NOTICE
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2012 IL App (5th) 100421-U

NO. 5-10-0421

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Saline County.
	)	
v.	)	No. 08-CF-100
	)	
DENNIS D. JACKSON,	)	Honorable
	)	Walden E. Morris,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH 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 in sentencing the defendant where it considered all relevant factors and the sentence imposed was well within the statutory limits.

¶ 2 The defendant, Dennis D. Jackson, appeals from the sentence imposed by the circuit court of Saline County upon the revocation of his probation for the offense of unlawful possession of a weapon by a felon. He argues the circuit court abused its discretion in sentencing him to a five-year term of imprisonment by failing to sufficiently consider his potential for rehabilitation, his lack of a serious criminal record, that the circumstances of the offense neither caused nor threatened harm to another, and that the defendant's culpability was negligible. The defendant also argues that he is entitled to an $80 credit against his $5,000 fine for 16 days spent in presentence custody. We find no abuse of discretion in the sentence but agree that the defendant is entitled to an $80 credit against his fine for time spent in presentence custody.

¶ 3 On July 10, 2009, the defendant entered a negotiated plea of guilty to one count of unlawful possession of a weapon by a felon. In return, five additional counts were nol-prossed and the State agreed to recommend a sentence of 48 months' probation and a $5,000 fine. The factual basis for the plea was stated as follows:

> "Judge, if we were to proceed to a trial in this count, the People would call Officer Brent Davis and Officer David Morris who would testify that on April 4, 2008, they were dispatched to Apartment 17A at 927 West Barnett Street in Harrisburg, Illinois; that Mr. Davis knocked on the door. The defendant came to the front door and said, oh, shit, looks like I'm going to jail and shut the door.
>
> Officer Morris then went around to the side window of the apartment where he could see through the damaged–a hole in the blinds which were damaged. And he could also see another black male which he later identified as Anthony Watson.
>
> Officer Morris then observed the defendant, Mr. Watson, taking cushions off the couch and ripping the liner of the cushions. He observed both of the individuals, the defendant and Mr. Watson, trying to place several items inside what appeared to be and was in fact a pair of jeans. They then pushed the jeans under the liner and inside the couch.
>
> Thereafter, after he entered the apartment, Officer Morris would testify that he went to the area where he had seen the defendant and Mr. Watson placing the items. He observed the jeans, pulled them out. As he did so a Walther P .22[-]caliber semi-automatic pistol, along with three magazines fell out of the jeans being 28 rounds of .22[-]caliber ammunition. Mr. Watson denied knowing anything about the gun. The defendant was arrested and subsequently charged with this offense. This all happened in Saline, County, Judge."

¶ 4 The court accepted the defendant's plea of guilty and inquired into the defendant's

criminal history. It then sentenced the defendant to 48 months' probation and to pay a $5,000 fine together with the costs of the action and a $25-per-month probation fee. The remaining charges against the defendant were nol-prossed. The defendant was ordered to comply with the mandatory conditions of probation, among which was that the defendant not violate any criminal statute of any jurisdiction.

¶ 5 On January 15, 2010, an amended petition to revoke the defendant's probation was filed charging the defendant with violating the terms of his probation by, among other things, having violated a criminal statute in that he had pled guilty to two counts of disorderly conduct in the City of Harrisburg. Following an evidentiary hearing on May 4, 2010, the circuit court found the defendant guilty of these violations of the conditions of his probation and revoked his probation.

¶ 6 The matter came on for sentencing on July 13, 2010. No evidence in aggravation or mitigation was offered. The presentence investigation report revealed the following relevant facts. The defendant owed the county over $5,000 in fines on various offenses which remained unpaid, although the defendant had been making some payments. The defendant was 25 years of age and had received a GED while incarcerated in the Department of Corrections on a prior felony conviction for the Class 1 offense of unlawful possession of a controlled substance with the intent to deliver. He had received a six-year sentence in 2005, which he served on "impact incarceration." This was the defendant's only prior felony conviction.

¶ 7 The defendant had a juvenile conviction for operating a motor vehicle without a valid driver's license. He had been convicted as an adult of two counts of failing to wear a seat belt (petty), criminal trespass to government-supported property (Class A), criminal trespass to state-supported land (Class A), fleeing or attempting to elude a police officer (Class A), disregarding a traffic control device (petty), criminal trespass to state-supported land (Class

A), and operating an uninsured motor vehicle, driving while license suspended (Class A), and criminal trespass to land (petty). The defendant had several young children.

¶ 8 The State argued in aggravation that the defendant's conduct did threaten serious harm because it involved a weapon. The defendant had an extensive criminal history. A lengthy prison sentence was necessary to deter others from committing the same offense. The State recommended the maximum sentence of 14 years' imprisonment.

¶ 9 The defense argued in mitigation that most of the defendant's criminal history consisted of traffic and ordinance violations, as well as trespass charges. The defendant's conduct did not threaten or cause serious physical harm to another and the defendant did not contemplate that his conduct would cause or threaten serious physical harm to another. The defendant was not in actual possession of the weapon, which was found in someone else's pants in someone else's apartment. The defendant did not use the weapon. The defendant's criminal conduct was not a result of circumstances that are likely to reoccur because the defendant would not again put himself in such a position. The defendant has been trying to pay his back due fines. The defense recommended a sentence of no more than the minimum three-year prison term with credit for time served.

¶ 10 The defendant made a statement in allocution. He talked about his difficult childhood. He also explained that his children and their mother lived in government housing from which he was barred. The trespass convictions were a result of him visiting his children there. He would often babysit for the children while their mother worked.

¶ 11 The court found in mitigation that the defendant did not contemplate that his conduct would, nor did his conduct, cause or threaten serious physical harm to another. The court found in aggravation that the defendant had a history of prior delinquency or criminal activity and that a sentence of imprisonment was necessary to deter others from committing the same crime. The court also considered the presentence investigation report, the financial impact

statement regarding the cost of incarceration, and the statement of the defendant. The court expressed the opinion that a continuation of a sentence of probation would deprecate the seriousness of the offense and be inconsistent with the ends of justice. Accordingly, the court sentenced the defendant to the Illinois Department of Corrections for a period of five years, followed by a two-year term of mandatory supervised release. The defendant was given credit for any time served. All prior fines and fees were confirmed and the defendant was ordered to pay the costs of the action.

¶ 12 The defendant's *pro se* motion to reconsider sentence was denied following a hearing on August 31, 2010. The defendant appeals.

¶ 13 On appeal the defendant argues that his sentence is excessive because his culpability was negligible, his criminal record is not serious, and he has the potential to be rehabilitated to productive citizenship. He argues that the weapon was owned by his codefendant and that he constructively possessed the weapon only by virtue of being present in the home of a third, mutual friend. No one was threatened or harmed by the defendant's conduct. The defendant was only 25 years of age, young enough to be rehabilitated, and his criminal history was not serious, including only one felony conviction for unlawful possession of a controlled substance with intent to deliver. He argues that his convictions for criminal trespass stem from his attempts to visit his children. He argues that any sentence greater than the statutory minimum is excessive and an abuse of the circuit court's discretion. He asks that we reduce his sentence to the statutory minimum of three years' imprisonment.

¶ 14 When a criminal defendant's probation is revoked, the circuit court may sentence the defendant to any sentence that would have been appropriate for the original offense. *People v. Young*, 138 Ill. App. 3d 130, 134-35 (1985). The defendant was originally convicted of the Class 2 felony offense of unlawful possession of a weapon by a felon, for which, given the defendant's previous conviction of a Class 1 felony under the Illinois Controlled

Substances Act (720 ILCS 570/100 *et seq.* (West 2010)), the range of prison sentence was 3 to 14 years. 720 ILCS 5/24-1.1(e) (West 2010).

¶ 15 A reviewing court must afford great deference to the circuit court's judgment regarding sentencing because the circuit 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, and habits. *People v. Romero*, 387 Ill. App. 3d 954, 978 (2008). This court must not substitute its judgment for that of the circuit court and cannot reduce a defendant's sentence unless that sentence constitutes an abuse of discretion. *Romero*, 387 Ill. App. 3d at 978. A sentence within the statutory limits will not be deemed to be excessive unless it is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *Romero*, 387 Ill. App. 3d at 978 (quoting *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 16 There is a strong presumption that the circuit court based its sentencing determination on proper legal reasoning, and the court is presumed to have considered any evidence in mitigation that is before it. *People v. Bowman*, 357 Ill. App. 3d 290, 304 (2005). However, the circuit court need not give greater weight to the defendant's potential for rehabilitation than to the seriousness of the offense. *Bowman*, 357 Ill. App. 3d at 304. A court abuses its discretion only where no reasonable person would take the view adopted by it. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005).

¶ 17 We find no abuse of discretion in the circuit court's imposition of a five-year term of imprisonment. We note that this term is much closer to the minimum allowable sentence than it is to the maximum allowable sentence. We further note that although the defendant's criminal history does not include more than one very serious offense, it is quite extensive and indicates an unwillingness to abide by the law. This weighs against the defendant's potential for rehabilitation. The defendant's sentence is neither greatly at variance with the spirit and

purpose of the law nor manifestly disproportionate to the nature of the offense. It does not constitute an abuse of discretion, and we refuse to reduce it on appeal.

¶ 18 We do, however, hereby reduce the defendant's fine of $5,000 by $80 to reflect a $5 credit for each of the 16 days he spent in presentence custody. See 725 ILCS 5/110-14(a) (West 2010). The State concedes this point.

¶ 19 For the foregoing reasons, the judgment of the circuit court of Saline County is hereby affirmed as modified.

¶ 20 Affirmed as modified.