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2016 IL App (3d) 140251-U

Order filed August 3, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

PEOPLE OF THE STATE OF ILLNOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Plaintiff-Appellee,	)	Rock Island County, Illinois.
	)	
v.	)	Appeal No. 3-14-0251
	)	Circuit No. 09-CF-878
ERIC A. PESINA,	)	
	)	The Honorable
Defendant-Appellant.	)	Walter D. Braud
	)	Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices Carter and Holdridge concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Where the trial court merely admonished defendant regarding his jury trial waiver, reassured a youthful witness, and explained its assignment of witness credibility during its oral ruling, the defendant failed to show it prejudged his case. Further, it did not abuse its sentencing discretion where the defendant failed to prove it did not consider all of the factors in aggravation and mitigation or that it relied on improper factors in aggravation.
- ¶ 2 Defendant, Eric A. Pesina, was charged by information with two counts of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 2014)) for allegedly committing two

acts of sexual penetration on two separate occasions with his nephew, J.C., who was at the time under the age of 13. Following a bench trial, the court entered a verdict of guilty for both counts and sentenced Pesina to 18 years' imprisonment for each count to be served consecutively along with a term of three years' mandatory supervised release. Pesina appeals arguing that the trial court (1) committed plain error by prejudging the credibility of a witness, upon whose testimony the State's entire case rested, prior to the close of evidence and (2) abused its sentencing discretion in finding that he had no "redeeming value" despite the presence of numerous factors in mitigation. For the foregoing reasons, we affirm the trial court's ruling and sentencing.

¶ 3

### FACTS

¶ 4

On October 2, 2009, Pesina was charged by information with two counts of predatory criminal sexual assault. In count I, it was alleged that on September 23, 2009, Pesina being 17 years or older committed an act of sexual penetration with J.C., who was under 13 years of age, by placing his penis in the anus of J.C. In count II, it was alleged that the same occurred between September 1, 2009, and September 16, 2009. An arrest warrant was issued for Pesina on October 2, 2009. He could not be found at that time, but was arrested a couple of years later and made his initial appearance in court in June 2012.

¶ 5

### Preliminary Hearing

¶ 6

On June 26, 2012, the trial court found probable cause to hold defendant for trial at the preliminary hearing. Detective Marcie O'Brien testified regarding her investigation of Pesina's alleged sexual assault of J.C. She stated at the hearing that the alleged assault was reported in September 2009 and that she was assigned the case at that time. J.C. told her that Pesina had on several occasions showed him pornographic videos, had made him bend over the bed, and had put his penis in J.C.'s butt. She stated that on September 23, 2009, following one of those alleged

occasions, J.C. told his father, Carlos Chavez, about the incident and that it was the latest of between 5 to 10 occurrences. She was told that J.C.'s family – Hilda Chavez, J.C.'s mother, and the parents of Hilda, Sanjuanita and Oscar Pesina – confronted Pesina, who admitted to the acts and apologized. O'Brien was, however, unable to speak with Sanjuanita or Oscar during her investigation to verify the confrontation or Pesina's admittance. She noted that at all times during her investigation J.C. was under the age of 13 and Pesina was over the age of 17.

¶ 7 Pesina waived his right to a jury trial. The trial court admonished him of his rights regarding such a waiver. It also told Pesina that by electing a bench trial, he would be "at a disadvantage" because judges in bench trials "have looked at the file and maybe [the court has] you in a the [sic] preliminary hearing. We kind of know a little bit about it."

¶ 8 Trial

¶ 9 The matter proceeded to a three-day bench trial in front of the same trial court judge who had presided over Pesina's preliminary hearing. The State called J.C., Carlos, Hilda, and O'Brien to testify on its behalf. Their testimony provided the following account of the alleged sexual assault and the ensuing timeline of events.

¶ 10 On several different occasions in September 2009 when J.C. would visit Sanjuanita and Oscar's home, Pesina, who was also visiting there at the time, allegedly had J.C. rub his own penis, rub Pesina's penis, and suck Pesina's penis. Pesina would also purportedly hold J.C. down by his arms, chest, and legs and insert his penis into J.C.'s butt.

¶ 11 J.C. told Carlos on September 25, 2009, about the alleged assault. Although Carlos testified that J.C. told him Pesina threatened him to prevent him from telling anyone about it, J.C. testified that he was not threatened. J.C. also testified to having previously falsely accused his grandfather, Oscar, of sexual assault, but affirmed that Pesina did in fact sexually assault him.

¶ 12 On September 28 Carlos told Hilda about the alleged assault and Hilda took J.C. to the hospital. J.C.'s examination revealed he had no signs of trauma, but did have small bruises on his right arm and leg. J.C. testified that Pesina caused the bruises and photos of these bruises were admitted into evidence. Although a rape kit was not performed, a hospital worker did call the police to report the alleged assault. O'Brien was assigned the case and, along with DCFS, interviewed J.C. the following day.

¶ 13 At some point prior to Pesina leaving town, Pesina, Sanjuanita and Oscar allegedly went to Hilda's home to speak with her about the alleged assault. While J.C. was in a separate room, Pesina purportedly got on his knees and apologized to Hilda for what he had done to J.C. Afterwards, Oscar supposedly had J.C. say what happened with Pesina and J.C. said, "[y]ou did touch me, you did what you did to me." Oscar and Sanjuanita got upset and then left with Pesina. That was the last time J.C. saw Pesina until the trial because he left town.

¶ 14 Pesina was charged and an arrest warrant was issued in October 2009. O'Brien tried to locate Pesina. Oscar, Sanjuanita, and Pesina's ex-girlfriend all told her they did not know where he was. When Oscar passed away, Pesina still did not return to even attend his funeral. O'Brien later learned of the conversation where Pesina allegedly admitted the assault and apologized but was unable to verify its occurrence with Oscar prior to his passing. Pesina was finally arrested in Texas in June 2010.

¶ 15 While J.C. was testifying, the trial court informed him that he was speaking too softly. The court stated that it understood J.C. might be embarrassed but that he was in a safe place and would need to speak up so that his story could be understood. At the conclusion of J.C.'s testimony, the trial court asked if it was embarrassing for him. J.C. responded "yes." The trial

court then stated “[o]kay, young man, you are a very brave person and a very good person and don’t take any of this with you as some bad mark on you.”

¶ 16 After the state rested, Pesina called himself and Sanjuanita to testify on his behalf. Sanjuanita testified that in 2009, J.C. would not come to her house while she was working. She further stated that she and Oscar did go to Hilda’s home to talk with Hilda and J.C. about the allegations, but that Pesina did not accompany them and she did not remember Pesina getting on his knees and apologizing. She testified that she and Oscar also did not talk to J.C. because Hilda would not let him out of his room. Sanjuanita noted that Pesina left in 2009; she did not know where he had gone; and she had no contact with him from the time he left until the time he was arrested. She was not able to reach him even to tell him of Oscar’s passing.

¶ 17 Pesina testified to several static facts including his age of 32, his previous burglary convictions, his two years of imprisonment in either 2004 or 2005, and his required sex offender registration. He also stated that none of what the State’s witnesses testified to having happened occurred.

¶ 18 Pesina asserted that before 2009, he did not spend much time with J.C. and that in 2009 he lived in Iowa with his former fiancée until September when they broke up. Around the time of the break-up, he would visit Sanjuanita and Oscar’s home and there were times when J.C. would be there. Pesina declared that he never touched J.C. with his penis, asked him to touch his penis, threatened J.C., told anyone that he did something bad to J.C., or got down on his knees to apologize for any such alleged occurrences. Regarding his being found in Texas almost a year later after he had been charged with the alleged assault, Pesina testified that he had been planning to move since April 2009 because “there was nothing here in Illinois” and he wanted to go somewhere where he could be an artist. He stated that his move to Texas at the time J.C.

accused him of the assault was due solely to his break-up and because his uncle was working there. It was not because of a belief that the police were after him or that he had committed a crime. He drove to Texas with a friend and found work with a contractor. He stated that while in Texas, he did not have contact with his family in Illinois and that he had not known his father had passed.

¶ 19 The trial court found Pesina guilty and stated while making its ruling that when cases are close, it gets “nervous” that it is “going to mess up” because it wants to “get it right.” As a result, it found itself “overworking” to make sure it reaches the right decision. The trial court pointed out, however, that this case was not close. It expressed “worry on the other side” that it was “not going to pay much attention to everything that is being said because it’s pretty clear what happened.” The trial court then explained, “[t]he boy’s testimony is pretty much beyond reproach. He’s totally credible. He’s in obvious pain. What happened to him was traumatic. Anyone that listened to his testimony would have been affected.”

¶ 20 Sentencing

¶ 21 Prior to the sentencing hearing held on January 21, 2014, the trial court ordered a presentencing report. The report provided that Pesina had numerous adult convictions for traffic, misdemeanor, and ordinance offences. He also had convictions for assault causing bodily injury, “willful injury” and burglary, failing to register as a sex offender, and for possession of less than 10 grams of cannabis. The report noted that Pesina had two children, ages 5 and 13, for whom he owed child support and that he had future goals of becoming an artist and completing welding school.

¶ 22 Five people wrote letters to the court attesting to Pesina’s positive character, reliability, focus on his family, children, and current fiancée, and his inspirational artwork. By contrast, in a

written victim impact statement, J.C. described how Pesina's actions affected him. He wrote that he is always scared, has nightmares, does not trust anyone, feels like there is nothing else left in his life, imagines Pesina everywhere, gets in fights, never makes friends, argues with his mother, and leaves the house and walks for hours.

¶ 23 At the sentencing hearing, Pesina stated, *inter alia*, that he had used the last year of his life to review his past and prepare for the future. He noted that his children and his fiancée were his sources of pride and stressed that they were his foundation for a strong and stable future. He expressed sympathy for everyone affected by the continued tragedy of his broken family and stated he wanted to continue to repair his family's sacred bond. He noted that his faith in God remained very strong and asked the court for mercy for the sake of his children and family.

¶ 24 The trial court sentenced Pesina to 18 years' imprisonment for each count to be served consecutively with three years to natural life of mandatory supervised visitation. The trial court took time to explain its reasoning for such a sentence. Regarding whether Pesina had caused or threatened serious harm, it stated:

“[T]hat's pretty muddled. [Pesina] didn't really cause [J.C.] to bleed. He doesn't have a scar that you can see. He wasn't in tears, at least in anybody's presence \*\*\* The harm that happened is what we all know, even without education. Although everybody here is educated. I mean, we have all been through these cases before. The people here, this is what we do for a living, so we know what the harm is. We know it another [sic] long standing. We know it's forever. We know it causes people to be unable in their relationships sexually, unable in their relationship in terms

of keeping and maintaining employment, getting along with other people, having self-worth, identifying who they are.

There's the presumption – at least by older men like me – that raping a boy is worse than raping [a] girl. And I characterize it by older men like me because that probably has been found to be untrue.”

¶ 25 The trial court found Pesina was at a high risk to reoffend because he showed no remorse or sensitivity toward J.C. It told Pesina,

“You are in a bad spot because you picked a crime that doesn't have any warm spots at all \*\*\* There's no warm fuzziness for me to find \*\*\* I just don't find a redeeming value in you \*\*\* I look high and low for redeeming values in everyone and I usually find them somewhere. Where others can't find them, I usually ferret them out. And I can't find any in you.”

¶ 26 On February 20, 2014, Pesina moved for his sentence to be reconsidered. He argued, *inter alia*, that the trial court erred in finding that he had no redeeming value. The court denied the motion and stated:

“It is probably not my best day that I would say that and I say that to say that I don't take it back. It isn't helpful for the judge to make comments that are particularly offensive and especially so at a time where the sentence is being imposed that it's going to place great hardship on the offender. But on the other hand I have to weigh whether or not I can reduce the sentence. He's in the high range and I'm trying to find a way to get him out of the high range and I couldn't find any. That boils down to no redeeming value. I apologize for saying it that way. I shouldn't have said it that way. It kind of puts you in the category of a



used car that doesn't run anymore. You're a human being. You've had your faults. I have not under the law been able to find a fact or something in your life that will give me the chance to give you a lesser sentence and I looked for it."

¶ 27 Pesina timely appealed.

¶ 28 ANALYSIS

¶ 29 Prejudgment

¶ 30 Pesina's first argument here on appeal is that the trial court erred in prejudging the evidence prior to the close of evidence. He asserts that the trial court showed prejudgment of the alleged predatory sexual assault by stating that electing to go to a bench trial would disadvantage him. Pesina further claims that the trial court evinced prejudgment during his trial by telling J.C., the State's witness whose testimony it rested its case upon, after he finished testifying that he was "a very brave person and a very good person" and not to "take any of this with [him] as some bad mark on [him]." Pesina acknowledges that he failed to preserve this issue for appeal. He urges this court to review it under the plain error doctrine and that the trial court's error satisfies the second prong of the doctrine.

¶ 31 The State counters that in the context of the statements the court was not showing any prejudgment thus there was no error warranting a plain error review. With regard to the statement made after Pesina waived his right to a bench trial, the State asserts that the court was admonishing Pesina of his rights and the consequences of his waiver. It claims that the court was ensuring he made an informed decision by letting him know that a jury would provide 12 people, vetted for their impartiality, and who would have to agree that he was proven guilty beyond a reasonable doubt. A bench trial would mean that his case would be solely before one decision maker, who has already looked at the file and may know a little about the case prior to the start

of the his trial. Regarding the statements the court made to J.C., the State argues that the context of the statements show that the court was attempting to comfort the youthful witness of sexual abuse over an experience that *he* stated was embarrassing to him. The State further asserts that neither party believed the remark contained a finality of judgment because the defense did not object and the prosecutor went on to present additional witnesses and evidence to prove Pesina guilty beyond a reasonable doubt.

¶ 32 We review *de novo* whether a forfeited claim is reviewable as plain error. *People v. Johnson*, 238 Ill. 2d 478, 485 (2010). To satisfy the plain-error doctrine, a defendant must first demonstrate a clear and obvious error and then show that either (1) that the evidence is so closely balanced that the error alone threatened to tip the scales of justice against him, regardless of the seriousness of the error, or (2) that the error is so serious that it affected the fairness of his trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowkis*, 225 Ill. 2d 551, 564-65 (2007).

¶ 33 The right to an unbiased, open-minded trier of fact is fundamental and rooted in the constitutional guaranty of due process of law. *People v. McDaniels*, 144 Ill. App. 3d 459, 462 (1986). Thus, it is the responsibility of the trier of fact, whether a judge in a bench trial or the jury in a jury trial, to resolve disputed issues of fact "only after hearing all of the evidence with an open mind" despite the strength of the opposing party's case. *People v. Johnson*, 4 Ill. App. 3d 539, 541 (1972); see *People v. Diaz*, 1 Ill. App. 3d 988, 992 (1971) ("A fair and impartial trial is a judicial process by which a court hears before it decides; by which it conducts a dispassionate inquiry and renders judgment only after receiving evidence.") For a court to prejudge a matter, would be "the antithesis of a fair trial" resulting in reversible error under the plain error doctrine. *Diaz*, 1 Ill. App. 3d at 992. A trial court provides a defendant with such an

unfair trial if it makes comments reflecting a preconceived attitude of the defendant's guilt before the close of evidence. *Diaz*, 1 Ill. App. 3d at 993; *People v. Heiman*, 286 Ill. App. 3d 102, 112-14 (1996). This may include direct comments about the credibility of a witness (*Heiman*, 286 Ill. App. 3d at 112) or comments implicating its assessment of a witness' credibility (*Johnson*, 4 Ill. App. 3d at 541). Our assessment is guided by several cases.

¶ 34 In *Diaz*, the trial court actually stated three separate times before it had heard all of the evidence that it had found the defendants guilty. *Diaz*, 1 Ill. App. 3d at 993. Two of those times occurred before the defendants had argued or presented any evidence in support of their case. *Id.* As it reversed and remanded the trial court's final guilty ruling, the appellate court held that the trial court's acts denied the defendant a fair and impartial trial. *Id.* The court had prejudged the matter prior to the close of evidence and such acts were a denial of the defendant's right to due process of law.

¶ 35 The court in *Johnson* responded similarly after finding the trial court prejudged the defendant in that case. During the testimony of a witness for the defendant, the court affirmed that it believed the disputed material fact that a shotgun was fired. *Johnson*, 4 Ill. App. 3d at 540. Moreover, after that witness's direct examination but before her cross-examination or even before the defendant was able to call all of his other witnesses and then rest his case, the court stated specifically "[t]here will be finding of guilty." *Id.* The trial court's ultimate guilty verdict for the defendant was reversed and the case was remanded for a new trial due to erroneous prejudgment. The *Johnson* court held that it was incumbent upon the court to "resolve disputed issues of material fact only after hearing all of the evidence with an open mind." *Id.* at 541.

¶ 36 In *Odeja*, the court prejudged the matter by asserting its belief that the defendant was lying about a material issue of fact in the case prior to the close of evidence. *Odeja*, 110 Ill. App.

2d at 483. After the defendant testified contrary to the police officer that he was not the driver of the vehicle at the time he was charged issued the traffic citations, the court noted its disbelief of the defendant's testimony by requesting that the officer's partner, who was not present at the scene of the defendant's traffic stop, testify to validate, if possible, the defendant's story. *Id.* at 482. It further noted its preconceived judgment of the defendant by evincing its disbelief of the defendant's witness before she took the stand. *Id.* The court ultimately found defendant guilty without bringing in the other officer to testify. *Id.* at 483. The finding, however, was reversed and remanded for a new trial. The *Ojeda* court held that the trial court's comments "reflected a preconceived attitude on the part of the trial judge regarding the defendant's guilt" and that it is fundamental for a trial court to "resolve disputed questions of fact only after hearing all of the evidence with an open mind." *Id.* at 485.

¶ 37 Lastly, the *Heiman* court also found that the defendant in that case had been prejudged. The trial court made sarcastic comments regarding a witness's testimony and credibility while the witness was testifying although it had previously certified the witness as an expert. *Heiman*, 286 Ill. App. 3d at 112. It also failed to allow defense counsel the opportunity to present a viable closing argument because it interrupted him 40 to 50 times as he presented his argument. *Id.* The appellate court found that such acts showed a prejudgment of the case, reversed the guilty ruling, and remanded the matter for a new trial. *Id.* at 113-14.

¶ 38 We find that this case is unlike the above-discussed cases primarily because the trial court did not affirmatively state at any time prior to the close of trial that it had found Pesina guilty. Moreover, the court's contested statements during Pesina's jury trial waiver, after J.C.'s testimony, and while it explained its ruling, unlike *Diaz*, *Ojeda*, and *Heiman*, were neither

explicit nor implicit indications that it had prejudged the disputed issue of whether Pesina committed the alleged sexual assault of J.C. prior to the close of evidence.

¶ 39 “When a defendant waives the right to a jury trial, the pivotal knowledge that the defendant must understand—with its attendant consequences—is that the facts of the case will be determined by a judge and not a jury.” *People v. Bannister*, 232 Ill. 2d 52, 69 (2008). In this case, the trial court provided Pesina with this information. Its additional explanation that, unlike a jury trial, in a bench trial the trial judge could have had an opportunity or an obligation to review the defendant’s case file prior to start of his trial and may begin his assessment of the case earlier was highly unnecessary, but not inaccurate or erroneous.

¶ 40 Now with regard to the trial court's comments to J.C. after he testified, such statements did not evince prejudgment but instead offered support and encouragement to a youthful witness. See *People v. Sims*, 192 Ill. 2d 592, 636 (2000) (the court's comments to the victim's mother were expressions of condolences and not reflections of bias). Pesina concedes that the first part of the trial court's statement to J.C. that he is a “brave and a good person” is innocuous. We find it was the trial courts attempt to comfort an admittedly embarrassed, visibly upset, and evidently withdrawn youthful witness. The court's immediately following comment that J.C. “not take any of this with [him] as a bad mark on [him]” was merely the trial courts attempt to further reassure J.C.

¶ 41 The trial court’s ultimate finding that J.C.’s testimony was credible was not compromised by his reassurance of this witness nor does he court's encouragement create an inference of prejudgment. It was the trial court’s responsibility as the trier of fact in the bench trial to assess the credibility of the witnesses. See *People v. Houston*, 118 Ill. 2d 194, 200 (1987). Pesina does not argue and we do not find that such an assessment was against the manifest weight of the

evidence. See *People v. Parcel of Prop. Commonly Known as 1945 N. 31st St., Decatur, Macon Cty., Illinois*, 217 Ill. 2d 481, 510 (2005). When it made its ruling at the close of the trial, the trial court, as the trier of fact, properly commented on J.C.'s credibility and its own efforts to remain open-minded to all of the evidence presented.

¶ 42 We pause briefly to note that we are aware that trial courts can become so strongly convinced by the facts in particular cases that they are driven to make statements reflecting that fervent conviction. However, such statements, whether strong or slight, can be misinterpreted, as in this case, as prejudgment of the defendant. It would be wise for the trial court to restrict its statements to its objective findings and ruling and avoid the risk of undermining the defendant's confidence and belief that he is receiving a fair trial at all times.

¶ 43 In this case, we find the trial court, despite its failure to guard against this risk, did not prejudge Pesina. Because we do not find error, we need not conduct a plain error analysis.

¶ 44 Sentencing

¶ 45 Pesina's second argument here on appeal is that the trial court abused its sentencing discretion in finding that he had no redeeming value in spite of his numerous factors in mitigation. He further argues that the trial court erred by considering matters in aggravation that were not based on facts in evidence. He requests this court to reduce his sentence in accord with the redeeming value allegedly ignored by the trial court or to remand for a new sentencing hearing.

¶ 46 When contested, the sentence imposed by the trial court is reviewed for an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203 (2000). Great deference is given to the sentencing decisions of the trial court and a reviewing court must not substitute its judgment with respect to that sentence merely because it would have weighed sentencing factors differently. *People v.*

*Streit*, 142 Ill. 2d 13, 19 (1991). Such deference is given because the trial court has the benefit of observing the defendant and hearing the evidence firsthand. *Id.*

¶ 47 Furthermore, the existence of mitigating factors does not obligate the trial court to reduce the sentence from the maximum or to impose a minimum sentence. *People v. Madura*, 257 Ill. App. 3d 735, 740-41 (1994). It is the task of the trial court to issue a sentence reflective of the proper balance between rehabilitative potential and the seriousness of the offense. *People v. Clark*, 207 Ill. App. 3d 439, 457-58 (1991). Here, the trial court did strike a proper balance and did not abuse its sentencing discretion.

¶ 48 Pesina's argument that the trial court did not consider his statutory mitigating factors of record, as evidenced by its statement that it "[did not] find a redeeming value in [him]," is without merit. First, a sentencing court is presumed to have considered all relevant factors, including any mitigating evidence, absent a contrary showing in the record. *People v. Franks*, 292 Ill. App. 3d 776, 779 (1997). Though a trial court is not required to articulate such consideration on the record (*Smith*, 321 Ill. App. 3d at 537), Pesina acknowledges that the trial court did in fact state for the record its consideration of the applicability of many of his asserted statutory mitigating factors. After taking into considering all of the factors in aggravation and in mitigation, the court imposed sentences 12 years less than the maximum on each count.

¶ 49 Pesina's assertion that the trial court failed to consider the statutory factor of whether his imprisonment would cause excessive hardship to his dependents also lacks merit. See 730 ILCS 5/5-5-3,1(a)(11) (West 2014). The court articulated on the record its consideration of the letters from his friends discussing his general character and relationship to his children. Additionally, the record does not support Pesina's assertion that there would be *excessive* hardship caused to his dependents warranting our need to find an abuse of sentencing discretion. The record shows

that Pesina is several thousands of dollars in arrears on child support and was not employed at the time he was arrested. Moreover, he was living in Texas and his children were still in Illinois. Thus someone else must have been providing the primary support for his dependents—certainly he was not.

¶ 50 Further, the court acknowledges exaggeration and apologized for making the statement that it could not find any redeeming value for Pesina. It stated, in denying Pesina's motion for reconsideration, that what it meant by "no redeeming value" was that it had weighed the factors in mitigation and could not find any reason that would allow it to reduce the sentence any further. Such a consideration is not a showing of abuse of sentencing discretion.

¶ 51 Pesina's last argument that the trial court considered improper matters in aggravation is also without merit. The court's statement regarding the harm sexual assault can cause on a youthful witness did not require a scholarly review prior to the court considering or even making such a statement, as many courts have found that such harm is inevitable. See *People v. Leggans*, 253 Ill. App. 3d 724, 737 (1993) ("Acts of sexual abuse of minors almost inevitably cause emotional harm to the victims."); see also *Scudder v. Hanover Insurance Company*, 201 Ill. App. 3d 921, 929 (1990) (noting cases that have "properly recognized the inevitability of emotional harm to minors from sexual abuse in all forms."). Therefore, the court's consideration of this lasting harm was not improper. See *People v. Ulmer*, 158 Ill. App. 3d 148, 149-51 (1987) (the trial court's finding that "'this particular offense \*\*\* could very well leave a permanent scar on this young lady'" was a proper consideration in aggravation when sentencing for indecent liberties with a child); see *People v. Fisher*, 135 Ill. App. 3d 502, 506 (1985) (defendant's act "created a strong probability of permanent psychological harm" and was thus properly considered as such; proof of medically diagnosed psychological harm was not necessary); see



*People v. Lloyd*, 92 Ill. App. 3d 990, 995-96 (1981) (the trial court's inference of emotional injury to the three-year old victim was an appropriate aggravating factor to consider when sentencing defendant for indecent liberties with a child). Moreover, not only did J.C. at the age of 16 testify at trial about the sexual assault he suffered, but his victim impact statement also showed he had been continuously suffering emotional harm since the occurrence, when he was nine, of the sexual assault. Thus the trial court did not consider any unsupported or improper factors and ultimately did not abuse its sentencing discretion.

¶ 52

#### CONCLUSION

¶ 53

The judgment of the circuit court of Rock Island County is affirmed.

¶ 54

Affirmed.