

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 under Rule 23(e)(1).

No. 3–09–0437

Order filed May 5, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	for the 13th Judicial Circuit,
Plaintiff-Appellee,)	LaSalle County, Illinois
)	
v.)	No. 07–CF–392
)	
SALVATORE CUTRANO,)	Honorable
)	Cynthia Raccuglia,
Defendant-Appellant.)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

Held: The trial court's imposition of a 25-year term of imprisonment for defendant's plea of guilty but mentally ill to burglary and aggravated assault was not an abuse of its discretion. The trial court properly considered mitigating and aggravating factors in determining the sentence.

Defendant Salvatore Cutrano pleaded guilty but mentally ill to burglary and aggravated assault and was sentenced to a 25-year term of imprisonment. He appeals his sentence. We affirm.

FACTS

Defendant Salvatore Cutrano was charged with burglary (720 ILCS 5/19-1(a) (West 2007)) and aggravated assault (720 ILCS 5/12-2(a)(6) (West 2007)). Cutrano entered a blind plead of guilty

but mentally ill to the charges. There was no agreement as to sentencing and Cutrano was required to be sentenced as a Class X offender due to his criminal history. 730 ILCS 5/5-5-3(c)(8) (West 2007). The trial court admonished Cutrano that the sentencing range for burglary was six to 30 years and aggravated assault could include a sentence of up to one year imprisonment or two years probation with a possible six-month sentence to the county jail. 730 ILCS 5/5-8-1(a)(3), 5-4.5-55 (West 2007). The State's factual basis provided that law enforcement responded to a burglar alarm at Family Pharmacy in Peru where Cutrano was discovered inside holding a metal pipe. Cutrano "advanced on officers in a threatening matter [*sic*] and was shot five times."

The presentence investigation (PSI) report indicated that at the time of sentencing, Cutrano was 33 years old and suffered from a seizure disorder as a result of head trauma he sustained in a motor vehicle accident in 1997. In addition, he suffered from chronic pain as a result of the gunshot wounds he sustained when committing the instant offenses. The PSI indicated that Cutrano had received and participated in various mental health services but that he generally failed to follow through with the services, including counseling and inpatient rehabilitation. According to the PSI, Cutrano had an extensive criminal history, including 15 felonies, as well as several misdemeanors and traffic violations. He had two prior terms of probation revoked and was re-sentenced to the Department of Corrections (DOC). He was also sentenced to the DOC for three other felonies.

The State presented Cutrano's criminal history, noting that the instant felony was his 16th and was committed one month after Cutrano was released from prison. The State pointed out Cutrano's previous unsuccessful attempts at rehabilitation, including mental health treatment, drug and alcohol treatment, counseling, and participation in Treatment Alternatives to Safe Communities (TASC). The State submitted that Cutrano's claims that he has "left behind his old crowd and he has

turned a corner” were belied by Cutrano being stopped in a vehicle two weeks earlier with two convicted felons. The State rejected Cutrano’s claims that his injury “has been a life-changing occurrence and that he has turned the corner and is no longer the Salvatore Cutrano of old but he is this new man.”

The State sought a 25-year sentence and the defense sought a term of imprisonment of 14 to 15 years. The defense argued that Cutrano’s criminal past was colored by his mental health and substance abuse issues. Defense counsel emphasized Cutrano’s need for help with his problems and that his crimes are related to his addictions. Cutrano addressed the court, expressing remorse and vowing to change his unlawful conduct. He argued that the injury he sustained from being shot changed him and he was interested in turning his life around. He asked the trial court to sentence him to a 10-year sentence at a psychiatric facility.

In imposing sentence, the trial court stated, “I can’t think of a case where the criminal history of the defendant beginning as a young man has been so extensive and so frequent.” It noted the many attempts at rehabilitation that had been offered to Cutrano from the time of his juvenile offenses, all of which were unsuccessful, stating that “every alternative that exists available to the court to rehabilitate” Cutrano had been tried “to no avail.” It reiterated that Cutrano violated his terms of probation on numerous occasions and was in and out of prison, committing new offenses after being released, and then returning to the DOC. The trial court determined that an extensive sentence was necessary to deter Cutrano from future crimes and “to deter others who commit crimes over and over and over and over again from committing them again.” The trial court acknowledged Cutrano’s mental illness as a mitigating factor but recognized that Cutrano had been afforded numerous resources to help him and that he continued to reject them. The trial court further stated:

“Now, with reference to [Cutrano’s] statement to the Court that his injuries have changed him, I agree that the injuries were extensive. And I am giving him the benefit of the doubt that they may in all likelihood have made him rethink how he is living his life. Unfortunately, it’s too late. It’s too late as far as this justice system is concerned. ***

Maybe you are extremely remorseful and I’m giving you the benefit of the doubt that you may be and I hope at some point that with the help that you will have in the Department of Corrections that maybe some of your life will be lived as a productive member of society. And maybe you will do some good as you have proposed to the Court, and maybe that is why you have lived and maybe in prison you will make a difference. But there is absolutely no question in the Court’s mind that in the interest of justice, in the interest of the protection of society and as a necessary deterrence to you and others who continue to commit crimes, there is no question as I am repeating based on those findings, that an extensive time in the Department of Corrections with considerable help as the law provides because you’ve agreed you are mentally ill, that you need to be sentenced to 25 years in the Department of Corrections where you will receive the help you need.”

Cutrano filed a motion to reconsider his sentence in which he argued that the trial court

improperly relied on his medical condition and/or disability status and erred in evaluating his expression of remorse, rehabilitative potential and likelihood to commit future offenses, when sentencing him. A hearing on his motion took place at which Cutrano testified. The trial court stated that Cutrano's sentence was mandated by his criminal history and denied his motion to reconsider. Cutrano appealed.

ANALYSIS

The issue on appeal is whether the trial court denied Cutrano a fair sentencing hearing. Cutrano argues that the trial court failed to consider his rehabilitative potential as a mitigating factor and improperly considered factors in aggravation that were contradicted by comments it made. He says that the trial court accepted his expression of remorse and his vow to change his life for the better but in sentencing him relied on his criminal history and lack of rehabilitative potential in imposing a lengthy sentence.

Cutrano did not object at sentencing or raise the specific issue in his motion to reconsider but urges this court to consider the issue under the plain error doctrine. The plain error doctrine allows this court to consider matters not properly preserved for appeal when the evidence is closely balanced or the error is of such magnitude that it denies the defendant a fair trial. *People v. Kopczick*, 312 Ill. App. 3d 843, 849 (2000). To invoke the plain error doctrine, a defendant must first establish that an error occurred, which requires a substantive review of the issue. *People v. Herron*, 215 Ill. 2d 167, 187 (2005).

Turning to the substantive issue, Cutrano challenges the trial court's sentencing findings as inconsistent. He submits that the trial court accepted his statement that being shot was a signal to turn his life into something positive but then rejected his potential for rehabilitation. According to

Cutrano, because the trial court gave him the benefit of the doubt about his desire for a second chance, it could not also find that he was likely to commit future crimes and that a lengthy sentence was necessary to deter him and others. Cutrano also questions the trial court's statement that it was "too late as far as this justice system is concerned" as inconsistent with his pledge to turn his life around.

In fashioning an appropriate sentence, a trial court considers numerous factors, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). Other relevant factors include the nature of the crime, protection of the public, deterrence, punishment, and the defendant's rehabilitative potential. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). Mitigating and aggravating factors are also considered. 730 ILCS 5/553.1, 3.2 (West 2007). A trial court is in the best position to determine an appropriate sentence. *People v. Thurmond*, 317 Ill. App. 3d 1133, 1142 (2000). A trial court, however, may not ignore applicable factors in mitigation. *People v. Ryan*, 336 Ill. App. 3d 268, 274 (2003). A defendant's display of remorse or lack thereof is an important factor to be considered. *Thurmond*, 317 Ill. App. 3d at 1143. However, a trial court is not required to give more consideration to a defendant's rehabilitative potential than the seriousness of the offense, which is the most important factor. *People v. Shumate*, 94 Ill. App. 3d 478, 485 (1981). In addition, the trial court may not consider improper factors in sentencing a defendant. *People v. Reed*, 376 Ill. App. 3d 121, 128 (2007). A trial court's additional comments or observations are of no consequence when the record demonstrates that the trial court considered proper sentencing factors. *Thurmond*, 317 Ill. App. 3d at 1142. The trial court may sentence a defendant to any term within the statutory range as long as it does not consider improper aggravating factors or ignore applicable mitigating factors.

Thurmond, 317 Ill. App. 3d at 1143. This court reviews a trial court's sentencing decision for an abuse of discretion. *People v. Cotton*, 393 Ill. App. 3d 237, 264-65 (2009).

Cutrano, who was only 33 years old at the time of sentencing, began committing offenses when he was a juvenile and continued his unlawful behavior into adulthood. His PSI establishes that he has had long-term substance abuse problems and mental health issues. Over the years, he has been offered and has engaged in a variety of different efforts to rehabilitate himself, including numerous assessments, inpatient treatment, counseling, and group therapy. He has been sentenced to TASC and was dismissed from the program. His efforts, however, have been unavailing. The record establishes that Cutrano's attempts at rehabilitation have failed. The trial court reviewed Cutrano's PSI and was familiar with his criminal history as well as his physical and mental health difficulties.

The trial court recognized Cutrano's claim that his injuries "in all likelihood have made him rethink how he is living his life." However, contrary to Cutrano's argument, the trial court's statement that it gave him the benefit of the doubt did not require it to place more emphasis on that factor than any other sentencing factors. The trial court also determined that Cutrano's self-proclaimed rehabilitation was "too late" to be a weighty factor in sentencing. The trial court noted the considerable opportunities that Cutrano had been given by the criminal justice system to turn his life around over the years and that he failed to take advantage of the second chances. The trial court's refusal to accept Cutrano's self-rehabilitation claim as a factor necessitating a lesser sentence does not establish that the trial court failed to properly consider the claim as a mitigating factor. The trial court's discussion of Cutrano's claims demonstrates that it in fact considered his rehabilitative potential but did not afford it greater weight than his extensive criminal history and multiple failed

attempts at rehabilitation. We find that the trial court did not improperly consider Cutrano's rehabilitative potential when it sentenced him and hold that the trial court's imposition of a 25-year sentence was not an abuse of its discretion. Because the trial court's ruling was not an abuse of discretion, we find no error to which we need apply a plain error analysis.

For the foregoing reasons, the judgment of the circuit court of LaSalle County is affirmed.

Affirmed.