NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 100989-U

Filed 9/14/12

NO. 4-10-0989

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Morgan County
LARRY J. RYAN,	)	No. 08CF110
Defendant-Appellant.	)	
	)	Honorable
	)	Richard T. Mitchell,
	)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's appeal presents no meritorious issues for review. The trial court's judgment is affirmed and OSAD's motion to withdraw as appellate counsel is granted.

¶ 2 A jury found defendant, Larry J. Ryan, guilty of burglary (720 ILCS 5/19-1(a) (West 2006)) and the trial court sentenced him to four years in prison. Defendant appealed, and the court appointed the office of the State Appellate Defender (OSAD) to represent him. OSAD filed a motion to withdraw as appellate counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), alleging there are no meritorious issues for review and an appeal would be frivolous. We grant OSAD's motion and affirm the court's judgment.

¶ 3 On August 7, 2008, the State charged defendant with burglary (720 ILCS 5/19-1(a) (West 2006)), alleging he knowingly and without authority entered an apartment building

with the intent to commit theft. At trial, the State presented evidence that two witnesses observed two men walking outside an apartment building. The witnesses were acquainted with defendant and identified him as one of the two men. They observed defendant climb in between the stairs of an outside staircase and enter the building through a basement window. Defendant then opened a door to the basement to let the other man inside. The witnesses observed defendant and the other man exit the building and leave the area with a lawn mower, ladder, and bicycle. The State further presented evidence that a lawn mower, ladder, hedge trimmers, and a bicycle were discovered missing from the building. The building's owner testified that defendant did not have permission to be in the building's basement even though he had previously been hired to perform some cleaning in the basement. Finally, the State's evidence showed police took pictures of the crime scene a week prior to trial and observed the stairs in the staircase to be flimsy with some "give" to them, making the area between the steps wider.

¶ 4 Defendant presented the testimony of a private investigator who took pictures of the crime scene. The investigator measured the distance between the stairs in the outside staircase and found a six-inch gap between each stair. He opined an adult would be unable to crawl between the stairs. Defendant also presented evidence that a mental-health center located next to the apartment building had three large vans that were parked outside the center overnight. In certain parking spaces, the vans would obstruct the view of the staircase at issue. The center's manager did not know where the vans were parked on the night of the burglary.

¶ 5 On May 14, 2010, the jury found defendant guilty of the charged offense. On October 7, 2010, the trial court conducted defendant's sentencing hearing. Defense counsel argued for a minimum sentence of three years in prison, noting no one was physically harmed

during the commission of the offense, defendant stayed out of trouble while awaiting trial and sentencing, defendant became involved with church and in volunteer activities, and defendant reconciled with his wife and children. The State asked the court to sentence defendant to six years in prison, noting his criminal history, which included five previous felony convictions and prison sentences. The court sentenced defendant to four years in prison and ordered him to pay $205 in restitution.

¶ 6 On October 14, 2010, defendant filed a motion to reconsider and/or reduce his sentence, arguing the trial court improperly weighed sentencing factors. On December 7, 2010, the court denied defendant's motion.

¶ 7 This appeal followed. As stated, OSAD was appointed to represent defendant on appeal and filed a motion to withdraw, alleging any issue raised on appeal would be without merit. It has attached a brief to its motion and the record shows service on defendant. On December 19, 2011, this court granted defendant leave to file additional points and authorities, but he did not respond.

¶ 8 OSAD presents four potential issues for review. It first maintains no colorable argument can be made that the trial court failed to comply with Supreme Court Rule 431(b) (eff. May 1, 2007) during *voir dire*. Rule 431(b) requires the trial court to ask each potential juror whether he or she accepts the following principles:

> "(1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or

> her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

The court must "provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

¶ 9 Here, the trial court questioned each juror regarding Rule 431(b)'s four principles and every member of defendant's jury was given the opportunity to respond to specific questions about each principle. The record shows the court's compliance with Rule 431(b) and presents no meritorious issue for appeal on this basis.

¶ 10 The next potential issue identified by OSAD is whether defendant received effective assistance of counsel. Ineffective-assistance-of-counsel claims are governed by the standard set forth by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Cathey*, 2012 IL 111746, ¶ 23, 965 N.E.2d 1109, 1115. "To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *Cathey*, 2012 IL 111746, ¶ 23, 965 N.E.2d at 1115. "More specifically, a defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *Cathey*, 2012 IL 111746, ¶ 23, 965 N.E.2d at 1115 (quoting *Strickland*, 466 U.S. at 694).

¶ 11 In this case, the record fails to show either deficient performance by defense

counsel or prejudice to defendant. Defense counsel filed motions on defendant's behalf, cross-examined the State's witnesses, and presented witnesses on defendant's behalf that challenged the State's evidence. Specifically, defense counsel presented the testimony of a private investigator who viewed and photographed the crime scene. The investigator's testimony provided conflicting evidence regarding defendant's ability to enter the apartment building's basement by crawling between the steps of an outside staircase. Defense counsel also presented evidence that the view from the location of the two eyewitnesses could have been obstructed.

¶ 12 The record shows defendant received effective assistance. It presents no meritorious issue for review based upon an ineffective-assistance-of-counsel claim.

¶ 13 As a third potential issue for review, OSAD considered the sufficiency of the evidence against defendant. "When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the required elements of the crime beyond a reasonable doubt." *People v. Gonzalez*, 239 Ill. 2d 471, 478, 942 N.E.2d 1246, 1250 (2011).

> "This court will not retry a defendant when considering a sufficiency of the evidence challenge. [Citation.] The trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court that saw and heard the witnesses. [Citation.] It also is for the trier of fact to resolve conflicts or inconsistencies in the evidence. [Citation.]" *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59, 958 N.E.2d 227, 241.

¶ 14 Here, defendant was convicted of the offense of burglary. "A person commits

burglary when without authority he knowingly enters or without authority remains within a building *** with intent to commit therein a felony or theft." 720 ILCS 5/19-1(a) (West 2006).

¶ 15 OSAD argues no colorable argument can be made that the State's evidence was insufficient to convict defendant of the charged offense and we agree. At trial, the State presented testimony from two eyewitnesses, both of whom were acquainted with defendant. Each witness testified to observing defendant entering the basement of an apartment building and then leaving the building with a lawn mower, ladder, and bicycle. The State further presented evidence that those items were missing from the building. Additionally, the building's owner testified that defendant did not have permission to be in the building's basement. Although defendant presented some conflicting evidence regarding his ability to enter the building in the manner described by the eyewitnesses and regarding the eyewitnesses' ability to view the building from their location, the evidence presented, when viewed in the light most favorable to the State, was sufficient to prove his guilt.

¶ 16 As a final issue for review, OSAD considered the propriety of defendant's sentence. On review, substantial deference is given to the trial court's sentencing decision as it had the opportunity to observe defendant and the proceedings and it "is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age." *People v. Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d 656, 663. The sentence imposed by the court will not be overturned on appeal absent an abuse of discretion. *Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d at 663. "We recognize that it is the function of the trial court to balance the relevant factors and make a reasoned decision as to the appropriate sentence, and we will not substitute our own judgment for that of the trial court." *People v.*

Rathbone, 345 Ill. App. 3d 305, 313, 802 N.E.2d 333, 340 (2003). Further, "[a] sentence within the statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Crenshaw*, 2011 IL App (4th) 090908, ¶ 22, 959 N.E.2d 703, 710.

¶ 17 Here, OSAD argues no colorable argument can be made that the trial court abused its discretion in sentencing defendant, and we agree. Defendant was convicted of burglary, a Class 2 felony. 720 ILCS 5/19-1(b) (West 2006). The applicable sentencing range for a Class 2 felony is from three to seven years in prison. 730 ILCS 5/5-8-1(a)(5) (West 2006). The court, in sentencing defendant to four years in prison, imposed a sentence that was well within statutory guidelines and at the lower end of the applicable sentencing range. Additionally, the record reflects the court considered relevant factors in sentencing defendant and defendant had a significant criminal history, including five previous felony convictions and prison sentences. The record fails to show the court abused its discretion.

¶ 18 A review of the record shows no meritorious issues for review. OSAD is correct in finding defendant's appeal to be frivolous.

¶ 19 For the reasons stated, we grant OSAD's motion to withdraw as appellate counsel and affirm the trial court's judgment.

¶ 20 Affirmed.