

NOTICE

Decision filed 03/08/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0618

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Randolph County.
	)	
v.	)	No. 09-CF-86
	)	
BRANDON S. EZZELL,	)	Honorable
	)	William A. Schuwerk, Jr.,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE SPOMER delivered the judgment of the court.  
Presiding Justice Chapman and Justice Stewart concurred in the judgment.

**R U L E 2 3 O R D E R**

*Held:* A maximum sentence of five years in the Department of Corrections was not excessive in light of the evidence before the circuit court at the sentencing hearing; the court erred in imposing a \$5 trauma center fee where not statutorily authorized.

The defendant, Brandon S. Ezzell, pleaded guilty to aggravated battery and was sentenced to a term of five years of imprisonment in the Illinois Department of Corrections. He was also ordered to pay, *inter alia*, a \$5 trauma center fee. In this direct appeal, he contends that his sentence was excessive and that the imposition of the trauma center fee was not statutorily authorized. For the reasons that follow, we vacate the imposition of the \$5 trauma center fee but otherwise affirm his sentence.

FACTS

On August 21, 2009, the defendant entered an open plea of guilty to a charge of aggravated battery, stemming from an incident in which, on a public roadway, he struck Brian Frazier in the face with his fist, causing bodily harm. A sentencing hearing was held

on October 14, 2009, at which two former girlfriends of the defendant testified in detail about multiple incidents during which the defendant had physically abused them. Each woman was eventually forced to obtain an order of protection against the defendant. The boyfriend of one of the women testified as well, recounting an incident during which the defendant had threatened the witness and violated the order of protection, even though the police were present at the time. The mother of the same woman testified that she witnessed many incidents of violence on the part of the defendant. At the conclusion of the hearing, the defendant was sentenced as described above. He filed a motion to reduce his sentence, which was denied, and this timely appeal followed.

#### ANALYSIS

On appeal, the defendant does not seek to withdraw his guilty plea, nor does he otherwise contest his conviction. Instead, he contends only that his sentence was excessive and that the trial court erred in imposing a \$5 trauma center fee that was not authorized by statute. As to the latter contention, the State confesses error, and we conclude that confession is well-taken. As our colleagues in the Second District recently noted, the trauma center fee is authorized "for those receiving orders of supervision for driving under the influence of drugs or alcohol, those convicted of certain weapons offenses, and those convicted of certain drug offenses." *People v. Valle*, 405 Ill. App. 3d 46, 61 (2010); see also 705 ILCS 105/27.6(b), (c) (West 2008). Moreover, a provision of a sentence that is "imposed without statutory authority is void and can be attacked at any time." *Valle*, 405 Ill. App. 3d at 61. Accordingly, we modify the defendant's sentence by vacating the imposition of the trauma center fee.

With regard to the length of the defendant's sentence, we afford great deference and weight to the sentencing decisions of a trial judge, because that judge stands in a far better position than does this court to fashion an appropriate sentence based on the judge's

"firsthand consideration of the defendant's credibility, demeanor, moral character, and other relevant factors." *People v. Weatherspoon*, 394 Ill. App. 3d 839, 861-62 (2009). To fashion an appropriate sentence, a trial judge "must balance the interests of society against the ability of a defendant to be rehabilitated." *Weatherspoon*, 394 Ill. App. 3d at 862. There is no requirement that a trial judge "give greater weight to the rehabilitative potential of a defendant than to the seriousness of the offense." *Weatherspoon*, 394 Ill. App. 3d at 862. To the contrary, "the seriousness of the crime committed is considered the most important factor in fashioning an appropriate sentence." *Weatherspoon*, 394 Ill. App. 3d at 862. We will not overturn a sentence that is within the statutory limits unless we discern an abuse, by the trial court, of its discretion. *People v. Stroup*, 397 Ill. App. 3d 271, 274 (2010).

In the case at bar, the record before the trial judge, and before this court on review, leads us to conclude that the trial judge did not err in fashioning the defendant's sentence. The defendant claims that the following factors in mitigation should have resulted in a shorter sentence for the defendant: (1) the defendant entered an open plea of guilty without an agreement regarding sentence, (2) he apologized and showed remorse for his crime, (3) he was relatively young (22 years old) at the time of the crime, (4) he was neglected and physically abused as a child, (5) he has substance abuse and mental health problems, and (6) he has a "fairly insignificant" criminal history. The defendant contends that because the trial judge stated that he did not "see any reason to give [the defendant] a minimum sentence" and because the judge commented disparagingly about the defendant's inability to control his temper, the judge must not have considered these mitigating factors. We do not agree. Each of the factors listed by the defendant was clearly and unequivocally before the trial judge. "Where mitigation evidence is before the trial court, the trial court is presumed to have considered the evidence absent some indication, other than the sentence imposed, to the contrary." *People v. Morgan*, 306 Ill. App. 3d 616, 633 (1999). There is no indication, other

than the defendant's sentence, that the trial judge failed to consider the evidence offered in mitigation. Moreover, as described above, the judge also had before him the testimony of two former girlfriends of the defendant about multiple incidents during which the defendant had physically abused them, as well as the testimony of two other witnesses who had been threatened by and/or had observed the defendant's violent outbursts. The judge expressed serious concern about the defendant's well-demonstrated propensity for violence and fashioned a sentence to strike a balance between the interests of society and the ability of the defendant to be rehabilitated. There was no error.

#### CONCLUSION

For the foregoing reasons, we modify the defendant's sentence by vacating the imposition of the \$5 trauma center fee, but we otherwise affirm the defendant's conviction and sentence.

Affirmed as modified.