2024 IL App (1st) 231071-U

No. 1-23-1071

Order filed September 18, 2024

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 19 CR 4741
	)	
KENNETH HAWKINS,	)	Honorable
	)	Timothy Joseph Joyce,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MARTIN delivered the judgment of the court.
Presiding Justice Lampkin and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction affirmed over his contentions that (1) the trial court denied him a fair trial by misstating the evidence and (2) his 20-year sentence was excessive.

¶ 2 After a bench trial, defendant Kenneth Hawkins was found guilty of aggravated battery with a firearm and sentenced to 20 years in prison. On appeal, he argues that he was denied a fair trial where the trial court misstated evidence regarding the victim's identification of Hawkins as

the offender. He also argues that his 20-year sentence is excessive given his mitigating evidence. We affirm.[1]

¶ 3 I. BACKGROUND

¶ 4 Hawkins was charged by indictment with four counts of attempted murder with a firearm (720 ILCS 5/9-1(a)(1) (West 2018)) and one count of aggravated battery (discharge firearm) (720 ILCS 5/12-3.05(e)(1) (West 2018)) following an October 25, 2018 incident in which Melvin Wooten was injured with a firearm.

¶ 5 Pretrial, Hawkins moved to suppress identification evidence and bar in court identification, asserting the photo array identification procedure through which Wooten identified Hawkins as the shooter was suggestive and conducive to mistaken identification. The court denied the motion.

¶ 6 At trial, Wooten testified that at 6 a.m. on October 25, 2018, he was sitting in his parked minivan on Polk Street in Chicago, Illinois. He was parked under a streetlight, and it was light outside at the time. Wooten briefly got out of his vehicle and, as he returned to the driver's side, a van pulled up next to his door. The front passenger door of that vehicle opened. Hawkins, whom Wooten identified in court, was sitting in the front passenger seat. From an inch or two away, Hawkins told Wooten, "don't move," and then "reached in his waist side." Wooten grabbed Hawkins's arm, since he did not know what Hawkins was reaching for, and Wooten "feared for [his] life." Hawkins discharged the firearm he had retrieved from his pants and shot Wooten in his right leg. Wooten turned around and ran, and Hawkins ran behind him and shot him in the back. Wooten then ran into a nearby building, where security called an ambulance. Wooten was taken to the hospital and was treated for his gunshot wounds. At the time of trial, Wooten still had the

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

bullet in his back.

¶ 7 Wooten testified that he told detectives at the hospital that the shooter was 5'7" and 170 to 180 pounds. Wooten then agreed that he "actually" told the detectives that the shooter was about 5'7" to 5'8" and 160 to 170 pounds. Wooten stated that the shooter wore all black.

¶ 8 On February 6, 2019, Chicago police detective John Powers came to Wooten's home and administered four separate photo arrays, one at a time. Wooten identified Hawkins in the first photo array[2] as the person who shot him. The exhibit, included in the record on appeal, depicts a photo array where the bottom left picture is circled. Wooten did not recognize anyone in the other three photo arrays that Powers administered. Wooten stated that Hawkins did not have anything covering his face on the day of the shooting.

¶ 9 On cross-examination, Wooten testified that the entire incident lasted about three minutes. Wooten confirmed that he initiated a struggle with Hawkins, which lasted about 30 seconds, while Hawkins was still seated inside the vehicle. Wooten denied that he told the police at the hospital that the shooter wore a burgundy or maroon shirt, as he told them that the shooter wore all black. He identified Hawkins in the photo array because he "remember[ed] his face."

¶ 10 On redirect examination, Wooten confirmed that he got his best look at Hawkins while Hawkins was still seated in the vehicle. When Hawkins exited the vehicle, Wooten was already running away from Hawkins.

¶ 11 Under questioning by the court, Wooten testified that he viewed about eight or nine different photo arrays and identified Hawkins "because [he] remembered his face from that night." He confirmed that the person who shot him in the leg was the same person who shot him in the

[2]People's Exhibit No. 3B.

back. Wooten explained that he knew it was the same person because he could see the shooter "out of the side of [his] eye." On further redirect examination, Wooten confirmed that, out of the side of his eye, he saw a firearm in Hawkins's hand as Hawkins raised his arm to shoot again.

¶ 12 Chicago police officer Shahrukah Ali testified that on November 14, 2018, at approximately 10:30 p.m., he and his partner, Chicago police officer Farias[3], received a flash message that a vehicle wanted in connection to a vehicular hijacking was parked at a gas station on the 6300 block of South Yale Avenue in Chicago. The message described one of the occupants of the vehicle as a Black male wearing black track pants and a blue hooded sweatshirt, and possibly armed. When Ali and Farias arrived at the gas station, Ali observed the vehicle matching the description and witnessed the occupants fleeing from the vehicle.

¶ 13 Ali chased the occupants and detained the occupant matching the description given in the flash message, whom he identified in court as Hawkins. Ali described Hawkins as approximately 5'10", 150 pounds, and of slender build at the time of arrest. Hawkins was not in possession of a firearm. Three other occupants of the vehicle were also arrested.

¶ 14 The parties stipulated that, if called, Farias would testify that he chased the occupants fleeing from the vehicle at the gas station on November 14, 2018. He detained Triastan Walker, who had been seated in the front passenger seat of the vehicle. Farias retrieved a fully loaded firearm from the vehicle's front passenger seat.

¶ 15 Marc Pomerance, a forensic scientist, testified that the fired cartridge casings collected from the scene of the shooting matched the firearm retrieved on November 14, 2018.

¶ 16 Chicago police detective James Sivicek testified that after his initial investigation on the

[3]Officer Farias's first name is not included in the record on appeal.

day of the shooting, the investigation was ultimately suspended. The case was reopened when Sivicek received notice from the firearms lab that a shell casing collected from the crime scene was a match to a firearm recovered in a different incident. Sivicek learned that four individuals, including Hawkins, were involved in the latter incident, and he created a photo array for each of the four individuals. Powers administered the photo arrays to Wooten, who identified Hawkins as the shooter.

¶ 17 On cross-examination, Sivicek could not recall what physical description Wooten gave to police. The only physical evidence tying Hawkins to the shooting was the fired cartridge recovered from the scene of the shooting and the firearm recovered from the vehicle in which Hawkins had been an occupant. The firearm was in the front seat, and Hawkins exited from the rear seat.

¶ 18 Following closing arguments, the court reviewed the evidence and noted that it "believe[d] the State's witnesses." Specifically, it believed Wooten's testimony and Officer Ali's testimony regarding Hawkins's arrest about two and half weeks after Wooten was shot. The court noted that identification was at issue and reviewed the five factors set forth in *Manson v. Brathwaite* for determining the "efficacy" of identification testimony. 432 U.S. 98 (1977).

¶ 19 As to the first factor, the court found that Wooten had ample opportunity to view the shooter, as they were face-to-face during the struggle and, ultimately, the shooting. It noted that Wooten had never met Hawkins. Regarding the second factor, the court believed that Wooten's degree of attention would likely have been heightened, as he was being assaulted at gunpoint. Concerning the third factor, the court noted that Wooten's description of the shooter did not match Hawkins precisely, but that Wooten described a man who weighed between 150-170 pounds and stood 5 feet 7 inches to 5 feet 10 inches—consistent with Hawkins's physical proportions. The

court found that it was of "minimal importance" that Wooten had been impeached regarding the color of the shooter's T-shirt.

¶ 20 Regarding the fourth factor, level of certainty, the court explained that Wooten "evinced no hesitancy when he identified [Hawkins]" in the photo array approximately two and a half weeks after the shooting and in court years later. The court clarified that the level of certainty exhibited at the time of confrontation was more important than at a post-confrontation proceeding but noted Wooten's certainty in his identification at trial was also relevant. For the final factor, length of time between the offense and identification, the court reiterated that it was "two and a half weeks."

¶ 21 After reviewing the *Brathwaite* factors, the court stated that the composition of the photo array from which Wooten identified Hawkins was also relevant. The court noted the array was "very fair," in that all the photographs presented were of persons similar in age, demographics, and facial features. Finally, the court recognized that while there were other individuals in the vehicle from which the firearm was recovered, Wooten viewed photo arrays for all four occupants and identified only Hawkins as the shooter. The court found recovery of the firearm in that vehicle was "pretty compelling evidence" that corroborated Wooten's identification testimony.

¶ 22 The court held that Wooten's testimony was believable and noted it had "absolutely no reason to disbelieve or discredit [Wooten] in any manner." Ultimately, the court found Hawkins guilty of aggravated battery with a firearm and not guilty of attempted first-degree murder.

¶ 23 Hawkins's presentence investigation (PSI) report reflected prior convictions for residential burglary (2016; sentenced to four years in the Illinois Department of Corrections when he violated probation), obstructing an officer (2016; two days in jail), and theft (2018; two years of probation, terminated satisfactorily).

¶ 24 The PSI reflected that Hawkins was 21 years old at the time of the shooting. Hawkins's father died from a gunshot wound when Hawkins was three years old. He had a great relationship with his mother, who had dementia and was a recovering drug addict. Hawkins was raised in the foster care system and was adopted at age 15 by his foster mother, who had raised him since the age of 4. Hawkins did not experience physical abuse or neglect in the foster care home, but he suffered emotional abuse from his foster brothers.

¶ 25 Hawkins withdrew from high school and completed his GED in 2017 while in the penitentiary. His future plans involve studying the culinary arts and drawing.

¶ 26 Hawkins denied any gang affiliation and stated he does not have any close friends as they are all deceased. He is in a serious relationship and plans to move in with his girlfriend when he is released.

¶ 27 Hawkins was diagnosed with ADHD at approximately 10 years old and reported mental health issues at 12 years old. He was placed on prescribed psychotic medication from the ages of 12 to 16. At the time of the report, Hawkins denied being under a physician's care or taking any prescribed medication. He was stabbed in the back and arm in 2016. Hawkins smoked marijuana daily from the age of 10 until his incarceration, first used cocaine at the age of 16, and used cocaine every other day until incarceration. Hawkins is willing to attend a substance abuse treatment program. In a phone interview with the investigator, Hawkins's sister recalled Hawkins having struggles and possible "anger issues."

¶ 28 At sentencing, the State argued that "perhaps most aggravating" was that, as Wooten ran away, Hawkins got out of the vehicle, pointed his firearm at Wooten, and then shot him "squarely in the back." The State also referenced Hawkins fleeing from the police during the encounter that led to his arrest. It requested a "significant" prison sentence.

¶ 29 In mitigation, defense counsel described Hawkins's difficult upbringing in the foster care system and remarked that it was not unusual for those in the system to end up in criminal court. Counsel stated that Hawkins wanted to accept responsibility, had already taken accountability, and had learned his lessons. Counsel requested the minimum sentence of six years in prison.

¶ 30 In allocution, Hawkins told the court that he was not angry with the State or the court for finding him guilty. After noting that he had been before the court for three years and had never disrespected the court or its peers, Hawkins stated that "jail is a place for rehabilitation, for you to change and change the way you think and per[ceive] in life and I promise I changed." He reiterated that his life had been full of challenges and, as a father now, requested leniency.

¶ 31 The court imposed a sentence of 20 years' imprisonment. In announcing the sentence, the court noted that it had listened carefully to the aggravation and mitigation arguments and Hawkins's "eloquent allocution," it had reviewed the PSI, and was familiar with the statutory factors in aggravation and mitigation. The court reviewed the facts of the case, noting that Hawkins "chased [Wooten] down and shot him in the back for no seeming or conceivable good reason *** [and] then fled not knowing whether [Wooten] would live or die." The court acknowledged Hawkins's difficult childhood, and remarked that, "while there are certainly some genuine mitigating circumstances present by virtue of [Hawkins's] upbringing and the circumstance as a young man and a child[,] there are also some very aggravating circumstances."

¶ 32 The court stated its belief that Hawkins was sincere in accepting responsibility, but noted that after the "vicious, unprovoked" shooting, Hawkins was still displaying behavior—such as carrying a weapon and fleeing from police officers—that is not consonant with accepting responsibility. Based on Wooten's injuries and all circumstances, the court believed that Hawkins

should not receive a minimum sentence, especially given that Hawkins had "already been through the system" on prior occasions and had already been to the penitentiary. It observed that many who grew up under comparable circumstances do not engage in similar conduct.

¶ 33 Over a year later, Hawkins filed an untimely *pro se* motion for leave to file a late notice of appeal, which this court allowed. On October 13, 2023, our supreme court allowed Hawkins's motion for a supervisory order, directing this court to treat Hawkins's late notice of appeal as a properly perfected appeal from the circuit court's judgment. *Hawkins v. Coghlan*, No. 130069 (Ill. Oct. 13, 2023) (supervisory order).

¶ 34 II. ANALYSIS

¶ 35 On appeal, Hawkins argues that he was denied due process and a fair trial where the trial court relied on an "erroneous recollection of the evidence" to support Wooten's identification of Hawkins as the shooter. Specifically, Hawkins contends that the trial court incorrectly recalled that Wooten identified him in a photo array two weeks after the shooting, when Wooten actually identified him over three months after the shooting. He asserts that the trial court incorrectly conflated the date of Hawkins's arrest with the date Wooten identified him as the shooter, and the court's rejection of Hawkins's defense depended on its inaccurate recollection of the evidence. Hawkins therefore requests we remand the case to the circuit court for a new trial.

¶ 36 The State asserts that Hawkins failed to object to the misstatement at trial or raise the claim in a posttrial motion to preserve the issue for this court's review. See *People v. Belknap*, 2014 IL 117094, ¶ 47 (stating that a defendant forfeits an issue by failing to object to the purported error at trial and raise the error in a posttrial motion). Hawkins concedes this failure but raises three bases to argue that the court's misstatement of trial evidence was not an issue that could be forfeited.

¶ 37 First, Hawkins contends that the issue cannot be forfeited for failure to object where defense counsel argued that Wooten's identification was not reliable as months had elapsed between the shooting and his identification. In support, Hawkins cites to *People v. Mitchell*, 152 Ill. 2d 274, 324 (1992), which recited the principle that "a defendant need not interrupt a trial court to correct a trial court's misapprehension, after defense counsel has just argued the same to the court." He also cites to *People v. Williams*, 2013 IL App (1st) 111116, ¶ 107, which relied on *Mitchell* for the same principle. However, those cases addressed whether forfeiture applied where the defense did not raise a contemporaneous objection at trial but did raise the contention generally in a posttrial motion. *Mitchell*, 152 Ill. 2d at 324; *Williams*, 2013 IL App (1st) 111116, ¶ 108. Here, Hawkins's forfeiture does not rest solely on his failure to contemporaneously object at trial, but also on his failure to file a posttrial motion. See *People v. Minter*, 2015 IL App (1st) 120958, ¶ 137 (denying defendant's request to relax forfeiture where defendant failed to raise the issue in his posttrial motion).

¶ 38 Second, Hawkins contends that the forfeiture rule is less stringently applied when the trial court's conduct is in question. While that principle is correct, reviewing any such unpreserved error "can be excused only under extraordinary circumstances" and where an objection to the trial court's conduct " 'would have fallen on deaf ears.' " *People v. McLaurin*, 235 Ill. 2d 478, 487-88 (2009) (quoting *People v. Davis*, 378 Ill. App. 3d 1, 20 (2007)). Examples of "extraordinary circumstances" to relax the forfeiture rule include the court's inappropriate remarks to a jury and the court considering evidence outside the record. *People v. Thompson*, 238 Ill. 2d 598, 612 (2010). Here, there is nothing in the record to indicate such an extraordinary circumstance or demonstrate that an objection would have "fallen on deaf ears." As such, this argument fails.

¶ 39 Finally, Hawkins contends that the issue is not forfeited, since "the trial court's failure to recall crucial evidence is the type of constitutional error that may be later raised in a post-conviction hearing." Hawkins again cites to *Mitchell*, 152 Ill. 2d at 325 and *Williams*, 2013 IL App (1st) 111116, ¶¶ 106-07, in support of his proposition. However, as aforementioned, those cases addressed forfeiture in the context of failing to raise a constitutional error with specificity in a posttrial motion. *Mitchell*, 152 Ill. 2d at 325, *Williams*, 2013 IL App (1st) 111116, ¶ 108. Here, Hawkins did not file a posttrial motion.

¶ 40 Even construing Hawkins's third basis under the recognized constitutional-issue exception to forfeiture, Hawkins's forfeiture is not excused. In *People v. Cregan*, 2014 IL 113600, ¶¶ 16, 18, our supreme court explained that forfeiture is inapplicable where a constitutional issue was properly raised at trial and could be raised later in a postconviction petition, as judicial resources would be wasted requiring a defendant to raise the issue later in a separate proceeding. As Hawkins acknowledges that he neither raised his claim of error at trial nor in a posttrial motion, the constitutional-issue exception to forfeiture does not apply. *Id.* ¶ 20; see *People v. Enoch*, 122 Ill. 2d 176, 190 (1988) (recognizing that constitutional issues that have been raised at trial and that may be raised in a postconviction petition are not subject to forfeiture).

¶ 41 Hawkins further argues that the State cannot prove that the trial court's misstatement of the trial evidence was harmless beyond a reasonable doubt. However, the burden of proof only shifts to the State once a defendant has proven that a purported error has been preserved for our review. See *Thompson*, 238 Ill. 2d at 611 ("Harmless-error analysis is conducted when a defendant has preserved an issue for review."). As stated, Hawkins's contention of error was not properly preserved for our review where he neither objected at trial nor filed a posttrial motion, and the

forfeiture rule exceptions do not apply. Therefore, harmless-error analysis is inapplicable, as the issue was not preserved for our review.

¶ 42 Hawkins alternatively argues that the issue is reviewable under the plain error doctrine. The plain error doctrine is not a general savings clause and does not instruct this court to consider all forfeited errors. *People v. Herron*, 215 Ill. 2d 167, 177 (2005). The plain error doctrine permits this court to review unpreserved errors when a clear and obvious error occurred and (1) the evidence was closely balanced such that "the error alone threatened to tip the scales of justice against the Hawkins, regardless of the seriousness of the error," or (2) the error was "so serious that it affected the fairness of the trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *Belknap*, 2014 IL 117094, ¶ 48. The first step in a plain error analysis is determining whether there was error, because without error, there can be no plain error. *People v. Padilla*, 2021 IL App (1st) 171632, ¶ 122. Hawkins requests review under both prongs of the plain error doctrine. He bears the burden of persuasion under either prong to demonstrate that the trial court committed an error violating his due process right to a fair trial. *McLaurin*, 235 Ill. 2d at 495; *People v. Simon*, 2011 IL App (1st) 091197, ¶ 89.

¶ 43 It is undisputed that the court misstated the evidence as to the length of time between the shooting and Wooten's identification. However, the parties dispute whether Hawkins has met his burden of demonstrating that either prong of the plain error doctrine applies to preserve the issue for our review.

¶ 44 As to the first prong of the plain error analysis, we find that Hawkins has not shown that the evidence was closely balanced. In determining whether Hawkins met the closely balanced prong, we "undertake a commonsense analysis of all the evidence" within the context of the circumstances of his individual case. *Belknap,* 2014 IL 117094, ¶ 50.

¶ 45 Here, Wooton identified Hawkins as the shooter in a photo array and at trial, testifying he remembered Hawkins's face. The record demonstrates that the court analyzed in detail each *Brathwaite* factor in assessing the reliability of Wooten's identification of Hawkins as the shooter and found the identification reliable. The court remarked that Wooten had ample time to view Hawkins during the struggle and shooting and noted Wooten's degree of attention would likely have been heightened. The court initially remarked that consideration of Wooten's earlier description could "cut both ways," but then determined that any impeachment of Wooten as to the shooter's shirt color was of "minimal importance" and that Wooten's description of Hawkins was consistent with Hawkins's physical proportions. The court further remarked that Wooten "evinced no hesitancy" in his identification of Hawkins in the photo array "roughly two and a half weeks later" and at trial "years later." As to the length of time between the offense and identification, the court remarked that it "again, was two and a half weeks."

¶ 46 In addition to reviewing each of the five *Brathwaite* factors, the court additionally considered the identification proceedings and found that the photo array administered to Wooten was "very fair." The court further remarked that recovery of the firearm two and a half weeks after the shooting in a vehicle that Hawkins had been in was "pretty compelling evidence" that corroborated Wooten's identification, even where other individuals were inside the vehicle. After consideration of all these factors, the court found no reason to disbelieve or discredit Wooten's identification testimony. In undertaking a commonsense analysis of all the evidence, we do not find that the evidence was closely balanced.

¶ 47 As to the second prong of the plain error analysis, we find that Hawkins has failed to demonstrate that the court's misstatement regarding when Wooten identified Hawkins in the photo array was so serious that it affected the fairness of his trial and challenged the integrity of the

judicial process, regardless of the closeness of the evidence. *People v. Piatkowski,* 225 Ill. 2d 551, 565 (2007). "[T]he errors that fall under the purview of the second prong of the plain error rule are rare." *People v. Jackson*, 2022 IL 127256, ¶ 27. Hawkins argues, in a single sentence, that the court's misstatement of the time between the shooting and the identification is a serious error leading to the denial of a fair trial, since it related to Wooten's identification, which was the central issue of the case. Hawkins has not shown that the misstatement of how much time elapsed between the shooting and identification—two and half weeks versus three months—affected the fairness of the trial or challenged the integrity of the judicial process, especially given the court's comprehensive review of the *Brathwaite* factors. Hawkins therefore has failed to satisfy the second prong of the plain error doctrine. As Hawkins has failed to demonstrate either prong of the plain error doctrine, we find that there is no basis to excuse his forfeiture of the issue. *People v. Nieves*, 192 Ill. 2d 487, 503 (2000) (defendant's plain error argument remains forfeited where his argument consisted of a single sentence requesting plain error review).

¶ 48 In the alternative, Hawkins argues ineffective assistance of counsel for failure to object to the court's misapprehension regarding the timing of the photo identification. A defendant asserting ineffective assistance of counsel must prove prejudice, such that "absent counsel's deficient performance there is a reasonable probability that the result of the proceeding would have been different." *People v. Evans*, 209 Ill. 2d 194, 219-20 (2004) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). As discussed above, the evidence was not closely balanced, and the record does not demonstrate that the misstatement had an effect on the court's finding of guilt, given the court's thorough consideration of the five *Brathwaite* factors and the totality of the evidence. Counsel therefore was not ineffective and the failure to object to the misstatement did not prejudice Hawkins at trial. See *People v. White*, 2011 IL 109689, ¶ 133.

¶ 49 Hawkins also contends that his 20-year sentence was excessive given the "facts and circumstances" of his case. Specifically, he claims that the court abused its discretion and failed to consider significant mitigating factors, including his age, troubled childhood, mental health conditions, substance abuse, and rehabilitative potential.

¶ 50 The State responds that Hawkins forfeited review of his sentencing claim when he failed to preserve his challenge in a postsentencing motion and notes that he did not seek this court's review under the plain error doctrine in his opening brief. In his reply brief, Hawkins requests our review under both prongs of the plain error doctrine. He further argues ineffective assistance of trial counsel for failing to preserve his sentencing challenge. Although Hawkins did not raise plain error in his opening brief, he did raise it in his reply brief, which is sufficient to allow us to review the issue. *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010).

¶ 51 As previously noted, the first step in a plain error analysis is to determine whether error occurred, as absent error, there can be no plain error. *Padilla*, 2021 IL App (1st) 171632, ¶ 122. Here, we find no error.

¶ 52 The trial court has broad discretion when imposing a sentence. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). Where a defendant challenges a sentence within the statutory limits for the offense, this court will not disturb it absent an abuse of discretion. *People v. Burton*, 2015 IL App (1st) 131600, ¶¶ 35-36. In the sentencing context, an abuse of discretion occurs when a sentence is "manifestly disproportionate to the nature of the offense." *People v. Jones*, 2019 IL App (1st) 170478, ¶ 50. A reviewing court will not substitute its judgment for that of the trial court merely because it would have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 213.

¶ 53 In fashioning a sentence, the court must balance the retributive and rehabilitative purposes of punishment, which includes careful consideration of all factors in aggravation and mitigation.

People v. Quintana, 332 Ill. App. 3d 96, 109 (2002). The factors include "the defendant's age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education, as well as the nature and circumstances of the crime and of defendant's conduct in the commission of it." *Id.* A trial court is not required to recite and assign a value to each aggravating and mitigating factor. *People v. Williams*, 2019 IL App (1st) 173131, ¶ 21. However, the seriousness of the offense is the most important factor in determining an appropriate sentence, and the court is not required "to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence." *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 123. The court is presumed to have properly considered all mitigating factors and rehabilitative potential before it, and the defendant bears the burden of affirmatively demonstrating the contrary. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010).

¶ 54 Aggravated battery with a firearm, as charged, is a class X felony that carries a sentence of 6 to 30 years in prison. 720 ILCS 5/12-3.05(e)(1) (West 2022). Since Hawkins's 20-year sentence is within the statutory range for the offense, we must presume it is proper, barring affirmative evidence to the contrary. *People v. Villalobos*, 2020 IL App (1st) 171512, ¶ 73.

¶ 55 Hawkins argues that the court committed a clear and obvious error by affording insufficient weight to the significant factors in mitigation, including his youth, difficult childhood, experience with grief, substance abuse, and rehabilitation.

¶ 56 However, Hawkins offers no evidence, aside from the length of the sentenced imposed, to demonstrate that the trial court failed to properly consider the mitigating evidence. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19. Rather, the record reflects that the trial court adequately

considered all relevant mitigating evidence. The court expressly referenced its review of the PSI, which reflected the mitigating factors Hawkins raises before this court. The court acknowledged that "there are *** mitigating circumstances present by virtue of [Hawkins's] upbringing," and recognized Hawkins's sincerity in accepting responsibility for his actions. The court recited the facts of the case, including that Hawkins shot Wooten in the leg and then in the back as he fled from Hawkins. In addition to the facts of the case, the court considered Hawkins's subsequent conduct in fleeing from the police and his prior criminal history.

¶ 57 Essentially, Hawkins asks this court to reweigh the aggravating and mitigating factors and assign them new weight, which we cannot do. *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 28. Based on this record, we find that the trial court did not commit a clear or obvious error in considering the aggravating and mitigating factors and imposing a 20-year sentence, which is within the applicable statutory sentencing range for the offense. Therefore, as Hawkins has failed to demonstrate a clear or obvious error, there can be no plain error and Hawkins's forfeiture must be honored. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Additionally, "counsel cannot be ineffective for failing to object if there was no error to object to." *People v. Sanders*, 2012 IL App (1st) 102040, ¶ 24.

¶ 58 III. CONCLUSION

¶ 59 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 60 Affirmed.