

2012 IL App (2d) 110096-U  
Nos. 2-11-0096 & 2-11-0097 cons.  
Order filed June 21, 2012

**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).

---

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. 10-CF-1502
	)	
DONALD MILLER,	)	Honorable
	)	George J. Bakalis,
Defendant-Appellant.	)	Judge, Presiding.

---

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-CF-1497
	)	
DONALD MILLER,	)	Honorable
	)	George J. Bakalis,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE HUDSON delivered the judgment of the court.  
Justices Bowman and Schostok concurred in the judgment.

**ORDER**

*Held:* (1) The trial court did not err in denying defendant's motion to withdraw his guilty plea, which was not invalid for the court's failure to admonish him of the collateral consequence of sex-offender registration; (2) the trial court did not abuse its discretion in sentencing defendant to prison terms at or below the midpoints of the applicable ranges: defendant's offenses were not necessarily as mild as he contended, but in any event the sentences were justified by other aggravating factors.

¶1 Defendant, Donald Miller, pleaded guilty to unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2010)) and aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2010)). When he pleaded guilty, he was not told by the trial court that he would have to register as a sex offender for the rest of his life. Thereafter, defendant was sentenced to concurrent terms of five years' imprisonment for aggravated criminal sexual abuse and seven years' imprisonment for unlawful delivery of a controlled substance. After imposing the sentences, defendant was made aware of the fact that he would have to register as a sex offender for the rest of his life. Because of that, defendant moved to withdraw his guilty plea to aggravated criminal sexual abuse, and he also moved the trial court to reconsider the sentences it imposed. The trial court denied the motions, and defendant appealed, arguing that the trial court abused its discretion in denying his motion to withdraw his guilty plea and in sentencing him. We affirm.

¶2 The factual basis for defendant's guilty pleas revealed that a confidential informant introduced an undercover police officer to defendant. On June 23, 2010, after that introduction was made, defendant sold 1.14 grams of an off-white powder to the undercover officer. Although tests revealed that the powder was a noncontrolled substance, there was heroin residue in the substance.

¶3 Thereafter, on June 30, 2010, a police officer, pursuant to a search warrant, searched defendant's home. During that search, the officer found A.M.S., who was 16 years old. A.M.S. told the police that, when she met defendant, she told him that she was 19 years old. As A.M.S.'s relationship with defendant continued, she admitted to defendant that she was 16 years old.

Although defendant took A.M.S. to her home after learning that, he brought her back to his home when she called him on June 29, 2010. At that time, defendant had sexual intercourse with A.M.S., telling A.M.S. that, if anyone asked her how old she was, she should say that she was 19 or 20. When defendant, who was 39 years old in June 2010, was questioned about his encounter with A.M.S., he admitted that he had sex with her after learning that she was 16 years old.

¶ 4 The trial court accepted defendant's guilty pleas to aggravated criminal sexual abuse and unlawful delivery of a controlled substance, finding that his pleas were knowingly and voluntarily entered and supported by a factual basis. At no time during the guilty plea proceedings was defendant made aware of the fact that, because of his conviction of aggravated criminal sexual abuse, he was considered a sexual predator (see 730 ILCS 150/2(E)(1) (West 2010)) and would be required to register as a sex offender for the rest of his life (see 730 ILCS 150/7 (West 2010)).

¶ 5 At the sentencing hearing, it was revealed that defendant comes from a close family, where he and other family members took care of defendant's disabled brother. Although defendant was incarcerated numerous times throughout his adult life, he retained close relationships with his wife and children, supporting them financially and emotionally. In addition to maintaining ties with his family, defendant was involved with his church. This involvement included talking with children at the church about staying out of trouble.

¶ 6 The presentence investigation report (PSI), of which the trial court took notice, revealed that defendant's criminal history is quite extensive. Beginning in 1993, when defendant was 22 years old, he was convicted of his first offense. Throughout the following years, defendant was convicted of over 30 offenses. Of these offenses, seven are felonies. The felony convictions include convictions of manufacturing or delivering cannabis, aggravated driving while under the influence of alcohol (DUI), and driving while his driving privileges were suspended. Because of these

offenses, defendant was often absent from the home. When defendant was arrested for the current offenses, he was on mandatory supervised release.

¶ 7 In addition to the PSI, the court also took notice of defendant's sex offender evaluation. Although, according to the report, defendant was unlikely to commit another sex offense, the report also indicated that defendant may not have been forthcoming with the evaluator. Specifically, the evaluator observed that defendant denied using drugs or drinking alcohol in excess, yet defendant's PSI reflected that defendant has been convicted of drug offenses and several DUIs.

¶ 8 Given these facts and the factual basis for defendant's guilty pleas, the trial court sentenced defendant to concurrent terms of five years for aggravated criminal sexual abuse and seven years for unlawful delivery of a controlled substance. After imposing the sentences, the court asked, "What is the registration on this?" The State responded, "[I]t does come with lifetime registration." Given that, the court's sentencing order reflects that defendant must register as a sex offender.

¶ 9 Thereafter, defendant moved to withdraw his guilty plea to aggravated criminal sexual abuse, claiming that, when he entered his guilty plea, he was unaware of the fact that, as a consequence of his plea, he would be required to register as a sex offender for the rest of his life. Defendant also filed a motion asking the trial court to reconsider the sentences it imposed. The trial court denied both motions. With regard to defendant's claim that he should be allowed to withdraw his guilty plea, the trial court found that, because registering was a collateral consequence of defendant's plea, the court was not required to admonish defendant about sex offender registration. Concerning defendant's motion to reconsider his sentences, the trial court noted that defendant's criminal history is extensive and that defendant tried to minimize his alcohol dependence. This timely appeal followed.

¶ 10 Defendant raises two issues in this appeal. He argues that, because the trial court did not admonish him that, as a consequence of his plea, he would be required to register as a sex offender for the rest of his life, he should have been allowed to withdraw his plea. Additionally, he claims that his sentences are excessive. We address each issue in turn.

¶ 11 The first issue we consider is whether, given that the trial court failed to admonish defendant about the fact that he would have to register as a sex offender for life, the trial court should have granted defendant's motion to withdraw his guilty plea. The decision whether to grant or deny a motion to withdraw a guilty plea rests within the trial court's discretion. *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009). Thus, we will disturb the trial court's decision only if the court abused its discretion. *Id.* A trial court abuses its discretion when its ruling is arbitrary, fanciful, unreasonable, or one that no reasonable person would make. *Id.*<sup>1</sup>

¶ 12 A defendant's right to withdraw a guilty plea is not automatic. *Id.* at 520. Rather, a plea may be withdrawn when the plea was entered based on a misapprehension of the facts or the law, when there is doubt concerning the defendant's guilt, or when justice would be better served by conducting

---

<sup>1</sup>Both parties suggest, to varying degrees, that our review is *de novo*. In making that argument, both parties cite to this court's decision in *People v. DePaolo*, 317 Ill. App. 3d 301, 310 (2000), wherein we determined that the issue of what admonishments a trial court is required to give a defendant is reviewed *de novo*. We find *Paolo* unpersuasive here, because, among other things, our supreme court has reviewed the issue raised here for an abuse of discretion. *Delvillar*, 235 Ill. 2d at 519 (court concluded that trial court did not abuse its discretion in denying the defendant's motion to withdraw his guilty plea based on the fact that the trial court did not advise the defendant that, as a consequence of his guilty plea, he would be deported).

a trial. *Id.* When a defendant claims that his plea was entered through a misapprehension of the facts or the law, the defendant bears the burden of establishing the misapprehension. *Id.*

¶ 13 A misapprehension of the facts or the law may be caused by the trial court's admonishments to the defendant prior to accepting the guilty plea. See *id.* However, the mere fact that the trial court may have failed to properly admonish the defendant does not, standing alone, mandate that the defendant be entitled to withdraw his guilty plea. See *id.* Rather, this court must focus on whether the defendant has affirmatively shown that his guilty plea was not made voluntarily or knowingly. *Id.*

¶ 14 Whether a defendant pleaded guilty voluntarily turns on whether he was made aware of the direct consequences of the plea. *Id.* Direct consequences are those that affect the defendant's sentence and any other punishment that the trial court may impose. *Id.* A consequence that the trial court does not control, *i.e.*, one that may or may not be imposed by an agency over which the trial court has no authority, is not a direct consequence. *Id.* Rather, such consequences are collateral consequences. *Id.* Unlike direct consequences, a trial court need not inform a defendant about the collateral consequences he may face by pleading guilty. *Id.*; see also *People v. Williams*, 188 Ill. 2d 365, 373 (1999) (trial court not required to advise the defendant about the fact that his guilty plea could be used at a subsequent trial, because the decision to use the defendant's guilty plea was made by the Cook County State's Attorney, over whom the trial court had no control).

¶ 15 Requiring a defendant to register as a sex offender is a collateral consequence. *People v. Logan*, 302 Ill. App. 3d 319, 333 (1998); *People v. Murphy*, 207 Ill. App. 3d 539, 541 (1991). Because the requirement that a defendant register as a sex offender is a collateral consequence, controlled by the legislature and not the courts, a trial court's failure to admonish the defendant about registering does not affect the voluntariness of a guilty plea. Thus, even though defendant has cited

to cases in other states where the voluntariness of a defendant's plea is questionable if the defendant was not made aware of the applicable registration requirements, we determine that, under Illinois law, the trial court did not abuse its discretion here when it denied defendant's motion to withdraw his plea on the basis that he was not made aware of the registration requirement before he pleaded guilty.

¶ 16 Although defendant recognizes this, he nevertheless argues that, given the fact that registration requirements have become more onerous, registering as a sex offender should be considered a punishment, and, because it is a punishment, the trial court was required to advise him about the registration requirement before accepting his guilty plea. While we acknowledge that the registration requirements have become more burdensome over the years, that fact does not change our result. The registration requirements have nothing to do with punishing a defendant convicted of a sexual offense. *Logan*, 302 Ill. App. 3d at 333; *Murphy*, 207 Ill. App. 3d at 541. Rather, requiring a defendant to register as a sex offender protects the public, particularly children. *People v. Adams*, 144 Ill. 2d 381, 388 (1991); *People v. Starnes*, 273 Ill. App. 3d 911, 914-15 (1995). All of the onerous requirements to which defendant cites serve that purpose.

¶ 17 Similarly, defendant's reliance on *Padilla v. Kentucky*, 559 U.S. \_\_\_, 130 S. Ct. 1473 (2010), is misplaced. There, the Supreme Court considered whether the defendant's counsel was ineffective for failing to advise the defendant that, if he pleaded guilty, he would be deported. *Id.* at \_\_\_, 130 S. Ct. at 1478. The Court found that counsel has a duty to inform the defendant about the possibility of deportation. *Id.* In reaching this conclusion, the Court recognized that some jurisdictions apply a direct-or-collateral-consequence analysis in deciding what counsel must inform the defendant, but the Supreme Court found that distinction irrelevant in determining whether counsel was ineffective. *Id.* at \_\_\_ n.9, 130 S. Ct. at 1481 n.9.

¶ 18 Here, defendant argues that the trial court, not his attorney, was obligated to inform him about the fact that, as a result of pleading guilty to aggravated criminal sexual abuse, he would have to register as a sex offender for life. Given that difference, we fail to see how *Padilla* is controlling here. See *People v. Gutierrez*, 2011 IL App (1st) 093499, ¶ 58 (“We do not read *Padilla* as rejecting the distinction between direct and collateral consequences in determining whether a defendant’s guilty plea was knowingly and voluntarily entered.”).

¶ 19 The next issue we address is whether defendant’s sentences are excessive. A sentence within the statutory limits for the offense will not be disturbed unless the trial court has abused its discretion. *People v. Coleman*, 166 Ill. 2d 247, 258 (1995). An abuse of discretion occurs if the trial court imposes a sentence that “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).

¶ 20 It is well established that “[a] trial court has wide latitude in sentencing a defendant, so long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation.” *People v. Roberts*, 338 Ill. App. 3d 245, 251 (2003). The existence of mitigating factors does not mandate imposition of the minimum sentence (*People v. Garibay*, 366 Ill. App. 3d 1103, 1109 (2006)) or preclude imposition of the maximum sentence (*People v. Phippen*, 324 Ill. App. 3d 649, 652 (2001)). Rather, it is the trial court’s responsibility “to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case.” *People v. Latona*, 184 Ill. 2d 260, 272 (1998). In reviewing that assessment, we presume that the trial court considered all relevant factors in determining a sentence, and that presumption will not be overcome without explicit evidence from the record that the trial court did not consider mitigating factors or improperly relied on aggravating factors. *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998). In line with that

presumption, we, as a reviewing court, will not reweigh factors the trial court considered. *Pippen*, 324 Ill. App. 3d at 653.

¶ 21 As noted, defendant was convicted of unlawful delivery of a controlled substance, a Class 1 felony (720 ILCS 570/401(c)(1) (West 2010)), and aggravated criminal sexual abuse, a Class 2 felony (720 ILCS 5/12-16(g) (West 2010)). A defendant convicted of a Class 1 felony faces a prison term between 4 and 15 years (730 ILCS 5/5-4.5-30(a) (West 2010)), while a defendant convicted of a Class 2 felony faces a prison term between 3 and 7 years (730 ILCS 5/5-4.5-35(a) (West 2010)). Defendant's sentences of seven years' imprisonment for the Class 1 felony and five year's imprisonment for the Class 2 felony fall at or below the midpoints of these sentencing ranges.

¶ 22 Nevertheless, defendant claims that he should have received shorter sentences given the minimal seriousness of the offenses. Initially, we question defendant's claim that his crimes were trivial, as he was selling a substance for a profit and, in an attempt to avoid criminal liability, he told a troubled minor to lie about her age after he had sex with her. In any event, given the aggravating factors, the trial court did not abuse its discretion in sentencing defendant.

¶ 23 At sentencing, the trial court considered defendant's extensive criminal history, his likelihood of committing similar crimes in the future, and the effects that incarceration would have on defendant and his family. From the trial court's comments, it is clear that the trial court weighed a multitude of factors in reaching its sentencing determination. Defendant asks us to discount the consideration and weighing conducted by the trial court and substitute our own, giving more weight to the nature of the offenses. As a reviewing court, we simply are not permitted to do this. *Pippen*, 324 Ill. App. 3d at 653.

¶ 24 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 25 Affirmed.