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2011 Ill. App. (4th) 100034-U

Filed 7/7/11

NO. 4-10-0034

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
JEREMIAH WHITAKER,)	No. 08CF2253
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Knecht and Justice Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion by sentencing defendant to four years' imprisonment for unlawful failure to register as a sex offender.
- ¶ 2 In February 2009, defendant, Jeremiah Whitaker, as part of a fully negotiated guilty plea, pleaded guilty to unlawful failure to register as a sex offender, a Class 3 felony. 730 ILCS 150/6, 10 (West 2008). The trial court sentenced him to 30 months' probation and ordered him to serve 57 days in the Champaign County correctional center.
- ¶ 3 In July 2009, the State filed a petition to revoke defendant's probation for his (1) failure to report to probation and (2) failure to resume outpatient sex-offender treatment. Defendant admitted the probation violations, and the trial court sentenced him to four years' imprisonment with credit for 119 days previously served.
- ¶ 4 On appeal, defendant argues his sentence was excessive because he was unable to

resume sex-offender treatment until he paid his financial obligations to the treatment facility. We disagree and affirm.

¶ 5

I. BACKGROUND

¶ 6 In February 2009, defendant, as part of a fully negotiated guilty plea, pleaded guilty to unlawful failure to register as a sex offender, a Class 3 felony. The trial court sentenced him to 30 months' probation and ordered him to serve 57 days in the Champaign County correctional center.

¶ 7 In July 2009, the State filed a petition to revoke defendant's probation for his (1) failure to report to probation and (2) failure to resume outpatient sex-offender treatment. The State agreed to cap its sentence recommendation at five years' imprisonment.

¶ 8 At the sentencing hearing, the State noted defendant repeatedly failed to comply with court orders and probation conditions despite multiple reminders and reprimands. Specifically, the State noted defendant (1) failed to report to register as a sex offender, which resulted in the State filing the petition to revoke probation; (2) failed to pay court costs or perform public service work as ordered; (3) failed to pay child support as ordered; (4) lied to his probation officer about drinking alcohol; (5) failed to report to probation; (6) failed to notify his probation officer regarding a change in residence, school, or employment; (7) failed to comply with a substance-abuse assessment; (8) failed to enroll in general-equivalency-diploma classes (GED); and (9) failed to meaningfully engage in sex-offender treatment.

¶ 9 Defense counsel noted defendant (1) admitted the probation violations, (2) was currently attending GED classes, and (3) was unable to resume sex-offender treatment because he could not pay his financial obligations to the treatment facility.

¶ 10 After considering the arguments of counsel, the presentence investigation report, and defendant's statement in allocution, the trial court sentenced defendant to four years' imprisonment with credit for 119 days previously served. The court noted, as factors in aggravation, (1) defendant's extensive criminal history, and (2) the deterrent effect of defendant's sentence on defendant and other similarly situated individuals. Although the court stated no statutory factors in mitigation were present, it did consider defendant's young age, his admission to the probation violations, and his initial plea of guilty.

¶ 11 Although the trial court acknowledged defendant had made an attempt to improve since the last hearing, the court determined defendant had no excuse for completely disregarding the court's order for the first six to seven months of the probationary period. The court further determined a community-based sentence would be inappropriate because it would "deprecate the seriousness of [defendant's] conduct, be inconsistent with the ends of justice, and would not *** be the appropriate deterrent factor."

¶ 12 In January 2010, defendant filed a motion to reconsider sentence, arguing his sentence was excessive. The trial court denied defendant's motion, stating the most important factor in the court's sentence determination was the deterrent effect of the sentence on defendant and other similarly situated individuals.

¶ 13 This appeal followed.

¶ 14 **II. ANALYSIS**

¶ 15 On appeal, defendant argues the trial court failed to consider his inability to pay his financial obligations as a nonstatutory factor in mitigation. In particular, defendant argues his attempt to resume sex-offender treatment was hampered by his inability to pay his debt to the

treatment facility.

¶ 16 A reviewing court must give great deference to a trial court's sentencing decision because the trial court is usually in the best position to determine the appropriate sentence.

People v. Stacey, 193 Ill. 2d 203, 209, 737 N.E.2d 626, 629 (2000). A court's sentence determination will not be disturbed absent an abuse of discretion. *People v. Streit*, 142 Ill. 2d 13, 19, 566 N.E.2d 1351, 1353 (1991). However, a sentence within statutory limits may be deemed excessive by a reviewing court if the sentence was "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210, 737 N.E.2d at 629.

¶ 17 In the present case, defendant pleaded guilty to unlawful failure to register as a sex offender and was sentenced to 30 months' probation. He subsequently admitted violating this probation, and the State agreed to cap its sentence recommendation at five years' imprisonment.

¶ 18 Unlawful failure to register as a sex offender is a Class 3 felony under section 10 of the Sex Offender Registration Act (730 ILCS 150/10 (West 2008)). Under section 5-8-1(a)(6) of the Unified Code of Corrections (Unified Code), a Class 3 felony is punishable by two to five years' imprisonment. 730 ILCS 5/5-8-1(a)(6) (West 2008).

¶ 19 However, the sentencing range for a Class 3 felony is 5 to 10 years' imprisonment when a defendant is eligible for extended-term sentencing. 730 ILCS 5/5-8-2(a)(5) (West 2008). Section 5-5-3.2(b) of the Unified Code (730 ILCS 5/5-5-3.2(b) (West 2008)) sets forth factors the trial court may consider as reasons to impose an extended-term sentence. Section 5-5-3.2(b)(1) of the Unified Code (730 ILCS 5/5-5-3.2(b)(1) (West 2008)) states, as follows:

¶ 20 "When a defendant is convicted of any felony, after having been previously

convicted *** of the same or similar class felony or greater class felony, when such conviction has occurred within 10 years after the previous conviction[.]"

¶ 21 Here, defendant was required to register as a sex offender because he was previously convicted of aggravated criminal sexual abuse, a Class 2 felony. Because defendant's aggravated-criminal-sexual-abuse conviction occurred in 2005, he was eligible for extended-term sentencing with a sentencing range of 5 to 10 years' imprisonment.

¶ 22 Although defendant was eligible for extended-term sentencing, the State agreed to cap its sentence recommendation at five years' imprisonment if defendant admitted the probation violations. Defendant agreed to the State's bargain, but argued, at sentencing, the trial court should sentence defendant to a community-based sentence. The State disagreed and recommended he receive a sentence of five years' imprisonment, the maximum nonextended term.

¶ 23 In addition to the arguments of counsel, the trial court also considered the presentence report in determining defendant's sentence. The presentence report stated as follows:

¶ 24 "Since being sentenced to probation, [defendant] has done nothing he was required or ordered to do. Referrals intended to improve his life situation were not acted upon. Directives intended to effectively facilitate supervision and to enhance community safety were disregarded. [Defendant] has utterly disregarded the Court's orders and requirements of probation, despite multiple written directives, verbal reminders and reprimands."

Specifically, the presentence report stated defendant failed to comply with court orders and probation requirements as follows: (1) he failed to pay assessed court costs, fines, and fees; (2)

he failed to complete any public service work; (3) he failed to obtain a substance-abuse evaluation; (4) he failed to enroll in GED classes; (5) he failed to complete sex-offender treatment; (6) he failed to notify his probation officer of changes in his residence, school, or employment; (7) he failed to report to probation; and (8) he failed to regularly contact his probation officer when he was homeless.

¶ 25 After the trial court considered the arguments of counsel, the presentence report, and defendant's statement in allocution, it sentenced defendant to four years' imprisonment with credit for 119 days previously served. Because defendant repeatedly failed to comply with court orders and conditions of probation, the court determined it would be inappropriate to sentence him to another community-based sentence.

¶ 26 Defendant argues this sentence was excessive because the trial court failed to consider his lack of monetary resources as a nonstatutory factor in mitigation. In particular, defendant argues he made a valid effort to obtain sex-offender treatment but his lack of monetary resources hampered his ability to resume treatment. In support of his position, defendant cites *People v. Harpole*, 97 Ill. App. 2d 28, 34-36, 239 N.E.2d 471, 474-75 (1968), which reduced the sentence imposed by the trial court because the defendant's failure to pay restitution was the controlling factor in the court's determination of an appropriate sentence.

¶ 27 First, defendant argues the trial court failed to consider his lack of monetary resources as a nonstatutory factor in mitigation. Although the court did not specifically mention defendant's inability to pay his financial obligation as a factor in mitigation, it did consider the presentence report and the arguments of counsel prior to sentencing. The presentence report noted defendant was required to pay his financial obligation to the treatment facility before he

would be allowed to continue sex-offender treatment. Additionally, defendant's counsel brought the situation to the court's attention during sentencing. Therefore, the court was aware of the circumstances surrounding defendant's failure to resume sex-offender treatment.

¶ 28 When a defendant presents evidence in mitigation, it is presumed the trial court considered this evidence when determining the defendant's sentence. *People v. Phippen*, 324 Ill. App. 3d 649, 653, 756 N.E.2d 474, 478 (2001). Therefore, it is presumed the court considered the circumstances surrounding defendant's inability to resume sex-offender treatment prior to sentencing.

¶ 29 Also, defendant's reliance on *Harpole* is misplaced. Unlike *Harpole*, defendant's failure to resume sex-offender treatment was not the sole factor in the trial court's decision to impose a sentence of four years' imprisonment. Instead, the court was presented with multiple violations of court orders and probation requirements, including violations having nothing to do with payment of financial obligations.

¶ 30 Further, defendant's sentence was within the statutory range for a Class 3 felony and was one year less than the sentence recommended by the State. The trial court refused to impose another community-based sentence because it would not effectively deter defendant and other similarly situated individuals from subsequent violations of court orders or probation conditions. Considering defendant's repeated failure to follow the conditions of his probation and the court's intent to deter subsequent violations, the court's sentence determination was appropriate. Accordingly, the court's sentence was not an abuse of discretion.

¶ 31 III. CONCLUSION

¶ 32 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.

¶ 33 Affirmed.