

2012 IL App (2d) 110044-U
Nos. 2-11-0044 & 2-11-0045, cons.
Order filed July 31, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08-CF-2966
)	09-CF-1748
)	
GORDON L. VANDERARK,)	Honorable
)	Blanche Hill Fawell,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: (1) The trial court did not abuse its discretion in sentencing the defendant.

¶ 1 After the defendant, Gordon Vanderark, pled guilty to aggravated driving while his license was revoked (DWLR) (625 ILCS 5/6-303(a), (d-5) (West 2008)) and aggravated driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1), (d)(2)(E) (West 2008)), the circuit court of Du Page County sentenced him to a total of 22 years' imprisonment. The defendant appeals, arguing that his sentence is excessive. We affirm.

¶ 2 On November 18, 2008, the defendant was charged by indictment with aggravated DWLR (625 ILCS 5/6-303(a), (d-5) (West 2008)). The case was docketed as 08-CF-2966.

¶ 3 On March 16, 2009, the defendant appeared at a status hearing. After someone indicated that they smelled alcohol on the defendant's breath, the trial court ordered that the defendant submit to a breathalyzer test instanter. The result was .118. The trial court admonished the defendant that if he ever appeared in court again under the influence of alcohol, it would hold him in contempt and incarcerate him.

¶ 4 On April 29, 2009, the defendant pled guilty to aggravated DWLR in case 08-CF-2966. The State asserted that the factual basis for the plea was that, on October 25, 2008, a police officer had observed the defendant improperly go through an intersection without stopping. A review of the defendant's certified driving abstract indicated that he had been previously convicted 14 or more times of DWLR. In accepting the defendant's plea, the trial court also noted that the defendant had been charged with transportation of open alcohol. A presentence report was filed on June 10, 2009.

¶ 5 On July 30, 2009, the defendant was charged with four counts of aggravated DUI (625 ILCS 5/11-501(a)(1), (d)(2)(E) (West 2008)) and aggravated DWLR (625 ILCS 5/6-303(a), (d-5) (West 2008)). The case was docketed as 09-CF-1748. On January 12, 2010, the defendant pled guilty to aggravated DWLR and one count of aggravated DUI. The State asserted that the factual basis for the plea was that, on July 18, 2009, at about 2:24 a.m., two Wheaton police officers had observed the defendant driving with the rear hatch of his car open. After he was stopped, the defendant stated that he had three mixed vodka drinks. A breathalyzer test at the police station provided a result of .164. The trial court accepted the defendant's guilty plea.

¶ 6 On July 8, 2010, the trial court conducted a sentencing hearing in both cases 08-CF-2966 and 09-CF-1748. The only witness to testify was Wheaton Police Officer Ryan Ermel. Officer Ermel testified that he stopped the defendant at 2:24 a.m. on July 18, 2009, when he saw that the rear hatch of the defendant's car was open, and the defendant had stopped his car about halfway over the stop line in the street. On approaching the car, Officer Ermel saw the defendant, who was the driver, wore only one shoe and his shirt was unbuttoned. Upon talking to the defendant, Officer Ermel detected a strong odor of alcohol. He asked for the defendant's driver's license and proof of insurance for the car. The defendant provided proof of insurance but not a driver's license. The defendant's eyes were bloodshot and glassy and his speech was slurred. The defendant acknowledged that he had consumed three drinks containing vodka. The defendant subsequently submitted to a breathalyzer test. The result of that test was .164.

¶ 7 The State argued that the defendant should be sentenced to a substantial term of imprisonment based on his extensive criminal history. The State noted that, including the instant offense, the defendant had 10 DUIs, 4 of them being felony DUIs. The defendant has not had a valid driver's license since February 1980 when it was revoked for DUI. The defendant had 20 prior convictions for driving while his license was revoked or suspended. Including the instant offenses, the defendant had 17 felony convictions. He had previously been imprisoned for 11 of those convictions. The State further noted that the 52-year-old defendant had been arrested 52 times, "which is almost one for every year of the defendant's life." The defendant was on parole for forgery when he committed the offense in case 08-CF-2966. The State further argued that a substantial prison term was necessary to deter others and because the defendant's conduct had threatened serious harm. The State asserted that the defendant had been in custody for 345 days, but there was no

evidence that he had completed any classes during that time. The State recommended a total sentence of 27 years' imprisonment.

¶ 8 Defense counsel argued in mitigation that the defendant's conduct had not actually harmed anyone. Defense counsel noted that the minimum sentence for the crimes that the defendant had pled guilty to was nine years' imprisonment. Defense counsel argued that the minimum sentence would be proportionate to the crimes that the defendant had committed.

¶ 9 The defendant told the trial court that he was remorseful and knew he had hurt people. The defendant recognized that "doing it" his way did not work and asked for the help he needed to live a normal life. He promised to "quit drinking." He also indicated that needed to take care of his wife. [The presentencing report indicated that the defendant's wife was suffering from cancer and multiple sclerosis. The record also reveals that the defendant and his wife subsequently divorced.]

¶ 10 At the close of the hearing, the trial court sentenced the defendant to a total of 24 years' imprisonment. The trial court explained that "the big issue in this case is how do we stop you from drinking and driving?" After reviewing the defendant's criminal history and his numerous incarcerations, the trial court stated:

"Usually one trip [to the Department of Corrections] is enough to make most people wake up, so I'm not convinced that you really believe that you have hit bottom and that you really are ready to change. I just don't see any evidence of that.

* * *

So I believe that in order to protect the public and to make you wake up and realize that you can't keep doing this, you need a lengthy prison sentence.

The fact that you came to court in front of me, drunk *** and you blew a [.]118, I—I just don't think you have any respect for the system. I don't think you fear any punishments.

I think to sentence you to the minimum would absolutely deprecate the seriousness of the offense and also *** put the public at risk.”

The trial court sentenced the defendant to 6 years’ imprisonment in case 08-CF-2966 for aggravated DWLR. The trial court sentenced the defendant to 6 years’ imprisonment in case 09-CF-1748 for aggravated DWLR and 18 years’ imprisonment for aggravated DUI. The trial court ordered that the sentence in case 08-CF-2996 be served consecutively to the sentences in case 09-CF-1748, for a total of 24 years’ imprisonment.

¶ 11 The defendant subsequently filed a motion to reconsider sentence. Following a hearing, the trial court reduced the defendant’s sentence for aggravated DUI to 16 years’ imprisonment, which reduced his overall sentence to 22 years’ imprisonment. The trial court explained that it was reducing the defendant’s sentence because (1) it had not given him any credit for accepting responsibility for his crimes when he pled guilty and (2) the defendant indicated he would be attending substance abuse counseling while incarcerated. Following the trial court’s ruling, the defendant filed a timely notice of appeal.

¶ 12 On appeal, the defendant argues that his sentence is excessive in light of the fact that (1) he pled guilty, (2) his conduct injured no one and (3) he was supporting his disabled wife at the time of the offenses. The defendant further contends that the trial court’s sentence does not further the objectives of rehabilitation and his restoration to useful citizenship. He also argues that his sentence should have been shorter in light of his statement in allocution that he finally understood that his drinking had destroyed his entire life. The defendant therefore requests that we reduce his sentence “to a more reasonable term.”

¶ 13 It is well settled that the trial court is the proper forum to determine a sentence and that the trial court’s sentencing decision is entitled to great deference and weight. *People v. Latona*, 184 Ill.

2d 260, 272 (1998). The trial court is charged with the duty to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case. *Id.* When a sentence falls within the statutory limits for the offense, the trial court's decision will not be disturbed absent an abuse of discretion. *People v. Coleman*, 166 Ill. 2d 247, 258 (1995). A trial court abuses its sentencing discretion when the penalty imposed "is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 14 In determining an appropriate sentence, relevant considerations include the nature of the crime, the protection of the public, deterrence, and punishment, as well as the defendant's rehabilitative potential. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). The existence of mitigating factors does not obligate the trial court to impose the minimum sentence. *People v. Adamcyk*, 259 Ill. App. 3d 670, 680 (1994). A sentencing judge is presumed to have considered all the relevant factors, including the mitigating evidence presented, unless the record affirmatively shows otherwise. *People v. Hernandez*, 319 Ill. App. 3d 520, 529 (2001). It is not the function of the reviewing court to reweigh the relevant sentencing factors or substitute its judgment for that of the trial court. *People v. Streit*, 142 Ill. 2d 13, 19 (1991).

¶ 15 Aggravated DWLR, based on 15 or more DWLR convictions, is a class 2 felony that has a sentencing range of three to seven years' imprisonment. 625 ILCS 5/6-303(a), (d-5) (West 2008); 730 ILCS 5/5-8-1(a)(5) (West 2008). Aggravated DUI, which is based on six or more DUIs, is a class X felony that has a sentencing range of 6 to 30 years' imprisonment. 625 ILCS 5/11-501(d)(2)(E); 730 ILCS 5/5-4.5-25 (West 2008).

¶ 16 Based on our review of the record, we do not believe that the trial court abused its discretion in sentencing the defendant. The record reveals that the trial court considered all of the relevant

factors in aggravation and mitigation. In particular, the trial court considered the defendant's extensive criminal history, which included 10 DUIs and 20 DWLRs. The trial court noted that the defendant had been incarcerated before, yet he continued to offend. The trial court further found that a lengthy sentence was necessary to deter the defendant from committing similar crimes and to protect the public. In mitigation, the trial court specifically considered that the defendant had accepted responsibility for his crimes by pleading guilty and also indicated that he wanted to seek substance abuse counseling while incarcerated. Based on its consideration of these factors, the trial court's decision was not unreasonable. See *People v. Phippen*, 324 Ill. App. 3d 649, 651-52 (2001) ("A court has abused its discretion when the record shows that the sentence is excessive and not justified under any reasonable view of the record.").

¶ 17 In so ruling, we reject the defendant's argument that his sentence was excessive. Although the defendant protests that the trial court failed to consider that he pled guilty to the charges against him, the trial court specifically considered that as a mitigating factor when it reduced the defendant's sentence at the hearing on his motion to reconsider sentence. We also reject the defendant's argument that the trial court should have placed greater weight on the fact that he was supporting his disabled wife at the time of the offenses. As the record reveals that the defendant and his wife divorced after his most recent arrest, the trial court's failure to place greater weight on the defendant's relationship with his former wife was not improper.

¶ 18 We also note that the defendant strenuously argues that the trial court's sentence demonstrates that it failed to consider that his conduct injured no one. He also contends that the trial court's sentence does not further the objectives of rehabilitating him and restoring him to useful citizenship. However, in making these arguments, the defendant minimizes his substantial criminal history, something that was clearly proper for the trial court to consider. See 730 ILCS 5/5-5-

3.2(a)(3) (West 2008). In light of the defendant's numerous offenses, the trial court could reasonably conclude that a lengthy sentence was necessary in order to protect the public, even though his instant offenses had not physically injured anyone. Further, as the defendant had been incarcerated several times before yet he continued to offend, the trial court could reasonably conclude that the goal of rehabilitation did not outweigh the need to deter the defendant from committing similar offenses in the future.

¶ 19 Finally, we find to be without merit the defendant's argument that his sentence was excessive in light of his comments to the trial court that he had learned the errors of his ways and that he would quit drinking alcohol. In imposing sentence, the trial court found that the defendant's statements were not credible, explaining that it did not believe that the defendant was "ready to change." As credibility determinations are strictly within the purview of the trier of fact (*People v. Llanos*, 288 Ill. App. 3d 592, 597 (1997)), the defendant's last argument is not a basis to disturb the trial court's sentence.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 21 Affirmed