NOTICE
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2026 IL App (5th) 241168-U

NO. 5-24-1168

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).

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Jefferson County. |
| | ) | |
| v. | ) | No. 20-CF-276 |
| | ) | |
| GREGORY A. GARRISON, | ) | Honorable |
| | ) | Jerry E. Crisel, |
| Defendant-Appellant. | ) | Judge, presiding. |

JUSTICE BARBERIS delivered the judgment of the court.
Justices Boie and Vaughan concurred in the judgment.

**ORDER**

¶ 1 *Held*: We affirm defendant's 35-year aggregate sentence for possession of child pornography where the circuit court did not abuse its discretion in weighing the evidence presented regarding the sentencing factors and defendant failed to show that the court's determination that defendant's actions were not part of a single course of conduct was against the manifest weight of the evidence.

¶ 2 Defendant, Gregory A. Garrison, pled guilty to seven counts of possession of child pornography[1] (720 ILCS 5/11-20.1(a)(6)(i) (West 2020)), and the Jefferson County circuit court sentenced him to seven consecutive terms of 5 years in prison for an aggregate sentence of 35 years. Defendant filed a motion to reconsider sentence, which the circuit court denied. This court

[1]We acknowledge that the Illinois legislature modified the language of this statute from "child pornography" to "child sexual abuse material." 720 ILCS 5/11-20.1(a) (modified by Pub. Act 104-245 (eff. Jan. 1, 2026)). However, we will use the "child pornography" terminology in use at the time the record was created for the purposes of consistency and clarity in this decision.

subsequently remanded the matter back to the circuit court for further postplea proceedings, concluding that defense counsel filed a facially deficient certificate of compliance pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2017). *People v. Garrison*, No. 5-23-0533 (June 25, 2024) (unpublished summary order pursuant to Illinois Supreme Court Rule 23(c)(2)). On remand, defendant filed a new motion to reconsider sentence, which the circuit court denied. Defendant appeals, arguing that the court's rejection of probation and imposition of an excessive 35-year aggregate sentence constituted an abuse of discretion. Defendant alternatively argues that his 35-year aggregate sentence exceeds the maximum term allowed by statute because the offenses were committed as part of a single course of conduct and without a substantial change in the criminal objective. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 10, 2020, the State charged defendant by information with 10 counts of possession of child pornography (720 ILCS 5/11-20.1(a)(6)(i), (iii) (West 2020)). The charges were based on allegations that on August 25, 2020, defendant, with the knowledge of the nature thereof, possessed various photographs and films of a female child under the age of 13 engaging in various acts of sexual conduct and sexual penetration. A grand jury subsequently returned a bill of indictment charging defendant with the same.

¶ 5 At a hearing held on December 1, 2020, defendant agreed to plead guilty to seven counts of possession of child pornography involving photographs, and the State agreed to dismiss three counts of possession of child pornography involving videos. At the hearing, the parties clarified that the offenses were probationable if a sex offender evaluation were conducted. The parties further agreed that the offenses were "mandatorily consecutive if sentenced to the [D]epartment

of [C]orrections." The following colloquy took place between the court, the State, defense counsel, and defendant:

> "THE COURT: So this is an open plea in essence on Counts I through VII?
> [Defense Counsel]: Yes, [Y]our Honor.
> THE COURT: Okay. So, [Assistant State's Attorney], is that the way you understand the plea—it's a partial agreement? Is that the way you understand it?
> [The State]: Yes, [Y]our Honor.
> THE COURT: And, [Defense Counsel], anything—everything you said and what [the State] has said was all accurate?
> [Defense Counsel]: Yes, [Y]our Honor.
> THE COURT: And, is that the way you understand the partial agreement, [Defendant]?
> THE DEFENDANT: Yes, [Y]our Honor."

¶ 6 The State next offered a factual basis for the guilty plea, stating that the evidence would show that, in August 2020, Stacey Poston, who resided with defendant, observed defendant through a window "on the phone with what appeared to be photos of naked children that appear[ed] to her to be somewhat under the age of 10 years of age." Poston reported defendant to law enforcement, and law enforcement subsequently obtained a search warrant for defendant's cell phone and computer hard drive. Before law enforcement executed the search warrant, defendant "took the hard drive off of his computer and went and hid it underneath a barn." Law enforcement subsequently obtained the hard drive and discovered "numerous files and from those files [the State] lifted out of the 10 that were specifically outlined for purposes of charging." The State posited that the evidence would show, "through the images," that a child under the age of 13 was engaged in acts of sexual penetration. The State further noted that, during an interview with law enforcement, defendant denied that child pornography would be on his hard drive but admitted that child pornography "would just pop up onto his computer and that's probably how that got there." When the court inquired if the seven counts were "separate events," the State responded,

"Yes, [Y]our Honor. Additionally, we believe that each image wou[ ]ld show that it is not the same file. It is a different file, a different child. It is not a copied file. Those are all separate offenses but they do—each one of them is under 13 and each one of them does involve penetration."

¶ 7 Thereafter, the circuit court advised defendant that he would face a minimum of three years and a maximum of seven years for each offense. The court further noted that it was "mandatorily consecutive prison time on *** all of these. It has to run consecutive with the other." Defendant indicated that he understood. The following exchange then took place between the court and defendant:

> "THE COURT: So I guess put another way, for instance on seven counts, if you got the minimum prison sentence on seven counts, total would be 21 years. Maximum would be 49 years if you got prison sentences on each one of them. And that would be a minimum and maximum. They would go consecutive. So do you understand that?
> THE DEFENDANT: Yes, [Y]our Honor."

¶ 8 The circuit court found that there was a factual basis for the plea and that defendant understood the nature of the charges and the possible penalties. The court found that defendant was entering his plea knowingly and voluntarily and accepted his plea of guilty to seven counts of child pornography. The court ordered the preparation of a presentence investigation report (PSI) and ordered Dr. Angeline Stanislaus to conduct a sex offender evaluation.

¶ 9 On July 1, 2021, the circuit court held defendant's sentencing hearing. At the outset, the court noted that three counts were previously dismissed and inquired if there was "any cap on this?" The State responded, "There is no cap, [Y]our Honor, and it's mandatory consecutive if sentenced to prison." When the court asked defense counsel if he agreed, defense counsel responded, "I do, [Y]our Honor."

¶ 10 Bobby Wallace, a detective with the Jefferson County Sheriff's Office, testified for the State. Detective Wallace began investigating defendant after Poston reportedly observed defendant viewing images and a partial video of naked children on his cell phone. After confronting defendant, Poston went to her parents' house with her children. When Detective Wallace interviewed Poston, Poston "stated she confronted [defendant] about that, told him that she was going to call the police. And she said at which time she observed him wiping or resetting the data on his phone." Detective Wallace obtained a search warrant for the home defendant shared with Poston. During the execution of the search warrant, law enforcement recovered defendant's cell phone and a desktop computer belonging to both defendant and Poston. The computer was missing its hard drive. During an interview, defendant initially advised law enforcement that he destroyed the hard drive but later admitted that he had hidden the hard drive under a shed on his brother's property. Forensic extraction from the computer hard drive yielded 174 files of child pornography, including 170 image files and 4 video files. Detective Wallace reviewed the files and observed that the images depicted children ranging from infants to children under the age of 13. Law enforcement identified 11 victims through the national Child Victim Identification Program.

¶ 11 A victim-impact statement from one victim's mother was admitted into evidence at the hearing. The statement indicated that the victim was around the age of 12 years old when her stepfather videotaped himself repeatedly raping the victim. The stepfather also took explicit photographs of the victim and shared those images with other people across the internet.

¶ 12 When the circuit court asked Detective Wallace how he knew the victims were under the age of 13, Detective Wallace testified that he personally viewed the photographs and videos and, "based upon [his] life experience," he believed they were under 13. Detective Wallace additionally noted that "there were a handful that were infants, I mean, like baby babies" and "there was another

large amount that were I would consider toddlers so maybe under the age of 5." Detective Wallace confirmed that the images portraying infants were sexually explicit, explaining that the images "ranged everything from *** just the child naked posing, there were some files where there was an infant where I believe there was an adult that was spreading the vaginal *** lips of the child and taking a picture up close, there were images of toddlers being both vaginally and anally penetrated and then also orally penetrated."

¶ 13 Anthony Amato, an officer with the Ina Police Department, testified for the State. Officer Amato was assigned to the Attorney General's Internet Crimes Against Children Unit, and he obtained degrees in computer forensics. Officer Amato had experience "in looking up deleted files, encrypted information and web history." Officer Amato recovered approximately 20,000 deleted website visits, including approximately 60 child-exploitation files. Officer Amato explained that he was able to view the name of the file, the date the file was downloaded, how the file was downloaded, and how many times the file was viewed. Defendant's search history included the terms "[n]ude petite teens," "lolly teens," "tiny naked girls," and "young nude girls." Officer Amato clarified that the term "lolly teens" referred to the age range of 6 to 12 years old. Officer Amato was unable to determine how many times the search terms were used, but he was able to determine that the first files were viewed on August 1, 2016. Officer Amato believed defendant viewed a video of child pornography on August 1, 2016. Officer Amato also confirmed that defendant used "Aries," a peer-to-peer sharing program that required intentional downloading. Officer Amato did not find any evidence that defendant shared the files, but he concluded that defendant intentionally deleted the files. Officer Amato confirmed that "four-year-old sucks off daddy" was a partial name of a file that defendant downloaded and deleted from his computer.

¶ 14 The defense presented the report of Dr. Stanislaus, a board-certified forensic psychiatrist and a licensed sex offender evaluator. In the report, Dr. Stanislaus summarized the police reports, which were consistent with the testimonies of Detective Wallace and Officer Amato. Dr. Stanislaus additionally noted that Poston advised law enforcement that, two months before she observed defendant watching child pornography through the window, she walked in on defendant using the home computer in their bedroom. Poston explained that defendant immediately shut down the computer and seemed nervous. Following an argument, defendant grabbed the entire computer and left. When defendant returned with the computer, several things had been deleted. Poston further advised law enforcement that she previously noticed defendant talking with, and looking at, little girls, and that she was concerned defendant may have done something inappropriate with their daughters. When interviewed by law enforcement, defendant claimed Poston caught him looking at "teen pornography" involving models between the ages of 18 and 20. Defendant maintained during the interview that he never downloaded or viewed child pornography on his cell phone or computer. Law enforcement could not recover data from defendant's cell phone due to the method of erasure used by the defendant.

¶ 15 Dr. Stanislaus also summarized the interview she conducted with defendant. Defendant admitted that he started searching for child images a year before Poston caught him looking at images on his phone. Defendant advised that he viewed and masturbated to adult pornography off and on for several years. Defendant claimed he came across child pornography while looking at teenagers. A few times, defendant searched for "Teenagers nude," "nude teens," or "babysitters." He viewed and masturbated to the images he found using those search terms. Defendant claimed that he felt bad about viewing the images and had not done it since. Defendant admitted that his

hard drive contained images of child pornography and that he had masturbated to images of children a couple of times. Defendant, however, denied sexual attraction to children.

¶ 16 Dr. Stanislaus noted that the following factors were associated with sexual recidivism in child pornography cases: an offender under the age of 35 years of age; any prior criminal history; any contact sexual offending; any failure on conditional release; any indication of sexual interest in child pornography material; more boy than girl content in child pornography; more boy than girl content in any depictions; and access to children such as children living in the residence, working with children, volunteering with children, or online sexual solicitation of children. Dr. Stanislaus acknowledged that defendant had an interest in child pornography and lived with his own children but noted that defendant was over the age of 35, had no prior criminal history, had not engaged in contact sexual offending, had not failed on conditional release, and had viewed more girl content than boy content. Dr. Stanislaus concluded that defendant's "risk of engaging in hands on contact sexual offending of children is minimal due to the factors described in this report." Dr. Stanislaus further concluded that defendant had a "low risk to return to child pornography use after legal consequences for his actions." Dr. Stanislaus noted that defendant was "capable of following rules" and "[i]f given probation with supervision and monitoring/restriction of his internet use, he should be successful in completing probation." Dr. Stanislaus also recommended that defendant participate in sex offender treatment in the community.

¶ 17 The State argued that the circuit court should sentence defendant to five years on each count, noting that "[t]hose are mandatory consecutives." The State emphasized the volume and nature of the material defendant possessed. The State also highlighted the victimization inherent in child pornography and noted that defendant attempted to hide evidence. The State also asserted

that Dr. Stanislaus's evaluation was unreliable because Dr. Stanislaus relied on information provided by defendant.

¶ 18 The defense requested probation or the minimum sentence. Defense counsel noted that defendant had no prior criminal history, long-term employment, and a supportive family. Defense counsel posited that defendant had strong potential for rehabilitation.

¶ 19 After hearing arguments from the parties, the circuit court found that defendant's possession of more than 100 images was an aggravating factor. The court also found the aggravating factor of deterrence applicable. The court found defendant's lack of criminal history and the fact that no physical harm occurred were mitigating factors. In considering the mitigating factor that defendant's criminal conduct was the result of circumstances unlikely to recur, the court stated, "I have nothing to indicate to me that that's the case. Even in giving to me the most liberal reading of Dr. Stanislaus' report, I—although she does say minimal risk but that's—she doesn't say no risk." In considering the mitigating factor that defendant was particularly likely to comply with the terms of a period of probation, the court stated as follows:

> "Um, again, I think that when Dr. Stanislaus' report is read in its most liberal, most favorable to the Defendant, I don't think it tells me that he is particularly likely to comply with probation. It tells me that he is low risk to return to child pornography. He's capable of following rules. He should be successful in completing probation. He should be. I don't accept that as, um, an endorsement that he's particularly likely to comply with the terms of a period of probation.
>
> Um, and I can also say that a lot of what's in Dr. Stanislaus' report—and this is no—I mean no disrespect or offense to her because I think she's a fine psychiatrist. A lot of what's in here is self-reported by [defendant], and he minimized the situation a lot which

is not unusual in circumstances like this. But it seems to me in my opinion he minimized his involvement in all of this. So I can't make that finding number (10.), that he's particularly likely to comply with the terms of probation."

¶ 20 The circuit court "strongly considered" the "evil and harm" the child pornography industry presented to the children involved, as well as the public. The court also considered the testimonies of Detective Wallace and Officer Amato, which demonstrated "the breadth and depth of the pornography that [defendant] had and was using." The court specifically noted that the images defendant possessed ranged "from infants to I guess prepubescent children ***." The court additionally noted that defendant attempted to hide evidence of his wrongdoing. The court declined to impose probation, finding that probation would deprecate the seriousness of the offense. The court ultimately sentenced defendant to 5 years for each of the seven counts, to be served consecutively, for a total of 35 years to be served at 50%, followed by 3 years to life of mandatory supervised release.

¶ 21 Defendant filed a motion to reconsider sentence, arguing that his sentence was excessive, that the court failed to properly weigh the factors, and that the court gave insufficient weight to Dr. Stanislaus's evaluation. The circuit court denied the motion following a hearing on July 19, 2023. In doing so, the court stated, "Of course, the matters were, I believe, mandatorily consecutive as set out which is required by the legislature."

¶ 22 This court subsequently remanded the matter back to the circuit court for further postplea proceedings, concluding that defense counsel filed a facially deficient certificate of compliance pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2017). *People v. Garrison*, No. 5-23-0533 (June 25, 2024) (unpublished summary order pursuant to Illinois Supreme Court Rule 23(c)(2)).

¶ 23 On August 7, 2024, defense counsel filed a new motion to reconsider sentence, arguing that the circuit court improperly weighed the factors in aggravation and mitigation. Defense counsel also argued that the court erred in its consideration of Dr. Stanislaus's evaluation of defendant. Defense counsel additionally asserted, for the first time, that defendant's seven convictions stemmed from a single course of conduct subject to a statutory aggregate-sentencing cap.

¶ 24 On October 24, 2024, the circuit court held a hearing on the motion to reconsider. After considering the parties' arguments, the court concluded that it properly weighed the aggravating and mitigating factors. The court also concluded that it did not err in its consideration of Dr. Stanislaus's evaluation. The court further concluded as follows:

> "As to the central argument here concerning consecutive sentences, the Court believes that the statute is clear. The Court followed the statute and the Court believes that this was not—these were not the same course of conduct. This was not the same criminal objective in each case, and so I believe that I have made the proper decision."

Thus, the court denied defendant's motion to reconsider. Defendant filed a timely notice of appeal.

¶ 25 II. ANALYSIS

¶ 26 On appeal, defendant argues that the circuit court erred by rejecting probation and by imposing an excessive 35-year aggregate sentence. Defendant alternatively argues that his 35-year aggregate sentence exceeds the maximum term allowed by statute. We address defendant's arguments in turn.

¶ 27 A. Excessive Sentence

¶ 28 Defendant first argues that the circuit court abused its discretion by rejecting probation and by imposing an excessive 35-year aggregate sentence, where the court misread or otherwise

ignored Dr. Stanislaus's findings, failed to consider mitigating evidence, and failed to consider defendant's potential for rehabilitation. The State responds that the court did not abuse its discretion, where the court gave proper consideration to Dr. Stanislaus's findings and properly weighed the mitigating and aggravating factors.

¶ 29 Initially, we address the State's claim that the arguments defendant raises in support of his excessive-sentence claim were not preserved for review because, although raised in his motions to reconsider sentence, he did not raise a contemporaneous objection at the sentencing hearing. See *People v. Hillier*, 237 Ill. 2d 539, 544-45 (2010) (noting that to preserve a claim of sentencing error, counsel must ordinarily make both a contemporaneous objection and a written postsentencing motion raising the issue). Defendant acknowledges that he failed to preserve these arguments for review, but he argues that this court should review these arguments under the first prong of the plain-error doctrine. "To establish plain error in the sentencing context, a defendant must first show that a clear or obvious error occurred." *People v. Fisher*, 2023 IL App (4th) 220717, ¶ 29 (citing *Hillier*, 237 Ill. 2d at 545). "Then, the defendant must show 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.* (citing *Hillier*, 237 Ill. 2d at 545). "Under both prongs of the plain-error doctrine, the defendant has the burden of persuasion." *Hillier*, 237 Ill. 2d at 545.

¶ 30 Defendant alternatively argues that these issues are reviewable because defense counsel's failure to contemporaneously object to these sentencing errors constituted ineffective assistance of counsel. "To succeed on a claim of ineffective assistance of counsel during sentencing, a defendant must show that [(1)] counsel's performance fell below minimal professional standards and that

[(2)] a reasonable probability exists that the defendant's sentence was affected." (Internal quotation marks omitted.) *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 88.

¶ 31 "It is well settled that a trial judge's sentencing decisions are entitled to great deference and will not be altered on appeal absent an abuse of discretion." *People v. Jackson*, 375 Ill. App. 3d 796, 800 (2007). A trial court abuses its discretion when the sentence is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the court. *People v. Hall*, 195 Ill. 2d 1, 20 (2000). A reviewing court defers to the trial judge's sentencing decisions because the trial judge "is in the best position to 'analyze the acts constituting the crime and a defendant's credibility, demeanor, general moral character, mentality, social environments, habits, age, and potential for rehabilitation.' " *People v. Tijerina*, 381 Ill. App. 3d 1024, 1039 (2008) (quoting *People v. Ramos*, 353 Ill. App. 3d 133, 137 (2004)). This court may not overturn a sentence merely because we might have weighed the pertinent factors differently. *People v. McGowan*, 2013 IL App (2d) 111083, ¶ 10.

¶ 32 Illinois courts have consistently recognized that sentences within the prescribed statutory range are presumed proper. *People v. Boclair*, 225 Ill. App. 3d 331, 335 (1992). When a sentence falls within the statutory range, the sentence will not be deemed 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. *People v. Weiser*, 2013 IL App (5th) 120055, ¶ 33. Put another way, an abuse of discretion may be found, even if the sentence is within the statutory range, if it is contrary to the purpose and spirit of the law. *Id.* The spirit and purpose of the law are promoted when the sentence gives sufficient consideration to both the seriousness of the offense and the defendant's rehabilitative potential. *Boclair*, 225 Ill. App. 3d at 335.

¶ 33 We presume the sentencing court considered all relevant mitigating factors, absent some contrary evidence. *People v. Etherton*, 2017 IL App (5th) 140427, ¶ 29. Thus, it is the defendant's burden to affirmatively establish that the sentence was based on improper considerations, and we will not reverse a sentence imposed by a trial court unless it is clearly evident the sentence was improper. *Id.*

¶ 34 Here, defendant pled guilty to seven counts of child pornography involving children under the age of 13, making the offenses Class 2 felonies (720 ILCS 5/11-20.1(c-5) (West 2020)) with sentencing ranges from three to seven years in prison. 730 ILCS 5/5-4.5-35(a) (West 2020). The parties agreed that defendant was eligible for probation and, thus, the presentence investigation was required to include a sex offender evaluation by an approved evaluator. *Id.* § 5-3-2(b-5). The circuit court, after considering the evidence and arguments presented at the sentencing hearing, declined to impose probation and, instead, imposed a sentence of five years in prison for each count—sentences well within the prescribed statutory range. Accordingly, we presume defendant's sentences were proper.

¶ 35 Defendant maintains, however, that the circuit court failed to consider mitigating evidence weighing in favor of probation or a lesser sentence. Specifically, defendant asserts that the court ignored Dr. Stanislaus's findings that defendant was unlikely to return to child pornography use and should be successful on probation, which demonstrated that the circumstances giving rise to defendant's criminal conduct were unlikely to recur and that he was particularly likely to comply with the terms of a period of probation.

¶ 36 Contrary to defendant's assertion that the circuit court "ignored" this mitigating evidence, the record clearly indicates that the court considered Dr. Stanislaus's report but did not give much weight to her opinions. The court specifically noted that Dr. Stanislaus found that defendant was

unlikely to return to child pornography use and that defendant should be successful in completing probation; however, the court concluded that Dr. Stanislaus's opinions were based on information defendant provided to her, some of which conflicted with other evidence presented at the sentencing hearing. Notably, in defendant's interview with Dr. Stanislaus, he stated that he used the search terms "nude teens" and "babysitters" and masturbated to the images from those searches "a couple of times." Defendant further reported to Dr. Stanislaus that he felt bad after he masturbated to those images and "did not do it again since then." The testimony from Officer Amato indicated that defendant had deleted 60 child pornography files. Officer Amato confirmed that defendant downloaded and deleted a file that related to a four-year-old victim. Moreover, Detective Wallace testified that law enforcement recovered 174 child pornography files, including 170 images and 4 videos, from defendant's computer. Detective Wallace also confirmed that some of the files involved babies and toddlers. Thus, the testimonies of Officer Amato and Detective Wallace regarding the age of the children and the number of files recovered from defendant's computer support the court's determination that defendant "minimized" his conduct during his interview with Dr. Stanislaus. Consequently, defendant has failed to demonstrate that the court violated due process by ignoring mitigating evidence. Defendant has additionally failed to demonstrate that the court abused its discretion by according little weight to Dr. Stanislaus's evaluation in imposing defendant's sentences.

¶ 37 Defendant further maintains that the circuit court disagreed with the child pornography offender risk assessment tool based on a misunderstanding of the risk factors and without any evidentiary basis for doing so. Specifically, defendant notes that Dr. Stanislaus considered the following factors in making her recommendation: whether the offender is younger than 35 years of age; any prior criminal history; any contact sexual offending; any failure on conditional release,

any indication of sexual interest in child pornography material; more boy than girl content; more boy than girl content in any child depictions; and any access to children, such as children living in the residence, working with children, volunteering with children, and online sexual solicitation of children. Defendant notes that Dr. Stanislaus determined, one-by-one, that none of the factors applied to defendant. We note, however, that Dr. Stanislaus did find that defendant had a sexual interest in child pornography material and that he resided with his daughters. Regarding Dr. Stanislaus's finding that defendant did not have any prior criminal history, defendant takes issue with the court's statement that his "experience as a lawyer and as a judge is that it's very common—I think [the State] argued that—very common for a person convicted of child pornography to have no criminal history." Defendant asserts that the court's statement indicates that the court was comparing defendant to repeat offenders. Defendant further asserts that the court made this determination based on the court's personal knowledge, rather than the evidence presented at sentencing.

¶ 38 Defendant notes that it is " 'well settled that, exclusive of certain matters of which the court may take judicial notice, the deliberations of the trial judge are limited to the exhibits offered and admitted in evidence and the record made before him in open court.' " *People v. Holland*, 2023 IL App (4th) 220384, ¶ 57 (quoting *People v. Rivers*, 419 Ill. 410, 416 (1951)). " 'A determination made by the trial judge based upon a private investigation by the court or based upon private knowledge of the court, untested by cross-examination, or any of the rules of evidence constitutes a denial of due process of law.' " *Id.* (quoting *People v. Dameron*, 196 Ill. 2d 156, 171 (2001)). "Whether the trial court relied upon an improper factor during sentencing is a question of law reviewed *de novo*." *People v. Musgrave*, 2019 IL App (4th) 170106, ¶ 55.

¶ 39 Where a trial court relies on an improper factor in sentencing, we must reverse unless we can conclude from the record that the weight placed on the improper factor was so insignificant that it did not increase the defendant's sentence. *People v. Whitney*, 297 Ill. App. 3d 965, 971 (1998). We focus not on a few words or statements of the trial court, but on the entire record. *People v. Fetter*, 227 Ill. App. 3d 1003, 1010 (1992).

¶ 40 Here, defendant has not shown that the circuit court's comments resulted in an inappropriate sentence. In imposing the sentence, the court specifically considered two aggravating factors—that the sentence was necessary to deter others from committing the same crime and that defendant possessed over 100 images. The court "strongly considered" the "evil and harm" the child pornography industry presented to the children involved, as well as the public. The court also considered the testimonies of Detective Wallace and Officer Amato, which demonstrated "the breadth and depth of the pornography that [defendant] had and was using." The court specifically noted that the images defendant possessed ranged "from infants to I guess prepubescent children ***." The court additionally noted that defendant attempted to hide evidence of his wrongdoing. The court also considered several mitigating factors, including that defendant's conduct did not cause or threaten serious harm and defendant had no prior criminal history. Despite this, the court concluded that probation or conditional discharge would deprecate the seriousness of the offense. See 730 ILCS 5/5-6-1(a) (West 2022) (in cases where a defendant is eligible for probation, a court shall impose a sentence of probation unless the court finds a prison sentence is necessary for the protection of the public or if probation would deprecate the seriousness of the offender's conduct). The court concluded that a sentence of five years—a sentence in the middle of the applicable sentencing range—was appropriate for each offense under the circumstances. Based upon our review of the record as a whole, we conclude that the court based defendant's sentences on proper

factors and that any improper consideration did not affect defendant's sentences. Consequently, defendant is unable to establish plain error. We additionally reject defendant's claim of ineffective assistance where defendant cannot show a reasonable probability exists that his sentence was affected.

¶ 41 B. Consecutive Sentences

¶ 42 Defendant next argues that his 35-year aggregate sentence exceeds the maximum term allowed by statute because the offenses were committed as part of a single course of conduct and without a substantial change in criminal objective. The State responds that this court lacks jurisdiction to consider defendant's consecutive sentencing argument because defendant was required to withdraw his plea in order to raise this issue on appeal. The State alternatively argues that the offenses were not committed as part of a single course of conduct.

¶ 43 We begin by addressing the State's argument that this court lacks jurisdiction to consider the issue on appeal due to defendant's failure to file a motion to withdraw his guilty plea. Illinois Supreme Court Rule 604(d) provides, in pertinent part, as follows:

> "No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.
>
> No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made

concessions relating to the sentence to be imposed and not merely to the charge or charges then pending." Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

¶ 44 In *People v. Lumzy*, 191 Ill. 2d 182 (2000), our supreme court considered whether a defendant's guilty plea was "negotiated" so as to require the defendant to file a motion to withdraw his guilty plea in order to challenge the length of his sentence. Our supreme court noted that "the State agreed to drop certain charges against [the] defendant in exchange for [the] defendant's plea of guilty to another charge," but that the agreement was "silent as to the sentence which [the] defendant would receive." *Id.* at 187. Our supreme court noted that "the State and the defendant were free to argue for any sentence provided for in the Unified Code of Corrections" and that "the trial court was able to exercise its full discretion in selecting any sentence permitted by law." *Id.* Our supreme court concluded that "where the record is clear that *absolutely no agreement existed* between the parties as to [the] defendant's sentence, [the] defendant manifestly cannot be breaching such a nonexistent agreement by arguing that the sentence which the court imposed was excessive." (Emphasis in original.) *Id.* Our supreme court noted that the "[d]efendant never agreed, impliedly or otherwise, to accept whatever sentence the trial court might have imposed." *Id.* Accordingly, our supreme court concluded that the contract principles guiding cases involving negotiated pleas did not prevent the defendant from appealing the length of his sentence under those specific facts. *Id.*

¶ 45 In the present case, the record reflects that the parties and the circuit court interchangeably referred to the plea as open or partially negotiated. Defendant's plea in this case is similar to the plea at issue in *Lumzy*—in that the State agreed to drop certain charges against defendant in exchange for defendant's plea of guilty to other charges. Also similar to *Lumzy*, there was no

recommended sentence or sentencing cap, allowing the court to exercise its full discretion in selecting any sentence permitted by law.

¶ 46 Despite this, the State argues that the consecutive sentencing in this case was an integral part of defendant's plea agreement, which required defendant to move to withdraw his guilty plea in order to challenge the consecutive sentences on appeal. The State points to several instances in the record where the parties seemingly agreed that the offenses were subject to mandatory consecutive sentences. In our view, however, the parties were merely acknowledging the statutorily required range of penalties. The record fails to demonstrate that the State bound itself to recommend a specific sentence, or a specific range of sentence, or made concessions relating to the sentence to be imposed. Accordingly, we conclude that defendant was not required to file a motion to withdraw his guilty plea in order to raise the consecutive sentencing argument on appeal. Having determined that we have jurisdiction, we now turn to the merits.

¶ 47 The State again notes that defendant failed to preserve this issue for review. Defendant acknowledges that he failed to object at the sentencing hearing but again argues that this court should review the issue under the plain-error doctrine. Defendant alternatively argues that counsel's failure to object constituted ineffective assistance. These legal standards are set forth above and will not be restated here.

¶ 48 Defendant acknowledges that the Unified Code of Corrections (Code) requires the imposition of consecutive sentences for the seven offenses to which he pled guilty to (730 ILCS 5/5-8-4(d)(2.5) (West 2020)); however, he asserts section 5-8-4(f) of the Code provided for a "cap" on the aggregate length of his sentences because the offenses were committed as part of a single course of conduct during which there was not substantial change in the nature of the criminal objective. Section 5-8-4(f) of the Code provides as follows:

> "For sentences imposed under the law in effect on or after February 1, 1978, the aggregate of consecutive sentences for offenses that were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective shall not exceed the sum of the maximum terms authorized under Article 4.5 of Chapter V for the 2 most serious felonies involved, but no such limitation shall apply for offenses that were not committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective." *Id.* § 5-8-4(f)(2).

¶ 49 " 'The test to be used in determining whether a particular offense is part of a single course of conduct, during which there was no [substantial] change in the nature of the criminal objective, is the independent motivation test; that is, were the defendant's acts independently motivated?' " *People v. Wilder*, 325 Ill. App. 3d 987, 1001 (2001) (quoting *People v. Harris*, 220 Ill. App. 3d 31, 21 (1991)). "If there was a substantial change in the nature of the criminal objective, the defendant's offenses are part of an 'unrelated course of conduct.' " (Internal quotation marks omitted.) *Id.* Typically, whether a defendant's actions constitute a single course of conduct or is part of an unrelated course of conduct is a question of fact for the trial court, and a reviewing court will defer to the trial court's determination unless it is against the manifest weight of the evidence. *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 102. A factual finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, and not based on the evidence. *People v. O'Malley*, 2021 IL App (5th) 190127, ¶ 23.

¶ 50 Defendant cites *People v. Thompson*, 2022 IL App (2d) 190950-U, and *People v. Schneider*, 2024 IL App (4th) 230524-U, in support of his position that the seven counts were committed as part of a single course of conduct with no substantial change in the nature of the criminal objective. In *Thompson*, 2022 IL App (2d) 190950-U, ¶¶ 2, 42, the defendant was

convicted of 12 counts of unlawfully disseminating child pornography based on his acts of sending four emails that contained multiple lewd images to a single person during an exchange lasting approximately 90 minutes. Our colleagues in the Second District concluded that the trial court's determination that the four emails did not constitute a single course of conduct was against the manifest weight of the evidence where "[a]ll four emails were sent in less than 1½ hours during an email exchange with a single individual, with no independent criminal objective breaking the course of conduct." *Id.* ¶ 42.

¶ 51 In *Schneider*, our colleagues in the Fourth District considered whether the trial court properly found that the defendant's possession of 15 files of child pornography was not part of a single course of conduct without a change in the criminal nature of the conduct. *Schneider*, 2024 IL App (4th) 230524-U, ¶ 46. The Fourth District noted that the 15 files were all found on a single device in defendant's possession on a single date and, thus, concluded that "[i]n order to construe defendant's possession as separate acts (*i.e.*, not a 'single course of conduct'), it becomes necessary to find in the record some basis to conclude that he possessed the files, or at least some of them, at an earlier date." *Id.* ¶ 45. Regarding one of the video files, the Fourth District concluded that a detective's testimony that the defendant obtained the video file well before the date the defendant was charged with possession was sufficient to support the trial court's conclusion that the file was not part of a single course of conduct. *Id.* ¶ 49. The Fourth District noted that the detective only testified about a single video file that related to only one count against the defendant. *Id.* ¶ 48. The Fourth District concluded that the metadata evidence listing the dates the files were created or modified was insufficient to demonstrate that 11 of the image files and 3 other video files were obtained by the defendant on prior dates. *Id.* ¶¶ 53-60. The Fourth District noted that the evidence

tended to show that the 11 images were downloaded within 13 minutes of each other, which demonstrated that the downloads were part of a single course of conduct. *Id.* ¶ 56.

¶ 52 We find the facts of the present case distinguishable from those in *Thompson* and *Schneider*. Notably, the defendant in *Thompson* was charged with disseminating child pornography, whereas defendant, here, was charged with possessing child pornography. As such, the charges in *Thompson* were premised on the defendant's email exchange with another individual that occurred over the course of 90 minutes. Here, however, the charges were premised on defendant's acts of downloading and viewing child pornography and there was simply no evidence demonstrating that these acts occurred in a short time span as was the case in *Thompson*. We also find *Schneider* distinguishable, as the Fourth District in *Schneider* noted that the metadata evidence indicated that the defendant downloaded the images within 13 minutes of each other, whereas, here, there is no evidence demonstrating that defendant downloaded and viewed the images within such a short time span. Moreover, the Fourth District was not conducting a plain error analysis in *Schneider*.

¶ 53 In the present case, defendant has failed to establish plain error by demonstrating that the circuit court's determination that his actions were not part of a single course of conduct was against the manifest weight of the evidence. That is, defendant has failed to demonstrate that the opposite conclusion is clearly evident, or the finding is arbitrary, unreasonable, and not based on the evidence. We acknowledge that, similar to *Schneider*, defendant was charged with possessing the child pornography on one date—August 25, 2020. However, testimony at the sentencing hearing demonstrated that law enforcement determined that the first recovered child pornography file was viewed on August 1, 2016—nearly four years before Poston reported to police that she observed defendant viewing child pornography on his phone. Poston suspected that defendant had been

viewing child pornography before she made this observation. Poston specifically advised law enforcement that two months before she observed defendant through the window, defendant removed the computer from the home after she walked in on him viewing what she suspected was pornography. Poston advised that when defendant returned the computer, she believed he had deleted data. Moreover, defendant advised Dr. Stanislaus that he began viewing child pornography a year before his arrest. As noted, the circuit court found that defendant minimalized his conduct during his interview with Dr. Stanislaus, indicating that the court believed defendant downloaded and viewed child pornography for a longer duration and more frequently than he reported to Dr. Stanislaus.

¶ 54 The State confirmed at the plea hearing that each count involved an image of a different child engaged in an act of penetration. Detective Wallace testified at the sentencing hearing that a search of defendant's computer hard drive revealed 174 child pornography files, including 170 image files and 4 video files. Detective Wallace personally viewed all 174 files and, based on his personal experience, he believed the children depicted in the images and videos were under the age of 13. Detective Wallace confirmed that several of the images depicted infants, babies, or toddlers, while the remainder of the images depicted children under the age of 10. It was clear from Detective Wallace's testimony that the images depicted multiple children and portrayed "pretty much any sex act you can imagine." Detective Wallace explained that the images depicted lewd exhibition, an adult spreading an infant's vaginal lips, as well as images of toddlers being vaginally, anally, and orally penetrated. From the files recovered from defendant's computer, law enforcement identified 11 victims through the national Child Victim Identification Program. While defendant maintains that there was no evidence demonstrating that defendant downloaded or viewed the image files prior to August 25, 2020, the large number of files and wide array of content

found on defendant's computer supports the inference that defendant had downloaded and viewed the files over the course of a longer period of time, rather than on one single date.

¶ 55 Thus, in our view, the circuit court could reasonably infer from the evidence that defendant had accessed and viewed child pornography on multiple occasions over the course of several years. Because there was some evidence supporting the circuit court's determination that defendant's actions were not part of a single course of conduct, we conclude that the court's determination was not against the manifest weight of the evidence. Accordingly, defendant has failed to establish that a clear or obvious error occurred. Because there was no error, we also reject defendant's argument that he received ineffective assistance of counsel.

¶ 56 III. CONCLUSION

¶ 57 For the foregoing reasons, we affirm the judgment of the circuit court of Jefferson County.

¶ 58 Affirmed.