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No. 3-09-0646

Order filed April 7, 2011

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IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 14th Judicial Circuit,
	)	Whiteside County, Illinois
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-441
	)	
JOEL R. FARGHER,	)	Honorable
	)	John L. Hauptman,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE CARTER delivered the judgment of the court.  
Justices O'Brien and Wright concurred in the judgment.

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**ORDER**

*Held:* When the circuit court properly weighed the appropriate sentencing factors in imposing a 17-year sentence for aggravated arson, properly imposed extended term sentences on the defendant's criminal damage to government supported property and criminal damage to property convictions based on the defendant's prior criminal record, failed to conduct a proper hearing on whether a public defender fee could be imposed, and failed to award monetary credit for presentence time served, the appellate court held that the defendant's prison sentences did not constitute abuses of discretion and the defendant was entitled to partial monetary credit for presentence time served. The appellate court also vacated the defendant's public defender fee and remanded the case for the circuit court to conduct a proper hearing on whether such a fee could be imposed.

Pursuant to an open plea agreement, the defendant, Joel R. Fargher, pled guilty to

aggravated arson (720 ILCS 5/20–1.1(a) (West 2008)), criminal damage to government supported property (720 ILCS 5/21–4(1)(a) (West 2008)), and criminal damage to property (720 ILCS 5/21–1(1)(a) (West 2008)) in exchange for the State’s agreement to drop six other charges. The court sentenced the defendant to concurrent prison terms of 17, 6, and 6 years, respectively, the latter two being extended term sentences. The court also ordered the defendant to pay \$695 in court costs, \$90 to the Violent Crime Victims Assistance Fund, \$500 for an arson fine, \$13,625.65 in restitution, and \$2,000 in public defender fees. The defendant’s motion to reconsider sentence was denied, and he appealed. On appeal, the defendant argues that: (1) the court abused its discretion when it sentenced him to 17 years of imprisonment for aggravated arson; (2) the court abused its discretion when it imposed the two extended term sentences; (3) the court erred when it ordered him to pay a \$2,000 public defender fee; and (4) he is entitled to a monetary credit for time spent in presentence custody. We affirm in part, modify in part, vacate in part, and remand with directions.

## FACTS

The charges filed in this case stemmed from incidents occurring on October 13, 2008. The defendant, or one for whom he was legally accountable, set fire to a residence when he knew or should have known that people were inside and also broke the windshield of a truck belonging to the Sterling Community Unit 5 School District. In addition, the defendant damaged sod belonging to a church.

The defendant entered an open guilty plea to aggravated arson, criminal damage to government supported property, and criminal damage to property in exchange for the State’s agreement to drop six other charges, which consisted of three residential arson charges, two

aggravated arson charges, and one criminal damage to property charge. The defendant agreed that the State could present evidence in aggravation pertaining to the dropped charges. The defendant also agreed to pay \$13,625.65 in restitution.

In its factual basis, the State relayed that in the early morning hours of October 13, 2008, the defendant, Aurelio Mancera, and two other individuals walked to the Tablante residence in Sterling. The defendant, who was carrying a can of gasoline, splashed some gasoline on the porch area of the residence. The defendant and Mancera talked about “getting even” with an individual who lived in the residence. Mancera ignited the gasoline, and the four individuals ran back to Fargher’s residence.

The four individuals got into a vehicle owned by Fargher’s parents and drove around the city of Sterling. The defendant bragged about other fires he had lit that night, as well as a lamppost that he pulled out of the ground. The defendant drove onto a church’s property and performed donuts on the grass. Afterward, as they drove around Sterling, Mancera and the defendant continued to talk about the other fires they had lit that night.

In his statements to police, the defendant said he had been extremely drunk that night. He also stated that he and Mancera threw rocks at the windshield of a truck and damaged the windshield. The defendant also stated that Mancera caused the damage to the lamppost and lit the fires. He admitted that they discussed setting a fire at the Tablante residence that night before they walked to the residence.

Prior to accepting the defendant’s plea, the circuit court informed the defendant that he was eligible for extended terms on the criminal damage to government supported property and criminal damage to property charges due to his prior criminal record.

At sentencing, the presentence investigation report indicated that the defendant had spent time in prison for two convictions in 2007 for misusing a credit card and for selling Lysergic Acid Diethylamide (LSD). The record indicates that these convictions were Class 3 and Class 2 felonies, respectively. The defendant also reported that he had alcohol and drug abuse issues.

The State presented, *inter alia*, the testimony of an individual who lived at one of the residences set on fire by the defendant and Mancera.<sup>1</sup> He testified that his truck was in his driveway that night. He was inside the residence with his wife and two children at the time the fire was set.

The State argued that the defendant engaged in a “terroristic rampage” that night, which included setting three fires to residences, all of which had people in them at the time. The State emphasized that the Tablante fire was premeditated and that the defendant initially lied to police about his involvement in the incidents and continually placed the blame for the incidents on Mancera. The State also emphasized that the defendant committed these after his recent release from the Department of Corrections (DOC), where he had been incarcerated on two felony convictions. The State recommended a 30-year sentence on the aggravated arson conviction. With regard to the two other convictions, the State recommended two six-year extended terms.

Defense counsel argued that the defendant did come forth and admit his involvement in the incidents and agreed to pay restitution. Defense counsel also minimized the defendant’s two other felony convictions, stating that the credit card came from within the defendant’s father’s home, and that the LSD sale was a small amount sold for \$20. Further, defense counsel noted that the defendant went through the DOC’s “Boot Camp Program” while he was incarcerated.

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<sup>1</sup> The charges related to this fire were among those dropped by the State.

Defense counsel argued that the defendant had generally led a law-abiding life and had been under the influence of alcohol and drugs on the night of the incident.

The circuit court stated that it considered the presentence investigation report, the financial impact of incarceration, evidence in aggravation and mitigation, sentencing alternatives, and the defendant's statement in allocution. In aggravation, the court specifically mentioned the defendant's prior criminal history and the necessity to deter others from committing the same crimes. In mitigation, the court specifically mentioned that the defendant did not act alone and agreed to pay restitution. The court noted the callous nature of the defendant's actions and acknowledged the significant impact they had on the victims. The court also found it significant that the defendant had recently been incarcerated and had gone through the DOC's impact incarceration program, but shortly thereafter committed these "heinous" and "stupid" acts, including a premeditated arson. The court also considered the fact that the defendant was not initially truthful about his involvement in the incidents, as well as the "outpouring of support" for the defendant given by his family. The court then sentenced the defendant to concurrent prison terms of 17, 6, and 6 years, respectively, the latter two being extended term sentences. The court also ordered the defendant to pay \$695 in court costs, \$90 to the Violent Crime Victims Assistance Fund, \$500 for an arson fine, and \$13,625.65 in restitution. The defendant was credited with 263 days against his prison sentence, but was not given any monetary credit for this time spent in presentence incarceration.

Further, the court addressed the State's motion for reimbursement, which it filed on the day of the sentencing hearing. The public defender responded that he spent 1195 minutes representing the defendant in this case. At the close of the sentencing hearing, the court found

that the reasonable value of the public defender's services was \$2,000. The court then stated that:

“[f]rom my review of the presentence report and from some of the testimony that I've heard here today, [the defendant] is of no physical disability, and he has been previously employed in the past and has been apparently a very good worker. I find that the Defendant has the ability to pay \$2,000.”

The court then ordered the defendant to pay a \$2,000 public defender fee.

After the court denied his motion to reconsider sentence, the defendant appealed.

#### ANALYSIS

First, the defendant argues that the circuit court abused its discretion when it sentenced him to 17 years of imprisonment for aggravated arson.

Sentencing decisions are matters within the circuit court's discretion and are entitled to great deference on review. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). The circuit court is in a better position than the reviewing court to fashion an appropriate sentence, as the court has the opportunity to weigh factors such as credibility, demeanor, age, and moral character. *Alexander*, 239 Ill. 2d at 213. We will not disturb a circuit court's sentencing decision absent an abuse of discretion. *Alexander*, 239 Ill. 2d at 212. “A sentence will be deemed an abuse of discretion where the sentence is ‘greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.’ ” *Alexander*, 239 Ill. 2d at 212 (quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2000)).

Our review of the record reveals that the circuit court properly considered the arguments of counsel, the presentence investigation report, and factors in aggravation and mitigation. While

the defendant argues that the court “ignored the substantial mitigation presented by the defendant suggesting strong rehabilitative potential,” there is absolutely nothing in the record to support the defendant’s claim. The applicable sentencing range was 6 to 30 years (720 ILCS 5/20–1.1(b) (West 2008); 730 ILCS 5/5–8–1(a)(3) (West 2008)), and the court sentenced the defendant to 17 years. The court thoroughly discussed the applicable factors and found it significant that the Tablante fire was a premeditated act, emphasizing the abhorrent nature of the defendant’s actions. To the extent that the court may not have specifically mentioned every aspect that impacted its decision, we note that the court is not required to articulate every detail of its sentencing decision. *People v. Ramos*, 353 Ill. App. 3d 133 137-38 (2004). Furthermore, rehabilitation is not entitled to more weight in a sentencing decision than the seriousness of the offense. *People v. Coleman*, 166 Ill. 2d 247, 261 (1995). Under these circumstances, we hold that the court properly exercised its discretion in imposing the 17-year sentence. See *Coleman*, 166 Ill. 2d at 258 (“[a] sentence within the statutory limits will not be disturbed absent an abuse of discretion”); see also *Alexander*, 239 Ill. 2d at 215 (a sentence is not an abuse of discretion when it is in accord with the spirit and purpose of the law and not manifestly disproportionate to the nature of the offense).

Second, the defendant argues that the circuit court abused its discretion when it imposed the two extended term sentences. The State agrees and requests this court to reduce the defendant’s extended term sentences to their maximum nonextended terms of three years. However, we are not bound by the State’s concession. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010).

In general, a defendant who has been convicted of multiple offenses may be sentenced to

an extended term of imprisonment only on the offense of the most serious class. 730 ILCS 5/5-8-2(a) (West 2008). An exception to this principle exists:

“[w]hen a defendant is convicted of any felony, after having been previously convicted in Illinois or any other jurisdiction of the same or similar class felony or greater class felony, when such conviction has occurred within 10 years after the previous conviction, excluding time spent in custody, and such charges are separately brought and tried and arise out of different series of acts.” 730 ILCS 5/5-5-3.2(b)(1) (West 2008).

In this case, the defendant pled guilty to Class X felony aggravated arson (720 ILCS 5/20-1.1(a), (b) (West 2008)), Class 4 felony criminal damage to government supported property (720 ILCS 5/21-4(1)(a) (West 2008)), and Class 4 felony criminal damage to property (720 ILCS 5/21-1(1)(a), (2) (West 2008)). Prior to accepting the defendant’s guilty plea on these charges, the court explained to the defendant that he was eligible for extended terms on the two Class 4 felonies due to his prior criminal record. The record reflects that the defendant’s prior criminal record included convictions in 2007 for Class 2 felony unlawful delivery of a controlled substance and Class 3 felony unlawful use of a credit card. Pursuant to the extended term provisions, the court did not err when it sentenced the defendant to extended terms on his criminal damage to government supported property and criminal damage to property convictions. 730 ILCS 5/5-8-2(a), 5-5-3.2(b)(1) (West 2008).

Third, the defendant argues that the circuit court erred when it ordered him to pay a \$2,000 public defender fee. The State concedes error.

Section 113-3.1(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS

5/113–3.1(a) (West 2008)) authorizes the circuit court to order the defendant to pay for court-appointed counsel, but only after the defendant has been given notice and the court holds a hearing in which it considers the amount owed and the defendant’s ability to pay.

“[T]he defendant must (1) have notice that the trial court is considering imposing a payment order pursuant to section 113–3.1 of the Code and (2) be given the opportunity to present evidence regarding her ability to pay and other relevant circumstances and otherwise be heard regarding whether the court should impose such an order. *People v. Johnson*, 297 Ill. App. 3d 163, 164-65 (1998). The trial court may not simply order reimbursement in a perfunctory manner.” *People v. Roberson*, 335 Ill. App. 3d 798, 804 (2002).

The perfunctory manner in which the court imposed the \$2,000 public defender fee in this case was insufficient to comport with statute’s hearing requirement. See *Roberson*, 335 Ill. App. 3d at 804 (defendant not given the opportunity to present evidence and be heard on the matter); see also *Johnson*, 297 Ill. App. 3d at 165 (describing the notice requirement). Accordingly, we vacate the court’s order that required the defendant to pay the \$2,000 public defender fee and remand the case for the court to conduct the hearing required by section 113–3.1.

Fourth, the defendant argues that he is entitled to a monetary credit for time spent in presentence custody. The State concedes that the defendant is entitled to the credit, albeit in a limited amount.

Section 110–14(a) of the Code provides that:

“[a]ny 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).

The defendant in this case spent 263 days in presentence incarceration, but did not receive a monetary credit for this time. While this credit would otherwise total \$1,315, we recognize that the only fine in this case that is eligible for reduction from the credit is the defendant’s \$500 arson fine. *People v. Chambers*, 391 Ill. App. 3d 467, 468 (2009) (Violent Crime Victims Assistance Fund fine may not be reduced by the section 110–14 credit); *People v. Jones*, 375 Ill. App. 3d 289, 290 (2007) (court costs may not be reduced by the section 110–14 credit).

We reject the defendant’s contention in his reply brief that we should apply the monetary credit “to the \$500 arson fine and any other unpaid fine that was pending while he was in pretrial custody in this or other cases.” The defendant is referring to handwritten notes on the court’s pay order in this case, which listed amounts owed by the defendant in this case and in past cases. However, the defendant has failed to cite any authority for his bald proposition that a monetary credit from a current case should be applied to fines imposed in past cases that are still unpaid, and we will not read such an interpretation into the language of the credit statute. See 725 ILCS 5/110–14(a) (West 2008). Accordingly, we hold that the defendant is entitled only to a credit of \$500 against his arson fine.

For the foregoing reasons, the judgment of the circuit court of Whiteside County is: (1) affirmed with respect to the defendant’s prison sentences; (2) affirmed as modified with respect to the credit applicable to his arson fine; and (3) vacated with respect to the \$2,000 public defender fee and remanded with directions for the court to conduct a proper hearing pursuant to

section 113–3.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/113–3.1 (West 2008)).

Affirmed in part; modified in part; vacated in part; cause remanded with directions.