2026 IL App (1st) 241621-U
No. 1-24-1621
Order filed November 12, 2026
Fourth Division

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

ROGELIO INIGUEZ, Defendant-Appellant

Appeal from the Circuit Court of Cook County.
Honorable Diana L. Kenworthy, Judge, Presiding.
No. 19 CR 00048501

JUSTICE OCASIO delivered the judgment of the court.
Justices Mitchell and Navarro concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for predatory criminal sexual assault of a child and aggravated criminal sexual abuse are affirmed where he did not receive ineffective assistance of counsel. Defendant's sentence is affirmed over his contention that the trial court plainly erred by imposing a harsher sentence because he exercised his right to a trial.

¶ 2 Following a jury trial, defendant Rogelio Iniguez was convicted of predatory criminal sexual assault of a child and aggravated criminal sexual abuse and sentenced to an aggregate term of 21 years in prison. On appeal, Iniguez argues that his trial counsel rendered ineffective assistance by inadvertently allowing the State to introduce prejudicial other-crimes evidence.

Iniguez also argues that the court plainly erred by imposing an excessive sentence as a penalty for him rejecting the State's plea offer. We affirm.

¶ 3 Iniguez was charged by indictment with two counts of predatory criminal sexual assault of a child for knowingly touching K.F.'s sex organ with his hand (720 ILCS 5/11-1.40(a)(1) (West 2016)) and one count of aggravated criminal sexual abuse for knowingly touching his penis to K.F.'s body (*id.* § 11-1.60(c)(1)(i)). Regarding all charges, the State alleged that Iniguez made the contact for his or K.F.'s sexual gratification while K.F. was under 13 years of age and Iniguez was over 17 years of age.

¶ 4 At a pretrial hearing, the trial court allowed the State to amend a scrivener's error on the second count of predatory criminal sexual assault of a child to allege that Iniguez knowingly touched his sex organ with K.F.'s hand.

¶ 5 The State then offered Iniguez 10 years in prison to be served at 85% in exchange for a guilty plea to an unspecified count of predatory criminal sexual assault. The court advised Iniguez that if he were found guilty of all three charged counts, following trial, he would be sentenced to a minimum of 15 years in prison but his sentence would "probably" be "in the 20's." The court explained that Iniguez's sentence would be higher "not as a punishment for someone who exercises their right to trial but there's a reason it's called a plea bargain" and that the minimum sentence would be "unlikely." Iniguez declined the State's offer.

¶ 6 Pretrial, in December 2020, the State filed a motion to allow evidence that Iniguez had also sexually assaulted K.F.'s older sister, B.F., to show Iniguez's intent, motive, *modus operandi*, and propensity to commit predatory criminal sexual assault and aggravated criminal sexual abuse.

¶ 7 Regarding the charged offenses against K.F., the State alleged that between March 2016 and June 2016, K.F. fell asleep while she and Iniguez were on Iniguez's bed watching a movie.

K.F. woke because she felt Iniguez's hand enter the side of her overalls and touch her vagina over her underwear. He then moved his hand inside K.F.'s underwear and touched her vagina. Iniguez removed his hand, grabbed K.F.'s hand, and placed it over his erect penis.

¶ 8 Regarding the other-crimes evidence, the State alleged that between April 2014 and June 2014, B.F., then between 12 and 13 years old, fell asleep while she and Iniguez were on his bed watching a movie. B.F. woke because she felt Iniguez place his hand inside her shirt and grab her breasts. She felt his erect penis against her buttocks while he touched her chest and heard him "breathing heavily."

¶ 9 The State argued that Iniguez's alleged sexual assault of B.F. was factually similar and temporally proximate to his alleged assault of K.F. Iniguez objected, arguing that the alleged incidents were dissimilar.

¶ 10 The trial court allowed the evidence of Iniguez's alleged sexual assault of B.F., finding the incident factually similar to the charged offense against K.F. The court noted that the victims were "both prepubescent or emerging pubescent girls," the acts were alleged to have occurred while Iniguez and the victims watched a movie, the victims were asleep when Iniguez engaged in sexual contact, and Iniguez allegedly had an erect penis.

¶ 11 The State later, in July 2023, filed a supplemental motion to allow additional evidence of other crimes by Iniguez against K.F. and B.F. The motion alleged six additional incidents to show Iniguez's intent, motive, common scheme or design, and propensity to commit, specifically, aggravated criminal sexual abuse.

¶ 12 Regarding K.F., the motion alleged that when she was between 10 and 11 years old, Iniguez touched her multiple times while they watched movies together in Iniguez's bedroom. Specifically, Iniguez touched K.F.'s breasts and vagina with his hand making skin-to-skin contact, and made

K.F. touch his penis with her hand over his clothing. On other occasions, K.F. and her family watched movies with Iniguez in the living room of their home. While Iniguez would lie behind K.F. "in a spooning position" on the couch, K.F. felt Iniguez's erect penis against her body.

¶ 13 Regarding B.F., the motion alleged that while she was living with Iniguez, he touched her with his hands and penis. On multiple occasions, while watching movies in the living room on the couch, B.F. was either sitting on Iniguez's lap or be "in a spooning position," and she would feel his "erect penis on her back or in between her buttocks through her clothing." On one occasion, B.F. sat on Iniguez's lap and he moved her back and forth against his erect penis, which she felt through his clothing.

¶ 14 On several other occasions, while Iniguez would lie "in a spooning position" with B.F. on Iniguez's bed, B.F. felt Iniguez's erect penis against her body and she could sometimes hear Iniguez moaning in her ear. The motion additionally alleged that when B.F. was approximately 12 years old, Iniguez remarked that she looked "sexy" in a photograph of her wearing shorts.

¶ 15 During a hearing on the supplemental motion, the State argued that the incidents were temporally proximate and factually similar to the charged assault of K.F. Iniguez argued that the alleged incidents lacked specific dates and the new allegations "c[a]me about right before trial."

¶ 16 The trial court allowed evidence of the alleged conduct against K.F. that occurred in Iniguez's bedroom, noting it was "narrowed down to her being 10 or 11," but it denied the motion to allow evidence of the additional alleged abuse of B.F. However, it pointedly warned defense counsel that it would allow those incidents into evidence if counsel questioned B.F. regarding those allegations or if counsel implied, either while questioning B.F. or during closing argument, that Iniguez had never acted inappropriately towards B.F. aside from the one incident previously allowed as other-crimes evidence.

¶ 17 At trial, K.F. identified Iniguez as the ex-boyfriend of her mother. When K.F. was in fifth grade, she, her mother, and her three older siblings, including B.F., moved into Iniguez's home, where they also lived with Iniguez's mother, Olga. Iniguez's two sons occasionally stayed in the home. K.F. and B.F. shared a bedroom with Olga.

¶ 18 Between March 2016 and June 2016, when K.F. was around 11 years old and in sixth grade, Iniguez invited her into his bedroom to watch a movie. Iniguez and K.F. laid on the bed and "fell asleep in a cuddling position." K.F. woke because she "felt his hand like on top of [her] overalls on top of [her] private parts." Iniguez then put his hand into K.F.'s overalls and "started touching [her] vagina over [her] underwear" and "started like a little rubbing motion." He moved his hand inside K.F.'s underwear and touched her vagina "still doing like the circular motion." Iniguez grabbed K.F.'s hand and placed it over his clothes on his "hard penis." K.F. moved her hand away, but Iniguez grabbed her hand again and held it on his penis. Iniguez then left the room.

¶ 19 On more than two other occasions between March 2016 and June 2016, while Iniguez and K.F. laid in his bed, he again touched her vagina and placed her hand over his clothing on his penis. Iniguez never placed her hand on his penis "with no clothes."

¶ 20 On another occasion between March 2016 and June 2016, K.F. was on the couch in the living room watching a movie with Iniguez, his two sons, and B.F. Iniguez and K.F. were lying in a "cuddling position." Iniguez was "hugging" K.F. and she felt his erect penis pressing into her back for the entire movie.

¶ 21 K.F. and her family moved out of Iniguez's home during K.F.'s seventh grade year. She did not communicate with him afterwards. K.F. did not tell her mother that Iniguez had touched her because K.F. "didn't know what he was doing at the time was wrong." In 2017, after the family

had moved, K.F. mentioned the incidents to her friend, who urged K.F. to tell an adult. The next day, K.F. told a school counselor, "Ms. Miranda," that Iniguez had touched her.

¶ 22 The State presented K.F. with four photographs of Iniguez's bedroom. K.F. testified that People's exhibit No. 5 was a photograph of Iniguez's bed and an adjacent nightstand, as they were arranged when she lived in the home. K.F. also testified that a desk in the corner of the bedroom shown in another photograph, People's exhibit No. 6, was not there when she lived in the house. Instead, "a different table" was in the corner, with a television that faced the bed.

¶ 23 B.F. testified that she and her family moved into Iniguez's home when she was 11 or 12 years old. Around 2014, when B.F. was 12 or 13 years old, she was sleeping alone in Iniguez's bed and woke when Iniguez "came up behind [her] on the bed." While Iniguez was next to B.F. in a "spooning position," he "put his hand *** under [her] shirt," reached inside her bra, and "grabbed" her breasts. She felt Iniguez's erect penis against her "lower back" and heard Iniguez "moaning" in her ear. B.F. also testified that at some point between March 2016 and June 2016, she saw K.F. leave Iniguez's bedroom crying.

¶ 24 After the direct examination of B.F., the court instructed the jury that it could consider evidence of offenses other than those charged in the indictment only for the issues of Iniguez's intent, motive, *modus operandi*, and propensity to commit aggravated criminal sexual abuse.

¶ 25 On cross-examination, defense counsel asked B.F. whether the incident that she described "after living there for two years" was "the only incident that ever happened." B.F. answered, "Between me and [Iniguez] that was not the only incident that happened." B.F. stated that she told K.F. about Iniguez's actions "[a]fter an incident had happened."

¶ 26 B.F. further testified that she saw Iniguez "spooning" with K.F. on the living room couch "pretty much any time there was a movie on." Olga usually was not present when B.F. and Iniguez

would watch movies. When B.F. saw K.F. leave Iniguez's bedroom crying, K.F. "ran" up the stairs to her room and Iniguez followed her.

¶ 27 On redirect examination, the State asked B.F. if Iniguez ever touched her on the living room couch. B.F. described several incidents where she would lay on the couch with Iniguez or sit on his lap and feel Iniguez "get hard or erect." When she tried to move away from Iniguez or change her seating position, Iniguez would "pull [her] closer, change position, or even ask [her] like if [she was] uncomfortable and why [she was] uncomfortable."

¶ 28 Defense counsel requested a sidebar, arguing that the State had improperly asked B.F. about incidents that the trial court had excluded. The State argued that defense counsel allowed that line of questioning by asking B.F. whether the incident she had described was the only incident that occurred. Defense counsel responded that after B.F. answered "yes," counsel "dropped the question" and "didn't go beyond that." The trial court ruled that, because of defense counsel's questions, "th[e] door was opened" to other incidents with B.F. The trial court also explained that allowing no further questions about other incidents would sound "a little suspicious to a jury."

¶ 29 The State resumed its examination of B.F., who testified that during the incidents on the couch, Iniguez would breathe "harder or even louder" while he spooned with her or she sat on his lap. Iniguez also spooned with B.F. in his bedroom, during which B.F. felt Iniguez's erect penis on her "back or lower back" and he breathed "louder or harder."

¶ 30 Nadia Miranda testified that she worked as a school counselor at K.F.'s elementary school. K.F. told Miranda that her mother's boyfriend had "touched her inappropriately" and described the incident. K.F. was "crying the entire time."

¶ 31 After Miranda's testimony and outside of the jury's presence, defense counsel advised the court that it "was not part of the trial strategy" and "not [counsel's] intention to open that door" to

evidence regarding other acts against B.F., "[t]hough apparently [counsel] did." Counsel acknowledged there may be "an issue with regards to [counsel] being ineffective for having done that." The trial court responded that it did not believe that counsel "[was] deliberately trying to do anything unethical whatsoever."

¶ 32 Elizabeth Perez, a forensic interviewer for Chicago Children's Advocacy Center, testified that she interviewed K.F. on June 27, 2017. An edited video of the interview was published to the jury. The video is included in the record on appeal and this court has viewed it. In the video, K.F. tells Perez that K.F.'s mother's boyfriend touched K.F.'s vagina and made a rubbing motion, both over and inside of her underwear, while she was on his bed. K.F. also states that Iniguez grabbed her hand and placed it over his pants upon his erect penis.

¶ 33 The State entered stipulations that K.F. was born in August 2004, and Iniguez was born in September 1975.

¶ 34 Iniguez moved for a directed verdict. The trial court granted the motion as to one count of predatory criminal sexual assault of a child, explaining that no witness had testified to "skin-to-skin contact" between K.F.'s hand and Iniguez's sex organ.

¶ 35 The defense called Olga, who testified that no television was ever in Iniguez's bedroom. Olga never saw Iniguez on the living room couch in a spooning position with K.F. or B.F. between January 2016 and September 2016. Olga also never saw any inappropriate behavior by Iniguez towards K.F. or B.F.

¶ 36 Iniguez testified that neither K.F. nor B.F. slept in his bed when they lived with him. He did not have a television in his bedroom. Iniguez denied holding K.F. or B.F. in a spooning position or on his lap, watching movies with them, placing his hands inappropriately on B.F. or placing her hands on him, placing K.F.'s hand on his groin area, making skin-to-skin contact with K.F.'s vagina

or over her clothing, and having an erection in K.F. and B.F.'s presence. Iniguez had a "tumultuous" relationship with K.F., while his relationship with B.F. was "a little better."

¶ 37 On cross-examination, the State asked whether Iniguez told police that the family watched television and movies on occasion. Iniguez explained that "family" meant his "sons, everybody." He denied telling police that he would hug K.F. and B.F., bring them close and have them sit on his lap, put his arm around them when watching scary things, or that they lay on him and put their back on him.

¶ 38 In rebuttal, the State called Chicago police detective Herbert Cisneros, who testified that he and another detective interviewed Iniguez at the police station on December 12, 2018. Iniguez's interview was recorded and portions were published to the jury. The footage is included in the record on appeal and has been viewed by this court.

¶ 39 In one video, Cisneros asks, "During those movies, did you ever hug them, did you ever bring them close or sit them on your lap?" Iniguez responds, "I don't know, it was a small house, so we would all be very close together and there would be times when I would put my arm around them, you know when we were watching scary stuff." Cisneros again asks Iniguez if he ever sat close to K.F. or B.F., or had them sit on his lap, while watching movies with them. Iniguez responds, "Yeah, they'd lay down, they'd tilt their backs at me." Iniguez leans backwards to demonstrate.

¶ 40 The jury found Iniguez guilty of predatory criminal sexual assault of a child and aggravated criminal sexual abuse.

¶ 41 Trial counsel filed a posttrial motion and supplemental motion for a new trial, arguing, *inter alia*, that trial counsel erred by inadvertently "open[ing] the door" to evidence of Iniguez's prior bad acts, which was not trial strategy, and required a new trial.

¶ 42 The trial court denied Iniguez's motions, finding that the challenged other-crimes evidence was not prejudicial because the remaining evidence of Iniguez's guilt was "overwhelming." The court stated that "the jury simply didn't believe him and believed the complaining witnesses and the other evidence."

¶ 43 The trial court ordered a presentence investigation (PSI) report. According to the PSI, Iniguez's mother raised him and he had had no contact with his father for the past 20 years. He was not abused or neglected as a child, but he experienced domestic violence in past relationships. Iniguez belonged to the League of United Latin American Citizens (LULAC), attended church regularly, and had worked for the State of Illinois for 17 years. He had some health issues, including type two diabetes, and denied needing to speak to a mental health professional. Iniguez began drinking alcohol and smoking marijuana as a teenager but had abstained from alcohol for eight years and did not consume drugs at the time of the PSI. The PSI did not indicate prior criminal involvement.

¶ 44 At sentencing, the State presented victim impact statements from K.F. and her mother. Her mother stated that she and her family suffered from Iniguez's actions and that he and his mother lied. K.F. stated that she had been diagnosed with depression, anxiety, and PTSD, and had been hospitalized twice due to Iniguez's abuse.

¶ 45 The State introduced photographs of Iniguez's bedroom. The State did not specify when these photographs were taken, except for People's sentencing exhibit No. 2, which was taken "between the summer of 2014 and the summer of 2016." These exhibits depicted a large monitor in the corner of Iniguez's bedroom. According to the State, this showed that Iniguez "took th[e] stand and lied." The State also noted that People's exhibit No. 5, which the jury had viewed, depicted a television remote on Iniguez's bed, further contradicting Iniguez's and Olga's testimony.

¶ 46 The State argued in aggravation that, as evidenced by the testimony of K.F. and B.F., Iniguez's conduct caused serious harm and a higher sentence would deter similar offenders. The State also argued that Iniguez's dishonesty merited a harsher sentence.

¶ 47 In mitigation, Iniguez presented letters from family members describing him as a kind man who supported his extended family.

¶ 48 Olga spoke in mitigation, describing Iniguez as a "good father" to his sons and that he had an active role in their lives. Iniguez took primary care of one son, who had attempted suicide. Through LULAC, Iniguez performed immigration and voting rights advocacy, scholarship drives, and "human rights training."

¶ 49 Iniguez spoke in allocution, stating that "[s]o many things have been said about [him] that are just untrue," he had "spent [his] entire life in the pursuit of doing good for others," and he "[did not] know what to say."

¶ 50 Defense counsel argued in mitigation that Iniguez contributed to society and had no criminal history. Counsel also argued that imprisonment would exacerbate Iniguez's chronic health conditions. Counsel further argued that a severe sentence would have no significant deterrent effect and would not alleviate the "psychological [e]ffect" inflicted on K.F.

¶ 51 In imposing sentence, the trial court stated that it considered the totality of the circumstances, including Iniguez's abuse of B.F., lack of criminal history, health issues, and potential for rehabilitation. The court imposed consecutive prison sentences of 16 years for predatory criminal sexual assault of a child and 5 years for aggravated criminal sexual abuse. The trial court also ordered Iniguez to register as a sex offender.

¶ 52 Iniguez filed a motion to reconsider his sentence, arguing, *inter alia*, that it was excessive in violation of the eighth amendment of the United States Constitution (U.S. Const., amend. VIII)

and the Illinois proportionate penalties clause (Ill. Const. 1970, art. I, § 11). The trial court denied Iniguez's motion, explaining that it had considered "all of the mitigation," including Iniguez's health, long work history, and his children. The court noted that for a Class X felony, the sentence was "on the low end."

¶ 53 On appeal, Iniguez argues that trial counsel rendered ineffective assistance by "opening the door" to "highly prejudicial" evidence of prior bad acts against B.F.

¶ 54 To establish ineffective assistance of counsel, a defendant must show that (1) his counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 55. The ultimate question of whether the record shows ineffective assistance is reviewed *de novo*. *People v. Davis*, 2023 IL App (1st) 220231, ¶ 28. If the defendant did not suffer prejudice, we need not determine whether counsel was deficient. *People v. Burnett*, 2019 IL App (1st) 163018, ¶ 16.

¶ 55 Here, the parties do not dispute that defense counsel allowed the State to introduce evidence that would otherwise have been excluded, namely, several additional instances of Iniguez's prior abuse of B.F., by asking B.F. whether the incident that she described was "the only incident that ever happened." The parties also agree this did not constitute trial strategy. Rather, they dispute whether defense counsel's performance prejudiced Iniguez.

¶ 56 Prejudice is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *Brown*, 2017 IL App (1st) 142877, ¶ 55. A defense counsel's conduct that inadvertently allows the State to introduce evidence against the defendant does not prejudice the defendant where "the evidence against the defendant was otherwise overwhelming." *People v. Rojas*, 359 Ill. App. 3d 392, 405 (2005).

¶ 57 Here, Iniguez has failed to show prejudice. K.F. recounted that she fell asleep while she and Iniguez watched a movie in a "cuddling position" on his bed in his bedroom and woke when Iniguez touched her vagina with his hand, first over her underwear and then inside her underwear. According to K.F., Iniguez moved his hand in a circular motion on her vagina and placed her hand upon his "hard penis" over his clothes while he breathed heavily. K.F. testified that this happened more than once. Miranda's testimony and footage from K.F.'s forensic interview corroborated K.F.'s testimony regarding Iniguez's sexual acts committed against her. B.F.'s testimony about an incident in 2016 where she saw K.F. leave Iniguez's bedroom crying corroborated K.F.'s testimony that such an incident had taken place. The credibility of K.F.'s testimony was also enhanced by B.F.'s testimony that Iniguez had committed a similar sexual assault on her two years earlier after she, like K.F., fell asleep in his bed and woke up to him pressed against her and touching her sexually.

¶ 58 Even had defense counsel not permitted the State to introduce evidence of the additional instances of Iniguez's abuse of B.F., no reasonable probability exists that the outcome of the trial would have changed given K.F.'s testimony recounting Iniguez's actions committed against her, the evidence corroborating her account, and B.F.'s testimony about Iniguez's similar sexual assault on her. See *People v. Ramsey*, 2017 IL App (1st) 160977, ¶ 36 (no ineffective assistance of counsel where evidence was introduced in error but the remaining evidence against the defendant was strong). Iniguez therefore was not prejudiced by trial counsel's performance. Absent prejudice, Iniguez is not entitled to relief for his claim of ineffective assistance of counsel. *Brown*, 2017 IL App (1st) 142877, ¶ 55.

¶ 59 Nonetheless, Iniguez argues that the evidence of acts against B.F. "unfairly bolstered" K.F.'s testimony, where a "credibility contest" existed between her version of events and his denial

that those events occurred, and moreover, no physical evidence supported her account. However, it was the jury's role to weigh and resolve any conflict in the witnesses' testimony. *People v. Hill*, 2023 IL App (1st) 150396, ¶ 21. The jury heard the State's rebuttal evidence, namely, Cisneros' testimony and the video evidence of Cisneros' interview of Iniguez, which contradicted Iniguez's testimony that he never watched movies with K.F. or B.F. or hugged them while watching movies. Moreover, physical evidence is not required to establish guilt. *People v. Nevilles*, 2021 IL App (1st) 191388, ¶ 65. Thus, no reasonable probability exists that the outcome of the trial would have been different had the challenged evidence been excluded. *Brown*, 2017 IL App (1st) 142877, ¶ 66.

¶ 60 Iniguez next argues that the trial court imposed an excessive sentence to penalize him for rejecting the State's plea offer and exercise his right to trial.

¶ 61 The State responds that Iniguez forfeited the issue by failing to raise it posttrial and failed to request plain error review in his appellate brief.

¶ 62 Iniguez replies that his written motion to reconsider argued that his sentence was unconstitutionally excessive, which encompassed whether the trial court improperly penalized him for exercising his right to trial. Iniguez alternatively argues for plain error review.

¶ 63 A defendant must preserve an alleged sentencing error by objecting at the sentencing hearing and filing a postsentencing motion raising the issue. *People v. Kline*, 2024 IL App (1st) 221595, ¶ 89. The postsentencing motion must allege errors "with sufficient specificity" to preserve the errors for our review. *People v. Prather*, 2022 IL App (4th) 210609, ¶ 16.

¶ 64 Here, Iniguez failed to preserve the issue he now raises on appeal. Iniguez's general postsentencing claim that the court imposed an unconstitutionally excessive sentence did not preserve the specific claim he now raises, namely, that the court penalized him for demanding a

trial. *Id.* However, we agree with Iniguez that he properly requested plain error review in his reply brief. See *People v. Booker*, 2015 IL App (1st) 131872, ¶ 52.

¶ 65 To establish plain error in the sentencing context, the defendant must show that a "clear or obvious error" occurred and either 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. *People v. Richards*, 2021 IL App (1st) 192154, ¶ 11. Here, Iniguez requests review under both prongs. However, we first consider whether any clear or obvious error occurred, because there can be no plain error without error. *People v. Johnson*, 2024 IL 130191, ¶ 41.

¶ 66 A sentence within statutory limits is presumed proper and will not be reduced absent an abuse of discretion. *People v. Webster*, 2023 IL 128428, ¶ 29. A sentence is an abuse of discretion if it greatly varies from the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). The defendant bears the burden of showing that his sentence was based on an improper sentencing consideration. *People v. Sherman*, 2020 IL App (1st) 172162, ¶ 52.

¶ 67 Predatory criminal sexual assault of a child is a Class X felony with a sentencing range of 6 to 60 years in prison. 720 ILCS 5/11-1.40(b)(1) (West 2016). As charged, aggravated criminal sexual abuse is a Class 2 felony carrying a sentencing range of three to seven years in prison. *Id.* § 11-1.60(g); 730 ILCS 5/5-4.5-35 (West 2016). Iniguez's conviction for predatory criminal sexual assault of a child mandated consecutive sentencing. *People v. Giraud*, 2012 IL 113116, ¶ 34; 730 ILCS 5/5-8-4(d)(2) (West 2016).

¶ 68 Here, the trial court sentenced Iniguez to prison terms of 16 years for predatory criminal sexual assault of a child and 5 years for aggravated criminal sexual abuse. As these sentences were within the statutory guidelines, they are presumed proper. *Webster*, 2023 IL 128428, ¶ 29.

¶ 69 Nonetheless, Iniguez contends that the sentences to two counts penalized him for exercising his right to trial where his aggregate 21-year prison sentence was "outrageously higher" than the State's pretrial offer of 10 years' imprisonment in exchange to pleading guilty to one count. Iniguez also notes that the trial court originally estimated that if he were convicted on all three charged counts after a trial, he would likely receive a sentence "in the 20's." Iniguez finally contends that his sentence does not reflect the significant mitigating evidence presented, including his lack of criminal history, strong employment history, close family ties, and his standing as a productive member of society.

¶ 70 A trial court may not punish a defendant for exercising his constitutional right to trial by imposing a longer sentence than it would have had the defendant pled guilty. *People v. Moriarty*, 25 Ill. 2d 565, 567 (1962). A trial tax may be evidenced by the court's explicit remarks regarding the basis for the harsher sentence, or an "outrageously higher" sentence than the State's plea offer. *People v. Moore*, 2023 IL App (1st) 211421, ¶ 135. However, disparity between a sentence and the State's offer is not, by itself, evidence of a trial tax. *People v. Jones-Beard*, 2019 IL App (1st) 162005, ¶ 26.

¶ 71 We find no evidence of a trial tax. Pretrial, the trial court specifically advised Iniguez that he would not be punished for exercising his right to trial, but that his sentence would likely be higher if convicted after a trial. The court never explicitly said that it would impose, or had imposed, a harsher sentence because Iniguez proceeded to trial. *Cf. Moriarty*, 25 Ill. 2d at 567 (explicit comments that the trial court imposed a harsher sentence because the defendant exercised his right to trial were evidence of a trial tax).

¶ 72 As to disparity, Iniguez's aggregate sentence was just over twice the State's pretrial offer. This court has ruled that a sentence even three times greater than a pretrial plea offer does not

suggest a trial tax. *Moore*, 2023 IL App (1st) 211421, ¶ 135. The instant disparity is further appropriate where Iniguez was convicted of two charges, as opposed to the single charge contemplated by the plea offer. During the plea hearing, the trial court only estimated that Iniguez would "probably" receive a sentence "in the 20's" if convicted of all three charged counts after a trial. This conveyed that the sentence could be higher. Finally, at sentencing, the court had access to significantly more evidence than was available to it pretrial. Thus, Iniguez's aggregate 21-year sentence for only two convictions is not in itself evidence of a trial tax. See *People v. Musgrave*, 2019 IL App (4th) 170106, ¶ 67 (the defendant's sentence of 16 years in prison was not a trial tax, even where the defendant had declined a plea deal of 13 years in prison for a more serious charge than the convicted charge).

¶ 73 Nothing in the record clearly evidences that the trial court imposed a harsher sentence as punishment for Iniguez exercising his right to trial. Iniguez has not argued any facts to suggest that the imposed sentences were an abuse of discretion or based on improper considerations, other than that they are longer than the sentences that the State offered, or that the trial court conjectured Iniguez might receive prior to trial. We therefore find that the trial court committed no "clear or obvious" error at sentencing. Absent error, there can be no plain error and Iniguez's claim remains forfeited. *People v. Miles*, 2020 IL App (1st) 180736, ¶ 8.

¶ 74 In conclusion, Iniguez did not receive ineffective assistance of trial counsel, and the trial court did not commit plain error in sentencing Iniguez to an aggregate 21 years in prison for predatory criminal sexual assault of a child and aggravated criminal sexual abuse.

¶ 75 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 76 Affirmed.