

NOTICE
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2012 IL App (4th) 110102-U

Filed 7/2/12

NO. 4-11-0102

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
RACHEL A. PHARRIS,)	No. 09CF473
Defendant-Appellant.)	
)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court held that the trial court did not abuse its discretion in sentencing defendant to six years' imprisonment.
- ¶ 2 In March 2011, defendant, Rachel A. Pharris, pleaded guilty to theft (720 ILCS 5/16-1(a)(1) (West 2008)), a Class 2 felony, and forgery (720 ILCS 5/17-3(a)(1) (West 2008)), a Class 3 felony. In September 2011, the trial court sentenced defendant to nonextended prison terms of six years for theft and four years for forgery.
- ¶ 3 On appeal, defendant argues the trial court misapprehended the maximum possible sentences because it erroneously believed she was eligible for extended-term sentencing on the theft count, the higher class felony offense here, thus arguably influencing its sentencing decision. We disagree.

¶ 4

I. BACKGROUND

¶ 5 In March 2010, defendant pleaded guilty to two felony counts: theft of property exceeding \$10,000 and not exceeding \$100,000 in value, a Class 2 felony (720 ILCS 5/16-1(a)(1) (West 2008)) (count I), and forgery, a Class 3 felony (720 ILCS 5/17-3(a)(1) (West 2008) (count II).

¶ 6 According to the factual basis, between August 2005 and February 2009, defendant forged a total of 56 checks against her employer's accounts, amounting to a total of \$29,129.48. In October 2008, defendant made a \$326.44 check purported to have been made by her employer and made payable to her.

¶ 7 At the plea hearing, the State asserted defendant was extended-term eligible on the forgery count for a sentence of between 2 and 10 years' imprisonment. The extended-term eligibility was due to her conviction of theft by deception, a Class 3 felony, in Cook County in 1999. The court thereafter admonished defendant that she was extended-term eligible, as represented by the State, on the forgery count.

¶ 8 At the September 2010 sentencing hearing, the State presented evidence in aggravation, including a presentencing investigation report (PSI) and certified copies of previous convictions. These exhibits show convictions in 1995 for forgery, a Class 3 felony, and in 1999 for theft by deception, a Class 3 felony. The prosecutor argued that defendant was extended-term eligible on the forgery count and stated, in pertinent part, as follows:

"Your Honor, there's also a basis for an extended term of the Defendant. Within ten years of the previous conviction, excluding time spent in custody, Your Honor, in this case the

Defendant was released from custody of the Department of Corrections [(DOC)] *** March 17th, 2000.

Your Honor, clearly, these offenses occurred well within that time period, even the date on which the actual conviction was entered, March 19th of this year."

The State argued for imposition of 7 years' imprisonment on theft and between 8 and 10 years' imprisonment on forgery.

¶ 9 In response, defendant's counsel stated, in pertinent part, as follows:

"The State is arguing that she receive a greater *** sentence on the lesser of the two offenses to which she is pleading guilty.

Now, I have researched that issue. There is nothing I'm aware of that prevents this Court legally from doing that, or obviously, I would present that to the Court. I'm simply saying as a logical matter, it does not make sense, and I believe it would be contra to the spirit and purpose and intent of our sentencing scheme to sentence someone to more time for an offense which is classified as a lesser offense than she can receive for the greater offense."

Defendant's counsel argued for a sentence of either four years' probation or 3 to 5 years' imprisonment on the Class 2 felony theft, but did not make a specific sentencing argument for the Class 3 felony forgery.

¶ 10 Thereafter, the trial court sentenced defendant to six years' imprisonment on theft,

a Class 2 felony, and four years' imprisonment on forgery, a Class 3 felony. Specifically, the court stated, as pertinent to this appeal, as follows:

"So despite my original inclination to go towards restitution and probation, I feel based upon everything that I've stated here, that you serve a term of imprisonment that's appropriate, *on this Class 2 Theft you're extended-term eligible* of six years in the Department of Corrections." (Emphasis added.)

¶ 11 In January 2011, defendant filed an amended motion to reconsider, arguing the trial court erred in finding defendant extended-term eligible.

¶ 12 At the hearing on the motions, the prosecutor admitted he was unaware, at the time of sentencing, that a person cannot be sentenced to more than the maximum they could receive for the most serious class offense. Importantly, the trial court addressed defendant's argument that it erred in finding defendant extended-term eligible and stated, in pertinent part, as follows:

"I did not impose an extended term in this particular case. I did take into account the medical condition as I understood it ***. I took into account her prior criminal history, her likelihood that she would reoffend, took into account she took great advantage of people who trusted her with their livelihood and the family business.

So I was careful. I afforded the Defendant every opportunity to make the Court aware of all the situations that she

was dealing with, and in this end I gave her what some might feel is a lenient sentence by not giving her the maximum. I did sentence her to six years in DOC. In my opinion that has not changed and that is the appropriate sentence."

Thereafter, the court denied the motion to reconsider.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues the trial court misapprehended the maximum possible sentences because it erroneously believed she was eligible for extended-term sentencing on the Class 2 felony theft, thus arguably influencing its sentencing decision. We disagree.

¶ 16 Where a sentence falls within statutory guidelines, it will not be disturbed on review unless the trial court abused its discretion and the sentence is manifestly disproportionate to the nature of the case. *People v. Bridgewater*, 388 Ill. App. 3d 787, 797, 904 N.E.2d 171, 179-80 (2009) (quoting *People v. Grace*, 365 Ill. App. 3d 508, 512, 849 N.E.2d 1090, 1093-94 (2006)). A reviewing court gives great deference to the trial court's judgment because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Alexander*, 239 Ill. 2d 205, 213, 940 N.E.2d 1062, 1066 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 209, 737 N.E.2d 626, 629 (2000)).

¶ 17 "A misstatement of the understanding of the minimum sentence by the trial judge necessitates a new sentencing hearing only when it appears that the mistaken belief of the judge arguably influenced the sentencing decision." *People v. Eddington*, 77 Ill. 2d 41, 48, 394 N.E.2d

1185, 1188 (1979). This standard applies to cases in which the trial court mistakenly believed that a defendant was eligible for an extended-term sentence. *People v. Kunze*, 193 Ill. App. 3d 708, 727, 550 N.E.2d 284, 297 (1990); *People v. Hill*, 294 Ill. App. 3d 962, 970, 691 N.E.2d 797, 803 (1998). In considering whether a mistaken belief influenced the trial court's sentencing decision, we look to whether the trial court's comments show that the court relied on the mistaken belief or used the mistaken belief as a reference point in fashioning the sentence. *People v. Quinones*, 362 Ill. App. 3d 385, 398, 839 N.E.2d 583, 593 (2005) (quoting *Hill*, 294 Ill. App. 3d at 970, 691 N.E.2d at 803).

¶ 18 We presume the trial court considers only competent and relevant evidence in determining a sentence, and the sentence will not be reversed unless it affirmatively appears that the court was misled or improperly influenced by arguments and remarks of counsel and that they produced a sentence contrary to the law and the evidence. *People v. Smith*, 176 Ill. 2d 217, 241, 680 N.E.2d 291, 305 (1997).

¶ 19 Section 16-1(b)(5) of the Criminal Code of 1961 (Criminal Code) provides that theft of property exceeding \$10,000 and not exceeding \$100,000 in value is a Class 2 felony. 720 ILCS 5/16-1(b)(5) (West 2008). Section 5-4.5-35 of the Unified Code of Corrections (Unified Code) provides that a Class 2 felony shall be a nonextended determinate sentence of not less than 3 years and not more than 7 years, with an extended term of not less than 7 years and not more than 14 years. 730 ILCS 5/5-4.5-35 (West 2008). Section 17-3(d) of the Criminal Code provides that forgery is a Class 3 felony. 720 ILCS 5/17-3(d) (West 2008). Section 5-4.5-40 of the Unified Code provides that a Class 3 felony shall be a nonextended determinate sentence of not less than 2 years and not more than 5 years, with an extended term of not less

than 5 years and not more than 10 years. 730 ILCS 5/5-4.5-40 (West 2008).

¶ 20 Section 5-5-3.1(b)(1) of the Unified Code provides that a trial court may consider as a factor in imposing an extended-term sentence a defendant's previous felony conviction of the "same or similar class felony or greater class felony, when such conviction has occurred within 10 years after the previous conviction, excluding time spent in custody." 730 ILCS 5/5-3.2(b)(1) (West 2008).

¶ 21 Defendant contends the trial court's statement "on this Class 2 Theft you're extended-term eligible of six years" at the sentencing hearing shows it misapprehended the applicable sentencing range, arguably influencing its sentencing decision. Specifically, defendant asserts this statement shows the sentence was not the result of a proper understanding of the law. For support, defendant cites *People v. Myrieckes*, 315 Ill. App. 3d 478, 734 N.E.2d 188 (2000). There, the Third District, under plain-error review, remanded for resentencing "[b]ecause the record suggests that the trial court erroneously believed that defendant was eligible for extended-term sentencing." *Myrieckes*, 315 Ill. App. 3d at 484, 734 N.E.2d at 194. That case is distinguishable because several counts were extended-term eligible if the victim was under age 12 (two victims were 12 but none was younger than 12); the trial judge misstated the law as to eligibility, admonishing defendant he was extended-term eligible if the victim of any of the cases was 12 or younger but defendant was statutorily eligible only if the victims were *under* 12; the judge did not indicate whether he believed the defendant was eligible for an extended-term, but the parties' arguments suggested they believed he was; and the defendant did not raise this issue at sentencing or in a posttrial motion. *Myrieckes*, 315 Ill. App. 3d at 483-84, 734 N.E.2d at 193.

¶ 22 Also, defendant asserts her case is controlled by *People v. Hausman*, 287 Ill. App. 3d 1069, 679 N.E.2d 867 (1997). There, the trial court stated the minimum sentence was three years when it was two years. *Hausman*, 287 Ill. App. 3d at 1071, 679 N.E.2d at 868. This court remanded for resentencing because based on the record, under plain-error review, the court's misstatement that it imposed the minimum sentence of three years exceeded the "arguable" standard set forth in *Eddington*. *Hausman*, 287 Ill. App. 3d at 1072, 679 N.E.2d at 869. That case is distinguishable because the record here does not show the trial court misstated the minimum or maximum authorized sentencing range.

¶ 23 Here, the record shows the trial court merely misspoke on defendant's extended-term eligibility on theft and was not influenced by an erroneous belief as to her extended-term eligibility. Importantly, the court never misstated the law as to defendant's extended-term eligibility or used the extended-term range as a reference point when pronouncing sentence. At the motion to reconsider hearing, the prosecutor acknowledged he incorrectly argued for its imposition on the forgery count, but noted he never argued defendant was extended-term eligible on theft. The record shows the State argued (a) for imposition of the maximum 7-year prison sentence for theft, and (b) that defendant was extended-term eligible on the forgery count based on a Class 3 felony conviction within the previous 10 years and an 8- to 10-year prison sentence on that forgery count. The record does not show the State's arguments influenced the court's sentence; rather, it shows the court carefully considered the nature of the offenses, defendant's criminal history, and the aggravating and mitigating factors. As the court is presumed to have properly understood the evidence and applied the law concerning extended-term eligibility, defendant's tenuous argument is unpersuasive. We note the issue of whether defendant was

