

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).

2026 IL App (4th) 260177-U

NO. 4-26-0177

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 20, 2026

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Henry County
CHRISTOPHER A. WHEATON,	)	No. 21CF129
Defendant-Appellant.	)	
	)	Honorable
	)	Terence M. Patton,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed defendant's convictions and sentences for the predatory criminal sexual assault and criminal sexual assault of his two daughters where (1) the trial court did not abuse its discretion in allowing an extension of the speedy-trial deadline to complete DNA analysis; (2) the evidence was sufficient to establish sexual penetration; and (3) defendant's aggregate 25-year prison sentence was not based on improper considerations, nor was it excessive.

¶ 2 Defendant, Christopher A. Wheaton, was charged with one count of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2020)) and one count of criminal sexual assault (720 ILCS 5/11-1.20(a)(3) (West 2020)). Following a bench trial, the trial court found defendant guilty of both offenses and sentenced him to consecutive prison sentences of 15 years for predatory criminal sexual assault of a child and 10 years for criminal sexual assault. Defendant appeals, arguing that (1) his right to a speedy trial was violated, (2) he was not proven guilty of either charge beyond a reasonable doubt, and (3) his sentence was based on improper

considerations and excessive. We affirm.

¶ 3

I. BACKGROUND

¶ 4

In April 2021, defendant was charged with predatory criminal sexual assault of a child involving his daughter, C.L.W. (720 ILCS 5/11-1.40(a)(1) (West 2020)). The information alleged that defendant “committed an act of sexual penetration with minor C.L.W., a person under the age of 13, in that he placed his penis inside C.L.W.’s vagina for the purpose of his own sexual gratification.” On the same day, defendant was charged with criminal sexual assault of his other daughter, A.M.W. (720 ILCS 5/11-1.20(a)(3) (West 2020)). That count alleged that “defendant committed of [sic] an act of sexual penetration with minor A.M.W., a person under the age of 18 years, in that he placed his penis in A.M.W.’s vagina, and said defendant is a family member of A.M.W.” Both events were alleged to have occurred on or about January 23, 2020. On May 3, 2021, defendant was arrested and taken into custody, where he remained until trial.

¶ 5

On June 17, 2021, defendant requested a continuance until July 15, 2021. On July 15, 2021, defendant asked that the final pretrial conference be set in August. The trial court stated: “Motion defense, without objection from the State, case will be continued for a final pretrial conference August 23rd.” Defendant requested additional continuances from August 23, 2021, to May 23, 2022. On May 23, 2022, defendant stated he was ready for trial, but the State indicated that it was not ready because the Illinois State Police lab finally identified a specimen and needed a DNA sample from defendant, which he was refusing to provide.

¶ 6

On May 25, 2022, the State filed a motion for collection of DNA evidence, seeking a buccal swab from defendant. On June 1, 2022, the trial court held a hearing on the motion. The State explained that it had been waiting for the lab to obtain DNA results, which finally came back showing additional DNA from the material it possessed, and the lab needed a standard from

defendant to compare it to. The State argued that it was “efficient” for it to wait to determine if DNA was needed from defendant before requesting it because “it’s rare that we get back a report from the lab that says that there is usable, identifiable specimens for them to cross-examine.” Once the State learned that there was an identifiable specimen to compare to defendant’s DNA, it requested defendant’s DNA. The court stated: “Regarding the motion, they have a DNA sample that’s not from the victim, so they want the defendant’s DNA to see if it’s his. That’s certainly reasonable.” The court also noted that “[t]he buccal swab is minimally intrusive.” The court explained that this could be “very significant evidence, depending on what results they get.” Thus, the court granted the motion.

¶ 7 On June 27, 2022, the State filed a motion for extension of speedy-trial time. The motion asserted that defendant’s buccal swab samples were immediately taken to the lab for analysis but that further testing was needed, and the results of a short tandem repeat on the Y chromosome (Y-STR) were “not yet available.” On June 28, 2022, defendant filed a motion to dismiss, asserting that his speedy-trial rights had been violated. In that motion, defendant contended that delays attributable to the State totaled 120 days and occurred (1) from May 3, 2021, to June 17, 2021, for a total of 45 days; (2) from July 15, 2021, to August 23, 2021, for a total of 39 days; and (3) from May 23, 2022, to June 27, 2022, for a total of 36 days.

¶ 8 On June 30, 2022, the trial court held a hearing on the State’s motion for extension of speedy-trial time and defendant’s motion to dismiss. The court determined that the delay from July 15, 2021, to August 23, 2021, was chargeable to defendant. Therefore, there was no speedy-trial violation, and the court denied defendant’s motion to dismiss. The court then considered the State’s motion for extension of speedy-trial time to complete testing on defendant’s DNA that was sent to the lab. The court reserved ruling on the State’s motion, finding that it was premature

because it was unknown whether the lab could complete its testing in time to allow for a trial within the original speedy-trial deadline. Over defendant's objection, the court granted the State's motion for a continuance of trial until August 4, 2022, which would be within 120 days of the speedy-trial period. The final pretrial conference was set for July 25, 2022.

¶ 9 On July 25, 2022, the State asked the trial court to rule on its motion for extension of speedy-trial time to complete DNA analysis. The State explained that the lab report related to the DNA analysis was complete but still had to be reviewed by a supervisor. Defendant objected. The State explained that it sent multiple items from both alleged victims to the lab in the early stages of the case but did not learn until the spring that the lab had located a sample that was suitable for comparison, so the lab needed a standard from defendant to compare it to. The State reiterated that defendant refused to provide a sample voluntarily, so the State had to file a motion with the court to order him to do so. The State indicated it had "been working steadily since then in order to get that sample tested and in the hands of the right people." The court determined that the Henry County State's Attorney's Office "has been diligent. They have not delayed." The court also found the lab was not intentionally or negligently delaying but was simply "busy." The court granted the State's motion to extend the speedy-trial deadline, over defendant's objection, finding "the State has exercised, without success, due diligence to obtain the results." The court set the case for jury trial on September 6 and 7, 2022, with the final pretrial conference on August 22, 2022.

¶ 10 On August 29, 2022, defendant waived his right to a jury trial. Defendant's bench trial took place on September 7, 2022. Defense counsel "reassert[ed] [his] client's violation of his speedy trial rights." The trial court stated that "for the reasons previously given, [the] motion to dismiss based on alleged violation of the speedy trial rights is denied."

¶ 11 A.M.W. testified that she was 18 years old at the time of trial. She identified defendant as her “biological father” and said she used to live with him in Kewanee, Illinois. A.M.W. testified that defendant “raped [her] and [her] sister.” She said she was 14 years old when it happened and that it happened “[m]ore than once.” When the State asked what “ ‘rape’ ” means to her, A.M.W. responded, “I’m not quite undersure [sic],” and, “I don’t really understand what you mean.” When the State asked what happened when defendant would “ ‘rape’ ” her, A.M.W. responded, “I’m still not quite sure what you mean.” She said it happened either in defendant’s hobby room or his bedroom, “[u]sually in the afternoon when [they] got home from school.” She said defendant made her and her sister “go up to his room and sit down and then send [their] brother to take a nap.” After that, he waited a little bit to make sure no one else was in the house, and then he made her or her sister “get up on his table.”

¶ 12 According to A.M.W., after making her or her sister get up on a table, defendant would “make [them] take [their] clothes off.” She said defendant took her clothes off. She said only her “[b]ottoms” came off. After that, defendant “would have sex with [her.]” She said defendant’s “bottoms were down,” including both his pants and underwear. She testified that she was “not quite sure how to explain” the part of defendant’s body that touched hers. She eventually stated, “The thing that touched me was the thing between his legs.” She said it touched her on her skin “[i]n between [her] legs.” She said defendant touched her “like three times, but it was every day.” It was always “[d]uring this time after school.”

¶ 13 A.M.W. testified that during her freshman year of high school, she decided to tell a teacher about it. She was afraid to tell anyone else “because [defendant] would always threaten [them].” She said defendant would threaten to “call the cops” or “send [them] to an insane asylum.”

¶ 14 C.L.W. testified she was 11 years old at the time of trial. She testified that she lived

in Kewanee from the ages of six to nine. She identified defendant as her “biological dad.” C.L.W. testified that defendant “tried putting his private part in [her] private part.” When asked where her “private part” was, she pointed between her legs. When asked where defendant’s “private part” was, she pointed between her legs. She said she did not know what defendant’s private part looked like. She testified that when defendant touched her private part, it was on her skin where she would pee. She said it happened “[m]ultiple times.” She said it happened in his bedroom or “his hobby room.” She said it happened “[i]n the morning or the afternoon when [they] got home from school.” When this was happening, her younger brother was “[n]apping.”

¶ 15 A.M.W. was in the room with her, and defendant would “[t]ry to put his private part in her private part too.” C.L.W. testified that she believed their clothes were off “[b]ecause he would try to put it in her.” She said she could see his private part when that was happening and saw it touch A.M.W. She said she thought she was on the desk when defendant was touching A.M.W. When defendant touched her, she was lying down on the desk. She said the touching would end because defendant’s private part “[c]ouldn’t make it in [her] private part.” She said she could feel that happening. She said she never told anyone what was happening.

¶ 16 Johanna Hager testified that she was a forensic interviewer for Braveheart Children’s Advocacy Center in Cambridge, Illinois, in January 2020. The trial court recognized her as an expert in the field of forensic interviewing in child sex abuse cases. In January 2020, she interviewed A.M.W. and C.L.W. She said A.M.W. “disclosed,” and C.L.W. did not. She testified that it is not uncommon for a child not to disclose because they are “denying to themselves that something’s going on” and not ready to acknowledge what happened. Hager said, “If they’re not ready to do that, they’re not going to tell me.”

¶ 17 Tim Bryner, a police officer with the city of Kewanee, testified he was working as

a detective on January 24, 2020. While on duty, he received a report regarding a sexual assault from Illinois Department of Children and Family Services (DCFS) employee Michael Connor. Upon receiving that report, Bryner met with Connor at the high school “to confer with counselors and one of the victims.” The victims were identified as A.M.W. and C.L.W. Defendant was identified as a suspect at the time. Bryner collected some clothing from A.M.W., including pink panties and a gray and pink bra. Those items were sent to the Illinois State Police Forensic Science Laboratory in Springfield, Illinois, for testing.

¶ 18 Bryner scheduled and attended interviews of A.M.W. and C.L.W. After that, he returned to the police department and contacted defendant. Defendant did not want to speak with Bryner but eventually talked to him on January 30, 2020.

¶ 19 DCFS arranged rides for the girls to St. Francis Hospital to have sexual assault kits completed. Bryner picked up the sexual assault kits from the hospital and took them to the police station. From there, they were sent to the Illinois State Police Forensic Science Laboratory.

¶ 20 Rosa Maria Rushing testified that in January 2020, she was employed as a police officer with the city of Kewanee. In January 2021, she was assigned to investigate defendant. She also collected a buccal swab from defendant on June 2, 2022. After packaging the swab in an envelope, she transported the envelope to the “Springfield lab.”

¶ 21 Dexter McElhiney was employed by the Illinois State Police Division of Forensic Sciences as a forensic scientist in the area of biology and DNA. The trial court recognized McElhiney as an expert in the field of forensic biology and DNA analysis. He was assigned to defendant’s case and authored four reports.

¶ 22 The State tendered McElhiney’s reports as evidence, and the trial court admitted them. According to his biology report, he tested pink panties and a gray and pink bra for semen,

and all tests came back negative. He then swabbed the items for further testing, specifically swabbing the interior crotch of the panties, which he labeled 1A, the waistband of the panties, which he labeled 1B, the interior cup area of the bra, which he labeled 2A, and the exterior cup area of the bra, which he labeled as 2B. Those swabs were retained for further testing. He took all four samples through DNA testing and found three of the four had sufficient quantitation to go forward with DNA amplification and to be run on the genetic analyzer. Item 1A did not have enough male DNA to go forward. Item 1B was forwarded to STRmix for additional analysis and interpretation. On the inside and outside of the bra, he identified a mixture of at least three individuals, with A.M.W. identified as a contributor and C.L.W. excluded as a contributor. He could not identify the second and third contributors. The swabs were then sent to forensic scientist Dana Pitchford for additional testing. He did not complete Y-STR testing on the samples because he was not qualified to do so.

¶ 23 Dana Pitchford testified that she is employed at the Illinois State Police Forensic Science Laboratory in Springfield as a forensic scientist and specialized in the area of forensic biology and DNA analysis. She has worked there since 1996. She has testified in trial courts over a hundred times. Over no objection, the court recognized Pitchford as an expert in the field of forensic biology and DNA analysis. She authored a DNA report in this case in August 2022 that was admitted into evidence. She performed both autosomal and Y-STR analysis in this case. A sample is suitable for Y-STR analysis only if male DNA is present. Item 1A had “ ‘[i]nsufficient male DNA for autosomal testing.’ ” Item 1B (the waistband of the panties) was tested, and it was determined there were three contributors present: a 95% contributor assumed to be A.M.W., a 4% contributor, and a 1% contributor. The results showed “very strong support” that defendant was a contributor to the DNA. She stated: “The value to that support is approximately one in 310 million

times more likely that [the DNA] originated from [A.M.W.], [defendant], and an unrelated individual than it originated from [A.M.W.] and two unknown individuals.” She was able to determine that because she had a standard from defendant.

¶ 24 Three contributors were present for Item 2A (the inside swab of the bra) as well; one was 87%, one was 10%, and one was 3%. She found “very strong support for the proposition that [defendant] is a contributor to the DNA profile” on the inside of the bra. She stated that it was “380 billion times more likely it originated from [A.M.W.], [defendant], and an unrelated individual” than it was that it originated from A.M.W. and two unrelated individuals. She found the results from the outside swab of the bra “inconclusive.”

¶ 25 No male DNA was detected from vaginal and neck swabs taken from both victims. The Y-STR analysis on the crotch of the pink panties showed male DNA and that defendant “ ‘[c]annot be excluded (is included).’ ” There was only one male contributor from Item 1A (the crotch of the panties). There was also one male contributor to Item 1B (the waistband of the panties), and defendant “cannot be excluded or is included as the contributor.” Pitchford explained that the amount of DNA on the inside of the bra “is not consistent with casual touch, like touch to pick up and move.” She said, “There’s more DNA that’s present, more like some kind of body fluid or a lot of force or friction behind touch.”

¶ 26 There was no male DNA detected on the vaginal swabs of either victim. Pitchford said if ejaculation occurred within 72 hours, she would expect to find semen. Without ejaculation, she would not expect to find semen even the day after intercourse.

¶ 27 Defendant testified that at approximately 3 p.m. on January 23, 2020, he was in the driveway working on his car with his father. He testified that A.M.W. and C.L.W. got off the bus while he was working, so he sent them inside. Defendant testified that he and his father worked on

the vehicle until about 6 p.m. and that his father left around 8 p.m. After that, he took a shower and worked on a model. After everyone went to bed that night, he cleaned the bathroom, which involved picking up clothes, turning them inside out, and putting them into a laundry basket. He vaguely remembered seeing a pair of panties and a bra belonging to A.M.W. He denied ever inappropriately or sexually touching A.M.W. or C.L.W.

¶ 28 Defendant admitted that he told Bryner that he watched the girls after they got off the bus on January 23, 2020. He agreed that he did not tell Bryner that he was working on his car with his dad for “potentially several hours” on January 23, 2020. He testified that he has both a hobby room and bedroom that are located on the second floor of the house.

¶ 29 The trial court stated that, having observed the witnesses and their manner of testifying, he found A.M.W. and C.L.W. to be “credible witnesses.” The court “did not find the defendant to be a credible witness.” The court found that the State proved both counts against defendant beyond a reasonable doubt. The court ordered a presentence investigation report (PSI).

¶ 30 According to the PSI, defendant had no prior criminal history except for a petty traffic offense. During his interview, defendant was cooperative. He “denied sexually abusing anyone.” He “denied any wrongdoing and felt his attorney failed to call witnesses and provide evidence on his behalf.”

¶ 31 In the “Victim Information” section of the PSI, A.M.W. reported that in addition to being sexually abusive, defendant “ ‘would not let her eat’ ” and “ ‘kept her in the basement.’ ” She said she was diabetic and took her insulin, which caused her blood sugar to drop, and “forced [defendant] to ‘let her eat.’ ” A.M.W. stated that she felt defendant “deserve[d] to be ‘on death row’ due to what he put her through.” C.L.W. and her mother felt defendant should be sentenced to prison “ ‘for as long as possible.’ ”

¶ 32 Defendant had not been employed since 2011. He reported that he has received disability benefits since that time due to his diagnosis of neuropathy. He described his current physical health as “ ‘very poor.’ ” He was diagnosed with type 1 diabetes in 1987 and currently receives insulin. He reported that he has been prescribed medications for anxiety and allergies. “He indicated he has symptoms of erectile dysfunction; however, [he] has never officially been diagnosed.” At the time of the interview, defendant was taking an antibiotic for a staph infection. Defendant said he suffers from “ ‘high anxiety’ ” because he is incarcerated and “not receiving his medication.”

¶ 33 Defendant’s sentencing hearing took place on November 15, 2022. At the hearing, the State read a victim impact statement in which A.M.W. indicated that she has nightmares about what defendant did to her and said “[h]e needs to be in prison forever.” She also stated that defendant “controlled every part of [her] life.” Defendant made an unsworn statement to the trial court, in which he stated that he is “not physically able to have committed these crimes.”

¶ 34 The State asked the trial court to sentence defendant to the maximum consecutive sentences for his crimes: 60 years for predatory criminal sexual assault of a child and 15 years for criminal sexual assault. Defense counsel pointed out that defendant had repeatedly professed his innocence and that his character and attitude indicate that he’s unlikely to commit another crime. In mitigation, defense counsel also pointed out that defendant has “a number of *** medical conditions that *** imprisonment could endanger,” including neuropathy, type 1 diabetes, anxiety, allergies, and a recent staph infection. Defense counsel noted that “the biggest factor working in the favor” of defendant is his lack of criminal history. Defense counsel stated that defendant has been “a law-abiding citizen.” Defense counsel asked that defendant be sentenced to the minimum prison term for both offenses.

¶ 35 The trial court stated that it considered the nature and circumstances of the offenses and described them as “heinous” and “serious crimes.” The court stated that defendant has “caused a great deal of emotional trauma to the victims.” In mitigation, the court found this is “not a physical harm crime.” The court also found no “prior history of delinquency.” The court stated:

“I don’t find that his criminal conduct was the result of circumstances unlikely to recur. Now, he has the right to maintain his innocence and he cannot be punished for that, that cannot be used as an aggravating factor and I’m not using it as an aggravating factor. But Factor 8 is a mitigating factor. If the Court finds that his criminal conduct was a result of circumstances unlikely to recur, that can be a mitigating factor. I don’t find that there’s any evidence. He certainly is allowed to maintain his innocence. But the bottom line is, I found him guilty, so he’s being sentenced as a guilty person. He blames the victims for this.”

¶ 36 The trial court noted that defendant has some “medical conditions” but found “nothing that I believe that imprisonment would endanger.” The court stated: “Those are conditions that many people have and can get medical treatment for that in the Department of Corrections.”

¶ 37 With respect to factors in aggravation, the trial court found that defendant’s conduct “did cause or threaten serious harm.” The court stated that defendant has “caused a lot of emotional harm.” The court found that in addition to the sexual offenses, the victim impact statements included information about defendant’s “controlling behavior and emotional abuse” of the children. The court referred to A.M.W.’s statement in the PSI that defendant would not let her eat and made her stay in the basement when she is a diabetic, which is “a health concern for her.”

¶ 38 The trial court next found that “[t]he sentence is necessary to deter others from

committing the same crimes.” The court stated that people need to know that “if you commit these offenses, you will be severely punished.” The court stated: “[I]t’s a type of offense that can be deterred by serious punishment.” The court stated that it did not believe the minimum sentence was appropriate, noting, “We have two separate victims here.” The court also stated: “The defendant doesn’t accept any responsibility, which again is a big mitigating factor.”

¶ 39 The trial court sentenced defendant to consecutive prison terms of 15 years for predatory criminal sexual assault of a child and 10 years for criminal sexual assault. Defendant filed a motion to reconsider his sentence, asserting that it was “excessive.” The court held a hearing on the motion and denied it, stating: “I still believe that the sentences were appropriate.”

¶ 40 On December 9, 2024, the case was remanded to the trial court for a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), because of defendant’s complaints against his attorney that were included in the PSI. After questioning defendant and his counsel, the court found no “factual basis for a claim of ineffective assistance of counsel.” Therefore, the court refused to appoint a new attorney to file new posttrial motions for defendant.

¶ 41 The case was sent back to the trial court on January 26, 2026, because the prior *Krankel* hearing was held before the mandate was returned. After questioning defendant and his counsel, the court again found that defense counsel was not ineffective.

¶ 42 This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 A. Speedy Trial

¶ 45 On appeal, defendant first argues that the trial court erred in allowing the State to extend the speedy-trial deadline beyond 120 days because the State did not establish that it acted diligently in seeking his DNA.

¶ 46 The speedy-trial statute states that “[e]very person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant.” 725 ILCS 5/103-5(a) (West 2022). However, a continuance of not more than an additional 120 days for DNA testing results may be granted “[i]f the court determines that the State has exercised without success due diligence to obtain results of DNA testing that is material to the case and that there are reasonable grounds to believe that such results may be obtained at a later day.” 725 ILCS 5/103-5(c) (West 2022). “The speedy-trial statute must be liberally construed in a defendant’s favor because it enforces a constitutional right.” *People v. Colson*, 339 Ill. App. 3d 1039, 1047 (2003). “Thus, the State is required to show it exercised without success due diligence.” *Colson*, 339 Ill. App. 3d at 1047. “Whether due diligence has been exercised is to be determined on a case-by-case basis.” *Colson*, 339 Ill. App. 3d at 1047. “The burden of proving due diligence is on the State.” *Colson*, 339 Ill. App. 3d at 1047. We will not overturn a trial court’s ruling on due diligence unless “it amounts to a clear abuse of discretion.” *Colson*, 339 Ill. App. 3d at 1047.

¶ 47 “What constitutes ‘due diligence,’ and therefore what the State must prove to be granted a continuance for DNA testing, is not defined by the statute.” *Colson*, 339 Ill. App. 3d at 1047. However, appellate courts have attempted to address the issue. *Colson*, 339 Ill. App. 3d at 1047. The Appellate Court, Fifth District, held that before a section 103-5(c) motion for continuance for DNA can be granted,

“the State should tender a full explanation of each and every step taken to complete DNA testing within the 120-day speedy[-]trial term. The steps articulated should comprise a course of action that a reasonable and prudent person intent upon completing tests within 120 days would follow. Further, the showing should

explain why the efforts engaged in fell short of their objective and resulted in an unavoidable need for delay.” *People v. Battles*, 311 Ill. App. 3d 991, 998 (2000).

The Appellate Court, Third District, has followed the Fifth District’s example. See *People v. Swanson*, 322 Ill. App. 3d 339, 342-44 (2001). However, this court has declined “to follow the Fifth District’s holding in *Battles* to the extent that it imposes a delineated series of steps that a prosecutor must go through before getting a continuance for DNA testing.” *Colson*, 339 Ill. App. 3d at 1047. Instead, we have chosen to abide by the established rule that “due diligence is to be determined on a case-by-case basis.” *Colson*, 339 Ill. App. 3d at 1048.

¶ 48 To preserve a speedy-trial issue for appeal, the defendant is required to file a motion seeking dismissal based on a speedy-trial violation and include the issue in a posttrial motion. *People v. Golden*, 2021 IL App (2d) 200207, ¶ 95. Here, defendant filed a motion to dismiss on speedy-trial grounds on June 28, 2022, alleging that the 120-day speedy trial term had expired. The trial court denied the motion, finding 39 days attributable to defendant and, therefore, determining that the speedy-trial deadline did not expire until August 5, 2022. On July 25, 2022, the court ruled on and granted the State’s motion to extend the speedy-trial deadline pursuant to section 103-5(c). After that, defendant never filed another motion to dismiss, arguing that the court erred in extending the deadline pursuant section 103-5(c) of the speedy-trial statute. Nor did defendant file a posttrial motion alleging that the court erred in extending the speedy-trial deadline. Thus, defendant has forfeited this argument. See *Golden*, 2021 IL App (2d) 200207, ¶ 95.

¶ 49 Forfeiture aside, the trial court did not abuse its discretion in granting the State’s motion to extend the speedy-trial deadline. The record in this case establishes that the State, through Bryner, obtained clothing from A.M.W. for DNA testing immediately after the crimes were reported on January 24, 2020. The clothing was then sent to the police lab, where it was

analyzed. Unfortunately, the analysis took a long time. It was not until the spring of 2022 that the lab notified the State that it had recovered DNA from the clothing that could be used for comparison with defendant's DNA. As a result, on May 23, 2022, the State requested a DNA sample from defendant, but he refused to provide it, requiring the State to file a motion for DNA testing. That motion was filed on May 25, 2022, and granted on June 1, 2022. The sample was taken from defendant the very next day and transported to the lab that same day. Unfortunately, the DNA testing, reporting, and review of those reports by a supervisor could not be completed before the speedy-trial deadline of August 5, 2022, requiring the State to file a motion to extend the speedy-trial deadline pursuant to section 103-5(c). As soon as the testing and reports were complete and disclosed to the parties, trial began on September 7, 2022, just 32 days after the original 120-day speedy-trial deadline. Under these circumstances, the court's finding that the State acted with due diligence was not a clear abuse of discretion.

¶ 50 Defendant contends that the State did not prove due diligence because it should have sought his DNA prior to June 1, 2022. However, the State did not know until shortly before June 1, 2022, that the clothing Bryner obtained from A.M.W. contained DNA that could be compared to defendant's. Until the State knew that testing had revealed a DNA profile on the clothing, there was no reason to seek defendant's DNA. The State acted with diligence in seeking and obtaining defendant's DNA more than two months before the speedy-trial deadline was set to expire and as soon as it knew defendant's DNA would be useful. Thus, the trial court properly granted the State's motion to extend the speedy-trial deadline pursuant to section 103-5(c).

¶ 51 Defendant also argues that the State should have been required to provide more details about the steps it took to obtain the DNA results within the speedy-trial period, as outlined by the Fifth District in *Battles*, 311 Ill. App. 3d at 998. However, as in *Colson*, we decline "to

follow the Fifth District’s holding in *Battles* to the extent that it imposes a delineated series of steps that a prosecutor must go through before getting a continuance for DNA testing.” *Colson*, 339 Ill. App. 3d at 1047. Instead, we have chosen to abide by the established rule that “due diligence is to be determined on a case-by-case basis.” *Colson*, 339 Ill. App. 3d at 1048. In this case, the evidence supports a finding that the State exercised due diligence in obtaining the results of DNA testing. Thus, the trial court did not abuse its discretion in granting the State’s motion.

¶ 52 B. Sufficiency of the Evidence

¶ 53 Defendant next argues that the State did not prove him guilty of sexually assaulting A.M.W. or C.L.W. beyond a reasonable doubt because there was no evidence that he committed an act of “sexual penetration” by placing his penis “in” or “inside” their vaginas.

¶ 54 “A reviewing court will not set aside a criminal conviction on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there exists a reasonable doubt of the defendant’s guilt.” *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). “When considering the sufficiency of the of the evidence, it is not the function of a reviewing court to retry the defendant.” *Maggette*, 195 Ill. 2d at 353. “Rather, the relevant question is whether, after reviewing all of the evidence in the light most favorable to the prosecution, any rational fact finder could have found beyond a reasonable doubt the essential elements of the crime.” *Maggette*, 195 Ill. 2d at 353.

¶ 55 Here, the State charged defendant with committing predatory criminal sexual assault of a child against C.L.W. and criminal sexual assault against A.M.W. through acts of “sexual penetration.” The Criminal Code of 2012 defines “sexual penetration” as follows:

“ ‘Sexual penetration’ means any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or an anus of another

person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.” 720 ILCS 5/11-0.1 (West 2020).

Defendant argues that the State had to prove that his penis intruded into the victims’ sex organs because the State alleged that he “placed his penis *inside* C.L.W.’s vagina” and alleged that he “placed his penis *in* A.M.W.’s vagina.” (Emphases added.) However, this is not the law. “ ‘Illinois case law provides that the type of sexual penetration is not an element of the offense, and its inclusion in the indictment is merely surplusage.’ ” *People v. Ross*, 395 Ill. App. 3d 660, 670 (2009); *People v. Olivieri*, 334 Ill. App. 3d 311, 317 (2002); *People v. Carter*, 244 Ill. App. 3d 792, 803-04 (1993). “ ‘The State need only prove that a type of sexual penetration occurred beyond a reasonable doubt.’ ” *Ross*, 395 Ill. App. 3d at 670; *Olivieri*, 334 Ill. App. 3d at 317; *Carter*, 244 Ill. App. 3d at 804. Consequently, the allegations that defendant placed his penis “in” or “inside” the victims’ vaginas constituted superfluous information that did not need to be proven for defendant to be convicted of the offenses charged. See *Olivieri*, 334 Ill. App. 3d at 317; see also *People v. Boand*, 362 Ill. App. 3d 106, 130 (2005) (finding that “[t]he additional allegation that the specific type of sexual penetration was the placing of [the] defendant’s penis in [the victim’s] vagina constituted mere surplusage”). Here, all the State needed to prove regarding the element of sexual penetration was that there was “any contact, however slight,” between the sex organ of defendant and the sex organs of the victims. See 720 ILCS 5/11-0.1 (West 2020).

¶ 56 Defendant contends that a different result is required by our supreme court’s decision in *Maggette*, where the court made a distinction between sexual penetration by “contact” and sexual penetration by “intrusion.” *Maggette*, 195 Ill. 2d at 346. In that case, the defendant was

charged with two counts of criminal sexual assault by committing acts of “sexual penetration” based on contact between the victim’s hand and the defendant’s penis and an allegation that the defendant rubbed the victim’s vagina through her clothing with his finger. *Maggette*, 195 Ill. 2d at 347. In determining if defendant was guilty of “sexual penetration,” the supreme court applied both the “contact” clause and the “intrusion” clause and determined that based on the facts of the case, there was no “sexual penetration” under either clause. *Maggette*, 195 Ill. 2d at 347. Pursuant to *Maggette*, as long as there is “sexual penetration” under either the “contact” or “intrusion” clause, the defendant is guilty of criminal sexual assault. See *Maggette*, 195 Ill. 2d at 347. There was no sexual penetration in *Maggette* because the defendant used only his hand and finger. That was not the case here. Here, the allegations were that defendant’s sex organ made contact with the sex organs of the victims, which falls within the definition of “sexual penetration.” See 720 ILCS 5/11-0.1 (West 2020).

¶ 57 Similarly, defendant’s reliance on *People v. Guerrero*, 2018 IL App (2d) 160920, and *People v. Garrett*, 281 Ill. App. 3d 535 (1996), is misplaced. Like *Maggette*, the defendants in those cases were not charged with using their penises to make contact with the victims. Instead, in *Guerrero*, the defendant was charged with using his hand to commit criminal sexual assault. *Guerrero*, 2018 IL App (2d) 160920, ¶ 54. In *Garrett*, the defendant was charged with using his finger to commit criminal sexual assault. *Garrett*, 281 Ill. App. 3d at 545. Because neither a hand nor a finger are sex organs, they do not fall within the “contact” definition of “sexual assault” and therefore are not relevant to this case.

¶ 58 Viewing the evidence in the light most favorable to the State, the trial court properly found defendant guilty of committing the “sexual penetration” necessary to establish the predatory criminal sexual assault of a child as to C.L.W. and the criminal sexual assault of A.M.W. First,

A.M.W. testified that defendant “raped” her and C.L.W. Although she had a hard time describing exactly what that meant, she eventually stated that the “thing between [defendant’s] legs” touched her on the skin “[i]n between [her] legs.” She testified that both she and defendant had their “bottoms” down, including their underwear. A.M.W. also testified that her father “would have sex with [her].” Next, C.L.W. testified that defendant “tried putting his private part in [her] private part.” When asked where her private part was, she pointed between her legs. When asked where defendant’s private part was, she pointed between her legs again. She testified that when defendant touched her private part, it was on her skin where she would pee. C.L.W. testified that defendant stopped when he “[c]ouldn’t make it in” her private part. She testified that she felt defendant’s private part touch her private part. She also testified that she was in the room and saw defendant “[t]ry to put his private part in [A.M.W.’s] private part.” This testimony was sufficient to establish “contact” between defendant’s sex organ and the sex organs of A.M.W. and C.L.W. See 720 ILCS 5/11-0.1 (West 2020).

¶ 59 Additionally, the testimony of A.M.W. and C.L.W. was consistent. They both testified that defendant took them to his bedroom or hobby room, and they laid on a desk or table while he removed their “bottoms.” C.L.W. testified that she saw defendant “[t]ry to put his private part in [A.M.W.’s] private part,” as she was in the room when this happened. She testified that she saw defendant’s private part “touch” A.M.W. They both also testified that this occurred after school, when their younger brother was napping.

¶ 60 The physical evidence also supported contact between defendant and A.M.W. Defendant’s DNA was found on both the underwear and bra belonging to A.M.W. While defendant argued that such evidence could have gotten there by merely touching the clothing, Pitchford testified that more than picking up and moving the clothing would have been required for the

amount of DNA found. She testified that fluid and/or a large amount of friction would have been necessary to account for the amount of DNA on A.M.W.'s bra.

¶ 61 Defendant argues that the evidence was insufficient to find him guilty of sexual penetration because no semen was found. However, the definition of “sexual penetration” specifically states: “Evidence of emission of semen is not required to prove sexual penetration.” 720 ILCS 5/11-0.1 (West 2020). Additionally, Pitchford testified that she would not expect to find any semen if there was no ejaculation. There is no requirement that the testimony of the victim be corroborated by medical evidence to sustain a conviction for criminal sexual assault. See *People v. Willer*, 281 Ill. App. 3d 939, 948-49 (1996). “Physical evidence is unnecessary to corroborate a victim’s testimony.” *People v. Carter*, 2022 IL App (1st) 210261, ¶ 56.

¶ 62 The “testimony of a single witness, if it is positive and the witness credible, is sufficient to convict, even though it is contradicted by the accused.” *People v. Anderson*, 325 Ill. App. 3d 624, 634 (2001). The trier of fact is charged with the responsibility of weighing the credibility of witnesses and resolving any conflicts in their testimony. *Anderson*, 325 Ill. App. 3d at 634. Here, the trial court found the testimony of C.L.W. and A.M.W. credible and found defendant not credible. Because the trial court is in a superior position to assess witness credibility, we will not reverse that decision. See *Anderson*, 325 Ill. App. 3d at 634.

¶ 63 C. Defendant’s Sentence

¶ 64 Next, defendant argues that the trial court relied on improper considerations in aggravation when sentencing him and did not properly consider his rehabilitative potential. Defendant admits that he did not raise these issues at sentencing or in a posttrial motion and therefore has forfeited them but argues that we should review them for plain error or ineffective assistance of counsel. The plain-error doctrine is a narrow and limited exception to forfeiture.

People v. Hillier, 237 Ill. 2d 539, 545 (2010). “To obtain relief under this rule, a defendant must first show that a clear or obvious error occurred.” *Hillier*, 237 Ill. 2d at 545.

¶ 65 In the sentencing context, a defendant must show that (1) the evidence at the sentencing hearing was closely balanced or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *Hillier*, 237 Ill. 2d at 545. Under both prongs, the defendant has the burden of persuasion. *Hillier*, 237 Ill. 2d at 545. “If the defendant fails to meet his burden, the procedural default will be honored.” *Hillier*, 237 Ill. 2d at 545.

¶ 66 “[T]here is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and thus we review the trial court’s sentencing decision with deference.” *People v. Dowding*, 388 Ill. App. 3d 936, 942-43 (2009). “The burden is on the defendant to affirmatively establish that the sentence was based on improper considerations.” *Dowding*, 388 Ill. App. 3d at 943.

¶ 67 1. *Alleged Improper Considerations*

¶ 68 a. *Victim Impact Statement in PSI*

¶ 69 First, defendant argues that the trial court relied on improper information in sentencing him when it referred to the physical and emotional abuse mentioned in A.M.W.’s victim impact statement in the PSI. We find no error. First, the court never stated that it considered defendant’s “controlling” behavior as an aggravating factor. Nevertheless, it was proper for the court to consider A.M.W.’s victim impact statement. “Victim impact evidence is consistent with our legal tradition of examining the harm caused by a crime in order to determine both the elements of a criminal offense and the appropriate punishment that should follow from that crime.” *People v. Shaw*, 186 Ill. 2d 301, 352 (1998). Thus, the court did not commit a clear and obvious error by considering the substance of A.M.W.’s victim impact statement in sentencing defendant.

¶ 70 Defendant contends that the victim impact statement should not have been considered because it consisted of hearsay, as it was contained in the PSI. However, “[i]t is well established that the ordinary rules of evidence are relaxed during sentencing hearings.” *People v. Varghese*, 391 Ill. App. 3d 866, 873 (2009). Evidence may be admitted as long “as it is both relevant and reliable.” *Varghese*, 391 Ill. App. 3d at 873. The mere fact that evidence presented contains hearsay does not make it inadmissible, nor does it deny the defendant the right to confront witnesses. *People v. Perez*, 108 Ill. 2d 70, 86 (1985). The evidence contained in A.M.W.’s victim impact statement in her PSI was both relevant and reliable and was therefore admissible at the sentencing hearing and could be considered by the trial court in sentencing defendant.

¶ 71 Furthermore, “a court may inquire into a defendant’s ‘general moral character, habits, social environment, abnormal tendencies, age, natural inclination or aversion to commit crime, and stimuli motivating his conduct, in addition to his family life, occupation, and criminal record.’ ” *Varghese*, 391 Ill. App. 3d at 873 (quoting *People v. Reed*, 376 Ill. App. 3d 121, 128 (2007)). “It may also consider a defendant’s ‘criminal conduct not resulting in prosecution or conviction.’ ” *Varghese*, 391 Ill. App. 3d at 873 (quoting *People v. Harris*, 375 Ill. App. 3d 398, 409 (2007)). Thus, it was appropriate for the trial court to consider defendant’s conduct toward A.M.W. as she described it in her victim impact statement.

¶ 72 Because there was no error in the trial court’s consideration of this evidence, there was no plain error. See *People v. Naylor*, 229 Ill. 2d 584, 602 (2008) (“Absent reversible error, there can be no plain error.”). Additionally, absent error, there can be no ineffective assistance of counsel. See *People v. Guerrero*, 2020 IL App (1st) 172156, ¶ 50 (stating that if there is no plain error, there is no ineffectiveness of counsel).

¶ 73 b. Defendant’s Failure to Admit Guilt

¶ 74 Next, defendant argues that the trial court improperly considered that he continued to maintain his innocence as an aggravating factor.

¶ 75 The record clearly refutes defendant's position on this issue, as the trial court specifically stated that defendant "has the right to maintain his innocence and he cannot be punished for that, that cannot be used as an aggravating factor and I'm not using it as an aggravating factor." Thus, the court specifically stated that it did not use defendant's protestations of innocence as an aggravating factor, and we will take the court at its word. See *People v Hunt*, 2022 IL App (4th) 210001, ¶ 43 (a strong presumption exists that the trial court's sentence is based on proper legal reasoning).

¶ 76 Defendant asks us to ignore the trial court's statements, relying on *People v. Dameron*, 196 Ill. 2d 156 (2001). However, that case is distinguishable. In *Dameron*, the trial court improperly relied on a social science book that was not in the record when determining the defendant's sentence. *Dameron*, 196 Ill. 2d at 172. Later, while ruling on the defendant's posttrial motion, the court stated that the book had not " 'controlled any portion of my decision in this case.' " *Dameron*, 196 Ill. 2d at 178. Notwithstanding the judge's reassurances, the supreme court determined that the judge's references to the book showed that he gave it some weight. *Dameron*, 196 Ill. 2d at 179. Unlike in *Dameron*, where the sentencing court commented on a book that was not in evidence, the court here commented on a matter that was in evidence by virtue of defendant's unsworn statement. Also, the court said it placed no weight on defendant's claims of innocence. We should accept that statement as true since there is no evidence in the record to refute it.

¶ 77 Defendant also relies on *People v. Pace*, 2015 IL App (1st) 110415. However, that case has been vacated, so it has no authoritative value. See *People v. Pace*, No. 120097 (Ill. Nov. 23, 2016 (supervisory order)). Nevertheless, even if we considered it, we would find it

distinguishable. In *Pace*, the trial court stated during the sentencing hearing that it would consider “ ‘the defendant’s right of allocution, which he did not avail himself of.’ ” *Pace*, 2015 IL App (1st) 110415, ¶ 97. In response to a motion to reconsider, the court stated that defendant’s decision not to speak in allocution “ ‘really didn’t even play a role in my sentencing.’ ” *Pace*, 2015 IL App (1st) 110415, ¶ 101. The appellate court, however, vacated the sentence, finding that the trial court’s statement affirmatively showed that the defendant was punished for choosing to remain silent during the sentencing hearing. *Pace*, 2015 IL App (1st) 110415, ¶ 101. Unlike the trial court in *Pace*, the trial court here specifically stated that it did not consider defendant’s protestations of innocence as an aggravating factor. Therefore, *Pace* is distinguishable and does not support defendant’s position in this case.

¶ 78 Because the trial court did not consider evidence of defendant’s protestations of innocence, there was no error. As a result, there was no plain error. See *Naylor*, 229 Ill. 2d at 602 (“Absent reversible error, there can be no plain error.”). Additionally, absent error, there was no ineffective assistance of counsel. *Guerrero*, 2020 IL App (1st) 172156, ¶ 50.

¶ 79 c. Deterrence

¶ 80 Next, defendant argues that the trial court erred when it held that the offenses committed here “can be deterred by serious punishment.” “The need to deter others” is a proper factor for a court to consider in aggravation when sentencing a defendant. *People v. Black*, 223 Ill. App. 3d 630, 635 (1992). Courts have noted the need to protect children and deter those who might commit sexual assault against them. See *People v. Calva*, 256 Ill. App. 3d 865, 875 (1993) (“Given the abhorrent nature of the crime of aggravated criminal sexual assault and society’s interest in protecting children from such acts, the need for deterrence would be an appropriate factor in aggravation.”); *People v. Burton*, 102 Ill. App. 3d 148, 155 (1981) (noting the need to deter others

from committing sexual assaults against children). Specifically, “[t]he imposition of a longer sentence to deter sexual abuse in the household is proper.” *People v. Landis*, 229 Ill. App. 3d 128, 137 (1992). Thus, the court did not err in finding deterrence was an aggravating factor that it could consider when sentencing defendant.

¶ 81 In support of his claim that the trial court should not have considered deterrence as a factor, he cites a journal article for the proposition that “lengthy prison sentences are ineffective as a crime-prevention measure.” We refuse to consider this journal article because it was not provided to the trial court and is not contained in the record on appeal. See *People v. Klein*, 2022 IL App (4th) 200599, ¶ 60. “The purpose of appellate review is to evaluate the record presented in the trial court, and review must be confined to what appears in the record.” *People v. Heaton*, 266 Ill. App. 3d 469, 477 (1994). Because the journal article was not presented to the trial court, it does not appear in the record on appeal, and we will not consider it. See *Heaton*, 266 Ill. App. 3d at 477.

¶ 82 Defendant also asserts that the trial court’s reliance on deterrence justifies the vacation of his sentence because it is similar to the judges’ statements in *People v. Bolyard*, 61 Ill. 2d 583 (1975), and *People v. Zemke*, 159 Ill. App. 3d 624 (1987). In *Bolyard*, the defendant was convicted of indecent liberties with a child and was eligible for probation. *Bolyard*, 61 Ill. 2d at 585. However, the trial court stated that it personally subscribed to the policy that “ ‘any crimes involving sexual violence, were simply not probationable.’ ” *Bolyard*, 61 Ill. 2d at 585. The supreme court found that based on the trial court’s statement, “the trial judge arbitrarily denied probation because defendant fell within the judge’s category of disfavored offenders.” *Bolyard*, 61 Ill. 2d at 587. Thus, the supreme court held that the defendant was “entitled to a new hearing to determine his sentence based upon the consideration of proper factors.” *Bolyard*, 61 Ill. 2d at 587.

Similarly, in *Zemke*, the defendant pleaded guilty to aggravated criminal sexual abuse and criminal sexual abuse. *Zemke*, 159 Ill. App. 3d at 625. In sentencing the defendant, the court stated, in pertinent part: “ ‘I cannot think of a worse crime than an aggravated sexual abuse crime.’ ” *Zemke*, 159 Ill. App. 3d at 627. The appellate court found that the trial court’s statements led it “to conclude the trial court’s imposition of the maximum possible sentence resulted from the fact that the defendant was a sex offender, a member of a class of offenders disfavored by the trial judge.” *Zemke*, 159 Ill. App. 3d at 628. Thus, the appellate court granted the defendant a new sentencing hearing. *Zemke*, 159 Ill. App. 3d at 629.

¶ 83 Here, unlike the courts in *Bolyard* and *Zemke*, the trial court made no statement to suggest that defendant was in a class of offenders disfavored by the trial judge. The court simply stated that the crimes in this case “can be deterred by serious punishment.” Nothing about that statement shows that the court held biases that would cause it to impose a sentence that was the maximum, like in *Zemke*. In fact, the sentence the trial court imposed in this case was one-third of the possible maximum aggregate sentence. Additionally, the offenses in this case were not probationable, so they are distinguishable from the offenses in both *Bolyard* and *Zemke*. Unlike the judges in *Bolyard* and *Zemke*, nothing the court stated was wrong or improper. Thus, unlike the defendants in those cases, defendant here is not entitled to a new sentencing hearing.

¶ 84 Defendant also contends that “the record contains no reason to think that a long sentence is necessary for deterrence in this case.” However, the court did not impose a greater than minimum sentence in this case to deter defendant, but to deter others. Deterrence of others is a proper sentencing consideration. See *Black*, 223 Ill. App. 3d at 635.

¶ 85 Because there was no error in the trial court’s consideration of this evidence, there was no plain error. See *Naylor*, 229 Ill. 2d at 602. Additionally, absent error, there can be no

ineffective assistance of counsel. *Guerrero*, 2020 IL App (1st) 172156, ¶ 50.

¶ 86 d. A Factor Inherent in the Offense

¶ 87 Defendant next contends that the trial court erred in considering that there were two victims in imposing sentences because this was inherent in the offenses.

¶ 88 “[I]t is well established that a factor inherent in the offense should not be considered as a factor in aggravation at sentencing.” *Dowding*, 388 Ill. App. 3d at 942. Here, the trial court did not consider a factor inherent in either offense as a factor in aggravation at sentencing. In this case, defendant was charged with two separate offenses involving two different victims. That defendant sexually assaulted A.M.W. was not an element of the offense of predatory criminal sexual assault of a child involving C.L.W. Nor was the assault of C.L.W. an element of the criminal sexual assault of A.M.W.

¶ 89 Here, defendant was subject to mandatory consecutive sentencing for his convictions of criminal sexual assault and predatory criminal sexual assault of a child. 730 ILCS 5/5-8-4(d)(2) (West 2020). That fact does not make it improper for the trial court to mention that there were two victims in this case. Nor does the legislature’s decision to require consecutive sentences for defendant’s offenses make the existence of more than one victim an element of or a factor inherent in either offense. It was appropriate for the court to consider the number of victims in considering the harm defendant caused. “The particular nature and circumstances surrounding an offense are relevant factors to be considered in sentencing.” *People v. Solano*, 221 Ill. App. 3d 272, 274 (1991). Thus, it was appropriate for the court to consider that there were two victims and two offenses in this case.

¶ 90 Because the trial court did not consider an element inherent in the offense, there was no error and no plain error. See *Naylor*, 229 Ill. 2d at 602. Additionally, absent error, there

was no ineffective assistance of counsel. *Guerrero*, 2020 IL App (1st) 172156, ¶ 50.

¶ 91

2. Excessive Sentence

¶ 92 Finally, defendant argues that his sentence was excessive because “the court failed to account for [his] rehabilitative potential, personal history, and personal characteristics.”

¶ 93 “There is a presumption the sentencing court considered mitigating evidence before it.” *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 42. “Moreover, the ‘existence of mitigating factors does not require the court to reduce a sentence from the maximum allowed.’ ” *Halerewicz*, 2013 IL App (4th) 120388, ¶ 42 (quoting *People v. Phippen*, 324 Ill. App. 3d 649, 652 (2001)). It is presumed that a trial court considered all relevant mitigating and aggravating factors in sentencing a defendant, “and that presumption will not be overcome absent explicit evidence from the record that the trial court failed to consider mitigating factors.” *Halerewicz*, 2013 IL App (4th) 120388, ¶ 43.

¶ 94 Here, defendant contends that the trial court failed to adequately consider his “very poor” health in sentencing him. However, the record refutes this contention. The court noted that defendant had health problems but found that they did not serve as a mitigating factor because they were nothing that imprisonment would endanger. The court noted, “Those are conditions that many people have and can get medical treatment for that in the Department of Corrections.” Thus, the court did not err in refusing to consider this as a mitigating factor.

¶ 95 While the Illinois Constitution requires a trial court to consider a defendant’s rehabilitative potential (Ill. Const. 1970, art. 1, § 11), “it does not require the judge to give greater weight to rehabilitation than to the seriousness of the offense.” *People v. Reid*, 160 Ill. App. 3d 491, 493 (1987). “Rehabilitation does not outweigh other considerations which are persuasive factors warranting a severe sentence.” *Reid*, 160 Ill. App. 3d at 493.

¶ 96 Here, the trial court stated that it considered all the factors in mitigation and aggravation. Nothing in the record refutes that statement. In fact, the court noted the existence of two mitigating factors: that defendant caused no physical harm and that defendant had no prior criminal history. The court weighed those mitigating factors against defendant's "heinous" conduct in this case, where he sexually assaulted his two biological daughters. Defendant was eligible for a total consecutive sentence of 75 years in prison, which is the sentence the State sought. We cannot say that the court abused its discretion in sentencing defendant to a consecutive prison term that was 50 years less than the maximum sentence and 15 years more than the minimum sentence. Defendant's aggregate prison sentence of 25 years for sexually assaulting his two daughters was not excessive.

¶ 97

III. CONCLUSION

¶ 98 For the reasons stated, we affirm the trial court's judgment.

¶ 99 Affirmed.