

No. 1-10-1910

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 4679
)	
KAMERON LEE,)	Honorable
)	Thomas M. Davy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice R. Gordon and Justice Cahill concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant where it considered the statutory factors in mitigation and aggravation before imposing a sentence of 15 years for a Class X felony.

¶ 2 After a bench trial, defendant Kameron Lee was found guilty of aggravated battery with a firearm, attempted aggravated vehicular hijacking, and aggravated battery, and sentenced to 15 years in prison. On appeal defendant contends that his sentence is excessive because the trial court improperly considered in aggravation factors that are inherent in the offense and an unrelated case, while ignoring his youth and potential for rehabilitation. We affirm.

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¶ 3 Defendant was charged via indictment with attempted first degree murder, aggravated battery with a firearm, attempted aggravated vehicular hijacking, and aggravated battery, based on a February 2007 incident during which the victim LeShawn Mean was shot in the leg.

¶ 4 At trial, Crystal Billingslea testified that she was sitting in the passenger seat of the victim's car when she saw defendant and another man approaching. Defendant was wearing a gray hoody. Defendant walked up to the car and attempted to open the driver's side door. Simultaneously, the victim put the car into reverse, defendant fired a gun, and Billingslea moved under the dashboard. Although the victim was able to drive away, the car soon began to slow down. At this point, Billingslea learned that the victim had been shot.

¶ 5 Billingslea was afraid defendant was following the car, so she told the victim to keep driving. When she saw a police vehicle in a Target parking lot, she told the victim to drive toward it. Billingslea gave police officers a description of the two men involved in the shooting. Approximately 15-20 minutes later, she identified defendant and his companion.

¶ 6 Victoria Thompson also identified defendant as the person who stood at the driver's side of the victim's car immediately before a gun was fired. Defendant was wearing a gray hoody with a white shirt and jeans. Although Thompson initially testified that defendant "shot" into the car, she later clarified that she could not see the gun and only heard the shot. Upon hearing the shot, she ran to her car and squatted behind it. As she looked up, the victim's car hit her car and she fell over. She then saw defendant turn and run toward her. As defendant passed her, he "snatched" her bag off her shoulder and she was able to see defendant's "big" silver gun. Thompson later went to the Target parking lot and gave police a description of defendant and his companion. Approximately 10 minutes later she identified defendant and the other man.

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¶ 7 Defendant's cousin Marcus Jones testified that he and defendant were walking to a relative's home when he heard three gunshots. As they rounded a corner, police officers "pulled up" and took them into custody. Defendant was wearing a gray hoody that night.

¶ 8 Jones denied telling an Assistant State's Attorney (ASA) that when he and defendant saw a car with "nice rims," defendant stated that he was "gonna get" the car, and told the people in the car to get out while pointing a revolver at them. He also denied telling the ASA that defendant shot out the car's driver's side window. When shown his written statement, Jones denied writing, signing or making changes to the statement.

¶ 9 ASA Stephanie Miller testified that after she transcribed Jones's statement, he reviewed it as she read it aloud. Miller then read the statement into the record. In the statement, Jones indicated that when defendant saw a car with nice rims, defendant walked up to the car, stated that he wanted it, and told the occupants to get out. Defendant then pulled out a revolver and pointed it at the people inside the car before shooting out the driver's side window.

¶ 10 Officer Rowe testified that after the victim pulled up and announced that he had been shot, Rowe spoke to the victim, Billingslea and Thompson. A description of the two men involved in the shooting was then put on the radio.

¶ 11 Officer Rodriguez testified that when he observed two African-American men matching the description in the flash message, he and his partner stopped their car. As they approached the two men, defendant stated that he and Jones did not have a gun. Jones and defendant were taken into custody and relocated to the Target parking lot.

¶ 12 After the State rested, the defense made a motion for a directed verdict, which the trial court granted as to the charge of attempted first degree murder only.

¶ 13 Defendant then testified that he was wearing a gray hoody at the time of his arrest, but that he did not shoot the victim. He denied telling police officers that he did not have a gun.

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¶ 14 Ultimately, the trial court found defendant guilty of aggravated battery with a firearm, attempted aggravated vehicular hijacking, and aggravated battery. At sentencing, the defense highlighted that defendant had no criminal background and asked for the minimum sentence. Defendant told the court that he was only 17 years old at the time of the offense, had been in custody for three years, and was ready to be "better" for his family and his daughter.

¶ 15 In sentencing defendant, the court stated that it had considered the testimony at trial, the presentence investigation, and defendant's lack of criminal background, as well as the statutory factors in aggravation and mitigation. The court stated that defendant's plan was to take the property of the victim and that just a week earlier an off-duty police officer was killed in an incident involving guns. The court then noted that although defendant had no criminal background, he had committed "an extremely serious offense." Ultimately, the court sentenced defendant to 15 years in prison for the aggravated battery with a firearm conviction. Defendant filed a motion to reconsider arguing that the sentence was excessive in light of his background. In denying the motion, the trial court stated that defendant's age and background were factors that had mitigated his sentence and in their absence the court would have imposed a longer sentence.

¶ 16 On appeal, defendant contends that his sentence is excessive because the trial court improperly considered aggravating factors that are inherent in the offense and relied on an unrelated case while giving "short shrift" to defendant's rehabilitative potential. He asks this court to either reduce his sentence to the statutory minimum or remand for resentencing.

¶ 17 A trial court has broad discretion in determining the appropriate sentence for a particular defendant and its determination will not be disturbed absent an abuse of that discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A sentence within the statutory range will not be considered excessive unless it varies greatly from the spirit of the law or is manifestly disproportionate to the nature of the offense. *People v. Brazziel*, 406 Ill. App. 3d 412, 433-34

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(2010). When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, but not limited to, a defendant's age, habits, credibility, criminal history, character, education, and environment, as well as the nature and circumstances of the crime and the defendant's actions in the commission of that crime.

People v. Raymond, 404 Ill. App. 3d 1028, 1069 (2010). A reviewing court will not substitute its judgment for that of the trial court merely because it may have analyzed the sentencing factors differently. *People v. Streit*, 142 Ill. 2d 13, 19 (1991).

¶ 18 This court considers the record as a whole, rather than a few words or phrases, when determining whether the trial court relied on the proper factors in aggravation and mitigation when sentencing a defendant. *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009). It is presumed that the trial court properly considered all mitigating factors before it; it is the defendant's burden to affirmatively show the opposite. *Brazziel*, 406 Ill. App. 3d at 434.

¶ 19 Here, defendant was convicted of aggravated battery with a firearm, a Class X felony with a sentencing range of between 6 and 30 years in prison. 720 ILCS 5/12-4.2 (West 2006); 730 ILCS 5/5-8-1(a)(3) (West 2006). The record reveals that in sentencing defendant, the court stated that it considered all factors in mitigation and aggravation, as well as the information contained in the presentence investigation and the fact that defendant did not have a criminal background. Ultimately, the court noted that while defendant did not have a criminal history, he had committed "an extremely serious offense" and sentenced defendant to 15 years in prison. This court cannot say that a prison sentence of 15 years was an abuse of discretion when defendant saw a car, decided that he wanted it, pointed a gun at two people, and ultimately shot the victim in the leg. See *Patterson*, 217 Ill. 2d at 448 (a trial court has broad discretion in sentencing).

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¶ 20 Defendant, however, contends that his sentence was improperly "double enhanced" when the trial court specifically considered in aggravation whether defendant's conduct caused or threatened serious harm (see 730 ILS 5/5-5-3.2(a)(1) (West 2006)), and whether a sentence was necessary to deter others from committing the same crime (see 730 ILCS 5/5-5-3.2(a)(7) (West 2006)) when those concerns are inherent in the classification of aggravated battery with a firearm as a Class X felony. He also contends that the trial court improperly relied on the facts of an unrelated case as aggravation when sentencing defendant.

¶ 21 A "double enhancement" occurs when either a single factor is used both as an element of an offense and as a basis for imposing a harsher sentence than might otherwise have been imposed, or the same factor is used twice to elevate the severity of the offense itself. *People v. Guevara*, 216 Ill. 2d 533, 545 (2005). Although a factor inherent in an offense should not also be considered as a factor in aggravation at sentencing (*People v. Conover*, 84 Ill. 2d 400, 404 (1981)), the sentence imposed upon a defendant is based upon the circumstances of each case, *i.e.*, the nature and circumstances of the offense committed by that defendant and the nature and circumstances of each element of that offense (*People v. Saldivar*, 113 Ill. 2d 256, 268-69 (1986)).

¶ 22 This court rejects defendant's contention that he suffered a "double enhancement" when the trial court considered whether his conduct caused serious harm and the importance of deterring other similar crimes. In sentencing defendant, the court stated that it had considered factors in mitigation and aggravation and that defendant was convicted of a serious offense. A trial court must consider the nature and circumstances of the crime when making its sentencing determination (*Raymond*, 404 Ill. App. 3d at 1069), and, here, the trial court considered not only defendant's lack of a criminal history, but also the circumstances of the offense and defendant's

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actions in committing the offense which included the firing of a gun into a car containing two people (*Saldivar*, 113 Ill. 2d at 268-69).

¶ 23 While it is true that the court mentioned an unrelated incident, *i.e.*, the death of an off-duty police officer, the mere fact that the trial court added personal observations, while not encouraged, does not constitute an abuse of discretion when the record shows that the court considered the proper factors in aggravation and mitigation. See *People v. Ayala*, 386 Ill. App. 3d 912, 921-22 (2008). Considering the record as a whole (*Dowding*, 388 Ill. App. 3d at 943), these brief comments in the middle of a discussion of the facts of this case are of "no consequence" (see *People v. Kolzow*, 301 Ill. App. 3d 1, 9 (1998)), where the trial court relied on the proper factors in aggravation and mitigation when sentencing defendant.

¶ 24 Defendant next contends that the trial court failed to adequately consider certain mitigating factors, including his youth, lack of a criminal record, and potential for rehabilitation. He argues before this court, as he did before the trial court, that the appropriate sentence in this case is the statutory minimum of six years.

¶ 25 There is a strong presumption that a trial court based its sentencing determination on proper legal reasoning. *People v. Donath*, 357 Ill. App. 3d 57, 72 (2005). While a defendant's potential for rehabilitation must be considered, the trial court is not required to give more weight to a defendant's chance of rehabilitation than to the nature of the crime (*People v. Evans*, 373 Ill. App. 3d 948, 968 (2007)), or to explain the value the court has assigned to each factor in mitigation and aggravation (*Brazziel*, 406 Ill. App. 3d at 434). It is presumed that the court properly considered the mitigating factors presented and the defendant's potential for rehabilitation; it is the defendant's burden to show otherwise. *Brazziel*, 406 Ill. App. 3d at 434.

¶ 26 Here, the record indicates that the trial court considered both the seriousness of the offense and defendant's potential for rehabilitation. The court stated that it had reviewed the

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presentence report, considered the arguments in aggravation and mitigation, and highlighted that although defendant did not have a criminal background, he had committed a serious offense. In denying defendant's motion to reduce sentence, the trial court stated that defendant's age and background were factors that had mitigated the sentence imposed. Defendant points to nothing in the record to indicate that the trial court did not take his youth and lack of criminal background into consideration when imposing a sentence that was only nine years above the statutory minimum. See *Brazziel*, 406 Ill. App. 3d at 434.

¶ 27 Here, defendant's sentence is not excessive when the trial court imposed a term of nine years more than the applicable statutory minimum after properly considering factors in mitigation and aggravation. *Brazziel*, 406 Ill. App. 3d at 434. The court did not abuse its discretion when sentencing defendant (*Patterson*, 217 Ill. 2d at 448), and, accordingly, its judgment is affirmed.

¶ 28 Finally, this court must address the State's contention that this cause must be remanded for resentencing because the trial court erred by failing to enter a sentence on defendant's conviction for attempted aggravated vehicular hijacking when that offense, unlike aggravated battery, was not a lesser-included offense of aggravated battery with a firearm.

¶ 29 This court notes that the State did not raise this issue before the trial court. Generally, issues not raised in the trial court are considered waived on appeal. *People v. Holloway*, 86 Ill. 2d 78, 91 (1981). In any event, this court determined in *People v. Aguilar*, 408 Ill. App. 3d 136, 150 (2011), *pet. for leave to appeal granted*, No. 112116 (May 25, 2011), that it could not review a defendant's conviction where the trial court had not imposed a sentence upon that conviction. *Aguilar*, 408 Ill. App. 3d at 150 (without a sentence, a conviction is not a final and appealable judgment); see also *People v. Ramos*, 339 Ill. App. 3d 891, 906 (2003) (the State may not seek review of unappealed and unsentenced convictions when the greater offense has not been reversed and vacated).

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¶ 30 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.