

NOTICE

Decision filed 02/14/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 100374-U  
NOS. 5-10-0374 & 5-10-0375 cons.  
IN THE  
APPELLATE COURT OF ILLINOIS

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIFTH DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Marion County.
	)	
v.	)	Nos. 06-CF-348 & 06-CF-397
	)	
	)	
ANDREW S. SZATKOWSKI,	)	Honorable Sherri L. E. Tungate &
	)	Honorable Dennis E. Middendorff,
Defendant-Appellant.	)	Judges, presiding.

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JUSTICE CHAPMAN delivered the judgment of the court.  
Presiding Justice Donovan and Justice Goldenhersh concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not abuse its discretion when it sentenced the defendant to an aggregate of 10 years' imprisonment for burglary and harassment of a witness.

¶ 2 The defendant entered open pleas of guilty to burglary (720 ILCS 5/19-1(a) (West 2006) (No. 06-CF-348)) and harassment of a witness (720 ILCS 5/32-4a (West 2006) (No. 06-CF-397)), both of which are Class 2 felonies. The circuit court sentenced the defendant to four years' imprisonment for burglary and reduced the defendant's sentence for harassment of a witness from seven years to six years' imprisonment. The defendant filed a motion to reduce his sentences on October 21, 2009. On July 16, 2010, the court denied the motion to reduce his sentence. The defendant appeals to this court, arguing that his sentence was excessive in light of the nature of his offenses and his background. The defendant's appeals were consolidated for this disposition. For the following reasons, we affirm.

¶ 3

## BACKGROUND

¶ 4 The defendant and an accomplice burglarized a transmission shop on July 30, 2006. The defendant stole a stereo and an undetermined amount of money. He then sold the stereo to Nathan Woods. When the police questioned Woods about the stereo later, he stated that he purchased it from the defendant. He also mentioned that after the burglary, he and the defendant and two other people drove to a person's home so the defendant could purchase "dope." Woods included all of this information in a written statement. He was then considered a potential witness to the burglary. Subsequently, the defendant was arrested for burglary and posted bail.

¶ 5 On August 15, 2006, three days after he posted bail, the defendant saw Woods walking down the street and approached him. He told Woods that he was "going to beat his ass for narcing [*sic*]" and that Woods's "funeral was coming." He also said that Woods was going to be in trouble for revealing from whom the defendant purchased drugs. Two days later, Woods and his mother went to the police department to report the threatening statements made by the defendant. One of the defendant's coworkers witnessed the threats made by the defendant and corroborated Woods's statement. The defendant was thereafter charged with harassing a witness (720 ILCS 5/32-4a (West 2006)).

¶ 6 At his sentencing hearing on December 13, 2006, the defendant was sentenced on both his burglary conviction and his harassment conviction. As the defendant was charged with harassing a witness while he was released on bail for burglary, his sentences were to run consecutively. 730 ILCS 5/5-8-4(d)(8) (West 2006). The court sentenced the defendant to four years' probation on the burglary conviction and seven years' imprisonment on the harassment conviction. The court stayed the defendant's prison sentence. It set the defendant's motion to reduce his prison sentence for four years in the future, at which point it would reconsider the defendant's prison sentence if the defendant successfully completed

his four years' probation. The defendant did not complete his probation because he (1) failed to report monthly to the probation office in writing, (2) failed to report to the probation office on three specified dates, (3) failed to abstain from using drugs, and tested positive for THC on several occasions, and (4) failed to undergo recommended treatment.

¶ 7 The State filed a petition to revoke probation. On September 29, 2009, the court held a sentencing hearing on the burglary case, for which the defendant failed to meet the terms of his probation, and held a hearing on the motion to reconsider the sentence in the harassment case. Following the revocation of the defendant's probation, the court sentenced the defendant to four years' imprisonment for the burglary and reduced the defendant's original sentence from seven years to six years on the harassment conviction. The defendant then filed a motion to reduce his sentences and argued that the sentences were excessive. The circuit court denied the motion. This timely appeal followed.

¶ 8 ANALYSIS

¶ 9 The defendant argues that his sentence was excessive in light of the nature of his offenses, his background, and his rehabilitative potential. We start by noting that the circuit court has considerable deference when imposing a sentence, and such decisions will not be overturned absent an abuse of discretion. *People v. Wilson*, 143 Ill. 2d 236, 250-51 (1991). Indeed, the circuit court is in the best position to determine an appropriate sentence. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). As the circuit court is in the best position to determine an appropriate sentence, a reviewing court may not substitute its own judgment for that of the circuit court. *Id.*

¶ 10 The defendant contends that his sentence was too long because he presented mitigating evidence about his background and rehabilitative potential. He argues that he should be sentenced to the minimum sentence in each case. When an imposed sentence is within the statutory range, the circuit court has not abused its discretion unless the sentence

is manifestly disproportionate to the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). Further, "[e]ven where there is evidence in mitigation, the court is not obligated to impose the minimum sentence." *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010) (citing *People v. Madura*, 257 Ill. App. 3d 735, 740-41 (1994)).

¶ 11 The statutory maximum sentence for a Class 2 felony is seven years' imprisonment. 720 ILCS 5/19-1(b) (West 2008). As the defendant was sentenced to four years' imprisonment on the burglary conviction and six years' imprisonment on the harassment conviction, he was sentenced well below the maximum for each conviction. The defendant argues that the threats made to Woods were insignificant and Woods did not even report the threats to the police for two days. However, that Woods reported the incident to the police at all is evidence that Woods was afraid of the defendant and felt that he may be in danger. The defendant lists several offenses that are more severe and have a 10-year prison term. However, the defendant fails to note that his sentence is an aggregate of two offenses, burglary and harassing a witness. He was given several opportunities to avoid any prison time, yet he did not take advantage of those opportunities by repeatedly failing to meet the terms of his probation. In fact, the court even reduced the original sentence for the harassment conviction from seven years to six. Therefore, his sentences were not disproportionate to the offenses.

¶ 12 The defendant contends that the circuit court did not consider his rehabilitative potential when sentencing him. This contention is contrary to the record. A defendant's rehabilitative potential is only one of several factors a circuit court considers when imposing a sentence. *People v. Goodwin*, 208 Ill. App. 3d 829, 831 (1991). The court also considers the defendant's history and character, the seriousness of the offense, the need to protect society, and the need for deterrence and punishment. *Id.* The supreme court held that a sentencing court that reviewed the presentence investigation report, heard arguments by

counsel, and heard the defendant's own statement of remorse carefully considered mitigating and aggravating factors for sentencing. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010).

¶ 13 In this case, the initial sentencing court gave the defendant an opportunity to clean up his act and avoid a prison term, as is evident by the court setting the defendant's motion to reconsider the prison term for four years in the future. The defendant had four years to follow the rules of his probation and prove to the court that a prison term was unnecessary. The defendant failed to do so when he did not show up for appointments with the probation office and tested positive for THC. Interestingly, during the defendant's first sentencing hearing, he stated that a prison term would not help him and that he would just start using drugs again upon his release. It appears that the defendant will use drugs with or without being sentenced to a prison term. The court read the transcript from the previous sentencing hearing, the defendant's presentence investigation report, as well as letters from the defendant's friends and family. It carefully considered several factors, both mitigating and aggravating, when determining the defendant's sentence.

¶ 14 **CONCLUSION**

¶ 15 For the foregoing reasons, the judgment of the circuit court of Marion County is affirmed.

¶ 16 Affirmed.