NOTICE
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2012 IL App (4th) 100856-U

Filed 1/20/12

NO. 4-10-0856

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
SEAN BRIDGMAN,	)	No. 07CF563
Defendant-Appellant.	)	
	)	Honorable
	)	Michael D. Clary,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The court affirmed the trial court's judgment, finding defendant's seven-year sentence was not excessive.

¶ 2 In July 2010, the trial court revoked defendant Sean Bridgman's probation and sentenced him to seven years' imprisonment. Defendant appeals, arguing his sentence is excessive. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2007, the State charged defendant by amended information with three counts of burglary (720 ILCS 5/19-1(a) (West 2006)). In August 2008, the State further amended the information to two counts of attempt (burglary) (720 ILCS 5/8-4(a), 19-1(a) (West 2006)) and one count of burglary (720 ILCS 5/19-1(a) (West 2006)); and defendant pleaded guilty to the two counts of attempt (burglary) in exchange for a seven-year cap on his sentence.

Under the plea agreement, the State agreed to dismiss the remaining count of burglary. Before accepting the plea agreement, the trial court requested the factual basis.

¶ 5 After hearing the factual basis, defendant persisted in his plea, and the trial court accepted the plea agreement, finding the State introduced sufficient evidence to form a factual basis.

¶ 6 At his December 2008 sentencing hearing, defendant testified he committed the crimes to which he pleaded guilty after overdosing on Xanax, for which he had a prescription. Defendant was prescribed Xanax for depression he suffered after his nine-year-old son passed away. Defendant also stated he had a history of drug abuse and expressed a desire to seek help.

¶ 7 On cross-examination, defendant stated he also had a history of abusing cocaine, Vicodin, prescription pills, and marijuana. Defendant testified he last used marijuana about a week before the hearing.

¶ 8 The State requested seven years' imprisonment, arguing defendant's criminal history, which included one sentence to the juvenile department of corrections and three adult felony convictions, and his failure to comply with community-based sentences in the past warranted such a sentence. Defense counsel requested probation to include intensive drug counseling.

¶ 9 The trial court sentenced defendant to 30 months' probation, citing "extenuating circumstances" and stating the sentence was "probably against [its] better judgment." Defendant's probation required him to, *inter alia*, perform 100 hours of community service, take part in the Treatment Alternatives for Safe Communities Program (TASC), and submit to weekly drug and alcohol tests.

¶ 10 In January 2010, the State filed a petition to revoke defendant's probation. The petition alleged defendant violated the terms of his probation when he (1) failed to report for five scheduled drug tests; (2) tested positive for cannabis and methadone on one occasion; benzodiazepines, oxycodone, and methadone on another occasion; and methadone on four other occasions; and (3) was discharged from drug treatment for failing to appear.

¶ 11 In March 2010, defendant admitted he violated his probation by testing positive for benzodiazepines, oxycodone, and methadone on July 7, 2009. The trial court accepted defendant's admission, revoked his probation, and set the matter for resentencing.

¶ 12 At his July 2010 resentencing hearing, defendant testified he had been receiving methadone from a clinic to combat his heroin addiction but was clean and sober due to his 21-day incarceration. Defendant requested another opportunity to comply with probation.

¶ 13 The State noted defendant was extended-term eligible and requested a seven-year sentence based on defendant's criminal record, which included five years' imprisonment for a previous felony theft and a sentence to the juvenile department of corrections for residential burglary and theft of a firearm. Defense counsel requested defendant be resentenced to a term of probation, noting he had not committed any new crimes while on probation in this case. In the alternative, defense counsel requested a three-year sentence if the trial court decided a community-based sentence was improper.

¶ 14 The trial court noted defendant had previously been placed on probation three times and failed to comply with the requirements each time, eventually resulting in revocation. Based on defendant's criminal history and poor track record with community-based sentences, the court resentenced defendant to an extended term of seven years' imprisonment.

¶ 15 In July 2010, defendant filed a motion to reconsider his sentence, arguing his seven-year sentence was excessive "considering defendant's background, the nature of the charge[,] and extenuating circumstances." At the October 2010 hearing on defendant's motion to reconsider his sentence, defendant requested he be considered for impact incarceration. The State informed the trial court defendant was eligible for impact incarceration but objected to its imposition based on his criminal history. Based on the State's objection to impact incarceration, the court denied defendant's request and upheld its original sentence.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Defendant appeals, arguing his sentence is excessive because the trial court failed to adequately consider mitigating factors. Specifically, defendant argues the court failed to adequately consider defendant's "high potential for rehabilitation" based on his accepting responsibility for his actions and his expressed desire to stay clean and sober. Defendant also argues his seven-year sentence is "manifestly disproportionate to the nature of the offenses." The State argues (1) defendant is estopped from arguing his seven-year sentence is excessive because his original plea agreement contained a seven-year sentencing cap; and (2) based on the record, defendant's sentence is not excessive.

¶ 19 The imposition of a sentence is a matter of judicial discretion for the trial court, and this court will not disturb the trial court’s sentencing determination absent an abuse of that discretion. *People v. Perruquet*, 68 Ill. 2d 149, 154, 368 N.E.2d 882, 884 (1977). A trial court's ruling constitutes an abuse of discretion when it is " 'arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *People v. Sutherland*,

223 Ill. 2d 187, 272-73, 860 N.E.2d 178, 233 (2006) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)). A proper sentence balances the seriousness of the offense with the defendant's rehabilitative potential. Ill. Const. 1970, art. I, § 11. Sentences imposed within the statutory guidelines are presumed to be proper and will not be overturned unless the sentence substantially departs from the spirit and purpose of the law and the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90, 871 N.E.2d 1, 16 (2007). When determining whether a trial court's sentence was disproportionate to the nature of the offense, we do not grant greater weight to rehabilitative potential than to the seriousness of the offense. *People v. Shaw*, 351 Ill. App. 3d 1087, 1093-94, 815 N.E.2d 469, 474 (2004). Moreover, "[t]he existence of mitigating factors does not require the trial court to reduce a sentence from the maximum allowed." *People v. Pippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001).

¶ 20 Defendant argues the trial court failed to adequately consider his rehabilitative potential and his sentence is excessive given the nature of the offense. The record belies his arguments. Initially, the court sentenced defendant to probation based almost entirely on his rehabilitative potential. Defendant's subsequent failure to comply with the terms of his probation resulted in its revocation. At his resentencing hearing, the court cited ample evidence of defendant's low rehabilitative potential, including his failure to comply with at least three separate terms of probation. Further, defendant's criminal history shows he committed several thefts over a long period of time. The crimes to which defendant pleaded guilty were Class 3 felonies, and defendant was eligible for an extended-term sentence of 5 to 10 years based on his past convictions for Class 3 felonies. See 730 ILCS 5/5-4.5-40(a) (West 2010). The court found defendant's crime warranted a prison term and imposed a term in the middle of the allowed

sentencing range. We conclude the trial court did not abuse its discretion in resentencing defendant to seven years' imprisonment. Because we conclude defendant's sentence is not excessive, we need not reach the State's remaining argument.

¶ 21 III. CONCLUSION

¶ 22 For the foregoing reasons, we affirm the trial court's judgment. As part of judgment, we grant the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 23 Affirmed.