

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. 4-09-0691

Filed 1/31/11

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
JOSHUA D. GRAVES,)	No. 06CF1773
Defendant-Appellant.)	06CF1800
)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred
in the judgment.

ORDER

Held: Because the trial court considered the appropriate mitigating and aggravating sentencing factors, it did not abuse its discretion by imposing concurrent 20-year prison sentences for defendant's two armed-robbery convictions.

In June 2007, defendant, Joshua D. Graves, pleaded guilty to two counts of armed robbery (720 ILCS 5/18-2(a) (West 2006)) pursuant to a negotiated plea. In July 2007, the trial court sentenced defendant to concurrent 20-year prison sentences.

Defendant appeals, arguing that the trial court's imposition of concurrent 20-year prison sentences was excessive. We disagree and affirm.

I. BACKGROUND

On December 27, 2006, the State charged defendant with

armed robbery (720 ILCS 5/18-2(a) (West 2006)), aggravated vehicular hijacking (720 ILCS 5/18-4(a)(4) (West 2006)), and aggravated kidnapping (720 ILCS 5/10-2(a)(6) (West 2006)), alleging that defendant kidnapped Mark Hinch at gunpoint and forced Hinch to drive defendant to an automated teller machine (ATM), where defendant robbed Hinch of \$400 (case No. 06-CF-1773). The next day, the State charged defendant with two counts of armed robbery (720 ILCS 5/18-2(a) (West 2006)), alleging that defendant took property from (1) Matthew Sites (count I) and (2) Daniel Ogden (count II) by force or threat of force while armed with a dangerous weapon (case No. 06-CF-1800).

In June 2007, defendant pleaded guilty to (1) armed robbery in case No. 06-CF-1773 and (2) count I in case No. 06-CF-1800, pursuant to a negotiated guilty plea. In exchange for defendant's guilty plea, the State moved to dismiss the remaining charges against defendant but did not agree to make a specific sentencing recommendation to the trial court.

At defendant's July 2007 sentencing hearing, the parties presented the following testimony from Sites; Tim Ogden, Daniel's brother; and Shirley and Lee Graves, defendant's grandparents.

During the evening hours of December 12, 2006, Sites, who managed a restaurant, saw a man in a hooded sweatshirt walk into the restaurant, push a waiter down onto the ground, and

point a gun at the waiter. The gunman then turned around, approached three patrons at a table, pointed the gun at them, and demanded that they "empty their pockets." After taking a cell phone from one of the patrons, the gunman approached Sites, who was standing behind the restaurant's front counter, pointed the gun at his head, and demanded money. Sites complied, imploring the gunman to take whatever he wanted. After the gunman took approximately \$200 from the cash register drawer, he ran out of the restaurant. Sites explained that he never thought he would ever experience the type of fear he felt during the robbery.

Tim, a patron at the restaurant at the time of the robbery, stated that he was at the restaurant having dinner with his brother, Daniel, and father when he saw defendant come into the restaurant. Tim's testimony regarding the details of defendant's robbery was consistent with Sites' account. Tim added that after an initial feeling of relief, he experienced an "intense rage" because he felt violated by defendant's actions, noting that "when [he] think[s] back about what could have happened, it's frightening."

On December 15, 2010, Hinch had parked his truck and was walking down a street to attend a luncheon when defendant (1) approached Hinch, (2) pulled out a gun, and (3) told Hinch that if he ran or yelled, he would shoot him. Hinch was momentarily stunned and frightened but immediately became compliant and

offered defendant his wallet to end the encounter. Defendant refused to accept Hinch's wallet, insisting instead that they were going to walk back to Hinch's truck and Hinch was going to drive to an ATM. Hinch returned to his truck but refused to get in. After defendant ordered Hinch at gunpoint to get into the truck, Hinch complied. Hinch explained that he did so because he believed that defendant would shoot him if he did not. At that point, Hinch described that his mouth became dry and he began sweating.

As Hinch drove to a nearby ATM, he asked defendant why he was "in this situation." Defendant responded that he was in trouble with some "bad guys" and needed \$1,500. After arriving at the ATM, defendant demanded that Hinch withdraw \$1,500. Hinch told defendant that his maximum daily limit would not allow him to withdraw that amount. Instead, Hinch withdrew his daily limit of \$400 and gave it to defendant. Defendant then ordered Hinch to continue driving. As Hinch did so, he attempted to convince defendant to let him out of the truck by offering defendant the truck to satisfy his debt. A short time later, defendant told Hinch to stop the truck and get out. Defendant then drove away in Hinch's truck. Although Hinch was relieved, he explained that his encounter with defendant "ha[d] to be one of the most frightening" he had ever experienced.

Hinch acknowledged that he only saw defendant's gun

when he was on the sidewalk and again when defendant forced him into the truck. At other times, defendant kept the gun in the front pocket of his "hoody" sweatshirt. Hinch also noted that defendant expressed sorrow for his actions and at one point, called him sir. Hinch stated that (1) it neither provided him comfort nor lessened his fear that defendant was respectful and (2) he complied with defendant's demands because defendant was brandishing a gun.

Shirley testified that because of defendant's "unstable home life," she and Lee raised defendant from the time he was 2 years old until he turned 13 years old. After that time, they sent defendant to live with his father but that situation "didn't work." Defendant then stayed with a couple from the church he attended. After defendant dropped out of school, Shirley recounted that defendant would stay with them "off and on" for "three of four days" at a time. During those stays, Shirley and Lee attempted unsuccessfully to get defendant to live with them.

Shirley noted that during the time she cared for defendant, he was a quiet, kindhearted young man, who kept to himself and did not pose a problem. Shirley acknowledged that (1) defendant's church attendance was not a relevant factor given his criminal activity and (2) despite her characterization of defendant's demeanor, she did not have knowledge of defendant's past or current activities.

Lee testified that he never had any problems with defendant when he raised him and that defendant "just took the wrong course." Lee explained that defendant did not want to live with his father because his father was strict in that he did not want defendant to follow in his footsteps and end up in prison. After defendant left his father's home, he lived with Lee but left shortly thereafter. Lee admitted that he did not know (1) what happened to defendant after defendant left his home and (2) the circumstances surrounding defendant's \$1,500 debt.

In addressing the trial court prior to sentencing, defendant apologized for his action, stating that he was accountable for the criminal acts he committed and that his actions were "very stupid and very dangerous." Defendant asked his victims to accept his apology.

Prior to imposing sentence, the trial court considered in mitigation defendant's (1) age (defendant was 17 years old); (2) minor criminal history, which consisted of a retail theft the previous year; (3) apology to his victims; and (4) difficult family upbringing.

In aggravation, the trial court considered that defendant (1) held restaurant employees and patrons hostage at gunpoint, (2) terrorized Hinch by kidnapping him at gunpoint and forcing him "to drive around town to try to get money," (3) used a dangerous weapon to perpetrate his crimes, and (4) committed

two armed robberies. The court also noted that whether defendant's gun was loaded or unloaded was irrelevant to its consideration because the gun was a "dangerous weapon" that "creates terror when pointed at another person, and [the court is] sure that's what happened here."

After noting that the trial court could impose consecutive sentences upon defendant that totaled 60 years, the court stated the following:

"[The court is] not going to impose consecutive sentences. [The court will] impose a sentence that [the court believes] is appropriate for the offenses here and this particular offender and hope that at some point in the future, this young man can get straightened out and become a member of society outside of the criminal world."

Thereafter, the trial court sentenced defendant to (1) 20 years in prison for armed robbery in case No. 06-CF-1773 and (2) 20 years in prison for armed robbery in case No. 06-CF-1800, to be served concurrently.

This appeal followed.

II. THE TRIAL COURT'S CONCURRENT SENTENCES FOR ARMED ROBBERY

A. Robbery, Armed Robbery, and the Applicable Sentencing Ranges

Section 18-1(a) of the Criminal Code of 1961 (Criminal

Code), which pertains to the offense of robbery, provides as follows:

"A person commits robbery when he or she takes property, except a motor vehicle covered by Section 18-3 or 18-4, from the person or presence of another by the use of force or by threatening the imminent use of force."

720 ILCS 5/18-1(a) (West 2006).

Section 18-2(a) of the Criminal Code, which pertains to the offense of armed robbery, provides as follows:

"(a) A person commits armed robbery when he or she violates Section 18-1; and

(2) he or she carries on or about his or her person or is otherwise armed with a firearm[.]"

* * *

(b) Sentence.

Armed robbery in violation of subsection *** (a) (2) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court." 720 ILCS 5/18-2(a), (b) (West 2006).

See *People v. Hauschild*, 226 Ill. 2d 63, 86-87, 871 N.E.2d 1, 14

(2007) (holding that the 15-year enhancement to sentences for armed robbery with a firearm violates the proportional penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, §11)).

Section 5-8-1(a)(3) of the Unified Code of Corrections (Unified Code), which pertains to Class X sentencing, provides as follows:

"except as otherwise provided in the statute defining the offense, for a Class X felony, the sentence shall be not less than 6 years and not more than 30 years[.]" 730 ILCS 5/5-8-1(a)(3) (West 2006).

Section 5-8-4(a) of the Unified Code provides as follows:

"When multiple sentences of imprisonment are imposed on a defendant at the same time *** the sentences shall run concurrently or consecutively as determined by the court."
730 ILCS 5/5-8-4(a) (West 2006).

B. Defendant's Claim That the Trial Court's Imposition of Concurrent 20-Year Prison Sentences Was Excessive

Defendant argues only that the trial court's imposition of concurrent 20-year prison sentences was excessive. In particular, defendant contends that the court did not adequately consider his "high potential for rehabilitation." We disagree.

"[T]he range of sentences permissible for a particular offense is set by statute." *People v. Fern*, 189 Ill. 2d 48, 55, 723 N.E.2d 207, 210 (1999). "Within that statutory range, the trial court is charged with fashioning a sentence based upon the particular circumstances of the individual case, including the nature of the offense and the character of the defendant." *Fern*, 189 Ill. 2d at 55, 723 N.E.2d at 210. "The sentencing judge is to consider 'all matters reflecting upon the defendant's personality, propensities, purposes, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding.'" *Fern*, 189 Ill. 2d at 55, 723 N.E.2d at 210-11, quoting *People v. Barrow*, 133 Ill. 2d 226, 281, 549 N.E.2d 240, 265 (1989).

"'A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.'" *People v. Romero*, 387 Ill. App. 3d 954, 978, 901 N.E.2d 399, 419-20 (2008), quoting *Fern*, 189 Ill. 2d at 54, 723 N.E.2d at 210. A reviewing court must afford great deference to the trial court's judgment regarding sentencing because that court, having observed the defendant and the proceedings, is in a far better position to consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits than a reviewing court, which must rely on a "cold" record. *Romero*, 387 Ill. App. 3d at 978, 901 N.E.2d

at 420. "Thus, '[i]n considering the propriety of a sentence, the reviewing court must proceed with great caution and must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently' [citation], and it may not reduce a defendant's sentence unless the sentence constitutes an abuse of the trial court's discretion." *Romero*, 387 Ill. App. 3d at 978, 901 N.E.2d at 420, quoting *Fern*, 189 Ill. 2d at 53, 723 N.E.2d at 209.

In support of his contention, defendant notes his young age, difficult family circumstances, minor prior criminal history, remorse as stated in his apology to his victims, and that his gun was not loaded, as factors that prove he had a "high potential for rehabilitation that the court did not adequately consider." Essentially, defendant's contention attacks the weight that the court placed on the aforementioned mitigating factors when it was considering the sentence it would impose.

In this case, the record at defendant's sentencing hearing belies his contention that the trial court failed to adequately consider his rehabilitative potential. Prior to imposing sentence, the record shows that in addition to the mitigating factors defendant identifies, the court also considered the nature and frequency of the crime perpetrated by defendant. Specifically, the court commented on the particularly heinous nature of the crime of armed robbery, which is an ex-

tremely violent crime because of the dangerous weapon used and the resulting terror it inflicts on a defenseless citizenry. In this regard, the court specifically noted that in striking a balance between defendant's rehabilitative potential and the need to punish and deter this particularly senseless crime, it would not impose the maximum sentence of consecutive 30-year terms totaling 60 years in prison but would impose concurrent 20-year prison terms.

Given our highly deferential standard of review, we conclude that the trial court's imposition of concurrent 20-year prison terms, which was within the authorized sentencing range for armed robbery, was entirely reasonable and was not an abuse of discretion.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment. Because the State has successfully defended a portion of the criminal judgment, we grant the State its statutory assessment of \$50 against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985), citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978).

Affirmed.