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2011 IL App (3d) 100100-U

Order filed September 8, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellee,)	Rock Island County, Illinois,
)	
v.)	Appeal No. 3-10-0100
)	Circuit No. 06-CF-937
)	
KEVIN YOUNG,)	Honorable
)	Walter D. Braud,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's arguments regarding the sufficiency of the evidence fail under the law of the case doctrine; the sentence imposed on defendant was not an abuse of discretion; and defendant's mittimus is modified to properly reflect the conviction and sentence.
- ¶ 2 Following a bench trial and a remand from this court in *People v. Young*, No. 3-07-0592 (2009) (unpublished order under Supreme Court Rule 23), defendant, Kevin Young, was resentenced for one count of aggravated battery with a firearm (720 ILCS

5/12–4.2(a)(2) (West 2006)) and two counts of aggravated discharge of a firearm (720 ILCS 5/24–1.2(a)(3) (West 2006)). Defendant received a 60-year term of incarceration for aggravated battery with a firearm, and a concurrent 45-year term of imprisonment for each count of aggravated discharge of a firearm. Defendant appeals, claiming that: (1) the State failed to prove his guilt as the shooter beyond a reasonable doubt; (2) the evidence was otherwise insufficient to support the charges of aggravated discharge of a firearm at a peace officer; (3) the 60-year sentence for aggravated battery with a firearm was excessive; and (4) the mittimus should be corrected to reflect judgment and sentencing only on counts I, VI, and VII. We modify defendant's mittimus and otherwise affirm the judgment.

¶ 3

FACTS

¶ 4

Defendant was arrested following a chase involving several Rock Island police officers. During the chase, defendant fired a gun eight or nine times in the direction of the officers. One of the bullets struck and wounded an officer in the ankle.

¶ 5

Following his arrest, defendant was charged with three counts of attempted first degree murder (720 ILCS 5/8–4(a), 9–1 (West 2006)), three counts of aggravated discharge of a firearm (720 ILCS 5/24–1.2(a)(3) (West 2006)), one count of aggravated battery with a firearm (720 ILCS 5/12–4.2(a)(2) (West 2006)), and one count of unlawful possession of a weapon by a felon (720 ILCS 5/24–1.1(a) (West 2006)).

¶ 6

Defendant waived his right to a jury trial, and the cause proceeded to a bench trial. At the conclusion of the trial, the trial court found defendant guilty on all counts. An appeal followed.

¶ 7 In his appeal, defendant argued that the trial court erred in denying his pretrial motion to dismiss the three counts of attempted first degree murder because the State failed in each case to state an offense with the specificity required under section 111-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3 (West 2006)). Defendant also contended that the evidence was not sufficient to prove beyond a reasonable doubt that he was the person shooting the weapon at the officers and that the evidence was insufficient to support his convictions of attempted murder.

¶ 8 This court reversed defendant's convictions for attempted murder and remanded the cause, instructing the prosecution to either retry defendant on the three counts of attempted murder or resentence him on the four remaining offenses. *Young*, No. 3-07-0592. We found that the evidence against defendant was sufficient to sustain the other charges against him. *Id.*

¶ 9 The State chose to have defendant resented on the remaining charges. At resentencing, the trial court found that defendant's crime was reminiscent of a "wild west gun battle," and that it "did great damage to the community as a safe place to live. It endangered the officers. It endangered private citizens, and it sent a message that either we are going to enforce the law or we're not." The trial court also found that defendant's conduct caused and/or threatened serious harm, that he had a violent prior criminal history, that any sentence must deter future criminal behavior, and that the crime was of a very public nature.

¶ 10 Defendant was then resented to 60 years imprisonment for count I (aggravated battery with a firearm). During the proceedings, the trial court merged count V

(aggravated discharge of a firearm) with count I. Defendant was also sentenced to 45 years imprisonment for each of counts VI and VII, which each alleged aggravated discharge of a firearm. The sentences were to run concurrent with one another. The mittimus mistakenly included judgment and sentencing on count V.

¶ 11 Defendant appeals from the sentencing, claiming that: (1) the State failed to eliminate a reasonable doubt that he was the shooter and that the evidence was insufficient to prove him guilty beyond a reasonable doubt; (2) the evidence was otherwise insufficient to support his convictions for aggravated discharge of a firearm; (3) the 60-year prison term for aggravated battery with a firearm was excessive; and (4) the mittimus should be amended to remove count V.

¶ 12

ANALYSIS

¶ 13

I

¶ 14

Defendant argues that (1) the State failed to eliminate a reasonable doubt as to the guilt of defendant as the shooter and (2) that the evidence was otherwise insufficient to support the charges of aggravated discharge of a firearm at a peace officer. Both issues were previously raised by defendant and decided by this court. See *Young*, No. 3–07–0592.

¶ 15

These two issues are foreclosed by the law of the case doctrine. Under that doctrine,

"[A] determination of [a question] of law will generally be held to govern [the] case throughout all [of] its subsequent stages where such determination has already been made on a prior appeal to a court of last resort. [Citation.] [A]n appellate court's

determination on a legal issue is binding on both the trial court on remand and appellate court on a subsequent appeal given the same case and substantially the same facts." (Internal quotation marks omitted.) *People v. Wilson*, 257 Ill. App. 3d 670, 699 (1993) (quoting *People v. Lyles*, 208 Ill. App. 3d 370, 376 (1990)).

¶ 16 The issues were raised in defendant's first appeal, and this court decided that the evidence presented at trial was sufficient to sustain the charges. *Young*, No. 3–07–0592. We adhere to our previous determination and affirm the ruling of the trial court.

¶ 17 II

¶ 18 Defendant next claims that his 60-year sentence for aggravated battery with a firearm is excessive. A trial court's decision regarding sentencing is entitled to great deference, and a sentence will not be disturbed absent an abuse of discretion. *People v. Coleman*, 166 Ill. 2d 247 (1995).

¶ 19 Under the Illinois Constitution, sentences shall be determined by consideration of the seriousness of the offense and the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11. The seriousness of the offense is the most important factor a court considers when deciding a sentence. *People v. Evans*, 373 Ill. App. 3d 948 (2007). Other factors that should be considered include prior criminal history, rehabilitative potential, the need to protect society, and the need to deter others. *People v. Smith*, 214 Ill. App. 3d 327 (1991). The trial court is in the best position to fashion a sentence based on the above considerations, because it has had the opportunity to observe the defendant in person and fully assess the relevant factors for sentencing. *Id.*

¶ 20 Here, the trial court did not abuse its discretion when it imposed a 60-year sentence on defendant for aggravated battery with a firearm. The court noted that defendant's crime was very serious. It characterized the events surrounding defendant's attempted escape as "a wild west gun battle running through the west end of the city" and that the crime "did great damage to the community as a safe place to live."

¶ 21 The court stated that it had considered a number of factors in imposing the 60-year sentence; it found that defendant's conduct caused and/or threatened serious harm, that defendant had a violent prior criminal history, that any sentence must deter future criminal behavior, and that the crime was of a very public nature. Defendant had a serious criminal history, with numerous convictions for theft and other offenses dating back to the 1990s.

¶ 22 The trial court did not commit an abuse of discretion when it sentenced defendant to a 60-year term of imprisonment for aggravated battery with a firearm. The record shows that the court considered the seriousness of the offense and the possibility of rehabilitation, along with other relevant factors. The trial court properly considered the relevant factors, and the imposition of the sentence was within its discretion.

¶ 23 III

¶ 24 Finally, defendant contends, and the State concedes, that the mittimus must be corrected to accurately reflect the entry of conviction and sentence only on counts I, VI, and VII. The record shows that count V was merged into count I. However, the record shows a conviction on count V, which is incorrect. Under our authority to modify defendant's mittimus, (Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999)), the

mittimus is modified to reflect the judgment and sentences only on counts I, VI, and VII.

¶ 25

CONCLUSION

¶ 26

The judgment of the circuit court of Rock Island county is affirmed as modified.

¶ 27

Affirmed as modified.