



(2) the VCVA fine was improperly calculated. We affirm as modified and remand with directions.

¶ 3

### I. BACKGROUND

¶ 4 In April 2009, defendant was indicted by a grand jury on one count of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2008)) and one count of unlawful possession of a firearm by a convicted felon (720 ILCS 5/24-1.1(a) (West 2008)). In December 2009, defendant entered into a partially negotiated guilty plea with the State. Under the plea, defendant agreed to plead guilty to unlawful possession of a firearm and the State agreed to dismiss the charge of aggravated discharge. Defendant had no agreement as to the sentence he would receive.

¶ 5

At the plea hearing, the factual basis showed the following. The victim and two of his friends were in a car outside defendant's residence when defendant pointed a handgun directly at the car. The victim and his friends immediately left the area and called police. Police arrived at defendant's residence and executed a search warrant for the premises. While searching defendant's residence, police located a handgun fitting the description given by the victim and his friends of the gun defendant allegedly pointed at them. The gun was loaded and contained five live rounds as well as one spent cartridge. Defendant was on mandatory supervised release (MSR) for four felony convictions when these events occurred.

¶ 6

In January 2010, at the sentencing hearing, the parties agreed defendant was extended-term eligible due to his prior criminal history. This meant defendant was subject to a sentence of 3 to 14 years' imprisonment in connection with his plea of guilty to unlawful possession of a firearm by a convicted felon. See 730 ILCS 5/5-5-3.2(b)(1), 5-8-2(a)(4) (West

2008). The parties also entered a stipulation in which defendant admitted discharging the weapon on the evening in question, though he maintained he did not discharge the weapon in the direction of the victim and his friends. The State requested the maximum 14-year sentence because this was defendant's fifth felony conviction, he was on MSR for four other felonies when he committed the act, and his actions threatened serious harm to others. Defense counsel acknowledged the serious nature of defendant's actions and requested a seven-year sentence, arguing defendant did not deserve the maximum punishment due to factors in mitigation, including defendant's age (23), history of substance abuse and mental illness, and rehabilitative potential. Defendant made a statement in allocution and accepted responsibility for his actions and apologized.

¶ 7 The trial court stated it took all the relevant information before it into account in sentencing defendant, including the "presentence investigation report, the evidence presented today, the recommendations of counsel, the defendant's statement in allocution, as well as the relevant statutory factors in aggravation and in mitigation." The court praised defendant for accepting responsibility and stated it hoped he would follow through with treatment for his alcohol and substance-abuse issues, noting "it's never too late to change habits." The court also acknowledged the serious nature of the offense, stating "that's kind of the crux of this whole issue \*\*\* the fact that you had the weapon and you discharged it." The court went on to state "[g]un violence in our society is an extremely, extremely serious matter, and for that reason I think that a significant sentence ought to be imposed in this case." The court declined the State's request to sentence defendant to the 14-year maximum due to the mitigating factors raised by defense counsel but sentenced defendant to 10 years' imprisonment.

¶ 8 In April 2010, the trial court denied defendant's motion to reconsider his sentence. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 A. Ten-Year Sentence Was Not an Abuse of Discretion

¶ 11 Defendant first argues the trial court abused its discretion in sentencing him to 10 years' imprisonment. Specifically, defendant contends the court failed to properly consider his history of drug abuse and mental illness, his age, and his rehabilitative potential as factors in mitigation. We disagree.

¶ 12 The imposition of a sentence is a matter of judicial discretion for the trial court, and this court will not disturb the trial court's sentencing determination absent an abuse of that discretion. *People v. Perruquet*, 68 Ill. 2d 149, 154, 368 N.E.2d 882, 884 (1977). A trial court's ruling constitutes an abuse of discretion when it is " 'arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *People v. Sutherland*, 223 Ill. 2d 187, 272-73, 860 N.E.2d 178, 233 (2006) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)). Sentences imposed within the statutory guidelines are presumed to be proper and will not be overturned unless the sentence substantially departs from the spirit and purpose of the law and the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90, 871 N.E.2d 1, 16 (2007).

¶ 13 The Unified Code of Corrections permits the trial court to consider certain statutory factors in aggravation and mitigation when imposing a sentence of imprisonment. 730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2008). In addition to the statutory factors, the court may consider nonstatutory factors in aggravation and mitigation. *People v. Csaszar*, 375 Ill. App. 3d 929, 948,

874 N.E.2d 255, 271 (2007). Those nonstatutory factors include the defendant's credibility, general moral character, mentality, social environment, habits, and age. *Perruquet*, 68 Ill. 2d at 154, 368 N.E.2d at 884. Because the trial court has observed the defendant throughout the proceedings, this court is highly deferential to its factual determinations at sentencing. *Id.* Moreover, "[t]he existence of mitigating factors does not require the trial court to reduce a sentence from the maximum allowed." *People v. Phippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001).

¶ 14 Defendant argues the trial court relied too heavily on aggravating factors, specifically the fact defendant discharged a weapon, and did not give proper consideration to mitigating factors. The record belies defendant's argument. The court specifically addressed the mitigating factors contained in the presentence report, as well as those raised by defense counsel. In fact, in sentencing defendant the court stated:

"Recognizing \*\*\* that there are some mitigation issues that have been pointed out by counsel here today, I'm not going to sentence you to the maximum because I don't think that's appropriate \*\*\* but I do believe a significant sentence is appropriate; and, therefore, the defendant will be sentenced on Count Two in this case to a sentence of ten years in the Illinois Department of Corrections."

¶ 15 Defendant had four previous felony convictions and was on MSR in connection with all four when he committed the underlying crime. Though the charge in connection with discharging the gun was dropped as part of the plea agreement, the trial court was entitled to

consider it as it threatened harm to others. Nothing in the record suggests the court ignored any of the relevant mitigating factors, especially where the court specifically addressed what it deemed to be relevant factors in mitigation. The court did not abuse its discretion in sentencing defendant to 10 years' imprisonment where he was subject to a sentence of up to 14 years.

¶ 16 B. VCVAA Fine Must be Modified

¶ 17 Defendant next contends his VCVAA fine amount of \$20 was improperly calculated. The State concedes the fine must be recalculated according to the relevant statutory provision. We agree.

¶ 18 Section 10(c)(2) of the VCVAA (725 ILCS 240/10(c)(2) (West 2008)) allows for a fine in the amount of \$20, *if no other fine has been imposed* in connection with a conviction. (Emphasis added.) In the present case, the trial court imposed additional fines in the form of a \$10 drug-court fine and a \$100 trauma-center-fund fine. Therefore, imposition of the \$20 VCVAA fine is improper. Under section 10(b) of the VCVAA (725 ILCS 240/10(b) (West 2008)), when other fines have been imposed, the defendant is subject to a \$4 fine for every \$40, or fraction thereof, of fine imposed. As a result, the VCVAA fine is based on \$110 in other fines, and we therefore reduce it to \$12 (110 divided by 40 equals 2.75; 2 plus a "fraction thereof" multiplied by 4 equals 12). See *People v. Childs*, 407 Ill. App. 3d 1123, 1134, 948 N.E.2d 105,114 (2011).

¶ 19 III. CONCLUSION

¶ 20 For the foregoing reasons, we affirm the trial court's judgment as modified and remand for issuance of an amended sentencing judgment. Because the State has in part successfully defended a portion of the judgment, we grant the State its statutory assessment of

\$50 as costs of this appeal.

¶ 21 Affirmed as modified and remanded with directions.