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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 McHenry County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07—CF—135
)	
NICOLE M. CERK,)	Honorable
)	Joseph P. Condon,
Defendant-Appellant.)	Judge, Presiding.

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

ORDER

Held: The trial court did not abuse its discretion in sentencing defendant to 8 years' imprisonment (on a 3-to-14 range) for aggravated DUI; despite defendant's request, we could not reweigh the relevant factors; despite the mitigating factors, the sentence was justified by the seriousness of the offense, in which, after a previous arrest for DUI, defendant made a conscious decision to drive with an alcohol level more than triple the legal limit.

Defendant, Nicole M. CerK, pleaded guilty to aggravated driving under the influence (DUI) (625 ILCS 5/11—501(d)(1)(F) (West 2006)) and was sentenced to eight years' imprisonment. She now appeals, arguing that her sentence is excessive. We affirm.

I. BACKGROUND

Defendant was indicted on two counts of aggravated DUI (625 ILCS 5/11—501(a)(1), (a)(2), (d)(1)(F) (West 2006)) and one count of unlawful possession of cannabis (720 ILCS 550/4(a) (West 2006)). On October 20, 2008, defendant entered a blind guilty plea on one count of aggravated DUI. The remaining counts were nol-prossed.

According to the factual basis for the plea, on February 3, 2007, just before midnight, defendant failed to stop her Chevy Trailblazer at a stop sign and, while traveling at about 38 miles per hour, crashed into a Chevy Cavalier driven by Curtiss Phelan as it passed through the intersection. Phelan died as a result of multiple injuries. At the scene, defendant admitted to emergency personnel and police officers that she had been coming from Half Times Bar, where she had been drinking pitchers of beer. Her breath had a strong odor of alcohol. Defendant voluntarily accompanied police to Northern Illinois Medical Center, where testing revealed defendant's blood alcohol level to be 0.210. A Breathalyzer test administered about three hours after the crash showed a blood alcohol level of 0.171. Expert testimony would establish that her blood alcohol level at the time of the crash was approximately 0.242.

The trial court accepted defendant's guilty plea, finding it knowingly and voluntarily made and supported by a factual basis. The case then proceeded to a sentencing hearing.

At the sentencing hearing, the court considered defendant's presentence investigation report (PSI) and victim impact statements, both oral and written. Defendant's PSI indicated that defendant was born in 1977 and that she lived with her boyfriend and their four-year-old daughter and two-year-old son. She graduated from high school with a 3.8 grade point average. She had been employed by Sign Appeal in Fox Lake since 1999. After her arrest, she completed 75 hours of treatment at DUI Associates in Grayslake. DUI Associates found no basis to recommend "aftercare

treatment.” In the PSI, the Department of Court Services stated that, “[b]ased on the defendant’s lack of criminal history and having a cooperative attitude, the Department of Court Services would have no objection to a sentence of probation.”

In addition, Lindenhurst police officer Kevin Klahs testified concerning his 1997 arrest of defendant for DUI. He stated that, upon responding to a dispatch of a reckless driver, he stopped defendant’s car. He observed defendant to have “very slurred speech, very extreme odor of alcohol on her breath and watery and bloodshot eyes.” He recalled that defendant failed field sobriety testing, could not readily locate her driver’s license, and exhibited severe mood swings. Based on his observations of defendant, he believed her to be intoxicated and arrested her for DUI. Although the videotape of the 1997 traffic stop could not be located, Klahs indicated that he vividly remembered details of the arrest because “[defendant] was very disrespectful, very insolent.” Although Klahs could not remember if the charge had been dismissed, defendant later introduced into evidence a certified disposition showing that the charge had been nol-prossed.

Defendant also testified on her own behalf. She asked the court to consider her children when sentencing her. She stated that she was “not someone who goes out and gets drunk all the time. This was a horrible, horrible lack of judgment.” She expressed remorse and apologized to Phelan’s friends and family and asked them for their forgiveness.

The trial court sentenced defendant to eight years’ imprisonment. In sentencing defendant, the trial court stated that it had considered all of the evidence offered in aggravation and mitigation, the information in the PSI, the financial impact of incarceration, the victim impact statements, and defendant’s statement. The court specifically acknowledged that defendant had no prior convictions, that her character and attitude indicated that she was unlikely to commit another crime, and that she

was obviously and sincerely remorseful. The court noted that defendant was “an industrious and self-reliant person” and that “she has taken steps to rehabilitate herself and deal with the problem that alcohol has contributed to in her life.” The court also specifically acknowledged Klahs’ testimony, finding it “reliable and relevant.” The court stated:

“And while [defendant] has behaved industriously and independently in many aspects of her life, the decision to continue encountering alcohol and to drive a vehicle with alcohol in her blood stream is in my opinion--after having been stopped ten years before by Officer Klahs--is in my opinion particularly irresponsible.”

The court did not find extraordinary circumstances that required probation. The court further noted that “probation or conditional discharge would deprecate the seriousness of [defendant’s] conduct and would be inconsistent with the ends of justice.”

Following the denial of her motion for reconsideration, defendant timely appealed.

II. ANALYSIS

On appeal, defendant argues that, in light of the presence of several mitigating factors and the absence of significant aggravating factors, the court erred when it imposed a sentence greater than the statutory minimum sentence of three years. She asks that her sentence be reduced to three years.

After reviewing the record, we conclude that the trial court did not abuse its discretion in sentencing defendant.

At the time of the offense, section 11—501(d)(2) of the Illinois Vehicle Code provided, in pertinent part, as follows:

“Aggravated driving under the influence [(under section 11—501(d)(1)(F) of the Illinois Vehicle Code)] is a Class 2 felony, for which the defendant, unless the court determines that extraordinary circumstances exist and require probation, shall be sentenced to *** a term of imprisonment of not less than 3 years and not more than 14 years if the violation resulted in the death of one person [.]” 625 ILCS 5/11—501(d)(2) (West 2006) (text as amended by Pub. Act 94—0113, §5 (eff. January 1, 2006) (2005 Ill. Legis. Serv. 1383, 1387 (West)), and Pub. Act 94—0609, §5 (eff. January 1, 2006) (2005 Ill. Legis. Serv. 3085, 3089 (West))).

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). It is well established that “[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). The existence of mitigating factors does not mandate imposition of the minimum sentence (*People v. Garibay*, 366 Ill. App. 3d 1103, 1109 (2006)) 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.” *People v. Latona*, 184 Ill. 2d 260, 272 (1998).

The Illinois Constitution requires that “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, §11. The rehabilitative potential of the defendant is only one of the factors

that must be weighed in deciding a sentence, and the trial court does not need to expressly outline its reasoning for sentencing or explicitly find that a defendant lacks rehabilitative potential. *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007). The most important sentencing factor is the seriousness of the offense. *Id.* 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 improperly relied on 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. *Pippen*, 324 Ill. App. 3d at 653.

Defendant argues on appeal that the sentence imposed by the trial court is excessive because the trial court improperly “offset the[] multiple mitigating factors against one aggravating factor: the stale testimony of a police officer regarding an arrest that occurred more than 10 years prior to the instant offense and did not result in the defendant’s conviction.” Defendant does not argue that the trial court failed to consider mitigating evidence before it or that it considered improper aggravating factors; rather her only contention of error is that the court did not strike the appropriate balance between defendant’s rehabilitative potential and the seriousness of the offense. Defendant essentially asks this court to reweigh Klahs’ testimony against the mitigating evidence and strike a new balance by finding that a lesser sentence is warranted. This we may not do. The trial court was in the best position to observe and evaluate the myriad factors that comprised the sentencing determination, and we will not substitute our judgment for that of the trial court merely because we might have weighed the factors differently. *People v. Perruquet*, 68 Ill. 2d 149, 156 (1977).

In any event, as noted, the most important factor to be considered in sentencing a defendant is the seriousness of the offense. The offense involved here was quite serious. At the time of the

crash, defendant's blood alcohol level was more than triple the legal limit. Further, as the trial court specifically noted, despite an earlier arrest for DUI, defendant made "the decision to continue encountering alcohol and to drive a vehicle with alcohol in her blood stream," which the trial court found to be "particularly irresponsible." It is well established that "[a] person who makes the conscious and intentional decision to drive drunk presents an imminent danger to the public." *People v. Winningham*, 391 Ill. App. 3d 476, 486 (2009). Given the nature of the offense, we cannot say that the trial court abused its discretion in imposing an eight-year sentence, which is just below the midpoint of the range of available sentences.

III. CONCLUSION

Accordingly, we affirm the judgment of the circuit court of McHenry County.

Affirmed.