

**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 allowed under Rule 23(e)(1).

NO. 4-09-0935

Filed 2/8/11

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
ANTHONY L. ANDRES,	)	Nos. 08CF1318
Defendant-Appellant.	)	08CF564
	)	
	)	Honorable
	)	Paul G. Lawrence,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court. Justices Steigmann and Appleton concurred in the judgment.

**ORDER**

*Held:* Where defendant's prison sentence was not excessive, the trial court did not abuse its discretion.

In May 2009, defendant, Anthony L. Andres, pleaded guilty to two counts of aggravated battery. In July 2009, the trial court sentenced him to consecutive terms of three and five years in prison. In November 2009, the court denied his motion to reconsider sentence.

On appeal, defendant argues his sentence was excessive. We affirm.

I. BACKGROUND

In May 2009, defendant agreed to plead guilty to two separate instances of aggravated battery. In case No. 08-CF-

1318, defendant pleaded guilty to the charge of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008)), alleging he knowingly and without legal justification made physical contact of an insulting or provoking nature with Deputy Jeff Kretlow by spitting in his face. In case No. 08-CF-564, defendant pleaded guilty to the charge of aggravated battery, alleging he knowingly and without legal justification caused great bodily harm to Officer Jermiah Liebendorfer by fighting and struggling with him. The State agreed to dismiss six other charges. No agreement was reached as to a sentence.

In July 2009, the trial court conducted the sentencing hearing. Bloomington police officer Jermiah Liebendorfer testified that on May 19, 2008, he observed defendant urinating in a parking lot. Liebendorfer identified himself, and defendant responded with a profanity. When told to stop urinating, defendant responded with more profanity. Liebendorfer found him to be "very hostile." Defendant's wife or girlfriend arrived, but when Liebendorfer began talking to her, defendant became angry. After separating the two, Liebendorfer attempted to question the woman. Defendant approached, grabbed her arm, and told her she needed to leave. Liebendorfer then told defendant he was under arrest for resisting and obstructing a peace officer. While attempting to handcuff him, defendant "physically attacked" Liebendorfer and swung at him "with a closed fist." They fought "for a few

seconds," and Liebendorfer eventually unholstered his Taser. The Taser did not activate properly, and defendant began to struggle with the officer again. Liebendorfer was able to take down defendant and call for help. During that time, defendant was "kicking," "punching," and trying to grab Liebendorfer's weapon. As a result of the physical altercation, Liebendorfer suffered severe injuries to his left knee, including a torn medial meniscus, torn lateral ligaments, and a tibia plateau fracture. He required full medical leave for six months.

The trial court found defendant to be 22 years of age, employed, and with three dependents. The court noted he had a juvenile adjudication for battery and was on bond when one of the underlying offenses occurred. Defendant also failed to report to the probation office when required to do so. Noting the need to deter others and for the protection of the public, the court sentenced defendant to five years in prison in case No. 08-CF-564 and three years in case No. 08-CF-1318. The court ordered the sentences to run consecutive to each other.

In August 2009, defendant filed a *pro se* motion to reconsider sentence, arguing it was excessive. In November 2009, the trial court denied the motion. This appeal followed.

## II. ANALYSIS

Defendant argues his sentence was excessive, contending various mitigating factors were not properly considered by the

trial court. We disagree.

The Illinois Constitution mandates "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, §11. "'In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed.'" *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)).

A trial court has broad discretion in imposing a sentence. *People v. Patterson*, 217 Ill. 2d 407, 448, 841 N.E.2d 889, 912 (2005). "A reviewing court gives great deference to the trial court's sentencing decision because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the cold record." *People v. Evangelista*, 393 Ill. App. 3d 395, 398, 912 N.E.2d 1242, 1245 (2009). Thus, the court's decision as to the appropriate sentence will not be overturned on appeal "unless the trial court abused its discretion and the sentence was manifestly disproportionate to the nature of the case." *People v. Thrasher*, 383 Ill. App. 3d 363,

371, 890 N.E.2d 715, 722 (2008).

In the case *sub judice*, the aggravated-battery offense in case No. 08-CF-564 was a Class 1 felony (720 ILCS 5/12-4(e)(3) (West 2008)). A defendant convicted of a Class 1 felony is subject to a sentencing range of 4 to 15 years in prison. 730 ILCS 5/5-8-1(a)(4) (West 2008). The aggravated-battery offense in case No. 08-CF-1318 was a Class 3 felony (720 ILCS 5/12-4(e)(1) (West 2008)). A defendant convicted of a Class 3 felony is subject to a sentencing range of two to five years in prison. 730 ILCS 5/5-8-1(a)(6) (West 2008). Because case No. 08-CF-1318 occurred while defendant was out on bond in case No. 08-CF-546, consecutive sentences were mandatory. 730 ILCS 5/5-8-4(h) (West 2008). As the trial court's sentences of five years on the Class 1 felony and three years on the Class 3 felony were within the relevant sentencing ranges and both were required to be served consecutive to the other, we will not disturb the sentence absent an abuse of discretion.

Defendant argues he apologized for his actions and noted the fight with Officer Liebendorfer occurred only three days after the death of his two-month-old daughter. He stated he turned to alcohol after her death to deal with the pain. He completed domestic-violence counseling and parenting classes. Defendant argues his young age, his daughter's death just prior to the first incident, his employment, his remorse, and his

single felony conviction all showed his high potential for rehabilitation.

The State notes defendant had a 2004 felony conviction for manufacture/delivery of cannabis for which he received 30 months' probation. He violated probation by failing a urine screen and he was resentenced to 100 days in jail. In 2007, he was sentenced to conditional discharge for possession of cannabis and resisting a peace officer.

The presentence investigation indicated defendant has three sons--ages four months, three years, and five years. His daughter died in May 2008 while at day care. In February 2007, a neglect petition was filed after it was reported defendant had given his son cannabis. In July 2009, defendant was found unfit after not participating in services and being uncooperative. He also was unsuccessfully discharged from individual counseling in October 2008 and failed to reengage after being directed to do so. Defendant reported the use of cannabis since age 12. He tested positive in May 2004 and June 2005. In a 2007 juvenile case, he was directed to call in for random urine screens. He failed to call in for 87 out of 87 screens from March to May 2009.

In this case, the trial court indicated it considered the aggravating and mitigating factors. The court noted defendant's age, his dependents, his employment, and the death of his

daughter shortly before one of the offenses. However, a trial court is not required to give greater weight to a defendant's rehabilitative potential or other mitigating factors over the seriousness of the offense. *People v. Shaw*, 351 Ill. App. 3d 1087, 1093-94, 815 N.E.2d 469, 474 (2004). The court noted defendant's prior record and found it "unlikely that he would be able to comply with a period of probation." Here, fighting and struggling with one officer and spitting in the face of another constituted serious offenses, and the court concluded a prison sentence was necessary not only to deter others but also to protect the public. We find no abuse of discretion in the court's sentences.

### III. CONCLUSION

For the reasons stated, 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.

Affirmed.