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No. 3-09-0701

Order filed March 16, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2011

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 12th Judicial Circuit
)	Will County, Illinois
Plaintiff-Appellee,)	
)	No. 09-CF-163
v.)	
)	
LYNDA A. BARTLEMAN,)	The Honorable
)	Carla Alessio-Policandriotes,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Wright and Holdridge concurred in the judgment.

ORDER

Held: Where the record reveals that the trial court reviewed the appropriate factors in aggravation and mitigation and the sentence is within the permissible statutory range, we find the court did not abuse its discretion in fashioning defendant's sentence.

On appeal, defendant, Lynda A. Bartleman, maintains that the 15-year sentence imposed on her for burglary was excessive. We affirm.

FACTS

Defendant was indicted for burglary (720 ILCS 5/1901(a) (West 2008)) and retail theft 720 ILCS 5/16A-3(a) (West 2008)). The indictment for burglary alleged that she, without authority, knowingly entered a Home Depot store, with the intent to commit therein a theft. The indictment for retail theft alleged that defendant, having previously been convicted of burglary, knowingly took merchandise offered for sale in a Home Depot store, with the intent to permanently deprive the store of the possession of the merchandise and without paying for it. The record reveals the following facts.

On January 21, 2009, a security officer at Home Depot saw defendant enter a Home Depot store in Joliet, Illinois, with a large purse. The officer followed defendant to the plumbing aisle where he witnessed defendant put two plumbing pieces up her sleeve. The officer then followed defendant to the next aisle where he witnessed her take four water filters and hide them in her purse. Defendant subsequently passed the cash registers and exited the store. Upon doing so, the officer and his supervisor stopped defendant outside the store.

Defendant cooperated with the officer and his supervisor. Specifically, defendant apologized, placed the merchandise on the officer's desk, offered to pay for the items and completed several written statements. The total cost of the merchandise taken was \$93.

At trial, defendant admitted that she had two water filter connectors in her possession at the time the officer stopped her. She also admitted that when she reached the aisle with the water filters, she took one and put it in her purse because she thought nobody was watching. Defendant testified that when she realized that she had "gotten away with it," she turned around, took three more, and put them into her purse. Defendant explained that she took the items because she was suffering financially.

Defendant also testified that she had various prior felony convictions, including a 1995 unlawful delivery of a controlled substance, a 1998 burglary, a 1998 unlawful possession of an Illinois license plate, a 2005 unlawful delivery of a controlled substance, and a 2005 unlawful possession with intent to deliver. Defendant admitted that she was on parole for the 2005 convictions at the time she entered the Home Depot. The trial court subsequently found defendant guilty of both burglary and retail theft.

At defendant's sentencing hearing, the State noted that defendant has been committed to the Department of Corrections (the DOC) for several felonies. In noting defendant's extensive criminal history, the State called attention to the fact that defendant was on parole when she committed the instant crimes. Thus, the State requested that defendant be sentenced to a term of 15 years' imprisonment in the DOC.

In response, defendant noted the presentence investigation report, which discloses that she was forced to move out when she was 16 because her mother was abusive, a drug addict and suffered from bipolar disease. Defendant subsequently quit high school and got involved in alcohol, marijuana and cocaine. Defendant obtained her general education development certificate in 1995, however, while she was in the custody of the DOC. She also earned enough credits to earn an associate's degree. At the time of her arrest, defendant earned approximately \$700 a month as a personal assistant at the Department of Human Services. Defendant also volunteered at church.

Defendant noted that she admitted at trial to the instant charges and acknowledged that she was wrong. She also noted her cooperation with the authorities. Defendant explained that she had a daughter and made some bad choices in the past, but was trying to live a better type of

lifestyle. Defendant stressed the fact that the merchandise stolen only cost \$93 and none of her crimes, including the present ones, were of a violent nature. Finally, defendant requested that she be sentenced to 6 years' imprisonment in the DOC.

Upon hearing argument, the court found defendant eligible for Class X offender sentencing and stated that it "considered all of the factors in mitigation and aggravation." The court found that defendant formed the intent to commit theft prior to entry into the Home Depot. The court also found that defendant's daughter would not suffer any financial hardship if defendant was imprisoned because due to her previous imprisonment, defendant had only been involved in her daughter's life for five months. In noting defendant's extensive criminal history and the fact that defendant committed the instant crimes while on parole, the court stated:

"The nature of the potential loss to the victim is not the only consideration in which to consider. One is whether or not there is some indication that Miss Bartleman can follow the laws of the State of Illinois, and based on her prior criminal history, she's never shown that."

The trial court then issued concurrent sentences of 15 years' imprisonment for the burglary conviction and 5 years' imprisonment for the retail theft conviction.

ANALYSIS

The sole issue presented on appeal is whether the trial court erred in sentencing defendant to 15 years' imprisonment for the burglary conviction.¹ Defendant argues that her 15-year

¹ Defendant has withdrawn her argument that defendant's conviction and sentence for retail theft should be vacated because retail theft was a lesser included offense of burglary, as

sentence is “excessive and should be reduced in light of the severity of the offense, her personal history, and her potential for rehabilitation.” Because we afford the trial court great deference with respect to its role in balancing factors in mitigation and aggravation, we decline defendant’s request to reweigh said factors.

Recently, the supreme court in *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010) summarized the principles applicable when reviewing a trial court’s sentencing decision.

Specifically, the court stated:

Supreme Court Rule 615(b)(4) grants a reviewing court the power to reduce a sentence. [Citation.] That power, however, should be exercised ‘cautiously and sparingly.’ [Citations.] A reviewing court may not alter a defendant’s sentence absent an abuse of discretion by the trial court. [Citation.] 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.’ [Citations.]

The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference. [Citations.] ‘A reviewing court gives great deference to the trial court’s judgment regarding sentencing because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing

alleged in the charging instrument.

court, which must rely on the [***] record.’ [Citation.] ‘The trial judge has the opportunity to weigh such factors as the defendant’s credibility, demeanor, general moral character, mentality, social environment, habits, and age. Citations. Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. Citation. [Citation.] *Alexander*, 239 Ill. 2d at 212-13.

“Where the sentence imposed is within the permissible statutory range for the offense of which the defendant was convicted, we may reduce the sentence only where its imposition was an abuse of discretion.” *People v. Burnette*, 325 Ill. App. 3d 792, 807 (2001). Defendant acknowledges that she is subject to Class X offender sentencing. The sentencing range for a Class X felony is 6 to 30 years’ imprisonment. 730 ILCS 5/5-8-1 (West 2008). We cannot find that defendant’s sentence of 15 years’ imprisonment is an abuse of discretion.

Here, the trial court expressly stated that it “considered all of the factors in mitigation and aggravation.” The record does not reveal that the court considered any improper factors in aggravation, nor is there any indication that the court ignored any mitigating factor. While defendant notes the lack of severity of her offenses, the court expressly referenced this factor and held that it is but one factor to be considered when fashioning a defendant’s sentence. Clearly, the court considered this factor.² We will not reweigh it. Likewise, while defendant notes her

² Even assuming the trial court did not specifically acknowledge this factor, we note that it is not obligated to recite and assign value to each factor presented at a sentencing hearing. *People v. Merritte*, 242 Ill. App. 3d 485, 495 (1993). When mitigating evidence is before the trial court, it is presumed that the court considered it, absent an indication other than the sentence imposed, to the contrary.. *People v. Case*, 246 Ill. App. 3d 566, 578 (1993).

personal history, which we acknowledge has been challenging at times, one simply cannot ignore her extensive criminal history. Finally, we are not convinced that any rehabilitative potential defendant may have outweighs her apparent proclivity to engage in criminal behavior. In coming to this conclusion, we note that defendant was on parole when she committed the instant offenses.

While defendant cites authority wherein the reviewing court has chosen to reduce the defendant's sentence, we note that the supreme court has expressly rejected the use of "comparative sentencing." *People v. Fern*, 189 Ill. 2d 48, 62 (1999). Specifically, the court stated: "If a sentence is appropriate given the particular facts of that case, it may not be attacked on the ground that a lesser sentence was imposed in a similar, but unrelated, case." *Fern*, 189 Ill. 2d at 62. Again, the record does not reveal any basis on which we can say that the sentence imposed in the present case is inappropriate. Thus, we are not persuaded by the comparison of sentences imposed in defendant's cited authority.

For the foregoing reasons, we affirm defendant's sentence.

Affirmed.