SECOND DIVISION
February 14, 2017

No. 1-14-3124

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. 11 CR 18465
	)	
JESUS LAGUNAS,	)	Honorable
	)	Tommy Brewer,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirm defendant's sentence where he forfeited the argument on appeal and the plain-error doctrine does not apply. Forfeiture aside, the trial court did not abuse its discretion in sentencing defendant.

¶ 2 Following a bench trial, defendant Jesus Lagunas was convicted of one count of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2010)) and sentenced to five years' imprisonment. On appeal, he argues his sentence is excessive where the trial court failed to consider the seriousness of the offense and several other factors in mitigation. We affirm.

¶ 3 Defendant was charged by indictment with three counts of attempted first degree murder, one count of aggravated discharge of a firearm, one count of aggravated unlawful restraint, and one count of reckless discharge of a firearm stemming from acts occurring on October 5, 2011 in Midlothian, Illinois. We briefly summarize the facts presented at trial as defendant does not challenge the sufficiency of the evidence supporting his conviction.

¶ 4 At trial, Anthony Colquitt, Jr. testified that, on October 5, 2011, he was with his girlfriend, Tashawana Rials, when he parked his car on the street across from his house. As they exited the car, a white car approached. Colquitt told Rials to go across the street because he thought there would be "trouble." Defendant got out of the white car and "had words" with Colquitt. While another man approached Colquitt, defendant "swung at [Colquitt]." Eventually, after chasing Colquitt around, defendant fired one shot, hitting Colquitt's driver's side car door. Defendant was standing at the driver's side window of the car and Colquitt was standing at the rear passenger door. Defendant then "aimed at [Colquitt]" and fired a second shot, which struck the driver's side car window.

¶ 5 Rials testified that she observed the altercation from the driveway of Colquitt's house. She observed defendant fire two shots in the direction of Colquitt before leaving the area. Rials later identified defendant as the man who shot twice at Colquitt.

¶ 6 Sergeant Adam Thibo testified he processed Colquitt's car and observed a broken driver's window, a bullet hole in the driver's seat headrest, and a spent round in the lower panel of the car's rear passenger side.

¶ 7 Detective Sergeant Adam Panozzo testified that he photographed a broken window, a small hole in the driver's seat, and another hole under the rear passenger window of Colquitt's

car. He further found a mark in the driver's side door. Panozzo also administered a gunshot residue test to defendant, and the parties later stipulated to the presence of gunshot residue on defendant's hands.

¶ 8 The trial court found defendant guilty of aggravated discharge of a firearm but not guilty of the attempted murder counts, aggravated unlawful restraint, and reckless discharge of a firearm. After defendant's written motion to reconsider or for a new trial was denied, the trial court proceeded to sentencing.

¶ 9 In aggravation, the State highlighted defendant's criminal history, which included 2013 felony aggravated discharge of a firearm and aggravated fleeing convictions for which he received sentences of eight and three years' imprisonment in the Illinois Department of Corrections (IDOC), respectively. In that case, defendant was driving a car while the codefendant passenger fired four gun shots at a police officer. Both offenses occurred while defendant was out on bond in the present case.[1] Defendant also had a 2011 misdemeanor conviction for criminal damage to property.

¶ 10 The State also noted the offense occurred in a residential neighborhood "that placed people in the neighborhood in danger of receiving bodily harm at the end of this defendant's actions." It asked for a significant sentence in the IDOC.

¶ 11 In mitigation, defense counsel mentioned letters of support written to the court on defendant's behalf that characterized defendant as "easygoing, soft spoken, smiling kind of guy." Counsel also noted defendant was in a GED program and that defendant had two jobs waiting for

[1] Defendant's convictions have since been affirmed. See *People v. Lagunas,* 2016 IL App (1st) 140864-U (unpublished order under Supreme Court Rule 23).

him upon his release years later. The presentence investigation report indicated that defendant was 18 years old at the time of the present offense. For these reasons, counsel asked for a "fair sentence."

¶ 12 In allocution, defendant apologized to the victim, the victim's family, and his own family. He stated that he was "a young man who made some bad choices in [his] life" and that prison was not a place he wanted to be. He mentioned he was in a GED program and that he had a job waiting for him. Lastly, he "[asked] forgiveness and mercy for the crime [he] committed."

¶ 13 The trial court sentenced defendant to five years' imprisonment in the IDOC. It first noted defendant "[did not] have much credibility with [the court]" because he had put himself in a situation where he was "with an individual who's allegedly fired in the direction of a police officer." The court further found that defendant "had a good support system" with a mother and father who "are prepared to work with [him] and who do love [him]," and told defendant that he has his "whole life in front of [him]."

¶ 14 The trial court stated "you should get an education above and beyond your GED, because I'm not impressed with that, because that's not going to get you anywhere in the world. You need to go out and get you a real education with real training for a vocation or career." The court stated it had read the letters submitted on defendant's behalf and considered the factors in aggravation and mitigation, "including the support system that defendant seems to have in place to help him make a good life for himself." Pursuant to statute, defendant's sentence would be consecutive to the sentences on the 2013 convictions, as those convictions were committed while defendant was out on bond in the instant case. See 730 ILCS 5/5-8-4(d)(8) (West 2012).

¶ 15 Defendant did not file a motion to reconsider sentence. He filed a timely notice of appeal.

¶ 16 On appeal, defendant argues his sentence is excessive given the nature of the case and the factors in mitigation. Specifically, he argues his youth, the fact he has a job waiting for him when released and his dedication to obtaining a GED demonstrate his rehabilitation potential, and his other case has already been taken into consideration by a consecutive eight-year term, rendering his current prison sentence excessive. He asks that we reduce his sentence to four years' imprisonment or remand for resentencing. As an initial matter, the parties agree the issue has been forfeited on appeal, but defendant urges us to review his challenge under the plain-error doctrine or as an ineffective assistance of counsel claim.

¶ 17 To preserve a sentencing issue for appeal, a defendant must raise the issue in the trial court, including through a written motion to reconsider sentence. *People v. Heider*, 231 Ill. 2d 1, 14-15 (2008). This allows the trial court an opportunity to review the defendant's sentencing claim "and save the delay and expense inherent in appeal if the claim is meritorious." *Id.* at 18.

¶ 18 Defendant did not file a motion to reconsider sentence and thus, this issue is forfeited on appeal. See *People v. Bannister*, 232 Ill. 2d 52, 76 (2008). However, sentencing issues raised for the first time on appeal may be reviewed under the plain-error doctrine. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 11. This doctrine is a narrow and limited exception to the rules of forfeiture. *People v. McGuire*, 2016 IL App (1st) 133410, ¶ 12.

¶ 19 In order to obtain relief under the plain-error doctrine, the defendant must first show an obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d at 551, 565 (2007). In the sentencing context, the defendant must next show "(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. Hillier, 237 Ill. 2d 539, 545 (2010). When a defendant fails to establish plain error, that procedural default must be honored. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008).

¶ 20 Defendant contends both prongs apply, arguing the evidence in mitigation and aggravation at sentencing was closely balanced and the error was so egregious as to deny defendant a fair sentencing hearing. However, we must first determine whether any error occurred at all. *People v. Banks*, 2016 IL App (1st) 131009, ¶ 71. "This requires a ' "substantive look" ' at the issue raised." *Id.* (quoting *People v. Johnson*, 208 Ill. 2d 53, 64 (2003)).

¶ 21 The trial court has broad discretion in imposing an appropriate sentence, and where, as here, that sentence falls within the statutory range for the offense, it will not be altered by a reviewing court absent an abuse of discretion. *People v. Cole*, 2016 IL App (1st) 141664, ¶ 55. An abuse of discretion occurs where the sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (citing *People v. Fern*, 189 Ill. 2d 48, 54 (1999)). Because of its personal observation of defendant and the proceedings, the trial court is in a superior position to determine an appropriate sentence. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). It must weigh the relevant sentencing factors, which include the defendant's demeanor, credibility, age, social environment, moral character and mentality. *Id.* at 213.

¶ 22 We find the trial court did not abuse its discretion in imposing a five-year prison term. Aggravated discharge of a firearm, as charged here, is a Class 1 felony punishable by a prison term between 4 and 15 years. See 720 ILCS 5/24-1.2(b) (West 2010); 730 ILCS 5/5-4.5-30(a) (West 2010). Defendant's five-year prison term falls within this statutory range and we therefore presume it is proper. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 12.

¶ 23 Defendant argues his five-year prison sentence is excessive in light of the nature of the offense, "as no one was injured and the property damage was relatively minimal." A sentence must reflect both the seriousness of the offense and the objective of restoring the offender to useful citizenship. *People v. McWilliams,* 2015 IL App (1st) 130913, ¶ 27. The seriousness of the offense, and not mitigating evidence, is the most important sentencing factor. *People v. Kelley*, 2015 IL App (1st) 132782, ¶ 94. Here, the evidence established defendant fired two gun shots in the direction of Colquitt. Given the inherent danger of firing a weapon twice at a person while located in a residential neighborhood with the second bullet lodging beneath the window where Colquitt was standing, the trial court understandably could have placed little weight on the fact "no one was injured" as a result of the shooting. See *People v. Sims,* 403 Ill. App. 3d 9, 24 (2010) ("[t]he seriousness of the offense or the need to protect the public may outweigh mitigating factors and the goal of rehabilitation"). Contrary to defendant's contention, we find defendant's sentence that is only one year above the minimum was not manifestly disproportionate to the seriousness of the offense.

¶ 24 Defendant argues the court overlooked the fact he was 18 years' old when the offense occurred and that the "judge never commented on the facts of the case, instead addressing the 2012 case that [defendant] committed while on bond." We disagree. The trial court proceeded to sentencing immediately after denying defendant's motion for a new trial, where defense counsel argued the facts of the case. Additionally, in aggravation, the State argued that this offense occurred in a residential neighborhood and "placed people in the neighborhood in danger of receiving bodily harm at the end of this defendant's actions." The trial court was therefore aware of the facts of the case. Further, the trial court stated it read letters written in support of defendant

and considered factors in aggravation and mitigation, "including the support system that defendant seems to have in place to help him make a good life for himself." It also heard defendant tell the court that he was "a young man who made some bad choices in [his] life." Defendant has therefore not shown the trial court did not consider his age in imposing sentence. See *People v. Burton,* 2015 IL App (1st) 131600, ¶ 38. (the defendant "must make an affirmative showing the sentencing court did not consider the relevant factors"). Rather, the opposite is true. The trial court explicitly stated that defendant was “a young man” with his "whole life in front of [him]," highlighting its awareness of defendant's age.

¶ 25 Defendant also cites to various studies and two United States Supreme Court cases to support his contention that the trial court did not adequately consider his age. We disagree and note that the two United States Supreme Court cases are distinguishable. See generally *Roper v. Simmons,* 543 U.S. 551, 569 (2005) (involving the application of the death penalty for a defendant who was 17 years' old at the time he committed a capital murder); see generally *Graham v. Florida,* 560 U.S. 48 (2010) (involving the application of life imprisonment without possibility of parole to a 16-year-old defendant for a nonhomicide crime).

¶ 26 Defendant next argues the trial court failed to sufficiently consider the mitigating factor that he had employment waiting for him upon his release from prison. However, both defense counsel and defendant mentioned this to the trial court, so we cannot agree with defendant. See *People v. Jackson,* 2014 IL App (1st) 123258, ¶ 53 ("[w]e presume the sentencing court considered mitigation evidence when it is presented"). Moreover, the trial court is neither required to specify each factor in aggravation or mitigation, nor assign a weight to each factor. *People v. Bryant,* 2016 IL App (1st) 140421, ¶ 16. Even assuming the same job would be

available to him after serving the sentence imposed in the present case consecutive to the eight years in his prior case, defendant still failed to make an affirmative showing the trial court did not consider this factor. *Burton*, 2015 IL App (1st) 131600, ¶ 38.

¶ 27 Defendant argues the trial court did not adequately consider the fact he was in a program working towards his GED. Specifically, he argues the trial court's comment that it was " 'not impressed' " because a GED " 'won't get you anywhere' " show it did not fully consider this mitigating factor. We disagree with defendant's characterization of the trial court's statements. Viewing the record, the court noted, "you [defendant] should get an education above and beyond your GED, because I'm not impressed with that, because that's not going to get you anywhere in the world. You need to go out and get you a real education with real training for a vocation or career." Read as a whole, the trial court's comments show encouragement to defendant that he should not simply settle for a GED but should pursue further training. We disagree with defendant that the trial court, in considering defendant's plans to obtain a GED, simply "brushed [it] aside." See *People v. Andrews*, 2013 IL App (1st) 121623, ¶ 15 ("a reviewing court determining whether a sentence is properly imposed should not focus on a few words or sentences of the trial court, but should consider the record as a whole"). Accordingly, we find the court did not abuse its discretion in sentencing defendant to five years' imprisonment. See *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010) ("[t]he mere fact that a reviewing court might have weighed the factors differently than the trial court does not justify an altered sentence").

¶ 28 In sum, we find that the trial court did not abuse its discretion in imposing a five-year prison sentence, only one year above the minimum, for aggravated discharge of a firearm where it considered the proper sentencing factors. See *Sims*, 403 Ill. App. 3d at 24 ("[e]ven where there

is evidence in mitigation, the court is not obligated to impose the minimum sentence"). Having found no error, there can be no plain error and defendant's argument is forfeited. See *People v. Williams,* 193 Ill. 2d 306, 349 (2000).

¶ 29 Defendant contends that any forfeiture was the result of ineffective assistance of counsel because "no plausible strategy justified failing to move to reconsider [defendant's] sentence" and therefore prejudice exists. A defendant has a constitutional right to the effective assistance of counsel. See *Strickland v. Washington,* 466 U.S. 668, 685-86 (1984). In order to establish that counsel is ineffective, the defendant must show both that (1) counsel's representation was deficient and (2) that deficiency prejudiced the defendant. *People v. Petrenko,* 237 Ill. 2d 490, 496 (2010) (citing *Strickland,* 466 U.S. at 694). Having already determined that no error occurred in sentencing defendant, we find he cannot establish the requisite prejudice, and therefore cannot succeed on his ineffective assistance of counsel claim. See *People v. Caffey,* 205 Ill. 2d 52, 106 (2001); see *People v. Sauseda,* 2016 IL App (1st) 140134, ¶ 23.

¶ 30 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.