

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).

2017 IL App (4th) 160525-U

NO. 4-16-0525

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 15, 2017
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
CARLOS CAMPOS,)	No. 11CF382
Defendant-Appellant.)	
)	
)	Honorable
)	Robert L. Freitag,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant failed to establish the trial court erred in sentencing him.

¶ 2 In September 2012, the trial court sentenced defendant, Carlos Campos, to consecutive sentences of 22 years in prison for predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 2008)) and 15 years in prison for criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2008)). Defendant appeals, arguing he did not receive a fair sentencing hearing because the trial court considered “the event itself” in determining defendant’s sentences. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In May 2009, the State charged defendant by information with a variety of offenses, including two counts of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1)

(West 2008)), two counts of criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2008)), and two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2008)). In April 2012, defendant entered an open guilty plea to predatory criminal sexual assault and criminal sexual assault.

¶ 5 In September 2012, the trial court held a sentencing hearing. The State recommended a sentence of 52 years in the Illinois Department of Corrections (DOC). In explaining its sentencing decision, the court noted it considered the information provided in the presentence report, the mitigating and aggravating evidence presented, counsels' recommendations, defendant's statement, and the relevant statutory aggravating and mitigating factors. The court also stated:

“The court frankly was somewhat taken aback by the characterization of this as an accident, and I think Miss Uppal put it in a little more context for me, whereas the defendant may have explained an incident here may have been a, quote, unquote, accident but the crimes to which the defendant has pled guilty, it's a travesty to refer to them as some sort of accident or a mistake. They are very obvious intentional, physical acts, which have victimized a young girl to the point where her entire world has been changed and that of her siblings and her mother.

It goes without saying in aggravation that the offense itself, the nature of the offense, the nature of the victim, the nature of the relationship that the defendant took advantage of to satisfy himself at the expense of this young child are inexcusable and extremely aggravating.

The court believes a significant sentence is appropriate in this case to deter not only the defendant but others from committing such heinous crimes, and the

court believes that such a significant sentence is appropriate to protect the public and other children from this defendant's predatory capabilities.”

The court then sentenced defendant to consecutive 22-year and 15-year prison terms.

¶ 6 In May 2016, after this court had twice remanded this case to the trial court because of issues involving Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013) (see *People v. Campos*, No. 4-13-0152 (May 13, 2013) (unpublished order under Supreme Court Rule 23) and *People v. Campos*, No. 4-13-1015 (Nov. 19, 2013) (unpublished summary order under Supreme Court Rule 23)), defendant filed an amended motion to reconsider his sentence, arguing his sentence was excessive.

¶ 7 In July 2016, the trial court held a hearing on defendant's amended motion to reconsider his sentence. After hearing arguments from the parties, the court stated:

“I'm not going to repeat everything, but the Court reaffirms that in the court's view, these are significantly heinous crimes, very serious crimes which as Mr. Harlow pointed out, left some serious impact and negative affects [*sic*] on the young, innocent victims. The bottom line here is when the court imposed this sentence originally back in September of 2012, there were two counts, the court was considering overall the defendant's conduct and the affect [*sic*] on the victims and so forth.

And frankly, I was firmly convinced then, and remain firmly convinced now, that the *** appropriate sentence overall in this case would be 40 years in [DOC], and that's the sentence the court originally fashioned with a 22-year term and with an 18-year term. The error that was made on count 3 was immediately made clear to the Court, and the court was certainly thankful for that, that we

were able to address that immediately, and the court therefore reduced that 18-year sentence to a 15-year sentence which was the maximum, but that then reduced the overall sentence to 37 years as opposed to 40.

But the end result was that the defendant ended up being sentenced to a lesser term than the court had really intended in this case, because of the mistake that I made, frankly.”

The court then denied the motion to reconsider the sentence.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues he did not receive a fair sentencing hearing because the trial court “improperly considered ‘the offense itself’ ” when sentencing defendant. The State argues defendant forfeited this argument. Defendant does not argue he preserved the alleged error for review. Instead, he argues the error is clear and satisfies the second prong of the plain-error doctrine. Pursuant to the plain-error doctrine, a reviewing court may consider an unpreserved error if the alleged error was clear or obvious and (1) the evidence is closely balanced or (2) the error was so serious defendant was denied a fair hearing. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967) and *People v. Rathbone*, 345 Ill. App. 3d 305, 311-12, 802 N.E.2d 333, 339 (2003).

¶ 11 Whether a trial court relied on an improper factor in imposing a sentence presents a question of law we review *de novo*. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8, 973 N.E.2d 459. However, the defendant bears the burden of establishing the trial court relied on an improper factor during sentencing. *People v. Conley*, 118 Ill. App. 3d 122, 133, 454 N.E.2d

1107, 1116 (1983). Defendant has failed to establish the trial court relied on an improper sentencing factor in this case.

¶ 12 Defendant focuses on three words from the trial court's pronouncement, *i.e.* "the offense itself." However, we must examine these three words in the context of the court's entire statement. *People v. Ward*, 113 Ill. 2d 516, 526-27, 499 N.E.2d 422, 426 (1986). Defendant has not established the court was referring to any specific element of the charged offenses. Instead, it appears the court was referring to the facts surrounding defendant's criminal acts. The three words in question were said in the middle of the following statement, previously quoted:

"The court frankly was somewhat taken aback by the characterization of this as an accident, and I think Miss Uppal put it in a little more context for me, whereas the defendant may have explained an incident here may have been a, quote, unquote, accident but the crimes to which the defendant has pled guilty, it's a travesty to refer to them as some sort of accident or a mistake. They are very obvious intentional, physical acts, which have victimized a young girl to the point where her entire world has been changed and that of her siblings and her mother.

It goes without saying in aggravation that the offense itself, the nature of the offense, the nature of the victim, the nature of the relationship that the defendant took advantage of to satisfy himself at the expense of this young child are inexcusable and extremely aggravating.

The court believes a significant sentence is appropriate in this case to deter not only the defendant but others from committing such heinous crimes, and the court believes that such a significant sentence is appropriate to protect the public and other children from this defendant's predatory capabilities."

¶ 13 While our supreme court stated in *People v. Conover*, 84 Ill. 2d 400, 404, 419 N.E.2d 906, 908 (1981), that a factor implicit in an offense should not be used as an aggravating factor at sentencing, the court later stated it did not mean this rule should be rigidly applied. *People v. Saldivar*, 113 Ill. 2d 256, 268, 497 N.E.2d 1138, 1142-43 (1986). According to the court:

“[T]his court did not intend a rigid application of the rule, thereby restricting the function of a sentencing judge by forcing him to ignore factors relevant to the imposition of sentence. The Illinois Constitution provides that ‘[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.’ (Ill. Const. 1970, art. I, sec. 11.) A reasoned judgment as to the proper penalty to be imposed must therefore be based upon the particular circumstances of each individual case. [Citations.] Such a judgment depends upon many *relevant* factors, including the defendant’s demeanor, habits, age, mentality, credibility, general moral character, and social environment [citations], as well as ‘ “the nature and circumstances of the offense, including the nature and extent of each element of the offense as committed by the defendant” ’ [citations].

Sound public policy demands that a defendant’s sentence be varied in accordance with the particular circumstances of the criminal offense committed. Certain criminal conduct may warrant a harsher penalty than other conduct, even though both are technically punishable under the same statute. Likewise, the commission of any offense, regardless of whether the offense itself deals with harm, can have varying degrees of harm or threatened harm. The legislature

clearly and unequivocally intended that this varying quantum of harm may constitute an aggravating factor. While the classification of a crime determines the sentencing range, the severity of the sentence depends upon the *degree of harm* caused to the victim and as such may be considered as an aggravating factor in determining the exact length of a particular sentence, *even in cases where serious bodily harm is arguably implicit in the offense for which a defendant is convicted.* [Citations.]” (Emphases in original.) *Saldivar*, 113 Ill. 2d at 268-69, 497 N.E.2d at 1142-43.

Defendant failed to establish the reasons given by the trial court for the sentence imposed fell outside these parameters.

¶ 14

III. CONCLUSION

¶ 15 The trial court’s sentencing decision in this case is affirmed as defendant failed to establish the court relied on an improper sentencing factor. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 16 Affirmed.