

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).

2019 IL App (4th) 160715-U

No. 4-16-0715

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 7, 2019

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
CHRISTIAN M. FORD,)	No. 14CF450
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Holder White and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding defendant forfeited his contention of error in his sentence by failing to raise it before the trial court.

¶ 2 Defendant, Christian M. Ford, entered a negotiated guilty plea to aggravated criminal sexual abuse and was sentenced to 30 months’ probation. Defendant’s probation was later revoked due to his failure to comply with its terms and conditions, and the trial court resentenced him to six years’ imprisonment. Defendant appeals, arguing the trial court improperly punished him for conduct while on probation rather than resentencing him for the underlying offense. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2015, defendant entered a negotiated guilty plea to aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1), (g) (West 2012)), a Class 2 felony. The plea stemmed from a January 2014 incident where defendant, who was then 26 years old, committed an act of sexual conduct with his paramour's son, who was then five years old, by placing his hand on the boy's penis while the boy was under defendant's supervision. In exchange for the plea, the State recommended defendant be sentenced to 160 days' incarceration, with credit for 160 days already served, and 30 months' probation, with certain terms and conditions.

¶ 5 In April 2016, the trial court, after receiving and considering the statutorily required sex offender risk assessment evaluation, sentenced defendant in accordance with the plea agreement.

¶ 6 In June 2016, the State filed a petition to revoke defendant's probation. The State alleged defendant violated the terms and conditions of his probation by failing to (1) report as directed for medical testing on May 31, 2016, or otherwise complete such medical testing (730 ILCS 5/5-5-3(g) (West 2014) (requiring medical testing for sexually transmissible diseases)); (2) report as directed to the Madison County probation department on June 13, 2016, for courtesy supervision intake; (3) advise his assigned probation officer of a change of residence; and (4) maintain contact with court services.

¶ 7 In July 2016, the trial court held a hearing on the State's petition to revoke defendant's probation. Defendant admitted to the allegations in the State's petition, and the State presented a factual basis to support the admission. The court accepted defendant's admission, finding it to be knowingly and voluntarily made and supported by a factual basis. The court revoked defendant's probation.

¶ 8 On August 19, 2016, the trial court held a resentencing hearing. The court had before it an April 2016 sex offender risk assessment evaluation and a recently created presentence investigation report. The defense presented the court with various exhibits in mitigation, which included (1) documentation indicating defendant had attended Alcoholics Anonymous and Moral Reconciliation Therapy meetings while incarcerated and (2) letters from defendant's mother, father, fiancée, and former employer.

¶ 9 In issuing its recommendation, the State highlighted defendant had previously been given multiple community-based sentences, all of which proved to be unsuccessful. The State asserted defendant failed to take advantage of an "exceptional opportunity" under the plea agreement in this case and highlighted defendant's conduct while on probation. The State argued, based on defendant's criminal history and his prior unsuccessful community-based sentences, a community-based sentence in this case would not be appropriate. The State recommended defendant be resentenced to seven years' imprisonment.

¶ 10 The defense acknowledged defendant's failure to comply with the terms and conditions of probation but asserted defendant was "trying to do the right thing at this point in time." The defense requested another community-based sentence.

¶ 11 Following recommendations, defendant made a statement in allocution, apologizing for his actions while on probation and requesting a community-based sentence.

¶ 12 The trial court ruled as follows:

"This court has considered the presentence [investigation] report, the sex offender [risk assessment] evaluation, all relevant statutory factors, including but not limited to the nature and

circumstances of the offense, the evidence and applicable factors in aggravation and mitigation, the character, history[,] and rehabilitative potential of the defendant, his statement in allocution, the documents tendered in mitigation, and the arguments and recommendations of counsel.

[Defendant] is [29] years of age. He does have a prior history of criminality which started nine years ago. It spans four counties, four misdemeanors[,] and three felonies, including this one. In 2008[,] he received drug court probation for a felony theft, a [c]lass 3 felony theft. He violated that and was subsequently resentenced to the Department of Corrections in 2010. While he was on parole he was convicted of and actually committed the offense of criminal damage to property. In 2013 then he was convicted of theft with a prior theft conviction, given an opportunity for [Treatment Alternatives to Street Crimes (TASC)] probation for [30] months. He was serving that probation when he committed this offense as well as the [driving under the influence charge] that he was convicted of. This offense was committed in January of 2014.

He does have his high school education and one class at a college level. He has been employed since December of 2015 but he does present a significant work history prior to that, multiple

different employments, some in short stints. I believe the longest employment he has held was [14] months but he has been gainfully employed for a large, if not the majority of his adult life, up until December of 2015, so he has the ability to do well. That's not as unusual with this type of an offense, but the court will note that. He has no medical or mental health issues. He does describe alcohol use and an entrenched history of cannabis and cocaine use since he was young. Some periods of sobriety. Those seem to coincide with often when he was incarcerated or under some restraints. He claims he has not used any illegal substances since December of 2015. He has had treatment in the past. In 2012[,] he completed residential treatment. In December of 2015[,] he went to the Pavilion and was transferred then to [the Alcoholic Rehabilitation Community Home], a program out of this county. He was unsuccessfully discharged in April of 2016 for lack of cooperation and dishonesty. He did take advantage or did have the advantages offered to him throughout his trips through the criminal justice system of some extraordinary programs, drug court, TASC and substance abuse counseling, put in place in his most recent conviction for driving under the influence, and he did not start up, even take advantage of that counseling with the last conviction

which was from April of 2016, at the same time he pled in this case.

I want to make it clear that there is no evidence this offense was committed as a result of any use or addiction to an illegal drug. The nature and circumstances of this offense is something the court can consider, and I have reviewed the factual basis. The victim was born in 2008. This happened in 2014[,] so he was very young. Even within the continuum of parameters that describe the age for the offense, he was on the young side of that. It is a factor in aggravation that this defendant was in a supervisory or care taking role for the victim. He was babysitting him for the victim's mother at the time. The victim reported that this defendant touched the victim inside his underwear. The victim told him to stop, and the defendant told him it was okay [and that] the victim's mother said it was okay, and that's what he relayed to the child. The defendant's explanation when he was evaluated by Mr. Kleppin *** as part of the sex offender [risk assessment] evaluation was that he was simply rough housing and playing games and tickling the child. The evaluator, Mr. Kleppin, had some concerns that at times the defendant appeared smug or grandiose, although he was always cooperative and pleasant, and he found him to be a moderate risk for reoffending and set forth very restrictive

requirements and very clear requirements as to what would be required for this defendant to be safe and successful in a community-based release. The State agreed to a community-based release as part of the original plea.

Once the defendant was released then, he failed to do anything. The probation was transferred to the county of his residence or where he claimed to reside to accommodate him and to meet his needs and make it as easy as possible to be successful, and instead of utilizing that extraordinary opportunity, this defendant blew it off all together. I want to make it clear these weren't just technical violations. [Defendant] walked out of this courtroom as if he was unfettered by any court orders whatsoever.

It is significant to the court that in the [sex offender] risk assessment that was conducted back in April as part of the original plea, the counselor made it clear that part of the recommendations were that this defendant should participate in sex offender therapy, total abstinence from all mood altering chemicals, maintain gainful employment, and cooperate with all the supervising requirements. It was the evaluator's opinion that if the defendant failed to comply with any of these conditions, it should be viewed as noncompliance with an increased risk to relapse and potential for reoffending, and the evaluator expressed concern for the safety of

the community, and that's precisely what happened. Despite the fact that probation travelled with this defendant to accommodate his needs, he followed through with none of this. He did not meet the most basic requirements, and that is he did not comply with even testing before he decided to blow off the conditions of probation. He never came in to be tested for sexually transmittable disease[s], to show that he was rehabilitating himself, had remorse for what he had done, and give the victim some assurance as to whether or not he had any type of sexually transmittable disease. He failed to show up all together. Court Services gave him several opportunities to do so, and to this date he has not cooperated with that requirement. He registered for the first move and then left from that address. Gave false information to the Madison County supervisory probation office, and they found out he hadn't lived at that address that he gave them for weeks, and he never notified them of the new address, so at this point he was off the grid. We had a sex offender who was not cooperating, was not getting counseling, was not getting treatment, and nobody knew where he was. Again that's an essential point. It certainly creates a higher risk for the community, and the legislature recognized that by requiring sex offenders to register.

Deterrence is a factor for the underlying offense and for those who choose to molest children, and also to make it clear that if you're given an opportunity to deal with that in a community-based sentence, it must be taken seriously. And what's the message to others who do work hard to be successful on probation if there are no sanctions for those who do not? What the defendant has demonstrated is that the resources made available to him to change the direction of his life meant nothing. He didn't just miss some appointments or not follow through or get confused; he totally dropped out of sight. He did absolutely nothing. And the bottom line is to have an untreated child molester free in the community whose whereabouts are unknown, who has gotten no counseling, is creating an untenable and unacceptable risk that the public should not be subjected to. He violated the court order. It's apparent he did not take any of this seriously, and he didn't take even the basic steps necessary to take advantage of that opportunity that was put before him.

It's the court's determination, having regard to the nature and circumstances of the offense and to the history, character[,] and rehabilitative potential of the defendant, imprisonment is [a] necessity at this point to protect the public. A community-based sentence would deprecate the seriousness of the defendant's

conduct, be inconsistent with the ends of justice, and I find would not be successful again. There's no basis to find that anything has changed from what had happened the first time.

It's the court's determination that the appropriate sentence is a period of incarceration in the Illinois Department of Corrections for six years, followed by two years of mandatory supervised release. He is to receive credit for his time previously served."

¶ 13 On August 22, 2016, defendant filed a motion to reconsider his sentence. In his motion, defendant argued (1) his sentence was "excessive;" (2) the trial court failed to impose a sentence in accordance with the seriousness of the offense and the objective of restoring him to useful citizenship; (3) his sentence was "not in keeping with [his] past history or criminality, mental history, family situation, economic status, education, occupational or personal habits;" and (4) the court failed to "give enough weight to his mitigation evidence and his age and his ability to be rehabilitated."

¶ 14 In September 2016, the trial court held a hearing on defendant's motion to reconsider his sentence. Defendant stood on his written motion. The court denied the motion.

¶ 15 This appeal followed.

¶ 16 **II. ANALYSIS**

¶ 17 On appeal, defendant argues the trial court improperly punished him for conduct while on probation rather than resentencing him for the underlying offense. The State disagrees, maintaining the court properly sentenced defendant on the underlying offense and properly

considered defendant's conduct while on probation when evaluating his rehabilitative potential and the risk he posed to the general public.

¶ 18 To preserve an issue for review on appeal, the record must show (1) a contemporaneous objection to the trial court's error was timely made and (2) the issue was contained in a written posttrial motion. *People v. Rathbone*, 345 Ill. App. 3d 305, 309, 802 N.E.2d 333, 336 (2003). At no point in the proceedings below did defendant suggest the trial court improperly punished him for conduct while on probation rather than resentencing him for the underlying offense. Defendant's failure to raise the issue below results in its forfeiture. See *Id.* at 310-11.

¶ 19 Forfeiture aside, we are not persuaded the trial court's comments during the resentencing hearing shows it intended to penalize defendant for his conduct while on probation rather than his conduct from the underlying offense. "When a sentence of probation has been revoked, the trial court may impose any other sentence that was available *** at the time of the initial sentencing." (Internal quotation marks omitted.) *People v. Somers*, 2012 IL App (4th) 110180, ¶ 21, 970 N.E.2d 606; see also 730 ILCS 5/5-6-4(e) (West 2012). The court may consider the defendant's conduct while on probation in reassessing his rehabilitative potential; however, the sentence imposed must not be punishment for the probation violation. *People v. Risley*, 359 Ill. App. 3d 918, 920, 834 N.E.2d 981, 983 (2005). "A sentence within the statutory range for the offense will not be disturbed as an abuse of the sentencing court's discretion unless this court is strongly persuaded that the sentencing judge intended to penalize the defendant for violating his probation." *Id.* at 920-21. A trial court's remarks "must be taken in context, and read in their entirety, including arguments of counsel." *People v. Young*, 138 Ill. App. 3d 130,

142, 485 N.E.2d 443, 450 (1985).

¶ 20 Defendant was convicted of a Class 2 felony (720 ILCS 5/11-1.60(c)(1), (g) (West 2012)) and faced a possible prison sentence between three and seven years (730 ILCS 5/5-4.5-35(a) (West 2012)). The trial court sentenced defendant to a term within the statutory range, which was one year less than the term the State requested. The court indicated it considered the statutory factors in aggravation and mitigation in reaching its decision. The court specifically addressed the nature and circumstances of the underlying offense as well as defendant's age, health, education, employment history, substance abuse, and criminal record. *C.f. People v. Varghese*, 391 Ill. App. 3d 866, 877, 909 N.E.2d 939, 949 (2009) (remanding for resentencing where the trial court never expressly considered the underlying offense when fashioning its sentence). In considering defendant's request for another community-based sentence, the court commented on defendant's history of unsuccessful community-based sentences as well as his conduct while on probation in this case. While the court suggested "sanctions" were warranted for offenders who fail to comply with the terms and conditions of probation, it did so in the context of considering defendant's rehabilitative potential and the threat he posed to the community. In its final comments before rendering its sentence, the court made clear its sentence was based on the "nature and circumstances of the offense and *** the history, character[,] and rehabilitative potential of the defendant." After reviewing the court's comments in their entirety, we are not persuaded the court's sentence was intended to penalize defendant for his conduct while on probation rather than his conduct from the underlying offense.

¶ 21 III. CONCLUSION

¶ 22 We affirm the trial court's judgment.

¶ 23

Affirmed.