

No. 1-14-2026

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 10598
	)	
ALEX AVERHART,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Justices Lavin and Cobbs concurred in the judgment.

**O R D E R**

- ¶ 1 *Held:* Defendant's sentence is affirmed where the trial court did not improperly consider in aggravation a factor inherent in the offense, *i.e.*, the broad societal harm caused by the drug trade.
- ¶ 2 Following a jury trial, defendant Alex Averhart was convicted of delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2012)) and sentenced to nine years' imprisonment. On appeal, defendant contends that his case should be remanded for resentencing as the trial court

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relied on an improper factor, namely the broad societal harm caused by the drug trade, at sentencing. We affirm.

¶ 3 Defendant was charged with, *inter alia*, delivery of a controlled substance. By leave of court, he proceeded *pro se* at trial. At trial, testimony by three police officers established that, on March 21, 2013, defendant sold "[t]wo clear knotted plastic bags containing a white, hard-like substance" for \$20 of prerecorded funds to an undercover officer. A forensic scientist testified that the bags contained "0.2 grams of chunky substance \*\*\* that were cocaine," a controlled substance. The jury found defendant guilty of delivery of a controlled substance.

¶ 4 At sentencing, defendant again proceeded *pro se*. The evidence established that defendant had prior felony convictions for manufacture/delivery of a controlled substance (two from 1988, six from 1990, one from 2003), possession of a controlled substance (two from 1991, one from 2003), and possession of narcotics (1996). He also had two prior misdemeanor convictions from 2008 for battery and violation of an order of protection. He had served sentences ranging from 136 days' to 6 years' imprisonment. In the presentence investigation report, defendant gave the following version of events: "Someone brought the police to me to buy cocaine. I did not sell the police anything. No transaction of any kind took place. But because of my background, I was railroaded. I did not commit this crime."

¶ 5 The State informed the court that defendant was Class X mandatory based on his background and asked the court to sentence him to "at least seven years in the Illinois Department of Corrections." It argued in aggravation that, based on defendant's long history of criminal convictions, he "just really did not take responsibility for his actions." It requested a sentence "long enough for him to recognize the consequence of his actions as well as attempt to

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change his direction in life." Defendant argued in mitigation that there was no aggravation, he was 51 years old, and there was "no violence" in his background.

¶ 6 The court sentenced defendant to nine years' imprisonment. It counted two "violent" misdemeanor offenses and recited the felony convictions and sentences in defendant's "extensive background." The court found that defendant had "no acceptance of responsibility here." It noted that defendant was Class X mandatory, that his longest previous prison term was six years, and that "[n]one of that has done anything." The court sentenced defendant to 10 years' imprisonment but subsequently reduced the sentence to 9 years on defendant's motion to reduce sentence. Defendant timely appealed.

¶ 7 On appeal, defendant argues that his case should be remanded for resentencing because the trial court considered in aggravation a factor inherent in the offense, namely the broad societal harm caused by the drug trade. Defendant refers to the following remarks the court made to defendant before pronouncing sentence:

"But you obviously view this as somehow as many do as not a crime. Sadly too many people like yourself look at it that way and look at it only that way in your case, supporting your own lengthy drug abuse or else you just don't care in any way about what all this dope has done to such a huge segment of our community. It creates violence, it creates all kinds of horrific sort of consequences because people like yourself is dealing in dope. You keep dealing dope and the people that [buy] it generally are fortunate enough to be working at first, generally. Many of them lose their jobs, they lose their ability to pay for it through legitimate purposes, so they turn to crime. All the money, it's always cash, it flows out of the country. It's enormous resources devoted to trying to stop

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people from ruining their lives on narcotics, and it's just a drain, like having a toilet that never stops running, flushing money and lives down the drain."

¶ 8 Defendant argues these comments show the court improperly considered the societal harm caused by the drug trade in sentencing. He further contends that the trial court improperly relied on its own personal knowledge when considering the broad societal harm caused by the drug trade, pointing to the court's comments that "[a]ll the money \*\*\* flows out of the country" and that most people who purchase drugs "generally are fortunate enough to be working" before they "lose their jobs."

¶ 9 The State responds that defendant forfeited this claim as it is a sentencing issue and defendant failed to object at sentencing or raise the issue in his posttrial motion to reduce sentence. The State further argues that, forfeiture aside, the trial court's comments regarding the societal harm caused by the drug trade were not improper as they "can be plainly understood as the judge's attempt, after recounting 15 previous convictions and the failed rehabilitation efforts stemming from those, to deter and emphasize the broader societal implications of defendant's drug-related criminality and his lack of remorse." Alternatively, the State argues that any weight placed on the trial court's consideration of the broad societal harm caused by the drug trade, even if improper, was insignificant.

¶ 10 As a threshold matter, defendant concedes that he failed to properly preserve this issue for review because he did not object at the sentencing hearing and did not raise it in his motion to reconsider sentence or his motion to reduce sentence. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). His argument is therefore forfeited. *Hillier*, 237 Ill. 2d at 544-45.

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¶ 11 However, citing *People v. Dameron*, 196 Ill. 2d 156 (2001), defendant argues that review is warranted as forfeiture is less rigidly applied "where the basis for the objection is the circuit court's conduct." *Dameron*, 196 Ill. 2d at 171. Defendant's argument raises what our supreme court has termed the "*Sprinkle* doctrine." See *People v. Thompson*, 238 Ill. 2d 598, 612 (2010). "[U]nder the *Sprinkle* doctrine, the forfeiture rule may be relaxed when a trial judge oversteps his or her authority in the presence of the jury or when counsel has been effectively prevented from objecting because it would have fallen on deaf ears." (Internal quotation marks omitted.) *Thompson*, 238 Ill. 2d at 612 (2010) (quoting *People v. Hanson*, 238 Ill. 2d 74, 118 (2010), quoting *People v. McLaurin*, 235 Ill. 2d 478, 488 (2009)). The doctrine will be applied to excuse the failure to preserve an error only "in extraordinary circumstances," such as where the court makes an inappropriate comment to the jury or relies on social commentary rather than the evidence in sentencing. *Thompson*, 238 Ill. 2d at 612. As our supreme court explained, it is crucial that the forfeiture rule should be applied "uniformly except in compelling situations because failure to raise a claim properly denies the trial court an opportunity to correct an error or grant a new trial, thus wasting time and judicial resources." *Thompson*, 238 Ill. 2d at 612 (citing *McLaurin*, 235 Ill. 2d at 488).

¶ 12 There is no basis to apply the *Sprinkle* doctrine here. Even if the court erred in referencing the broad societal harm resulting from the drug trade, its conduct was not so extraordinary that defendant's forfeiture should be forgiven. Defendant does not claim that the trial court overstepped its authority in front of the jury. Instead, he argues that he was practically prevented from objecting during sentencing as he, a *pro se* defendant, could not be expected to "interrupt and chastise the judge moments before the judge determined how long he would be

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incarcerated." However, the record shows the trial court admonished defendant on multiple occasions about the risks associated with proceeding *pro se* and defendant was therefore well aware of the risks of self-representation. "A *pro se* defendant must comply with the rules of procedure required of those represented by counsel and a court should not apply more lenient standards to *pro se* clients." *People v. DeRossett*, 237 Ill. App. 3d 315, 339 (1992). Further, nothing in the record suggests the trial court would have ignored an objection. The mere fact that defendant is challenging a comment made by the trial court does not provide a compelling reason to relax the forfeiture rule in this case.

¶ 13 Defendant argues alternatively that, even if forfeited, review of his sentencing claim is warranted under the plain-error doctrine. The plain-error doctrine is a narrow exception to the forfeiture rule that allows a reviewing court to consider unpreserved error when "a clear or obvious error" occurred and (1) the evidence was so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) that error was 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. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The burden to prove plain error rests with the defendant. *Thompson* at 613.

¶ 14 Defendant argues his claim falls under the second prong of the plain-error doctrine. However, absent a "clear and obvious" error, there can be no plain error and defendant's claim is forfeited. *Piatkowski*, 225 Ill. 2d at 565; *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010) (citing *People v. Herron*, 215 Ill. 2d 167, 187 (2005)). Accordingly, we must first decide whether an error in sentencing actually occurred. See *People v. Naylor*, 229 Ill. 2d 584, 593 (2008).

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¶ 15 Imposition of a sentence is normally within a trial court's discretion (*People v. Jones*, 168 Ill. 2d 367, 373 (1995)), and there is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, such that the trial court's sentencing decision is reviewed with great deference. *People v. Dowding*, 388 Ill. App. 3d 936, 942–43 (2009). Nonetheless, the question of whether a court relied on an improper factor in imposing a sentence ultimately presents a question of law to be reviewed *de novo*. *People v. Chaney*, 379 Ill. App. 3d 524, 527 (2008). The burden is on the defendant to affirmatively establish that the sentence was based on improper considerations. *Dowding*, 388 Ill. App. 3d at 943.

¶ 16 Defendant argues the trial court erred in improperly considering the broad societal harm caused by the drug trade as a factor in aggravation, as this is inherent in the offense. Defendant is correct that a factor inherent in the offense should not be considered as a factor in aggravation at sentencing because the legislature is presumed to have provided for such factors when it established the applicable penalty range. *Dowding*, 388 Ill. App. 3d at 942. He is also correct that it is improper to consider general societal harm as an aggravating factor in a drug case as the harm is implicit in the offense. See *People v. Atwood*, 193 Ill. App. 3d 580, 592 (1990); *People v. Maxwell*, 167 Ill. App. 3d 849, 852 (1988) ("[T]he issue of widespread harm from the use of cocaine is implicit in the crime of delivery."). However, "it is not improper *per se* for a sentencing court to refer to the significant harm inflicted upon society by drug trafficking," as "[i]t is important that defendants understand why they are subject to the penalties provided by law and why they received their particular sentences." *People v. McCain*, 248 Ill. App. 3d 844, 852 (1993).

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¶ 17 We find that the court did not improperly consider the broad societal harm as an aggravating factor at sentencing. In determining whether the trial court based the sentence on proper aggravating and mitigating factors, a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court. *Dowding*, 388 Ill. App. 3d at 943. The record establishes that the trial court's remarks regarding the societal harm caused by the drug trade, read in context with the court's entire sentencing decision, were made solely in concert with its discussion of defendant's lack of accountability and remorse and in direct response to defendant's assertion that there was no violence in his background.

¶ 18 The court first set forth the litany of defendant's prior convictions, noting this background was not something to be proud of. It discussed the mitigating factors in defendant's PSI report, but then told defendant that, although the evidence against him was "overwhelming,"

"[Y]ou continue to argue in this statement that you made to the probation officer during the Pre-Sentence investigation that you, somehow you're being railroaded, you're being – you didn't do anything. \*\*\* You've got those other 13 convictions involving narcotics. And this time somehow you didn't do anything. It shows that you're not learning anything. You don't show any remorse."

¶ 19 The court then segued into its discussion regarding the societal harm resulting from the drug trade, pointing out that the drug trade "creates violence, it creates all kinds of horrific sort of consequences because people like yourself [are] dealing in dope." The court concluded:

"I'm aware that you would have no remorse for it. You think you can get away with it. You think you can do it to support your habit. You said you had drug treatment when you were in jail. You said successfully, but successfully means you're no longer

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part of the drug trade. If it was successful, it means that you're not supporting your daily habits while you were living off the backs of individuals that are addicted to substances you try to sell to the community.

You are Class X mandatory. Six years was the most significant sentence you have received in the past. None of that has done anything. I'm sentencing you to ten years in the Illinois Department of Corrections, followed up with three years mandatory supervised release."

¶ 20 The record clearly shows that the court relied on defendant's significant criminal history, his lack of remorse or accountability, and his inability or unwillingness to demonstrate a potential for rehabilitation in sentencing. Nothing in the court's pronouncement demonstrates that its statement regarding the societal harm caused by the drug trade was anything more than an explanation to defendant of why he was subject to the penalties of law and the sentence he received. It was an explanation that there was, in fact, violence in defendant's background as a result of his drug convictions. Further, "[c]ommenting on the problems caused by drug-related crime encourages rehabilitation by providing a context in which a defendant may develop feelings of remorse." *McCain*, 248 Ill. App. 3d at 852. In sum, when considered in their entirety, we find the trial court's remarks demonstrate that it did not improperly consider the societal harm as a factor in aggravation. As there is no error in the court's sentencing decision, there can be no plain error. Defendant's argument is therefore forfeited. The court's judgment is affirmed in all respects.

¶ 21 Affirmed.