

**NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2023 IL App (3d) 200411-U

Order filed June 28, 2023

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2023

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-20-0411
	)	Circuit No. 19-CF-792
DIMETREION D. IVY,	)	Honorable
Defendant-Appellant.	)	John P. Vespa, Judge, Presiding.

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JUSTICE BRENNAN delivered the judgment of the court.  
Presiding Justice Holdridge concurred in the judgment.  
Justice McDade specially concurred.

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**ORDER**

¶ 1 *Held:* The juvenile court did not abuse its discretion by transferring defendant's case for prosecution in criminal court. Defendant's ineffective assistance of counsel claim requires additional facts that are not part of this record.

¶ 2 Defendant, Dimetreion D. Ivy, appeals his conviction. Defendant argues that the Peoria County circuit court abused its discretion by transferring him to criminal court where the State failed to present sufficient evidence as to several applicable factors and the court made a finding contrary to established law. He further argues that he received ineffective assistance where counsel

agreed to a sentence which led to the court not being able to consider the juvenile mitigation factors. We affirm.

¶ 3

## I. BACKGROUND

¶ 4

The State filed a delinquency petition charging defendant with armed robbery (720 ILCS 5/18-2(a)(2) (West 2016)) and two counts of home invasion (*id.* § 19-6(a)(2), (a)(3)). Defendant was 14 years old at the time and the State filed a motion to transfer the case to criminal court, which the court granted. Following a stipulated bench trial, defendant was convicted of armed robbery and one count of home invasion. At the sentencing hearing, both parties advised the court that the minimum sentence defendant faced was 21 years' imprisonment.<sup>1</sup> The court sentenced him to concurrent terms of 22 years' imprisonment. Defendant appealed. Following a confession of error by the State, this court vacated defendant's convictions and sentences and remanded the matter for a new discretionary transfer hearing. *People v. Ivy*, No. 3-17-0588 (2019) (unpublished minute order). In doing so, we noted that the evidence presented at the transfer hearing failed to establish that defendant possessed a deadly weapon as it did not show that the gun was loaded or used as a bludgeon. *Id.* at 2.

¶ 5

On remand, the State filed an amended delinquency petition again charging defendant with armed robbery (720 ILCS 5/18-2(a)(2) (West 2016)) and two counts of home invasion (*id.* § 19-6(a)(2), (a)(3)). One count of home invasion alleged defendant threatened the imminent use of force while armed with a dangerous weapon—a handgun—and the other alleged that defendant

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<sup>1</sup>This information comes from transcripts that are part of the record in defendant's prior appeal, case No. 3-17-0588, and we take judicial notice of them. See *In re Marcus S.*, 2022 IL App (3d) 170014, ¶ 46, n.4 (stating that "[w]e may take judicial notice of the record in another case involving the same party or of public documents contained in the record of any other judicial proceeding if doing so would aid us in deciding the instant appeal").

intentionally caused injury. The State filed an amended motion to transfer defendant to criminal court.

¶ 6 At the hearing on the transfer motion, the court noted the potential sentencing ranges of 6 to 75 years' imprisonment and that the sentences could be consecutive. The State admitted defendant's birth certificate into evidence which showed a birthdate in April 2002. Officer Tom Bieneman testified that on February 4, 2017, he responded to a home invasion call. The victim, Harry Irwin, told him that three black male juveniles, later identified as defendant, G.I., and T.H., knocked on his door and asked him questions. Irwin said G.I., "pulled a gun, which he believed was a black .22-caliber handgun." All three juveniles attacked Irwin. Defendant wrestled with Irwin and then took his wallet from his back pocket. After Irwin's wallet was taken, the juveniles left. Bieneman observed injuries on Irwin, which he described as "[a] large knot, swelling on his forehead." Irwin was transported to the hospital by ambulance. The State introduced photographs of Irwin's injuries into evidence. The next day, Irwin's credit card was used at a store in the mall. Mall security stopped four juvenile black males, later identified as defendant, G.I., T.H., and J.W., and requested the credit card. Defendant handed security the card and they all fled except for T.H. Irwin's credit card was also used at a liquor store.

¶ 7 Detective William Calbow testified that Irwin was 75 years old. Irwin told him that he responded to a knock on his door and saw three black male juveniles. They asked Irwin several questions then pushed their way into his house. Irwin told Calbow "they grabbed onto his legs, pushed him down to the ground. The shorter of the three males pulled out a small silver handgun and held it to his head." Calbow stated that according to Irwin "[t]hey pointed [the gun] directly at [Irwin's] head" and they threatened him, although on cross-examination Calbow clarified only one juvenile threatened to shoot Irwin, and G.I. was the individual with the gun. Irwin believed the gun

was a .22-caliber handgun, but was not certain. Additionally, Irwin told Calbow that “[t]hey were all punching and beating him,” and then he felt someone reach for his wallet. After they removed his wallet, they left. At the time of Calbow’s interview with Irwin on February 8, Calbow did not observe any injuries to Irwin but noted that when officers first made contact with Irwin “he had a cut and a bump on the top of his head, and he had been taken by ambulance to a hospital to be treated.”

¶ 8 Calbow interviewed defendant after he was taken into custody at school when a BB gun was found in his bookbag along with a checkbook that had been stolen during another home invasion. Defendant told Calbow the BB gun belonged to G.I. and he had no knowledge regarding the checkbook. Defendant admitted his involvement in the crime against Irwin, including planning it, although he said he was a lookout while T.H. and G.I. went inside the house. Defendant admitted a gun was used during the home invasion and that he used the credit card to make a purchase at the mall. Calbow interviewed T.H. who also admitted his involvement. T.H. told Calbow that defendant punched Irwin in the head and G.I. held a gun to Irwin’s head.

¶ 9 Megan Couri testified that she was defendant’s probation officer from approximately July 2016 to January 2017. Defendant’s probation was not terminated successfully because several revocations of probation were filed due to new offenses. Specifically, Couri stated “there were two subsequent violations of probation which included new criminal offenses, and then he was held in contempt of court twice for violating his ankle monitoring, GPS, and then, ultimately, what took him off my caseload as a juvenile offender was his, I guess, last offense in February of 2017.” Defendant was ordered to complete “Thinking For Change” and a substance abuse treatment program. He did not complete these programs because he committed new offenses and was taken into custody but he did attend one day of “Thinking For Change.” Defendant did not abide by the

probation condition to not ingest illegal substances because all seven of his urine screens in 2016 were positive for marijuana. He was required to attend school as part of his probation but attended infrequently. Couri recalled that defendant met with her as instructed but could not recall whether there were any times he did not meet with her when scheduled. Defendant had two violations of probation due to new offenses and two findings of contempt of court for technical violations related to his GPS monitor. Couri stated that “looking at [defendant’s] past, there was so many violations that came in and new offenses that it would be hard to predict whether or not he would engage in services now.” Couri only noted one other program that she thought could have been offered to defendant to help him stay out of trouble but when confronted with a probation violation for failing to cooperate with that program, she admitted that defendant must have been referred to that program, but she could not recall when.

¶ 10 Sharon Kramer testified that she was a supervisor in the juvenile probation department. As part of her job, she stays advised of the services available in the community or otherwise to youth on probation. She was shown exhibit Nos. 7 and 7A which she identified as lists of services available in the community. The programs listed on exhibit No. 7A are the programs that would be available to defendant if he were placed on probation and those on exhibit No. 7 were what was available in 2017. One service that was not available in 2017 but was now available was the Wraparound Center which Kramer described as part of the Peoria public schools. She stated it provides services for juveniles who are at risk, including substance abuse services and mental health counseling. Kramer stated that it also included a food pantry. When a youth is placed on probation they use a risk assessment tool to determine the risk of reoffending in the community.

¶ 11 The State then moved to admit: (1) exhibit Nos. 2 and 3, the services available in the Illinois Department of Juvenile Justice (IDJJ) in 2017; (2) exhibit No. 4, a certified copy of a neglect case

where defendant was the minor; (3) exhibit No. 5, a certified copy of defendant's delinquency case; (4) exhibit No. 8, defendant's entire probation file from Juvenile Court Services; and (5) exhibit No. 9, defendant's school records. All of these exhibits were admitted. The State then moved to admit exhibit No. 10, which were services currently available in IDJJ. At that point, defense counsel requested the exhibit number of the Juvenile Court Services' file. After being told the number, counsel asked what exhibit No. 10 was and the court stated IDJJ services. The State clarified it was the current IDJJ services. The State then moved to admit exhibit Nos. 11A, B, and C which consisted of defendant's records from IDJJ, including his master file, counseling records and education records. The court admitted 11A, B, and C. The State rested.

¶ 12 Robyn Piche, a mental health professional at the Illinois Youth Center in Harrisburg, testified for the defense. She worked with defendant between November 2018 and September 2019. When she met with defendant in November 2018, he did not have any youth disciplinary reports that day. A youth disciplinary report is made when a juvenile exhibits negative behavior or violates the rules.

¶ 13 Piche met with defendant at least twice a month for individual therapy but sometimes saw him more often and would also see him when he was in group therapy. She described defendant's engagement with her counseling services as "very cooperative towards mental health services, open. He was, I thought, insightful for his age." Piche thought defendant was very engaged with her services and receptive to the work she was doing with him. Defendant participated in anger management counseling as part of individual and group therapy. In her treatment plan for defendant, Piche focused on managing his impulse control, anxiety, and anger management. As part of the therapy, she taught him coping skills and problem solving and also focused on understanding the reasons behind his behavior. Piche noted that defendant received a diploma

while he was her patient and he also attended a program through Lakeland College. Piche noted that defendant's relationship with his parents was a source of stress for him because contact with them was inconsistent. Defendant had behavioral incidents while he was Piche's patient but remained engaged in services with her. After defendant's behavioral incidents, Piche would process them with him and he would accept responsibility for his actions and talk about the skills he tried to use. Defendant had matured while Piche worked with him. Piche believed defendant benefitted from the therapy services he received.

¶ 14 The State inquired about the behavioral incidents and Piche stated that she was not able to review the master file but believed several involved fighting. She could not specifically recall a theft incident the State asked about. Piche stated that following an incident, she would process it with defendant, and he would accept responsibility for his actions. She agreed that she wrote in her notes exactly what happened. She further agreed that when she wrote in a note from May 2019 that she processed a theft incident with defendant and he minimized his actions and was not taking it seriously, that would be what she thought at that time.

¶ 15 The court took the matter under advisement. When the court gave its ruling, it stated that it reviewed the transcripts, its notes, and the exhibits and found there was probable cause to believe the allegations in the amended petition to transfer. It further found that it was not in the best interest of the public to proceed in juvenile court and granted the transfer to criminal court.

¶ 16 It then noted that it considered and evaluated each of the discretionary transfer factors and addressed each factor. The court noted defendant's history of delinquency highlighting that defendant was adjudicated delinquent in July 2016 for burglary, and two days after he was sentenced, he violated his probation. Further, there was another probation violation three months later. The court noted a further violation for failing to comply with the terms of probation. As to

the offense defendant was in court for, the court stated that it occurred six days after he was “re-re-placed” on probation for the underlying offense. Turning to defendant’s educational history, it highlighted Couri’s testimony that defendant infrequently attended school.

¶ 17 The court noted the seriousness of the offenses and that he was charged with home invasion and armed robbery where the victim was 75 years old. It further noted that these were Class X offenses with potential extended-term sentences. The court stated that defendant “was clearly involved in bursting into the victim’s home and assaulting him” but that he did not possess the firearm. As such, it noted that the armed robbery may be charged through accountability, but the home invasion was not. The court found that the crime was undeniably aggressive and it was premediated as defendant admitted to planning the robbery.

¶ 18 Regarding serious bodily harm, the court found that Irwin was knocked to the ground and beaten and had abrasions and bumps to his head. It stated that “[w]hen you beat a senior citizen to the ground and leave visible abrasions on him, I believe that is and would constitute serious bodily harm.” The court considered whether there was evidence defendant possessed a deadly weapon and noted defendant was “part and parcel of these offenses.” However, it determined there was no evidence defendant was in possession of the firearm.

¶ 19 The court stated that it gave great thought to the advantages of treatment within the juvenile court system. The court noted it reviewed the testimony of Couri, Kramer, and Piche as well as exhibit Nos. 7 and 7A which the court stated identified the programs and facilities available at the county and state levels. The court found that there was no particular advantage to the minor or the public in those programs. The court considered whether the security of the public required a sentence under the criminal sentencing statutes. In doing so, the court considered defendant’s history of services and willingness to meaningfully participate in services. It noted how Couri’s



testimony made it clear that defendant showed little, if any willingness to participate in services while in the community on probation. It also considered Piche's testimony that defendant participated in services at IDJJ, but noted it had to balance that with her testimony that he continued to commit acts of violence by fighting with other juveniles while in IDJJ and was accused of a theft while in IDJJ. It found that "while he may have participated in services while in IDJJ, they didn't take. He continued his unlawful behavior. And therefore, I don't believe that the services available under that program would really provide any substantial benefit."

¶ 20 The court determined that, due to defendant continuing to violate the law while on probation and fighting, along with committing a theft while at IDJJ, there was no reasonable likelihood that he would be rehabilitated prior to the expiration of the juvenile court's jurisdiction. Additionally, the court stated that it knew "of no services that could be provided to [defendant] that would adequately provide for the protection of the public." The court stated that it carefully considered all the factors, "giving greater weight to the seriousness of this offense. And it is very, very serious, sir." Last, the court stated it gave greater weight to defendant's record of delinquency and that even considering youth and its attendant circumstances, it concluded it was in the best interests of the public and defendant to transfer the matter to criminal court.

¶ 21 In criminal court, the State charged defendant with armed robbery, home invasion with a dangerous weapon, and home invasion. The court appointed the public defender to represent defendant. At a hearing in May 2020, defendant requested new counsel. Defendant and counsel indicated to the court that defendant was unhappy with the length of the proposed sentence included in the offer counsel had obtained from the State. The court did not appoint new counsel, and defendant did not hire private counsel. The matter proceeded to a stipulated bench trial in October 2020, and the State dismissed the armed robbery and home invasion with a dangerous

weapon charges. The court found defendant guilty of home invasion. Defendant filed a motion for new trial stating the court erred when it granted the State’s motion to transfer the case to criminal court. Neither the motion nor counsel during the hearing made any argument as to why the court erred by transferring the case. The court denied the motion. The matter proceeded immediately to sentencing. The court was advised of an agreed upon sentence, and after confirming with defendant that it was his agreement, the court entered the agreed sentence of 20 years’ imprisonment to be served at 50%. Defendant appeals.

¶ 22

## II. ANALYSIS

¶ 23

### A. Transfer to Criminal Court

¶ 24

Defendant argues that the court abused its discretion by transferring the matter to criminal court. He argues that the State failed to present sufficient evidence as to some of the factors the court was required to consider which tainted its analysis of those factors. Additionally, he argues that the court’s finding regarding serious bodily harm was contrary to law.

¶ 25

Initially, we note that defendant forfeited these arguments because, although he moved for a new trial on the basis that the court erred in allowing the matter to be transferred to criminal court, he failed to present the arguments he raises on appeal or any arguments in support of that motion. See *People v. Estrada*, 394 Ill. App. 3d 611, 626 (2009) (“It is axiomatic that arguments may not be raised for the first time on appeal.”). Regardless, we do not find defendant’s arguments in this regard persuasive.

¶ 26

Matters involving minors 13 years of age or older may be transferred to criminal court on the State’s motion. 705 ILCS 405/5-805(3)(a) (West 2018). Section 5-805(3) of the Juvenile Court Act of 1987 (the Act) states:

“(a) If a petition alleges commission by a minor 13 years of age or over of an act that constitutes a crime under the laws of this State and, on motion of the State’s Attorney to permit prosecution of the minor under the criminal laws, a Juvenile Judge assigned by the Chief Judge of the Circuit to hear and determine those motions, after hearing but before commencement of the trial, finds that there is probable cause to believe that the allegations in the motion are true and that it is not in the best interests of the public to proceed under this Act, the court may enter an order permitting prosecution under the criminal laws.

(b) In making its determination on the motion to permit prosecution under the criminal laws, the court shall consider among other matters:

(i) the age of the minor

(ii) the history of the minor, including:

(A) any previous delinquent or criminal history of the minor,

(B) any previous abuse or neglect history of the minor, and

(C) any mental health, physical, or educational history of the minor

or combination of these factors;

(iii) the circumstances of the offense, including:

(A) the seriousness of the offense,

(B) whether the minor is charged through accountability,

(C) whether there is evidence the offense was committed in an

aggressive and premeditated manner,

(D) whether there is evidence the offense caused serious bodily

harm,

(E) whether there is evidence the minor possessed a deadly weapon;

(iv) the advantages of treatment within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system;

(v) whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections:

(A) the minor's history of services, including the minor's willingness to participate meaningfully in available services;

(B) whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction;

(C) the adequacy of the punishment or services.

In considering these factors, the court shall give greater weight to the seriousness of the alleged offense, the minor's prior record of delinquency than to the other factors listed in this subsection." *Id.* § 5-805(3).

"[T]he purpose of a transfer proceeding is to balance the best interests of a juvenile offender, particularly as the offender's interests relate to his potential for rehabilitation, against society's legitimate interest in being protected from criminal victimization perpetrated by minors." *People v. Morgan*, 197 Ill. 2d 404, 424-25 (2001).

¶ 27 "The decision to permit prosecution of a juvenile under the criminal law is a matter of judicial discretion, although that discretion is limited and controlled by [the Act] (705 ILCS 405/1-1 *et seq.* (West 1994))." *Id.* at 422-23. " 'To affirm an order transferring a minor to criminal court,' a reviewing 'court must determine if there was sufficient evidence in the record as to each statutory

factor to support the transfer order.’ ” *People v. Harris*, 2022 IL App (1st) 192509, ¶ 22 (quoting *People v. Moore*, 2011 IL App (3d) 090993, ¶ 21). While the mere recitation that all statutory factors have been considered is not enough to affirm a discretionary transfer order, we will not reweigh the factors. *Id.*

¶ 28 Defendant does not argue that the court erred in weighing the statutory transfer factors. Instead, he argues: “the State \*\*\* erred in failing to present sufficient evidence as to some of the factors and, as a consequence, tainted the court’s analysis of the transfer factors. In addition, the court made at least one finding that is contrary to established law.” Defendant takes issue with the evidence related to the seriousness of the offenses and the available programs, specifically discussing (1) the inadequate proof that a firearm was used in the commission of the armed robbery, (2) inadequate proof that a dangerous weapon was used in the home invasion, (3) the finding of serious bodily harm, and (4) inadequate evidence of the IDJJ’s facilities and programs. We will consider each of these in turn.

¶ 29 1. Seriousness of the Offenses: Inadequate Proof that a Firearm Was Used

¶ 30 Defendant first argues that the State failed to meet its burden of providing sufficient evidence at the transfer hearing that the gun used in the charged robbery was actually a firearm. Defendant was charged with armed robbery with a firearm. 720 ILCS 5/18-2(a)(2) (West 2016). He argues that the only evidence provided was the testimony of the victim that he believed the gun was a .22-caliber handgun, but “couldn’t say for sure.” Instead, defendant states there was more evidence that a BB gun was used because he was found with a BB gun shortly after the offense. See 430 ILCS 65/1.1 (West 2016) (defining “firearm” and excluding BB guns).

¶ 31 “In a transfer hearing under the Act, the State need only present evidence sufficient to sustain a finding of probable cause.” *Morgan*, 197 Ill. 2d at 426. Here, there was sufficient

evidence presented which would warrant a reasonable belief that a firearm was used such that the State met its burden of providing sufficient information on this issue. Specifically, the victim told the officers that a handgun was used during the offense and that he believed it was a .22-caliber handgun. Further, both defendant and T.H. admitted to Calbow that a gun was used. Neither T.H. nor defendant stated it was a BB gun even though defendant was questioned after being taken into custody for having a BB gun in his bookbag and Calbow questioning him regarding the BB gun. Therefore, the State provided sufficient evidence that a firearm was used, and the court did not abuse its discretion in finding that the armed robbery offense was serious because a firearm was used.

¶ 32                   2. Seriousness of the Offenses: Inadequate Proof of a Dangerous Weapon

¶ 33                   Similarly, defendant next argues that “the State failed to meet its burden at the transfer hearing of providing adequate evidence about the characteristics of the ‘gun’ that provided the basis of the home invasion with a dangerous weapon charge.” Again, defendant argues the gun was likely a BB gun and, as stated in this court’s prior order (*Ivy*, No. 3-17-0588), the State failed to show the gun was loaded or defendant used the gun as a bludgeon.

¶ 34                   Here, as to the dangerous weapon, although the amended petition noted a dangerous weapon—a handgun—was used in the home invasion, proof of a dangerous weapon was not needed under the statute. Specifically, as charged, the relevant home invasion offense required that, to meet its burden under the transfer petition, the State show probable cause to believe defendant was armed with a firearm and threatened the imminent use of force. See 720 ILCS 5/19-6(a)(3) (West 2016). We have already concluded there was enough evidence presented to show probable cause to believe a firearm was used. *Supra* ¶ 31. Additionally, Calbow testified that Irwin

related to him that one juvenile threatened him with the handgun. Thus, there was probable cause to believe a home invasion under section 19-6(a)(3) of the Criminal Code of 2012 took place.

¶ 35 Moreover, in discussing the seriousness of the offenses, the court never mentioned the term “dangerous weapon.” Rather, it noted the offenses defendant was charged with, including that a firearm was involved, and that they were Class X offenses with potential extended sentences. Based on the foregoing, we conclude the State provided sufficient evidence as to the home invasion and the court did not abuse its discretion in finding that the offenses were serious on the ground that a firearm was used in the home invasion.<sup>2</sup>

¶ 36 In coming to this conclusion, we note defendant argues that counsel provided ineffective assistance by not investigating whether the gun used during the offense was the BB gun later recovered from defendant. However, there is no evidence in the record to conclude either way whether counsel conducted an investigation in this regard and, if so, what determination was reached. Rather than engaging in speculation, we conclude that this issue is better raised in collateral proceedings. See *People v. Bew*, 228 Ill. 2d 122, 134 (2008) (determining that ineffective assistance of counsel claims are better suited for collateral review when “the record on direct appeal is insufficient to support a claim of ineffective assistance of counsel”).

¶ 37 3. Seriousness of the Offenses: Finding of Serious Bodily Harm

¶ 38 Defendant next argues that the court’s finding that Irwin suffered serious bodily harm was contrary to established law because Irwin only suffered an abrasion. He argues that great bodily

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<sup>2</sup>While not an argument raised by defendant, we note that there is a separate factor that the court was required to consider: whether there was evidence defendant *possessed* a deadly weapon. See 705 ILCS 405/5-805(3)(b)(iii)(E) (West 2016). Defendant’s argument regarding the lack of evidence that the firearm was loaded or used as a bludgeon is relevant to this factor. See, e.g., *Moore*, 2011 IL App (3d) 090993, ¶ 24. However, the court here, in addressing this factor, specifically noted that defendant was not the one that possessed the firearm during the commission of the offenses. Thus, it is clear the court determined that defendant did not possess a deadly weapon.

harm requires proof of an injury that is more serious than abrasions and that serious bodily harm requires an even greater harm because it requires a substantial risk of fatal consequences, permanent disfigurement, or loss or impairment of the function of a body part. In contrast to defendant's argument that serious bodily harm is greater than great bodily harm, our court has used the terms interchangeably. See, e.g., *People v. Estes*, 127 Ill. App. 3d 642, 649, 651 (1984); *People v. Rennie*, 2014 IL App (3d) 130014, ¶ 32 (noting that "serious harm" was implicit in aggravated driving under the influence with great bodily harm); see also *Lawlor v. People*, 74 Ill. 228, 230-32 (1874) (finding that serious bodily injury was equivalent of great bodily harm).

¶ 39 Here, the court found that Irwin suffered bumps and abrasions on his head. The evidence indicated that Irwin was punched and beaten to the ground, which resulted in him being taken to the hospital by ambulance. Additionally, the court considered that Irwin was a senior citizen, which compounded his injuries. We cannot say that the court's finding of serious bodily harm was erroneous.

¶ 40 4. Inadequate Evidence of the IDJJ's Facilities and Programs

¶ 41 Defendant argues that the State failed to present sufficient evidence of the IDJJ's facilities and programs. He states that because the court did not admit exhibit No. 10, which set forth the programs available at the IDJJ, and the court only specifically referenced the exhibits setting forth the programs at the county level, the court did not have sufficient evidence to properly determine whether the programs available to defendant would be adequate to rehabilitate him while he was subject to the juvenile court's jurisdiction.

¶ 42 As to exhibit No. 10, although the court did not expressly state that the exhibit was admitted, the State offered the exhibit, defendant did not object, and the parties and the court appeared to operate as if the exhibit was admitted. It is included as part of the exhibits on appeal.



Under these circumstances, it appears that the court considered the exhibit admitted although it made no formal pronouncement that it did. Accordingly, we conclude that the exhibit was properly before and considered by the court.

¶ 43 Although the court only referenced the exhibits containing the programs available at the county level, it did not need to mention every exhibit it reviewed. Moreover, before setting forth its specific rulings, the court did state that it reviewed the exhibits. Thus, this cannot be taken as an indication that the court only reviewed the exhibits related to the county programs. This is especially so considering that the court referenced those exhibits as setting forth the programs available at both the state and county levels, which indicates it likely reviewed exhibits relating to the state level programs even if it mistakenly stated the wrong exhibit number.

¶ 44 Further, the court had information as to what programs defendant had been participating in through defendant's IDJJ records and Piche's testimony regarding defendant's therapy and educational programs he participated in. The IDJJ records and testimony provided the court with insight as to whether any therapy or programs defendant was participating in were helping to rehabilitate him. The court specifically found that any services defendant participated in through IDJJ "didn't take." We conclude that the court had sufficient information regarding the programs available to defendant to properly consider whether defendant could be rehabilitated while subject to the juvenile court's jurisdiction. This conclusion would not change even if we were to determine that exhibit No. 10 was not admitted because under the circumstances of this case there was still sufficient information regarding available programs and defendant's progress after participating in services available through IDJJ.

¶ 45 Because the State provided sufficient evidence as to the above-mentioned factors, the court properly considered the evidence before it, and the court made the proper findings, we cannot say that the court abused its discretion by transferring defendant to criminal court.

¶ 46 B. Ineffective Assistance of Counsel

¶ 47 Last, defendant argues that his counsel provided ineffective assistance by agreeing to the imposition of a 20-year sentence which prevented the court from considering the mitigating factors that specifically apply to juvenile defendants (see 730 ILCS 5/5-4.5-105(a) (West 2020)). Defendant argues that the 20-year sentence was only two years less than he had been sentenced to following his first trial and that sentence was imposed when the parties mistakenly believed the minimum sentence he faced was 21 years' imprisonment. He further argues that had the court considered the juvenile mitigating factors it is likely he would have received a shorter sentence.

¶ 48 "To establish a claim of ineffective assistance of counsel, a defendant must prove both deficient performance and prejudice." *People v. Smith*, 195 Ill. 2d 179, 187-88 (2000). "Counsel's performance is measured by an objective standard of competence under prevailing professional norms." *Id.* at 188. To establish prejudice, a defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" or " 'that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair.' " *People v. Manning*, 241 Ill. 2d 319, 326-27 (2011) (quoting *People v. Jackson*, 205 Ill. 2d 247, 259 (2001)).

¶ 49 Here, defendant acknowledged in court that he agreed to the 20-year sentence. However, it appears he is attempting to raise a claim regarding counsel's advice to him concerning the sentence length and recommendation to agree to the overall sentence. However, because the record is devoid of evidence regarding what advice counsel did or did not give defendant regarding the

sentence and the applicability of the juvenile sentencing factors (see 730 ILCS 5/5-4.5-105(a) (West 2020)), it is insufficient to support a claim of ineffective assistance of counsel. Ultimately, the record needs more development to determine whether counsel provided ineffective assistance, and therefore, we conclude that this claim is better suited for collateral proceedings. See, e.g., *Bew*, 228 Ill. 2d at 134-35. Accordingly, this claim fails on the record before us but may be brought in a collateral proceeding.

¶ 50

### III. CONCLUSION

¶ 51

The judgment of the circuit court of Peoria County is affirmed.

¶ 52

Affirmed.

¶ 53

JUSTICE McDADE, specially concurring:

¶ 54

I specially concur with the majority's decision, as I disagree with the trial court's decision to transfer this case to adult court. However, considering that defendant is 21 years old and has been in the Department of Corrections for some time, I do not find that a remand in this case would further the ends of justice. Nonetheless, I find it extraordinarily important to point out the injustice done in defendant's case.

¶ 55

First, I believe the State was disingenuous in initially charging defendant. As the majority notes, the State filed a delinquency petition charging defendant with armed robbery, home invasion, and home invasion accompanied by a threat with a firearm. *Supra* ¶ 5. In order to transfer this case to adult court, the prosecutor argued the seriousness of the crimes, two of which were Class X felonies. When deciding to transfer the case to adult court, the court primarily based its decision on the seriousness of these two offenses and the fact that they were Class X felonies. However, as soon as the case was transferred to adult court, the State dismissed the two Class X felonies and solely continued on the count of simple home invasion. It seems clear that the State

improperly overcharged defendant initially in order to secure his transfer to adult court, which it is not allowed to do. See *People v. Fort*, 2017 IL 118966, ¶ 30 (noting that the Act seeks to “prevent[ ] the State from overcharging a minor defendant in order to secure an adult sentence where the evidence does not support a finding of the more serious charge”).

¶ 56 Second, during the transfer hearing, the charges were discussed as if they were committed with a firearm. However, the only indication that the “weapon” was a firearm, was Irwin’s statement that he believed a .22-caliber handgun was used, but “couldn’t say for sure.” Tellingly, a BB gun was found on defendant shortly after the incident. Defendant stated that this BB gun belonged to G.I., who was allegedly the person who brandished the gun at Irwin. The evidence points to the BB gun being the weapon used in this case, and a BB gun is not a firearm. See 720 ILCS 5/2-7.5 (West 2016); 430 ILCS 65/1.1 (West 2016); *People v. Davis*, 199 Ill. 2d 130, 137 (2002). Therefore, this alleged “firearm” should not have been used as a predicate for the charges in this case or as a reason to transfer the case to adult court.

¶ 57 Third, by transferring the case, the court took away any ability defendant had to show his rehabilitative potential. Defendant was only 14 years old. His counselor testified that defendant was making efforts to comply with counseling. While defendant had not achieved perfection, his counselor reported that he had a good attitude and was making a strong effort. He had some lapses, which any 14-year-old child would. Because of these lapses, the court decided that he could not be rehabilitated. However, the State has significant resources and programs that defendant had yet to participate in. His counselors would have had several more years to work with him to achieve success before he aged out of the juvenile system. Instead, defendant was transferred to an adult facility, without regard to the success of the rehabilitation efforts. Defendant was too young to be devalued in this way. I would implore the courts to be more mindful when transferring a young

juvenile to adult court. A transfer in a situation similar to the one in this case is ill advised and leads reviewing courts with scant opportunity to correct an improper move if one occurs.