

NOTICE
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2012 IL App (4th) 110492-U
NO. 4-11-0492
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
December 12, 2012
Carla Bender
4th District Appellate
Court, IL

In re: ELIJAH D., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 11JD13
ELIJAH D.,)	
Respondent-Appellant.)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to the Department of Juvenile Justice and did not err in considering respondent's prior arrests and police contacts in sentencing respondent.

¶ 2 In January and February 2011, the State filed a petition and supplemental petition for adjudication of wardship, alleging respondent, Elijah D., committed robbery and attempt (armed robbery). In February 2011, respondent pleaded guilty to robbery, and the trial court adjudicated him a delinquent minor. In March 2011, the court adjudicated respondent a ward of the court and sentenced him to the Illinois Department of Juvenile Justice (DJJ) for an indeterminate term to automatically terminate in 7 years or upon respondent attaining the age of 21, whichever occurs first.

¶ 3 Respondent appeals, arguing the trial court abused its discretion in sentencing

respondent to the DJJ and erred in relying on respondent's prior arrests and police contacts in sentencing respondent. We affirm.

¶ 4

I. BACKGROUND

¶ 5 On January 11, 2011, respondent participated in a plan to lure a woman named Rachel C. into an empty apartment under the pretext of a drug deal. Rachel was engaged in text messaging with a man whom she believed to be Joseph Thompson, a known drug dealer.

Thompson's phone, however, had been stolen the day before, and Rachel was actually communicating with Darren G., another juvenile participant in the robbery scheme. Rachel admitted to the Urbana police she was a prescription drug addict and had arranged to meet a man whom she thought was Thompson to buy Valium on January 11, 2011.

¶ 6 Respondent was caught on a security camera at the apartment complex, directing Rachel into the apartment where she was to complete the fake drug deal. Respondent acted as a lookout while Darren G. used force to steal \$74 and a cell phone from Rachel. Darren G. then ordered respondent and the other participants out of the apartment and sexually assaulted Rachel. Officer Matthew Quinley testified respondent indicated to him respondent did not know the sexual assault was going to take place and was not present when it took place.

¶ 7 On January 12, 2011, respondent participated in a second scheme to lure a woman named Emily into an empty apartment where she would be robbed. Thompson's phone was also used in arranging the second fake drug deal with Emily. Rachel had knowledge of text messages between Emily and Thompson's phones because Rachel was a friend of Emily. Rachel brought Emily's phone to the police station and notified the police of the text messages. The police used Emily's phone to send additional text messages to Thompson's phone, to arrange a fake drug deal

with "Thompson."

¶ 8 When the police arrived undercover at the apartment where the drug deal was to take place, posing as Emily and her boyfriend, respondent was again acting as a lookout. Darren G. and two others were also present. Darren G. was armed with a knife, and the other two participants were armed with "sticks." Respondent admitted knowing about the knife but did not indicate whether he knew about the sticks. When the police entered the apartment, respondent was in the bathroom. Respondent admitted to police he was a lookout and he and the other minors had planned to rob Emily.

¶ 9 In January 2011, the State filed a petition for adjudication of wardship, charging respondent with attempt (armed robbery) (720 ILCS 5/8-4(a), 18-2(a)(1) (West 2010)) for the incident on January 12, 2011, aimed at Emily. In February 2011, the State filed a supplemental petition, charging defendant with robbery (720 ILCS 5/18-1(a) (West 2010)) for the incident on January 11, 2011, involving Rachel.

¶ 10 In February 2011, respondent pleaded guilty to robbery. In exchange, the State dismissed the attempt (armed robbery) charge and dismissed charges against respondent in two other pending cases, Champaign County Nos. 10-JD-281 and 10-JD-315. The trial court adjudicated respondent a delinquent minor.

¶ 11 In March 2011, the trial court adjudicated respondent a ward of the court. The court sentenced respondent to the DJJ for an indeterminate term to automatically terminate in 7 years or upon respondent attaining the age of 21, whichever occurs first. In sentencing respondent, the court considered

"the report of [c]ourt [s]ervices, the previous youth detention

center reports, the documents tendered in mitigation, and all appropriate evidence, including the testimony introduced today, the [r]espondent [m]inor's statement in allocution, the arguments and recommendations of counsel, and all available alternatives to incarceration."

¶ 12 In April 2011, respondent filed a motion to reconsider sentence, arguing his sentence was excessive. The trial court denied respondent's motion, finding the sentence imposed was appropriate. The court noted respondent's success in the DJJ from the time of incarceration until the hearing on respondent's motion, stating "it simply confirms that he is doing well and responding to the structured setting and expectations of the department, which clearly he was not able to do when he was released in the community."

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, respondent argues the trial court abused its discretion in sentencing respondent to the DJJ and erred in relying on prior arrests and police contacts in sentencing respondent. We consider each argument in turn.

¶ 16 A. DJJ Sentence

¶ 17 A trial court may commit a juvenile to the DJJ if the minor's parents "are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train[,] or discipline the minor, or are unwilling to do so, and the best interests of the minor and the public will not be served" by alternative placement or if "it is necessary to ensure the protection of the public." 705 ILCS 405/5-750(1) (West 2010). We review the court's sentencing decision

for an abuse of discretion. *In re A.J.D.*, 162 Ill. App. 3d 661, 666, 515 N.E.2d 1277, 1280 (1987).

¶ 18 Respondent argues the trial court abused its discretion in sentencing him to the DJJ because the record suggests respondent was suitable for alternate placement. Respondent contends the evidence showed (1) he had family who was willing and able to care for him, (2) he had no prior adjudications, and (3) he had substance abuse problems. Respondent suggests this evidence shows it was not in his best interest or the public's to incarcerate him. The trial court disagreed, and we defer to the court's discretion.

¶ 19 The record shows the trial court considered a great deal of mitigating and aggravating evidence at the dispositional hearing, including whether an alternate placement was suitable for respondent. The court also considered the court services report, his previous youth detention center reports, documents tendered in mitigation by respondent and his family, respondent's statement in allocution, and the arguments and recommendations of counsel. Respondent's counsel requested probation and the State recommended commitment to the DJJ. The court ultimately found it was in the best interest of respondent and the public to commit respondent to the DJJ.

¶ 20 In making its decision, the trial court noted respondent had "a long list of police contacts extending back over three and one-half years." The court also referenced the "egregious" and "chilling" nature of the offense, in that it was "planned" and "premeditated" and was not "impulsive" or the result of "an adolescent's lack of judgment." The court had doubts respondent would be able to refrain from engaging in criminal activity if he remained in the community, considering (1) he was out on pretrial release for a prior offense when he committed

this offense less than a month later and (2) he participated in a planned robbery attempt the day after he participated in the first robbery. The court also found respondent's parents and siblings had extensive criminal histories and were unable to set a positive example or provide appropriate structure within their household. Further, the court found respondent thrives "where there is structure and expectations and monitoring, consequences and rewards." On this record, we conclude the court did not abuse its discretion in sentencing respondent to the DJJ.

¶ 21 Respondent also argues, in great length, it was an abuse of discretion for the trial court to sentence respondent to the DJJ because incarceration fails to rehabilitate youth.

Respondent contends the purpose of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 to 7-1 (West 2010)) is to rehabilitate youth and protect the community. We agree with respondent these are the purposes of the Juvenile Court Act. See 705 ILCS 405/1-2 (West 2010). However, our legislature has decided the incarceration of minors is appropriate under certain circumstances, which the trial court found to be present here. While it may be true numerous studies have shown, as respondent contends, incarcerating minors does not serve any rehabilitative function, rehabilitation is not the only purpose delineated by our legislature. The need to protect the public from serious crimes, such as that at issue here, is an important purpose of the provisions of the Juvenile Court Act relating to delinquent minors. 705 ILCS 405/5-101(1)(a) (West 2010). Protection of the community is an appropriate and specified purpose when sentencing a minor. We find no abuse of discretion here.

¶ 22 B. Prior Arrests and Police Contacts

¶ 23 Respondent also argues it was error for the trial court to rely upon prior arrests and police contacts when sentencing respondent. The State argues (1) respondent has forfeited

this issue on appeal and (2) notwithstanding forfeiture, the court did not err in relying upon such information in sentencing respondent.

¶ 24 We note the trial court asked the State's Attorney and respondent's attorney if they wanted to make "any corrections or additions to [the] social investigation report." The only correction respondent's attorney made was a correction to the number of respondent's brothers and sisters. Respondent's attorney did not object to the court's use of the social investigation report or the prior arrests and police contacts listed therein. Thus, respondent waived this issue when he acquiesced to the use of the report. However, the parties have construed respondent's acquiescence as forfeiture and structured the arguments in their briefs around forfeiture and plain error analysis. Accordingly, we will address the parties' arguments as they have presented them to this court.

¶ 25 Respondent suggests he forfeited this issue on appeal by not raising it in his motion to reconsider sentence but requests this court to review the trial court's sentencing decision for plain error pursuant to Illinois Supreme Court Rule 615(a) (eff. Aug. 27, 1999). Rule 615(a) allows for appellate review of a claim not properly preserved if plain error has occurred. *People v. Harvey*, 211 Ill. 2d 368, 386, 813 N.E.2d 181, 193 (2004). Relief will be granted under plain error analysis (1) when the evidence is closely balanced regardless of the seriousness of the error, or (2) where "the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." (Internal quotation marks omitted.) *In re M.W.*, 232 Ill. 2d 408, 431, 905 N.E.2d 757, 773 (2009).

¶ 26 In the case *sub judice*, respondent argues the evidence is closely balanced.

Respondent suggests the consideration of police contacts and arrests in sentencing juveniles is an unreliable and highly prejudicial practice that is deeply embedded in our juvenile justice system. Respondent contends such practice is at odds with the Juvenile Court Act and its guarantee minors be afforded the same procedural safeguards as adult defendants in criminal proceedings. See 705 ILCS 405/5-101(3) (West 2010) ("minors shall have all the procedural rights of adults in criminal proceedings, unless specifically precluded by laws that enhance the protection of such minors").

¶ 27 Evidence of criminal conduct other than convictions may not be introduced in adult sentencing hearings unless it is relevant and reliable. *People v. Robinson*, 286 Ill. App. 3d 903, 910, 676 N.E.2d 1368, 1373 (1997). Reliability is ensured by introducing the evidence through witnesses who may be confronted and cross-examined. *Robinson*, 286 Ill. App. 3d at 910, 676 N.E.2d at 1373. Respondent argues evidence of prior arrests and police contacts should not be introduced at a juvenile sentencing through "hearsay allegations in the presentence report" and juveniles should be afforded the same procedural protection as adults in sentencing—live testimony and the ability to confront and cross-examine witnesses. Thus, respondent urges this court to find such information should no longer be used in juvenile sentencing and invites us to overturn the body of case law that has permitted trial courts to consider such information without the added reliability requirements. Respondent further argues if we were to conclude courts are no longer allowed to consider prior arrests and police contacts in juvenile sentencing, and remove such from this case, we would conclude the evidence concerning respondent's sentencing is closely balanced.

¶ 28 Initially, we note respondent recognizes this court has a long history of allowing

trial courts to utilize such information in fashioning an appropriate sentence for minors. See, *e.g.* *In re Nathan A. C.*, 385 Ill. App. 3d 1063, 1077, 904 N.E.2d 112, 123 (2008) (Fourth District, holding a trial court may consider station adjustments, prior arrests, curfew violations, and the social investigation report, among other factors in determining whether commitment to the DJJ is in the respondent's and public's best interest). However, respondent urges this court to overturn this body of case law. Since we agree with the existing case law, the trial court did not commit error and, therefore, there can be no plain error. Even if we address the plain error claim, respondent loses.

¶ 29 Respondent's only argument as to plain error is that, once respondent's prior police contacts and arrests have been removed from the trial court's consideration, the question as to whether respondent should be sentenced to the DJJ is closely balanced. We disagree.

¶ 30 The trial court enumerated many reasons for sentencing respondent to the DJJ other than respondent's prior arrests and police contacts. The court referenced the "egregious" nature of the offense and how it was "planned" and "premeditated." The offense was "so chilling" because it was not "kid's play" or "juvenile hijinx [*sic*]" but a serious robbery. Further, the court was concerned about deterrence in sentencing respondent, acknowledging many juveniles had been involved in the robbery and this was "one of those cases where the word [wa]s out" and people would be "looking at what the sentence w[ould] be." Additionally, the court noted respondent's parents were unable to set a good example or give respondent the guidance he needed. The court also considered respondent engaged in the planning and execution of a second robbery only one day after the first had taken place. The court found this made respondent an "untenable and unacceptable risk to the community." Based on this record, we do not conclude

the evidence is closely balanced. The trial court had before it a plethora of evidence, aside from prior arrests and police contacts, in fashioning respondent's sentence. Thus, even were we to find error, since the evidence was not closely balanced, we would not forgive respondent's forfeiture and consequently would find no plain error occurred.

¶ 31

III. CONCLUSION

¶ 32

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

¶ 33

Affirmed.