2020 IL App (4th) 180595-U

NO. 4-18-0595

FILED
November 19, 2020
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
KEYVELL L. LEWIS,	)	No. 17CF837
Defendant-Appellant.	)	
	)	Honorable
	)	Nancy S. Fahey,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Steigmann and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err by finding defendant was subject to Class X sentencing for bribery and in considering the statutory mitigating and aggravating factors in imposing defendant's 20-year sentence.

¶ 2 In December 2017, the State charged defendant, Keyvell L. Lewis, by information with one count of bribery (720 ILCS 5/33-1(a) (West 2016)) and one count of communicating with a witness (720 ILCS 5/32-4(b) (West 2016)). After a July 2018 trial, the jury found defendant guilty of bribery. Defendant filed a motion for a new trial, which was denied. At an August 2018 hearing, the Vermilion County circuit court found defendant was eligible for Class X sentencing under section 5-4.5-95(b) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4.5-95(b) (West 2016)) and sentenced defendant to 20 years' imprisonment for bribery. Defendant filed a motion to reconsider his sentence, which the court denied in September 2018.

¶ 3 Defendant appeals, contending the trial court erred by (1) sentencing him as a

Class X offender because one of his prior convictions was a not a qualifying conviction due to his age at the time he committed the offense and (2) failing to consider two statutory mitigating factors and improperly considering an aggravating factor in sentencing defendant. We affirm.

¶ 4 I. BACKGROUND

¶ 5 While the State charged defendant by information with both bribery and communicating with a witness, it only tried defendant on the bribery charge. The bribery count alleged that, on February 27, 2017, defendant, with the intent to influence the performance of any act related to the function of a witness, T.S., in Vermilion County case No. 17-CF-38 (hereinafter case No. 17-CF-38), promised T.S. property or personal advantage, namely United States currency and a shopping trip for clothes and shoes, which T.S. was not authorized or allowed to accept. The information also stated defendant was subject to Class X sentencing under section 5-4.5-95(b) and the sentence had to run consecutive to any sentence in case No. 17-CF-38.

¶ 6 On July 10, 2018, the trial court commenced a jury trial on the bribery charge. The State presented the testimony of (1) T.S.'s mother, Cassaundra V.; (2) Dawn Hartshorn, a Danville police officer; and (3) Susan Wilson, a victim witness advocate with the Vermilion County State's Attorney's office. The State also presented two recordings and a transcript of the video recording. Defendant did not present any evidence.

¶ 7 Cassaundra testified she was the mother of T.S. and four other children, three of whom defendant was their father. Cassaundra and defendant had been in a relationship for 11 years. Defendant was not T.S.'s father, but he had been present for most of T.S.'s life. On January 11, 2017, defendant was arrested and removed from the family home. About a week later, Cassaundra had a telephone call with defendant while he was in jail. Cassaundra identified

a recording of that telephone conversation (State's exhibit No. 1), and the trial court admitted it into evidence without an objection. On February 28, 2017, Cassaundra took T.S. with her to the health department for a video visit with defendant, who was still in jail. Cassaundra also identified the video recording of that visit (State's exhibit No. 2), and the court admitted the video recording without objection.

¶ 8 Officer Hartshorn testified she was a juvenile investigator and her responsibilities included talking to witnesses at the police department where the interview could be audio and video recorded. On or about January 12, 2017, she was called into work to interview 14-year-old T.S., who was with Cassaundra. Officer Hartshorn interviewed T.S. alone for about 30 minutes. Thereafter, Officer Hartshorn interviewed Cassaundra and then defendant. She also collected other evidence. As a result of her investigation, defendant was charged with a felony and T.S. was the victim of the felony. According to Officer Hartshorn, T.S. was a witness for the charges to which she was a victim. Additionally, Officer Hartshorn identified State's exhibit No. 1 as the audio recording of the telephone conversation between Cassaundra and defendant and State's exhibit No. 2 as the video recording of the visit between Cassaundra, T.S., and defendant. She also identified State's exhibit No. 3, which was a transcript of the video recording. Both recordings were played for the jury.

¶ 9 During the audio recording (State's exhibit No. 1), defendant told Cassaundra the State would need T.S. as a witness. He further explained that, if T.S. did not show up, the State would not have a case. He also told Cassaundra she could take the family and leave. In the video recording of the visit between defendant, T.S., and Cassaundra, defendant asked T.S. and Cassaundra where they were going after the visit, and T.S. responded they were going shopping. Defendant remarked they could not go shopping until defendant got home. He then told T.S.,

"[A]ll you gotta do is come to court and tell 'em man this is some bullshit." Defendant further stated to T.S. the following:

> "I'm tryin to hold that money so when hopefully I come home, which is up to you, this is up to you, so all you have to do is sit up here and tell them I lied on Keys because I was tired of my momma and him fighting. That's it. The rest of this shit is up to you. I'm not thinkin about whoopin your ass, I'm not thinking about that, I need to get home. Just like you, you called us and told is to get your ass home, that's what I did, I told your momma go get you. Now you need to get me home because you got little brothers and sisters that need me."

Defendant later told T.S. he had "about eight thousand dollars, but see we [could]n't spend it until you get me home, black ass. Yeah. Yeah. You." He again conveyed to T.S. she needed to come to court and do what her mother told her to do. Defendant emphasized the quicker he got home, the quicker they could go shopping for groceries, clothes, and shoes. Later in the conversation, defendant again told T.S. he needed her to come to court and "drop this." He emphasized to T.S. to do what her mother told her to do.

¶ 10 After Officer Hartshorn's testimony and the videos, the parties' following stipulation was read into the record: "One, on December 27, 2017, the Defendant, Keyvell Lewis, was charged with three counts alleging felony conduct. Two, [T.S.] was the named victim and complaining witness in all three counts." In his brief, defendant notes the stipulation appears to set forth a description of the charges in case No. 17-CF-38, and those charges were filed on January 13, 2017, and not December 27, 2017.

¶ 11 Wilson testified Cassaundra brought T.S. to the office on February 6, 2018. Wilson and the prosecutor met with T.S. to explain the process of a jury trial and to learn what

T.S. was going to say. At the meeting, T.S. said defendant did not do it. Wilson showed T.S. a video of her earlier statement to police. At first, T.S. did not remember saying any of it but then said she made it up because she wanted defendant out of the house. T.S. wanted him to stop fighting her mother. After the meeting was over, T.S. left with Cassaundra.

¶ 12 At the conclusion of the trial, the jury found defendant guilty of bribery. Defendant filed a timely motion for a new trial, which the trial court denied after an August 10, 2018, hearing.

¶ 13 On August 22, 2018, the trial court held the sentencing hearing. The State presented four certified convictions for defendant. The first conviction was in Cook County case No. 05-CR-2385701, where defendant pleaded guilty to armed robbery, a Class X felony, and was sentenced to seven years' imprisonment in June 2006. The second conviction was in Cook County case No. 02-CR-0770301, where defendant pleaded guilty to forgery, a Class 3 felony, and was sentenced to three years' imprisonment in May 2002. The third conviction was in Cook County case No. 00-CR-2912001, where defendant pleaded guilty to forgery, a Class 3 felony, and was sentenced to three years' imprisonment in February 2001. The first three convictions were in defendant's real name. The fourth conviction was in Cook County case No. 96-CR-3192201, where defendant pleaded guilty to robbery, a Class 2 felony, and was sentenced to six years' imprisonment in July 1998. The fourth conviction was in the name of Matthew Martin. The presentence investigation report (1) noted defendant admitted using the alias of Matthew Martin in 1996 and (2) listed defendant's birthdate as October 30, 1980. All four certified convictions were admitted. However, defendant did object to the admission of the fourth conviction based on it not being in defendant's name.

¶ 14 In addition to the certified convictions and presentence investigation report, the

State presented the testimony of Officer Hartshorn. Officer Hartshorn testified about the basis for the charges in case No. 17-CF-38, which were criminal sexual assault charges. She also testified that, when police officers first made contact with defendant in investigating the allegations in case No. 17-CF-38, defendant gave three different names, Matthew Roberson, Darrell Thorn, and Matthew Martin. Additionally, Officer Hartshorn stated the state's attorney's office received letters in late February or early March 2018 purportedly from T.S. and Cassaundra, advising T.S. had lied about defendant's actions because she wanted Cassaundra and defendant to stop fighting. Officer Hartshorn spoke with T.S.'s cousin, Jocelyn V., who informed her Cassaundra had written the letters, T.S. had found the letters, Cassaundra offered T.S. money, and T.S. did not feel comfortable lying. During cross-examination, defense counsel moved to strike Officer Hartshorn's testimony. The trial court refused to strike Officer Hartshorn's testimony but noted its sentencing was not going to be based on the underlying charges that were still pending.

¶ 15 The State recommended a sentence of 28 years' imprisonment based on defendant's extensive criminal history. In addition to defendant's criminal history, the State contended the other statutory aggravating factors that applied were (1) a long sentence was necessary to deter others from committing the same crime and (2) defendant's conduct caused or threatened serious harm. The State also emphasized the serious nature of the underlying charges and the fact defendant was a father figure to T.S. Last, the State asserted defendant had little rehabilitative potential. Defense counsel asked for a short prison sentence and encouraged the court to find the first two statutory mitigating factors applied. Defense counsel also contended the court should consider in mitigation another person's conduct influenced defendant's actions, defendant acted in concert with Cassaundra, defendant was employed, defendant's family was

dependent on him, and T.S. had recanted her allegations. Defendant made a statement in allocution. He noted he did not intend to commit a crime while in jail. His intention was trying to prove he did not criminally sexually assault his stepdaughter. He apologized for putting his family through this and noted his only mistake was being intoxicated and fighting with Cassaundra.

¶ 16 After hearing the parties' arguments, the trial court first explained it did not find any mitigating factors applied. The court then found defendant caused emotional and mental harm to T.S. and probably defendant's entire family, found the sentence was necessary to deter others from committing the same crime, and defendant had minimal rehabilitative potential. It also noted this was an adult versus child situation and defendant was the adult. Additionally, the court found defendant was subject to Class X sentencing under section 5-4.5-95(b). At the conclusion of the hearing, the court sentenced defendant to 20 years' imprisonment for bribery.

¶ 17 Defendant filed a timely motion to reconsider his sentence, asserting, *inter alia*, the trial court erred by finding the statutory mitigating factors contained in section 5-5-3.1(a)(1), (2), and (5) of the Unified Code (730 ILCS 5/5-5-3.1(a)(1), (2), (5) (West 2016)) did not apply in his case. Defendant also contended the court erred by finding defendant caused serious harm. Additionally, defendant argued his sentence was excessive. At an August 30, 2018, hearing, the court denied defendant's motion to reconsider his sentence.

¶ 18 On August 31, 2018, defendant filed a timely notice of appeal that listed the appealed judgment as the denial of his motion to reconsider sentence. On September 17, 2018, defendant filed a timely amended notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. July 1, 2017), which listed the nature of the appealed order as the conviction, the sentence, and denial of the motion to reconsider sentence. Ill. S. Ct. R. 303(b)(5)

(eff. July 1, 2017). Accordingly, this court has jurisdiction of defendant's appeal under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 19 II. ANALYSIS

¶ 20 A. Class X Sentencing

¶ 21 Defendant first argues the trial court erred by sentencing him as a Class X offender for the Class 2 felony of bribery under section 5-4.5-95(b) of the Unified Code (730 ILCS 5/5-4.5-95(b) (West 2016)) because his 1998 robbery conviction was committed when he was 16 years old and would not be a Class 2 felony under current law. Defendant contends section 5-4.5-95(b) demands the sentencing court look at the classification of the prior offense at the time defendant committed the offense for which he was being sentenced. In support of his assertion, defendant cites the decision of the Appellate Court, First District, in *People v. Miles*, 2020 IL App (1st) 180736, ¶ 22, *appeal allowed*, No. 126047 (Ill. Sept. 30, 2020). Defendant recognizes he did not preserve this issue for appeal but contends we should review the matter under the plain-error doctrine (Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967)). Additionally, defendant argues he was denied effective assistance of counsel because counsel failed to raise the issue in defendant's motion to reconsider his sentence. The State asserts *Miles* is distinguishable and contends the *Miles* court improperly interpreted section 5-4.5-95(b).

¶ 22 The plain-error doctrine permits a reviewing court to consider unpreserved error under the following two scenarios:

> "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and

challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010).

¶ 23 We begin our plain-error analysis by first determining whether any error occurred at all. *Sargent*, 239 Ill. 2d at 189, 940 N.E.2d at 1059. If error did occur, this court then considers whether either of the two prongs of the plain-error doctrine has been satisfied. *Sargent*, 239 Ill. 2d at 189-90, 940 N.E.2d at 1059. Under both prongs, the defendant bears the burden of persuasion. *Sargent*, 239 Ill. 2d at 190, 940 N.E.2d at 1059.

¶ 24 Section 5-4.5-95(b) of the Unified Code (730 ILCS 5/5-4.5-95(b) (West 2016)) states, in pertinent part, the following:

> "When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender."

¶ 25 In *Miles*, 2020 IL App (1st) 180736, ¶ 1, the defendant was convicted of a June 2016 burglary, a Class 2 felony (720 ILCS 5/19-1(a) (West 2016)), but sentenced as a Class X offender pursuant to section 5-4.5-95(b). On appeal, the defendant argued his criminal history did not qualify him for Class X sentencing under section 5-4.5-95(b) because his 2006 aggravated vehicular hijacking and armed robbery convictions relied on by the trial court for imposing a Class X sentence were committed when the defendant was only 15. *Miles*, 2020 IL App (1st) 180736, ¶¶ 1-5. Citing sections 5-120 and 5-130 of the Juvenile Court Act of 1987

(705 ILCS 405/5-120, 5-130 (West 2016)), the defendant argued his 2006 convictions for offenses committed when he was a juvenile no longer qualified as a prior conviction under section 5-4.5-95(b) because, in 2016, a 15-year-old person would not have automatically been tried as an adult for aggravated vehicular hijacking and armed robbery. *Miles*, 2020 IL App (1st) 180736, ¶¶ 6-7. The reviewing court agreed with the defendant's argument and found the 2006 convictions if committed on the date of the offense in *Miles* would have been resolved in delinquency proceedings in juvenile court and thus were not qualifying offenses for Class X sentencing pursuant to section 5-4.5-95(b). *Miles*, 2020 IL App (1st) 180736, ¶ 11.

¶ 26 Recently, this court addressed a similar argument where the defendant contended he was not subject to Class X sentencing for a Class 2 felony he committed in 2016 pursuant to section 5-4.5-95(b) because the prior burglary he committed in 2006 was not a qualifying conviction since the burglary was committed when he was 17 years old. *People v. Reed*, 2020 IL App (4th) 180533, ¶ 17. This court disagreed with the First District's opinion in *Miles*. *Reed*, 2020 IL App (4th) 180533, ¶ 24. We emphasized juvenile courts do not have exclusive jurisdiction over defendants under the age of 18. *Reed*, 2020 IL App (4th) 180533, ¶ 24. Moreover, this court found section 5-4.5-95(b) does not suggest criminal convictions entered on defendants under the age of 18 are to be considered juvenile adjudications. *Reed*, 2020 IL App (4th) 180533, ¶ 25. We also concluded the age of the defendant when he committed the prior burglary was irrelevant because age was not an element of burglary in 2006 or 2016. *Reed*, 2020 IL App (4th) 180533, ¶ 28. Additionally, in 2016 when the defendant committed the crime for which he was being sentenced, burglary was still a Class 2 felony. *Reed*, 2020 IL App (4th) 180533, ¶ 28. Based on the record before us, we concluded the trial court, the State, and defense counsel were correct the defendant's prior burglary conviction could serve as one of the two

prior convictions necessary to sentence defendant as a Class X offender under section 5-4.5-95(b). *Reed*, 2020 IL App (4th) 180533, ¶ 29.

¶ 27 Like in *Reed*, defendant's 1998 conviction for the robbery he committed in 1996 at the age of 16 was still a Class 2 felony on February 28, 2017, when he committed the bribery in this case. See 720 ILCS 5/18-1(c) (West 2016). At defendant's sentencing hearing, the State presented a certified statement of conviction for the 1998 robbery conviction in Cook County circuit court case No. 96-CR-3192201. While the name of the defendant on the certified statement of conviction was Matthew Martin, the State presented evidence that name was defendant's alias, and defendant does not argue the 1998 robbery conviction was not his. Thus, the trial court had sufficient evidence to find the 1998 robbery conviction was a qualifying conviction for Class X sentencing to apply to defendant under section 5-4.5-95(b).

¶ 28 B. Sentencing Factors

¶ 29 In the alternative, defendant argues he should receive a new sentencing hearing because the trial court failed to consider two statutory factors in mitigation and relied on the aggravating factor defendant caused psychological "serious harm" when no evidence supported its conclusion. The State disagrees, asserting the court did not err when considering mitigating and aggravating factors.

¶ 30 Defendant essentially challenges the trial court's analysis of the statutory mitigating and aggravating factors. In *People v. Johnson*, 2019 IL 122956, 129 N.E.3d 1239, our supreme court addressed the nature of challenges to sentences based on the consideration of improper sentencing factors in analyzing whether such challenges can be raised on appeal from a negotiated guilty plea. It noted that, when a defendant contends the trial court improperly considered a statutory aggravating factor inherent in the offense, the defendant is asserting the

court imposed a "harsher sentence than might otherwise have been imposed had the court not considered the improper statutory factor." (Internal quotation marks omitted.) *Johnson*, 2019 IL 122956, ¶ 38 (quoting *People v. Phelps*, 211 Ill. 2d 1, 12, 809 N.E.2d 1214, 1220 (2004). Moreover, the supreme court pointed out the "argument ha[d] been indeed characterized in our case law as an excessive sentence challenge." *Johnson*, 2019 IL 122956, ¶ 40.

¶ 31 This court has explained appellate review of a defendant's excessive sentence claim as follows:

> "A trial court's sentencing determination must be based on the particular circumstances of each case, including factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Generally, the trial court is in a better position than a court of review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case. [Citation.] Thus, the trial court is the proper forum for the determination of a defendant's sentence, and the trial court's decisions in regard to sentencing are entitled to great deference and weight. [Citation.] Absent an abuse of discretion by the trial court, a sentence may not be altered upon review. [Citation.] If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341 (quoting *People v. Hensley*, 354 Ill. App. 3d 224, 234-35, 819 N.E.2d 1274, 1284 (2004)); see also *People v. Alexander*, 239 Ill. 2d 205, 212-13, 940 N.E.2d 1062, 1066 (2010).

As found with the previous issue, defendant was subject to Class X sentencing (730 ILCS 5/5-4.5-95(b) (West 2016)), which carries a sentencing range of 6 to 30 years in prison (730 ILCS 5/5-4.5-25(a) (West 2016)). Thus, defendant's 20-year prison term is within the sentencing range. When a defendant's sentence falls within the statutory sentencing range, this court will not disturb the sentence unless its imposition constitutes an abuse of discretion. *People v. Solis*, 2019 IL App (4th) 170084, ¶ 23, 138 N.E.3d 247.

¶ 32 Defendant first asserts the trial court erred by failing to find the following two statutory mitigating factors did not apply in his case:

> "(1) The defendant's criminal conduct neither caused nor threatened serious physical harm to another.
>
> (2) The defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm to another." 730 ILCS 5/5-5-3.1(a)(1), (2) (West 2016).

Defendant then contends the court compounded the error by finding in aggravation defendant's conduct caused psychological harm. Defendant recognizes the trial court can consider psychological harm but contends no evidence of psychological harm was presented. He notes no evidence was presented T.S. was in counseling and the absence of any evidence of T.S.'s mental or emotional state after the video visit. The State points out that, in cases involving sexual abuse of minors, courts have found psychological harm even without direct evidence showing how the harm had manifested in the child.

¶ 33 In *People v. Fisher*, 135 Ill. App. 3d 502, 506, 481 N.E.2d 1233, 1236 (1985), the reviewing court held no proof of medically diagnosed harm was necessary where from the record it was apparent the defendant's conduct created a strong probability of harm. There, evidence in

the record showed (1) the defendant threatened to distribute pornographic pictures he had taken of the victim to his high school peers, (2) the defendant threatened the victim with castration, (3) the victim became withdrawn after the sexual encounter, and (4) the incident caused problems for the victim at school by subjecting him to daily verbal abuse by his classmates.

¶ 34 As in *Fisher*, the record shows the defendant's conduct created a strong probability of psychological harm. The offense is captured on video, which was played at defendant's jury trial. T.S. and Cassaundra are on a video call with defendant, who is surrounded by other inmates in jail. Defendant was in jail on criminal sexual assault charges for which T.S. was the victim. Cassaundra's face is clearly visible during the entire video visit. On the other hand, T.S.'s face is only partially visible most of the time. Several times, defendant asks to see T.S.'s face on camera. T.S. does not appear to want to be at the visit. Defendant seems to make fun of T.S.'s fighting ability, her new braids, and for looking at herself on the camera. He also makes it clear he is in charge and forbids her from shopping until he is back home and notes everything he had bought for her in the past. On multiple occasions when defendant gives T.S. instructions on what to say in court, T.S. tries to avoid looking at him, and Cassaundra even has an uncomfortable look on her face. Defendant also emphasized everything was on T.S. and that her little brothers and sisters needed defendant at home. Additionally, Officer Hartshorn testified she spoke with T.S.'s cousin, Jocelyn, who stated Cassaundra had drafted letters stating T.S. had lied about defendant's actions, T.S. found the letters, Cassaundra offered T.S. money, and T.S. did not feel comfortable with lying. We find the aforementioned evidence was sufficient for the trial court to find T.S. suffered psychological harm as a result of defendant's action of promising T.S. money and shopping to influence her testimony against him in the underlying sexual assault case.

¶ 35 As to the mitigating factors, defendant told T.S., during the video visit, to say she lied about defendant's actions, and then noted, "I'm not thinkin about whoopin your ass, I'm not thinking about that, I need to get home." Just by bringing up "whoopin your ass" to T.S., one could find defendant was threatening T.S. with serious physical harm. Defendant's veiled denial of not thinking about "whoopin" T.S. is inconsistent with him even mentioning it to her. Since Cassaundra seemed to be working with defendant in getting T.S. to say she lied about defendant's actions resulting in the charges in case No. 17-CF-38, the threat was not idle chatter without a possibility of actually happening. Thus, we disagree with defendant's contention no evidence showed (1) defendant's conduct threatened physical harm to T.S. and (2) he contemplated serious physical harm to T.S.

¶ 36 Accordingly, we find the trial court properly considered the relevant factors in mitigation and aggravation. Given defendant's criminal history, lack of rehabilitative potential, his position of authority over the minor victim in this case, and other relevant factors, we do not find the trial court's 20-year sentence was an abuse of discretion.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the Vermilion County circuit court's judgment.

¶ 39 Affirmed.