

**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).

2023 IL App (3d) 210365-U

Order filed February 22, 2023

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2023

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-21-0365
DUSTIN J. GREINER,	)	Circuit No. 17-CF-2451
Defendant-Appellant.	)	Honorable David M. Carlson, Judge, Presiding.

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JUSTICE BRENNAN delivered the judgment of the court.  
Justices McDade and Albrecht concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The circuit court erred when it considered the difference in age between defendant's daughter and the victim in determining defendant's sentence.
- ¶ 2 Defendant, Dustin J. Greiner, pled guilty to one count of aggravated driving while under the influence (625 ILCS 5/11-501(a)(4), (d)(1)(F), (d)(2)(G) (West 2016)) and was sentenced to seven years' imprisonment. Defendant appeals his sentence, arguing that the Will County circuit court improperly considered: (1) the age difference between defendant's daughter and the victim,

and (2) in aggravation, numerous inadmissible victim impact statements. We vacate defendant's sentence and remand for resentencing.

¶ 3

## I. BACKGROUND

¶ 4

The State charged defendant by indictment with two counts of aggravated driving while under the influence. *Id.* §§ 11-501(a)(4), (a)(6). The offenses were charged as Class 2 felonies requiring a mandatory term of imprisonment of 3 to 14 years absent a finding of exceptional circumstances warranting probation. *Id.* §§ 11-501(a)(4), (a)(6), (d)(1)(F), (d)(2)(G). Defendant entered an open plea to count I, which alleged that, while under the influence of any drug or combination of drugs to a degree that rendered him incapable of safely driving, he drove a vehicle and got into a motor vehicle accident that resulted in the death of the victim. Count II was dismissed.

¶ 5

The factual basis for the plea established that defendant rear-ended a vehicle, pushing it into oncoming traffic. The vehicle was struck by another vehicle, and a 16-year-old passenger died as a result of the accident. Defendant's urinalysis indicated a positive result for cocaine. The court accepted the plea and the cause proceeded to a sentencing hearing.

¶ 6

Defendant's presentence investigation report (PSI) revealed that he had no prior felony convictions but had 5 misdemeanor convictions and 15 traffic offenses. The PSI stated that defendant had three children, a 17-year-old son, a 9-year-old daughter, and a 4-year-old son.

¶ 7

At the sentencing hearing, the State presented victim impact statements, without objection, from the victim's mother, father, grandfather, two aunts, cousin, boyfriend, boyfriend's mother, friend, friend's mother, a friend of her father, and a family friend. Defendant's pastor testified on his behalf, stating that he saw growth in defendant after the

accident and believed that he could continue to grow if he was not imprisoned. Defendant also gave a statement apologizing for his actions.

¶ 8 The court took the matter under advisement and continued the hearing. Before pronouncing the sentence, the State requested to reopen proofs to introduce into evidence that defendant committed a new driving-while-license-suspended offense. The parties stipulated witnesses observed defendant drive from the courthouse after the last hearing date and that he had a suspended driver's license. Defendant admitted to the offense. In part given the new driving offense, the State requested that defendant be sentenced at the higher end of the 3- to 14-year sentencing range.

¶ 9 The court found in mitigation that defendant accepted responsibility for the accident; would be separated from his children if imprisoned, something that the court said "breaks [its] heart"; and had no prior felony convictions. In aggravation, the court found that defendant had a lengthy history of driving violations and had committed another violation after the prior hearing date.

¶ 10 The court sentenced defendant to seven years' imprisonment. The court stated:

"I'm going to sentence you to seven years in the Illinois Department of Corrections because you will not be free until [defendant's daughter] is the same age [as the victim]. The years that [the victim's family] will never get back, you are not going to get either. I don't know of any other way. I don't know of any other rhyme or reason or anything that would make sense to anybody."

¶ 11 Defendant filed a motion to reconsider sentence, which the court denied. On direct appeal, we remanded for compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017). *People v. Greiner*, No. 3-19-0748 (2020) (unpublished minute order). On remand, defendant

filed another motion to reconsider, arguing that his sentence was excessive. The court denied the motion, and defendant appeals.

¶ 12

## II. ANALYSIS

¶ 13

Defendant contends he was denied a fair sentencing hearing where the circuit court: (1) based its sentence on the arbitrary difference between the age of defendant's daughter and the victim in determining defendant's sentence, and (2) considered in aggravation several victim impact statements from persons who were not representatives of the victim under the Rights of Crime Victims and Witnesses Act (Act) (725 ILCS 120/6 (West 2018)). The State argues that defendant forfeited both of these issues because trial counsel failed to make a contemporaneous objection and did not raise the issue in the motion to reconsider sentence. Defendant responds that if this court finds his sentencing issues forfeited, forfeiture should be excused and his sentence vacated under the second prong of the plain error rule.

¶ 14

Considering first defendant's claim of error that the trial court arbitrarily considered his daughter's age in crafting his sentence, we note that the Illinois Constitution requires that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. A sentencing judge must balance "the retributive and rehabilitative purposes of punishment, and the process requires careful consideration of all factors in aggravation and mitigation." *People v. Daly*, 2014 IL App (4th) 140624, ¶ 26. For a sentence to be reasonable, a "sentence must be based on the particular circumstances of [the] case." *Id.* The most important factor a judge must consider in sentencing is the seriousness of the crime. *People v. Busse*, 2016 IL App (1st) 142941, ¶ 28. A court has broad discretion in imposing a sentence. *People v. Patterson*, 347 Ill. App. 3d 1044, 1056 (2004). We will not alter a defendant's sentence absent an abuse of

discretion. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). Moreover, a sentence within the applicable range is presumptively valid, and defendant bears the burden to rebut this presumption. *Busse*, 2016 IL App (1st) 142941, ¶ 27.

¶ 15 However, “[a] trial court abuses its discretion when, among other things, it fashions a sentence based on the court’s personal beliefs or arbitrary reasons.” *People v. Miller*, 2014 IL App (2d) 120873, ¶ 36. A judge may not employ personal policy in sentencing. *Id.* Consideration of an improper sentencing factor, however, only requires remandment when a reviewing court cannot determine from the record that the weight placed on the improper factor was so insignificant that it did not lead to a greater sentence. *Id.* ¶ 37.

¶ 16 While defendant acknowledges that his 7-year sentence falls within the 3- to 14-year sentencing range for his offense (625 ILCS 5/11-501(a)(4), (d)(2)(G) (West 2016); 730 ILCS 5/5-4.5-35(a) (West 2016)), he asserts that the trial court erred in arbitrarily basing his sentence on the age of his daughter and the desire to make his daughter the same age as the victim upon defendant’s release from prison. As defendant notes, the victim’s age is irrelevant to the sentence imposed on defendant. Compare *People v. Joe*, 207 Ill. App. 3d 1079, 1087 (1991) (consideration of the victim’s profession and standing in the community was “clearly inappropriate”).

¶ 17 The State acknowledges that the court’s sentencing rationale was “unusual and perhaps even inappropriate.” And we agree; to the extent the trial court considered the ages of defendant’s daughter and the victim in determining the number of years that defendant would be sentenced to the penitentiary, it would be error to do so. The State nevertheless argues that “it is clear from the record” that defendant’s sentence was proper because the court based its decision on the seriousness of the offense, defendant’s criminal record, and the fact that defendant drove

on a suspended driver's license following the first sentencing hearing. However, while the record certainly supports that the trial court considered a variety of appropriate factors in aggravation and mitigation, we cannot determine that the trial court's consideration of the arbitrary factors of his daughter and the victim's ages was so insignificant that it did not lead to a greater sentence. *Miller*, 2014 IL App (2d) 120873, ¶¶ 36-37. After announcing that defendant would be sentenced to seven years in the penitentiary, the court immediately stated, "*I don't know of any other way. I don't know of any other rhyme or reason or anything that would make sense to anybody.*" (Emphasis added.) The weight given to the arbitrary and irrelevant ages of the victim and defendant's daughter was anything but insignificant given the trial court's closing comments in pronouncing sentence and notwithstanding the court's prior discussion of the factors in aggravation and mitigation.

¶ 18 As argued by the State, defendant forfeited his arbitrary sentence argument by failing to raise it in a post-sentencing motion. Defendant asks us to excuse the forfeiture of this error under the plain error rule. The plain error rule provides a limited exception to forfeiture. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The first step of plain error review is to determine if a clear or obvious error occurred, which, as we have explained above, did occur. *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 serious as to deny the defendant a fair sentencing hearing." *Id.* Defendant bears the burden of persuasion under either prong. *Id.*

¶ 19 Our supreme court has held that a sentencing court's erroneous consideration of a factor inherent in the offense warrants reversal under the second prong of the plain error rule. See *People v. Martin*, 119 Ill. 2d 453, 458 (1988). In so concluding, it noted that a "trial judge's consideration of the fact that the defendant's conduct caused serious harm to [the victim],

resulting in his death, as a factor in aggravation in sentencing clearly affected the defendant's fundamental right to liberty [citation] and impinged on her right not to be sentenced based on improper factors." *Id.* The error at issue here affected the same fundamental right and similarly impinged on defendant's right not to be sentenced based upon an improper factor. Accordingly, it constituted plain error requiring reversal under the second prong of the plain error rule given that we cannot otherwise determine that the trial court gave insignificant weight to the arbitrary factor. *Miller*, 2014 IL App (2d) 120873, ¶¶ 36-37.

¶ 20 Our resolution of the above issue has rendered analysis of the remaining victim impact statement issue unnecessary. Nevertheless, we have authority to address this claim as it is likely to recur on remand. *People v. Walker*, 211 Ill. 2d 317, 343 (2004).

¶ 21 Both the Illinois Constitution (see Ill. Const. 1970, art. I, § 8.1(a)(5)) and the Act (725 ILCS 120/6 (West 2018)) prescribe numerous rights for crime victims, including the right to be heard at sentencing. Section 6(a-1) of the Act specifically states:

“In any case where a defendant has been convicted of a violation of any statute, \*\*\* relating to the operation or use of motor vehicles, \*\*\* if the violation resulted in great bodily harm or death, the person who suffered great bodily harm, the injured person's representative, or the representative of a deceased person shall be entitled to notice of the sentencing hearing. ‘Representative’ includes the spouse, guardian, grandparent, or other immediate family or household member of an injured or deceased person. The injured person or his or her representative and a representative of the deceased person shall have the right to address the court regarding the impact that the defendant's criminal conduct has had upon them. If more than one representative of an injured or deceased person is present in the

courtroom at the time of sentencing, the court has discretion to permit one or more of the representatives to present an oral impact statement.” *Id.* § 6(a-1).

¶ 22 This court observed in *People v. Larson*, 2022 IL App (3d) 190482, ¶ 37, that

“The plain language of the statute thus contemplates impact statements limited in number (the victim or, in the event of a death, ‘a’ representative of the deceased person); source (a ‘representative’ of the deceased person); and content (impact ‘upon them’ of the defendant’s criminal conduct) \*\*\* The statute does not serve as an invitation to rail against the defendant or to recommend a certain sentence to the court.”

We found that the circuit court did not have discretion to allow nonrepresentatives to make victim impact statements, and the court was “obligated to bar any statements by nonrepresentatives and to exercise discretion with respect to any additional victim impact statements beyond those specifically provided as a right under the Act. *Id.* ¶ 40.

¶ 23 Here, the court erroneously considered victim impact statements from numerous individuals who did not meet the “representative” definition set forth in section 6(a-1) of the Act. Therefore, “we remind the trial court[] of [its] obligation to comply with the statute” (*People v. Somers*, 2013 IL 114054, ¶ 18) and only allow and consider those victim impacts statements allowed by the Act on remand.

¶ 24 III. CONCLUSION

¶ 25 The judgment of the circuit court of Will County is vacated and remanded with directions to resentencing defendant without considering arbitrary factors.

¶ 26 Judgment vacated.

¶ 27 Cause remanded with directions.