

No. 1-14-1748

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 3937
)	
KENDERICK ADAMS,)	Honorable
)	Kevin M. Sheehan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm defendant's sentence where the trial court did not err in relying on the sentencing guidelines that became effective on June 1, 2008.

¶ 2 Following a jury trial, defendant Kenderick Adams was convicted of predatory criminal sexual assault of a child and aggravated criminal sexual abuse. He was sentenced to 14 years imprisonment for predatory criminal sexual assault of a child and 4 years for aggravated criminal sexual abuse, to be served consecutively. On appeal, defendant contends that the trial court erred

when it imposed the sentence for predatory criminal sexual assault of a child based on the mistaken belief that the statutory sentencing guidelines allowed for a range of 6 to 60 years imprisonment rather than 6 to 30 years. We affirm.

¶ 3 Defendant was initially charged with three counts of predatory sexual assault of a child, four counts of criminal sexual assault, six counts of aggravated criminal sexual abuse, and nine counts of criminal sexual abuse. The State elected to proceed to trial on Count I of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2008) and Count XI, a single count of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2008). The State *noll prossed* the remaining 20 counts. Relevant here is Count I, which charged that defendant, "on or about July 17, 2007 and continuing on through July 16, 2008," committed "an act of sexual penetration" with A.M., specifically contact between defendant's mouth and A.M.'s penis, when A.M. was under 13 years of age.

¶ 4 A.M. was born July 17, 1997. At trial, he testified that defendant is his cousin and, in 2007, when A.M. was 10 years old, lived in the apartment below that of A.M. and his mother. One day that year, A.M. entered defendant's room and witnessed him watching a pornographic film. Defendant told A.M. to leave and he complied. On a subsequent occasion, A.M. again entered defendant's room and witnessed him watching a pornographic film. This time, however, A.M. stayed and both he and defendant masturbated. This behavior continued until one day defendant asked if he could touch A.M.'s penis. A.M. said yes and defendant manually masturbated A.M. This occurred multiple times.

¶ 5 On a subsequent occasion, defendant asked if he could put his mouth on A.M.'s penis. A.M. agreed and defendant performed oral sex on A.M. The oral sex happened more than one but less than five times. A.M. testified the sexual interactions with defendant began when he was 10 years old but also stated he did not remember when they began. Defendant last put A.M.'s penis in his mouth when A.M. was approximately 12 or 13 years old.

¶ 6 Assistant State's Attorney Gillman testified defendant provided a signed statement to her during his interview at the police station. The statement was published to the jury. In the statement, defendant declared that he masturbated with A.M., "jag[ged] him off" multiple times, and performed oral sex on him between six and eight times. Defendant stated all of the incidents took place over the course of a year when A.M. was between 9 and 10 years old and defendant was between 16 and 18 years old, "between July 17, 2007 and July 16, 2008."

¶ 7 Detective Robert Midlawski testified that defendant informed him that he performed oral sex on A.M. between 10 and 20 times. Defendant presented no evidence.

¶ 8 The jury found defendant guilty of both counts. The trial court sentenced defendant to 14 years' imprisonment for predatory criminal sexual assault of a child (Count I) and 4 years for aggravated criminal sexual abuse (Count XI), to be served consecutively. During sentencing, the State contended that the sentencing range for both counts was from 8 to 67 years in prison. The court clarified that this range included the sentences for both counts. It then stated that for Count I, the range was 6 to 60 years in prison. Defendant did not object to the stated sentencing range or file a post-sentencing motion.

¶ 9 On appeal, defendant contends that the trial court erred when it relied on the 6 to 60 year sentencing guideline in imposing sentence for predatory criminal sexual assault of a child. This sentencing range became effective on June 1, 2008. 720 ILCS 5/12-14.1(b)(1) (West 2008). Prior to that, the sentencing range for the offense was 6 to 30 years imprisonment. 720 ILCS 5/12-14.1(b)(1) (West 2006); 730 ILCS 5/5-4.5-25(a) (West 2006). Defendant argues the State proved the act of sexual penetration occurred in 2007, before the effective date of the higher sentencing range. He therefore requests that his sentence for this conviction be vacated and the cause remanded for resentencing.

¶ 10 To preserve a claim of sentencing error for review, a defendant must both object at trial and include the alleged error in a written postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Defendant acknowledges that he failed to preserve the alleged error for appeal by failing to object to the trial court's comments regarding the sentencing range at the time of sentencing and failing to file a post-trial motion to reduce sentence. He has, therefore, forfeited appellate review of his claim (*Hillier*, 237 Ill. 2d at 546), but argues we should review the issue under the second prong of the plain error doctrine.

¶ 11 As defendant has forfeited appellate review of the issue, we may review his claim of error only if he has established plain error. *People v. Piatkowski*, 225 Ill. 2d 551, 564-565 (2007). Plain errors are those that affect something that is " 'fundamental to the integrity of the judicial process.' " *People v. Keene*, 169 Ill. 2d 1, 17 (1995) (quoting *People v. Green*, 74 Ill. 2d 444, 456 (1979) (Ryan, J., specially concurring)). The plain error doctrine is a narrow and limited exception to the general rule of procedural default. *Hillier*, 237 Ill. 2d at 545.

¶ 12 To obtain relief under the doctrine, defendant must first show that a clear or obvious error occurred. *Piatkowski*, 225 Ill. 2d at 565. In the sentencing context, defendant must then show 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. Hall*, 195 Ill. 2d 1, 18 (2000).

¶ 13 Under both prongs of the plain-error doctrine, the defendant has the burden of persuasion. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008); *People v. Herron*, 215 Ill. 2d 167, 187 (2005). If the defendant fails to meet his burden, the procedural default will be honored. *Naylor*, 229 Ill. 2d at 593. The second prong of the plain error doctrine should be invoked only when the possible error is so serious that its consideration is “necessary to preserve the integrity and reputation of the judicial process.” *People v. Hampton*, 149 Ill. 2d 71, 102 (1992). However, before there can be plain error, there must be error. *Herron*, 215 Ill. 2d at 178. For the following reasons, defendant has failed to meet his burden to show an error occurred here.

¶ 14 Pursuant to the indictment, defendant was convicted for "an act" of predatory criminal sexual assault of a child under 13 years old age occurring "on or about July 17, 2007 and continuing on through July 16, 2008." Prior to June 1, 2008, the applicable sentencing range for this offense was 6 to 30 years in prison. 720 ILCS 5/12-14.1(b)(1) (West 2006); 730 ILCS 5/5-4.5-25(a) (West 2006). In 2007, the statute was amended to double the maximum prison term for the offense to 60 years in prison, effective June 1, 2008. 720 ILCS 5/12-14.1(b) (1) (West 2008). Defendant contends that the State failed to prove beyond a reasonable doubt that defendant's offense occurred after June 1, 2008, the effective date of the longer sentencing range, and the

trial court therefore erred in relying upon the sentencing guidelines that became effective on June 1, 2008. The record contradicts his claim.

¶ 15 The State proved the sexual penetration occurred between July 17, 2007, and July 16, 2008, as charged in Count I. A.M. testified that the abuse began when he was 10 years old and occurred on multiple occasions before ending when he was approximately 12 or 13 years old. A.M. was 10 years old from July 17, 2007 through July 16, 2008. More importantly, in defendant's signed written statement to the Assistant State's Attorney, he acknowledged that the incidents included six to eight acts of sexual penetration, which occurred between July 17, 2007, and July 16, 2008. The evidence at trial therefore supports a finding that an act of sexual penetration occurred after June 1, 2008, when the sentencing guideline relied upon by the trial court became effective.

¶ 16 It was defendant's burden to show that the court erred in relying on a sentencing structure that became effective on June 1, 2008, *i.e.*, that the evidence did not support a finding that an act of sexual penetration occurred after that date. He failed to do so here. Accordingly, the court did not err in sentencing defendant in the 6 to 60 year range. There being no error, defendant's claim does not warrant plain error review.

¶ 17 Defendant having failed to preserve the issue for appeal and show that a plain error occurred, we affirm the ruling of the trial court.

¶ 18 Affirmed.