

NOTICE
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2012 IL App (4th) 111021-U

Filed 4/16/12

NO. 4-11-1021

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
AARON J. YOUNG,)	No. 08CF1111
Defendant-Appellant.)	
)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant's six-year sentence for aggravated driving under the influence (DUI) was not excessive, we find the trial court did not abuse its discretion.
- ¶ 2 In September 2009, a jury found defendant, Aaron J. Young, guilty of four counts of aggravated DUI. In November 2009, the trial court sentenced him to 12 years in prison. On appeal, this court affirmed defendant's convictions but vacated his sentence and remanded for a new sentencing hearing. In October 2011, the trial court sentenced defendant to an extended term of six years in prison.
- ¶ 3 On appeal, defendant argues his six-year prison sentence was excessive. We affirm.
- ¶ 4 I. BACKGROUND
- ¶ 5 In June 2008, the State charged defendant by information with aggravated DUI

with two prior DUI convictions, a Class 2 felony (625 ILCS 5/11-501(a)(2), (c-1)(2) (West Supp. 2007) (as amended by Pub. Acts 94-113, 94-609, 94-963, 95-149, and 95-355)), alleging he drove or was in actual physical control of a motor vehicle at a time when he was under the influence of alcohol on March 30, 2008. In July 2009, the State filed three additional aggravated DUI charges against defendant (counts II, III, and IV). Count II alleged defendant drove a motor vehicle at a time when his blood-alcohol concentration (BAC) was 0.08 or more and he had twice previously committed DUI or similar offenses (625 ILCS 5/11-501(a)(1) (West Supp. 2007)).

¶ 6 In September 2009, the State filed two additional counts, charging defendant with aggravated DUI, a Class 4 felony, alleging he drove or was in actual physical control of a motor vehicle and did not possess a driver's license at the time of the DUI (count V) (625 ILCS 5/11-501(d)(1)(G) (West Supp. 2007) (as amended by Pub. Acts 94-114, 94-963, 95-149, and 95-355)), and aggravated DUI, a Class 4 felony, alleging he drove or was in actual physical control of a motor vehicle with a BAC of 0.08 or more when he did not have a driver's license (count VI) (625 ILCS 5/11-501(d)(1)(G) (West Supp. 2007) (as amended by Pub. Acts 94-114, 94-963, 95-149, and 95-355)). Defendant pleaded not guilty.

¶ 7 In September 2009, defendant's jury trial commenced. The State dismissed counts III and IV. Champaign County sheriff's deputy Billy Pryor testified he was on duty as a Rantoul police officer on March 30, 2008, at approximately 12:31 a.m. In a shopping center parking lot, he heard a loud stereo coming from a parked vehicle. He observed defendant sitting behind the wheel of the vehicle with the engine running. He also noticed "a strong odor of alcohol" coming from defendant, who stated he had consumed several beers. Defendant failed several field-sobriety tests. Deputy Pryor then arrested him. On cross-examination, Deputy Pryor testified

three people were in the car. A female sat in the front passenger seat and a Hispanic male sat in the back.

¶ 8 Rantoul police officer Christina Reifsteck testified to the loud car stereo and the three occupants inside. She stated the engine was running and smoke could be seen coming from the exhaust. She also stated defendant could not finish the field-sobriety tests.

¶ 9 The parties stipulated defendant's driver's license had been revoked at the time of the offense. The parties also stipulated defendant's BAC was 0.183. The State then rested.

¶ 10 Defendant testified he went to Keefer's Bar at approximately 8 or 9 p.m. with Tiffany Green and her boyfriend. Green, the designated driver, drove defendant's mother's car. At approximately 12:30 a.m., all three left the bar to smoke cigarettes in the car. Defendant stated he had no intention of exercising physical control over the vehicle.

¶ 11 On cross-examination, defendant testified he was in the driver's seat, but he could not remember if the car was on. He stated he possessed the keys and could have driven the car. He did not dispute he was under the influence of alcohol.

¶ 12 Following closing arguments, the jury found defendant guilty on all four counts. Defendant filed a motion for a new trial, which the trial court denied. In November 2009, the court conducted the sentencing hearing. The State informed the court that defendant was not eligible for Class X sentencing, contrary to earlier belief, because he committed his second Class 2 felony before he had been convicted of the first. The court sentenced defendant to 12 years in prison on count II and treated the other counts as merged.

¶ 13 On November 18, 2009, a notice of appeal was filed. On December 23, 2009, defendant filed a *pro se* motion for reduction of sentence. The trial court took no action on the

motion. This court remanded the cause with directions to strike the notice of appeal and consider defendant's motion. *People v. Young*, No. 4-09-0870 (Feb. 10, 2010) (unpublished order under Supreme Court Rule 23).

¶ 14 In March 2010, defendant's newly appointed counsel filed a supplemental motion for a new trial, alleging defendant might have pleaded guilty had he not been wrongly told he was eligible for Class X sentencing. Counsel also filed a motion to reconsider sentence, arguing the sentence was excessive and the trial court erred in using his prior DUI convictions as aggravation after they had been used to elevate the current DUI charge to a Class 2 felony. The court denied the motions.

¶ 15 On appeal, defendant argued he was improperly convicted of one count of aggravated DUI and his 12-year sentence was excessive. This court affirmed defendant's convictions but vacated his extended-term sentence for a Class 2 felony and remanded for a new sentencing hearing. *People v. Young*, 2011 IL App (4th) 100227-U, ¶ 28.

¶ 16 In October 2011, the trial court conducted the new sentencing hearing on remand. The court indicated it reviewed the updated presentence report and the case file, and defendant offered a letter and a prison activity card as mitigation. Following arguments, the court resentenced defendant to six years in prison. In November 2011, defendant filed a motion to reconsider sentence, which the court denied. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Defendant argues the six-year maximum extended-term sentence was excessive where he merely sat in the driver's seat of a vehicle while under the influence of alcohol. We disagree.

¶ 19 The Illinois Constitution mandates "[a]ll penalties shall 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. "In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed." *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)).

¶ 20 A trial court has broad discretion in imposing a sentence. *People v. Chester*, 409 Ill. App. 3d 442, 450, 949 N.E.2d 1111, 1118 (2011). "A reviewing court gives great deference to the trial court's sentencing decision because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the cold record." *People v. Evangelista*, 393 Ill. App. 3d 395, 398, 912 N.E.2d 1242, 1245 (2009). Thus, the court's decision as to the appropriate sentence will not be overturned on appeal "unless the trial court abused its discretion and the sentence was manifestly disproportionate to the nature of the case." *People v. Thrasher*, 383 Ill. App. 3d 363, 371, 890 N.E.2d 715, 722 (2008).

¶ 21 In the case *sub judice*, a jury found defendant guilty of aggravated DUI, a Class 4 felony. 625 ILCS 5/11-501(d)(2) (West Supp. 2007). A defendant convicted of a Class 4 felony is subject to a sentencing range of one to three years in prison. 730 ILCS 5/5-4.5-45(a) (West 2008). Because of defendant's criminal record, he was subject to extended-term sentencing. The maximum extended-term sentence for a Class 4 felony is six years in prison. 730 ILCS 5/5-4.5-45(a) (West 2008). As the trial court's extended-term six-year sentence for aggravated DUI was

within the relevant sentencing range, we will not disturb the sentence absent an abuse of discretion.

¶ 22 Defendant argues the circumstances of his crime indicate the trial court abused its discretion in sentencing him to six years in prison. Defendant contends there was no evidence he had been driving while he was under the influence. Moreover, and despite his criminal history, defendant argues the sentence was excessive because he was not a threat to anyone as he sat in an idling vehicle to keep warm while smoking a cigarette.

¶ 23 In this case, the trial court stated it had reviewed the appellate court order, the case file, and the updated presentence investigation report. The report indicated defendant was born in 1983. As an adult, defendant had a long list of traffic offenses, including driving while his license was suspended. He also had convictions for criminal damage to government property, possession of a controlled substance, felony escape from a peace officer, possession of more than 15 but less than 30 grams of methamphetamine-manufacturing chemicals, and DUI. Defendant was no stranger to the Department of Corrections.

¶ 24 The trial court stated it remembered "in surprising detail the trial and the prior sentencing hearing." The court found the presentence investigation report was "staggering" in the sense that defendant "had been involved with the criminal justice system, essentially nonstop since 1998, and has rarely, frankly if ever, complied with any of the terms of any of the order[s] that any of the myriad of Judges that he has appeared in front of." The court found nothing to indicate defendant's potential for rehabilitation had changed.

¶ 25 While the evidence may have shown defendant was not a threat to anyone when he committed the offense, the presentence investigation report did show he had little respect for

the law. Given his poor rehabilitative potential, a maximum sentence of six years in prison was justified. We find no abuse of discretion.

¶ 26

III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 28 Affirmed.