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2012 IL App (3d) 100886-U

Order filed April 6, 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 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-10-0886
)	Circuit No. 09-CF-2863
KIRK THOMPSON,)	
)	Honorable
Defendant-Appellant.)	Carla Alessio-Policandriotes,
)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to seven years' imprisonment.

¶ 2 After entering into an open plea of guilty, defendant, Kirk Thompson, was convicted of forgery (720 ILCS 5/17-3(a)(2) (West 2008)) and sentenced to seven years' imprisonment. Defendant appeals, arguing that his sentence was excessive in light of his history of drug addiction, his eligibility for drug treatment, and the nonviolent nature of the offense. We affirm.

FACTS

¶ 3

¶ 4 On January 7, 2010, defendant was charged by indictment with forgery. 720 ILCS 5/17-3(a)(2) (West 2008). A Treatment Alternatives for Safe Communities (TASC) evaluation was subsequently ordered and conducted on July 19, 2010. The TASC evaluation found defendant was crack cocaine dependent and eligible for TASC services, specifically, intensive outpatient substance abuse treatment.

¶ 5 On August 25, 2010, defendant failed to appear in court because he had been admitted to the hospital. Concerned about defendant's possible drug use while released on bond, the court ordered a drug screen. On August 27, 2010, the drug screen showed that defendant tested positive for cocaine, and his bond was revoked.

¶ 6 On September 1, 2010, the trial court accepted defendant's open plea of guilty. The factual basis underlying defendant's guilty plea was that on December 12, 2009, defendant signed the names of Richard Albert and George Morrow to a check payable to Charles Prunty in the amount of \$1,600. The check was from an account held by Illinois Oxford House. Defendant gave the check to Prunty to cash at First American Bank. When Prunty tried to cash the check, bank employees contacted Albert, who stated the check was fraudulent. Albert further stated that defendant had previously worked at Illinois Oxford House, but did not have authority to write checks.

¶ 7 According to the presentence investigation report (PSI), defendant's prior criminal history occurred between 1987 and 2007 and included driving on a suspended license, fleeing and eluding police, burglary, robbery, possession of a controlled substance, aggravated battery of a peace officer, retail theft, manufacturing and delivery of a controlled substance, and resisting a peace officer. Defendant, who was born in 1965, first used alcohol and cannabis in 1980 and crack cocaine in

1987. While incarcerated for an offense in 2006, defendant pursued substance abuse treatment.

¶ 8 At defendant's sentencing hearing, defense counsel requested TASC probation with inpatient drug treatment. Counsel stated that defendant completed 16 classes for his drug addiction and that the majority of defendant's criminal offenses were drug related. Defendant made a statement in allocution, expressing regret for his conduct and requesting help for his drug addiction. Defendant stated that he was a good, law abiding citizen prior to his drug use.

¶ 9 After hearing all of the evidence and reviewing the PSI and TASC evaluation, the trial court sentenced defendant to seven years' imprisonment. In making its determination, the court noted that defendant had a felony criminal history that started in 1991 and continued until defendant's current offense. The court further noted that the victim in this case, Illinois Oxford House, provided housing for recovering drug addicts, and due to defendant's attempt to steal money from them, put others at risk of using controlled substances. The court found that defendant was not suitable for probation because of his inability to separate himself from his addiction and criminal conduct.

¶ 10 Defendant filed a motion to reconsider sentence, which was denied by the trial court. Defendant appeals.

¶ 11 ANALYSIS

¶ 12 Defendant argues that his sentence of seven years' imprisonment was excessive in light of his history of drug addiction, his eligibility for drug treatment, and the nonviolent nature of the offense.

¶ 13 The Illinois Constitution mandates that all penalties be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11. However, the determination and imposition of a sentence involves

considerable judicial discretion, and we will not reverse a trial court's sentence unless we find that the court abused its discretion. *People v. Alexander*, 239 Ill. 2d 205 (2010). A trial court is in a far better position than an appellate court to fashion an appropriate sentence, based upon firsthand consideration of factors such as defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Streit*, 142 Ill. 2d 13 (1991). Therefore, we will not substitute our judgment for that of the trial court just because we may have balanced the sentencing factors differently. *Id.*

¶ 14 Furthermore, a sentence that falls within the statutory range will not be deemed excessive unless it either departed greatly from the spirit and purpose of the law, or it was manifestly disproportionate to the nature of the offense. *People v. Spencer*, 303 Ill. App. 3d 861 (1999). Forgery, a Class 3 felony, has a sentencing range of two to five years' imprisonment or probation. 720 ILCS 5/17-3(d); 730 ILCS 5/5-4.5-40(a) (West 2008). Due to defendant's criminal history, he was eligible for extended-term sentencing with a sentencing range of five to ten years' imprisonment. 730 ILCS 5/5-4.5-40(a), 5-8-2(a) (West 2008).

¶ 15 Here, we find that the trial court did not abuse its discretion in sentencing defendant to seven years' imprisonment. Defendant argues that the trial court did not properly consider his drug addiction and the nonviolent nature of the offense. However, we cannot substitute our judgment for that of the trial court merely because we would have weighed the factors differently. See *Streit*, 142 Ill. 2d 13. Furthermore, defendant points to nothing in the record which would serve to rebut the presumption that the trial court considered all relevant factors, including any mitigating evidence. See *People v. Hernandez*, 319 Ill. App. 3d 520 (2001). Therefore, in light of defendant's lengthy criminal history and inability to control his drug addiction, we cannot say that the trial court abused

its discretion when it weighed the factors and found that a sentence of seven years was appropriate.

¶ 16

CONCLUSION

¶ 17 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 18 Affirmed.