

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) 251309-U
NO. 4-25-1309
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
October 27, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
GREGORY J. HENRY,	)	No. 24CF894
Defendant-Appellant.	)	
	)	Honorable
	)	Donald W. Knapp Jr.,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices DeArmond and Vancil concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted the Office of the State Appellate Defender’s motion to withdraw pursuant to *Anders v. California*, 286 U.S. 738 (1966), and affirmed the trial court’s judgment.

¶ 2 Defendant, Gregory J. Henry, appeals his convictions for aggravated battery to a peace officer and driving under the influence of alcohol (DUI). On appeal, the Office of the State Appellate Defender (OSAD) was appointed to represent defendant. OSAD now moves to withdraw pursuant to *Anders v. California*, 286 U.S. 738 (1966), on the basis that an appeal in this case would be without arguable merit. We grant OSAD’s motion to withdraw and affirm the trial court’s judgment.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by indictment with aggravated battery of a peace officer (720 ILCS 5/12-3.05(d)(4) (West 2024)), in that he made physical contact of an insulting or

provoking nature with Deputy Adam Burris of the McLean County Sheriff's Office by kicking Burris when he knew that Burris was a peace officer performing his official duties. He was charged by information with obstructing a peace officer (*id.* § 31-1(a)(2)). He was also charged by complaint with DUI (625 ILCS 5/11-501(a)(2) (West 2024)) and stopping in the roadway (*id.* § 11-1303).

¶ 5 The matter proceeded to a jury trial. Before the trial commenced, the State indicated that it was only moving forward on the charges of aggravated battery of a peace officer and DUI. Burris testified that, at the time of the incident, he was employed as a sheriff's deputy at the McLean County Sheriff's Office. At approximately 1 a.m. on September 18, 2024, Burris observed a vehicle almost strike the curb on a very busy street in Normal, Illinois. Burris began following the vehicle in his squad car, and the vehicle immediately switched lanes. The vehicle then switched back to the other lane. The vehicle came to a complete stop at an intersection with a green light, and "it appeared the vehicle was put into park for about three seconds." Burris got behind the vehicle again and initiated a traffic stop. He was wearing a uniform that identified him as a sheriff's deputy at the time of the traffic stop.

¶ 6 Burris testified that, when he approached the vehicle, he immediately smelled alcohol, and he noted the driver's speech was slurred. Burris identified defendant in court as the driver of the vehicle. Three other officers were on the scene, as well. Defendant exited his vehicle, and Burris asked him to perform field sobriety tests. Burris attempted to administer the horizontal gaze nystagmus (HGN) test, but defendant was unable to complete it because he was unable to follow Burris's finger with his eyes. Defendant was also unable to complete the walk-and-turn test. Burris stated that defendant complained of pain or being unable to perform the test safely, so Burris decided to skip the test since they were on a busy street. Defendant was also

unable to complete the one-leg-stand test because he was physically unable to do so. Burris stated defendant's "significant other" arrived on the scene at some point.

¶ 7 Burris stated he placed defendant under arrest, and defendant became "irate" with him and the other officers. He yelled obscenities at them and tried to "press into" them. As the officers were walking defendant to the squad car, he fell to ground, requiring the officers to pick him back up. Burris stated it appeared he had gone limp in an attempt to avoid being placed inside the squad car. When the officers were attempting to get defendant into the squad car, he initially refused to sit down. At one point, he kicked Burris in the right thigh. The officers eventually got defendant into the squad car and transported him to the jail. When they arrived, they asked defendant to complete a breath test, but he refused.

¶ 8 A recording of Burris's body camera footage was admitted into evidence. Burris stated he had reviewed the footage, and there were some redactions in the footage. He stated the redactions were generally of parts of the traffic stop where he was completing administrative tasks.

¶ 9 In the recording, a pickup truck can be seen switching lanes multiple times, at one point stopping in the road for several seconds. Burris conducts a traffic stop on the vehicle, and defendant exits the vehicle. Burris repeatedly tells defendant to get back in his truck. Defendant stands outside the truck and tells Burris to shoot him. Defendant eventually complies with Burris's directions to get back in the truck. Burris asks defendant how much he had to drink that night, and defendant responds, saying he had nothing to drink. Defendant provides his driver's license at Burris's request. Burris then states he is going to "run him," and the video fades to black.

¶ 10 Burris is then shown reapproaching defendant's truck, and he again asks

defendant how much he had to drink. Defendant replies he had had nothing to drink. He then states he had two beers earlier and had been at a “jazz thing.” Defendant tells the officers to call his counselor, his attorney, and the judge. Burris asks defendant to complete field sobriety tests, and defendant agrees to do so. Defendant speaks to someone on his cell phone while interacting with Burris. Burris attempts to administer the HGN test. Defendant does not look at Burris’s finger and repeatedly tells Burris to call his attorney and a judge. Eventually, Burris states they will just move on to the next test.

¶ 11 Burris then attempts to conduct the walk-and-turn test, but defendant states he cannot do it without his cane. Eventually, Burris says they will skip that test, as well. Burris attempts to conduct the one-leg-stand test, but defendant states he is physically unable to do the test due to his back issues. Burris then requests that defendant provide a voluntary breath sample. Defendant refuses and tells Burris to call his attorney or a judge. Burris again attempts to administer the HGN test, but defendant indicates he cannot follow Burris’s finger.

¶ 12 In the video, Burris handcuffs defendant and places him under arrest for DUI. Defendant then shouts obscenities at Burris and yells at the other officers. A woman appears in the video and tells defendant to stop talking and “chill out.” At one point, defendant falls to the ground, and the officers tell him to get up. A few seconds later, the camera shakes, and the recording appears to show defendant briefly raise his leg as the officers attempt to get him into the squad car. The woman then says, “No, no, no! Stop it, Greg!” Burris testified that defendant kicked him and made contact with his leg at the time the camera shook.

¶ 13 Felicia Nesby testified that she and defendant were “together” and that she had been taking care of him for six years, including on the day of the incident. She had not seen defendant drink alcohol the day of the incident. She stated she went to the scene of the traffic

stop, and she did not see defendant kick an officer. Nesby acknowledged that she was the woman on the video who is heard saying “no.” She indicated she said that because she wanted defendant to calm down.

¶ 14 Defendant testified that, at approximately 1 a.m. on the day of the incident, he was driving when his left side started hurting. He stated he was having a “medical episode” because he had not taken his medication that day. He called Nesby and told her he was going to have a “medical attack,” so he was going to pull over because he was losing feeling in his left side. He stated he tried to “throw [his] truck in neutral so [he] could get out of everyone’s way.” He saw an officer behind him after he pulled over.

¶ 15 Defense counsel asked defendant how much he had in total to drink on September 17, 2024, and September 18, 2024. Defendant replied: “Nothing really. About 2:00 on early that day I told officer, well, if you would have stopped me earlier in the day I was drinking. That was 2:00, but I was not drinking at the time. Later that night, no, I was not drinking.” Counsel then asked defendant if he had been drinking at 2 p.m. on August 17, 2024. Defendant said he had not. Counsel then asked defendant what day he was drinking at 2 p.m. Defendant replied: “No, 2:00 p.m. on—me and my cousin John and them, I was over at his house, we sat and talked and watched TV, but it was not that day of.” The prosecutor asked defendant if he had been at a jazz festival on the night of the incident, and defendant said he had not. He stated that might have been the night before the incident, but he did not recall. The prosecutor asked defendant if he was misremembering when he told Burris he had been to a jazz festival earlier that night. Defendant responded: “I told him I was drinking two nights before, the night before, not the night of.”

¶ 16 Defendant stated he had been using a cane for approximately nine years at the

time of the incident, and he still had back problems. He stated he did not kick Burris.

¶ 17 The jury found defendant guilty of aggravated battery of a peace officer and DUI.

¶ 18 A pretrial investigation report (PSI) was prepared. The PSI stated that defendant was 59 years old. The PSI showed defendant had prior convictions for possession of a firearm with a defaced serial number, arson, battery, aggravated assault, resisting a peace officer, criminal damage to property, domestic battery, and several traffic offenses. His most recent prior conviction was from 2017. The PSI indicated he had also received dispositions of court supervision for numerous offenses, including two prior DUI offenses. The PSI stated that he failed to report to probation several times in connection with his 2005 arson case and incurred new charges while still on probation in that case. A petition to revoke was filed in that case, and defendant was resentenced to a term of periodic imprisonment after being unsuccessfully discharged from probation. Defendant reported that he sustained a back injury in 2015 and was in “ ‘terrible’ ” physical health. He stated his pain made him angry and caused him to not think clearly. He took prescription medication for pain and other physical and mental health conditions.

¶ 19 The trial court held a sentencing hearing. No evidence was presented, other than the PSI. The State argued that defendant should be sentenced to six years’ imprisonment for aggravated battery of a peace officer based on his criminal history and his failure to address his alcohol abuse during prior community-based sentences. Defense counsel argued that defendant should be sentenced to probation, noting defendant’s prior offenses were old and that defendant had significant health problems. Defendant gave a statement in allocution, in which he stated he recalled “a lot of things” that were not shown in the video played during the trial. He stated he suffered an “attack on [his] left side” on the night of the incident, which is why he had to stop his

vehicle. He stated he had “toxilock” on his vehicle for a year, and he used it successfully. He asserted: “[A]s far as kicking the officer, with my medical condition, I know I cannot kick my leg no three or four foot above the ground. My foot can barely go, you know, six inches, so as far as kicking him, I know I would not kick him.”

¶ 20 The trial court stated it had considered the PSI; defendant’s history, character, and attitude; the evidence and arguments of the parties; the statement in allocution; and the statutory factors in mitigation and aggravation. The court found defendant’s conduct threatened serious harm, though it did not cause serious harm. The court stated it had seen the video, and it showed that defendant was drunk and kicked Burris. The court found defendant had a history of prior criminal activity, though his most recent conviction was from 2017. The court also found the need to deter others from committing the same offense was an applicable factor in aggravation. The court stated it would not sentence defendant to imprisonment, but it was difficult not to do so given defendant’s lack of contrition. The court found, in mitigation, that imprisonment would place excessive hardship on defendant and would endanger his physical or mental condition and that there was a substantial period of time prior to the offenses during which he did not engage in criminal conduct. The court imposed concurrent sentences of 48 months’ probation and 180 days in jail for aggravated battery to a peace officer, and 180 days in jail for DUI.

¶ 21 On appeal, OSAD was appointed to represent defendant. Appointed counsel subsequently moved to withdraw pursuant to *Anders*, asserting that he determined that an appeal in this case would be frivolous. Counsel states that he informed defendant by phone and letter of his conclusion and mailed defendant a copy of his motion. Defendant has not filed a response.

¶ 22 II. ANALYSIS

¶ 23 Appointed counsel has indicated that he identified several potential issues for

review but concluded that each of them would be without arguable merit. We address each issue in turn.

¶ 24 A. Charges

¶ 25 Counsel first asserts that he considered arguing defendant was not properly charged with aggravated battery to a peace officer and DUI, but he concluded such an argument would be without arguable merit.

¶ 26 All felony prosecutions must be by information or indictment, and all other prosecutions may be by indictment, information, or complaint. 725 ILCS 5/111-2(a), (b) (West 2024). A charge must be in writing and allege the commission of an offense by (1) stating the name of the offense, (2) citing the statutory provision allegedly violated, (3) setting forth the nature and elements of the offense, (4) stating the date and county of the offense, and (5) stating the name of the accused. *Id.* § 111-3(a). An indictment must be signed by the foreman of the grand jury. *Id.* § 111-3(b). Where a peace officer observes the commission of a misdemeanor, the officer must sign the complaint and may swear to it or certify that the statements therein are true and correct and are subject to the legal penalties for false certification and perjury. *Id.* Also, a uniform traffic citation constitutes a complaint to which a defendant may plead. *Id.*

¶ 27 Here, defendant was charged by indictment with the felony offense of aggravated battery of a peace officer. Our review of the record shows that the indictment was signed by the grand jury foreman and met the statutory requirements. Defendant was charged with misdemeanor DUI by a traffic citation complaint, which was signed and certified by the arresting officer and stated name of the offense, statutory citation, date and county of the offense, and defendant's name. While it did not further set forth the nature and elements of the offense, courts have held that the name of the offense and statutory citation is sufficient in cases where

misdemeanor offenses are charged by traffic citations. See *People v. Tamm*, 40 Ill. 2d 76, 79 (1968) (“[A] conviction based on a Uniform Traffic Ticket naming an offense and citing the statutory provision, where there is no objection to the sufficiency of the ticket or request for a bill of particulars, will not be set aside for failure to comply with section 111-3(a)(3).”); *People v. Doherty*, 139 Ill. App. 3d 1028, 1031-32 (1986).

¶ 28 Accordingly, we agree with counsel that an argument that defendant was improperly charged would lack merit.

¶ 29 B. Compliance With Illinois Supreme Rule 431(b)

¶ 30 Counsel indicates that he considered arguing that the trial court failed to properly admonish the potential jurors pursuant to Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). Our review of the record shows that the trial court asked each potential juror if he or she accepted and understood the four principles set forth in Rule 431(b), and they indicated they did. Our supreme court has approved of the use of such a procedure for admonishing the jury. See *People v. Birge*, 2021 IL 125644, ¶¶ 38-41. Accordingly, we agree with counsel that no argument of arguable merit can be made that the court failed to comply with Rule 431(b).

¶ 31 C. Ineffective Assistance of Counsel

¶ 32 Counsel asserts that he considered arguing that appellate counsel was ineffective for failing to file a motion to suppress the video evidence and statements defendant made during the traffic stop on the bases that (1) defendant was improperly seized during the traffic stop or (2) defendant’s *Miranda* rights (see *Miranda v. Arizona*, 384 U.S. 436 (1966)) were violated. However, counsel has concluded that such an argument would be without arguable merit.

¶ 33 In order to succeed on a claim of ineffective assistance of counsel, “a defendant must show that his attorney’s representation fell below an objective standard of reasonableness

and that a reasonable probability exists that, but for counsel's errors, the result of the proceeding would have been different." *People v. Webb*, 2023 IL 128957, ¶ 21. "The decision whether to file a motion to suppress is generally a matter of trial strategy entitled to great deference." *Id.* ¶ 23. When a claim of ineffective assistance of counsel is based on counsel's failure to file a motion to suppress, in order to establish prejudice, the defendant must show the unargued motion was meritorious and a reasonable probability exists the trial outcome would have been different if the evidence had been suppressed. *Id.*

¶ 34 *1. Improper Seizure*

¶ 35 Counsel asserts that he considered arguing that trial counsel should have filed a motion to suppress the video evidence and statements made by defendant during the traffic stop on the basis that the traffic stop constituted an improper seizure in violation of the fourth amendment (U.S. Const., amend. IV). "Vehicle stops are subject to the fourth amendment's reasonableness requirement." *People v. Hackett*, 2012 IL 111781, ¶ 20. Generally, a law enforcement officer's decision to stop an automobile is reasonable when there is probable cause to believe a traffic violation has occurred. *Id.* However, an officer need only have reasonable suspicion that justifies an investigative stop in order to satisfy the fourth amendment's reasonableness requirement. *Id.*

¶ 36 Here, the trial evidence showed that Burris had at least reasonable suspicion to initiate an investigatory stop of defendant's vehicle. Burris testified that he observed defendant's vehicle driving erratically, including almost striking the curb, switching lanes, and stopping for several seconds at a green light. The video recording of the traffic stop supported Burris's testimony, as it showed defendant's vehicle changing lanes several times in quick succession and stopping in the middle of the roadway near a green light for several seconds, which may have

been a violation of section 11-1303(a) of the Illinois Vehicle Code (625 ILCS 5/11-1303(a) (West 2024)). Burris testified that when he approached defendant's vehicle, he smelled alcohol and noticed defendant had slurred speech, which, combined with the erratic driving he had observed, gave him reasonable suspicion to further detain him for field sobriety testing. See *People v. Patel*, 2020 IL App (4th) 190917, ¶¶ 20-25. Thus, a motion to suppress on the basis that the stop was unlawful would have lacked merit, and we agree that trial counsel was not ineffective for failing to file such a motion. See *Webb*, 2023 IL 128957, ¶ 23.

¶ 37 2. *Miranda Violation*

¶ 38 Appellate counsel also considered arguing that trial counsel was ineffective for failing to file a motion to suppress the video evidence and defendant's statements during the traffic stop on the basis that his fifth amendment (U.S. Const., amend. V) rights were violated pursuant to *Miranda*. Counsel notes that defendant asked for an attorney, counselor, and judge at various times during the stop. Counsel indicates that he ultimately determined, however, that an argument that trial counsel was ineffective for failing to file a motion to suppress based on *Miranda* would lack arguable merit. We agree.

¶ 39 In *Miranda*, the United States Supreme Court held that, under the fifth amendment, a person in custody must be advised of certain rights, including the right to remain silent and the right to an attorney, before any interrogation by law enforcement officers. *Miranda*, 384 U.S. at 444. When a person invokes the right to counsel during custodial interrogation, he or she is not subject to further interrogation until counsel has been made available unless the individual initiates further communication with the police. *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981). "In order to invoke the *Miranda* right to counsel, an individual must be both in custody and subject to interrogation or under imminent threat of

interrogation.” *People v. Villalobos*, 193 Ill. 2d 229, 241-42 (2000).

¶ 40 Individuals temporarily detained pursuant to ordinary traffic stops are not “in custody” for the purposes of *Miranda*. *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984); see *People v. Gonzalez*, 184 Ill. 2d 402, 423 (1998) (“[P]rearrest roadside questioning pursuant to a routine traffic stop does not require warnings pursuant to *Miranda* because, under such circumstances, an individual is not subject to ‘custodial’ interrogation.”). However, if a motorist is detained pursuant to a traffic stop and is subsequently subjected to restraints comparable to those associated with a formal arrest, *Miranda* applies. *Berkemer*, 468 U.S. at 440-41. The mere fact that an individual is not free to leave during a traffic stop does not mean that he or she is in custody for *Miranda* purposes. *People v. Wright*, 2011 IL App (4th) 100047, ¶ 33.

“When examining the circumstances of interrogation, this court has found a number of factors to be relevant in determining whether a statement was made in a custodial setting, including: (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused.” *People v. Slater*, 228 Ill. 2d 137, 150 (2008).

¶ 41 Here, the trial evidence, including the body camera footage, showed that defendant was not subject to restraints comparable to those associated with a formal arrest during the traffic stop such that he was in custody for *Miranda* purposes. The encounter took place on the side of a public road in the early morning hours and lasted approximately 20 minutes. Burris

testified that he pulled defendant over after observing him driving erratically and smelled alcohol when he approached him. Defendant agreed to perform field sobriety tests, and much of the encounter consisted of defendant attempting to complete these tests. The video evidence showed that defendant called and spoke to Nesby during the traffic stop, and she subsequently arrived at the scene of the stop and was present with him. While three officers were present, the evidence did not indicate that they brandished their weapons or otherwise used force before arresting defendant. Accordingly, defendant was not in custody for purposes of *Miranda* during the stop, and we agree with appellate counsel that there was no arguable basis for trial counsel to seek suppression of defendant's statements or the video evidence on *Miranda* grounds.

¶ 42 D. Sufficiency of the Evidence

¶ 43 Counsel indicates that he considered arguing that the trial evidence was insufficient to prove defendant guilty beyond a reasonable doubt but determined that such an argument would be without arguable merit. When presented with a challenge the sufficiency of the evidence, “the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (Emphasis in original and internal quotation marks omitted.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Here, the trial evidence, viewed in the light most favorable to the State, was clearly sufficient to prove defendant guilty of both aggravated battery to a peace officer and DUI.

¶ 44 To prove defendant guilty of aggravated battery of a peace officer, the State was required to prove that defendant knowingly and without legal justification made physical contact of an insulting or provoking nature with a person he knew to be a peace officer performing his official duties. 720 ILCS 5/12-3.05(d)(4) (West 2024). Here, the trial evidence showed that

Burris was working as a sheriff's deputy at the time of the incident. He was wearing a uniform and driving a marked squad car. Burris testified that, after he had arrested defendant and was attempting to place defendant in his squad car, defendant kicked him in the thigh. Burris's body camera footage was consistent with his testimony on this point, though it was difficult to discern the kick in the video. In the video, Nesby could be heard saying, "No, no, no! Stop it, Greg!" immediately after the kick allegedly occurred. The foregoing evidence, viewed in the light most favorable to the State, was sufficient to prove defendant guilty beyond a reasonable doubt of aggravated battery to a peace officer. While Nesby testified that she did not see defendant kick Burris and defendant testified he did not kick Burris, the jury was not required to find their testimony credible. See *People v. Jackson*, 2020 IL 124112, ¶ 64 ("[A] reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of witnesses.").

¶ 45 To prove defendant guilty of DUI as charged in the instant case, the State was required to prove that defendant drove or was in actual physical control of a vehicle while under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2024). It was undisputed that defendant was driving a vehicle on the night of the incident. Burris's body camera footage showed him pulling defendant's vehicle over and defendant exiting the driver's seat of the vehicle.

¶ 46 The evidence, viewed in the light most favorable to the State, was also sufficient to prove that defendant was under the influence of alcohol. Burris testified that he observed defendant's vehicle driving erratically, almost striking a curb, switching lanes abruptly, and stopping at a green light. Burris also testified that he smelled alcohol when he approached defendant's vehicle, and defendant had slurred speech when he spoke to Burris. In the video recording, defendant told Burris he had two beers earlier that evening. Burris also testified that

defendant refused to submit to breath testing at the jail, which could be considered evidence of consciousness of guilt. See *People v. Johnson*, 218 Ill. 2d 125, 140 (2005) (“[E]vidence of a person’s refusal to take a test designed to determine the person’s blood-alcohol content is admissible and may be used to argue the defendant’s consciousness of guilt.”).

¶ 47 While defendant testified that he did not drink alcohol on the day of the incident and that he had told Burris that he drank alcohol on a different day, this testimony is contradicted by defendant’s statements on the video recording. Also, defendant’s testimony as to which day he actually drank alcohol was not entirely clear or consistent. We acknowledge that defendant testified at the trial that he was experiencing medical issues at the time of the incident, and this could arguably explain his erratic driving and inability to complete field sobriety tests. However, the jury was not required to accept defendant’s testimony over that of Burris’s. The jury had the opportunity to view the video of the incident and observe defendant’s behavior during the incident. We conclude that, given the evidence presented in this case, a rational jury could conclude that defendant’s behavior was caused by intoxication rather than medical issues.

¶ 48 E. Excessive Sentence

¶ 49 Finally, counsel indicated that he considered arguing that the trial court abused its discretion in sentencing defendant but concluded that such an argument would lack merit. Counsel notes that defendant failed to file a motion to reconsider his sentence and, as such, has forfeited any claim of sentencing error. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Accordingly, we may only review a claim of sentencing error if it rises to the level of plain error. *Id.* at 545. To obtain relief under the plain error doctrine, a defendant must first show that clear or obvious error occurred. *Id.* “In the sentencing context, a defendant must then show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious

as to deny the defendant a fair sentencing hearing.” *Id.*

¶ 50 The trial court has broad discretion in imposing a sentence, and its sentencing decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). This is because it is generally in a better position than the reviewing court to determine the appropriate sentences, as “[t]he trial judge has the opportunity to weigh such factors as the defendant’s credibility, demeanor, general moral character, mentality, social environment, habits, and age.” *Id.* “[A] sentence within statutory limits will be deemed excessive and the result of an abuse of discretion by the trial court where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.” *Id.* at 210.

¶ 51 For the offense of aggravated battery to a peace officer, the possible sentences included, *inter alia*, a term of imprisonment of three to seven years, a period of probation or conditional discharge of up to four years, and a fine of \$75 to \$25,000. 720 ILCS 5/12-3.05(d)(4), (h) (West 2024); 730 ILCS 5/5-4.5-35, 5-4.5-50(b) (West 2024). For DUI, the possible penalties included, *inter alia*, a term of imprisonment of less than one year, a term or probation or conditional discharge not to exceed two years, and a fine of \$75 to \$2500. 625 ILCS 5/11-501(a)(2), (c)(1) (West 2024); 730 ILCS 5/5-4.5-55 (West 2024). A second DUI conviction is also subject to a minimum term of 5 days’ imprisonment or 240 hours of community service. 625 ILCS 5/11-501(c)(2) (West 2024).

¶ 52 We agree with appellate counsel that it is not arguable that the sentence imposed by the trial court—concurrent terms of 48 months’ probation and 180 days’ imprisonment for aggravated battery to a peace officer and 180 days’ imprisonment for DUI—was a clear or obvious abuse of discretion. Defendant faced a maximum possible sentence of seven years’ imprisonment for aggravated battery to a peace officer, and the State recommended that he

receive a sentence of six years' imprisonment. Defendant had an extensive criminal history, including a history of failing to comply with the terms of probation. Despite defendant's criminal history and the other aggravating factors in this case, the court imposed a sentence of probation. The court indicated it had considered in mitigation that there was a substantial period of no criminal activity prior to the offenses in the instant case and that imprisonment would entail excessive hardship and would endanger defendant's physical or mental condition.

¶ 53 Counsel asserts that he identified a fee that was possibly improper but correctly notes that he cannot challenge fines and fees for the first time on appeal. See Ill. S. Ct. R. 472(c) (eff. Feb. 1, 2024).

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 56 Affirmed.