

NOTICE
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2019 IL App (5th) 180228-U

NO. 5-18-0228

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Montgomery County.
)	
v.)	No. 12-CF-189
)	
LARRY P. KORUNKA,)	Honorable
)	James L. Roberts,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's 7-year sentence for unlawful delivery of methamphetamine and 30-year sentence for unlawful possession of methamphetamine are affirmed where the trial court properly considered the mitigating factors of his age, physical and mental health, his desire for substance-abuse treatment, and the remorse that he showed at sentencing and where the court's consideration of the receipt of compensation and the fact that his conduct caused or threatened serious harm as aggravating factors was not plain error.

¶ 2 The State charged the defendant, Larry Korunka, with one count of unlawful delivery of methamphetamine (less than five grams), having been previously convicted of the manufacture of methamphetamine (count I) (720 ILCS 646/55(a)(2)(A) (West 2012)); two counts of aggravated participation in methamphetamine manufacturing (counts II and

III) (*id.* § 15(b)(1)(D), (B)); and one count of unlawful possession of methamphetamine (more than 100 grams but less than 400 grams) (count IV) (*id.* § 60(b)(4)). Thereafter, the defendant entered an open plea of guilty to counts I and IV, and the trial court sentenced him to 7 years' imprisonment on count I and 30 years' imprisonment on count IV. On appeal, the defendant does not challenge his conviction but attacks his sentence as excessive. For the reasons that follow, we affirm the order of the circuit court of Montgomery County.

¶ 3 On November 19, 2012, the State charged the defendant with one count of unlawful delivery of methamphetamine (*id.* § 55(a)(2)(A)) in that he knowingly and unlawfully delivered to a confidential source of the South Central Illinois Drug Task Force less than five grams of methamphetamine, and he had previously been convicted of the manufacture of methamphetamine. The following day, the State charged him with two counts of aggravated participation in methamphetamine manufacturing (*id.* § 15(b)(1)(D), (B)) in that he knowingly and unlawfully produced, prepared, or separated more than 100 grams but less than 400 grams of methamphetamine in a structure containing a surveillance system and in a structure where a child under 18 was present.

¶ 4 On August 27, 2013, the State charged him with one count of unlawful possession of methamphetamine (*id.* § 60(b)(4)). That same day, the defendant entered an open guilty plea to counts I (unlawful delivery of methamphetamine, a Class 2 felony) and IV (unlawful possession of methamphetamine, a Class X felony). In exchange for the guilty plea, the State agreed to dismiss counts II and III.

¶ 5 During the guilty-plea hearing, the trial court admonished the defendant as to the minimum and maximum sentences prescribed by law. The court stated that count I had a possible extended-term sentencing range of not less than 3 and not more than 14 years' imprisonment because he had a previous methamphetamine conviction (the nonextended-term sentencing range was three to seven years' imprisonment). The imposed sentence would be followed by a two-year period of mandatory supervised release (MSR). The court further stated that count IV had a possible extended-term sentencing range of not less than 6 years' and not more than 60 years' imprisonment because he had a previous methamphetamine conviction (the nonextended-term sentencing range for a Class X felony was between 6 and 30 years' imprisonment). The imposed sentence would be followed by a three-year period of MSR. The sentences would be served concurrently.

¶ 6 The trial court then admonished the defendant in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 2012). The State provided the following factual basis:

"Your Honor, with regards to Count I if this were to go to trial the State would call confidential source as well as Agent Gonzalez of the South Central Illinois Drug Task Force. They would testify that on the date and time alleged in the information they were conducting a covert narcotics operation [and] that the target [was] Larry P. Korunka. They had equipped the confidential source with a[n] eavesdropping device. Made phone contact with Mr. Korunka. Confidential source then at approximately 12:04 p.m. walked to the property of 7190 Illinois Route 16 in Montgomery County, Illinois. The eavesdrop device was activated, recorded a conversation and meeting between Mr. Korunka, another male individual, and the confidential source. During that meeting[,] *** Mr. Korunka unscrewed a metal container and handed *** a quantity of methamphetamine to the confidential source in exchange for \$60. There was then a debriefing. The substance that was purportedly identified by the confidential source as being given to it by Mr. Korunka was sent to the lab for forensic testing and was analyzed and positive for the substance containing methamphetamine .1 grams. That was by Kristin K. Stiefvater, Illinois Forensic Scientist.

With regards to Count 4 after the results of the delivery to the confidential source a search warrant was obtained for the property of 7190 Illinois Route 16 and executed at 8:26 p.m. During that search warrant they found indicia of residency of Mr. Korunka who was the purported owner of this machine shed that had sleeping quarters, etc. There would be testimony from officers that Mr. Korunka tried to stop the officers from entering as they were executing the search warrant. They did find items of particular to methamphetamine manufacturing. With regards to this count they found a substance in the upper level of the machine shed that ultimately field tested positive for methamphetamine and then was sent for forensic testing. The State would present testimony from Forensic Scientist in this case it's Marla Spangler, that she tested the items and it was positive for a substance containing methamphetamine and the weight was over 100 grams of methamphetamine. *** That would be testified to by the same individuals as well as Agent Cowell and other members of the Meth Emergency Response Team that recovered the various items including the 173 grams of *** a substance containing methamphetamine."

The trial court then accepted the defendant's guilty plea and found that it was knowingly and voluntarily made.

¶ 7 The trial court then held the sentencing hearing on October 7, 2013. At the hearing, the court indicated that the presentence investigation (PSI) report had been filed. According to the report, the defendant had a number of traffic, misdemeanor, and ordinance violation charges, and three previous felony charges, which resulted in his being incarcerated from 2004 to 2009 for a Class X felony conviction for the manufacture of methamphetamine. The report also indicated that the defendant had substance-abuse issues, had first tried methamphetamine at the age of 44, and had used methamphetamine almost daily until he went to prison for manufacturing in 2004. The report further indicated that the defendant reported that he suffered from depression, anxiety, peripheral artery disease, chronic obstructive pulmonary disease, degenerative disc disease, attention deficit hyperactive disorder, asthma, and Hepatitis C. He reported having a heart attack

in 2004 and that he was on oxygen to assist with his breathing. His medical records were included with the PSI report.

¶ 8 Justin Gonzalez, an officer with the South Central Illinois Drug Task Force, testified that he was the case agent for the covert narcotics operation that occurred at the defendant's residence. He testified that, as part of the investigation, there was a purported delivery of methamphetamine that occurred through the use of a confidential source, that he was present during the debriefing of the source, and that he listened to the eavesdropping device. During the transaction, the confidential source offered to bring the defendant a box of pseudoephedrine to facilitate the deal. There was also evidence that a small child was present during the delivery; while listening to the eavesdropping device, Gonzalez heard the defendant tell one of the officers to be quiet because the baby was sleeping. Gonzalez was present when the search warrant was served on the defendant for the search of his residence (the residence was actually a shed that had a sleeping quarters and a kitchen); upon entry to serve the search warrant, Gonzalez observed an infant in the residence. Further, while searching the residence, the searching officers found a crib, multiple toys, and baby formula in the kitchen. The infant was identified as the defendant's grandchild. The officers also discovered methamphetamine manufacturing materials in the residence. There was also a working surveillance camera in the front room and a security camera on the back side of the residence that had a monitor wired up to another room in the loft.

¶ 9 After the testimony, the State recommended that the defendant be sentenced to 7 years' imprisonment for count I to be followed by 2 years of MSR and be sentenced to 34

years' imprisonment for count IV to be followed by 3 years of MSR. The State based its recommendation on the following factors in aggravation: that the defendant's conduct caused or threatened serious harm in that he delivered methamphetamine on the same date that he possessed a large quantity of methamphetamine, and there was an infant in the same structure where the large amount of methamphetamine was discovered; that he received compensation for committing the offense in that there was an exchange of currency and that he was requesting pseudoephedrine pills, which was a component of further manufacturing of methamphetamine; that he has a known history of prior delinquency or criminal activity in that he had a previous conviction for a Class X felony for a methamphetamine-related offense, a felony charge for possessing a weapon in 2009, and a driving under the influence conviction; that anything less than 30 years would depreciate the seriousness of the offense; and that the sentence was necessary to deter others from committing the same crime. The State contended that this was a systematic, calculated operation that both resulted in the delivery of methamphetamine to a confidential source as well as possession well in excess of 100 grams of methamphetamine. The State further argued that the legislature has spoken to the seriousness of this offense in that it has doubled both the fine possibilities and the maximum sentences because of the previous felony conviction within the last 10 years of the methamphetamine-related charges.

¶ 10 In response, defense counsel recommended that the defendant be sentenced to 7 years' imprisonment on count I and somewhere in the mid-range between 6 and 30 years (but no more than 30 years) on count IV. Defense counsel noted that there were not any

applicable mitigating factors but asked the court to take into consideration the fact that the defendant pled guilty to the charge and accepted his guilt in the possession of methamphetamine. Defense counsel argued that a prison sentence would be considered a death sentence for the defendant because the defendant did not believe that he would come out of prison alive.

¶ 11 The defendant then made a statement in which he expressed remorse for his actions, indicated that he wanted to seek treatment for his substance-abuse issues, and asked for the minimum sentence because he suffered from chronic lung disease, and he was not allowed an oxygen machine in prison. He indicated that he believed that prison would be a death sentence for him.

¶ 12 After hearing counsels' recommendations and the defendant's statements, Judge Kelly Long stated as follows:

"At least from the defendant's position probably consider factors in mitigation that imprisonment of the defendant might endanger his medical condition. I have no idea whether the Department of Corrections will allow him to have or not have oxygen, and I have no idea whether he needs or must have oxygen for his claimed medical condition. Factors in aggravation are, one, his conduct caused or threatened serious harm. 2, the defendant received compensation. 3, the defendant has a history of prior criminal activity. 7, that sentence is necessary to deter others from committing the same crime. The legislature has deemed this offense extremely serious especially considering [the defendant's] prior history, and I'm not considering the factors that double the maximum sentence on these two offenses as further aggravating. The legislature has already taken that into consideration."

Thereafter, the court sentenced him to seven years' imprisonment to be followed by a two-year period of MSR on count I. The court sentenced him to 30 years' imprisonment

to be followed by a 3-year period of MSR on count IV. The sentences were to be served concurrently.

¶ 13 On November 6, 2013, defense counsel filed a motion to reconsider the sentence, arguing that the imposed sentence was not "in keeping with [the defendant's] health issues" in that he suffered from several health issues, that he needed an oxygen machine to assist with his breathing, and the Illinois Department of Corrections (DOC) refused to give him an oxygen machine. The defendant also filed *pro se* motions to reduce his sentence and to withdraw his guilty plea. In the motion to reduce his sentence, he argued that the conditions in prison exacerbated his health conditions and that the lengthy prison sentence would be a death sentence for him. In his motion to withdraw guilty plea, he argued that his trial counsel was ineffective.

¶ 14 Thereafter, new counsel was appointed to represent the defendant, and the newly appointed counsel filed amended motions to withdraw the guilty plea and to reconsider the sentence. In the amended motion to reconsider sentence, he argued that the sentence was excessive because it exacerbated the defendant's medical condition; and the trial court failed to give adequate consideration to his rehabilitative potential, his imprisonment would be an excessive hardship to his family, that it would endanger his medical condition, and that he pled guilty to the offenses. Counsel also filed a certificate of compliance with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013).

¶ 15 The trial court held a hearing on the amended motions to withdraw guilty plea and to reconsider sentence on October 24, 2014. At the hearing, defense counsel withdrew the amended motion to withdraw the guilty plea and proceeded on the amended motion to

reconsider sentence. Tammy Taylor, the defendant's sister, testified that, prior to his incarceration, the defendant was their father's primary caretaker and that the defendant's incarceration had been a hardship on their father and on her. She also testified that the defendant had four children and had medical issues himself. The defendant, who was 53 years old, testified that he suffered from Barrett's esophagus, which was the corroding of the esophagus liner; chronic obstructive pulmonary disorder, which required breathing treatments and an oxygen machine; a back condition; a "bad neck"; depression; and peripheral artery disease. He testified that he has been unable to obtain an oxygen machine at the DOC and that there was no air conditioning in prison, which negatively impacted his health in that it made him dizzy, and he has passed out from the heat. He expressed remorse for his actions and admitted that he was at fault in that he "didn't have to leave the door open." He acknowledged that he has not been diagnosed with any health conditions since being incarcerated and that he sees either a doctor or a nurse monthly. When questioned by the court whether he was participating in any substance-abuse program while incarcerated, the defendant responded that the facility does not offer any substance-abuse programs.

¶ 16 After testimony, defense counsel requested that the trial court reduce the defendant's sentence on count IV to between 15 and 20 years, arguing that imprisonment endangered his medical conditions, that his imprisonment was a hardship on his father, that he was unlikely to commit another crime, and that he pleaded guilty to these offenses. Thereafter, on October 30, 2014, Judge Long denied the amended motion to reconsider sentence. In the order, the court made the following findings: that the

defendant had not presented any credible evidence that he had new medical conditions resulting from his incarceration; that he was not enrolled in any DOC programs for substance-abuse counseling or treatment; that he wanted to see his children and grandchildren but had endangered them by his past conduct in that he allowed them to be exposed to his methamphetamine manufacturing; that he received a sentence that was 50% of the sentence that he could have received; that there was no credible evidence that he could or would be needed by any other family member for any assistance or that he would be a proper caregiver; that there was no evidence that he needed or was using oxygen while manufacturing methamphetamine; that the court considered the mitigating factor of the guilty plea and did not sentence him to 60 years due to this factor, his age, and his medical conditions; that his conduct and prior record would justify a 60-year sentence; that there was little probability that he would conform his conduct to the law if released from custody now or in the future; that there was no credible evidence that incarceration had aggravated his medical conditions; and that it was more likely that incarceration had been a benefit to his health. Thus, the court denied the defendant's amended motion to reduce his sentence. The defendant appealed this order.

¶ 17 On appeal, this court vacated the trial court's order because counsel's Rule 604(d) certificate was deficient in that it did not state that counsel consulted with the defendant about contentions of error he might have regarding both the guilty plea and sentence. Thus, this court remanded the matter for strict compliance with Rule 604(d). *People v. Korunka*, No. 5-14-0585 (2016) (unpublished Summary Order under Illinois Supreme Court Rule 23(c)).

¶ 18 On February 14, 2017, defense counsel filed an amended motion to reduce the defendant's sentence, arguing, in pertinent part, that the trial court failed to give adequate consideration to the mitigating factor that imprisonment would exacerbate his medical conditions. The motion indicated that he suffered from Barrett's esophagus syndrome (a precancerous condition), asthma, chronic obstructive pulmonary disease, peripheral artery disease, degenerative disc disease, gastroesophageal reflux disease, Hepatitis C, and attention deficit hyperactive disorder. The motion further indicated that, while in the custody of the DOC, the defendant had been taken off his nebulizer treatments and had not received timely cancer screenings. Attached to the motion were the defendant's medical records. Counsel also filed a new Rule 604(d) certificate.

¶ 19 On November 2, 2017, the trial court held a hearing on the amended motion to reduce the defendant's sentence. Judge James Roberts presided over the hearing. Pavinderpal Gill, a licensed physician who was board certified in internal medicine and sleep medicine, testified that, although the defendant was not his patient, he reviewed the defendant's medical records and spoke to him concerning his medical condition. He noted that the defendant suffered from a lung condition (emphysema/COPD), had a liver problem, had Hepatitis C, had blockages of the blood vessels in his legs (peripheral arterial disease), suffered from depression, and was possibly bipolar. He also noted that the defendant had osteoarthritis and suffered from chronic pain from that. The COPD caused the defendant to have difficulty breathing and caused shortness of breath. It was a progressive condition if not treated properly, and the usual treatment consisted of medication, usually inhaled and sometimes pills, and rehabilitation programs that were

meant to strengthen the lungs. Dr. Gill explained that the defendant had been receiving standard treatment for his COPD while incarcerated, but he had not been provided with supplemental oxygen (an oxygen machine). In addition, he had not been given a pulmonary function test to determine whether he needed supplemental oxygen or to determine the progression of his lung condition. Certain conditions, such as extreme temperature, extreme humidity, excessive exertion, or exposure to allergens, would exacerbate his COPD. The defendant reported that he was exposed to high humidity and high temperatures at times when he was working in the kitchens. Dr. Gill explained that it is important to minimize exacerbations because each time there is an exacerbation, there is a "certain part of the lung that dies out so to speak." He further explained that pulmonary rehabilitation would help build up the lung reserve.

¶ 20 Dr. Gill testified that the defendant was given prednisone for his COPD while incarcerated but explained that prednisone could adversely impact his mental health issues. He did not believe that the defendant was receiving counseling for his bipolar disorder. The defendant also had not received any treatment for Hepatitis C, which was still active. He testified that the conditions of imprisonment likely endangered his medical conditions. He believed that the defendant's health was declining and opined that it would continue to decline because the defendant was not receiving pulmonary rehabilitation, supplemental oxygen, and treatment for the Hepatitis C.

¶ 21 The defendant testified that he had a heart attack in early 2000 and that he was taking an aspirin every day, but the DOC doctor would not give him an aspirin. He explained that his COPD affected him on a daily basis in that he constantly "[ran] out of

air" and that it was progressively getting worse. He has an inhaler, but he gets sinus infections every time he uses the inhaler. He works as a dishwasher in the kitchen, which impacted his ability to breathe because it was extremely hot in the kitchen. He had requested treatment for the Hepatitis C but was told that he was ineligible. He was on medication for bipolar disorder, but he could not breathe when taking the medication. He participated in counseling approximately three months ago, and he does not know why that stopped. He completed a substance-abuse program approximately one year ago.

¶ 22 After hearing the testimony, the trial court stated as follows:

"The request is that your sentence be cut in half based on the fact that you are not getting proper treatment in the Department of Corrections with regard to these chronic and ongoing health conditions, and something that just seems to be of importance to the Court and maybe it was just something that Dr. Gill could not opine, but you know I don't know if this is something that a reduction of a couple of years is going to make a difference with regard to your ultimate health, and it wasn't clear to me based on the testimony. You've testified that there is some exacerbating circumstances in that you are working in the condition or in the kitchen which is subjecting you to heat and moisture and other things that are causing a problem, but I don't recall hearing the testimony that that was a mandatory thing that you have to do. My suggestion would be is to the extent that you can protect your own health stop doing things that are putting you in that circumstance. If working in the kitchen is causing pulmonary problems and you can't breathe, then stop working in the kitchen. That seems to be something that you can take care of yourself and doesn't require the Court to intervene. Having said that, I want to take a look at these records, because I do believe and that's why I granted the opportunity for this additional mitigating evidence, I do know that Judge Long and [your previous counsel] briefly on your behalf did at least address and touch on the fact that you have health conditions, and that was noted. Whether it was fully explored and the full mitigating evidence was presented, well, I don't think anyone disagrees that this extent of evidence was not presented, and I do want to revisit Judge Long's statements with regard to what he took into consideration and then the Court will determine whether or not there's going to be any additional relief that will be provided to you in a reconsideration of the sentence based on this further mitigating evidence."

¶ 23 Thereafter, on March 9, 2018, the trial court denied the defendant's amended motion to reduce his sentence. In the order, the court found that Judge Long had properly considered mitigating factors when determining the appropriate sentence, which was in the range of his discretion. The court noted that the defendant had a prior opportunity to raise and address his health and medical issues through expert or medical records and found that Judge Long had considered those medical conditions and related issues as mitigating factors and, as a basis, in part, for not imposing a greater sentence. The defendant appeals, arguing that the trial court abused its discretion in sentencing him.

¶ 24 It is well settled that the imposition of a sentence is left to the sound discretion of the trial court and will not be altered upon review absent an abuse of discretion. *People v. Etherton*, 2017 IL App (5th) 140427, ¶ 15. Generally, when a sentence falls within the statutory sentencing range for an offense, we may find an abuse of discretion only where the trial court imposes a sentence that is greatly at variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). The trial court is given such deference because it is in a better position to consider, among other things, defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Id.* at 209. A proper sentence balances the seriousness of the offense with the objective of restoring a defendant's rehabilitative potential. Ill. Const. 1970, art. I, § 11.

¶ 25 The Unified Code of Corrections permits the trial court to consider certain statutory factors in aggravation and mitigation when imposing a sentence of imprisonment. 730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2012). In fashioning the appropriate

sentence, the court must carefully consider all of the factors in aggravation and mitigation, which include defendant's age, demeanor, habits, credibility, criminal history, social environment, and education as well as the nature and circumstances of the crime and of defendant's conduct in the commission of the crime. *People v. Calhoun*, 404 Ill. App. 3d 362, 385 (2010). When such factors have been presented for the trial court's consideration, it is presumed, absent some contrary indication, that the factors have been considered. *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010). A trial court has wide latitude in sentencing a defendant, as long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation. *Id.*

¶ 26 The defendant here pled guilty to one count of unlawful delivery of methamphetamine, which is a Class 2 felony with a sentencing range of 3 to 14¹ years' imprisonment. He also pled guilty to one count of unlawful possession of methamphetamine, which is a Class X felony with a sentencing range of 6 to 60² years' imprisonment. He was sentenced to 7 years' imprisonment on the unlawful delivery conviction and 30 years' imprisonment on the unlawful possession conviction, which were within the sentencing ranges.

¶ 27 The defendant requests that we either reduce his sentence to 15 years' imprisonment on the unlawful-possession conviction or remand for resentencing. He first claims that the trial court failed to appropriately consider the following mitigating factors:

¹The defendant was eligible for the extended-term sentence because he had been previously convicted of the manufacture of methamphetamine, a Class X felony.

²The defendant was eligible for the extended-term sentence.

his age; his physical and mental health; his desire for substance-abuse treatment; and the remorse that he showed at sentencing. We disagree.

¶ 28 The record reveals that the defendant was 52 years old at the time that he was charged with the methamphetamine-related offenses and that he suffered from a variety of health conditions, both physical and mental. At sentencing, Judge Long stated that a factor in mitigation was that imprisonment might endanger the defendant's medical condition. In addition, in the order on the amended motion to reduce sentence, before remand, Judge Long reiterated, after hearing the defendant's testimony in regard to his physical and mental health, that the court considered the mitigating factor of the guilty plea and did not sentence the defendant to 60 years due to this factor as well as his age and medical condition.

¶ 29 Moreover, after hearing further evidence expanding on the severity of the defendant's medical conditions and the impact that incarceration had on his medical conditions, Judge Roberts, on remand, determined that the defendant's 30-year sentence was appropriate and noted that Judge Long had properly considered mitigating factors when determining the appropriate sentence, which was in the range of his discretion. After hearing the testimony on remand, Judge Roberts noted that there was no testimony that some of the conditions of incarceration that were exacerbating the defendant's medical condition were mandatory, such as working in the kitchen, and suggested that, to the extent that the defendant could protect his own health, he should stop doing the particular things aggravating his condition. Judge Roberts opined that this was something that the defendant could do himself and did not require court intervention. In

the remand order, Judge Roberts stated that the defendant had a prior opportunity to raise and address his health and medical issues through expert or medical records and that, regardless of that, Judge Long had considered those medical conditions and related issues as mitigating factors and as a basis, in part, for not imposing a greater sentence.

¶ 30 As for his substance-abuse issues and desire to complete substance-abuse treatment, although the trial court did not specifically identify the defendant's substance-abuse issues as a mitigating factor, the PSI report indicated that the defendant had substance-abuse issues and had used methamphetamine almost daily until he went to prison in 2004. Because the PSI report was presented to the court, we presume that the court considered this information. See *People v. Phippen*, 324 Ill. App. 3d 649, 652 (2001) ("When mitigating factors are presented to the trial court, there is a presumption it considered them.").

¶ 31 Regarding the defendant's desire to complete substance-abuse treatment, the defendant expressed his desire to obtain treatment for his substance-abuse issues at sentencing. In the vacated order on the amended motion to reduce sentence, Judge Long noted that the defendant wished to get treatment for his substance-abuse issues but noted that he had not enrolled in any treatment programs at the DOC. Judge Long even questioned the defendant at the hearing when the defendant indicated that the facility that he was housed at did not have any substance-abuse treatment programs and seemed skeptical that a treatment program was not available at his facility. As previously noted, Judge Roberts found that Judge Long had properly considered the mitigating factors; this includes the defendant's substance-abuse issues and desire for treatment.

¶ 32 As for his remorse, the trial court heard the defendant express his remorse at sentencing. In addition, the court explicitly stated that it had considered the mitigating factor that the defendant pled guilty in fashioning the sentence. Even though the court did not announce whether it was considering the defendant's remorse as a factor in mitigation, we assume, absent some contrary indication, that it was properly considered. The presence of mitigating factors does not mandate the imposition of the minimum sentence. *Flores*, 404 Ill. App. 3d at 158. The reviewing court is not to reweigh the factors considered by the trial court. *Id.* Thus, the defendant's contention that the trial court failed to give proper weight to the mitigating factors is without merit, and we cannot find that the court abused its discretion in this regard.

¶ 33 The defendant next contends that the trial court improperly considered the receipt of compensation and that his conduct caused or threatened serious harm as aggravating factors at sentencing, and, as such, his sentence should be vacated and remanded for a new sentencing hearing without consideration of those factors. Because the defendant failed to preserve these claims of error in his amended motion to vacate the sentence, they are considered forfeited unless we deem them to be plain errors. *People v. Rios*, 2011 IL App (4th) 100461, ¶ 11.

¶ 34 The plain error doctrine allows a reviewing court to consider an unpreserved sentencing error when a clear or obvious error occurred and the evidence at the sentencing hearing was closely balanced or that error was so egregious as to deny a defendant a fair sentencing hearing. *Id.* ¶ 12. Under either prong of the plain-error analysis, the burden of persuasion remains with defendant. *Id.* However, the first step in

plain-error review is to determine whether any error has been committed at all. *Id.* If error did occur, then this court considers whether either of the two prongs has been satisfied. *Id.*

¶ 35 Although a trial court has broad discretion in imposing a sentence, it may not consider factors inherent in the offense as an aggravating factor at sentencing. *People v. McCain*, 248 Ill. App. 3d 844, 850 (1993). The rule is based on the reasoning that, in determining the appropriate sentencing range for a criminal offense, the legislature must have already considered the factors inherent in the offense. *People v. Ferguson*, 132 Ill. 2d 86, 97 (1989).

¶ 36 The receipt of compensation is inherent in a conviction for possession with intent to deliver and, thus, cannot be considered at sentencing. *People v. Conover*, 84 Ill. 2d 400, 405 (1981); *People v. Harrison*, 156 Ill. App. 3d 39, 42 (1987). "Nevertheless, the court may properly consider a defendant's efforts to maximize profits from a drug enterprise in sentencing for unlawful possession, to the extent that such evidence reflects on the nature of the crime." *People v. M.I.D.*, 324 Ill. App. 3d 156, 159-60 (2001). While the receipt of compensation is not a proper aggravating factor, it can be considered at sentencing when the proceeds relate to such things as the extent and nature of a defendant's involvement in a particular criminal enterprise, a defendant's underlying motivation for committing the offense, the likelihood of defendant's commission of similar offenses in the future, and the need to deter others from committing similar crimes. *Rios*, 2011 IL App (4th) 100461, ¶ 15.

¶ 37 Further, the harm caused by delivery of a controlled substance is also inherent in the offense. *People v. Atwood*, 193 Ill. App. 3d 580, 592-93 (1990). It is well recognized that drugs and drug-related crimes cause harm to our society. *McCain*, 248 Ill. App. 3d at 851. Thus, it is improper to consider general societal harm as an aggravating factor at sentencing in a drug case. *Id.* at 852. However, a trial court may consider the harm caused by defendant's conduct where the record demonstrates that defendant's conduct had a greater propensity to cause harm than that which is merely inherent in the offense itself. *Id.*

¶ 38 Here, at sentencing, the State argued that the defendant received compensation for committing the offense in that there was an exchange of currency, and he had requested pseudoephedrine pills, which was a component of further methamphetamine manufacturing; and that defendant's conduct caused or threatened serious harm in that he delivered methamphetamine on the same date that he possessed a large quantity of methamphetamine and that there was an infant in the same structure where the large amount of methamphetamine was discovered. In announcing the factors in aggravation, the trial court did not specifically elaborate on compensation or threat of harm; it just enumerated them among other aggravating factors. There is a strong presumption that the trial court based its sentencing decision on proper legal reasoning, and the reviewing court must consider the record as a whole, rather than focussing on a few words or statements made by the trial court. *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 22.

¶ 39 The record indicated that the transaction included the potential receipt of pseudoephedrine pills, which are used to manufacture methamphetamine, and that the defendant possessed a large quantity of methamphetamine at the time that he completed the sale to the undercover informant. This information demonstrated the extent and nature of the defendant's involvement and his underlying motivation to continue in the commission of distributing methamphetamine in the future. The defendant had a history of illegal activity, which included a previous methamphetamine-related conviction. In addition, the record revealed that there was an infant in the residence at the time that the defendant sold and possessed the methamphetamine. There was also testimony that there were methamphetamine manufacturing items in the residence and near the infant's formula. Thus, the defendant had endangered his grandchild by allowing the grandchild to be exposed to his methamphetamine manufacturing. Therefore, we conclude that, while the court should not have listed receipt of compensation and societal harm as factors in aggravation at sentencing, there was no error because the record indicates that the court was actually considering the receipt of compensation as it related to the nature of the offense and was considering the harm as it related to how the defendant allowed his grandchildren to be exposed to methamphetamine manufacturing. Accordingly, the defendant has not demonstrated that an error occurred at his sentencing.

¶ 40 Moreover, assuming *arguendo*, that the defendant had demonstrated error, this error was not plain error under the second prong in that it did not deny him a fair sentencing hearing. To establish second-prong plain-error review, a defendant must prove that the error was so serious that it affected the seriousness of defendant's trial and

challenged the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 186 (2005). The trial court briefly mentioned the receipt of compensation and serious harm when it enumerated the applicable factors in aggravation. There was no further discussion of these factors. The defendant's criminal history included incarceration from 2004 through 2009 on a previous methamphetamine-related conviction. Further, the State recommended 34 years' imprisonment on count IV. The defendant was sentenced to 30 years on that count, which was within the sentencing range and, although he was extended-term eligible, he did not receive a sentence within the extended-term range.

¶ 41 For the foregoing reasons, we affirm the judgment of the circuit court of Montgomery County.

¶ 42 Affirmed.