

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 OF ILLINOIS,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09—CM—4099
)	
CHRISTIAN DeFAZIO,)	Honorable
)	Brian J. Diamond,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

Held: (1) The State proved defendant guilty beyond a reasonable doubt of battery, as the alleged weaknesses in the victim's testimony either did not exist or were mild enough that the trial court still could credit the testimony; (2) the trial court did not abuse its discretion in sentencing defendant to one year of conditional discharge (as opposed to supervision) for battery: the trial court presumably considered the mitigating factors that defendant cited, the court was not required to articulate the basis for its sentence, and the sentence clearly was not excessive.

Following a bench trial, defendant, Christian DeFazio, was found guilty of battery (720 ILCS 5/12—3(a)(2) (West 2008)), a Class A misdemeanor, and was sentenced to one year of conditional discharge. On appeal, defendant argues that the State failed to prove his guilt beyond a reasonable

doubt and, in the alternative, that his sentence should be reduced to a term of supervision. We affirm.

I. BACKGROUND

On August 20, 2009, defendant was charged by complaint with battery (720 ILCS 5/12—3(a)(2) (West 2008)). The complaint alleged that, on June 27, 2009, defendant “without legal justification knowingly made contact of an insulting and provoking nature with Daniel Baxter in that he grabbed Daniel Baxter by the neck and pulled him out of his moving vehicle.” The trial court later granted the State’s motion to amend the complaint, striking the language “and pulled him out of his moving vehicle” and inserting the language “with his hands.”

At trial, Baxter testified that he was the owner of Baxter Coach and had been subcontracted by Limos Without Limits, Ltd., to transport wedding guests from defendant’s wedding reception at Cantigny to the guests’ overnight accommodations at Indian Lakes Resort. On June 26, 2009, he arrived at Cantigny in his “limo bus” at about 11:25 p.m. to pick up guests for transport. Although his bus could carry 26 people, only 9 individuals boarded the bus. After transporting the first group to Indian Lakes Resort, Baxter returned to Cantigny to pick up another group.

Baxter testified that, when he returned to Cantigny, he saw “a large crowd—there had to be 80 to 100 people *** who all came rushing towards the bus.” Baxter stopped the bus and got ready to get out to introduce himself to the second group of riders. Before he had a chance to exit the bus, the passenger door of the driver’s cab opened, and Baxter saw defendant step onto the outside metal step. Baxter knew defendant because he had spoken with him several times that day. Defendant stood in the passenger doorway, cursing and screaming at Baxter. Someone in a tuxedo pulled defendant off of the step. At that point, defendant’s wife (the bride) stepped onto the metal step and

stood in the passenger doorway. Baxter spoke with her. When asked what happened during the conversation, he stated:

“In the middle—near the end of that conversation I called 911 because I knew this was getting out of hand fast.

And I quit speaking to her and called 911 and told them where I was and that I needed help, that there was an out-of-control bridal party.

And when I did that, she totally flipped.”

At that point, two men, also in tuxedos, pulled the bride off of the step and “both started attacking [him].” They swung at him with their fists, while they cursed at him. They did not make contact with him. They were half in the bus, attempting to crawl over the passenger seat. The door allowed only one person in at a time, so as one of the men was crawling in, the other man was on top of that man or to the side of him trying to get in. Baxter started to drive away, because he thought that it would cause the two men to jump off of the bus. When the men did not jump off of the bus, Baxter grabbed a flashlight, and he swung it at the men, while he attempted to drive the bus.

According to Baxter, as he was attempting to drive away, the driver’s door opened and defendant was standing on the outside step, swinging at Baxter. A “fourth guy jumped up” onto the driver’s side step. When Baxter was asked whether defendant made contact with him, the following colloquy transpired:

“A. He was swinging at me. Then he grabbed me by—like my—I had this type of, you know, same certain tie on. He grabbed me by like the collar and tie, and he was pulling on me.

So I wasn't able to defend myself towards the right. So now these guys are completely on the bus. And now they're hitting me from the right.

And as he's pulling me, I have my—my right arm is the last thing on the steering wheel and—

Q. And all this while the bus is still moving?

A. It's still moving. I don't have my feet on the gas or anything, so it's three—two or three or four or five miles an hour tops, you know. Idle—whatever that diesel bus will idle at.

And as he's pulling with like this whole idea, somebody with him punched me—hit me in the mouth and which split my lip open.

And at that point I let go. And they just yanked me out of the bus, and I went head first onto the ground where I just received that ass kicking that they were promising.”

Baxter testified that he was kicked and punched after being pulled from the bus. His contact lens was knocked out when he hit the ground. He “curled up in a ball,” and he “was getting kicked from every direction possible.” He stated: “So I don't really even know how many people there were.” He estimated that “[t]here were at least six or eight people in this big cluster.” He explained: “I don't know who was helping and who was hurting, other than the defendant and the other guy who were not helping. They were hitting.” After about 15 seconds, the individuals stopped kicking him, and they all ran away. Baxter ran to his bus, which had rolled about 50 feet away, and locked the doors. His cell phone was still connected to 911, and the 911 operator told him that help was on the way.

When Baxter was asked whether the driver's door was open when defendant got in, Baxter testified: "They opened the door itself. I never even considered it a thought before, but a limo bus that size, you put your car in drive, it locks the door automatically. They don't do that. So the doors were open. And he opened it by the door handle."

Baxter testified that the police and an ambulance arrived in about 10 minutes. Several of the wedding guests were leaving in cabs. The police "did a makeshift lineup" of about eight to nine people. Most of the people in the lineup were wearing tuxedos. After identifying defendant, Baxter went to the hospital, where he received five stitches in his lip. He suffered from contusions and abrasions.

On cross-examination, the following colloquy occurred regarding the lineup:

"Q. And where were you standing in relation—did you walk up to each individual person in the lineup and look at them before you made a choice or—

A. Yeah.

Q. —how did you pick [defendant]?

A. They told me to walk up to each specific person and only pick out anybody that you are one hundred percent sure that you could identify.

And defendant was the only one that I could one hundred percent identify."

Ryan Culver, a police officer with the Du Page County sheriff's office, testified that he responded to an incident at Cantigny at about 12:30 a.m. on June 27, 2009. He approached a bus, which was stopped against a curb. There was a group of about five or six individuals around the bus. After speaking with the driver of the bus, Culver spoke with the bride. Culver then placed 10 individuals, wearing tuxedos, in a lineup. Baxter identified defendant from the lineup. Defendant

gave Culver his version of the events. Defendant told Culver that, while he was waiting for the bus to pick him up, he heard a commotion. He saw his wife and then he saw the bus driving off. He began to run toward the bus but was restrained by several members of the wedding party and guests. Defendant broke free and chased after the bus. Defendant caught up to the bus, while it was moving. Defendant looked into the passenger compartment and saw the driver swinging a flashlight. Defendant told Culver that he did not enter the passenger compartment. According to Culver, while he was speaking with defendant, he observed that defendant had slurred speech and smelled of alcohol. Defendant was cooperative and did not appear agitated. After speaking with defendant, Culver spoke with the bride's mother and the bride's brother, Joseph Miksan (Joseph). Culver determined that probable cause existed to get a warrant to arrest defendant. Defendant was served by mail, and he turned himself in.

On cross-examination, Culver testified that, when he arrived on the scene, Baxter told him that one person had dragged him out of the bus, and he estimated that nine people attacked him as he was curled up in a ball. Culver testified that after assembling the lineup "[they] had [Baxter] stand back and he took his time and then he picked out the defendant." The people in the lineup were "approximately ten feet" away. The lighting was "ambient light from the parking lot lights." Baxter told Culver that two people climbed into the bus on the passenger side and that one person pulled him out of the bus on the driver's side.

Joseph told Culver that he had to physically restrain defendant from going after the bus. Joseph saw defendant "break free and then run to the two [*sic*] passenger's side of the bus." Joseph told Culver that he never saw defendant "lay a hand" on Baxter, but he also told Culver that he was unable to see what was occurring on the driver's side of the bus. Other than Baxter, no one told

Culver that they saw defendant make physical contact with Baxter. Defendant was polite and cooperative and did not appear “mussed at all.”

For the defense, Jennifer Miksan, defendant’s wife, testified that she lived in Brooklyn, New York, with defendant and that she was a fourth-year medical student. On the evening of the incident, defendant had “had some drinks, but he wasn’t like wasted or belligerent or anything like that.” She had had about two drinks that day. When the bus arrived, she saw defendant get on. She pulled defendant off of the bus, and she stepped onto the passenger step to speak with Baxter. According to Miksan, Baxter was “yelling and not making a lot of sense.” She told Baxter that she needed him to do “another run,” because she wanted her grandparents to get home. She was “kind of yelling.” At some point, Baxter started to call the police, and she continued to ask him to just take her grandparents home. Miksan did not see anyone rush toward the bus or try to board the bus while she was talking to Baxter. Miksan testified that, after she “realized that there was no talking to [Baxter],” she stepped off the bus. She then saw defendant’s father step onto the passenger step. Baxter then “stepped on the gas and zoomed away.” She never saw defendant make any contact with Baxter during the evening. She “didn’t see [defendant] at all.” She stated: “He wasn’t in my immediate vision.”

Frank DeFazio, defendant’s father, testified that he lived in New Jersey with his wife and two daughters. He also had two sons, defendant and Michael, but they did not live with him. He worked as a principal systems engineer for Motorola. DeFazio testified that he had consumed alcohol at the wedding but that he was not intoxicated at the time of the incident. Defendant also had consumed alcohol but was not intoxicated. At about 12:30 a.m. on June 27, 2009, he was waiting for a ride from the reception to the hotel, along with his 10-year-old daughter and several other young children.

There were about 40 people in total standing outside. At some point, Miksan approached DeFazio and told him that Baxter was not going to let anyone on the bus. Miksan was yelling and upset. DeFazio went to talk to Baxter to find out what was going on. DeFazio stepped onto the passenger step, and Baxter yelled at him to get off the bus. Baxter accelerated the bus and again yelled at DeFazio to get off. DeFazio pulled himself into the bus, because he thought that he was going to fall off. As he pulled himself closer to Baxter, Baxter started swinging something at him. DeFazio hit Baxter “a few times.” The bus was moving the entire time. When the bus came to a stop, Baxter’s door opened, and Baxter jumped out. DeFazio did not see anyone open the driver’s-side door or pull Baxter from the bus. DeFazio exited the bus and went around the back of the bus. DeFazio saw several people, including defendant, run over to where the bus had stopped. He saw Baxter get back on the bus and close the door. He never saw anyone hit or kick Baxter. DeFazio waited for the police to arrive. DeFazio assumed that the police were going to arrest Baxter because “[h]e almost ran over a bunch of people.” DeFazio never saw defendant pull Baxter from the bus or strike Baxter.

Aarti Ravikumar testified that she lived in Brooklyn, New York, and was a fourth-year medical student. Ravikumar was defendant’s good friend. At about 12:30 a.m. on June 27, 2009, she was sitting outside the reception hall waiting to be transported back to her hotel. She saw the bus pull up, and she saw defendant approach the bus. She next saw defendant exit the bus, and she saw Miksan get on the bus briefly. After Miksan exited the bus, she saw DeFazio get on the bus and then she saw the bus speed away. Ravikumar’s boyfriend and a few of her boyfriend’s friends went running toward the bus, because the bus had stopped and they wanted to make sure that everything was okay. She followed, but as soon as she arrived near the bus, her boyfriend screamed at her to get away. As she walked away, she saw defendant run toward the bus. There was a large group of

people by the bus, and she was not able to see what was happening. The bus stopped about 30 seconds after it had first pulled away. While the bus was moving, she never saw anyone other than DeFazio get on the bus. She never saw defendant touch Baxter.

Denise Cruci, defendant's aunt, testified that she lived in Pennsylvania with her grandmother and two daughters. At about 12:30 a.m. on June 27, 2009, she was sitting outside the reception hall waiting for the bus. There was a group of women and children standing on the curb waiting to board the bus. When the bus arrived, she saw Miksan talking to Baxter. She heard defendant being "loud," and she walked over to him to see what was going on. As she was talking to defendant, she heard screaming, and the bus started to take off. Someone screamed that someone was being dragged. Defendant thought that it was his wife being dragged. Cruci grabbed hold of him and then let him loose. After the bus had already stopped, they ran toward the bus. While the bus was moving, Cruci did not see anyone approach the bus or attempt to board the bus. Defendant was in Cruci's sight the entire time, and she never saw defendant make contact with Baxter.

The trial court found defendant guilty of battery, and sentencing immediately followed. The State noted defendant's lack of prior criminal history and argued for one year of conditional discharge, a \$100 fine, court costs, five days' participation in the Sheriff's Work Alternative Program, and participation in an anger management program. Defense counsel emphasized defendant's lack of criminal history and argued for a period of court supervision and some public service work. The court sentenced defendant to one year of conditional discharge, a \$100 fine plus court costs, and participation in an anger management program.

Defendant filed an amended motion for a new trial and a motion to reconsider his sentence. In his motion to reconsider his sentence, defendant asked that his sentence be reduced to court

supervision, specifically noting that he had earned a master's degree from Rutgers University in 2007 and that he had been employed by Manhattan Thorton Thomasette as a senior engineer for four years. The trial court denied both motions, and defendant timely appealed.

II. ANALYSIS

A. Sufficiency of the Evidence

A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). When reviewing a challenge to the sufficiency of the evidence, “ ‘the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and determining what inferences to draw, and a reviewing court ordinarily will not substitute its judgment on these matters for that of the trier of fact. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). Although credibility determinations are not immune from review, they will not be disturbed on appeal unless no rational trier of fact could have given credence to the challenged testimony. See, e.g., *People v. Smith*, 185 Ill. 2d 532, 545 (1999).

Defendant does not dispute that Baxter's testimony, if true, was sufficient to establish that he committed battery. Defendant argues, however, that Baxter's testimony was not credible. Defendant's argument that Baxter's testimony was incredible rests primarily on what he refers to as “significant” inconsistencies between Baxter's trial testimony and his statements to the police

following the incident. Relying on *People v. Cowan*, 209 Ill. App. 3d 994 (1991), defendant argues that the inconsistencies warrant reversal. After a review of the record, we find that many of the claimed inconsistencies are based on defendant's extremely strained interpretation of the testimony. Moreover, to the extent that there are any actual inconsistencies, they are hardly significant and do not warrant reversal. We will address each in turn.

First, according to defendant, Baxter testified that he was attacked by four people while driving the van (two on the right and two on the left), and this testimony is inconsistent with what Baxter reported to Culver at the scene. Culver testified that Baxter told him that there was only one attacker on the driver's side. Defendant's assertion regarding Culver's testimony is simply incorrect. Culver was asked: "Did [Baxter] ever tell you that there were two or more people who climbed in through the driver's side?" He responded: "He only indicated to me that there was one person." Culver's reference to "one person" refers to how many people "*climbed in* through the driver's side," and thus is not inconsistent with Baxter's testimony that a "fourth guy *jumped up*" on the driver's-side step. (Emphases added.)

Defendant next takes issue with Baxter's testimony concerning when he called 911 for help. According to defendant, Baxter testified that he called 911 in the *middle* of his conversation with Miksan, and this is inconsistent with what he told Culver at the scene. Defendant asserts that Culver testified that Baxter told him that he called 911 *after* speaking with Miksan. We note that, contrary to defendant's assertion, Culver did *not* testify about when Baxter called 911; he testified only that Baxter told him that "he felt uncomfortable after his conversations with the bride." This testimony is in no way inconsistent with Baxter's testimony concerning when he called 911. Baxter testified that he called 911 "in the middle—near the end of the conversation." He stated: "I quit speaking to

her and called 911.” Baxter’s testimony that he was “[i]n the middle” of a conversation with the bride when he “quit speaking to her and called 911” is entirely consistent with his statement to Culver that “he felt uncomfortable after his conversations with the bride.”

Defendant next argues that, “[e]ven more significantly, [Baxter] initially alleged that Defendant grabbed him by the neck and pulled him out of his moving vehicle, but testified at trial that he was grabbed by the collar and tie, and did not specify who actually pulled him out of the vehicle.” In support of this argument, defendant cites the complaint, which was amended to allege that defendant “grabbed Daniel Baxter by the neck with his hands.” We fail to see any significant inconsistencies. Baxter testified that defendant “grabbed [him] by like the collar and tie, and he was pulling on [him].” He later stated that he was pulled out of the bus. We see little distinction, much less a significant one, between being grabbed by the neck and being grabbed by the collar and tie. We also see no significance in the absence of testimony from Baxter specifying who pulled him out of the bus, especially since there was no allegation in the amended complaint that defendant pulled him from the bus.

Defendant also claims that Baxter’s testimony concerning how many people attacked him after he was pulled from the vehicle is inconsistent with what he told Culver. According to defendant, Baxter testified that four to five people had attacked him but Culver testified that Baxter reported that nine people had attacked him. Once again, we find that any inconsistency is hardly significant. Baxter testified that, after being pulled from the bus, he “curled up in a ball” and “was kicked from every direction possible.” He stated: “I don’t really even know how many people there were” but estimated that “[t]here were at least six or eight people in this big cluster.” He explained that he did not know “who was helping and who was hurting, other than the defendant and the other

guy who were not helping. They were hitting.” Although Culver testified that Baxter told him that nine people attacked him, the trial court could have accepted Baxter’s testimony. Indeed, Baxter explained that he was surrounded by a “big cluster” of people and that he was not sure how many people there were. In any event, there is little distinction between Baxter’s estimate that the group consisted of six to eight people and his alleged statement to Culver that he was attacked by nine people. Moreover, we note that this testimony goes to what happened after defendant’s battery allegedly occurred.

Defendant also points to inconsistencies in the testimony concerning Baxter’s identification of defendant from the lineup. According to defendant, Baxter and Culver gave “two entirely different stories” concerning how the lineup took place. Baxter testified that he walked up to each individual in the lineup, and Culver testified that Baxter identified defendant from about 10 feet away. We do not find the versions significantly inconsistent. When testifying, Baxter did not provide any estimation of distance; he merely agreed that he “walk[ed] up” to the lineup. One could certainly “walk up” to or approach someone and nevertheless remain at a distance of 10 feet.

To the extent that minor inconsistencies exist between defendant’s testimony and his reports to Culver, they do not rise to the level of those present in *Cowan*. There, the victim of a sexual assault testified that the assault occurred on a bed in a bedroom, while the defendant held her down and another man alone placed his finger in her vagina. *Cowan*, 209 Ill. App. 3d at 997. This was in “sharp contrast” to the statements the victim made to police officers. *Id.* She told the officers that the assault occurred in the kitchen while she was standing. *Id.* She also reported to the officers that the two men alternately restrained her and that both men inserted their fingers into her vagina. *Id.* The third district reversed the defendant’s conviction of battery, stating: “[T]he inconsistencies and

contradictions involved here can hardly be deemed collateral or minor. Where even the room in which the alleged assault took place changed between the police interview and the trial, we find that the very existence of the incident was called into question.” *Id.* Here, unlike in *Cowan*, any inconsistencies are slight at most.

Defendant’s next challenge to Baxter’s credibility concerns Baxter’s testimony regarding defendant’s opening of the driver’s-side door. According to defendant, “due to the vehicle’s auto locking mechanism, the doors could only be opened from the inside while [the vehicle] was in drive,” and “thus, [d]efendant could not have opened the door.” Relying on *People v. Yeargan*, 229 Ill. App. 3d 219, 231-32 (1992), defendant argues that we must reverse because the State “failed to provide evidence that the door was forcibly opened or unlocked from the outside.” In *Yeargan*, the reviewing court reversed a conviction of sexual assault and unlawful restraint where the physical evidence failed to support the complainant’s version of the events. *Id.* at 230-35. There, complainant testified that she was physically restrained and that her clothing was forcibly removed; however, her clothing was not torn and she did not exhibit any physical signs of abuse. *Id.* at 230. We find *Yeargan* to be distinguishable. Here, there was no conclusive testimony that Baxter’s vehicle had an “auto locking mechanism.” Baxter stated: “I never even considered it a thought before, but a limo bus that size, you put your car in drive, it locks the doors automatically. They don’t do that. So the doors were open. And he opened it by the door handle.” Baxter’s testimony on whether his vehicle had an auto-locking mechanism is not clear; in fact he seems to have said that the doors on his vehicle “don’t do that” and that “the doors were open.” Unlike the situation in *Yeargan*, where the “absence of *** evidence would suggest that the night’s events occurred

consensually as defendants urge” (*id.* at 230), the unclear testimony concerning the door’s locking mechanism is hardly sufficient to render the State’s theory of the case “physically impossible.”

Lastly, defendant asserts that we must reject Baxter’s testimony as incredible because it was “completely contradicted by all other eyewitness testimony.” According to defendant, DeFazio, Ravikumar, Cruci, and Miksan all “testified that Defendant did not strike [Baxter].” We note that, with respect to Miksan’s testimony, although she testified that she never saw defendant strike Baxter, she also testified that she was standing on the passenger’s side of the bus at all times during the incident. In fact, she conceded that she “didn’t see [defendant] at all.” She stated: “He wasn’t in my immediate vision.” In any event, while defendant’s friends and family all testified that they did not see defendant strike Baxter, it was for the trial court to determine the credibility of the witnesses. Baxter’s testimony was sufficient to support the court’s judgment. See *People v. Doll*, 371 Ill. App. 3d 1131, 1138 (2007) (when viewed in the light most favorable to the prosecution, the complainant’s testimony must support a finding by a rational trier of fact that the essential elements of the crime were proved beyond a reasonable doubt; the complainant’s testimony need not be corroborated and need not be unequivocal).

In sum, viewing the evidence in a light most favorable to the State, the evidence was sufficient to prove defendant guilty of battery beyond a reasonable doubt. Any inconsistencies are minor and do not rise to the level of justifying a reasonable doubt of defendant’s guilt.

B. Sentence

Defendant argues that, due to his lack of criminal history, his education, and his employment history, the trial court abused its discretion in sentencing him to anything other than supervision. We disagree.

Battery is a Class A misdemeanor. 720 ILCS 5/12—3(b) (West 2008). Thus, the trial court could sentence defendant to up to 364 days in jail or up to two years of conditional discharge. 730 ILCS 5/5—4.5—55(b), (d) (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). The reviewing court is not to reweigh factors considered by the trial court. *Phippen*, 324 Ill. App. 3d at 653.

Defendant argues that “[t]he court sentenced Defendant to conditional discharge without explanation” and that the record “suggests” that the court failed to balance the relevant factors. We disagree. First, the court was not required to articulate the basis for its sentence. See *People v. Jarrell*, 248 Ill. App. 3d 1043, 1051 (1993) (a trial court need not articulate the process by which it determines the appropriateness of a given sentence). Second, the court heard the evidence at trial, heard counsel’s sentencing arguments, and considered defendant’s motion to reconsider his sentence. 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 record does not contain any indication that the trial court failed to consider defendant's lack of criminal history, his education, and his employment, 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). As noted, we may not reweigh those factors. In any event, given the harsher sentences available, defendant's sentence was clearly not excessive. Thus, defendant's contention fails.

III. CONCLUSION

Based on the foregoing, we affirm the judgment of the circuit court of Du Page County.

Affirmed.