2019 IL App (4th) 170124-U

NO. 4-17-0124

FILED
July 5, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
TEVONNE THOMAS,	)	No. 14CF1049
Defendant-Appellant.	)	
	)	Honorable
	)	Rudolph M. Braud Jr.,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices DeArmond and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) the trial court did not abuse its discretion in sentencing defendant to an aggregate term of 53 years' imprisonment and (2) defendant forfeited his restitution issue.

¶ 2 Following a November 2016 bench trial, the trial court found defendant, Tevonne Thomas, guilty of aggravated criminal sexual assault and home invasion. In December 2016, the court sentenced defendant to an aggregate term of 53 years' imprisonment and ordered him to pay $10,420 in restitution to the Prairie Center Against Sexual Assault (Prairie Center).

¶ 3 Defendant appeals, arguing the trial court (1) abused its discretion in sentencing defendant to an aggregate term of 53 years' imprisonment and (2) erred by ordering defendant to pay $10,420 in restitution without a sufficient evidentiary basis. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 In September 2014, the State charged defendant with (1) aggravated criminal sexual assault (720 ILCS 5/11-1.30 (West 2012)) (count I), (2) home invasion (720 ILCS 5/19-6 (West 2012)) (count II), and (3) residential burglary (720 ILCS 5/19-3 (West 2012)) (count III). Prior to trial, the State dismissed count III.

¶ 6 A. Bench Trial

¶ 7 In November 2016, the trial court held a bench trial and heard the following relevant evidence.

¶ 8 P.C., 73 years old at the time of trial, testified that on August 8, 2014, she fell asleep on the couch while watching television and she suddenly woke up in the early morning while it was still dark outside. P.C. "got a cold chill" and felt "something was weird," so she went to the kitchen to put in her dentures and get a glass of water. P.C. walked through the downstairs of her home but still did not feel right. P.C. testified, "I thought well maybe I had a dream and I don't remember. So I came back and I laid back on the couch and I fell asleep, and then the next time I knew, I couldn't breathe." According to P.C., she could not breathe because somebody was on top of her. The person had his legs pressed against P.C.'s ribs and wanted her to open her mouth for oral sex. The man pried P.C.'s mouth open and she bit him, causing him to begin hitting her. P.C. testified the man put his penis in her mouth and kept beating her chest. P.C. stated, "I said, [']I can't breathe,[’] and he said, [']that's the point.[’]"

¶ 9 The man dragged P.C. by her hair into another room and violated her again. P.C. passed out and woke up back in the living room. The man took P.C.'s clothes off, groped her, and rubbed his penis all over her. Eventually, P.C. shoved the man and offered him her iPad and her debit card to get him to leave. The two walked into the dining room, and the man instructed P.C. not to look at him. P.C. did not look at the man, gave him her debit card, and gave him her

personal identification number. The man told P.C. not to call anybody and threatened to kill her if she did. P.C. testified she saw the man had dark skin when he put his fingers in her mouth and tore her dentures out.

¶ 10 P.C. called her neighbor, and the police eventually arrived. P.C. went to the hospital for a sexual assault examination and treatment for a collapsed lung, broken ribs, and facial injuries.

¶ 11 Detective Michael Fanin testified he photographed P.C.'s injuries and the photographs were admitted into evidence. Fanin also photographed P.C.'s home, including a broken basement window and a butter knife found near the broken window. The butter knife was collected as evidence because the suspect may have handled the knife to pry open the window.

¶ 12 Detective Jim Stapleton testified P.C.'s bank reported activity on her debit card on August 8, 2014, at a store called Oscar's. Detective Stapleton reviewed video from Oscar's of the transaction involving P.C.'s debit card. On August 29, 2014, Detective Stapleton received information regarding another criminal sexual assault and home invasion that occurred approximately five blocks from P.C.'s home. The second sexual assault case involved J.W., and defendant was identified as a suspect in the case. According to Detective Stapleton, he reviewed the video from Oscar's and it appeared to show defendant.

¶ 13 Jennifer Aper, a forensic scientist with the Illinois State Police, testified that five bloodstains were found on P.C.'s shirt. Three of the five samples matched P.C.'s deoxyribonucleic acid (DNA) profile. One of the samples contained a mixture of DNA from two people; the major DNA profile matched defendant, and P.C. was included as a possible contributor to the minor DNA profile. Aper testified, "the major male DNA profile that matched

[defendant] would be expected to occur in approximately [1] in 6.7 quintillion African-American individuals." The final sample matched defendant's DNA profile and would also be expected to occur in 1 in 6.7 quintillion African-American individuals.

¶ 14 J.W. testified that on August 29, 2014, at approximately 4 a.m., she woke up to a man standing over her with his hand on her mouth. The man had his face covered and told J.W. to suck his penis. J.W. stated, "After I fell off the bed onto the floor and then I basically agreed to it because he was covering my mouth up and stuff and I agreed to it, and that's when he used his own voice and I recognized who he was." J.W. testified she knew defendant since he was a baby because he was her daughter's cousin. According to J.W., she saw defendant earlier that day and he was wearing a maroon shirt and light blue jeans. J.W.'s assailant was wearing a maroon shirt and light colored jeans. J.W. wrestled with defendant and pulled the covering off his face. Defendant picked up something in J.W.'s room and hit her on top of her head. J.W. released defendant, and he ran out of the house. When police arrived, J.W. went through her home and noticed a broken window in the basement.

¶ 15 Detective Shane Overby testified that on August 29, 2014, "We received a similar report of a sexual assault nearby. The circumstances were very much the same as the other sexual assault of [P.C.], and there was a suspect identified in that case." The circumstances in J.W.'s and P.C.'s cases were very similar, leading Detective Overby to believe the perpetrator was the same person. Following defendant's arrest, Detective Overby conducted an interview where defendant initially said someone forced him to go into P.C.'s house at gunpoint. In another version, defendant said someone went into P.C.'s house with him. Finally, defendant said he was in P.C.'s house by himself. Overby testified, "He said when he was younger,

someone had sexually victimized him and ultimately it felt like he was turning it around on other people."

¶ 16 Orlean Alexander, defendant's grandmother, testified that defendant lived with her in August 2014. On August 29, 2014, Alexander opened the door to her home for defendant to come inside between 12 a.m. and 1 a.m. Defendant was in her home when Alexander went to bed at 2 a.m. Alexander testified she next saw defendant when she woke up between 8 a.m. and 10 a.m.

¶ 17 At the conclusion of the bench trial, the trial court found the State met its burden of proving defendant's guilt beyond a reasonable doubt. Accordingly, the trial court found defendant guilty of home invasion and aggravated criminal sexual assault.

¶ 18 B. Sentencing

¶ 19 In December 2016, the trial court held a sentencing hearing and considered the presentence investigation report (PSI), a letter regarding counseling for P.C., and a victim impact statement. The PSI indicated defendant was 20 years old at the time of sentencing. According to the PSI, defendant had no prior criminal record but he had the following pending charges: (1) criminal sexual assault and home invasion (Sangamon County case No. 14-CF-960), (2) home invasion, attempted aggravated criminal sexual assault, and aggravated battery (Sangamon County case No. 14-CF-1047), and (3) five counts of public indecency (Sangamon County case No. 16-CM-471).

¶ 20 Defendant reported his uncle sexually abused him between the ages of eight and nine. Defendant had a poor relationship with his father, who was incarcerated for most of defendant's life. Defendant was unemployed and had no history of gainful employment. Defendant was expelled from high school in ninth grade after he was found in possession of

cannabis on school grounds. In 2013, defendant registered as a cadet at Lincoln's Challenge Academy. Although defendant graduated from the program in June 2013, he failed to obtain his general education degree after failing the math portion of the exam.

¶ 21 Defendant reported poor mental health and numerous contacts with mental health staff while incarcerated in the Sangamon County jail. In July or August 2016, defendant attempted to commit suicide by hanging himself in his cell. Information from the Sangamon County jail medical division indicated "that the defendant… 'exhibited symptoms consistent with a Schizophrenia Spectrum Disorder or possibly Depression/Bipolar Disorders with psychotic features.' This information additionally indicated that the defendant was stable in general population and classified his mental health need as 'not serious.' " A November 2014 forensic psychiatric evaluation indicated "defendant had possible diagnoses of conduct disorder, polysubstance abuse, history of attention deficit hyperactivity disorder, and antisocial personality disorder." The 2014 evaluation found defendant was fit to stand trial.

¶ 22 Defendant reported he was 14 years old when he first used alcohol and he consumed approximately a fifth of liquor daily prior to his arrest in August 2014. Defendant further reported using cannabis for the first time at the age of 14 and he "consumed a quarter ounce of this substance daily for several years." The PSI also indicated defendant used Methylenedioxymethamphetamine (MDMA) daily from 2013 until his arrest in August 2014.

¶ 23 The State introduced a letter from the Prairie Center documenting counseling, advocacy, and support services provided to P.C. The letter indicated the Prairie Center contributed 130.25 hours of services and requested restitution at a rate of $80 per hour, totaling $10,420. The victim impact statement indicated P.C. suffered extensive physical injuries, recurring nightmares, constant fear, and the disruption of her daily life.

¶ 24 The State recommended an aggregate sentence of 55 years' imprisonment. In aggravation, the State noted the violent nature of the offense that caused the victim serious harm. Additionally, the State noted that although defendant did not have prior criminal convictions, the trial court could consider other criminal activity, including the testimony from J.W. regarding another home invasion and sexual assault. The State recommended a 30-year term of imprisonment on the aggravated criminal sexual assault conviction and a consecutive 25-year term of imprisonment on the home invasion conviction.

¶ 25 Counsel for defendant argued it was "premature" to consider J.W.'s testimony in aggravation because the charges against defendant were still pending in that case. Counsel emphasized defendant's lack of criminal convictions. Counsel argued defendant was "not the most intelligent young man" and he had been evaluated for fitness prior to trial. Counsel asked for a sentence at the low end of the sentencing range for the aggravated criminal sexual assault conviction and at the middle of the sentencing range for the home invasion conviction. Counsel argued an aggregate sentence of 21 years' imprisonment was appropriate. In allocution, defendant stated as follows: "I just pray that everything where it will be okay and I pray that she will be able to get past this and I just always will sincerely keep her in my prayers and I just pray that God grant you mercy to be able to have leniency on my sentence today because I'm just ready to make a change and move forward in life and just stay out of trouble."

¶ 26 The trial court stated it considered the evidence presented by the State, the PSI, the financial cost of incarceration, the applicable factors in aggravation and mitigation, and the victim impact statement. The judge went on to state as follows:

> "[Defendant], I made sure over the years I keep my comments brief, because again if I state what's truly in my heart and on my

> mind, the Appellate Court would have a field day with it, so I keep my statements brief, but again what you put that elderly woman through that day, calculated, manipulative, horrific, and she is going to have to carry that for the rest of her life, what you did to her. I appreciate you're going to keep everybody in prayers and yourself, but that does not erase the horror you inflicted on her that day."

The court went on to say, "And all the apologies in the world won't erase what she has to live through for her remaining years on this life." The court further noted it appreciated defendant's lack of criminal history and specifically stated it would take that into account. The court sentenced defendant to a 28-year term of imprisonment on the aggravated criminal sexual assault conviction and a consecutive 25-year term of imprisonment on the home invasion conviction.

¶ 27 The trial court then addressed the State's request for restitution in the amount of $10,420. Defense counsel said the amount was not agreed upon, and the court asked counsel if he had "any evidence to contradict or any evidence with respect to this[.]" Counsel responded, "I don't have any evidence, and I don't think the State really has a whole lot of evidence other than the document they presented to the [c]ourt as to what services were provided and what the cost is." Counsel further argued the restitution judgment "would never be collected, so it's just a loose end that's going to be floating around the courthouse forever." The State argued restitution was appropriate regardless of defendant's ability to pay. The State further noted the letter from the Prairie Center documented the number of hours of services provided and the cost per hour to arrive at the total amount of $10,420. The court ordered $10,420 in restitution.

¶ 28 In January 2017, defendant filed a motion to reconsider his sentence. At a hearing on the motion to reconsider, defense counsel argued the trial court subconsciously "considered the evidence of the other sexual assault in making the decision on this particular case, which stands alone, given the fact that [defendant] ha[d] no criminal history." The judge stated as follows:

> "And again, my standard sentencing statements, I don't over-highlight any factor. I don't put over-emphasis because, again, the Appellate Court's going to tell me I over-emphasized something, and so I made sure that I was crystal clear when I went through my sentencing for [defendant] of the presentence investigation, any victim impact statement, State's sentence recommendation, your sentence recommendation, allocution, financial impact of incarceration, and all these factors in aggravation and mitigation, and I'm not saying that they were all equal weight, but again, this [c]ourt did not over-emphasize criminal history or lack thereof. It was a collective analysis on behalf of the [c]ourt."

Accordingly, the court denied defendant's motion to reconsider his sentence.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 On appeal, defendant argues the trial court (1) abused its discretion in sentencing defendant to an aggregate term of 53 years' imprisonment and (2) erred by ordering defendant to pay $10,420 in restitution without a sufficient evidentiary basis.

¶ 32 A. Sentence

¶ 33 Defendant argues the trial court abused its discretion in sentencing defendant to an aggregate term of 53 years' imprisonment because the judge's comments at sentencing show he overemphasized punishing defendant and failed to adequately consider relevant mitigating factors and the constitutionally mandated objective of rehabilitation.

¶ 34 The Illinois Constitution requires the trial court, when imposing a sentence, to balance the defendant's rehabilitative potential with the seriousness of the offense. Ill. Const. 1970, art. 1, § 11; *People v. Bien*, 277 Ill. App. 3d 744, 756, 661 N.E.2d 511, 519 (1996). We afford a trial court's sentencing decision substantial deference. *People v. Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d 656. Sentencing decisions must be based on a consideration of all relevant factors and the specific circumstances of each case. *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999). The court must not ignore relevant mitigating factors. *People v. Flores*, 404 Ill. App. 3d 155, 157, 935 N.E.2d 1151, 1154 (2010). However, "a trial court is not required to expressly outline its reasoning for sentencing, and absent some affirmative indication to the contrary (other than the sentence itself), we must presume that the court considered all mitigating factors on the record." *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55, 8 N.E.3d 470. This presumption may be overcome only by showing explicit evidence from the record that the court did not consider mitigating evidence. *Flores*, 404 Ill. App. 3d at 158. Additionally, a reviewing court must not substitute its judgment for that of the trial court simply because it would have balanced the factors differently. *Fern*, 189 Ill. 2d at 53.

¶ 35 Defendant contends the trial court ignored relevant mitigating factors and defendant's rehabilitative potential and overemphasized retribution. Specifically, defendant argues the court focused on punishment, told defendant his apology would not erase his actions,

and described defendant's actions as horrific and horrendous. Defendant further points to the following comment made by the judge: "I made sure over the years I keep my comments brief, because again if I state what's truly in my heart and on my mind, the Appellate Court would have a field day with it, so I keep my statements brief, but again what you put that elderly woman through that day, calculated, manipulative, horrific, and she is going to have to carry that for the rest of her life, what you did to her." Defendant contends this comment, coupled with the judge's decision to impose a 53-year aggregate sentence, suggests the judge weighed a particular factor that is not explained by the record or considered a wholly impermissible factor. We disagree.

¶ 36 The record shows the trial court explicitly stated it considered the evidence presented by the State, the PSI, the financial cost of incarceration, the applicable factors in aggravation and mitigation, and the victim impact statement. The court also referenced defendant's statement in allocution. In particular, the PSI contained the factors in mitigation defendant now points to, including defendant's relatively young age, his substance abuse, his mental-health issues, and his difficult childhood. As noted, the court explicitly stated it considered the information within the PSI. Although the court told defendant his apology would not erase his actions and described defendant's actions as horrific and horrendous, the court also acknowledged defendant's lack of a criminal history. Our review of the record shows the court considered the relevant mitigating factors before it. Although the court did not explicitly state it considered defendant's potential for rehabilitation, the court is not required to expressly outline every factor considered.

¶ 37 As to the statement that the judge made that this court would "have a field day" if he "state[d] what's truly in [his] heart and on [his] mind," we conclude this is not explicit

evidence the judge ignored the mitigating factors. Defendant argues this comment, coupled with the lengthy sentence imposed, shows the court weighed a particular factor not explained by the record or considered a wholly impermissible factor. Absent affirmative evidence *other than the sentence itself* that the court ignored mitigating evidence, we presume the court considered the mitigating factors on the record. *Jones*, 2014 IL App (1st) 120927, ¶ 55. Nothing in the record indicates the court considered a wholly impermissible factor. If anything, this comment suggests the court gave greater weight to the seriousness of the offense—something adequately explained by the record—than it gave to the mitigation factors, including defendant's potential for rehabilitation. The court is not required to give the potential for rehabilitation greater weight than the seriousness of the offense. *People v. Anderson*, 325 Ill. App. 3d 624, 637, 759 N.E.2d 83, 95 (2001). In this case, defendant broke into the victim's house in the early morning hours and sexually assaulted her as she slept on her couch. Defendant forced her dentures from her mouth and placed his penis in her mouth, preventing her from breathing and causing extensive physical injuries. We note the court also had evidence of another very similar home invasion and sexual assault, as well as defendant's explanation that he was sexually abused and his actions "felt like he was turning it around on other people."

¶ 38 Absent an abuse of discretion, it is not for this court to alter the trial court's sentence. *Fern*, 189 Ill. 2d at 53. Moreover, we presume the court considered all relevant mitigating factors where the record contains no explicit evidence to the contrary. *Jones*, 2014 IL App (1st) 120927, ¶ 55. Simply because rehabilitative and mitigating factors are present does not entitle them to greater weight than the seriousness of the offense. *People v. Coleman*, 166 Ill. 2d 247, 261, 652 N.E.2d 322, 329 (1995); *People v. Shaw*, 351 Ill. App. 3d 1087, 1093-94, 815 N.E.2d 469, 474 (2004). Given the circumstances of this offense, we conclude the court did

not abuse its discretion in giving the seriousness of the offense greater weight than defendant's relative youth, substance-abuse issues, mental-health issues, and difficult childhood. Accordingly, we affirm the court's judgment imposing a within-guidelines sentence of 53 years' imprisonment.

¶ 39 B. Restitution

¶ 40 Defendant next argues the trial court erred by ordering defendant to pay $10,420 in restitution without a sufficient evidentiary basis. Specifically, defendant argues the State presented insufficient evidence to support its claim that restitution was appropriate under section 5-5-6(g) of the Unified Code of Corrections (Code) (730 ILCS 5/5-5-6(g) (West 2016)), which provides, in part, as follows:

> "In addition to the sentences provided for in Section *** 11-1.30 *** of the Criminal Code of 1961 or the Criminal Code of 2012, the court may order any person who is convicted of violating any of those Sections *** to meet all or any portion of the financial obligations of treatment, including but not limited to medical, psychiatric, or rehabilitative treatment or psychological counseling, prescribed for the victim or victims of the offense." 730 ILCS 5/5-5-6(g) (West 2016).

Defendant argues the State neglected to present evidence that the "counseling[,] advocacy[,] and support services" were (1) prescribed by a medical professional or (2) "treatment" eligible for restitution under this section. The State argues defendant has forfeited this argument by failing to include it in his motion to reconsider his sentence.

¶ 41 Section 5-4.5-50(d) of the Code requires a defendant seeking to challenge the correctness of a sentence or an aspect of the sentencing hearing to file a written motion with the trial court. 730 ILCS 5/5-4.5-50(d) (West 2016). To preserve sentencing issues for appellate review, those issues must be raised in a defendant's written motion to reconsider the sentence before the trial court. *People v. Reed*, 177 Ill. 2d 389, 393, 686 N.E.2d 584, 586 (1997). (We note the statute at issue in *Reed* (730 ILCS 5/5-8-1(c) (West 1994)) is currently codified under section 5-4.5-50(d) of the Code.) An issue not raised before the trial court is deemed forfeited. *People v. Rathbone*, 345 Ill. App. 3d 305, 310, 802 N.E.2d 333, 337 (2003). Adherence to this rule allows the trial court to first address any "contention of sentencing error and save the delay and expense inherent in appeal if they are meritorious." *Reed*, 177 Ill. 2d at 394.

¶ 42 In this case, defendant failed to challenge the evidentiary sufficiency in his motion to reconsider his sentence. Accordingly, this issue is deemed forfeited. We further note that although defense counsel did raise an objection to the restitution at the sentencing hearing, he never raised the statutory construction argument regarding subsection 5-5-6(g) he now raises on appeal. However, defendant asks this court to review the issue under the second prong of the plain-error doctrine, which allows this court to review for plain error when an alleged error is so fundamental a defendant may have been deprived of a fair sentencing hearing. *People v. Beals*, 162 Ill. 2d 497, 511, 643 N.E.2d 789, 796 (1994). Defendant argues second-prong plain-error review is appropriate because sentencing issues affect a defendant's fundamental right to liberty and the "absence of any evidence to support the restitution order affects [defendant's] substantial rights." In support of this argument, defendant cites *People v. Jones*, 206 Ill. App. 3d 477, 482, 564 N.E.2d 944, 947 (1990).

¶ 43 However, this court has declined to follow the Second District's decision in *Jones*. See *People v. Hanson*, 2014 IL App (4th) 130330, ¶ 36, 25 N.E.3d 1. "When a defendant expects the reviewing court to bypass the forfeiture statute and address his claim, his burden of establishing plain error is more than a *pro forma* exercise. Any defendant is capable of merely asserting a few ten-dollar phrases—such as 'substantial rights,' 'grave error,' and 'fundamental right to liberty'—but those phrases mean nothing unless the defendant persuades the reviewing court that the sentencing error *in his case* merits plain-error review. As we held in *Rathbone*, 'it is not a sufficient argument for plain-error review to simply state that because sentencing affects the defendant's fundamental right to liberty, any error committed at that stage is reviewable as plain error. Because all sentencing errors arguably affect the defendant's fundamental right to liberty, determining whether an error is reviewable as plain error requires more in-depth analysis.' " *Id.* ¶ 37 (quoting *Rathbone*, 345 Ill. App. 3d at 311).

¶ 44 Defendant attempts to distinguish this court's decision in *Hanson* because it involved restitution of $490.82 for repairs to a car. See *id.* ¶ 40. Defendant contends this restitution was clearly covered by the restitution statute, while the "advocacy" and "support" services provided to P.C. are not. Defendant further asserts this court found the specific amount of restitution in *Hanson* suggested a precise bill even though one was not placed in evidence. See *id.* This ignores the specificity of the statement from the Prairie Center that P.C. received 130.25 hours of services at a rate of $80 per hour totaling $10,420. There was more evidentiary support in the record for this restitution amount than there was in *Hanson*.

¶ 45 We conclude defendant has failed to demonstrate that he was deprived of a fair sentencing hearing or that any error affected his substantial rights. This is not a case where a restitution order was entered without any evidentiary basis whatsoever or where the court failed

to calculate counseling expenses. See *People v. Guajardo*, 262 Ill. App. 3d 747, 770-71, 636 N.E.2d 863, 880 (1994) ("While the circuit court was correct in ordering restitution be paid, it erred in determining the amount of restitution without properly determining the amount of counseling expenses incurred.").

¶ 46 In defendant's opening brief, he includes a two-sentence argument that this court should alternatively address this issue because "counsel rendered constitutionally ineffective assistance for failing to include in the motion to reconsider the entry of an invalid restitution order." In his reply brief, defendant offers a conclusory statement that counsel's failure to raise this issue in the motion to reconsider his sentence was objectively unreasonable because this court decided *Hanson* in 2014 and the sentencing hearing took place in 2016. Defendant further offers the conclusory statement that he was prejudiced because he has now incurred a $10,420 debt. We decline to address defendant's conclusory ineffective assistance argument, particularly where defendant has failed to make any argument that the outcome of the proceeding would have been different but for counsel's failure to include this issue in the motion to reconsider.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we affirm the trial court's judgment.

¶ 49 Affirmed.