 217 Ill. App. 3d 1016, 1020 (1991).

¶ 25 As described in detail above, in the present cases, the circuit court extensively discussed, when rendering the consecutive sentences, the defendant's prior criminal history, the court's familiarity with the defendant over the last approximately 20 years, the court's belief—as a factor in aggravation—that a sentence was "necessary to deter others from committing the same crime," and the fact that the defendant was on probation when she committed the offenses in these cases, which led the circuit court to expressly state that it did "not have any faith whatsoever that" the defendant would be able to comply with probation. We believe the circuit court's statements, taken together and viewed in the context of the court's sentencing decisions, demonstrate that the circuit court believed that the consecutive sentences in these cases were necessary for the protection of the public from further criminal conduct by the defendant—a belief that is strongly supported by the record, which also shows that the defendant was on pretrial release in 22-CF-101 when she

committed the aggravated battery to which she later pled guilty in 22-CF-185. Accordingly, the defendant cannot show that she was prejudiced by the failure of her counsel to include a claim contesting the consecutive sentences in her motions to reconsider the defendant's sentences. Moreover, had counsel included such a claim in her motions, the circuit court would have had the opportunity at the hearing on the motions to explain in even greater detail its reasoning for the consecutive sentences.

¶ 26 III. CONCLUSION

¶ 27 For the foregoing reasons, the motions of appointed counsel to withdraw are granted, and the judgments of the circuit court are affirmed.

¶ 28 Motions granted; judgments affirmed.