

2011 IL App (2d) 100106-U
Nos. 2—10—0106 & 2—10—0527 cons.
Order filed July 20, 2011

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).

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—649
)	
DONALD L. BROWN,	)	Honorable
	)	Perry R. Thompson,
Defendant-Appellant.	)	Judge, Presiding.

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County
)	
Plaintiff-Appellee,)	
)	
v.	)	No. 09—CF—390
)	
DONALD L. BROWN,	)	Honorable
	)	Perry R. Thompson,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Schostok 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 4-to-15 range) for robbery. Considering the factors in mitigation and aggravation the sentence in the middle of the possible range was not an abuse of discretion. (2) We vacate defendant's DNA analysis fees, as the record showed that he had given a DNA sample in connection with a prior conviction.

¶ 1 Defendant, Donald L. Brown, entered a nonnegotiated plea of guilty to two counts of robbery (720 ILCS 5/18—1 (West 2008)), one in case No. 09—CF—390 and one in case No. 09—CF—649. The trial court sentenced him to concurrent 10-year prison terms. In each case, the clerk assessed a \$200 "DNA Analysis Fee." Defendant appeals, arguing that (1) his prison terms are excessive, and (2) the DNA fees should be vacated. We vacate the DNA fees but otherwise affirm.

¶ 2 I. BACKGROUND

¶ 3 According to the factual basis for the guilty plea in case No. 09—CF—390, on February 14, 2009, defendant approached the victim, a woman who was older than 60 years of age, took her purse, and pushed her to the ground. Defendant was subsequently apprehended, based on the victim's identification, and the victim's purse was found in defendant's car.

¶ 4 According to the factual basis for the guilty plea in case No. 09—CF—649, on February 9, 2009, defendant approached the victim, a woman who was older than 60 years of age, as she was entering her home and took her purse, causing her to fall to the ground. The victim later identified defendant from a lineup at the Du Page County jail.

¶ 5 After defendant entered his pleas, the cases were continued for sentencing, and the trial court ordered the preparation of a presentence investigation report (PSI). The PSI revealed that the 30-year-old defendant had a criminal history that included convictions of delivery of cocaine in 1997, unlawful possession of a controlled substance in 2001 and 2002, possession of cannabis

in 2008, and illegal transportation of alcohol in 2006 and 2008. Defendant's criminal history also included numerous convictions of driving without a valid license. The PSI also included a statement from defendant. In the statement, defendant apologized for his actions and explained that he committed the crimes so that he could obtain money to take his wife out for Valentine's Day. He stated that he did not mean to cause any harm.

¶ 6 At the sentencing hearing, the State asked for a 12-year sentence. In aggravation, the State emphasized the nature of the crimes, noting the ages of the victims, 78 and 82. The State pointed to defendant's criminal history, which included prior felonies. The State argued that no mitigating factors applied and that, even if there were mitigating factors, deterrence and the need to protect society outweighed them.

¶ 7 Defense counsel asked for a sentence of probation, arguing that defendant accepted responsibility for his actions, that he had no intent to harm the victims, that his family would suffer excessive hardship if defendant were imprisoned, and that he had had consistent employment since 2006.

¶ 8 In allocution, defendant stated that he would like to apologize to his victims and that he had learned from his "stupid mistake." He also stated that his employer was willing to give him another chance.

¶ 9 The trial court sentenced defendant to 10 years' imprisonment in each case with the sentences to run concurrently. The court acknowledged that defendant had been working with the same company for three years and that the company was willing to give defendant a second chance. However, the court stated: "You know, this is not like you ran over something in the driveway or broke a window by accident with a baseball." The court called defendant a "bully,"

and stated: “You’re 30 years old. You’re apparently healthy, physically fit. You picked on an 82-year-old and a 78-year old.” The court further noted that, while defendant took property from the victims, more importantly he took away “their sense of security.” The court stated: “If you really learned from what happened here, you wouldn’t have had the second offense a week later.” The court also noted defendant’s criminal history and further observed that defendant had provided a DNA sample in connection with a prior conviction.

¶ 10 The trial court denied defendant’s motion for reconsideration of his sentences. Defendant appealed.

¶ 11 II. ANALYSIS

¶ 12 A. Prison Terms

¶ 13 Defendant first contends that the 10-year concurrent prison terms are excessive and requests that we reduce them 4 years. After reviewing the record, we affirm the terms imposed by the trial court.

¶ 14 Defendant pleaded guilty to two counts of robbery (720 ILCS 5/18—1 (West 2008)), a Class 1 felony, with a sentencing range of not less than 4 years and not more than 15 years (730 ILCS 5/5—8—1(a)(4) (West 2008)). 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).

¶ 15 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. *Evans*, 373 Ill. App. 3d at 968. 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.

¶ 16 Defendant argues that the trial court did not adequately consider defendant's remorse or his potential for rehabilitation. The record does not contain any indication that the trial court failed to consider 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 was 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). As noted, we may not reweigh those factors. For this reason alone, defendant's contention fails. In any event, those factors were clearly offset by the seriousness of the offense and defendant's substantial criminal history. The trial court did not abuse its discretion in imposing prison terms roughly in the middle of the statutory range.

¶ 17 B. DNA Analysis Fee

¶ 18 Defendant argues that the DNA analysis fee assessed in each case under section 5—4—3 of the Code of Criminal Procedure of 1963 (730 ILCS 5/5—4—3(a), (j) (West 2008)) must be vacated, because his DNA had already been collected and because the circuit court clerk was without authority to levy the fees.

¶ 19 Recently (and after the parties filed briefs in the present case), the supreme court decided *People v. Marshall*, No. 110765 (Ill. May 19, 2011). In *Marshall*, the court held that “section 5—4—3 authorizes a trial court to order the taking, analysis and indexing of a qualifying offender's DNA, and the payment of the analysis fee only where that defendant is not currently registered in the DNA database.” *Marshall*, slip op. at 15. Here, because the record establishes that defendant's DNA had already been collected, we vacate the fee imposed in each case.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm defendant's sentences, except that we vacate the \$200 DNA analysis fee imposed in each case.

¶ 22 Affirmed in part and vacated in part.