

¶ 3 On appeal, defendant argues (1) the trial court improperly admonished defendant as to the applicable sentencing range, (2) his trial counsel was ineffective for failing to argue in a posttrial motion the trial court admonished defendant under the wrong sentencing range, and, in the alternative, (3) his sentence is excessive.

¶ 4 I. BACKGROUND

¶ 5 In March 2010, a McLean County grand jury indicted defendant on cannabis trafficking in an amount more than 2,500 grams (720 ILCS 550/5.1(a) (West 2010)), unlawful possession of more than 5,000 grams of cannabis with the intent to deliver (720 ILCS 550/5(g) (West 2010)), and unlawful possession of more than 5,000 grams of cannabis (720 ILCS 550/4(g) (West 2010)). The cannabis trafficking indictment alleged defendant knowingly and unlawfully brought or caused to be brought more than 2,500 grams of cannabis into Illinois with the intent to deliver the cannabis within Illinois or any other state. The indictment stated defendant's cannabis trafficking count was a Class X felony punishable by 12 to 60 years' imprisonment.

¶ 6 In October 2010, the trial court held a plea hearing. Before accepting the plea, the court admonished defendant, in relevant part, as follows:

"Now, that charge [cannabis trafficking] is what is referred to as a Class X felony, and it has certain enhanced penalties. Now what all that means is that there is a mandatory prison sentence for this offense with a minimum term of 12 years in the Department of Corrections up to a maximum term of 60 years in the Department of Corrections. Any sentence to the Department of Corrections on

this charge would also be followed by a three-year term of mandatory supervised release or what used to be called parole. There is also a possible fine of up to four hundred thousand dollars that could be imposed."

Defendant acknowledged he understood those were the possible penalties.

¶ 7 According to the factual basis, defendant was an over-the-road truck driver. The Illinois State Police (ISP) performed a routine motor carrier safety inspection check and identified several violations. A canine unit alerted to the presence of drugs and police searched the trailer. In the trailer, police found three duffle bags containing 88.7 pounds of cannabis packaged for sale. The actual weight was slightly over 40,000 grams. (88.7 pounds is the equivalent of approximately 40,234 grams (88.7 pounds x 453.592 = 40,233.61 grams).) The ISP lab tested a cannabis sample weighing 6,571 grams. Defendant informed police he had originated from Georgia and was traveling to Indianapolis, Indiana, to deliver the cannabis. Upon delivery in Indianapolis, defendant was to receive a cash payment of \$7,000.

¶ 8 In exchange for his plea, the State agreed to dismiss the charges for unlawful possession of cannabis with intent to deliver and unlawful possession of cannabis. Defendant pleaded guilty to cannabis trafficking.

¶ 9 In December 2010, the trial court held a sentencing hearing. The State introduced a presentencing investigation report (PSI). The PSI indicated defendant was 39 years old at sentencing. The PSI indicated (1) a 2007 conviction in Kansas for possession of marijuana with intent to distribute (the PSI noted the charging documents in the Kansas case indicated defendant possessed approximately 11 pounds of cannabis), and (2) a 2008 conviction in Texas for

possession of marijuana (the PSI noted the charging documents in the Texas case indicated defendant possessed over four ounces but less than five pounds of cannabis). At the hearing, defense counsel agreed the sentencing range begins at 12 years' imprisonment. Defendant made a statement in allocution wherein he acknowledged he made a "mistake." The court expressly stated it appreciated the fact defendant took responsibility for his conduct and that he "stood here and acknowledged it." The court found this was defendant's third cannabis-related offense and he was under court orders for the Kansas and Texas convictions when he committed this offense. The court stated, based on defendant's record, "a significant sentence is entirely appropriate." The court sentenced defendant to 24 years' imprisonment on cannabis trafficking.

¶ 10 In late December 2010, defendant filed a motion to reconsider sentence. In October 2011, this court remanded to the trial court for filing of a certificate in compliance with Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. July 1, 2006)) and the opportunity to file a new postplea motion. *People v. Thomas*, No. 4-11-0651 (Oct. 20, 2011) (agreed order on motion for summary remand).

¶ 11 In December 2011, defendant filed a motion to withdraw plea. Defense counsel filed a Rule 604(d) certificate. At the February 2012 hearing on the motion, defendant testified when he pleaded guilty he "was under the impression that it was a Class X [f]elony, which was six to 30 [years' imprisonment]." Defendant expressed when he pleaded guilty he thought the minimum of 12 years was up to the judge's discretion to "enhance it." The court noted it admonished defendant twice about the 12- to 60-year sentencing range before accepting defendant's plea and defendant acknowledged he understood the range. The court denied the motion.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues (1) his guilty plea was involuntary because the trial court misinformed him about the applicable sentencing range; (2) his trial counsel was ineffective for failing to argue in a posttrial motion the trial court admonished defendant under the wrong sentencing range; and, in the alternative, (3) his sentence is excessive. Specifically, defendant contends (1) his plea was involuntary because the court admonished him he was subject to enhanced Class X sentencing of 12 to 60 years' imprisonment and cannabis trafficking an amount of cannabis weighing between 2,000 and 5,000 grams is a Class 1 felony with an enhanced penalty of 8 to 30 years' imprisonment (720 ILCS 550/5(f) (West 2010)); and, in the alternative, (2) his sentence is excessive because of his expressed remorse and rehabilitative potential. (Actually, a cannabis trafficking offense must involve at least 2,500 grams of cannabis.)

¶ 15 A. Defendant's Improper Admonishment Claim

¶ 16 Defendant contends his guilty plea was involuntary because the trial court improperly admonished him as to the correct sentencing range.

¶ 17 1. *Plain-Error Generally*

¶ 18 Defendant acknowledges he did not make this same argument before the trial court but urges this court to consider his claim under plain-error review. We note in the trial court defendant argued his plea was involuntary on the basis he understood the court had discretion to sentence defendant to an enhanced 12- to 60-year prison sentence. The trial court rejected this argument. See *People v. Davis*, 145 Ill. 2d 240, 244, 582 N.E.2d 714, 716 (1991)

("In the absence of substantial objective proof showing that a defendant's mistaken impressions were reasonably justified, subjective impressions alone are not sufficient grounds on which to vacate a guilty plea.").

¶ 19 Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) expressly provides any issue not raised by the defendant in a motion to withdraw the plea of guilty is deemed waived on appeal. Supreme Court Rule 615(a), the basis for the plain-error doctrine, provides that the appellate court may review plain errors affecting substantial rights, although not brought to the attention of the trial court. Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999); *People v. Kitch*, 239 Ill. 2d 452, 461, 942 N.E.2d 1235, 1241 (2011). The plain-error doctrine is a narrow and limited exception. *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010). A reviewing court may consider an unpreserved error where (1) a clear and obvious error occurred and the evidence is closely balanced, or (2) the error is so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process. *People v. Ahlers*, 402 Ill. App. 3d 726, 733, 931 N.E.2d 1249, 1255 (2010) (quoting *People v. Bannister*, 232 Ill. 2d 52, 65, 902 N.E.2d 571, 580 (2008)); *People v. Wishard*, 396 Ill. App. 3d 283, 286, 919 N.E.2d 1118, 1120 (2009). Under both prongs, defendant has the burden of persuasion. *Wishard*, 396 Ill. App. 3d at 286, 919 N.E.2d at 1120 (quoting *People v. Walker*, 232 Ill. 2d 113, 124, 902 N.E.2d 691, 697 (2009)). The first step in plain-error review is to determine whether error occurred. *Kitch*, 239 Ill. 2d at 462, 942 N.E.2d at 1241.

¶ 20 *2. Supreme Court Rule 402(a)*

¶ 21 "[I]f a trial court fails to give the defendant the admonishments required by Rule 402, it is possible that this action can amount to plain error, an exception to the waiver rule, as

set forth in Supreme Court Rule 615(a)." *People v. Fuller*, 205 Ill. 2d 308, 322-23, 793 N.E.2d 526, 537 (2002). "Before invoking the plain error exception, however, we determine whether any reversible error occurred." *Id.* at 323, 793 N.E.2d at 537.

¶ 22 In part, Supreme Court Rule 402(a) requires the trial court, prior to accepting a guilty plea, to admonish the defendant of the "the minimum and maximum sentence prescribed by law." Ill. S. Ct. R. 402(a) (eff. July 1, 1997). Failure to properly admonish a defendant, standing alone, does not automatically establish grounds for vacating the plea; rather, the defendant must show a "manifest injustice" or that he has been prejudiced by the inadequate admonishment. *Fuller*, 205 Ill. 2d at 323, 793 N.E.2d at 537; *People v. Delvillar*, 235 Ill. 2d 507, 520, 922 N.E.2d 330, 338 (2009). The trial court has discretion to grant or deny a motion to withdraw a guilty plea and, as such, the decision is reviewed for an abuse of discretion. *Delvillar*, 235 Ill. 2d at 519, 922 N.E.2d at 338.

¶ 23 *3. Did Error Occur?*

¶ 24 In his brief, defendant does not explain why the trial court was mistaken in admonishing defendant pursuant to the enhanced Class X sentencing as provided in section 5(g) of the Cannabis Control Act (Act) (720 ILCS 550/5(g) (West 2010)). Further, the State asserts cannabis trafficking (more than 2,500 grams) is a Class 1 felony, punishable by 8 to 30 years' imprisonment. Both defendant and the State are incorrect.

¶ 25 Section 5.1 of the Act criminalizes cannabis trafficking as follows:

"(a) Except for purposes authorized by this Act, any person who knowingly brings or causes to be brought into this State for the purpose of manufacture or delivery or with the intent to

manufacture or deliver 2,500 grams or more of cannabis in this State or any other state or country is guilty of cannabis trafficking.

(b) A person convicted of cannabis trafficking shall be sentenced to a term of imprisonment not less than twice the minimum term and fined an amount as authorized by subsection (f) or (g) of Section 5 of this Act, based upon the amount of cannabis brought or caused to be brought into this State, and not more than twice the maximum term of imprisonment and fined twice the amount as authorized by subsection (f) or (g) of Section 5 of this Act, based upon the amount of cannabis brought or caused to be brought into this State. " 720 ILCS 550/5.1 (West 2010).

In turn, section 5 of the Act, in relevant part, provides as follows:

"It is unlawful for any person knowingly to manufacture, deliver, or possess with intent to deliver, or manufacture, cannabis. Any person who violates this section with respect to:

* * *

(f) more than 2,000 grams but not more than 5,000 grams of any substance containing cannabis is guilty of a Class 1 felony for which a fine not to exceed \$150,000 may be imposed;

(g) more than 5,000 grams of any substance containing cannabis is guilty of a Class X felony for which a fine not to exceed \$200,000 may be imposed." 720 ILCS 550/5(f), (g) (West

2010).

Section 5-4.5-25(a) of the Unified Code of Corrections (Unified Code) provides a Class X felony is punishable by not less than 6 years and not more than 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2010).

¶ 26 By its own language, cannabis trafficking under section 5.1(b) of the Act looks to sections 5(f) and (g) of the Act to determine whether it is a Class 1 or Class X felony. Where the person commits cannabis trafficking by knowingly bringing or causing to bring more than 5,000 grams of cannabis into Illinois, that conviction is punishable as a Class X felony for a term not less than 12 years and not more than 60 years' imprisonment. See *People v. Guerrero*, 311 Ill. App. 3d 968, 969, 725 N.E.2d 783, 784 (2000) (where defendant had 2,780 pounds of cannabis, cannabis trafficking charged as a Class X felony requiring imposition of a prison sentence of 12 to 60 years).

¶ 27 Defendant concludes he was subject to Class 1 felony sentencing—without specifying why he was subject to the Class 1 sentencing range—and should have been admonished accordingly. As noted above, on appeal, the State agrees with defendant that cannabis trafficking is a Class 1 felony punishable by 8 to 30 years' imprisonment. However, the State indicted defendant on cannabis trafficking as a Class X felony punishable by 12 to 60 years in prison. At the plea hearing, the factual basis stated defendant was found with approximately 40,000 grams of cannabis and the ISP lab tested a cannabis sample weighing 6,571 grams. In short, defendant stipulated he was found with more than 5,000 grams of cannabis. Defendant brought more than 5,000 grams of a substance containing cannabis into Illinois and is subject to enhanced Class X felony sentencing pursuant to section 5(g) of the Act (720 ILCS 550/5(g))

(West 2010)). At the plea hearing, the trial court admonished defendant he was subject to a sentence of 12 to 60 years' imprisonment. Because the court properly admonished defendant on the appropriate sentencing range, no error occurred. As such, defendant's ineffective-assistance claim fails.

¶ 28 Assuming *arguendo* defendant is correct—which he is not—he should have been admonished pursuant to the enhanced Class 1 felony guidelines his argument fails because 24 years' imprisonment falls within the Class 1 sentencing guidelines. See *People v. Riegle*, 246 Ill. App. 3d 270, 275, 615 N.E.2d 1232, 1235 (1993) (defendant not prejudiced where trial court admonished range to be 9 to 40 years when it was actually 6 to 30 years and defendant was sentenced to 14 years' imprisonment).

¶ 29 B. Defendant's Excessive Sentence Claim

¶ 30 Defendant asserts his sentence is excessive because (1) it is based on an incorrect sentencing range, (2) he expressed remorse for his conduct, and (3) the trial court did not give adequate weight to his rehabilitative potential. We disagree.

¶ 31 Where a sentence falls within statutory guidelines, it will not be disturbed on review absent an abuse of discretion. *People v. Bridgewater*, 388 Ill. App. 3d 787, 797, 904 N.E.2d 171, 179-80 (2009) (quoting *People v. Grace*, 365 Ill. App. 3d 508, 512, 849 N.E.2d 1090, 1093-94 (2006)); *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010). 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. "A reviewing court must afford great deference to the trial court's judgment regarding sentencing

because that court, having observed the defendant and the proceedings, is in a far better position to consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits than a reviewing court, which must rely on a 'cold' record." *People v. Little*, 2011 IL App (4th) 090787, ¶ 24, 957 N.E.2d 102, 105-06.

¶ 32 Defendant's arguments are unpersuasive. First, as discussed above, the enhanced Class X felony sentencing range for cannabis trafficking (more than 5,000 grams) is 12 to 60 years' imprisonment (720 ILCS 550/5(g), 5.1(b) (West 2010); 730 ILCS 5/5-4.5-25 (West 2010)). The record shows the trial court understood the applicable sentencing range. Second, as the State's brief points out, the court expressly recognized defendant's remorse for his actions and appreciated the fact he had "taken responsibility for [his] decision." However, as the court noted, defendant has demonstrated an inability to conform his conduct to the requirements of the law as evidenced by his 2007 Kansas conviction for possession with intent to distribute cannabis and 2008 Texas conviction for possession of cannabis. Accordingly, the court found "a significant sentence is entirely appropriate" based on defendant's criminal history. Further, generally evidence of a defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense, the protection of the public, and punishment. See *Grace*, 365 Ill. App. 3d at 513, 849 N.E.2d at 1094. Here, the trial court was entitled to conclude defendant demonstrated little rehabilitative potential where he committed the instant offense while under orders from Kansas and Texas courts related to committing similar offenses.

¶ 33 In sum, as the trial court sentenced defendant to 24 years' imprisonment, a sentence within the appropriate sentencing range, no abuse of discretion occurred.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2010).

¶ 36 Affirmed.