

NOTICE
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2011 IL App (4th) 110341-U

Filed 12/30/11

NO. 4-11-0341

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
MICHAEL E. GANNON,)	No. 07CF1560
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner concurred in the judgment.
Justice Appleton dissented.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying defendant's motion to vacate judgment and dismiss criminal proceedings under section 40-10(e) of the Alcoholism and Other Drug Abuse Dependency Act (20 ILCS 301/40-10(e) (West 2010)) after properly weighing the nature and circumstances of the offense, and defendant's history, character, and condition.

¶ 2 In June 2008, defendant Michael E. Gannon, a police officer, pleaded guilty to three counts of official misconduct (720 ILCS 5/33-3(b) (West 2008)). In July 2008, the trial court sentenced defendant to 24 months of probation and ordered him to complete Treatment Alternatives for Safe Communities (TASC). After successfully completing probation and TASC, defendant moved to vacate his conviction. The trial court denied the motion, citing the egregious nature and circumstances of the offense. Defendant appeals, contending the trial court abused its discretion. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On October 24, 2007, the State charged defendant by indictment with six counts of official misconduct. Three counts alleged possession of a controlled substance—cocaine—and three counts alleged patronizing a prostitute. On June 23, 2008, the three counts for patronizing a prostitute were dismissed after defendant pleaded guilty to three counts of official misconduct for possession of a controlled substance. In July 2008, the trial court sentenced defendant to 24 months' probation and ordered him to complete TASC. On July 29, 2008, defendant filed a motion to vacate judgment of conviction pursuant to section 40-10(e) of the Alcoholism and Other Drug Abuse Dependency Act (Dependency Act) (20 ILCS 301/40-10(e) (West 2008)).

¶ 5 Defendant successfully completed probation and TASC. On November 10, 2010, a hearing was conducted on defendant's motion to vacate judgment. Defendant argued he was rehabilitated and had reconciled with his family. He also emphasized he had promising current employment and was seeking future employment with the National Guard. He testified he was participating in an aftercare program for his substance abuse. Defendant also stressed he had no subsequent offenses and had an "outstanding" record as a police officer, member of the Army, and member of the National Guard prior to this conviction. Defendant further asserted he had no future plans to participate in law enforcement.

¶ 6 The State focused on the nature of the original offense. The State emphasized defendant was a sworn police officer, on duty, at the time of the criminal conduct. It also reminded the trial court the possession and use took place on more than one occasion. The State further pointed out defendant's conviction was a lasting "black mark" on police departments everywhere and was therefore "not appropriate *** to let [defendant] escape from any lasting

effects of his conduct while a police officer." The State concluded the conviction should not be vacated considering the nature and circumstances of the offense.

¶ 7 On November 10, 2010, the trial court took the matter under advisement and denied defendant's motion "believ[ing] that the nature and circumstances of the offenses are so egregious that vacation of judgment would be wholly inappropriate." On December 2, 2010, defendant filed a motion to reconsider. On March 25, 2011, the trial court denied the motion. This appeal followed.

¶ 8 I. ANALYSIS

¶ 9 Defendant contends the trial court's denial of his motion to vacate judgment was an abuse of discretion. More specifically, defendant asserts the trial court's focus on defendant's occupation as a police officer was arbitrary and unreasonable. We disagree.

¶ 10 A. The Discretionary Nature of Section 40-10(e)
of the Dependency Act

¶ 11 In reviewing a trial court's denial of a defendant's motion to vacate under section 40-10(e) of the Dependency Act, the standard of review is whether the trial court abused its discretion. *People v. McGregor*, 405 Ill. App. 3d 776, 779, 939 N.E.2d 1009, 1012 (2010). An abuse of discretion is found where the trial court's decision is "fanciful, arbitrary, or unreasonable to the degree that no person would agree with it." *People v. Ortega*, 209 Ill. 2d 354, 359, 808 N.E.2d 496, 500-01 (2004). We find no abuse of discretion.

¶ 12 Section 40-10(e) of the Dependency Act states:
"upon motion, the court *shall* vacate the judgment of conviction and dismiss the criminal proceedings against him *unless*, having considered the nature and circumstances of the offense and the

history, character and condition of the individual, the court finds that the motion should not be granted." (Emphases added.) 20 ILCS 301/40-10(e) (West 2010).

One purpose of the statute is to facilitate rehabilitation by allowing a defendant to more easily reintegrate into society by vacating the conviction from his record. *McGregor*, 405 Ill. App. 3d at 779-80, 939 N.E.2d at 1012.

¶ 13 Defendant asserts a vacation of judgment under section 40-10(e) should be granted once an offender has successfully completed his probation and treatment. He argues the mandatory term "shall" implies the granting of a motion to vacate is preferred under the statute and should only be denied under special circumstances. Conversely, the State contends, and the Second District has held, "the statute compels the court to consider the defendant's character and the nature of the offense *** and, if the court finds that the motion should not be granted, the court is within its discretion to deny it." *McGregor*, 405 Ill. App. 3d at 780, 939 N.E.2d at 1012. The statute must be read as a whole and "requiring automatic vacation of the conviction" would render the later portion of the statute "superfluous." *McGregor*, 405 Ill. App. 3d at 781, 939 N.E.2d at 1013.

¶ 14 We agree the proper reading of the statute allows the trial court discretion. The trial court is at liberty to grant the motion to vacate unless it finds, after weighing the information specified in the statute, reasonable grounds to deny the request. Although one purpose of the statute is to facilitate rehabilitation through easier reintegration, this does not mean a defendant is automatically granted a vacation of judgment once he has completed his probation and treatment.

¶ 15

B. The Trial Court's Focus on Defendant's
Occupation as a Police Officer

¶ 16

Defendant next argues the trial court was overly concerned with his status as a police officer and therefore only focused on the nature and circumstances of the offense and did not consider the history, character, and condition of defendant. The State responds by asserting defendant improperly characterized his occupation as a police officer as information pertaining to the nature of the offense, when it was actually further information concerning the character of defendant. The State correctly argues the trial court heard evidence of both the nature and circumstances of the offense and the history, character, and condition of defendant and properly exercised its discretion in weighing these factors. Finally, defendant asserts the trial court effectively created an exclusion for police officers, not written into the statute, by too heavily relying on his status as a police officer. We address each argument individually.

¶ 17

1. *Defendant's Occupation as Character Evidence*

¶ 18

The State alleges any information presented concerning defendant's status as a police officer was further evidence of defendant's character, and not information pertaining to the nature of the offense. The State asserts police officers are held to certain character-based standards defendant directly violated. See *Launius v. Board of Fire & Police Commissioners of City of Des Plaines*, 151 Ill. 2d 419, 444, 603 N.E.2d 477, 488 (1992) ("A police officer does not have the option of performing his duties when he wishes."); *Sindermann v. Civil Service Comm'n of Village of Gurnee*, 275 Ill. App. 3d 917, 928, 657 N.E.2d 41, 50 (1995) ("[A]s the guardians of our laws, police officers are expected to act with integrity, honesty, and trustworthiness."); *Westby v. Board of Fire & Police Commissioners of City of Plano*, 48 Ill. App. 3d 388, 395, 362 N.E.2d 1098, 1103 (1977) ("The public has a right to expect that its police officers *** will

maintain a high standard of integrity.").

¶ 19 We conclude defendant's status as a police officer concerns both the nature of the offense and defendant's character. However, the trial court has discretion to determine (1) how it wants to characterize this information and (2) the weight to accord it. Further, even if we were to find defendant's occupation only concerned the nature of the offense, the trial court heard argument as to both the nature of the offense and defendant's character and properly exercised its discretion in weighing those factors.

¶ 20 *2. The Trial Court's Weighing of Factors*

¶ 21 The trial court heard a considerable amount of information pertaining to the history, character, and condition of defendant. The court heard argument and testimony defendant was a "model probationer," had rehabilitated himself, and had reconciled with his family. The court also heard information on defendant's current employment outside law enforcement and future employment with the National Guard. Defendant also submitted information on his participation in an aftercare program for his substance abuse, as well as argument he had an "outstanding" record as a police officer, member of the Army, and member of the National Guard prior to this conviction. Defendant testified he had no future plans to participate in law enforcement. However, he further testified he hoped to be admitted to warrant officer school with the National Guard but believed his conviction would be a hindrance to that effort.

¶ 22 The trial court also heard argument on the nature and circumstances of the offense. The State argued defendant took advantage of his position as a police officer to possess and ingest cocaine while on duty on more than one occasion. The State also argued the criminal

conduct was a "black mark" on the police department, and granting defendant's judgment would not be appropriate considering the seriousness of the offense.

¶ 23 At the hearing, the trial court noted its concern for the possibility of defendant returning to law enforcement. However, the court also stated it would have to consider all the information brought forth by counsel in making its decision. The final order recognized defendant successfully complied with all probation conditions and gained employment outside law enforcement, but it still found the nature and circumstances of the offense to be "so egregious that vacation of judgment would be wholly inappropriate."

¶ 24 The statute affords the trial court discretion to consider both the nature and circumstances of the offense and the history, character, and condition of defendant in ruling on defendant's section 40-10(e) motion to vacate judgment. The trial court found the seriousness of the offense outweighed the positive aspects of defendant's history, character, and condition. We find no abuse of discretion in weighing these factors.

¶ 25 *3. Exclusion of Police Officers*

¶ 26 Defendant finally argues the trial court relied too heavily on defendant's occupation as a police officer, effectively creating an exclusion against police officers. We are not persuaded. Defendant's occupation is directly related to the nature of the offense and defendant's character. These are factors the statute specifically provides the trial court may rely on in making its decision. The record does not indicate the trial court intended to create a disfavored class. "In the absence of evidence to the contrary, we will assume the trial court properly fulfilled its duties." *People v. Jones*, 284 Ill. App. 3d 975, 980, 673 N.E.2d 456, 460 (1996). We conclude the trial court properly weighed the statutory factors and did not create an

exclusion against police officers.

¶ 27

III. CONCLUSION

¶ 28 For the reasons stated above, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 29 Affirmed.

¶ 30 JUSTICE APPLETON, dissenting:

¶ 31 The trial court's decision matrix in determining whether or not the nature and circumstances of the offense, history, character, and condition of the individual would prohibit a denial of vacation of the judgment following successful completion of TASC does not, in my mind, include consideration of defendant's previous employment of a police officer.

¶ 32 While I understand the trial court's concern that defendant could conceivably try again to work in law enforcement, as a practical matter, the background checks performed on prospective law enforcement officers would not miss defendant's record here, regardless of vacation of the judgment. Even if that were not the case, the trial court's decision here unfairly places defendant in a special disfavored class not contemplated by the statute.