

2011 IL App (2d) 100212-U
No. 2—10—0212
Order filed August 10, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09—CF—1324
)	
EVERETT L. CRAIG,)	Honorable
)	Kathryn E. Creswell,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

Held: (1) The trial court did not abuse its discretion in sentencing defendant to 10 years' imprisonment (on a 6-to-30 range) for burglary: although there were various mitigating factors, the court reasonably balanced those factors against the aggravating factors, especially defendant's "staggering" criminal history; (2) defendant was entitled to full credit against his fines for the drug court-mental health court and the children's advocacy center, to reflect the 151 days he spent in presentencing custody; and (3) because defendant's charge for the county jail medical costs fund was a fine rather than a fee, defendant's fines exceeded \$40, and thus his charge for the violent crime victims assistance fund would be reduced from \$20 to \$8.

¶ 1 Defendant, Everett L. Craig, entered a nonnegotiated guilty plea to a single count of burglary (720 ILCS 5/19—1 (West 2008)), a Class 2 felony. Because of his criminal history, defendant was

sentenced as a Class X offender. 730 ILCS 5/5—5—3(c) (8) (West 2008). The trial court sentenced defendant to a 10-year prison term. On appeal, defendant argues: (1) his 10-year sentence is excessive; (2) he is entitled to monetary credit for time spent in presentencing custody against his \$10 drug court-mental health court fine and his \$30 Children’s Advocacy Center fine; and (3) the \$20 charge for the Violent Crime Victims Assistance Fund (VAF) should be reduced to \$4. For the reasons that follow, we (1) affirm defendant’s prison sentence; (2) award him presentencing credit against his fines; and (3) reduce the \$20 VAF charge to \$8 (not \$4).

¶ 2

I. BACKGROUND

¶ 3 According to the factual basis for the plea, on May 27 and May 28, 2009, loss prevention officers at a Kohl’s store located in Bloomingdale observed defendant remove a “GPS” unit from the store shelves, conceal it in a shopping bag, and exit the store without paying. On May 29, 2009, the officers again observed defendant remove a GPS unit from the shelves and leave the store without paying. The officers followed defendant out of the store and approached him. Defendant threw the bag containing the unit and attempted to flee. During a struggle with one of the officers, defendant swung at the officer but missed. Defendant was apprehended and taken to the loss prevention offices. There, defendant admitted to the officers that he had stolen GPS units on May 27 and 28, 2009, and that he had sold them in Chicago to obtain money for heroin. Defendant claimed that, because it was so easy to steal the units, he had returned on May 29 to steal a third unit.

¶ 4 After defendant entered his plea, the case was continued for sentencing, and the trial court ordered the preparation of a presentence investigation report (PSI). The PSI revealed that the 42-year-old defendant had an extensive criminal history. Defendant committed his first felony, armed robbery, in 1980. This was followed by convictions of robbery (1981), burglary (1983), gambling

(1986), attempted murder (1988), robbery (1988), and aggravated battery (1988). In 1988, defendant committed 22 separate robberies. From 2003 through 2009, defendant was convicted of DUI, theft, attempted armed robbery, attempted robbery, conspiracy to commit robbery with a firearm, and retail theft. While on bond in the present case, he was charged with theft. According to the PSI, defendant began smoking marijuana at age 9 and used marijuana occasionally until age 25. From age 25 through 27, defendant used powder cocaine. At age 34, defendant began using heroin and had used heroin daily until arrested.

¶ 5 On January 12, 2010, the parties appeared for sentencing. The State argued that defendant should be sentenced to 15 years in prison, noting defendant's "atrocious criminal history," the fact that he committed misdemeanor theft while out on bond in the present case, and the fact that he went to the store three times to steal three GPS units, thereby establishing a pattern of conduct. Defendant maintained that a sentence of six years would be more appropriate. In mitigation, defendant presented a letter from his wife, asking the court for help with defendant's drug problems. In allocution, defendant stated that his addiction played a major role in his actions and asked for drug treatment while in prison. He also apologized for his actions.

¶ 6 In imposing sentence, the trial court stated as follows:

“THE COURT: Okay. I’ve considered the factors in aggravation and mitigation, the arguments of counsel, the statement of [defendant]. I don’t know what surprised me more about this case, the criminal history of the Defendant, which has got to be one of the worst I’ve ever seen—

THE DEFENDANT: Yes, ma’am.

THE COURT: —It's amazing—or the fact that some judge gave you court supervision after all that and a 28-year sentence.

But looking at the certified copies, it just looks like you had a spree in February and March of 1988. These offenses occurred on different dates with different victims. It's a horrible criminal history.

THE DEFENDANT: Yes, your Honor.

THE COURT: Clearly the Defendant thinks he's an addict. He's indicated today a desire for treatment, although according to the PSI the Defendant hasn't attended classes at the jail. I don't know if those just weren't available or what the problem was there. But in looking at the history, the facts of the case—[a]nd the facts were aggravating because the factual basis was that on three consecutive days the Defendant went to the same establishment. He stole the same thing, a GPS, two days in a row. And then the third day he goes back for another one of these GPS devices, and that's when he's apprehended upon exiting the store after a short chase. So those facts are aggravating too.

I can appreciate the Defendant's comment that he thought it was a victimless crime. Along those lines, I guess, I can only say yes, that it wasn't a robbery or an attempt robbery, or an armed robbery, as the history indicates; but there's just no getting away from the history here. It's horrible.

Based upon all the information available to the Court, it will be the judgment of the Court that the Defendant will be sentenced to ten years in the Illinois Department of Corrections. The Court will recommend that he receive drug treatment while at the Department of Corrections.”

¶ 7 In addition to his prison sentence, defendant was assessed various fees and fines. A certified copy of the Du Page County circuit court clerk's record indicates that defendant's assessments include a \$10 drug court-mental health court fine, a \$30 Children's Advocacy Center fee, a \$20 VAF charge, and a \$10 County Jail Medical Cost Fund charge.

¶ 8 Defendant moved for reconsideration of his sentence. The trial court denied the motion, stating:

“Okay. Well, I'm not going to go through everything that came out at the sentencing hearing. I have to say just reviewing the file yesterday in anticipation of the motion when I took a look at the presentence report, under the circumstances the sentence seems a little bit light. This was a very unusual situation.

There was no doubt that the defendant's a heroin addict and the Court considered his addiction. But the criminal history here was so staggering really. And without going through all of it, just the attempt murder, robbery, aggravated battery, entry was concurrent with 22 separate robberies. And that's just looking at a couple entries in the history. I think the sentence was reasonable.”

¶ 9 Defendant timely appealed.

¶ 10 II. ANALYSIS

¶ 11 A. Propriety of Prison Sentence

¶ 12 It is well established that the trial court “is the proper forum to determine a sentence and the trial judge's decision in sentencing is entitled to great deference and weight.” *People v. Latona*, 184 Ill. 2d 260, 272 (1998). “A trial court has wide latitude in sentencing a defendant, so long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation.” *People*

v. Roberts, 338 Ill. App. 3d 245, 251 (2003). A sentence within the statutory limits for the offense will not be disturbed unless the trial court has abused its discretion. *People v. Coleman*, 166 Ill. 2d 247, 258 (1995). An abuse of discretion occurs if the trial court imposes a sentence that “is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.” *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). Considerations relevant to the trial court’s sentencing decision include “the nature of the crime, the protection of the public, deterrence, and punishment, as well as the defendant’s rehabilitative prospects and youth.” *People v. Garibay*, 366 Ill. App. 3d 1103, 1109 (2006). The existence of mitigating factors does not mandate imposition of the minimum sentence (*Garibay*, 366 Ill. App. 3d at 1109) or preclude imposition of the maximum sentence (*People v. Phippen*, 324 Ill. App. 3d 649, 652 (2001)). It is the trial court’s responsibility “to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case.” *Latona*, 184 Ill. 2d at 272. There is a presumption that the trial court considered all relevant factors in determining a sentence, and that presumption will not be overcome without explicit evidence from the record that the trial court did not consider mitigating factors or relied on improper aggravating factors. *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998). The reviewing court is not to reweigh factors considered by the trial court. *Phippen*, 324 Ill. App. 3d at 653.

¶ 13 Defendant argues that his 10-year prison term is excessive given that (1) he “did not use any force or threats, but simply took the GPS unit from a shelf, put it in his bag, and walked out of the store”; (2) he accepted responsibility for his actions; (3) he expressed remorse; and (4) he requested drug treatment for a long-standing heroin addiction, which, according to defendant, was the underlying cause of his actions in this case. With regard to the first point, defendant notes that the most serious charge initially pending against defendant was retail theft. He was later charged with

and pleaded guilty to burglary, a Class 2 felony (720 ILCS 5/19—1(b) (West 2008)), but because of his criminal history, the trial court was required to sentence him as a Class X offender (730 ILCS 5/5—5—3(c)(8) (West 2008)) to a prison term ranging from 6 to 30 years. According to defendant, because he committed “one of the least serious offenses for which a defendant could be sentenced as a Class X offender,” a lesser sentence would be more appropriate.

¶ 14 In determining a proper sentence, the trial court must consider all relevant factors. *People v. Battle*, 393 Ill. App. 3d 302, 315 (2009). The seriousness of the offense is the most important of these factors (see, e.g., *People v. Gutierrez*, 402 Ill. App. 3d 866, 902 (2010)), but in appropriate circumstances a minor offense may warrant a significant penalty. For instance, in *People v. Lautenschlager*, 205 Ill. App. 3d 530 (1990), the defendant was found guilty of retail theft of a pack of cigarettes. Because the defendant had prior convictions of theft and retail theft, the offense was a Class 4 felony (Ill. Rev. Stat. 1989, ch. 38, par. 16A—10(2)), punishable by a prison term of one to three years (Ill. Rev. Stat. 1989, ch. 38, par. 1005—8—1(a)(7)). Moreover, the trial court concluded that the defendant qualified for an extended-term sentence of three to six years’ imprisonment. Ill. Rev. Stat. 1989, ch. 38, par. 1005—8—2(a)(6). The trial court imposed a five-year prison term—a sentence in the upper half of the extended-term sentencing range. The *Lautenschlager* court affirmed, reasoning that, although the meager value of the property involved in the offense was “an appropriate factor to consider,” the defendant’s criminal record and lack of rehabilitative potential were more compelling. *Lautenschlager*, 205 Ill. App. 3d at 532.

¶ 15 Here, as noted by the trial court, defendant’s criminal history was “one of the worst” it had ever seen. Defendant committed his first felony, armed robbery, in 1980. This was followed by numerous convictions including robbery, burglary, attempted murder, theft, DUI, and attempted

armed robbery. Defendant argues that “most of his criminal history is limited to a two-month period that occurred over 20 years ago.” While it is true that he did commit 22 robberies in 1988, he went on to commit additional crimes in 2003, 2004, 2007, and 2009. Indeed, while on bond in the present case, he was charged with theft. Given defendant’s “staggering” criminal history, a minimum sentence would have been inappropriate.

¶ 16 Nevertheless, defendant argues that his criminal history does not warrant a 10-year sentence in light of his “high degree of rehabilitative potential.” He points to the facts that he pleaded guilty, that he expressed remorse, and that he expressed a desire to receive treatment for his drug problem. He also argues that the court should have afforded mitigating weight to the fact that his “conduct neither caused nor threatened serious physical harm to another” (730 ILCS 5/5—5—3.1(a)(1) (West 2008)) and to the fact that he “did not contemplate that his criminal conduct would cause or threaten serious physical harm to another” (730 ILCS 5/5—5—3.1(a)(2) (West 2008)). We note again that the existence of mitigating factors does not mandate imposition of the minimum sentence. *Garibay*, 366 Ill. App. 3d at 1109. In any event, the record does not contain any indication that the trial court failed to consider any of these factors, and defendant points to nothing other than the sentence itself to demonstrate that the trial court did not consider this evidence. See *Roberts*, 338 Ill. App. 3d at 251 (when mitigating evidence is before the trial court, it is presumed that the trial court considered it, and the defendant must point to something beyond the sentence itself to demonstrate that the evidence was not considered). Thus, we presume that the trial court considered these factors but simply deemed them offset by the aggravating factors, especially defendant’s criminal history (730 ILCS 5/5—5—3.2(a)(3) (West 2008)).

¶ 17 A Class X offense carries a prison sentence of 6 to 30 years. In view of all of the relevant circumstances, defendant's 10-year prison term—which is much closer to the minimum than the maximum sentence—is not excessive. The trial court did not abuse its discretion in concluding that a 10-year prison term struck a proper balance between the relevant factors in aggravation and mitigation.

¶ 18 B. Credit Against Fines for Time Spent in Presentencing Custody

¶ 19 Defendant asks that he be granted monetary credit against his \$10 drug court-mental health court fine and against his \$30 Children's Advocacy Center fine for time spent in custody prior to sentencing. The State concedes that defendant is entitled to the credit.

¶ 20 Section 110—14(a) of the Code of Criminal Procedure of 1963 (Code) provides:

“Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine.” 725 ILCS 5/110—14(a) (West 2008).

Whether a defendant is entitled to such credit is an issue that may be raised at any time. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008). The question presented is one of law and is subject to *de novo* review. *People v. Andrews*, 365 Ill. App. 3d 696, 698 (2006).

¶ 21 Although the drug court-mental health court assessment is labeled as a fee under section 5—1101(d—5) of the Counties Code (55 ILCS 5/5—1101(d—5) (West 2008)), it is actually a fine. See *People v. Graves*, 235 Ill. 2d 244, 255 (2009); *People v. Evangelista*, 393 Ill. App. 3d 395, 401 (2009). Similarly, the Children's Advocacy Center charge, also referred to as a fee (55 ILCS 5/5—1101(f—5) (West 2008)), is actually a fine. See *People v. Jones*, 397 Ill. App. 3d 651, 660

(2009). Because they are fines, they may be offset by credit for the time that a defendant served in custody prior to sentencing. 725 ILCS 5/110—14(a) (West 2008). As defendant was in custody for 151 days before sentencing, the credit is easily sufficient to satisfy both fines. We award it.

¶ 22 C. Violent Crime Victims Assistance Fund

¶ 23 Defendant next contends that, because he was assessed fines for the drug court-mental health court and the Children’s Advocacy Center, the \$20 VAF charge must be reduced to \$4. The State argues that defendant has forfeited the argument for failure to raise it below. In the alternative, the State argues that the VAF charge should be reduced to \$8, not \$4.

¶ 24 As an initial matter, we note that defendant did not raise this claim below. Generally, sentencing claims not raised in a postsentencing motion are forfeited. See *People v. Reed*, 177 Ill. 2d 389, 393-94 (1997). However, a sentencing provision that lacks proper authority may be challenged at any time. *People v. Alexander*, 369 Ill. App. 3d 955, 957-58 (2007). Accordingly, we will address defendant’s argument.

¶ 25 The \$20 charge for the VAF is to be imposed only when “no other fine is imposed.” 725 ILCS 240/10(c) (West 2008). However, as noted above, because the assessments for the drug court-mental health court and the Children’s Advocacy Center are also fines, there are other fines imposed, and thus subsection (c) is no longer applicable. Rather, defendant’s VAF charge must be calculated pursuant to subsection (b), which provides that the court shall assess “an additional penalty of \$4 for each \$40, or fraction thereof, of fine imposed.” 725 ILCS 240/10(b) (West 2008). The State concedes that defendant’s VAF charge must be reduced but argues that, because defendant was assessed a \$10 charge for the County Jail Medical Costs Fund (730 ILCS 125/17 (West 2008)), his fines total \$50 and thus his \$20 VAF charge should be reduced to \$8, not \$4. Resolution of this

issue turns on whether the \$10 charge imposed for the County Jail Medical Costs Fund is a fine or a fee.

¶ 26 As noted by our supreme court: “Broadly speaking, a ‘fine’ is a part of the punishment for a conviction, whereas a ‘fee’ or ‘cost’ seeks to recoup expenses incurred by the state—to ‘compensat[e]’ the state for some expenditure incurred in prosecuting the defendant.” *People v. Jones*, 223 Ill. 2d 569, 582 (2006). The “*central* characteristic which separates a fee from a fine” is whether the charge “seeks to compensate the state for any costs incurred as the result of prosecuting the defendant.” (Emphasis in original.) *Jones*, 223 Ill. 2d at 600. “A charge is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant’s prosecution.” *Jones*, 223 Ill. 2d at 600.

¶ 27 The State argues that the \$10 charge assessed under the County Jail Medical Costs Fund is a fine, because it is not a cost associated with prosecuting this particular defendant. Defendant maintains that it is a fee, because the purpose of the statute is to reimburse the State, not to punish the defendant. We agree with the State and find that the charge is a fine.

¶ 28 At the time of defendant’s offense, the statute provided:

“An arresting authority shall be responsible for any incurred medical expenses relating to the arrestee until such time as the arrestee is placed in the custody of the sheriff. However, the arresting authority shall not be so responsible if the arrest was made pursuant to a request by the sheriff. When medical expenses are required by any person held in custody, the county shall be entitled to obtain reimbursement from the County Jail Medical Costs Fund to the extent moneys are available from the Fund. To the extent that the person is reasonably able

to pay for that care, including reimbursement from any insurance program or from other medical benefit programs available to the person, he or she shall reimburse the county.

The county shall be entitled to a \$10 fee for each conviction or order of supervision for a criminal violation, other than a petty offense or business offense. The fee shall be taxed as costs to be collected from the defendant, if possible, upon conviction or entry of an order of supervision. The fee shall not be considered a part of the fine for purposes of any reduction in the fine.

All such fees collected shall be deposited by the county in a fund to be established and known as the County Jail Medical Costs Fund. Moneys in the Fund shall be used solely for reimbursement to the county of costs for medical expenses and administration of the Fund.” 730 ILCS 125/17 (West 2008).

¶ 29 The prior version of the statute provided, in relevant part:

“All such fees collected shall be deposited by the county in a fund to be established and known as the Arrestee’s Medical Costs Fund. Moneys in the Fund shall be used solely for reimbursement of costs for medical expenses relating to the arrestee while he or she is in the custody of the sheriff and administration of the Fund.” 730 ILCS 125/17 (West 2006).

This court has analyzed the prior version of the statute (when it contained the language “reimbursement of costs for medical expenses relating to the arrestee while he or she is in the custody of the sheriff” and when the fund was titled “Arrestee's Medical Costs Fund”) and held that a defendant could be charged the fee even if he did not incur medical costs while under arrest. See *Evangelista*, 393 Ill. App. 3d at 400. Other districts have also considered the prior version of the statute and reached similar conclusions. See *People v. Unander*, 404 Ill. App. 3d 884, 889 (2010);

People v. Hubbard, 404 Ill. App. 3d 100, 105-06 (2010); *People v. Jones*, 397 Ill. App. 3d 651, 663 (2009). The amendment confirms that the charge is to be collected regardless of whether a defendant incurs injury or requires treatment while in custody. Moreover, we note that the statute expressly provides that the moneys collected may be used toward administration of the fund, which is certainly not an expense incurred as a result of prosecuting the defendant. Thus we find that the charge is a fine. See *Jones*, 223 Ill. 2d at 600 (a charge is a fine, despite its label, if it “does not seek to compensate the state for any costs incurred as the result of prosecuting the defendant”).

¶ 30 In addition, we further note that the statute provides that “[t]he fee shall not be considered a part of the fine for purposes of any reduction in the fine.” 730 ILCS 125/17 (West 2008). If the charge were truly a fee, there would be no reason to include this language, because as a fee the charge would not be subject to any reduction for presentencing incarceration. See *Jones*, 223 Ill. 2d at 599. Indeed, concluding that the charge is a fee would render this language superfluous. See *Jones*, 223 Ill. 2d at 599.

¶ 31 Based on the foregoing, we find that the \$10 County Jail Medical Costs Fund charge is a fine. Thus, as defendant was assessed \$50 in fines, we modify the mittimus to reduce the VAF charge from \$20 to \$8.

¶ 32 IV. CONCLUSION

¶ 33 We affirm defendant’s prison sentence. We award defendant a credit sufficient to satisfy his \$10 drug court-mental health court fine and his \$30 Children’s Advocacy Center fine, and we reduce the VAF charge from \$20 to \$8.

¶ 34 Affirmed as modified.