2023 IL App (3d) 200489-U

Order filed August 14, 2023

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2023

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
	)	Henry County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-20-0489
v.	)	Circuit No. 17-CF-186
	)	
JOSE C. GUERRERO,	)	Honorable
	)	Terence M. Patton,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HAUPTMAN delivered the judgment of the court.
Justices McDade and Peterson concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction and sentence are affirmed. The circuit court strictly complied with Illinois Supreme Court Rule 604(d) on remand. Additionally, the circuit court properly denied defendant's motion to continue the sentencing hearing and no error occurred regarding defendant's sentencing.

¶ 2 Defendant plead guilty in an open plea to one count of predatory criminal sexual assault and was sentenced to 20 years' imprisonment. On appeal, this court remanded defendant's case for strict compliance with Illinois Supreme Court Rule 604(d). Ill. S. Ct. R. 604(d) (eff. July 1, 2017). On remand, appointed counsel filed an amended Rule 604(d) certificate. The circuit court

then denied defendant's amended motion to reconsider sentence for a second time following a hearing. Defendant appeals.

¶ 3 I. BACKGROUND

¶ 4 On June 8, 2017, the State charged defendant by information with two counts of predatory criminal sexual assault, which arose from allegations that defendant inserted his finger into the anus of Z.A. on June 4, 2017. 720 ILCS 5/11-1.40(a)(1) (West 2016). On July 17, 2018, the State agreed to tender defendant an offer, and the parties agreed to a pretrial date of August 16, 2018. From July 2018 through October 2018, the parties participated in plea negotiations and the case was continued three times. On October 19, 2018, the court granted defendant a final continuance. However, the court indicated that it could not, in good conscience, continue the case any longer.

¶ 5 On October 22, 2018, defendant entered an open guilty plea to count 1, and the State dismissed count 2. The State provided the following factual basis for the plea:

> "On June 5th, 2017, Detective Jim Kessinger of the Henry County Sheriff's Office was contacted by Detective Ryan Tone with the Colona Police Department requesting Detective Kessinger's assistance with a complaint of a sexual assault. Detective Kessinger identified the victim as nine-year-old Z.A. and the offender as the defendant, Jose Guerrero.
>
> On June 8th, 2017, Detective Kessinger attended a C.A.C. interview of the victim, Z.A., where she disclosed that she was awakened by the defendant touching her. She was lying facedown in her bed. This occurred in the middle of the night. She felt the defendant sitting with his legs holding her legs down. She then felt the defendant put his

finger in her anus. She said she was screaming and crying, but the defendant wrapped his arms around her head, making it hard for her to breathe.

Eventually, the defendant got off of Z.A. and laid down on the floor in her room. Z.A.'s mother came into Z.A.'s room and found the defendant on the floor. Z.A. also immediately disclosed this to her mother, told her what had happened. Z.A.'s mother told the defendant to leave, and he walked out under his own power. The defendant was 29 at the time of the offense."

¶ 6 Defendant's attorney agreed the State would present this evidence if the case were to proceed to trial. The court admonished defendant about the guilty plea, and defendant confirmed his wish to plead guilty and signed a jury waiver. The court found defendant guilty of count 1 after finding a factual basis for the plea and finding that the plea was knowingly and voluntarily made. The court ordered a presentence investigation (PSI) and set the cause for sentencing on December 21, 2018.

¶ 7 The PSI filed on December 13, 2018, summarized that defendant attended a pool party at Z.A.'s home on June 3, 2017, where he became intoxicated. Z.A.'s mother, Mrs. Anderson, allowed defendant to stay the night so that he did not have to drive home. At approximately 2:30 a.m. on June 4, 2017, Anderson was awakened by Z.A.'s screaming and crying. Anderson discovered defendant on the floor next to Z.A.'s bed. Z.A. relayed that defendant had hurt her and touched her, though Z.A. was not specific. Anderson and a friend removed defendant from the bedroom and gave him a ride home. Later the same day, the father of one of Z.A.'s friends informed Anderson that Z.A. told his daughter that defendant touched Z.A. and put his fingers inside of her. Anderson did not discuss the situation further with Z.A. and contacted the police.

¶ 8 On June 8, 2017, Z.A. was interviewed at the Braveheart Children's Advocacy Center (CAC). Z.A. reported that defendant had been swimming at her house and that he later threw up. Z.A. went to bed and was awakened by defendant touching her. Z.A. indicated that she was sleeping lying face down. Defendant was behind Z.A. and used his legs to hold her legs down. Defendant put his fingers in Z.A.'s anus two to three times and unsuccessfully attempted to put them in her vagina. Z.A. began crying and defendant wrapped his arms around her head, which she perceived as him trying to comfort her. Then, defendant laid down on the floor next to her bed. Z.A. related that she told her mother that defendant had hurt her and put his fingers inside of her.

¶ 9 Defendant reported during his PSI interview that he was born in Mexico in 1988 and moved to the United States, becoming a citizen in 2004. On the date of the incident, defendant was invited to the Anderson home for a pool party. Defendant consumed 18 beers and several shots of hard liquor throughout the day. Defendant blacked out and did not remember anything until he was awakened by a friend at the party telling him he had to leave. Defendant recalled that as he was leaving, Mrs. Anderson was yelling at him to "get the f*** out of my house." Defendant did not know why she was upset until he learned about the allegations the next day.

¶ 10 The PSI indicated that defendant had no criminal record. Defendant graduated from Rockford East High School in 2007 and earned a certificate in surgical technology from Rock Valley College in 2013. Defendant was previously employed as a surgical technician and currently worked at Brose Belvidere, Inc. Defendant married his wife in Mexico in 2016, and she moved to Rockford, Illinois, in 2018. Defendant's parents and three siblings also resided in Rockford. Defendant denied having substance abuse issues.

¶ 11 A victim impact interview was conducted with Mr. and Mrs. Anderson on December 7, 2018. The Andersons reported that after contacting the police, Z.A. was examined at the hospital, where no permanent physical trauma was uncovered. After the incident, the Anderson family began attending counseling at the Freedom House in Princeton, Illinois. The Andersons reported that their entire family had been impacted by the offense. Since the incident, Z.A. wet the bed, had accidents during the day, and felt ashamed about what happened. Z.A. would not allow the Andersons to tell other family members about the incident for a year and a half. The Andersons no longer invited guests to their home for overnight stays. The Anderson's oldest son felt guilty because he believed that he could have prevented the incident if he had been in his bedroom that night.

¶ 12 When the parties appeared for sentencing on December 21, 2018, defendant made an oral motion to continue the hearing so that a translator could be present. Defense counsel informed the court that several of defendant's family members wished to give statements on his behalf but only one of them spoke English. After confirming that the victim and her family were present, the court denied defendant's motion to continue, stating:

> "Ok, I agree with Mr. Schutte. We selected this date for the sentencing hearing back on October 22nd of 2018, and I understand this is a surprise to Mr. Dalton, but there has been plenty of time for [defendant] to advise his attorney if any family members were going to show up or not. I don't find good cause to continue this sentencing hearing, so I'm going to deny the motion to continue."

¶ 13 In aggravation, Mr. Anderson testified about the grief and heartache his family had to endure. Mr. Anderson stated that defendant betrayed his trust, stole Z.A.'s innocence, and caused her to have to grow up way too fast.

¶ 14 The State then recited Z.A.'s written statement aloud, stating:

> "I got impacted because I feel like people treat me differently when I'm sad, ask if I'm sad because of it. We voted on charities, and one pushed the bruise inside of me. People can do things and it hits the bruise. The bruise is what won't let me forget."

¶ 15 In mitigation, defendant called his sister, Katia Guerrero. Katia described defendant as honest and hard working. Katia stated that defendant had never been in trouble and had never showed signs of being the man he was being portrayed to be. Defendant was always there for his family. Katia relayed that defendant was lost for a time, but a change occurred when he married his wife. Katia did not believe defendant committed the instant offense.

¶ 16 In allocution, defendant stated that he worked hard every single day to be with his wife. Defendant was stressed and tired and made the mistake of drinking more than he should have on the date of the incident. Defendant maintained that he did not remember anything and described the day as a complete blackout. Defendant expressed that his family did not deserve the pain he had caused. Defendant deeply regretted drinking that day, stating, "I wish I can remember and say to them I'm sorry for what I did, but I cannot remember anything. I'm sorry they're in this pain because of my alcohol, but I cannot say sorry about that, because I do not remember anything at all."

¶ 17 Following defendant's statement, the State argued that defendant refused to apologize to Z.A. for his actions and pointed out the immeasurable, negative, impact this incident had on Z.A.'s life. The State argued that defendant chose the weakest, most vulnerable person in the home and "[a]s she was trying — crying and trying to scream, he wrapped his arms around her head, so tightly, in fact, that she had a hard time breathing. That's to me somebody that — that's predatory. That's somebody seeking out the easiest victim and controlling that victim and

keeping them quiet." As to the statutory factors in aggravation, the State asserted the first and seventh factors applied, i.e., that defendant's conduct caused psychological harm to the victim, and that the sentence was necessary to deter others from committing the same crime. 730 ILCS 5/5-5-3.2(a)(1), (7) (West 2018). The State recommended a 20-year sentence.

¶ 18 Defense counsel disagreed with the State's assertion that defendant was not remorseful and argued that defendant had no criminal history and had been a family man his entire life. Counsel described the State's argument that defendant squeezed Z.A.'s head as a gross mischaracterization of the PSI and recalled instead that Z.A. believed defendant was trying to comfort her. Defense counsel advocated for the minimum sentence of six years.

¶ 19 The court noted the discrepancy between the PSI, which reported Z.A.'s perception that defendant wrapped his arms around her head to comfort her, and the factual basis supporting the plea, which stated that as Z.A. was screaming and crying, defendant wrapped his arms around her head, making it hard for her to breathe. The court asked the parties to address this discrepancy before it went further. Defense counsel responded that the language of the PSI matched that of the police reports. The State recalled that Z.A. stated during her CAC interview that defendant's actions made it hard for her to breathe.[1] The State noted that the defense did not object to the factual basis and acknowledged that its interpretations of defendant's actions might be different than the victim's. Defense counsel conceded that both statements could have been made. The court described one act as that of comfort and the other as effecting the ability of the victim to breathe. The court believed the difference between these two interpretations was significant, but agreed they were not mutually exclusive. According to the record, the State "showed an item to [defense counsel]," and then the parties conferred off the record. Thereafter,

[1]Neither the police reports nor the CAC interview were made part of the record on appeal.

defense counsel stated that "this victim has made two different statements," and argued that both statements were interpretations.

¶ 20 Next, the court noted its consideration of the nature and circumstances of the offense, the information contained in the PSI, the evidence presented at sentencing, the arguments of counsel, the statutory factors in aggravation and mitigation, any relevant nonstatutory factors, the cost of incarceration, and the rehabilitative potential of defendant. The court described the offense as horrendous and stated:

> "[t]he factual basis was that he — he had his legs holding her legs down, so he's restraining her. She started screaming and crying, and he wrapped his arms around her head. She may have perceived that as him trying to comfort her. I don't know. She's nine years old. She didn't know what the hell was going on. No one would expect her to. But that doesn't necessarily mean she was not telling the truth when she said it made it hard to breathe. One is a statement of opinion. One is a statement of fact.
>
> So he tried — he held her down, and he tried to stop her from screaming. Now, if he was so drunk that he didn't know what was going on, how did he know I need to hold this girl down, and when she starts screaming, I need to quiet her down? So I do find that especially aggravating, when you are forcibly — because force is not an element of predatory criminal sexual assault of a child, so it's not a double enhancement. He used force and he restricted her breathing at the time." (Internal quotation marks omitted.)

¶ 21 In mitigation, the court found that no serious physical harm occurred, but did not believe that defendant's overconsumption of alcohol excused his conduct. The court highlighted that defendant had no prior history of criminal activity. The court was unable to conclude, however, that the criminal conduct was the result of circumstances that were unlikely to recur and noted

that defendant never apologized to Z.A. The court found that imprisonment would not impose excessive hardship on defendant's dependents.

¶ 22 The court found, in aggravation, that while serious physical harm did not occur, the aggravating factor was not limited to physical harm, and that this crime caused significant psychological harm. The court found that defendant's sentence was necessary to deter others, as children are the most vulnerable members of society. Concerning rehabilitative potential, the court stated that it did not find defendant's version of events credible based on the evidence. The court sentenced defendant to serve 20 years' imprisonment.

¶ 23 On August 13, 2019, defendant filed an amended motion to reconsider his sentence, arguing that the sentence imposed was excessive, the court improperly weighed the factors in mitigation and aggravation, and improperly denied defendant's motion to continue the sentencing hearing.[2] Defendant's motion was accompanied by counsel's Rule 604(d) certificate, a brief in support of defendant's arguments, and several letters from family and friends. Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

¶ 24 At the hearing on defendant's amended motion to reconsider sentence, defense counsel stated that he would stand on his brief, but made a short argument that had the court granted defendant's motion to continue, several family members would have testified regarding the hardships that defendant's incarceration would place on the family. The State did not object to defense counsel's request to make letters written by defendant's family members part of the record. The court denied defendant's motion to reconsider, finding that it correctly exercised its discretion in denying the motion to continue, correctly weighed the factors in mitigation and aggravation, and correctly fashioned a 20-year sentence.

[2]Defendant's initial motion to reconsider sentence was filed on January 7, 2019.

¶ 25 Thereafter, defendant appealed. On January 14, 2020, defendant filed a motion for summary remand to the circuit court in *People v. Guerrero*, 3-19-0654, citing counsel's failure to certify in his Rule 604(d) certificate that he had examined the proceedings pertaining to defendant's plea of guilty. This court granted defendant's motion and remanded the case "for further post-plea proceedings, including the filing of a new post-plea motion, the filing of a Rule 604(d) certificate, and a de novo hearing on the post-plea motion." This court additionally declared all prior proceedings on the postplea motion a nullity.

¶ 26 On remand, the circuit court appointed new counsel to represent defendant. In accordance with this court's order, counsel filed an amended Rule 604(d) certificate. On November 13, 2020, the cause proceeded to a new hearing on defendant's amended motion to reconsider his sentence and the following exchange occurred.

"THE COURT: This case was sent back by the Appellate Court for further post plea proceedings. Mr. Dyer took over for the previous attorney, Mr. Dalton. Mr. Dyer has filed an amended Supreme Court Rule 604(d) certificate. And I did not see an amendment to the amended motion to reconsider sentence, so I am presuming, Mr. Dyer, you looked at that and did not find that any amendments were necessary?

MR. DYER: That's correct, Your Honor.

THE COURT: So we're operating again off of the amended motion to reconsider sentence that was filed — oh goodness, it looks like August 13th 2019?

MR. DYER: I believe that's correct, Judge. And you had already heard and ruled on that, yes.

THE COURT: Okay. All right. So any additional arguments on the amended motion, Mr. Dyer?

MR. DYER: No, Judge.

THE COURT: And Ms. Barrick?"

The State went on to extensively address each of the arguments raised in the amended motion to reconsider, including the denial of defendant's motion to continue, the court's assessment of the aggravating and mitigating factors at sentencing, and the 20-year sentence defendant received. Following the State's argument, the court found that on remand, defense counsel held discussions with defendant concerning his guilty plea and sentence, examined the report of proceedings for both proceedings, filed an amended Rule 604(d) certificate, and determined that no amendments to defendant's postplea motion were necessary. The court denied defendant's amended motion to reconsider sentence, stating "these are all issues that the Court has addressed previously. And I don't find any grounds to believe that I erred to change my mind, and I still believe there was not good cause for the motion to continue. I still believe that I appropriately [weighed] the [aggravating] and mitigating factors. So the amended motion to reconsider sentence is denied." Defendant appeals.

¶ 27 II. ANALYSIS

¶ 28 A. Rule 604(d) Compliance on Remand

¶ 29 Defendant opens his appeal by asserting that this matter must be remanded to the circuit court for a second time for strict compliance with Rule 604(d) because the second hearing on his amended motion to reconsider sentence was perfunctory and did not result in a meaningful review of the merits of the motion. The State responds that counsel strictly complied with Rule 604(d) by filing a compliant Rule 604(d) certificate and determining that it was not necessary to file a new motion to reconsider sentence. Furthermore, the State posits that a new hearing was held on the motion, which afforded both sides an opportunity to be heard.

¶ 30 Rule 604(d) provides:

> "[t]he defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by phone, mail, electronic means or in person to ascertain defendant's contentions of error in the sentence and the entry of the plea of guilty, has examined the trial court file and both the report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings.
>
> The motion shall be heard promptly, and if allowed, the trial court shall modify the sentence or vacate the judgment and permit the defendant to withdraw the plea of guilty and plead anew."

¶ 31 Defense counsel must strictly comply with each provision of Rule 604(d) and failure to do so necessitates remand of the cause. *People v. Gorss*, 2022 IL 126464, ¶ 19. The appropriate remedy on remand is the filing of a new Rule 604(d) certificate, an opportunity to file a new motion to withdraw guilty plea and/or reconsider sentence, if counsel concludes that a new motion is necessary, and a new motion hearing. *People v. Lindsay*, 239 Ill. 2d 522, 531 (2011). Compliance with a supreme court rule is reviewed *de novo*. *People v. Hinton*, 362 Ill. App. 3d 229, 232 (2005).

¶ 32 In accordance with the aforementioned caselaw, this court remanded this case due to a noncompliant Rule 604(d) certificate in *People v. Guerrero*, 3-19-0654. On remand, defense counsel filed a compliant Rule 604(d) certificate in which counsel certified that he consulted with defendant by phone to ascertain defendant's contention of error in the entry of his sentence and the entry of the plea of guilty, examined the court file and the report of proceedings of the

plea of guilty and the sentencing hearing, and considered whether any amendments to the motion were necessary in order to make a proper presentation of the motion to reconsider the sentence. Counsel indicated that his review of the record did not necessitate the filing of a second amended motion to reconsider sentence. See *Lindsay*, 239 Ill. 2d at 529-30 (generally discussing that the filing of a new motion is not required on remand). The parties proceeded to a hearing on defendant's amended motion to reconsider sentence, and the court denied that motion. Based on these facts, both counsel and the court fulfilled the requisite Rule 604(d) duties on remand as proscribed by our supreme court.

¶ 33 Nonetheless, defendant asserts that counsel did no more than file a compliant Rule 604(d) certificate and argues that the new motion hearing was a mere charade performed for the purpose of reinstating an appeal. *People v. Tejada-Soto*, 2012 IL App (2d) 110188, ¶ 14; see *People v. Maxwell*, 2013 IL App (4th) 111042, ¶¶ 9-13; see *People v. Fricks*, 2017 IL App (2d) 160493, ¶ 7 (providing that on remand, the postplea motion must be considered anew). To illustrate this point, defendant cites to *People v. Porter*, 258 Ill. App. 3d 200, 203 (1994).

¶ 34 In *Porter*, the Second District reversed the denial of defendant's postplea motion because counsel failed to file a compliant Rule 604(d) certificate. *Id.* at 201. On remand for a new motion and hearing, the court granted counsel leave to file a Rule 604(d) certificate, to which counsel replied, "I guess I'm asking basically to file that and then that all the evidence that was heard therein be considered; and again make that motion to withdraw the plea based upon the motion I previously filed." *Id.* at 202. The court then accepted counsel's Rule 604(d) certificate and asked counsel if he would like to appeal, to which counsel responded, "I'm asking that notice be based on the fact we had a prior hearing and everything was brought forth in that hearing except I failed to file the [Rule 604(d) certificate] before that hearing; but I had done everything

necessary before that hearing but failed to specifically file the certificate under [Rule 604(d)]." *Id*. The record indicated that the defendant's oral motion to withdraw his guilty plea was heard and denied. *Id.* On appeal, the Second District held that the hearing on the motion was both incomplete and defective in "that it was error for defense counsel and the trial court merely to rely on matters determined in defendant's prior hearing" where the prior hearing was a nullity. *Id*. at 203-04.

¶ 35 This case is unlike *Porter*. Although defense counsel made no oral argument in support of the amended motion to reconsider sentence, a brief setting forth the arguments in support of the motion accompanied its filing. In addition, the State extensively addressed the arguments raised in the motion, including the denial of defendant's motion to continue, the court's assessment of the aggravating and mitigating factors at sentencing, and the 20-year sentence defendant received. In denying the motion, the court indicated that it had considered the motion anew, stating, "these are all issues that the Court has addressed previously. And I don't find any grounds to believe that I erred to change my mind, and I still believe there was not good cause for the motion to continue. I still believe that I appropriately [weighed] the [aggravating] and mitigating factors. So the amended motion to reconsider sentence is denied." This hearing was no mere charade as the court did not exclusively rely on matters determined during the first hearing on defendant's postplea motion when it denied the motion a second time. As such, we reject defendant's argument and find that defendant received the appropriate remedy on remand, *i.e.*, the filing of a new Rule 604(d) certificate, an opportunity to file a new motion to reconsider sentence, and a new motion hearing.

¶ 36 B. Motion to Continue the Sentencing Hearing

¶ 37 Defendant argues the circuit court abused its discretion when it denied his motion to continue the sentencing hearing for the purpose of securing a translator for his mitigation witnesses. The State argues the court properly balanced the relevant factors in denying defendant's motion to continue, and that even if the court's denial was an abuse of discretion, defendant suffered no prejudice.

¶ 38 It is well settled that the grant or denial of a motion to continue rests in the sound discretion of the circuit court, and a reviewing court will not interfere with that decision absent an abuse of discretion. *People v. Walker,* 232 Ill. 2d 113, 125 (2009). An abuse of discretion occurs only where the circuit court's ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court. *People v. Patrick,* 233 Ill. 2d 62, 68 (2009). Axiomatically, whether an abuse of discretion occurred depends upon the facts and circumstances of each case. *Walker,* 232 Ill. 2d at 125. As such, no mechanical test exists to determine the propriety of a denial of a criminal defendant's request to continue. *Id.* However, courts may consider the interests of justice, the movant's diligence, the history of the case, the complexity of the matter, the seriousness of the charges, docket management, judicial economy, and inconvenience to the parties and witnesses. *Id*. at 125-26.

¶ 39 Taking these considerations into account, we hold that the circuit court properly exercised its discretion when it denied defendant's motion to continue the sentencing hearing. Here, the case was continued three times between July 2018 and October 2018 while the parties held plea negotiations. On October 19, 2018, the court granted defendant a final continuance, stating that the court could not, in good conscience, continue the case any longer. On October 22, 2018, defendant plead guilty and his sentencing hearing was set for December 21, 2018. On that

date, 60 days later, defendant made an oral motion to continue in order to secure a translator for several family members who planned to give a statement on defendant's behalf. After confirming that Z.A. and her family were present, the court found no good cause to continue the hearing, stating that defendant had "plenty of time" to advise his attorney of this matter following his guilty plea. We cannot say this decision was an abuse of discretion.

¶ 40 Regarding docket management and the history of the case, this case was more than a year old at the time of sentencing and had recently been continued several times. Of course, crime victims have the right to a timely disposition following the arrest of the accused. Ill. Const. 1970, art. I, § 8.1(a)(7). Accordingly, the court noted the presence of Z.A. and her family at sentencing. This court is also cognizant of the courage required of the victims and their families to prepare for, attend, and participate in a sentencing hearing, especially when a minor victim is involved. See 725 ILCS 5/114-4(k) (West 2018). (In prosecutions for violations under section11-1.40 involving a victim under 18 years of age, the court shall, in ruling on any motion to continue, consider and give weight to the adverse impact the delay may have on the well-being of the child). As such, the decision to ask the victim to return on a later date cannot be taken lightly. Regarding defendant's diligence, defendant has yet to explain why arrangements for a translator could not have been made during the two-month period between his guilty plea and sentencing. Moreover, defendant's sister testified on his behalf that defendant was an honest, hardworking man, who was always there for his family.

¶ 41 Ultimately, the record reflects that the court weighed the relevant factors in coming to its decision. As such, the court did not abuse its discretion, and we affirm the denial of the motion to continue.

¶ 42 C. Factual Inferences at Sentencing

¶ 43 Defendant argues that in aggravation at sentencing, the court improperly relied on its mistaken belief that defendant wrapped his arms around Z.A.'s head, which restricted her breathing, as evidence that defendant used force during the commission of the offense. The State contends the court did not consider an improper sentencing factor and that, if anything, defendant invited any error by agreeing to the State's factual basis and the representations made during defendant's plea hearing.

¶ 44 At the outset, defendant, citing *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8, frames the issue as to whether the court relied on an improper factor in imposing his sentence, which is subject to *de novo* review. We disagree with the holding in *Abdelhadi* and with defendant's characterization of the issue. This court recently declined to apply the standard developed in *Abdelhadi* and its progeny. See *People v. Young*, 2022 IL App (3d) 190015, ¶ 18. We reiterated the long-held standard that a sentence may not be altered on appeal absent an abuse of discretion. *Id*. ¶ 19; citing *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). We find this standard especially applicable to the instant case where, despite defendant's assertions, defendant is arguing that the circuit court could not have reasonably inferred that defendant wrapped his arms around Z.A.'s head, making it difficult for her to breathe. *People v. Robinson*, 2015 IL App (1st) 130837, ¶¶ 88, 93 (instructing that a trial judge is allowed to make reasonable inferences from the evidence when sentencing a defendant and that whether said inferences were reasonable is reviewed for an abuse of discretion). For the following reasons, we cannot find that the court abused its discretion during sentencing when it made reasonable inferences based on the evidence. See *id*. ¶ 93; *People v. Foster*, 119 Ill. 2d 69, 96 (1987). (Sentencing courts exercise

wide discretion in the sources and types of evidence that the judge may use in fashioning a sentence.).

¶ 45 On appeal, defendant persists in his assertion that Z.A. interpreted defendant's action of wrapping his arms around her head as a comforting gesture, rather than a forceful one. However, the record reflects that defense counsel agreed with the State's factual basis, which referenced the difficulty Z.A. had breathing and conceded at sentencing that Z.A. made both statements. Moreover, defendant has not made the police report or the CAC interview, which purportedly contain the conflicting statements, available on appeal. As such, any doubts arising from the incompleteness of the record shall be construed against defendant and in favor of the judgment rendered in the lower court. *People v. Henderson*, 2011 Ill. App (1st) 090923, ¶ 45.

¶ 46 Even if we were to assume, however, that Z.A. relayed her perception that defendant was acting to comfort her, and never stated that defendant restricted her breathing, the circuit court aptly noted that Z.A.'s interpretation was not ironclad, as she was nine years old at the time of the assault. The circuit court also noted that Z.A. could have felt that defendant was comforting her and still had difficulty breathing, as these two conditions were not mutually exclusive. It is undisputed that Z.A. was screaming and crying as she was assaulted in the middle of the night in her own bed. It is further undisputed that defendant held down Z.A.'s legs to restrict her movement. Based on these facts, the most reasonable explanation for defendant placing his arms around Z.A.'s head would be to attempt to stifle Z.A.'s screaming. It logically follows that this act could have impeded Z.A.'s ability to breathe. Accordingly, the factual inferences drawn from the record by the sentencing court regarding the force used by defendant were reasonable, and no abuse of discretion occurred.

¶ 47 D. Excessive Sentence

¶ 48 Lastly, defendant argues the circuit court afforded inappropriate weight to the relevant statutory factors in aggravation and mitigation, resulting in an excessive sentence of 20 years. Defendant argues that the record lacks a basis for why defendant, who had no criminal background and had rehabilitative potential, and was not in his right state of mind during the commission of the offense, would receive a sentence 14 years above the minimum. The State asserts that the 20-year sentence was not an abuse of discretion because it was not manifestly disproportionate to the nature of the offense.

¶ 49 The Illinois Constitution provides 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. Sentencing courts have a far better opportunity to consider factors such as defendant's general moral character, mentality, social environment, and habits, than reviewing courts, which must rely on the cold record. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). Consequently, this court must not substitute its judgment for that of the sentencing court, merely because the requisite factors could have been weighed differently. *Id*.

¶ 50 A sentence within the statutory limits may be deemed excessive and the result of an abuse of discretion if the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000); *People v. Murray*, 2020 IL App (3d) 180759, ¶¶ 26-27 (we presume that a sentence falling within the statutory range is not excessive and that the court considered the relevant factors in aggravation and mitigation); see 720 ILCS 5/11-1.40(b)(1) (West 2016). (A person convicted of predatory criminal sexual assault of a child shall be sentenced to a term of imprisonment of 6-60 years.).

¶ 51 We find nothing in this record indicating that the appropriate factors were not considered. In imposing the sentence, the court noted its consideration of the nature and circumstances of the offense, the information contained in the PSI, the evidence presented at sentencing, the arguments of counsel, the statutory factors in aggravation and mitigation, any relevant nonstatutory factors, the cost of incarceration, and the rehabilitative potential of defendant. Though it was not required to do so, the court went on to recite and assign value to many of the relevant statutory factors. *People v. Hageman*, 2020 IL App (3d) 170637, ¶ 20.

¶ 52 Defendant argues that the circuit court afforded too much weight to the factors in aggravation, such as defendant's lack of remorse and the psychological harm suffered by Z.A., while not accounting for defendant's lack of criminal history and rehabilitative potential. As stated above, we are not inclined or entitled to reweigh such factors. A defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense, which the sentencing court aptly described as horrendous. *Alexander*, 239 Ill. 2d at 214. We further decline to entertain defendant's cross-case comparative analysis, as our supreme court has rejected such comparisons as a basis for challenging a sentence. *People v. Fern*, 189 Ill. 2d 48, 55 (1999).

¶ 53 Ultimately, defendant received a sentence on the lower end of the sentencing range enacted by the legislature. The serious and heinous nature of this offense warranted the 20-year sentence that was imposed. As the record does not establish that the court failed to consider the appropriate sentencing factors or that the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense, we must uphold defendant's sentence as valid. Defendant's conviction and sentence are affirmed.

¶ 54 III. CONCLUSION

¶ 55 The judgment of the circuit court of Henry County is affirmed.

¶ 56 Affirmed.