2025 IL App (4th) 240455-U

NOS. 4-24-0455, 4-24-0456 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 11, 2025
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Henry County
BRIAN C. HANDLEY,	)	Nos. 22CF88
Defendant-Appellant.	)	22CF150
	)	
	)	Honorable
	)	Terence M. Patton,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Doherty and Grischow concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant has forfeited his claims of sentencing error, and the doctrine of plain error does not avert the forfeiture.

¶ 2 Defendant, Brian C. Handley, violated his probation. Consequently, the circuit court of Henry County revoked his probation and resentenced him to five years' imprisonment. Defendant appeals, arguing that errors the court made at the sentencing hearing led the court to punish him too severely. Specifically, he argues the court committed an error of fact by finding he had failed to follow through with rehabilitative treatment for his alcoholism. Also, he argues the court erred by not regarding his alcoholism as a mitigating factor.

¶ 3 Because defendant raised neither of those claims of error in his postsentencing motion, they are forfeited. The doctrine of plain error does not avert the forfeiture. The reason why the doctrine affords no relief is that it is less than clear or obvious that the circuit court

erred. Arguably, defendant did not follow through with intensive outpatient treatment and attendance at Alcoholics Anonymous. Recent case law holds that a substance abuse problem is not necessarily mitigating. Therefore, we affirm the circuit court's judgment.

¶ 4 I. BACKGROUND

¶ 5 On March 22, 2022, in Henry County case No. 22-CF-88, the State filed an information against defendant. Count I charged him with aggravated battery (see 720 ILCS 5/12-3.05(d)(2) (West 2022)), a Class 3 felony (see *id.* § 12-3.05(h)), in that on March 21, 2022, he pushed Shannon Handley, put his hands around her neck, or did both of those things, knowing she had a physical disability. Because Shannon Handley was a "family or household member," count II charged defendant, additionally, with domestic battery (see *id.* § 12-3.2(a)(2)), a Class A misdemeanor (see *id.* § 12-3.2(b)).

¶ 6 On May 11, 2022, while Henry County case No. 22-CF-88 was pending, the State filed an information against defendant in Henry County case No. 22-CF-150. Count I charged defendant with aggravated driving under the influence (DUI) (see 625 ILCS 5/11-501(a)(2), (d)(1)(A) (West 2022)), a Class 2 felony (see *id.* § 11-501(d)(2)(B)), in that on January 22, 2022, in Kewanee, Illinois, he drove a vehicle while under the influence of alcohol, having committed DUI on at least two prior occasions (*id.* § 11-501(a)). Count II charged defendant with DUI on an alternative theory: aggravated driving while the alcohol concentration in his blood was 0.08 or more (see *id.* § 11-501(a)(1), (d)(1)(A)), likewise a Class 2 felony (see *id.* § 11-501(d)(2)(B)).

¶ 7 On November 10, 2022, the parties appeared and announced they had reached a fully negotiated plea agreement. Under the terms of the agreement, defendant would plead guilty to count I in case No. 22-CF-88 and to count I in case No. 22-CF-150. In return, the State would dismiss the remaining counts in those cases, and defendant would be sentenced to 30 months of

probation and 180 days in jail. Defendant pleaded guilty to the two counts, the State dismissed the remaining counts, and the circuit court imposed the agreed-upon sentence, including 30 months of probation.

¶ 8 On August 31, 2023, in the two cases, the State petitioned for the revocation of defendant's probation. According to the petition, defendant had violated several conditions of his probation, including that he (1) "obtain an alcohol and controlled substance evaluation and commence recommended treatment within [45] days of his release from custody" and (2) "be evaluated and enroll in a domestic violence treatment program within [30] days of his release from custody."

¶ 9 On November 14, 2023, the circuit court held a hearing on the State's petition for the revocation of defendant's probation. At the hearing, defendant admitted he had failed to comply with (1) and (2) in the preceding paragraph. The court scheduled a resentencing hearing and ordered the preparation of a presentence investigation report (PSI).

¶ 10 A PSI was filed on December 22, 2023. According to this report, defendant, who was 42 years old, previously was convicted of criminal trespass and furnishing alcohol to an underage person. He also had two previous convictions of DUI and driving while his driver's license was suspended or revoked. For a Georgia offense of theft by taking, he was sentenced to adult probation for five years. From 2002 to 2005 in the theft case, nine probation "violation[s] [were] filed," some of them for consuming methamphetamines and cannabis and some of them for consuming alcohol, among other infractions. From age 21 to age 35, defendant's consumption of alcohol progressed from drinking every weekend to drinking every day to the point of intoxication. By age 40, defendant "was blacking out from drinking daily." He said that when he drank, he became "aggressive" and got into fights and that he shook badly when the

alcohol wore off. He "reported he last drank in August 2023 when he entered a detox program at Riverside [Drug and Alcohol Services (Riverside)]" in Rock Island, Illinois.

¶ 11 The probation officer who wrote the PSI, Ashley M. Salmon, obtained records corroborating that defendant entered the detoxification program at Riverside. She wrote:

> "On 7-31-23, the defendant obtained a Substance Use Disorder Placement Screening at Riverside, Rock Island, IL. Records received from Riverside indicated the defendant appeared at the Trinity Medical Center Emergency Room for withdrawals from alcohol and was seeking detoxification services. Records received further indicated the defendant met criteria for alcohol use disorder severe and was found appropriate for inpatient treatment. The defendant was successfully discharged from inpatient treatment on 8-21-23 with the recommendation to follow up with intensive outpatient treatment and Alcoholics Anonymous (AA). These records are available for review should the Court desire. The defendant reported he did not complete the discharge recommendations due to being in custody of the Henry County jail."

¶ 12 On January 5, 2024, at the resentencing hearing, the State called Stephen Kijanowski, a Kewanee police officer. He testified that on September 5, 2023, he was dispatched to 513 Elliott Street in Kewanee. The reason for the dispatch was that a man—defendant, as it turned out—was in the stairwell of an apartment building, Arrow Towers, and "they wanted the subject removed." Upon arriving there, Kijanowski noticed that defendant was slow to react to his questions, his "speech was thick-tongued," he smelled of alcohol, and he was unsteady on his feet. Kijanowski was called to the apartment building three times that day to remove defendant from the property, but defendant kept returning. At the third call, Kijanowski arrested him for

criminal trespass.

¶ 13 After Kijanowski testified, the parties made their sentencing arguments. Because of defendant's criminal history, the risk that he would reoffend, and his noncompliance with probation in past cases, as well as in the present cases, the prosecutor recommended six years' imprisonment on both counts (aggravated battery and aggravated DUI). Defense counsel argued that although defendant's criminal record was "not great," it was "not terrible either." During the preceding 10 years, the only offense of which defendant was convicted was intoxication in a public place. He had "done some treatment" for alcoholism and "was starting to attend some classes at Bridgeway in Galesburg." To be sure, defendant had suffered lapses, but he had picked himself up: he had kept trying to overcome his drinking problem. For a recognition of those rehabilitative efforts, defense counsel recommended that the probation "be revoked unsuccessfully" and that defendant "be discharged." Alternatively, if the circuit court thought that imprisonment was necessary, defense counsel recommended the minimum prison sentence of two years.

¶ 14 After the attorneys made their arguments, the circuit court began by being explicit about what it had considered in its sentencing determination, including "information contained in the [PSI]," the factors in aggravation and mitigation, and "the nature and circumstances of the offense[s]."

¶ 15 The nature and circumstances of the offenses—defendant's putting his hands around the neck of his disabled wife and his commission of a third DUI—were, in the circuit court's view, "serious."

¶ 16 In mitigation, the circuit court found that defendant's conduct had not caused or threatened serious harm, nor had defendant contemplated that his conduct would do so. The

threat of harm inherent in an aggravated DUI, the court reasoned, was already taken into account in the classification of the offense as a felony.

¶ 17 In aggravation, the circuit court found that defendant's criminal record was an aggravating factor, although it was not the worst criminal record the court had ever seen. Defendant's previous offense, which he committed in Georgia, was quite some time ago, considering that he was sentenced for that offense in 2005.

¶ 18 What concerned the circuit court the most was defendant's problem with alcohol, his alcohol-driven risk of reoffending, and his repeated failure to comply with conditions of probation. The court said, "The aggravating factor is he keeps committing crimes due to his alcohol abuse, and he doesn't follow through with treatment on it. Didn't follow through with his treatment on his domestic violence classes that he was ordered to do either."

¶ 19 Because defendant had been "given multiple chances to rehabilitate himself[ ] and he [had not] done it," the circuit court concluded that his "rehabilitative potential" was "low." Even though the "[c]ost of incarceration [was] high," the court sentenced him to five years' imprisonment in both cases.

¶ 20 On February 1, 2024, defendant filed a motion for reconsideration of the sentence. The motion read simply, "[Defendant] moves for a reconsideration of the sentence pursuant to [Illinois] Supreme Court Rule 604(d) [(eff. Dec. 7, 2023)] as the sentence that *** defendant *** received is excessive."

¶ 21 On March 11, 2024, the circuit court held a hearing on the motion. At the hearing, defense counsel did not alert the court to any error of fact the court might have committed at the resentencing hearing. Instead, he argued that defendant "would be much better served in a rehabilitation facility *** as opposed to in the Department of Corrections." Accordingly, defense

counsel requested that the court "resentence [defendant] to a term of probation and Court-ordered time in a rehabilitation facility."

¶ 22 The circuit court declined this request. The court remarked, "I considered [defendant's] addiction, but *** I also considered the fact that he'd had the opportunity for rehabilitation in the past, and he had not taken advantage of that." The court observed that the sentences were within the statutory limits, and the court was unconvinced that the sentences were excessive. The court was unaware that, in imposing the sentences, it had "made any errors as to the law or to the facts." Therefore, the court denied the postsentencing motion.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 If all a postsentencing motion says is that the sentence is excessive, the motion serves little purpose. Merely a notice of a postsentencing hearing would convey the idea that the defendant wishes the sentence to reduced. To preserve a claim of sentencing error, not only a contemporaneous objection but also a written postsentencing motion is required (*People v. Hillier*, 237 Ill. 2d 539, 544 (2010)), and the Fourth District has held that "[f]ailure to raise a sentencing issue with specificity in a postsentencing motion forfeits the issue for review" (*People v. Prather*, 2022 IL App (4th) 210303-U, ¶ 61). "A central purpose *** of a postsentencing motion[ ] is to give the reviewing court the benefit of the [circuit] court's judgment on the specific allegation." (Internal quotation marks omitted.) *Id.* That purpose can be defeated by "[b]road and general allegations *** in a postsentencing motion." (Internal quotation marks omitted.) *Id.* If, in the postsentencing motion, the defendant hides the pea under a nutshell of general and formulaic language, the defendant is likely to find that, on appeal, when the nutshell is lifted, the pea is not there.

¶ 26 On appeal, defendant makes two arguments regarding his sentences. First, he argues the circuit court made a factual error in its remark that defendant "doesn't follow through with treatment on [his alcohol abuse]." Defendant points out that, in fact, as the PSI says, he began inpatient treatment at Riverside before the State petitioned for the revocation of his probation, and he was "successfully discharged" from the inpatient treatment program on August 21, 2023. Second, defendant argues the court erred by failing to regard his alcoholism as a mitigating factor.

¶ 27 The postsentencing motion did not raise these claims of error with sufficient specificity to make them discernable. By invoking the rule of plain error, defendant seeks to avoid a forfeiture of these sentencing claims. The supreme court has explained:

> "To obtain relief under this rule, a defendant must first show that a clear or obvious error occurred. [Citation.] 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." *Hillier*, 237 Ill. 2d at 545.

Defendant argues that the evidence at the sentencing hearing was closely balanced. Before reaching that argument, we must first ascertain whether a clear or obvious error was committed at the sentencing hearing. See *id.*

¶ 28 We find no clear or obvious error. The circuit court did not clearly or obviously err by remarking that defendant "doesn't follow through with treatment on [his alcohol abuse]." Although it is true, as defendant points out, that he completed the inpatient program at Riverside, the treatment that Riverside recommended was not limited to the inpatient program. To quote the PSI, defendant was supposed "to follow up with intensive outpatient treatment and Alcoholics

Anonymous." He admitted he did not follow through with that further recommendation. The report says, "The defendant reported he did not complete the discharge recommendations due to being in custody of the Henry County Jail." Saying that being put in jail prevented one from doing X could be regarded as an unsatisfactory excuse absent an explanation of why one did not belong in jail. It is unclear what case or what charges defendant was jailed on or that being jailed was unrelated to his conduct. If it ultimately was his fault that he "did not complete the discharge recommendations," then, arguably, he failed to "follow through with treatment."

¶ 29 Nor did the circuit court clearly or obviously err by not regarding defendant's alcoholism as a mitigating factor. It is true, as defendant notes, that some older cases characterize alcoholism as a mitigating factor. See *People v. Walcher*, 42 Ill. 2d 159, 166 (1969); *People v. Goodman*, 98 Ill. App. 3d 743, 749-50 (1981). More recent case law holds, however, that alcohol abuse or other substance abuse need not be regarded as mitigating. See *People v. Mertz,* 218 Ill. 2d 1, 83 (2005); *People v. Madej*, 177 Ill. 2d 116, 139 (1997); *People v. Klein*, 2022 IL App (4th) 200599, ¶ 36; *People v. Musgrave*, 2019 IL App (4th) 170106, ¶ 60.

¶ 30 Absent an error that is clear or obvious, defendant has forfeited his two claims of sentencing error. See *Hillier,* 237 Ill. 2d at 545 ("[W]e may review this claim of error only if defendant has established plain error.").

¶ 31 The sentences, in themselves, are not an abuse of discretion. See *Klein*, 2022 IL App (4th) 200599, ¶ 37. Because of the intractability of defendant's alcohol problem and its apparent relation to his reoffending, the circuit court could reasonably decide that the community needed five years of protection from him. See *id.* ¶ 36.

¶ 32 III. CONCLUSION

¶ 33 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 34 Affirmed.