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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 06—CF—2447
	)	
CHRISTOPHER P. NEGRE,	)	Honorable
	)	Patricia Piper Golden,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices Zenoff and Schostok concurred in the judgment.

**ORDER**

*Held:* (1) Defendant's two convictions of possession of a firearm without a valid FOID card, for his simultaneous possession of two firearms, were reversible plain error under the one-act, one-crime rule, so we vacated one; (2) the trial court did not abuse its discretion in sentencing defendant to 14 years' imprisonment (on a 6-to-30 range) for unlawful possession of a controlled substance; the court expressly or presumably considered the factors that defendant cited, and we could not reweigh them; in any event, the sentence was supported by defendant's criminal history and the amount he possessed.

Following a stipulated bench trial, defendant, Christopher P. Negre, was convicted of unlawful possession with the intent to deliver a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2006)), unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West

2006)), unlawful possession of cannabis (720 ILCS 550/4(d) (West 2006)), and two counts of possession of a firearm without a valid Firearm Owner's Identification (FOID) card (430 ILCS 65/2(a)(1) (West 2006)). Defendant appeals, arguing that (1) his two convictions of possession of a firearm without a valid FOID card violate the one-act, one-crime rule, and (2) the trial court imposed an excessive sentence on his conviction of unlawful possession with the intent to deliver a controlled substance. For the reasons that follow, we vacate one of defendant's convictions of possession of a firearm without a valid FOID card but otherwise affirm.

### BACKGROUND

Defendant was charged with one count of unlawful possession with the intent to deliver a controlled substance, namely, more than 15 but less than 100 grams of cocaine (count 1); one count of unlawful possession of a controlled substance, namely, more than 15 but less than 100 grams of cocaine (count 2); one count of unlawful possession with the intent to deliver more than 30 but less than 500 grams of cannabis (720 ILCS 550/5(d) (West 2006)) (count 3); one count of unlawful possession of more than 30 but less than 500 grams of cannabis (count 4); and two counts of possession of a firearm without a valid FOID card (counts 5 and 6).

The matter proceeded to a stipulated bench trial. There, the State presented evidence of the following. In September 2006, a no-knock search warrant was executed at an address in Aurora. During the search, police seized two handguns, ammunition, a police scanner, two digital scales, two cell phones, approximately 43.65 grams of cocaine, and approximately 85.22 grams of cannabis. Following his arrest, defendant admitted that the handguns belonged to him and that he sold "powder" out of the house to make money. Defendant's FOID card was revoked in November 1999.

The trial court found defendant guilty of all counts except count 3. Following an unsuccessful motion for a new trial, the trial court sentenced defendant to 14 years' imprisonment on count 1 (count 2 merged with count 1), 2 years' imprisonment on count 4, and 3 years' imprisonment on both counts 5 and 6. All of the sentences were ordered to run concurrently. Defendant filed a motion to reconsider the sentence, which the trial court denied. Defendant then brought this timely appeal.

#### ANALYSIS

On appeal, defendant first contends that his two convictions of possession of a firearm without a valid FOID card violate the one-act, one-crime rule, because his simultaneous possession of two guns constituted only a single act. The State agrees that one of the convictions must be vacated, as do we.

Initially, we note that defendant did not raise this issue in his postsentencing motion. This issue, however, may be reviewed under the second prong of the plain-error doctrine. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010) (“forfeited one-act, one-crime arguments are properly reviewed under the second prong of the plain-error rule because they implicate the integrity of the judicial process”).

Under the one-act, one-crime rule, multiple convictions based on precisely the same act are improper. *Nunez*, 236 Ill. 2d at 494. Section 2(a)(1) of the Firearm Owners Identification Card Act (430 ILCS 65/2 (a)(1) (West 2006)) prohibits the possession of “any firearm, stun gun, or taser” without also possessing a valid FOID card. The question of whether separate charges may be brought under this statute for the simultaneous possession of multiple firearms has not been

definitively answered. Defendant contends, and the State agrees, that the matter is governed by *People v. Carter*, 213 Ill. 2d 295 (2004).

In *Carter*, the defendant was convicted of four counts of unlawful possession of weapons by a felon for his simultaneous possession of two guns and clips of ammunition for those two guns. *Carter*, 213 Ill. 2d at 297. The defendant argued that his simultaneous possession of the guns and ammunition could support only one conviction. *Carter*, 213 Ill. 2d at 300. At the time of the defendant’s prosecution, the relevant statute prohibited the possession of “any firearm or any firearm ammunition” by a felon. 720 ILCS 5/24—1.1(a) (West 1996). The supreme court found the statute to be ambiguous because the use of the term “any” in the statute did not sufficiently define the allowable unit of prosecution; it neither permitted nor prohibited the State from bringing separate charges for the simultaneous possession of multiple firearms or firearm ammunition. *Carter*, 213 Ill. 2d at 301-02. Because the construction most favorable to the accused must be adopted when there exist two or more constructions of a statute—and because it had previously held that where a statute is ambiguous, simultaneous possession could not support multiple convictions—the supreme court held that, absent a specific statutory provision to the contrary, the defendant’s simultaneous possession could support only a single conviction. *Carter*, 213 Ill. 2d at 302-04.

Here, as in *Carter*, the relevant statute refers to “any firearm, stun gun, or taser” (emphasis added) (430 ILCS 65/2(a)(1) (West 2006)), rendering the statute ambiguous as to whether simultaneous possession of multiple firearms can support separate charges for each firearm. As the supreme court made clear in *Carter*, where a statute is subject to two or more constructions, the construction most favorable to the accused must be adopted. *Carter*, 213 Ill. 2d at 302. In this case, as in *Carter*, the construction most favorable to defendant is the one that would prohibit separate

charges based on the simultaneous possession of multiple firearms without a valid FOID card. Accordingly, pursuant to Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we modify the judgment to reflect a single conviction of possession of a firearm without a valid FOID card.

Defendant also contends that the 14-year sentence the trial court imposed on his conviction of unlawful possession with the intent to deliver a controlled substance is excessive. Defendant requests that we reduce his sentence to a term not to exceed 10 years. After reviewing the record, we affirm the sentence imposed by the trial court.

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. *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. *Pippen*, 324 Ill. App. 3d at 653.

Defendant argues that the trial court did not adequately consider some mitigating factors, including that he had no prior felonies, possessed only 43 grams of cocaine, and demonstrated great rehabilitative potential. 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). As noted, we may not reweigh those factors. For this reason alone, defendant's contention fails.

We also note, however, that the trial court specifically commented on the fact that defendant had no prior felony convictions, but also observed that defendant had a string of misdemeanor convictions, including offenses involving harm, threats, drugs, and guns. In addition, defendant's argument that he possessed only 43 grams of cocaine, an amount that falls in the lower half of the

statutory range, cuts in favor of the given sentence, which is also in the lower half of the statutory sentencing range of 6 to 30 years (720 ILCS 570/401(a)(2)(A) (West 2006)).

Given that evidence of defendant's criminal history, the amount of cocaine he possessed, and his attempts to remedy his drug and alcohol problems was presented to the trial court, we must presume that the trial court considered it, absent some record evidence to the contrary. *Roberts*, 338 Ill. App. 3d at 251. As defendant has not presented any such evidence to the contrary, we affirm the sentence.

#### CONCLUSION

For the reasons stated, we vacate one of defendant's convictions of possession of a firearm without a valid FOID card and its associated sentence. Otherwise, we affirm the judgment of the circuit court of Kane County.

Affirmed in part and vacated in part.