Rule 23 filed January 3, 2018

Modified upon denial of Rehearing March 12, 2018

2018 IL App (4th) 150793-U

NO. 4-15-0793

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
KENTES WEST,	)	No. 13CF151
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer Bauknecht,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in its decision to shackle defendant during the trial after conducting a proper inquiry and considering relevant factors.

(2) The trial court did not err in accepting defendant's waiver of counsel as knowing and voluntary after proper admonishments.

(3) The trial court did not err in its consideration of relevant aggravating factors during sentencing.

¶ 2 Defendant, Kentes West, appeals from his conviction of aggravated battery and sentence of 20 years in prison. Defendant represented himself at trial and did not file a posttrial or postsentencing motion. On appeal, he contends the trial court (1) failed to conduct a proper *Boose* hearing (see *People v. Boose*, 66 Ill. 2d 261, 362 N.E.2d 303 (1977)) before shackling him for trial, (2) erred in allowing him to proceed *pro se* without proper admonishments, and (3) considered improper factors in aggravation during sentencing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 28, 2013, at Pontiac Correctional Center, defendant, an inmate serving a sentence for armed robbery and first degree murder, attacked correctional officer Timothy Gannon, causing injuries to Gannon's face, including a broken orbital socket and a broken nose. The State charged defendant by indictment with aggravated battery, alleging he "knowingly caused great bodily harm to correctional officer [Gannon], in that defendant struck [Gannon] about the head, knowing [Gannon] to be a correctional institution employee of the State of Illinois Department of Corrections, who was engaged in the performance of [his] authorized duties[.]" 720 ILCS 5/12-3.05(a)(3)(i) (West 2012).

¶ 5 Initially, the trial court appointed an attorney to represent defendant but, on June 4, 2014, defendant informed the court, the Honorable Robert M. Travers presiding, that he wished to proceed *pro se*. Judge Travers admonished defendant as follows:

> "THE COURT: All right. Mr. Yedinak [Assistant State's Attorney], this is characterized in the indictment as a Class 1 felony, —
>
> MR. YEDINAK: That is correct, Judge.
>
> THE COURT: —aggravated battery.
>
> All right. Mr. West, you are charged with a Class 1 felony. And if you are convicted of this particular offense, your sentence has to run consecutive to the current sentence you're serving in the Department of Corrections. As a Class 1 felony, you're looking at a maximum sentence of 4 to 15 years in the Illinois Department of Corrections with a fine of up to $25,000 plus various costs and assessments, two years of mandatory supervised release, and eligibility for up to 4 years of probation or conditional discharge.

Do you understand the charge against you?

THE DEFENDANT: Yes, sir."

¶ 6 Defendant's appointed counsel interrupted the trial court's admonishments and advised defendant was extended-term eligible due to his prior Class M sentence (first degree murder), making the maximum sentence 30 years and consecutive to his current sentence. The court continued its admonishments, questioning defendant about his education, health, and legal experience. The court cautioned defendant about the difficulties of presenting a criminal defense and that he would not receive special treatment. Defendant indicated he understood and that he wished to "give up [his] right to assistance of counsel." The court accepted defendant's waiver and discharged appointed counsel.

¶ 7 Defendant's jury trial began on August 14, 2015. Prior to the start of the trial, outside the presence of the jury, the trial court, the Honorable Jennifer Bauknecht presiding, addressed defendant's restraints, stating:

"THE COURT: To begin with, I do want to make a record concerning any restraints that may be on the defendant during trial. I have been tendered a copy from the transport team of the security summary for escorts and I note that the defendant is a high security classification. He is a moderate—has been designated a moderate escape risk. There is a history of assaultive behavior listed on the summary, including a violent assault of staff. I don't have the details on that. Also, indicated on the transport sheet, to use caution when transporting the inmate.

For the record, the defendant is in the Illinois Department of Corrections right now out of the Class M felony offense out of Cook County for murder intent

to kill or injure. And looks like there is also pending sentencing, I guess it's one incident, both alleged to have occurred on September 8th of [19]96 but it was always Class X armed robbery. Sir, you're in now on armed robbery and murder with intent—or murder intent to kill. I don't show any other offense on your record at this time. However, I'm concerned because, as you are aware, we have had a lot of problems getting your paperwork to you for the trial. ***.

So, I wanted to ensure that you had your paperwork for today. And in the process of doing that, I did contact again Warden Butler from Menard [Correctional Center]. She made some phone calls and called me back later that day and confirmed that you would have your paperwork today so that we could proceed with the trial. However, she also advised me there was an incident at Stateville [Correctional Center], I don't know the details of it, but an incident between you and another inmate on Wednesday and, through the course of that, apparently it's alleged, and I understand there is an investigation going, but she indicated that you may have gotten into some type of confrontation with this inmate resulting in this inmate's ear being bitten off. Don't know the details of that. But it's a concern to me on your mental state, and you've always been respectful in the courtroom. I have no problems with that. But I want to make sure we are not in any problems. I have you, for the record, you have no handcuffs on at all, so your hands are free. You're actually sitting at a table that is skirted, well actually wooden, three ways around so the jury cannot see your legs, wearing a regular blue shirt so, not standard prison attire. And right now though, your legs are shackled together, not to the floor, just together. Correct?

THE DEFENDANT: Correct.

THE COURT: Okay. I have to determine what manner, if any, to have you restrained while you're in the courtroom. You're facing serious charges here. As I indicated already, I do have a little bit of a concern regarding your temperament. Again, I've never had any problems with you in here, so I'm hoping we are not going to have any problems. But this incident happened very recently so that is my concern. That, coupled with the escort summary indicating to use caution when you're being transported.

So, my feeling is that it would be appropriate to have your legs remain shackled, but to have your hands free. That way the jury cannot see that you're restrained in some fashion, you'll be able to take notes, but you would not be able to walk around, which I don't think I would allow anyways, but your legs are going to be shackled together.

Do you have an objection to proceeding in that fashion, Mr. West?

THE DEFENDANT: No Your Honor.

THE COURT: All right. So I'll—you may stand if you wish whenever you're questioning or anything like that. But I don't want you obviously to walk around. Okay? And then I'll ask the State to maybe—is there an objection if the State asks questions from here or do you want them to stay where you're at?

THE DEFENDANT: It don't matter.

THE COURT: All right. So, if there is no objection then, the record will reflect that the defendant's legs are shackled together not to the floor, but otherwise he's not restrained in any fashion for the trial."

¶ 8 At trial, defendant did not deny that he attacked Gannon and caused his injuries. However, he argued he was insane at the time of the attack and incapable of understanding the illegality of his conduct. Despite his defense, the jury found defendant guilty of aggravated battery.

¶ 9 Defendant did not file a posttrial motion. On September 29, 2015, Judge Bauknecht conducted a sentencing hearing. The State introduced the presentence investigation report but neither side presented any other evidence. In sentencing defendant, the trial court stated:

> "Having said that, this is a pretty serious case. The legislature directs the court to consider the seriousness of the offense. I'm not double considering anything here, but I am looking at a Class 1 felony offense of aggravated battery, a very serious offense.
>
> Here, it's elevated to a Class 1 because of the allegation and the evidence was that it was great bodily harm. So, we sometimes see aggravated batteries where there's not great bodily harm; but, in this particular case, there was great bodily harm. And I, again, am not trying to weigh certain factors more than they should be. My point is simply that the legislature has deemed this sufficient enough of a serious, or serious enough to indicate that it's a Class 1 felony.
>
> Additionally, I'm to consider the facts and circumstances as presented at trial. And here, completely unprovoked, the defendant just lit into the correctional officer for no reason. Now, I understand you believe that you were provoked because of something over commissary; but—

* * *

And it was still unprovoked; I mean, it was an unprovoked attack that resulted in very serious damage and harm to the correctional officer. I'm not saying any aggravated battery is okay, because it's not, but when you look at the levels of aggravated battery, this is pretty extreme, given the nature and circumstances of the injuries that were suffered by the correctional officer. And that is a factor the court is to consider in aggravation, the seriousness or whether your conduct caused serious harm, which, in this case, it did.

And your prior record, you know, insofar as it goes, it's one prior offense, I understand that; but it's a—, again, it's a serious offense. So, I do think your prior record is a factor in aggravation as well as the disciplinary reports from the Department of Corrections which indicate a history of noncompliance with the rules and regulations of the correctional center.

And, finally, I would note that deterrence is a factor in this case. Obviously, it is not okay to strike another person, particularly when you're in the Illinois Department of Corrections, especially to just light up on him like you did. I mean, you just, you hit him numerous times and caused very, very serious injuries.

I also agree with the State that I don't find any real strong mitigating factors in this case that would outweigh the aggravating factors or even minimize the aggravating factors in this case.

> So, given the very serious nature of the charges, the evidence that was received at trial, coupled with the strong aggravating factors in this case, I do think it's appropriate to sentence the defendant to an extended term."

The court sentenced defendant to a 20-year term to run consecutively to his current term. Defendant did not file a postsentencing motion.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Defendant files this direct appeal, claiming (1) the trial court failed to conduct a proper *Boose* hearing before shackling defendant for trial, (2) the court erred by allowing defendant to proceed *pro se* without proper admonishments, and (3) the court improperly considered Gannon's injuries and defendant's disciplinary record as factors in aggravation. We discuss each issue separately.

¶ 13 Initially, we note defendant did not raise an objection to any of these claims during the trial court proceedings. In this appeal, he suggests each error constitutes plain error and, as such, the error can be addressed despite his forfeiture based on the seriousness of the error. See *People v. Herron*, 215 Ill. 2d 167, 187, 830 N.E.2d 467, 479-80 (2005) (applying the second prong of the plain-error rule, prejudice is presumed if the defendant demonstrates the occurrence of an error so serious it challenged the integrity of the judicial process). Therefore, we analyze each issue with this standard in mind.

¶ 14 A. *Boose* Hearing

¶ 15 First, defendant contends the trial court failed to conduct a *Boose* hearing, as codified in Illinois Supreme Court Rule 430 (eff. July 1, 2010), before ordering defendant's "legs [to] remain shackled." We find no error.

¶ 16 In *Boose*, our supreme court recognized that the shackling of an accused should be avoided if possible because "(1) it tends to prejudice the jury against the accused; (2) it restricts his ability to assist his counsel during trial; and (3) it offends the dignity of the judicial process." *Boose*, 66 Ill. 2d at 265. The supreme court noted that most courts had found an accused should never be in restraints in the jury's presence absent a showing of a manifest need for the restraints. *Boose*, 66 Ill. 2d at 265-66; see also *Deck v. Missouri*, 544 U.S. 622, 626-27, (2005) (noting the law has long forbidden the routine use of visible shackles during the guilt phase except when special need is shown). Such a need exists if (1) the defendant may try to escape, (2) the defendant may pose a threat to the people in the courtroom, or (3) it is necessary to maintain order during the trial. *Boose*, 66 Ill. 2d at 266. The *Boose* court held the determination of whether restraints are necessary rests within the trial court's discretion and set forth a list of factors the trial court should consider when making its determination. *Boose*, 66 Ill. 2d at 266-67. It also required that, outside the jury's presence, the trial court give the defendant an opportunity to present reasons why he should not be shackled and then state for the record the court's reasons for its determination on the use of restraints. *Boose*, 66 Ill. 2d at 266.

¶ 17 In 2010, our supreme court enacted Rule 430, which codified *Boose* and *People v. Allen*, 222 Ill. 2d 340, 347, 349, 856 N.E.2d 349, 354 (2006) (the supreme court confirmed that a trial court's shackling of a defendant without first conducting a proper *Boose* hearing constitutes a violation of due process unless there is a showing of a "manifest need for the restraint"). In *Allen*, when addressing the plain-error rule, the court specifically held that restraining a defendant without a *Boose* hearing did not *always* constitute second-prong plain error. *Allen*, 222 Ill. 2d at 352-53. Instead, the court noted the issue of second-prong plain error must be considered on a case-by-case basis. *Allen*, 222 Ill. 2d at 353.

¶ 18 In *People v. Rippatoe*, 408 Ill. App. 3d 1061, 1068, 945 N.E.2d 132, 138 (2011), the Third District explained that the concerns underlying restraints apply with greater force when a defendant appears *pro se* by stating:

> "Where a defendant is forced to appear *pro se*, take an oath, testify, question witnesses, and present his arguments to the court all while shackled, without any consideration by the trial judge of the necessity for the shackles, the integrity of the judicial process is greatly demeaned. There can be no doubt that the defendant's ability to act on his own behalf is severely diminished."

¶ 19 Here, the trial court considered many of the factors set forth in Rule 430, such as (1) the seriousness of the present charge, (2) defendant's temperament and character, and (3) defendant's past criminal record. The court also considered (1) the reported incident from prison occurring just a few days earlier where defendant allegedly bit off the ear of another inmate, (2) the escort summary classification wherein defendant was considered a moderate escape risk, (3) defendant's history of violent assaults against staff, and (4) the warning to use caution when transporting defendant. Given these considerations, the court determined it "would be appropriate to have [defendant's] legs remain shackled, but to have [his] hands free." The court noted the jury would not be able to see the shackles, but defendant would not be able to move freely about the courtroom.

¶ 20 The State argues the plain-error doctrine is inapplicable because defendant not only forfeited his claim by not objecting, but went so far as to invite the error in the trial court. As a result, the State argues, defendant "should be stopped from making his argument."

¶ 21 "[P]lain-error review is forfeited when the defendant invites the error." *People v. Harding*, 2012 IL App (2d) 101011, ¶ 17, 966 N.E.2d 437. "[U]nder the doctrine of invited error,

a defendant may not request to proceed in one manner and later contend on appeal that the course of action was in error." *Harding,* 2012 IL App (2d) 101011, ¶ 17. "To allow a defendant to use the exact ruling or action procured in the trial court as a vehicle for reversal on appeal would offend notions of fair play and encourage defendants to become duplicitous." *Harding*, 2012 IL App (2d) 101011, ¶17.

¶ 22 Defendant's response to the trial court that he did not "have an objection to proceeding in that fashion" did not rise to the level of invited error. Because defendant was proceeding *pro se*, it is likely he did not realize he could have objected to the court's shackling decision. This failure to object constitutes forfeiture, not invited error.

¶ 23 Nevertheless, defendant has failed to demonstrate the trial court's shackling decision affected the fairness of defendant's trial or that "the dignity of the proceedings was compromised." See *Allen*, 222 Ill. 2d at 353. The trial court offered defendant the opportunity to have the court order the State to remain at counsel table as well while questioning witnesses and arguing the case. Defendant indicated such an order was not necessary. Leveling the playing field may not have mattered to defendant perhaps because he admitted he committed the crime. That is, he did not profess innocence, only insanity.

¶ 24 Again, the *Boose* court warned that shackling a defendant should be avoided unless absolutely necessary because shackling (1) tends to prejudice the jury against the defendant by negating the presumption of innocence; (2) restricts the defendant's ability to assist counsel during trial; and (3) offends the dignity of the judicial process. *Boose*, 66 Ill. 2d at 265. None of those concerns were present here. As such, we find no error, plain or otherwise, with the trial court's decision to keep defendant's legs shackled during trial.

¶ 25 B. Proceeding *Pro Se*

¶ 26 Defendant next contends the trial court erred in allowing him to proceed *pro se* without properly admonishing him pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). In particular, defendant argues the court did not advise him (1) of the nature of the charge or (2) that he had a right to counsel and, if he was indigent, he could have counsel appointed.

¶ 27 Our supreme court recently addressed the sufficiency of a trial court's admonishments regarding a defendant's waiver of counsel, stating as follows:

> "This court has long recognized that the right to self-representation is 'as basic and fundamental as [the] right to be represented by counsel.' (Internal quotation marks omitted.) [Citation.] An accused may therefore waive his constitutional right to counsel as long as the waiver is voluntary, knowing, and intelligent. [Citations.] 'Although a court may consider the decision unwise, a defendant's knowing and intelligent election to represent himself must be honored out of " 'that respect for the individual which is the lifeblood of the law.' " [Citations.]
>
> Illinois Supreme Court Rule 401(a) governs the trial court's acceptance of an accused's waiver of counsel in Illinois. That rule states:
>
> > 'Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:
> >
> > (1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and

(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.' [Citation.]

This court has recognized that compliance with Rule 401(a) is required for an effective waiver of counsel. [Citations.] We have recognized for 30 years that '[s]trict technical compliance with Rule 401(a), however, is not always required. Rather, substantial compliance will be sufficient to effectuate a valid waiver if the record indicates that the waiver was made knowingly and voluntarily, and the admonishment the defendant received did not prejudice his rights.' [Citations.]" *People v. Wright*, 2017 IL 119561, ¶¶ 39-41.

¶ 28 At the June 2014 hearing when defendant asked to fire appointed counsel, the judge advised defendant he was charged with "a Class 1 felony *** aggravated battery." The judge related the potential maximum sentence, including the potential fines. The court asked defendant his age, level of education, the status of his health, criminal history, experience with the court system, and his perceived capability of handling the case. The court warned defendant of the difficulty of presenting a defense and complying with the various applicable rules. It further explained defendant's waiver of his right to counsel would be effective until there was an appeal. The court told defendant if he later wanted an attorney, the court did not have to "give" him one. Defendant indicated he understood all of the admonitions. The court then asked defendant the following: "Now, knowing these things, are you willing to give up your right to

assistance of counsel?" Defendant replied in the affirmative. After that, the court accepted defendant's waiver as "knowing and voluntary."

¶ 29 After reviewing the above exchange between defendant and the trial judge at June 2014 hearing, we conclude all admonishments substantially complied with what is required by Rule 401(a). In short, the record belies defendant's claims of error and therefore, we find no plain error to excuse defendant's procedural forfeiture.

¶ 30 C. Sentence

¶ 31 Finally, defendant contends the trial court improperly considered Gannon's injuries (an inherent element of the offense) and defendant's prison disciplinary records without evidentiary support as factors in aggravation. We disagree either claim constitutes error.

¶ 32 Based upon the trial court's pronouncement of sentence, it is clear to this court the trial court considered the particular circumstances of the offense, including the extent of each element of the offense. See *People v. Sanders*, 2016 IL App (3rd) 130511, ¶ 13, 58 N.E.3d 661. Simply because the court repeatedly mentioned or referred to the serious nature of the injuries suffered by Gannon does not mean the court *relied* on those injuries as a factor in aggravation. In fact, the court specifically stated, more than once, it was "not double considering anything" with regard to the particular circumstances and elements of the offense.

¶ 33 Additionally, we find defendant failed to convince this court that the trial court relied on defendant's prison disciplinary record in fashioning an appropriate sentence. The trial court clearly considered the nature of the offense, the potential range of punishment, defendant's criminal history, the need for deterrence, and the lack of mitigating factors as relevant and appropriate considerations for the 20-year sentence imposed. In sum, our review of the record

before us indicates that no error, let alone plain error, occurred with regard to the court's imposition of sentence.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 36 Affirmed.