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2012 IL App (3d) 100698-U

Order filed April 3, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellee,)	La Salle County, Illinois,
)	
v.)	Appeal No. 3-10-0698
)	Circuit No. 06-CF-525
MICHAEL L. JOHNSON,)	
)	Honorable
Defendant-Appellant.)	Cynthia M. Raccuglia,
)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when it sentenced defendant upon the revocation of his probation.

¶ 2 Defendant, Michael L. Johnson, pled guilty to unlawful possession of cannabis sativa plant (720 ILCS 550/8(b) (West 2006)) and was sentenced to probation. Defendant's probation was revoked, and he was sentenced to three years imprisonment. Defendant appeals, arguing that the trial court abused its discretion when it resentenced him upon the revocation of his probation.

¶ 3

FACTS

¶ 4 Defendant was charged with unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(g) West 2006) and unlawful possession of cannabis sativa plant (720 ILCS 550/8(b) (West 2006)). On December 13, 2006, defendant pled guilty to unlawful possession of cannabis sativa plant, and the other charge was dropped. The trial court sentenced defendant to probation.

¶ 5 The State subsequently filed a petition to revoke defendant's probation, alleging that defendant had tested positive for cannabis on three separate occasions and that he had signed an admission of substance abuse for cocaine and cannabis use on a fourth occasion. At a hearing on the motion, the State only proceeded on the allegation that defendant had signed a form admitting that he had used cocaine and cannabis. The trial court found that defendant had violated his probation and proceeded to resentence defendant for the underlying offense.

¶ 6 At the sentencing hearing, the court addressed defendant's probation violation, including the three positive tests alleged by the State but not addressed at the revocation hearing. The court noted that based on defendant's behavior while on probation, defendant had not proven to the court that he was serious about rehabilitating himself. After addressing a number of mitigating factors, the court sentenced defendant to three years imprisonment.

¶ 7 Defendant filed a motion to reconsider the sentence, arguing that the trial court had erroneously enhanced the sentence based on allegations that had not been proven by the State at the revocation hearing. At a hearing on the motion, the court stated that it had only considered the violation proven in court, not the three unproven allegations, when it pronounced defendant's sentence. Defendant appeals.

¶ 8

ANALYSIS

¶ 9 Defendant argues that the trial court abused its discretion when it sentenced him following the revocation of his probation. Specifically, defendant contends that the trial court only considered the violation giving rise to the revocation of probation, as well as unproven allegations, when it fashioned defendant's sentence.

¶ 10 Upon the revocation of a sentence of probation, the trial court may resentence a defendant to any sentence that would have been appropriate for the original offense. *People v. Risley*, 359 Ill. App. 3d 918 (2005). While the sentence imposed must not be punishment for the probation violation, the defendant's conduct while on probation may be considered in assessing the defendant's potential for rehabilitation. *People v. Bedenkop*, 252 Ill. App. 3d 419 (1993). We will not disturb a sentence within the statutory range for the offense unless we are strongly persuaded that the sentencing judge intended to penalize the defendant for violating his probation. *Risley*, 359 Ill. App. 3d 918.

¶ 11 Here, the trial court did not abuse its discretion when it sentenced defendant. Unlawful possession of cannabis sativa plant is a Class 2 felony (720 ILCS 550/8(b) (West 2006)) with a sentencing range of not less than three years and not more than seven years (730 ILCS 5/5-8-1(a)(5) (West 2006)). Defendant's sentence was at the bottom of this range. Although the court did discuss defendant's probation violation, we do not find that its mention of the proven and unproven allegations was error. Our careful reading of the record shows that the trial court only considered the proven allegations when it pronounced defendant's sentence; its consideration of defendant's probation violation was permissible as part of its assessment of defendant's potential for rehabilitation. See *People v. Bedenkop*, 252 Ill. App. 3d 419. The trial court did not abuse its discretion when it sentenced defendant.

¶ 12

CONCLUSION

¶ 13 The judgment of the circuit court of La Salle County is affirmed.

¶ 14 Affirmed.