

**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) 160787-U

NO. 4-16-0787

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

June 17, 2019

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
CURTIS DUANE VANNOTE,	)	No. 15CF1198
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Justices Knecht and DeArmond concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant could not challenge as excessive his sentence of 20 years in prison where he did not argue on appeal that the trial court erred in denying his motion to withdraw his guilty plea.

¶ 2 Defendant, Curtis Duane Vannote, pleaded guilty to criminal sexual assault (720 ILCS 5/11-1.20(a)(2) (West 2014)) pursuant to a partially negotiated plea agreement in exchange for the State capping its sentence recommendation at 20 years in prison. The trial court sentenced defendant to 20 years' imprisonment. On appeal, defendant argues he was denied his right to a fair sentencing hearing as well as the benefit of his plea bargain because the court failed to consider certain factors in mitigation. The State disagrees and contends this court lacks jurisdiction. We affirm.

¶ 3

## I. BACKGROUND

¶ 4 In 2015, the State charged defendant with criminal sexual assault (720 ILCS 5/11-1.20(a)(2) (West 2014)) based upon allegations that defendant performed oral sex on his son.

¶ 5 In April 2016, defendant pleaded guilty to the charge of criminal sexual assault. In exchange, the State agreed to cap its sentence recommendation at 20 years in prison. Prior to accepting the plea agreement, the trial court admonished defendant and informed him that the offense for which he was charged, a Class X felony, carried a prison sentence of between 6 and 30 years. Defendant stated that he understood the nature of the charge against him and the possible penalties, and he confirmed that his plea was entered freely and voluntarily.

¶ 6 On June 28, 2016, the trial court held a sentencing hearing. Defense counsel presented testimony from Sergeant Roger Frank. Sergeant Frank testified that defendant was a “hall worker” at the county jail where he was incarcerated and would assist with sweeping, mopping, and serving meals. Sergeant Frank stated that defendant complied with rules and regulations at the facility and he had “always been respectful.”

¶ 7 Following Sergeant Frank’s testimony, the State recommended a sentence of 20 years’ imprisonment. In support of this recommendation, the State noted defendant’s lengthy criminal history, including prior sex offenses, and his failure to successfully complete parole on three occasions. The State acknowledged defendant’s acceptance of responsibility; however, the State argued that “the plea agreement itself \*\*\* accounts for that type of mitigation” and, in the absence of a plea agreement, the State would have recommended more than a 20-year sentence “given the severity of [the] conduct” in this case and defendant’s prior record. Defense counsel acknowledged defendant’s prior criminal record and recommended a 12-year sentence. Defense

counsel noted that since his first meeting with defendant, defendant would ask about “every possible opportunity he could to better himself and to better his life.” Defense counsel stated that defendant’s ability to follow rules and regulations at the detention facility shows that he has rehabilitative potential. Defendant then made a statement in allocution. The trial court subsequently sentenced defendant to 20 years in prison.

¶ 8 In sentencing defendant, the trial court noted that it had considered factors in mitigation and factors in aggravation. The court acknowledged defendant’s positive attitude and his acceptance of responsibility and emphasized “how important” and “how commendable” it was that defendant had taken steps to improve. The court noted there was “some” validity to the State’s argument that there had been “a little consideration already given to some of these factors” as evidenced by the State’s sentencing concessions under the plea agreement. The court again commended defendant’s efforts of “recent times” but concluded that a 20-year sentence was appropriate in this case because of defendant’s prior record. The court found it “particularly troubling” that defendant had been convicted of multiple sex offenses and exhibited a “pattern of very poor decision making” and “choosing” “innocent victims[.]”

¶ 9 On July 8, 2016, defendant filed a motion to reconsider, arguing that his sentence was excessive. On August 24, 2016, defense counsel requested an extension of time to file a motion to withdraw the guilty plea. The court granted defendant an additional 30 days to file his motion. On September 14, 2016, defense counsel filed a motion to vacate the guilty plea, claiming that defendant entered the guilty plea “without knowing and understanding the consequences of the plea.” The trial court denied defendant’s motion to reconsider and the motion to vacate the guilty plea.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Defendant argues on appeal that he was denied his right to a fair sentencing hearing as well as the benefit of his plea bargain because the court failed to consider factors in mitigation at the sentencing hearing. The State disagrees and further contends that this court lacks jurisdiction.

¶ 13 A. Jurisdiction

¶ 14 This court's jurisdiction is a threshold issue we must first address before reaching the merits on appeal. The State contends that defendant failed to file a motion to withdraw the guilty plea in violation of Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014) and this court therefore lacks jurisdiction to consider defendant's claims on appeal.

¶ 15 Generally, a trial court is divested of jurisdiction 30 days after the entry of a final judgment unless a post-judgment motion is filed within that time. *People v. Bailey*, 2014 IL 115459, ¶ 8, 4 N.E.3d 474. To challenge a sentence as excessive after entering a negotiated guilty plea, defendant must file a motion to withdraw his guilty plea and vacate the judgment within 30 days of the imposition of the sentence. Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014). However, "a defendant might be entitled \*\*\* to obtain an extension of time beyond the 30-day period prescribed by Rule 604(d)." *People v. Frey*, 67 Ill. 2d 77, 84, 364 N.E.2d 46, 48-49 (1977).

¶ 16 Here, defendant was sentenced on June 28, 2016. He filed a motion to reconsider his sentence within the 30-day time frame on July 8, 2016. Defendant subsequently requested an extension to file a motion to withdraw the guilty plea, and the trial court granted him an

additional 30 days to file that motion. Contrary to the State's assertion, the record reflects defendant filed a written motion to withdraw his guilty plea on September 14, 2016, within the 30-day extension period.

¶ 17 We find the trial court was not divested of jurisdiction because defendant filed a motion to reconsider within 30 days after sentencing and, as a result, the court retained jurisdiction until it ruled on that motion. See *Bailey*, 2014 IL 115459, ¶ 8, 4 N.E.3d 474. Before the court ruled on defendant's motion to reconsider, the court granted defendant a 30-day extension to file a motion to withdraw his guilty plea. The record shows that defendant filed a motion to withdraw his guilty plea on September 14, 2016, within the 30-day extension period granted by the court. See, e.g., *People v. Church*, 334 Ill. App. 3d 607, 613-14, 778 N.E.2d 251, 256 (2002) ("Nothing in Rule 604(d) states that the trial court does not have authority to extend the time for filing a motion to reconsider sentence or a motion to withdraw guilty plea."). Accordingly, we find no jurisdictional bar here.

¶ 18 B. Sentencing

¶ 19 Defendant argues that he was denied the benefit of his plea bargain and his right to a fair sentencing hearing because the trial court failed to consider certain factors in mitigation. Defendant concedes that he failed to raise this claim in his postjudgment motion. See *People v. Smith*, 2016 IL 119659, ¶ 38, 76 N.E.3d 1251. He maintains, however, that his forfeiture may be excused under the plain-error doctrine.

¶ 20 "The initial step under either prong of the plain-error doctrine is to determine whether the claim presented on review actually amounts to a 'clear or obvious error' at all." *People v. Harvey*, 2018 IL 122325, ¶ 15, 115 N.E.3d 172 (citing *People v. Staake*, 2017 IL

121755, ¶ 33, 102 N.E.3d 217). “[S]entencing errors raised for the first time on appeal are reviewable as plain error if (1) the evidence was closely balanced or (2) the error was sufficiently grave that it deprived the defendant of a fair sentencing hearing.” *People v. Ahlers*, 402 Ill. App. 3d 726, 734, 931 N.E.2d 1249, 1256 (2010).

¶ 21 As stated, defendant contends that he was denied a fair sentencing hearing because the trial court failed to consider certain factors in mitigation—namely, his acceptance of responsibility and “not demanding [that] the victim testify.” Defendant argues that the trial court found the negotiated plea agreement took these factors into account and “had it considered that mitigation, it is likely the court would have fashioned a sentence below the twenty year cap.”

¶ 22 Recently, in *People v. Johnson*, 2019 IL 122956, ¶ 57, our supreme court held that “a defendant who enters into a negotiated plea agreement may not challenge his sentence on the basis that the court relied on improper statutory sentencing factors.” In that case, the defendant entered into a negotiated plea agreement where the State agreed to dismiss certain counts and cap its sentence recommendation on the remaining charges. *Id.* ¶ 4. The trial court sentenced the defendant within the range contemplated by the plea agreement. *Id.* The defendant subsequently filed a *pro se* motion to reduce his sentence. *Id.* ¶ 12. He was later granted leave to file an amended motion to withdraw his plea. *Id.* The trial court denied the defendant’s motions and noted that “the State had already made certain concessions at the time of the plea agreement” by reducing the sentencing range from a “15-year maximum penalty to a 13-year maximum penalty \*\*\*.” *Id.* ¶ 14.

¶ 23 The supreme court in *Johnson* noted that, in the appellate court, the “defendant abandoned any claim that the trial court erred in denying his motion to withdraw \*\*\*.” *Id.* ¶ 16.

The court further noted that the defendant's recourse under Rule 604(d) was to seek to withdraw the plea and return the parties to the status quo and, instead, he had "chosen to abandon any argument on appeal with respect to the withdrawal of his plea." *Id.* ¶ 47. The defendant in *Johnson* attempted to skirt Rule 604(d)'s requirements by claiming he was not challenging his sentence as excessive. *Id.* ¶ 36. Rather, the defendant maintained that his "challenge [was] one of constitutional dimension that implicate[d] due process" because the trial court improperly relied on certain statutory factors in aggravation. *Id.* Our supreme court found that this was a "distinction without a difference" and the defendant's argument "would allow almost every sentencing challenge in a criminal case to be restated in a constitutional due process framework \*\*\*." *Id.* ¶ 41. The court stated that the defendant was seeking to "retain the State's [sentencing] concession while freely challenging his sentence." *Id.* ¶ 46 (citing *People v. Diaz*, 192 Ill. 2d 211, 735 N.E.2d 605 (2000)). The court explained that the defendant's plea was entered "with the full knowledge that he could receive a sentence within the cap[.]" he avoided a harsher punishment while receiving the certainty of a lower sentencing range, and "[t]he sentence imposed was within the terms of the bargain \*\*\*." *Id.* ¶ 45. The court concluded that, after entering into a negotiated plea agreement, a defendant may not challenge his sentence by claiming that the trial court relied on "improper statutory sentencing factors." *Id.* ¶ 57.

¶ 24 This case closely resembles *Johnson*. Just like the defendant in *Johnson*, defendant in the case at bar has abandoned on appeal any claim that the trial court erred in denying his motion to withdraw guilty plea and instead attempts to challenge his sentence as excessive by claiming that the trial court's improper application of statutory sentencing factors violated his due process rights. As discussed, *supra*, our supreme court has expressly rejected

this argument where a defendant enters into a negotiated plea agreement and later attempts to challenge his sentence based on the trial court's allegedly improper consideration of sentencing factors. See *id.* ¶ 57. Further, in this case, the trial court sentenced defendant to 20 years in prison. Like in *Johnson*, this sentence was within the agreed upon sentencing range under the clear terms of the plea bargain.

¶ 25 Based on the above, because defendant abandoned any claim that the trial court erred in denying his motion to withdraw guilty plea, and pursuant to our supreme court's directive in *Johnson*, we may not consider on appeal defendant's claim that his sentence was excessive.

¶ 26 III. CONCLUSION

¶ 27 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. 55 ILCS 5/4-2002(a) (West 2016).

¶ 28 Affirmed.