2026 IL App (1st) 230816-U

No. 1-23-0816

Second Division
October 13, 2026

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DEANGELO OWENS, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. Nos. 14 CR 17113 14 CR 17114 The Honorable Mary Margaret Brosnahan, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice D.B. Walker and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment is affirmed, where (1) the trial court did not improperly expand the scope of the hearing on defendant's claims of ineffective assistance of trial counsel and (2) the trial court properly imposed a 25-year sentencing enhancement and ordered defendant's sentences to run consecutively.

¶ 2 Following a jury trial, defendant Deangelo Owens was found guilty of robbery, home invasion, and attempted first degree murder. During posttrial proceedings, defendant alleged that his trial counsel was ineffective, and the trial court permitted him to file a *pro se* motion pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). The trial court ultimately denied the

motion, finding that appointment of counsel for the *Krankel* proceedings was unnecessary. Defendant was appointed new counsel for sentencing, and the trial court imposed an aggregate sentence of 65 years in the Illinois Department of Corrections, which included two 25-year firearm sentencing enhancements for the home invasion and attempted murder. On appeal, defendant contends (1) that the trial court erred in denying his *Krankel* motion without appointing him counsel for the hearing and (2) that the trial court erred in imposing the firearm sentencing enhancement to the home invasion conviction and in ordering his sentences to run consecutively. For the reasons set forth below, we affirm.

¶ 3 BACKGROUND

¶ 4 *Trial*

¶ 5 In case No. 14 CR 17113, defendant and codefendant Corey Stewart were charged with attempted first degree murder, aggravated battery, home invasion, attempted armed robbery, and aggravated unlawful restraint in connection with an August 27, 2014, incident involving victims Jason Scott and Crystal Anderson. In addition, in case No. 14 CR 17114, the two defendants were charged with armed robbery, robbery, vehicular invasion, and aggravated unlawful restraint in connection with an incident occurring the same day involving victim Terrence Marshall. The two cases were joined at the State's request. Defendant requested that his case be severed from Stewart's, as defendant was planning on pursuing an alibi defense which would be inconsistent with Stewart's anticipated defense, and the two defendants were tried simultaneously before separate juries.[1] Prior to trial, however, defendant changed his theory of defense and ultimately did not call his alibi witness. At trial, the State nol-prossed a

[1] Stewart's conviction was previously affirmed by this court in *People v. Stewart*, 2022 IL App (1st) 200046-U.

number of the counts against defendant and proceeded only on one count of attempted first degree murder, two counts of home invasion, and one count of armed robbery.

¶ 6 Defendant's trial occurred over three days, from October 16 through October 18, 2018. The evidence at defendant's trial established that, at approximately 7:45 p.m. on August 27, 2014, Jason Scott was at home with Crystal Anderson and her children when defendant and Stewart knocked on the door. Scott answered and, when they asked for Anderson, went upstairs to inform her of the visitors. Unbeknownst to Scott, defendant and Stewart followed him upstairs to Anderson's bedroom. Upon observing them, Anderson ordered them to leave, and the four engaged in a physical altercation, with Stewart grabbing Anderson and defendant grabbing Scott. Scott ultimately pushed defendant toward Stewart and Anderson, then ran downstairs. Defendant grabbed a firearm which Stewart was carrying and shot at Scott, hitting him in the arm. Scott continued running, exiting the home. Anderson, who had locked herself in the bedroom with her children, pushed an air conditioner unit out of the window to allow her children to exit through the window. Defendant, who had chased Scott into the nearby alley, fired at him again, hitting his leg. A neighbor called 911, and police arrived, taking Scott to the hospital, where he remained for approximately a month. Defendant and Stewart, however, had since fled the scene.

¶ 7 Anderson had known defendant prior to the incident and identified him to police, including providing his name and phone number.[2] After speaking to police at the hospital, she decided to search for defendant and Stewart. From her vehicle, she observed them entering a liquor store, and she flagged down a police officer and gave a description of defendant to the officer.

[2] Deonte George, who had been in the alley at the time playing basketball and who also knew defendant, similarly identified defendant as one of the two men running through the alley toward him and testified that defendant was carrying a chrome pistol. We also observe that portions of the events at issue were captured on a neighbor's security cameras.

The officer entered the store, but was unable to locate anyone matching the description, and returned to his vehicle. Anderson again spoke to the officer, repeating her description and providing a description of Stewart, when Terrence Marshall approached and joined the conversation, indicating that Anderson's description also matched two individuals who had recently robbed him. The officer relayed the description over the radio, and defendant and Stewart were ultimately arrested.

¶ 8 With respect to the robbery, the evidence at trial established that, at approximately 10 p.m. on August 27, 2014, Marshall was sitting in his vehicle speaking to one of his employees over the telephone. Defendant approached Marshall and told him, "you know what this is." Marshall relayed his location to his employee, then was "ushered" out of his vehicle while Stewart patted him down. His pockets were emptied and his phone was taken. Defendant ordered Marshall to enter the back of the vehicle, but Marshall refused, and Stewart instead searched the vehicle. Several of Marshall's employees then arrived at the scene, and the two men fled. Upon searching his vehicle, Marshall discovered that $2700 in sequential $100 bills, which he had recently withdrawn from the bank, was missing. He immediately reported the robbery to the police. After defendant and Stewart were arrested, a "large" number of sequential $100 bills was recovered from Stewart.

¶ 9 At the close of the State's case, defendant moved for a directed verdict on the armed robbery charge, as Marshall's testimony contained no evidence of a weapon, and the trial court agreed that the jury should be instructed only as to the lesser-included offense of robbery. Defendant presented no evidence in his defense, other than the stipulated testimony of two police officers concerning the description of the suspects provided to them by Anderson and Marshall.

¶ 10 *Jury Instructions*

¶ 11 As relevant to the instant appeal, the jury was instructed that the State had alleged that, during the commission of the attempted first degree murder, defendant personally discharged a firearm that proximately caused great bodily harm to Scott. Accordingly, the jury instructions indicated that, "[t]o sustain the allegation made in connection with the offense of attempt first degree murder," the State was required to prove "[t]hat during the commission of the offense of attempt first degree murder, the defendant personally discharged a firearm that proximately caused great bodily harm to another person."

¶ 12 In addition, as to the two counts of home invasion, the jury instructions provided that:

> "A person commits the offense of home invasion when he, not being a peace officer acting in the line of duty, without authority, knowingly enters the dwelling place of another when he knows or has reason to know that one or more persons is present, and while armed with a firearm uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs or personally discharges a firearm that proximately causes great bodily harm to another person within the dwelling place."

¶ 13 The next instructions contained separate instructions with respect to the home invasion charges involving Anderson and Scott, respectively. The jury was first instructed:

> "To sustain the charge of home invasion, the State must prove the following propositions:
>
> *First*: That the defendant, or one for whose conduct he is legally responsible, was not a peace officer acting in the line of duty; and

Second: That the defendant, or one for whose conduct he is legally responsible, knowingly and without authority entered the dwelling place of another; and

Third: That when the defendant, or one for whose conduct he is legally responsible, entered the dwelling place he knew or had reason to know that one or more persons was present; and

Fourth: That the defendant, or one for whose conduct he is legally responsible, was armed with a firearm; and

Fifth: That while armed with a firearm the defendant, or one for whose conduct he is legally responsible, threatened the imminent use of force on Crystal Anderson, a person within the dwelling place;

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty."

¶ 14 The jury was then instructed that, "[t]o sustain the charge of home invasion (discharge of a firearm), the State must prove the following propositions[.]" The remainder of the instruction was identical to the instruction given with respect to Anderson except that the fifth proposition instead provided:

"*Fifth*: That the defendant personally discharged a firearm during the commission of the offense which proximately caused great bodily harm to Jason Scott, a person within the dwelling place."

¶ 15 The verdict forms provided to the jury included (1) verdict forms for attempted first degree murder, (2) verdict forms for "Home Invasion to Crystal Anderson," (3) verdict forms for "Home Invasion to Jason Scott," and (4) verdict forms for robbery. In addition, the jury received a form as to the allegation "that during the commission of the offense of attempt first degree murder the defendant personally discharged a firearm that proximately caused great bodily harm to another person."

¶ 16 The jury ultimately found defendant guilty of attempted first degree murder, home invasion with respect to both Scott and Anderson, and robbery, and further found that the State had proven that, during the commission of the attempted first degree murder, defendant personally discharged a firearm that proximately caused great bodily harm to another person.

¶ 17 Krankel *Proceedings*

¶ 18 On December 4, 2018, defendant sent a *pro se* letter to the trial court indicating that he was planning on filing a *Krankel* motion concerning his trial counsel and requesting copies of any discovery and trial transcripts. When the parties came before the trial court for a posttrial status hearing, the trial court informed defendant that he was not entitled to such items, as he was currently represented by his trial counsel. Instead, the trial court explained to defendant that he was entitled to file a *Krankel* motion and the trial court would have a preliminary hearing to determine whether the claims had merit, at which point defendant would be appointed a new attorney. While the matter was pending, defendant's trial counsel filed a motion for new trial on defendant's behalf.

¶ 19 On February 8, 2019, defendant's trial counsel informed the trial court that defendant had retained new counsel, and the trial court permitted trial counsel to withdraw and the new counsel to file an appearance. New counsel explained that he was retained to represent

defendant on the *Krankel* matter and, if necessary, for sentencing. On August 9, 2019, however, defendant's new counsel filed a motion for leave to withdraw. The trial court granted counsel's motion on September 18, 2019. The trial court asked defendant if he was planning on retaining private counsel, and defendant responded, "No, ma'am. I would like to go pro se on this matter."

¶ 20 The trial court explained to defendant that, typically, it would conduct a *Krankel* hearing and determine whether, based on the allegations, defendant was entitled to the appointment of an attorney. In defendant's case, however, before any hearing had occurred, defendant retained private counsel to represent him, as was his right. As counsel had now withdrawn, "now we're back to" the initial procedure. After the trial court again confirmed that defendant was not planning on retaining another private attorney, it explained:

> "THE COURT: All right. So it's not automatic—when you file a motion saying my lawyer was ineffective, it's not automatic after the finding of guilty that you get a new lawyer appointed to you. I need to do a hearing to determine whether or not we can go to that next level and then if I determine that there should or could be an attorney appointed on your case, you can then determine if you want to go pro se or not.
>
> DEFENDANT: Okay.
>
> THE COURT: That's an option. We'll have to have a long discussion. I have a form that I have you fill out, et cetera. But right now we're back in the position of where we were in December of 2018, which is you at that time wanted to file a pro se motion for ineffective assistance of counsel."

The trial court continued the matter to permit defendant to file a *pro se Krankel* motion.

¶ 21 On October 4, 2019, defendant filed a six-page *pro se Krankel* motion, claiming that his trial counsel was ineffective in a number of respects. Specifically, defendant claimed that (1) counsel had not properly investigated the case, including failing to interview Anderson or Stewart; (2) counsel had failed to go over defendant's case with him; (3) counsel failed to challenge the indictments for robbery and home invasion; (4) counsel failed to request a severance; (5) counsel failed to demand trial when defendant wished him to do so; (6) counsel improperly relied on defendant's input in selecting a jury; (7) counsel failed to ensure that the jury knew that defendant was charged with attempted murder and not murder; and (8) counsel failed to bring to the trial court's attention the fact that several jurors were sleeping during the trial. In support of his motion, defendant attached several affidavits, including an affidavit from codefendant Stewart in which Stewart averred that he was the person who shot Scott.

¶ 22 The motion was considered at a hearing on November 4, 2019, at which defendant's trial counsel was present. At the hearing, the trial court asked defendant to explain his claims of ineffectiveness point by point. As he did so, the trial court asked questions to clarify the argument and, in certain instances, immediately found the claims meritless. For example, defendant argued that trial counsel was ineffective for failing to seek dismissal of the armed robbery charge where the police report indicated that the items taken from Marshall were taken from his vehicle, not from his person, and similarly argued that the home invasion counts should have been dismissed where defendant and Stewart had permission to enter the home. The trial court informed defendant that his claims had no merit, as they were issues of fact which were required to be resolved at trial, not matters which would have resulted in the dismissal of the charges. In addition, where defendant made certain representations as to his

trial counsel, the trial court asked counsel his recollection of the issue. After hearing defendant's arguments, the trial court took the matter under advisement.

¶ 23 On November 22, 2019, the trial court denied defendant's *Krankel* motion, finding that appointment of counsel and further proceedings on the matter were not necessary. In doing so, the trial court observed that one of the affidavits in support of the motion was Stewart's affidavit averring that he was the shooter. The trial court, however, noted that defendant's case and Stewart's case were tried at the same time before the same trial court, and that Stewart had made comments during his recent sentencing hearing which were seemingly inconsistent with the statements in the affidavit. The trial court read the relevant portion of the transcript from Stewart's sentencing hearing into the record, noting that Stewart maintained that defendant grabbed the firearm from Stewart and that Stewart never intended for the situation to rise to the level it had. As to the claims against defendant's trial counsel, the trial court found that they all pertained to trial strategy and there were no claims which merited the need for appointed counsel to further develop them. As such, the trial court denied defendant's motion.

¶ 24 *Sentencing*

¶ 25 Defendant was appointed new counsel for sentencing and, before sentencing, counsel filed a supplemental motion for new trial, followed by a second supplemental motion for new trial. The motions came before the trial court on January 13, 2023, and were ultimately denied.

¶ 26 The matter proceeded to sentencing, and the State filed a sentencing memorandum arguing that defendant's sentences should be imposed consecutively as both attempted first-degree murder and home invasion were triggering offenses for purposes of consecutive sentencing.

¶ 27 On April 26, 2023, the trial court sentenced defendant to 31 years in the Illinois Department of Corrections for the attempted first degree murder and 31 years for the home invasion count

concerning Scott; the home invasion count concerning Anderson was merged into that count. For both the attempted first degree murder and the home invasion, the trial court's sentence included mandatory 25-year sentencing enhancements based on defendant's personal discharge of a firearm. In addition, the trial court sentenced defendant to three years for the robbery. Finally, the trial court found that consecutive sentences for all of the convictions were appropriate, resulting in an aggregate sentence of 65 years. In sentencing defendant to consecutive sentences, the trial court stated: "Great bodily harm has been alleged under certainly severe bodily injury."

¶ 28 Defendant filed a motion to reconsider sentence, which was denied, and this appeal follows.

¶ 29 ANALYSIS

¶ 30 On appeal, defendant contends that the trial court improperly conducted his *Krankel* hearing and raises several challenges to his sentence. We consider each argument in turn.

¶ 31 Krankel *Hearing*

¶ 32 A *pro se* posttrial motion which alleges ineffective assistance of trial counsel is governed by the procedure developed by the Illinois Supreme Court in *Krankel* and its progeny.[3] *People v. Roddis*, 2020 IL 124352, ¶ 34. This procedure "encourages the trial court to fully address these claims and thereby narrow the issues to be addressed on appeal." *Id.* (citing *People v. Jocko*, 239 Ill. 2d 87, 91 (2010)).

¶ 33 When a defendant raises a claim of ineffective assistance of counsel, the trial court must employ a two-step procedure. First, the trial court conducts a preliminary examination of the

[3] We observe that this procedure applies regardless of whether trial counsel was appointed or was retained, as is the case here. See *In re Johnathan T.*, 2022 IL 127222, ¶ 44.

factual basis underlying the defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). During this preliminary evaluation, the trial court is permitted to question defense counsel about the facts and circumstances surrounding the defendant's allegations, engage in a discussion with the defendant, or rely on its own knowledge of counsel's performance at trial and the insufficiency of the defendant's allegations. *People v. Ayres*, 2017 IL 120071, ¶ 12.

¶ 34 If the trial court determines that the defendant's claim lacks merit or pertains only to matters of trial strategy, the trial court need not appoint new counsel and may deny the *pro se* motion. *Moore*, 207 Ill. 2d at 78. If, however, the trial court finds that the allegations demonstrate "possible neglect of the case," new counsel must be appointed to represent the defendant at the next stage of the proceeding. *Id.* The appointed counsel can then independently evaluate the defendant's ineffectiveness claim and avoid any conflict of interest which might arise if trial counsel was forced to justify his or her actions contrary to the defendant's position. *Id.*

¶ 35 "The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Id.* (citing *People v. Johnson*, 159 Ill. 2d 97, 125 (1994)). Accordingly, if the reviewing court is asked to determine whether the trial court properly conducted a *Krankel* inquiry, the standard of review is *de novo*. *Roddis*, 2020 IL 124352, ¶ 33.

¶ 36 In this case, defendant contends that, while the trial court indicated that it was conducting only a preliminary *Krankel* inquiry, it in actuality conducted a full evidentiary hearing on the merits of his claims, necessitating the appointment of counsel to represent him at the hearing. Defendant thus claims that the matter must be remanded for proper *Krankel* proceedings, with

the appointment of counsel to represent him at the hearing. We do not find this argument persuasive.

¶ 37 As an initial matter, we observe that, while defendant claims in his reply brief that the hearing was "adversarial," the State had limited involvement in the proceedings and did not present any argument during the hearing. Similarly, we are hard-pressed to characterize the hearing as "evidentiary," where it consisted primarily of defendant's explanation of the points raised in his motion and trial counsel's responses when requested by the trial court, both of which are entirely appropriate during the initial stage of the *Krankel* proceedings. See *Ayres*, 2017 IL 120071, ¶ 12. To the extent that the trial court commented on any evidentiary matters, they were limited to observing that Stewart's affidavit arguably contradicted his statements during his sentencing hearing and did not in any way transform the hearing into an evidentiary hearing.

¶ 38 We also cannot find that the trial court's conduct during the hearing "went far beyond a preliminary inquiry on whether to appoint counsel." The record demonstrates that the trial court did exactly what was required under the law: it conducted a preliminary examination of the factual basis underlying the defendant's ineffectiveness claim (*Moore*, 207 Ill. 2d at 77-78). Defendant's motion raised a number of issues, and the trial court appropriately went issue-by-issue to ensure that it understood defendant's arguments as to each one. Some of defendant's claims were meritless on their face, which the trial court noted, while others required further explanation. Our supreme court has made it clear that a trial court is entitled to explore the factual basis for the defendant's claims through discussion with the defendant, trial counsel, and the trial court's own knowledge. See *Ayres*, 2017 IL 120071, ¶ 12. This

includes consideration of the merits of defendant's claims in their entirety, both factual and legal. See *Roddis*, 2020 IL 124352, ¶ 61.

¶ 39 On appeal, defendant points to several examples which he claims demonstrate that the trial court went beyond a preliminary inquiry. Specifically, he cites a discussion concerning potentially sleeping jurors, the trial court's use of the transcript from Stewart's sentencing hearing, and general "witnesses and evidence that he claimed counsel had failed to investigate or that he had not been informed of." None of these examples, however, suggest that the trial court improperly expanded the scope of the *Krankel* proceeding.

¶ 40 As to the matter of the sleeping jurors, defendant claimed that four jurors were sleeping for two days of the trial. Upon hearing defendant's claim, the trial court flatly rejected it, indicating that it had not observed anything of the sort during the trial and further noting that, "I mean I guess it's certainly true that once in a blue moon somebody might have nodded off in a jury. It's not unheard of. Obviously it's an important and significant issue, but my goodness, you can't miss four people sleeping for two days in a row. Nobody could have missed that." When defendant continued to insist that it was true, the trial court asked trial counsel and the State whether they recalled sleeping jurors. Trial counsel explained that there was one day in which one juror had closed her eyes for "maybe 30 or 40 seconds" while listening to testimony, but it was apparent that she was not asleep. The assistant state's attorney similarly indicated that he did not recall observing any sleeping jurors and suggested that, "[s]ince there were two juries, they were getting up pretty often, so for a juror to be asleep doesn't seem very likely." The trial court again indicated that "it's not a possibility that I would have missed four sleeping jurors. Nobody could miss four of them. That's just—that's not a viable argument." Defendant indicated that Stewart's attorney observed the sleeping jurors, and the trial court responded:

"Well, she could have been called to testify today. If you have witnesses that would say that right now, I—no, there were not four sleeping jurors present in this courtroom for two days in a row."

¶ 41 Defendant contends that there were "factual disagreements" concerning his claim, and that the trial court suggested that he should have called in a witness, indicating that the trial court went beyond a preliminary *Krankel* inquiry in ruling on his claim. The record, however, clearly demonstrates that the trial court found defendant's claim meritless based on its own experience and its own recollection of the trial and that any "factual disagreement[ ]" was based on defendant's insistence on a wholly implausible sequence of events. As noted, the trial court may consider the merits of defendant's claims in their entirety, both factual and legal, in conducting a *Krankel* inquiry. See *Roddis*, 2020 IL 124352, ¶ 61. Defendant cites no authority suggesting that a trial court must accept a defendant's version of events as true, regardless of how incredible it is. To the extent that the trial court suggested that Stewart's attorney "could have been called to testify today," we observe that this comment came after the trial court had repeatedly stated that it found defendant's version of events to be impossible and cannot find that it indicates that the trial court was conducting a full evidentiary hearing.

¶ 42 Similarly, we cannot find that the trial court's comparison of Stewart's affidavit to his statement at his sentencing hearing transformed the character of the *Krankel* proceeding. Defendant and Stewart were tried simultaneously before the same trial judge, who was present for the entirety of both jury trials. As such, it is unremarkable that the trial court would notice when the affidavit submitted by defendant factually contradicted statements the trial court heard Stewart make during his sentencing hearing. This is especially true given the timing of Stewart's sentencing hearing—Stewart's affidavit was signed on June 7, 2019, his sentencing

hearing occurred on October 22, 2019, and defendant's *Krankel* hearing occurred on November 4, 2019. We recognize that our supreme court has suggested that a trial court should not rely on matters outside the record when evaluating a defendant's claims in a preliminary *Krankel* inquiry. See *People v. Jolly*, 2014 IL 117142, ¶ 36. It is not obvious whether this includes a trial judge's personal recollection of statements made during the sentencing of a codefendant after simultaneous trials. Even, however, if defendant is correct in his claim that the trial court should not have referenced material from Stewart's case, we cannot find that the use of this material suggests that the trial court was conducting an evidentiary hearing.

¶ 43 Finally, the fact that defendant identified certain witnesses or evidence which he claimed trial counsel had not interviewed or investigated does not automatically mean that he was entitled to an evidentiary hearing on his claims. The trial court in this case asked defendant to expand on the details of his claims, and asked trial counsel to explain the reasoning behind his actions, before finding that the claims were either not supported by the record or constituted trial strategy. See *People v. Jackson*, 2020 IL 124112, ¶ 106 (decisions such as what witnesses to call and whether to object constitute trial strategy). As noted, if the trial court determines that the defendant's ineffectiveness claim lacks merit or pertains only to matters of trial strategy, the trial court need not appoint new counsel and may deny the *pro se* motion. *Moore*, 207 Ill. 2d at 78. Here, that is exactly what the trial court did and, accordingly, we cannot find that the trial court improperly expanded the scope of the *Krankel* inquiry, nor can we find that defendant demonstrated possible neglect such that appointment of counsel was necessary.

¶ 44 Since we have determined that the trial court conducted only a preliminary *Krankel* inquiry, defendant's arguments about the waiver of counsel are inapplicable, as defendant recognizes that he is not entitled to counsel at the first stage of the *Krankel* proceedings. See *Moore*, 207

Ill. 2d at 78. Consequently, we have no need to further consider defendant's arguments on this point.

¶ 45 *Firearm Enhancement*

¶ 46 Defendant next raises two arguments concerning his sentencing. First, defendant contends that the trial court should not have imposed a 25-year sentencing enhancement to his home invasion conviction. A conviction for home invasion is subject to a mandatory 25-to-life sentencing enhancement where the defendant "[p]ersonally discharges a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person within the dwelling place." 720 ILCS 5/19-6(a)(5), (c) (West 2022). A conviction for attempted first degree murder is similarly subject to a 25-to-life sentencing enhancement under the same circumstances. *Id.* § 8-4(c)(1)(D). In order for either sentencing enhancement to apply, the State was required to establish beyond a reasonable doubt that defendant personally discharged a firearm which proximately caused great bodily harm. See *People v. Jackson*, 199 Ill. 2d 286, 296 (2002) (every fact necessary to establish the sentencing range is an element of the crime).

¶ 47 In this case, with respect to the attempted murder charge, the State obtained a separate finding from the jury "that during the commission of the offense of attempt first degree murder the defendant personally discharged a firearm that proximately caused great bodily harm to another person." It did not, however, seek a similar finding with respect to the home invasion count concerning Scott.[4] Consequently, defendant claims that the imposition of the sentencing enhancement to the home invasion count was improper.

[4] As quoted in our prior statement of facts, the "personal discharge of a firearm" language was instead included in the issues instruction for the home invasion concerning Scott.

¶ 48 As an initial matter, the State contends that defendant has both forfeited any challenge to the sentencing enhancement by failing to object below and has waived such a challenge where defendant's trial counsel affirmatively acquiesced to the jury instructions which were given at trial. To the extent that defendant's argument is based on the State's failure to obtain a separate finding from the jury concerning the home invasion count, we agree with defendant that he cannot be said to have waived his current challenge, as it is the State's burden to prove every element of the offense, which includes the facts necessary to establish the sentencing range. See *Jackson*, 199 Ill. 2d at 296.

¶ 49 We agree with the State, however, that defendant's claim has been procedurally forfeited. To preserve a sentencing error, a defendant is required to both make a contemporaneous objection and to include the issue in a written postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Similarly, a defendant generally forfeits any purported jury instruction error if the defendant does not object to the instruction (or tender an alternative instruction) and does not raise the instruction issue in a posttrial motion. *People v. Bannister*, 232 Ill. 2d 52, 76-77 (2008).

¶ 50 In this case, defendant failed to raise any challenge to the sentencing enhancement, whether in instructing the jury, in any of his three posttrial motions (drafted by two different attorneys), during his sentencing hearing, or in his postsentencing motion. While defendant contends that his sentencing counsel "raised the issue when it arose" at sentencing by "argu[ing] that the jury instructions for home invasion included non-I.P.I. instructions regarding the personal discharge of the firearm," such a contention misstates the record. At the sentencing hearing, after the trial court had set forth the minimum and maximum sentences for each count, including the fact that the home invasion count concerning Scott was subject to a 25-year

sentencing enhancement, sentencing counsel expressly agreed with the sentencing structure. Counsel then stated: "The only thing that I notice is that the verdict form itself did not exactly mirror Instruction No. 22 and 23, in that No. 22 was listed as home invasion in parenthesis, personal discharge[,] and that's not exactly how it is written out on the verdict form. But I do acknowledge that it does not require separate. I believe that the law does not require it be a special interrogatory because of the six exceptions to that necessity." While it is not entirely clear, it appears that sentencing counsel was referring to the fact that "personal discharge of a firearm" was not listed on the verdict form itself.[5] Counsel, however, immediately acknowledged that it was not required to be so listed under the law, and the trial court agreed, given that personal discharge of a firearm was one of the elements the State was required to prove with respect to the home invasion count concerning Scott. Thus, the record clearly establishes that, contrary to defendant's claim, sentencing counsel did not raise any argument or otherwise challenge the applicability of the sentencing enhancement.

¶ 51 Errors which have been procedurally forfeited may nevertheless be reviewed for plain error, and the State in its brief on appeal addresses defendant's claim under that framework. In his reply brief, however, defendant denies that his claim was waived or forfeited, arguing only that it was properly preserved. At oral argument, counsel reaffirmed that defendant was not seeking plain error review and was taking the position that the issue had been properly preserved. The defendant bears the burden of persuasion in a plain-error analysis, and where the defendant fails to meet his burden, the procedural default will be honored. *Hillier*, 237 Ill. 2d at 545. Our supreme court has observed that "[a] defendant who fails to argue for plain-

[5] While the instruction as to home invasion concerning Scott provided that "[t]o sustain the charge of home invasion (discharge of a firearm)," the State was required to prove five propositions, the verdict form listed "Home Invasion to Jason Scott."

error review obviously cannot meet his burden of persuasion." *Id.* Thus, here, where defendant forfeited his sentencing claim and did not argue for plain error, we honor his procedural default. See *id.* at 550 ("Because defendant forfeited review of his *** claims and did not argue plain error, the appellate court should not have reached the merits of those issues.").

¶ 52 *Consecutive Sentences*

¶ 53 The final challenge defendant raises on appeal concerns the trial court's imposition of consecutive sentences. When a trial court imposes multiple sentences of imprisonment at the same time, those sentences generally run concurrently. 730 ILCS 5/5-8-4(a) (West 2022). A defendant, however, is subject to mandatory consecutive sentences where "[o]ne of the offenses for which the defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury." *Id.* § 5-8-4(d)(1). In this case, the home invasion conviction was a Class X felony, and the trial court found that "[t]here's been a finding of severe bodily injury." Thus, consecutive sentences were mandatory.

¶ 54 Defendant, however, contends that there was no finding of severe bodily injury and that the trial court's statement reflected a misapprehension of the record. As with his prior claim, defendant failed to properly preserve this issue for review. Unlike his other claim, however, defendant here contends that "because the improper imposition of consecutive sentences may violate a defendant's fundamental rights, this Court can review this issue to determine whether the imposition of consecutive sentences constitutes plain error."

¶ 55 The plain-error doctrine permits a reviewing court to consider an unpreserved claim (1) if a clear or obvious error occurred and the evidence is so closely balanced that this error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) if a clear or obvious error occurred and the error is so serious that it affected the

fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence at the defendant's trial. *People v. Sebby*, 2017 IL 119445, ¶ 48; *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). In both cases, the burden of persuasion remains with the defendant. *People v. Hartfield*, 2022 IL 126729, ¶ 50. Defendant in the instant case does not specify whether he is seeking review under the first or second prong of the plain-error doctrine. The first question in any plain-error analysis, however, is whether any error occurred. *Id.* ¶ 51.

¶ 56 As noted, consecutive sentences are mandated where "[o]ne of the offenses for which the defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury." 730 ILCS 5/5-8-4(d)(1) (West 2022). The determination by a trial court that a particular injury is "severe" is a question of fact which will be reversed only if it is against the manifest weight of the evidence. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008); *People v. Langston*, 2024 IL App (5th) 220296, ¶ 38. See also *People v. Wagener*, 196 Ill. 2d 269, 280-81 (2001) (determination of whether consecutive sentences would be imposed was properly made by the sentencing court and not the jury).

¶ 57 In this case, defendant contends that the trial court's imposition of consecutive sentences was based on its misapprehension that a finding of severe bodily injury had been made. Specifically, defendant claims that the jury's finding of great bodily harm was not synonymous with a finding of severe bodily injury and further claims that the trial court did not make such a finding itself.

¶ 58 While different appellate districts have reached differing results, the First District has previously held that "severe bodily injury" requires a degree of harm to the victim which is something more than that constituting "great bodily harm." See *People v. Williams*, 335 Ill.

App. 3d 596, 599-600 (2002); see also *People v. Alvarez*, 2016 IL App (2d) 140364, ¶¶ 22-23; *Langston*, 2024 IL App (5th) 220296, ¶ 37. But see *People v. Witherspoon*, 379 Ill. App. 3d 298, 308 (2008) (Fourth District held that the difference between the terms is "merely semantic"). Thus, defendant is correct that the jury's finding that defendant had caused Scott great bodily harm does not necessarily mean that defendant inflicted severe bodily injury for purposes of consecutive sentencing.

¶ 59 We disagree, however, with defendant's suggestion that the trial court itself did not make a finding of severe bodily injury. In setting forth the sentencing structure defendant faced, the trial court indicated:

> "The sentence will be on Count No. 10, the home invasion with Jason Scott as the victim. The sentencing range is 6 to 30 years, plus a mandatory add-on penalty of 25 years based on that. The court is making the finding that the home invasion, Class X offense, is the triggering offense under the law.
>
> Great bodily harm has been alleged under certainly severe bodily injury. And that mandates an 85 percent serving of the sentence, so that's as to Count No. 10, 7 is merged in."

Shortly thereafter, when the State argued in aggravation, the assistant state's attorney observed that, "I know the court had already made the finding," but then set forth the evidence which supported a finding that Scott had suffered severe bodily injury.

¶ 60 In imposing sentence on defendant, the trial court indicated that it was imposing the minimum sentence under the law and stated, in relevant part:

> "So as we have already discussed, Count No. 7 merges into Count No. 10, which is the home invasion of Jason Scott, I will sentence you to 6 years in the Illinois

> Department of Corrections on the Home Invasion. There's been a finding of severe bodily injury. It must be served at 85 percent and there is a mandatory add-on penalty of 25 years to Count No. 10 so that brings Count No. 10 to 31 years."

In the half-sheet documenting the sentencing hearing, the sentence for the home invasion count similarly contains a notation providing "severe bodily injury."

¶ 61 The record thus establishes that the trial court made a finding of severe bodily injury for purposes of consecutive sentencing. We recognize that the actual finding— "Great bodily harm has been alleged under certainly severe bodily injury"—is less than clear, which the State suggests could be the result of a scrivener's error in the transcript. We cannot, however, agree with defendant's position that *no* finding was made at all or that the trial court improperly equated the jury's finding of great bodily harm with severe bodily injury. The record demonstrates that the trial court was well aware of the requirements for imposing consecutive sentences, including the necessity of a finding of severe bodily injury. The record further confirms that the trial court's statement was understood by all involved as a finding of severe bodily injury based on the same facts underlying the jury's great bodily harm finding—the State expressly noted that the trial court "had already made the finding" when arguing in aggravation, and the defense did not challenge the severity of Scott's injuries. Moreover, in imposing sentence, the trial court specifically indicated that "[t]here's been a finding of severe bodily injury" and further memorialized the finding on the half-sheet. Accepting defendant's position would require us to presume that the trial court was unaware of its own findings, made only minutes earlier, which we decline to do.

¶ 62 Defendant does not contend that a finding that Scott suffered severe bodily injury was against the manifest weight of the evidence, and we agree that the trial court's finding was

amply supported by the evidence. Consequently, where there was no error in the trial court's imposition of consecutive sentences, there can be no plain error. See *Hartfield*, 2022 IL 126729, ¶ 51.

¶ 63 CONCLUSION

¶ 64 For the reasons set forth above, the trial court's judgment is affirmed. The trial court did not improperly expand the scope of defendant's *Krankel* hearing, nor did it err in imposing a 25-year sentencing enhancement for defendant's home invasion conviction or in ordering the sentences to run consecutively.

¶ 65 Affirmed.