

NOTICE
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2019 IL App (5th) 160548-U

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).

NO. 5-16-0548

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	No. 05-CF-2092
)	
LEE D. CRUTCHFIELD,)	Honorable
)	Zina R. Cruse,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Barberis and Boie concurred in the judgment.

ORDER

- ¶ 1 *Held:* The defendant's sentence is affirmed where the trial court properly considered his protestations of innocence as demonstrating a lack of remorse.
- ¶ 2 At a jury trial in the circuit court of St. Clair County, the defendant, Lee Crutchfield, was convicted of first-degree murder in the death of Ryon Smith. On August 8, 2016, he was sentenced to 65 years' imprisonment. On appeal, he argues that the trial court considered an improper factor at sentencing where the court viewed his claim of innocence, in his statement of allocution, as a lack of remorse.

¶ 3 On December 25, 2005, the body of six-year-old Ryon Smith (victim) was found by authorities and medical responders in the house in which he had resided with his mother, Starr Lohman, and the defendant. The victim's body had lacerations and blood on his face and bruises on his head, face, chest, arms, hands, and abdomen. Dr. Raj Nanduri, who conducted the autopsy on the victim, indicated that the victim had suffered from several blunt force trauma injuries and bruising covered both sides of his face. Dr. Nanduri concluded, with a reasonable degree of scientific certainty, that the victim died as a result of a homicide due to blunt force trauma to the abdomen. Benjamin Koch, an Illinois State Police homicide investigator, took pictures of the defendant's hands, which showed swelling in the right hand and an abrasion with some blood near a nail on the left hand.

¶ 4 The evidence at trial established the following altercation occurred between the defendant and the victim that day. The victim, who was very small at 34 pounds and underweight for a six-year-old, was beaten by the defendant until he was lying unresponsive on the floor. That morning, the victim had urinated in his bedroom closet, and the defendant was yelling at him about it. The victim bit down on the defendant's finger during the altercation, and the defendant responded by hitting the victim at least 5 to 10 times in an attempt to allegedly get his finger released from the victim's mouth. The defendant claimed the victim had called him the "N****" word in addition to biting down on his finger, to which the defendant responded by hitting him in his chest area. Lohman, the victim's mother, placed the victim on the bed after the beating. He did not move or talk again despite Lohman shaking his body. She testified that she believed the

victim was still breathing and did not call for medical assistance until approximately 36 hours after the beating.

¶ 5 During the trial, the defense introduced a forensic pathologist who testified that the victim's death was the result of seizures caused by epilepsy rather than the defendant's beating of the victim. The State rebutted this claim by introducing a different forensic pathologist who testified he found no credible evidence that the victim had epilepsy. After hearing all of the evidence, the jury convicted the defendant of first-degree murder.

¶ 6 On June 11, 2012, the trial court sentenced the defendant to a mandatory natural life sentence pursuant to section 5-8-1(a)(1)(c)(ii) of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2010)). Thereafter, defense counsel filed a motion to reconsider the sentence, arguing the Illinois Supreme Court in *People v. Wooters*, 188 Ill. 2d 500 (1999), found that the enactment of section 5-8-1(a)(1)(c)(ii) was unconstitutional and, relying on *People v. Quevedo*, 403 Ill. App. 3d 282 (2010), the statute had never been reenacted. After hearing arguments, the trial court determined that *Quevedo* did not apply and affirmed that the statute required a natural life sentence without the possibility of parole. The defendant appealed, in pertinent part, that decision, and this court, agreeing with the defendant, reversed the trial court's determination that section 5-8-1(a)(1)(c)(ii) required a mandatory sentence of natural life imprisonment. *People v. Crutchfield*, 2015 IL App (5th) 120371, ¶ 52. This court also remanded with directions to sentence the defendant without applying the mandatory life sentence provision in section 5-8-1(a)(1)(c)(ii). *Id.*

¶ 7 At the August 8, 2016, resentencing hearing, the trial court indicated that the defendant was eligible for an extended term sentence of between 60 to 100 years in prison. The State presented no evidence but asked the court to take judicial notice of the record of the first sentencing hearing, at which the State presented evidence in aggravation. At the initial sentencing hearing, the State, as evidence in aggravation, had presented a letter from Ryon's grandmother in which she told the court about Ryon's death, its impact on her and the family, and that the family had to have a closed casket funeral for him due to his extensive injuries. The defense asked the court to consider the transcript of the initial sentencing hearing, at which the defense had presented letters and testimony from the defendant's family and friends.

¶ 8 The defense also presented further evidence in mitigation. Robert Scott Moore, who had employed the defendant in the past, testified that the defendant was always punctual, personable with the other employees and clients, and friendly to his family. Moore testified that he had known the defendant for approximately 30 years, and that the defendant was a teenager when he met him. Moore indicated that, once the defendant was released from incarceration, he was willing to help him transition back into society and would hire him at his restaurant. Jennifer Flacke, the defendant's friend for approximately 24 years, testified that he had always been a supportive friend and that they had become really close since his incarceration. She indicated that once he was released from prison, she would let him stay with her, and she would help him obtain employment. Judy Flacke, Jennifer's mother, testified that she had known the defendant since he was 15 years old, that he was always welcome in her home, that he had a big

heart, and that he was a good friend to her daughter. Judy DeBrecht testified that the defendant lived with her for almost two years when he was a teenager, and she considered him as a second son. During that time, the defendant completed his chores, and she never had a problem with him. He also kept in touch after he moved out and would either call or visit her every Christmas. Leroy Williams Jr., the defendant's father, testified that he was an absentee father to the defendant when he was younger; that since the defendant has been incarcerated, it has been hard to visit him; and that he lived alone and did not have anyone to help him.

¶ 9 After the witnesses' testimony, the State argued as follows. The State noted that Ryon was a burden to the defendant, that the defendant frequently got angry with him, and that, after getting angry at Ryon, the defendant had locked him in a closet for multiple days. The State also noted that the defendant had beaten a six-year-old child, who weighed about 40 pounds, and then left him to die. The State indicated that the beating was so brutal that the defendant's hands were still swollen and bruised days later. The State then argued, as a factor in aggravation, that a sentence was necessary to deter others from committing this type of crime. The State noted that, although it did not ask the jury to make a finding of brutal and heinous behavior, the circumstances showed that this was brutal and heinous behavior, indicative of wanton cruelty. The State argued that this was the type of offense that the trial court needed to impose an extremely harsh sentence and that this was the type of conduct that could not be condoned or tolerated. The State then asked the court to sentence the defendant to 80 years' imprisonment.

¶ 10 Defense counsel argued in mitigation that this was one terrible incident where the defendant was provoked by being bit and being called a racial slur. He also indicated that the defendant had acknowledged hitting Ryon about four or five times, that Ryon was still alive when the defendant left the house, that Lohman remained in the house after the defendant left, and that there were likely actions that she could have taken to save Ryon's life. Counsel argued that the circumstances were unlikely to reoccur and that the defendant had a support system in place to assist him in transitioning back to society. Based on the above, counsel asked for a sentence of 35 years' imprisonment.

¶ 11 The defendant then made a statement in allocution. In his statement, he acknowledged that Ryon's death was a tragedy and apologized for the mistakes he made in handling the situation. He then stated: "I maintain that I did not kill Ryon Smith. When I left that house, Ryon was alive. So I'm going to continue working through the appeal process and hope for a new trial. But the fact of the matter is I was found guilty by a jury of my peers, and I understand that I will be sentenced here today." He indicated that, prior to this incident, he had no criminal record and that, since he has been in prison, he has had no write-ups and has had the lowest aggression level possible. He then stated: "And I do not take light the loss of Ryon's life. I understand it is a tragedy, but I didn't kill him. *** I know I made mistakes and I own that. From the day one I always said, when he bit my finger, I hit him. *** I never skated that. I never tried to pretend that it didn't happen. But I didn't kill him, and I *** maintain that."

¶ 12 After considering counsels' arguments and the defendant's statement in allocution, the trial court stated as follows:

"Having now considered the factual basis, the presentencing investigation, the history, character and attitude of the defendant, the evidence and arguments, and the statement of allocution presented, and having considered the statutory matters presented in aggravation and mitigation, and having due regard for the circumstances of the offense, I find as follows:

I cannot imagine in my wildest imagination, what happened to make Ryon go from this (indicating photograph [of Ryon before his death]) to this (indicating photograph [of Ryon after his death]).

I have no reason to think the ten people that spoke on your behalf *** in the letters, and came here today, I have no reason to think that they are not telling me the truth about your relationship with them and your relationship with their families and their children. I have no reason to doubt that what they said about you and their experiences with you, to doubt anything about that.

But I've been in this position long enough to know, also, that the very same person that these ten people spoke about, could be the same person that takes us from People's Exhibit 48 to People's Exhibit 8.

I imagine that for the rest of my life, as long as I live, I will see People's Exhibit 8 in my head.

And then you give me your statement of allocution and persist in your innocence. For me, after a jury has found you guilty, it is still a denial, and not owning up to your actions.

And you expressed your intention to continue with your appeals process, *** which is your right.

But today you're being sentenced to 65 years in the Illinois Department of Corrections, to be served at 100 percent, followed by three years of mandatory supervised release."

¶ 13 On September 7, 2016, the defendant filed a motion to reconsider his sentence, and on October 3, 2016, an amended motion to reconsider sentence. In his amended motion, the defendant argued that he should have been sentenced to a range between 20 and 60 years' imprisonment; that the trial court did not have the authority to sentence him to an extended term sentence because the State failed to properly notify the defense that it was seeking an extended term sentence; that the sentence imposed was not in keeping

with his past history of criminality, occupational or personal habits, mental history, family history, economic status, or education; that the sentence was unduly harsh and not in keeping with the alternatives available to assist him in his rehabilitation; and that the trial court failed to give appropriate consideration to the mitigating factors. Counsel also filed a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016). On December 8, 2016, the trial court entered an order, denying the defendant's amended motion to reconsider. The defendant appeals.

¶ 14 On appeal, the defendant argues that the trial court erred by improperly considering his statement of allocution as a claim of innocence showing a lack of remorse. Because he failed to preserve this claim of error in his amended motion to reconsider sentence, it is considered forfeited unless we deem it to be plain error. *People v. Reed*, 2018 IL App (1st) 160609, ¶ 56.

¶ 15 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.* Under either prong of the plain-error analysis, the burden of persuasion remains with defendant. *People v. Herron*, 215 Ill. 2d 167, 187 (2005). However, the first step in plain-error review is to determine whether any error has been committed at all. *People v. Johnson*, 347 Ill. App. 3d 570, 574 (2004). If error did occur, then this court considers whether either of the two prongs has been satisfied. *Herron*, 215 Ill. 2d at 187.

¶ 16 The defendant was convicted of first-degree murder with a sentencing range of 20 to 60 years' imprisonment, and he was eligible for an extended term sentence of between 60 to 100 years' imprisonment. He was sentenced to 65 years' imprisonment, which was within the extended term sentencing range. He is arguing second-prong plain error in that his substantial right to be lawfully sentenced was violated.

¶ 17 It is well settled that a sentence imposed by the trial court is entitled to great deference. *People v. Perkins*, 408 Ill. App. 3d 752, 762 (2011). When a sentence falls within the statutory sentencing range for an offense, it may not be disturbed absent an abuse of discretion. *Id.* An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it. *People v. Abrams*, 2015 IL App (1st) 133746, ¶ 32. 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.* 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.

¶ 18 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 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 court has wide latitude in sentencing a defendant, as long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation. *Id.* at 157. When reviewing a trial court's sentencing decision, the reviewing court should not focus on a few words or statements of the trial court. *People v. Ward*, 113 Ill. 2d 516, 526 (1986). Instead, the determination of whether the sentence was improper must be made by considering the record as a whole. *Id.* at 526-27. The decision of whether the trial court relied on an improper factor in imposing a sentence ultimately presents a question of law to be reviewed *de novo*. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8.

¶ 19 A trial court should not automatically and arbitrarily consider a defendant's insistence on his innocence as an aggravating factor when sentencing him. *Perkins*, 408 Ill. App. 3d at 763. However, in some instances and under certain factual circumstances, a continued protestation of innocence and a lack of remorse may convey a strong message to the trial judge that defendant is an unmitigated liar and at continued war with society. *Ward*, 113 Ill. 2d at 528. Thus, a defendant's failure to show remorse or a penitent spirit may properly be considered in determining sentences, but these factors must be evaluated in light of all other relevant factors. *People v. Thompson*, 234 Ill. App. 3d 770, 779 (1991). A trial court is at liberty to express its belief that defendant is guilty, and it is free to consider defendant's protestations of innocence and lack of remorse as

indicative of his character and prospects for rehabilitation. *People v. Charleston*, 2018 IL App (1st) 161323, ¶ 29.

¶ 20 In *Ward*, defendant expressed his innocence in his statement of allocution, and the sentencing court responded that defendant's statement almost made the court want to sentence him to what the State was asking for because he showed no repentance when he stood before the court. *Ward*, 113 Ill. 2d at 524. Then, when imposing the sentence, the court indicated that it was rejecting the minimum sentence because defendant showed "no contrition." *Id.* at 525. On appeal, our supreme court rejected defendant's claim that the trial court improperly used his claim of innocence as an aggravating factor. *Id.* at 530-31. In making this decision, the supreme court indicated that it did not know what other factors, not revealed by a cold record, such as tone of voice, facial expressions, and general demeanor, led to the sentencing court's conclusion that defendant showed a lack of contrition. *Id.* at 530. The court concluded that the trial judge was in a superior position to evaluate those factors and that the judge had the right to consider defendant's lack of contrition and protestation of innocence in light of the other relevant facts in the case. *Id.* at 531. A court must evaluate defendant's protestations of innocence in light of the other information that the court has about defendant and all the other facts of the case in determining what relevant meaning defendant's attitude displays with respect to his prospect for rehabilitation and restoration to a useful place in society. *Id.* at 529. Because the court found no abuse of discretion in the trial court's consideration of defendant's protestation of innocence, it affirmed defendant's sentence. *Id.* at 531.

¶ 21 In contrast, the Second District, in a case decided before *Ward*, determined that the record revealed a clear indication that the sentencing court improperly increased defendant's term of imprisonment from 10 years to 11 years solely because defendant continued to protest his innocence. *People v. Speed*, 129 Ill. App. 3d 348, 351 (1984). At sentencing, the court indicated that it was considering a 10-year sentence, but the fact that defendant expressed his innocence of the convicted crime " 'tilted the scale the other way, ' " and the court sentenced him to 11 years' imprisonment. *Id.* The court noted that, when determining whether sentencing was improperly influenced by defendant's failure to admit his guilt following a conviction, reviewing courts have focused on whether the sentencing court has indicated, either expressly or implicitly, that there would be better treatment if defendant abandoned his claim of innocence. *Id.* at 350. The court concluded that defendant's sentence was improperly influenced by his persistent denial of his guilt and that the sentencing court was not merely addressing the factors of remorsefulness or veracity as they bore on defendant's rehabilitation. *Id.*

¶ 22 Here, unlike *Speed*, there is nothing in the record to indicate that the trial court imposed a more severe sentence solely due to the defendant's protestations of innocence. Instead, the record merely shows that the court considered the defendant's protestations of innocence to be a demonstration of his lack of remorse. As we previously noted, a defendant's failure to show remorse or a penitent spirit may properly be considered in determining the sentence; a trial court is not prohibited from considering a defendant's protestation of innocence and lack of remorse as factors in aggravation as long as its decision is not automatic or arbitrary.

¶ 23 The defendant here argues that the trial court erroneously applied a bright-line rule that any protestation of innocence after a conviction meant that a defendant was not showing remorse; that the court erroneously viewed his protestations of innocence as a lack of remorse. He contends that the record indicates that he expressed remorse in that, although he maintained his innocence for the killing, he also apologized for the mistakes that he made in handling the situation and admitted to beating Ryon. After carefully considering the record as a whole, we disagree with the defendant that the court applied a bright-line rule that *any* protestation of innocence after a conviction automatically means that a defendant lacked remorse. In fashioning the defendant's sentence, the court noted that it considered the factual basis; the presentence investigation; the history, character, and attitude of the defendant; the evidence and arguments; the defendant's statement in allocution; and the statutory factors in aggravation and mitigation. The record indicates that the imposed sentence was heavily influenced by the brutal nature of the murder. Although the court also referenced the fact that the defendant persisted in his claim of innocence, noting that he was not "owning up" to his actions, we do not find it erroneous for the trial court to infer, in light of the evidence offered at trial, that the defendant lacked remorse for his actions. "The trial court here was not bound to adopt a particular interpretation of defendant's statement in allocution, but was rather free to determine the message it conveyed." *Charleston*, 2018 IL App (1st) 161323, ¶ 30. The trial court is in the best position to evaluate the sincerity of the defendant's remarks. *Thompson*, 234 Ill. App. 3d at 779. As in *Ward*, we do not know what other factors, which are not revealed by the cold record, such as tone of voice, facial expressions, and general demeanor, led to

the court's conclusion that the defendant showed a lack of remorse. Because the court's reference to the defendant's persistent claim of innocence did no more than address the factor of remorsefulness, the court did not commit error in sentencing the defendant.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 25 Affirmed.