



prisoner cell located in the prison's receiving segregation wing (receiving seg), told Officer Michael Clark that he wanted to speak with Officer Billy Rolla, one of the prison's "Intel" investigators at the time. The defendant also told Clark that "he had made a weapon[,] and he intended to use it against staff." The defendant claimed that "the staff had been fucking with him and threatening to send him to [the] R5 [segregation wing of the prison]." When Clark asked the defendant to surrender the weapon, the defendant refused. Clark immediately reported the situation to Rolla and Lieutenant William Lawless, and both proceeded to receiving seg. Thereafter, the defendant was handcuffed and escorted from his cell to a secured shower area, where Lawless strip-searched him. During the search, the defendant voluntarily produced and handed Lawless a "homemade weapon."

¶ 5 When later interviewed by Officer Sean Furlow of Internal Affairs (IA), the defendant admitted that he had made the weapon that had been confiscated during the search. Furlow testified that the defendant had stated that he had the weapon because "he feared staff and feared inmates both" and did not want to be housed in R5. The defendant had not specifically named anyone whom he allegedly feared, however, and although IA was generally "made aware of threats against inmates," Furlow testified that he had not been aware of any particular threats that had been made against the defendant. Furlow further testified that the defendant's expressed fears pertained solely to the staff and inmates in R5 and that the defendant had not claimed that he had ever been threatened in receiving seg. The defendant specifically indicated that the staff in R5 were going to allow the prison workers in R5 to "get him." Explaining that it would require a complete breakdown in security "for that to happen," Furlow stated that he did not believe the defendant's claims regarding R5.

¶ 6 Furlow testified that he had personally had two previous encounters with the defendant, and both had involved reports of other inmates' activities. Furlow explained that

the defendant had provided IA with information about prison porters "selling coffee or passing items of contraband around from cell to cell." Furlow further explained that the defendant "would try to find things" to report whenever he wanted to "to manipulate a cell[-]move."

¶ 7 Furlow testified that whenever an inmate is threatened by another inmate, the threatened inmate can opt to fill out a "KSF" or "keep separate from" form, and the alleged problem is investigated. Furlow indicated that threatened inmates are also moved to one of the prison's segregation wings. Furlow testified that IA handled all incidents involving an inmate's possession of a weapon but that only a few arose each year. Furlow testified that inmates often claim threats made by staff and other inmates, but if specific information is not provided, IA does not know who to interview, and the threats are therefore not investigated. Furlow indicated that the defendant had never filled out a KSF form. Furlow estimated that there were approximately 15 inmates who worked as porters in R5.

¶ 8 Furlow indicated that IA kept all inmate cooperation confidential. Furlow stated that while he had not been made aware of any inmate threats against the defendant, it was possible that someone else in IA might have been. Furlow testified that the defendant had a history of "being deceitful" and that the defendant's claimed threats were not considered credible. Furlow indicated that IA routinely dealt with inmates who tried to put themselves in what they thought were better positions in the prison. Furlow further indicated that an inmate trying to control his situation "would do anything in their power" to do so, "[e]ven to the point of making a weapon."

¶ 9 Rolla testified that in May 2009, he had been one of the prisoner's "Intel" investigators and had often worked with IA. Rolla testified that he had briefly spoken with the defendant after the defendant's homemade weapon had been confiscated. The defendant reported feeling threatened by staff and workers in R5 but had not been more specific than that. Rolla

testified that he had passed the information on to IA and had not considered the matter "an immediate danger situation."

¶ 10 Lawless testified that when he confiscated the defendant's homemade weapon, the defendant had not reported "any threats." Lawless further testified that the defendant had never told him that "he was feeling threatened or [was] facing threats from other inmates."

¶ 11 Officer Larry Penland testified that in May 2009, he had been assigned to receiving seg and that prior to that, he had worked in R5 seg. Penland indicated that inmate stays in receiving seg are generally temporary, while stays in R5 seg are for extended periods of time. Penland explained that inmates have their own cells in receiving seg but are "double bunked" in R5.

¶ 12 Penland testified that in May 2009, he had ticketed the defendant for refusing housing after the defendant had disobeyed three orders to "pack his stuff to move to [R]5." Penland explained that the defendant was supposed to move to R5 to free up space in receiving seg. When the defendant protested and refused the transfer, he did not say why he did not want to go to R5. Penland assumed that the defendant had wanted to remain in receiving seg, because he wanted his own cell. Penland indicated that through administrative procedures, an inmate who refuses a transfer can be forced to move, but in the defendant's case, "they just left him." Penland acknowledged that at some point, the defendant had advised him that he wanted to speak with IA. Penland testified that he had informed IA of the defendant's request, but he did not know what had happened after that. Penland testified that the defendant had never spoken with him about threats from other inmates.

¶ 13 Clark testified that he had previously worked in both R5 seg and receiving seg. Clark described receiving seg as a "smaller \*\*\* version of R5" seg. Clark testified that he had never witnessed any inmate-on-inmate fights in either seg wing and that inmate-to-inmate access was essentially the same in both.

¶ 14 Clark indicated that a few days before the defendant was found in possession of the homemade weapon, the defendant had asked to speak with Rolla but had not indicated why he had wanted to do so. Clark testified that he had forwarded the defendant's request and that Rolla had indicated that he would meet with the defendant. Clark did not know what had happened after that. On May 6, 2009, the defendant had again requested to speak with Rolla. When Clark advised that he would forward the message, the defendant said, "I made a weapon[,] and I intend to use it against staff."

¶ 15 Justin Cocke testified that from December 2008 through December 2009, he had been an investigator with IA and had dealt with inmate complaints about other inmates. Cocke explained that whenever an inmate claimed that he had "an enemy," he would advise the inmate to "refuse housing" so that the complaint could be investigated. Cocke testified that he had never directly dealt with the defendant but had heard of him. Cocke further testified that he had never seen a "request slip" from the defendant, but he acknowledged that Furlow, Rolla, or someone else from IA might have.

¶ 16 Aaron Hawk testified that he had worked as an IA investigator from May 2008 to January 2009. Hawk stated that inmates who had problems in the prison would submit "request forms" asking IA to look into their complaints or concerns. Hawk acknowledged that an inmate could also lodge a complaint by letter. Hawk testified that IA received numerous inmate complaints every day, but he did not recall ever seeing one from the defendant.

¶ 17 The defendant testified that he was in prison serving "20 years for robbery." The defendant testified that he was a member of the Unknown Vice Lords and that his gang was affiliated with several other gangs that also had members in prison. The gangs' "code of conduct" includes "no snitching, no homosexual activities, look out for one another, [and] things like that." The defendant explained that if an affiliated gang member violates the

code, he can "be brought up on charges" to a higher authority within the gang structure. If it is subsequently determined that an actionable violation of the code has occurred, a "smash on sight" or "SOS" order may be given with respect to the offending member. The defendant explained that an SOS order gives any affiliated member the right to physically harm the offending member. The defendant indicated that he had personally witnessed multiple inmate-on-inmate attacks, at least one of which resulted in an inmate's death.

¶ 18 The defendant testified that in the fall and winter of 2008, he had been housed in Pinckneyville's R5 segregation wing with other affiliated gang members. While housed in R5, the defendant had given Furlow information about other inmates' activities in exchange for "extra favors." The defendant specifically indicated that he had informed on R5-inmate porters who had been in possession of contraband such as coffee and candy. The defendant further indicated that although the fact that he had cooperated with IA was supposed to be kept confidential, other inmates had found out about it and had planted a bag of coffee in his cell. In December 2008, when the defendant was ticketed for having the coffee, he told Lawless what had happened, but Lawless had advised that "he didn't like snitches" and then "walked off." The defendant testified that he had also tried to forward a letter to Furlow advising him of the situation, but the letter had been intercepted by "one of the staff members and was shown to the R5 porters," some of whom were gang members. The R5 porters who were gang members then told "everyone" that the defendant had been working with IA. Thereafter, the defendant learned that he had been brought up on charges and that an SOS order had been issued against him. The defendant indicated that he had first learned of the SOS order in December 2008 when R5 staff had advised him that "gang members had it out for [him]." The defendant indicated that he had been particularly concerned that R5 inmate Terrell Jackson would harm him, because Jackson was an affiliated gang member, and they once "had a confrontation" while they were housed together in Cook County. The defendant

testified that he had also feared retaliation from his R5 cellmate "Will," a "higher ranking" gang member. To get away from Will, the defendant went on a hunger strike and was moved to a different cell. The defendant testified that Will had not had time to harm him because they had only been cellmates for "two or three minutes." In April 2009, fearing for his safety, the defendant feigned "feeling suicidal" and, as a result, was transferred from the R5 seg wing to receiving seg.

¶ 19 The defendant indicated that after he had been transferred to receiving seg, he had spoken to Cocke about the SOS order and had provided "individual names" and "specifics about the threats" made against him. The defendant testified that Cocke had indicated that someone would get back to him, but no one ever did. The defendant testified that he had been on suicide watch in receiving seg for three days and that after that, he had gone on a two-day hunger strike so he would not be transferred back to R5. The defendant indicated that after his hunger strike and due to a clerical error, he had been allowed to stay in receiving seg until he was subsequently transferred to the Pontiac Correctional Center. The defendant further indicated that he had felt safe in receiving seg, because the inmates were not aware of the SOS order, and no one had threatened him there.

¶ 20 The defendant indicated that on May 3, 2009, the officers in receiving seg had advised him that he was going to be transferred back to R5. The defendant further indicated that he had protested the transfer and had advised the officers that he feared that the porters in R5 were going to injure or kill him. The defendant testified that in response, Penland had issued him a ticket for "refusing housing assignment." Penland indicated, however, that someone from IA would meet with the defendant to discuss his concerns regarding the transfer. The defendant testified that no one from IA had subsequently come to see him and that "several times that day," he had told Clark that he needed to speak with Rolla. Although Clark had claimed that he had delivered the message, Rolla had apparently been too busy to see the

defendant. The defendant testified that he had "talked to Penland every day about the situation."

¶ 21 The defendant testified that on May 6, 2009, he had again told Clark that he needed to speak with Rolla. In response, Clark had indicated that he had already relayed the defendant's request for a meeting. Later that night, the defendant stopped Clark and intimated that he had the "shank" in his cell. The defendant testified that he had recently fabricated the weapon, and he explained how he had constructed it. The defendant stated that when he relinquished the weapon, he had told Lawless that the staff in receiving seg were "trying to send [him] to R5 trying to get the porters to jump on [him]." Shortly thereafter, Rolla met with the defendant, and the defendant explained what had happened in R5. The defendant also told Rolla that he had repeatedly asked to speak with him. Rolla told the defendant that he would file a report and that someone from IA would come and talk to him later, but no one ever did.

¶ 22 The defendant testified that after he had been ticketed for having the homemade weapon, he had also spoken with Furlow about the threats against him. The defendant acknowledged that he had not given Furlow "any names or details" and that he had told him that "staff" had been threatening him. The defendant claimed that he had previously written letters to Furlow in which he had listed the names of specific inmates who had threatened him.

¶ 23 The defendant testified that he had made and possessed the confiscated weapon for self-defense purposes only. The defendant further testified that officers did not intervene in inmate-on-inmate attacks until there was sufficient "back-up[,] because they don't want to get hurt." The defendant explained that because of the SOS order, he believed that something would happen to him "almost immediately" upon his return to R5. Because his attempts to report the threats against him had proven futile, he further believed that making

and possessing the weapon had been his only recourse. When cross-examined, the defendant acknowledged that each time he had reported a problem with a cellmate, he had been moved to another cell.

¶ 24 In closing arguments, the State maintained that the defendant was "nothing but a manipulator" and that his testimony was "nothing but self[-]serving." Noting that each time the defendant had feigned suicide, gone on a hunger strike, or reported a problem with a cellmate, remedial action had been taken, the State further maintained that even if the defendant had been facing a "realistic threat," the threat had not been immediate. The State noted that the defendant's claims that he had repeatedly reported the threats against him were directly contradicted by numerous witnesses.

¶ 25 Defense counsel argued that because no one from IA had ever bothered to investigate the defendant's concerns regarding R5, the defendant did what he had to do "under the circumstances." Noting that it was undisputed that the defendant was a gang member who had cooperated with IA, counsel argued that the defendant had satisfied the elements needed to establish the affirmative defense of necessity and that he should be found not guilty "on that basis."

¶ 26 In August 2010, the trial court entered a verdict finding the defendant guilty as charged. Noting, *inter alia*, that "the defendant admitted that any time that he made a worthwhile complaint[,] he was afforded a transfer or cell change," the trial court observed that the defendant had attempted to establish a valid necessity defense, "but failed miserably in his attempt to do so." Rejecting the defendant's trial testimony, the court further determined that the defendant had failed to prove the existence of an actual threat. After denying the defendant's posttrial motion, which alleged, *inter alia*, that the State had failed to rebut his affirmative defense, the trial court imposed a 10-year sentence on the defendant's conviction. After the trial court subsequently denied his motion to reconsider sentence, the

defendant filed a timely notice of appeal.

¶ 27

#### DISCUSSION

¶ 28 On appeal, the defendant argues that (1) his conviction must be reversed because the homemade weapon found in his cell was not a "knife, dirk[,] or dagger"; (2) the State failed to rebut his necessity defense; (3) the trial court was inherently biased against his use of a necessity defense; and (4) when imposing sentence, the trial court improperly considered a factor implicit in the charged offense as a factor in aggravation and failed to consider several applicable factors in mitigation. We will address each contention in turn.

¶ 29

#### The Homemade Weapon

¶ 30 In January 2010, defense counsel moved to dismiss the State's amended information, arguing that it failed to state a cognizable offense. At a hearing on the motion, defense counsel asserted that the homemade weapon that the defendant was charged with possessing was not a "knife, dirk, or dagger" as alleged in the State's charging instrument. At the hearing, the weapon was admitted into evidence and described as a "hardened plastic" toothbrush filed down to a point with the broken handles of two plastic "sporks" at its base, all "wrapped" together with "a white T-shirt material." The edges of the point were described as "not sharp," and it was noted that the weapon was a "poker[-]style weapon" as opposed to a "cutting tool." During the proceedings below, the weapon was sometimes referred to as a "shank" but was more often referred to as a "knife." We have examined the weapon ourselves, and we note that the plastic "sporks" resemble and act as a crude two-piece handle for the pointed blade.

¶ 31 At the hearing on the defendant's motion to dismiss, the parties submitted what defense counsel aptly referred to as "competing definitions" of the terms "knife," "dirk," and "dagger." Referencing the defendant's submitted definitions, defense counsel argued that because the weapon did not have a "sharpened blade," it was not a "knife," and because it

was not a knife, it was not a "dagger" or "dirk." In response, referencing its submitted definitions, the State argued that the weapon was a "dagger," *i.e.*, a "short swordlike weapon with a pointed blade and a handle used for stabbing." The trial court ultimately denied the defendant's motion and noted for the record that "for further definition," it had also considered the definitions of "knife" and "dagger" included in the eleventh edition of Webster's Collegiate Dictionary. On appeal, reiterating the arguments that he made below, the defendant maintains that we should reverse his conviction. We review this issue *de novo*. *People v. Kohl*, 364 Ill. App. 3d 495, 499 (2006).

¶ 32 For purposes of the statute defining the offense of unlawful possession of contraband in a penal institution, a contraband weapon includes "any knife, dagger, [or] dirk," but those weapons are not further defined. 720 ILCS 5/31A-1.1(b) (West 2008). "Under well-settled principles of statutory construction, an undefined term must be given its ordinary and popularly understood meaning," and "to determine that meaning, we may look to a dictionary." *Kohl*, 364 Ill. App. 3d at 500.

¶ 33 The dictionary that the trial court specifically referenced defines a "knife" as "a cutting instrument consisting of a sharp blade fastened to a handle" or "a weapon resembling a knife." Merriam-Webster's Collegiate Dictionary 690 (11th ed. 2003). The same dictionary defines "dagger" as "a sharp pointed knife for stabbing" or "something that resembles a dagger." *Id.* at 313.

¶ 34 Here, the weapon in question is knifelike given its pointed blade and makeshift handle, and although the weapon would be relatively useless as a cutting tool, as the trial court noted, it could definitely be used to "puncture" or stab someone. In that respect, the weapon is daggerlike and at the very least is "something that resembles a dagger." *Id.* Moreover, we agree with the State's observation that generally speaking, a "dagger" is any short, sharp-pointed weapon used for stabbing. See, *e.g.*, *State v. Giltner*, 537 P.2d 14, 15-16



defense \*\*\*, proof of that factor is a threshold requirement for its establishment." *Id.*

¶ 39 Here, the defendant attempted to justify his possession of the confiscated weapon by claiming that he had feared retaliatory attacks from gang members in the R5 segregation unit. The defendant further claimed that he had expressed specific concerns in statements and letters to prison staff, but no one had taken him seriously. Numerous witnesses contradicted the defendant's testimony regarding his allegedly reported threats, however, and the defendant's intimations aside, the evidence otherwise demonstrated that he had faced no immediate threat necessitating a need for a homemade weapon.

¶ 40 Whether an inmate actually faced a specific and immediate threat is a question for the trier of fact to determine from its assessment of the weight and credibility of the evidence presented for its consideration. *Kite*, 153 Ill. 2d at 46. Here, sitting as trier of fact, the trial court determined that the defendant had failed to prove that he had ever been threatened during his incarceration, noting that "only the defendant's testimony revealed such a situation." Rejecting the defendant's claims, the court thus determined that the defendant had failed to satisfy the "threshold" element of a valid necessity defense. Moreover, as the State notes on appeal, given the defendant's history of being deceitful and manipulative with prison staff, the trial court could have concluded that the defendant's possession of the weapon was a way "to concoct another means of manipulating his housing placement." In any event, "[i]t is well settled that on issues of credibility of witnesses, this court will, necessarily, defer to findings of the trial court." *Id.* Because it was not unreasonable for the trial court to find that the evidence adduced at trial did not sufficiently support the defendant's necessity defense, the trial court properly rejected the defense when determining the defendant's guilt. We note that considering the evidence as a whole, it is arguable whether the defendant was even entitled to assert the defense in the first place. See *People v. Govan*, 169 Ill. App. 3d 329, 338-39 (1988); *People v. Tackett*, 169 Ill. App. 3d 397, 402-03 (1988). We further note that



court suggested, *inter alia*, that a jury might find it "crazy" that "an inmate can have a knife in prison because he is worried about what is going to happen to him there." The court also stated, "It's to me silliness when we get to this point[,] but that's just a personal opinion[, and] I will not express any of that in front of a jury."

¶ 44 At a subsequent pretrial hearing held the day before the cause was to proceed to a jury trial, the defendant's use of a necessity defense was again discussed, and the trial court again advised the defendant of the attendant risks of asserting the defense. The trial court noted that although the defendant had the right to raise the defense, the evidence at trial would dictate whether he could actually assert it. During the discussion, the court stated that it was not "pre-disposed one way or the other," because it did not know what the defendant was "going to say." The defendant acknowledged that he understood the "concepts" involved. Following a recess in the proceedings, the defendant waived his right to a jury trial and asked that the matter be set for a bench trial.

¶ 45 Prior to the commencement of the bench trial, defense counsel advised the court that the defendant had a question about the "immediate[-]danger threshold" of his necessity defense. The applicability of the defense being contingent on the evidence presented at trial was discussed further, and the defendant again indicated that he understood.

¶ 46 On appeal, referencing portions of the trial court's pretrial remarks regarding the defendant's necessity defense, the defendant argues that the court's "preconceived notions regarding the necessity defense in a case where a prisoner possessed a 'weapon,' led [the court] to reject [the defendant's] defense even before [he] presented his evidence." Citing *People v. McDaniels*, 144 Ill. App. 3d 459 (1986), the defendant thus maintains that he was denied the right to a trial before an unbiased trier of fact. Acknowledging that he lodges these complaints for the first time on appeal, the defendant asks that we relax the normal rules of forfeiture or review the issue as an ineffective-assistance-of-counsel claim.

¶ 47 In *McDaniels*, the defendant's cause proceeded to a bench trial where she asserted a claim of self-defense based on an earlier altercation with the victim. *McDaniels*, 144 Ill. App. 3d at 460. Early in the trial, "before any evidence of self-defense, other than the prior altercation between the parties, had been presented," the trial court stated: "'Seems to be pretty ridiculous to claim self-defense. You might do that before a jury, but this is a bench trial.'" *Id.* at 462. "Moreover, the witness who was being cross-examined at the time these remarks were made was the victim, \*\*\* whose very involvement in the crime as the alleged victim would indicate his testimony would be biased against the defendant." *Id.* On appeal, the appellate court reversed the defendant's conviction, holding that "the trial judge's premature and clearly biased remarks denied the defendant a fair and impartial trial." *Id.* at 462-63. The court determined that considering the remarks in context, it was "plainly apparent that the trial court, as the trier of fact, had prejudged the validity of the defendant's defense prior to hearing the totality of the evidence." *Id.*

¶ 48 Here, we agree with the State's assessment that *McDaniels* is distinguishable because in *McDaniels*, the trial court demonstrated a bias against "the credibility of the defense and not the logic of the applicability of the defense in the first instance." Here, although the trial court expressed a personal opinion suggesting its disagreement with the legal notion that a prisoner found in possession of a weapon should be entitled to assert a necessity defense, the court acknowledged the precedents providing for such a defense, acknowledged that its opinion of those precedents was "totally irrelevant," and vacated its order granting the State's motion to deny the defendant's use of the defense. Moreover, when later discussing the defendant's proposed assertion of a necessity defense, the trial court specifically stated that it was not "pre-disposed one way or the other."

¶ 49 "It is assumed that judges, regardless of their personal backgrounds and experiences in life, will be able to set aside any biases or predispositions they might have and consider

each case in light of the evidence presented." *People v. Jackson*, 205 Ill. 2d 247, 276 (2001). "[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." *Liteky v. United States*, 510 U.S. 540, 555 (1994). "They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." (Emphases in original.) *Id.* "Allegations of judicial bias must be viewed in context and should be evaluated in terms of the trial judge's specific reaction to the events taking place." *Jackson*, 205 Ill. 2d at 277.

¶ 50 Here, "[a]lthough one may reasonably conclude the instant remarks were unfortunate or ill-advised" (*People v. Dixon*, 184 Ill. App. 3d 90, 101 (1989)), when considered in their proper context, the trial court's pretrial comments regarding the availability of the necessity defense in cases involving an inmate's possession of a weapon do not reveal "such a high degree of favoritism or antagonism as to make fair judgment impossible" (*Liteky*, 510 U.S. at 555). Accordingly, "the issue of judicial bias is waived" (*Jackson*, 205 Ill. 2d at 277), and the defendant's ineffective-assistance-of-counsel claim is without merit (*People v. Smith*, 372 Ill. App. 3d 179, 184-85 (2007)).

#### ¶ 51 The Defendant's Sentence

¶ 52 At the defendant's sentencing hearing, the State argued that the following statutory factors in aggravation were applicable: "the defendant's conduct caused or threatened serious harm," "the defendant has a history of prior delinquency or criminal activity," and "the sentence is necessary to deter others from committing the same offense." 730 ILCS 5/5-5-3.2(a)(1), (a)(3), (a)(7) (West 2008). Arguing that knowing it was not his only recourse, the defendant had threatened to use his homemade weapon against prison staff as a means of getting the "attention that he was seeking," the State maintained that deterrence was

particularly important under the circumstances. The State suggested that the court impose a sentence that would convey the following "message" as a deterrent: "[W]hen you make a knife out here at Pinckneyville Correctional Center[,] you get sentenced to prison[,] and you get sentenced for a long period of time \*\*\*." The State argued that the defendant should therefore receive the maximum nonextended-term sentence of 15 years. See 720 ILCS 5/31A-1.1(i) (West 2008); 730 ILCS 5/5-8-1(a)(4) (West 2008).

¶ 53 In response, defense counsel first noted that the defendant had not harmed anyone and had, in fact, voluntarily given the weapon to prison staff after voluntarily "bringing it to their attention." Acknowledging that the trial court had rejected the defendant's necessity defense at trial, counsel then argued that the defendant had acted under a "strong provocation," *i.e.*, "a fear of serious harm to himself," and that there were therefore "substantial grounds tending to excuse or justify his criminal conduct although failing to establish a defense." Defense counsel thus maintained that several statutory factors in mitigation were applicable in the present case. See 730 ILCS 5/5-5-3.1(a)(1), (a)(3), (a)(4) (West 2008). Defense counsel also asked the court to consider the time, money, and resources that were saved as a result of the defendant's decision to waive his right to a jury trial and proceed to a bench trial. Counsel maintained that the defendant "should be given a term of probation" or, alternatively, "the minimum sentence of four years."

¶ 54 In allocation, the defendant claimed, *inter alia*, that he had been "treated unfairly" and that the State had exaggerated a "weak situation" into "something big." The defendant maintained that he had told the truth at trial, while the State's witnesses "got on the stand and lied." Asserting that he had only wanted to protect himself, the defendant stated that he "felt [like he] had no other choice but to do what [he] did."

¶ 55 When imposing sentence, the trial court stated that it had a "tremendous problem" with the defendant's suggestion that to "survive" in prison, he had to threaten to use a

homemade weapon against the staff. The court noted that prison staff are "just doing a job in the midst of a lot of turmoil" and needed to be kept safe. Acknowledging that the defendant had voluntarily relinquished the weapon, however, the court intimated that a 15-year sentence would be too harsh. The court ultimately imposed a 10-year sentence on the defendant's conviction, concluding that 10 years was a "fair judgment" that "serves its purpose here in being the deterrent."

¶ 56 The defendant's final argument on appeal is that the trial court erred in imposing sentence. The defendant specifically contends that the court improperly considered a factor inherent in the charged offense by considering that his homemade weapon posed a potential threat to prison staff and that the court failed to consider the applicable statutory factors in mitigation that were argued at the sentencing hearing.

¶ 57 "Absent an abuse of discretion, a reviewing court will not disturb a sentence that falls within the statutory limits." *People v. Jones*, 295 Ill. App. 3d 444, 455 (1998). "In determining an appropriate sentence, the defendant's history, character, rehabilitative potential, the seriousness of the offense, the need to protect society and the need for deterrence and punishment must be equally weighed." *Id.* "In determining the correctness of a sentence, the reviewing court should not focus on a few words or statements made by the trial court, but it is to consider the record as a whole." *People v. Fort*, 229 Ill. App. 3d 336, 340 (1992). "A court is not required to set forth every reason or the weight it gave each factor considered in determining a defendant's sentence." *People v. Lima*, 328 Ill. App. 3d 84, 101 (2002). "A sentencing judge is presumed to have considered all relevant factors absent a contrary showing in the record." *People v. Shields*, 298 Ill. App. 3d 943, 951 (1998). Additionally, "there is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and thus we review the trial court's sentencing decision with deference." *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009). "The

burden is on the defendant to affirmatively establish that the sentence was based on improper considerations." *Id.*

¶ 58 The defendant argues that the court improperly considered a factor inherent in the charged offense by considering that his homemade weapon posed a potential threat to prison staff. The defendant acknowledges that he failed to include this claim in his motion to reconsider sentence, and as a general rule, "a defendant forfeits appellate review of any sentencing issue not raised in the trial court in a written postsentencing motion." *People v. Lewis*, 234 Ill. 2d 32, 42 (2009). The defendant thus asks that we review the issue as plain error. See, e.g., *People v. Whitney*, 297 Ill. App. 3d 965, 969 (1998). "The first step in conducting plain-error review is to determine whether error occurred at all." *People v. Campbell*, 2012 IL App (1st) 101249, ¶ 20.

¶ 59 "It is well established that a factor inherent in the offense should not be considered as a factor in aggravation at sentencing." *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 22. "At the same time, however, a trial court may consider the nature and circumstances of the offense \*\*\*." *People v. Robinson*, 391 Ill. App. 3d 822, 842 (2009).

¶ 60 Here, when taken in context, the trial court's comments regarding the defendant's possession of a homemade weapon were general comments regarding the nature and circumstances of the charged offense. The remarks were made during the trial court's discussion of the need to protect prison staff, which reflected the court's expressly stated goal of imposing a sentence that would serve as a "deterrent" to other inmates. Because the defendant is unable to affirmatively establish that the trial court improperly considered a factor inherent in the charged offense, the defendant is unable to establish plain error.

¶ 61 The defendant lastly complains that the trial court failed to consider the statutory factors in mitigation that defense counsel argued at the sentencing hearing, *i.e.*, that "[t]he defendant's criminal conduct neither caused nor threatened serious physical harm to another,"

that "[t]he defendant acted under a strong provocation," and that "[t]here were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense." 730 ILCS 5/5-5-3.1(a)(1), (a)(3), (a)(4) (West 2008). At the outset, we reiterate that " '[t]he trial court has no obligation to recite and assign value to each factor presented at a sentencing hearing.' " *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010) (quoting *People v. Hill*, 402 Ill. App. 3d 920, 928 (2010)). "Rather, 'it is presumed that the trial court properly considered all mitigating factors and rehabilitative potential before it; and the burden is on the defendant to affirmatively show the contrary.' " *Id.* (quoting *People v. Garcia*, 296 Ill. App. 3d 769, 781 (1998)).

¶ 62 Here, when opining that a 15-year sentence would be excessive under the circumstances, the trial court specifically recognized that the defendant had voluntarily relinquished the homemade weapon that he had threatened to use against prison staff. The record thus indicates that the court considered that the defendant's conduct had neither caused nor immediately threatened serious physical harm. With respect to whether the trial court considered that the defendant had acted "under a strong provocation" and that "[t]here were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense" (730 ILCS 5/5-5-3.1(a)(3), (a)(4) (West 2008)), as defense counsel acknowledged when arguing that these factors were applicable, the trial court rejected the defendant's necessity defense at trial. It thus appears that the trial court did not consider that the defendant had acted under a strong provocation or that there were grounds tending to justify his conduct, because it previously rejected the defendant's testimony that might have otherwise supported such findings. Under the circumstances, the trial court's findings were ostensibly based on credibility determinations, and we cannot conclude that the trial court abused its discretion in imposing sentence. See *People v. Rader*, 272 Ill. App. 3d 796, 806-07 (1995); *People v. Murillo*, 225 Ill. App. 3d 286, 301 (1992).

¶ 63

## CONCLUSION

¶ 64 For the foregoing reasons, the defendant's conviction and sentence are hereby affirmed.

¶ 65 Affirmed.