

2012 IL App (2d) 120099-U
No. 2-12-0099
Order filed October 18, 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 Mc Henry County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 06-CF-1174
)	
KEVIN O'REILLY,)	Honorable
)	Sharon L. Prather,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to six years' imprisonment for DUI: having already reduced the sentence to reflect the reduction of the classification of the offense from Class X to Class 1, the court was not required to find the nature of the offense less serious and thus reduce the sentence further; and the court was not required to account for good-conduct credit that defendant might or might not have earned had he originally received a Class 1 sentence.

¶ 2 In this appeal, defendant, Kevin O'Reilly, comes before this court following a remand for resentencing. Defendant raises two issues in this appeal. Specifically, he asks us to consider (1) whether a six-year sentence for a Class 1 felony is appropriate when the offense of which he was

convicted was reduced from a Class X to a Class 1 felony, and (2) whether the trial court erred when it refused to allow him to present evidence that he was denied good-conduct credit because of the improper classification of his offense as a Class X felony. For the reasons that follow, we affirm.

¶ 3 The facts relevant to resolving the issues raised in this appeal are as follows. After a jury trial, defendant was convicted of driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2006)). Because this was his sixth conviction of such an offense, he was sentenced as a Class X offender to seven years' imprisonment. See 625 ILCS 5/11-501(c-16) (West 2006). Defendant appealed, arguing that his conviction must be reduced to a Class 1 felony and that, given this reclassification, his cause had to be remanded for a new sentencing hearing. This court agreed. See *People v. O'Reilly*, 2011 IL App (2d) 100159-U.

¶ 4 On remand, a new sentencing hearing was held. At that hearing, defendant admitted that he was an alcoholic, and he expressed remorse for his actions. The evidence also indicated that defendant is an honorable man who is committed to his friends and family, that defendant has participated in many programs in prison, and that defendant has not been the subject of any prison disciplinary action. Given defendant's accomplishments and attitude while in prison, he was considered a "model inmate."

¶ 5 During direct examination of defendant, counsel asked defendant whether he was denied admission to any programs at the prison. The State objected on relevancy grounds, the objection was sustained, and counsel made an offer of proof. Counsel stated that defendant had applied to five programs and was denied admission to these programs only because he had been sentenced as a Class X offender. Counsel asserted that, had defendant been allowed to participate in these programs, he would have earned several months of good-conduct credit.

¶ 6 In his closing argument, counsel urged the court to impose a less severe sentence given that the class of crime of which defendant was convicted had been reduced from a Class X to a Class 1 felony. Counsel claimed that “by definition” defendant’s conviction was now of a “less serious offense.”

¶ 7 In imposing a six-year sentence, the court noted that defendant’s “attitude *** surely does seem much different than it was back [when defendant was originally sentenced].” Despite that fact, the court found that “any lesser sentence would deprecate the seriousness of the nature of the crimes [*sic*] for which the [d]efendant is being sentenced.” Further, the court rejected defendant’s claim that the seriousness of the crime had been reduced given the fact that the DUI was reduced from a Class X to a Class 1 felony. Rather, “[o]nly the classification of the offense ha[d] been reduced as a result of the Appellate Court findings.”

¶ 8 Defendant filed a motion to reconsider his sentence, claiming that the trial court failed to consider the fact that defendant was being sentenced for a Class 1 instead of a Class X felony and should have considered the fact that, because he was improperly sentenced as a Class X offender originally, he was denied the ability to earn additional good-conduct credit. The trial court denied the motion, and this timely appeal followed.

¶ 9 Two issues are raised in this appeal. Specifically, defendant claims that the reduction in the class of DUI of which he was convicted mandates that the seriousness of the offense was also reduced. Moreover, defendant argues that the trial court should have considered that, given the fact that defendant was sentenced as a Class X offender originally, he was unable to participate in various prison programs that would have allowed him to earn good-conduct credit. We consider each issue in turn.

¶ 10 The first issue we address is whether a six-year sentence is appropriate given that the class of defendant's DUI was reduced from a Class X to a Class 1 felony. In reviewing the appropriateness of a sentence, we must defer to the trial court, which is uniquely qualified to weigh the pertinent sentencing factors. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). We will not disturb a sentence within the statutory guidelines unless the trial court abused its discretion. *Id.* A sentence is not an abuse of discretion unless it is at great variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Id.* at 210.

¶ 11 Here, defendant was convicted of DUI, which, because defendant had been convicted of DUI five times in the past, was a Class 1 felony. 625 ILCS 5/11-501(c-1) (4) (West 2006). A defendant convicted of a Class 1 felony faces a prison term between 4 and 15 years. 730 ILCS 5/5-8-1(a)(4) (West 2006). Defendant's six-year sentence is only two years above the minimum.

¶ 12 Nevertheless, defendant argues that the fact that the class of offense for the DUI was reduced necessarily means that the seriousness of the offense was likewise reduced and should result in a lesser sentence. We disagree.

¶ 13 As the State points out in its brief, defendant's six-year sentence is less severe than the seven-year sentence he was originally given. Moreover, the classification of defendant's crime *in general* does not affect the seriousness of defendant's *particular* crime. The trial court found that the DUI of which defendant was convicted was more than minimally serious, noting that anything the court could impose below a six-year sentence would "deprecate the seriousness of the nature of the crimes [*sic*] for which the [d]efendant is being sentenced." Given the fact that the most important factor to consider in imposing a sentence is the seriousness of the offense (see *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007)), the fact that the record does not reflect that the trial court did not consider

mitigating factors or relied on improper aggravating factors (see *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998)), and the fact that we cannot reweigh the trial court's assessment of the evidence (see *People v. Phippen*, 324 Ill. App. 3d 649, 653 (2001)), we cannot conclude that the trial court abused its discretion when it sentenced defendant to six years' imprisonment.

¶ 14 The second issue we consider is whether the trial court erred when it refused to allow defendant to testify about the fact that, but for the fact that he was originally sentenced as a Class X offender, he could have received good-conduct credit for the time he would have spent participating in various programs the prison offered. At sentencing, "[t]he only requirement for admission [of evidence] is that the evidence be reliable and relevant as determined by the trial court within its sound discretion." *People v. Jett*, 294 Ill. App. 3d 822, 830 (1998).

¶ 15 Defendant's argument is based on section 3-6-3(a)(4) of the Unified Code of Corrections (Code) (730 ILCS 5/3-6-3(a)(4) (West 2006)), which provides that defendants other than, among others, those who are convicted of a Class X felony may be awarded additional good-conduct credit if they "satisfactorily complete[]" various enumerated programs the Department of Corrections (DOC) provides. Here, defendant's offer of proof reflected that he sought admission to these types of programs delineated in section 3-6-3(a)(4) of the Code but that he was denied admission because he was convicted of a Class X felony. As the State points out, section 3-6-3(a)(4) of the Code does not prohibit Class X offenders from participating in the various delineated programs. Rather, section 3-6-3(a)(4) dictates only that Class X offenders may not receive good-conduct credit for the time they participated in the programs. Thus, in contrast to what defendant claims, the clear language of section 3-6-3(a)(4) does not provide that defendant's status as a Class X offender in any way prohibited him from participating in the programs.

¶ 16 However, even if defendant was denied admission to the programs based on his status as a Class X offender, the mere fact that defendant may have been admitted to the programs if he had been sentenced as a Class 1 felon originally does not mean that he would have earned the good-conduct credit that he says is now due. Seeking admission to these programs does not trigger the awarding of additional good-conduct credit. Rather, in order to be awarded this additional good-conduct credit, the plain language of section 3-6-3(a)(4) of the Code states that a defendant must “satisfactorily complete[]” the programs “as determined by the standards of the [DOC].” *Id.* Because, even though defendant was considered a “model inmate,” nothing indicated that defendant would have “satisfactorily complete[d]” the programs based on the DOC’s standards, he was not entitled to the award of that additional good-conduct credit. *Id.* As a result, evidence about defendant being denied admission to these programs was irrelevant, because defendant might not have “satisfactorily complete[d]” the programs as determined by the DOC and been awarded good-conduct credit. *Id.*

¶ 17 Relying on *People v. Clankie*, 180 Ill. App. 3d 726 (1989), defendant argues that the court should have considered that, because he is a “model inmate,” he most likely would have been awarded the additional good-conduct credit. We disagree.

¶ 18 In *Clankie*, the trial court sentenced the defendant to four years’ imprisonment. *Id.* at 727. In imposing this sentence, the court found that actually serving four years was too harsh, but, because the defendant would most likely earn good-conduct credit and be released after serving two years, a four-year sentence was not too severe. *Id.* at 729. This court affirmed, noting that, because the trial court believed that an actual sentence of two years was appropriate, the trial court did not err

when it considered the defendant's rehabilitative potential and concluded that, with good-conduct credit, a sentence of four years would result in an actual sentence of two years. *Id.* at 733-34.

¶ 19 We find *Clankie* inapposite. *Clankie* indicates that, in imposing a sentence, it is not improper for the trial court to consider the possibility of a defendant receiving good-conduct credit. Nothing in *Clankie* provides that a trial court *must* consider the possibility of a defendant receiving good-conduct credit. Indeed, in discussing the various cases that had addressed the issue of considering good-conduct credit, this court observed that, in one of those cases, this court determined that the trial court did not consider the defendant's eligibility for good-conduct credit, but, even if it did, such a consideration would not be improper. *Id.* at 733 (citing *People v. Torgeson*, 132 Ill. App. 3d 384, 389 (1985)). Given that a court is not required to consider good-conduct credit, we find defendant's reliance on *Clankie* misplaced.

¶ 20 For these reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 21 Affirmed.