

Nos. 1-11-3288 and 1-12-1368
(Consolidated)

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 8510
)	
GREGORY COBBINS,)	Honorable
)	Thomas M. Davy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not abuse its discretion in sentencing defendant to maximum extended-term prison sentence of 14 years. The mitigating factors cited by defendant were before the court for its consideration. The court's references to defendant's ongoing denials of guilt were appropriate, especially in light of the relative credibility of the State and defense evidence, and the court expressly relied on two additional appropriate factors in imposing sentence.
- ¶ 2 Following a jury trial in the circuit court of Cook County, defendant Gregory Cobbins was convicted of burglary and sentenced to 14 years of imprisonment. On appeal, defendant contends that the trial court abused its discretion in sentencing him to the maximum extended-term sentence for his offense. In particular, he argues that the trial court erred by (1) misapprehending the law and facts; and (2) not properly considering the nature of his offense in light of his rehabilitative potential.
- ¶ 3 At trial, the evidence presented showed that at about 9 a.m. on April 22, 2010, defendant

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burglarized a vacant house at 2040 West 67th Place in Chicago. A "Remax" real estate agent, who managed the unoccupied house since December 2009, testified that it was posted "for sale" and its doors were locked with new locks. Neither defendant nor anyone else had been given permission to enter the house on the morning in question nor to destroy the bathroom tiles. A neighbor testified that he saw defendant enter the house through the front door carrying tools. Because the neighbor knew that the house was unoccupied and had previously been locked, he called the police. Police officers responded to the scene in about two minutes, and an officer testified to finding the front door of the house pried open and hearing "breaking and smashing noises." The officer then found defendant breaking a tiled bathroom wall with a tire iron and prying pipes out of the wall. Another officer testified that defendant was found in the bathroom and that he heard an iron object fall to a porcelain surface when the first officer told him to "drop it." The officers immediately arrested defendant, who later gave a statement admitting to entering the house through the already-open front door and breaking the bathroom wall to take the copper pipes therein.

¶ 4 Defendant testified that he lived with his elderly mother across the street from the property in question. He admitted that he entered the house in question without permission, and knew that it was unoccupied and for sale. However, defendant denied that he entered the house carrying tools, broke the tiles, or tried to remove piping. He maintained that the police found and stopped him in the front room rather than a bathroom. He testified that he entered the house because he saw the open front door and wanted to ensure that there were no children hiding inside. At first, he testified that he did so as a "member of the block club committee," but admitted on cross-examination that he was not a member. He explained that "as far as the block is concerned I pitch in and help" and attend committee meetings, but admitted that his last attendance was in August 2009 and he merely "came in and made a showing."

¶ 5 On this evidence, the jury found defendant guilty of burglary.

¶ 6 Defense counsel filed a general post-trial motion. Defendant also filed several *pro se* post-

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trial motions, alleging that the State destroyed exculpatory evidence, falsified documents, and "allowed a witness to testify who did not have any connection with this case." He challenged the absence of forensic evidence linking him to the tire iron and challenged the introduction of photographs taken by Remax rather than the police. He further alleged that the 911 call was made by a woman and thus "would have proved that I am innocent."

¶ 7 The pre-sentencing investigation report (PSI) showed defendant's prior felony convictions: burglary in 2005; possession of burglary tools in 2001 and 2003; possession of a controlled substance in 2002, 1997, and 1986; and possession of cannabis in 2001. For each of the controlled substance offenses, defendant was sentenced to probation that terminated unsatisfactorily. He received prison sentences of one year for each of the convictions for possession of burglary tools, and three years for the 2005 burglary conviction. Defendant was born in 1960, one of five children raised by married parents, and did not endure any childhood abuse or neglect. Until his arrest for the instant offense, he lived with his ailing and retired mother. Defendant's 1987 marriage was dissolved in 2006, but he maintains contact with his ex-wife. He had three children with his ex-wife and keeps in contact with them. He left high school in the eleventh grade and had a substantial if somewhat irregular employment history until the instant arrest. Defendant stated that he drank alcohol in moderation until 2009, used cocaine from 1997 until 2001, and smoked marijuana from 1977 to 2009. He received drug treatment while he was incarcerated.

¶ 8 Following arguments, the court denied the *pro se* and counsel-filed post-trial motions and proceeded to sentencing. The parties accepted the PSI without correction or addition. The State argued that defendant was "caught redhanded tearing up *** a house in his own neighborhood to pull piping out of that house to sell for scrap metal" and that his "extensive criminal background" rendered him eligible for an extended-term sentence. Defense counsel argued in mitigation that the instant offense was a non-violent crime against an unoccupied property, and that his criminal history was "not the sum and substance of his life" in that he was 50 years old, was previously employed,

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and had children and an ailing mother.

¶ 9 Defendant addressed the court, arguing that there was "absolutely no copper in that house" and "how could I do all of that destruction in [as] short a period of time" as two minutes.

¶ 10 Before passing sentence, the court stated that it considered the contents of the PSI in light of the aggravating and mitigating factors. It recited defendant's criminal history, finding that the burglary conviction subjected him to an extended-term sentence. The trial court noted that defendant could have been convicted upon the officers' testimony alone, and that his contention that there was no copper in the building belied familiarity with the burglarized property. It also noted that while some people were trying to preserve defendant's neighborhood by rehabilitating homes, others, including defendant, were breaking into those homes to steal copper pipes and other valuable materials which "does no good at all to the Englewood community." The court sentenced defendant to 14 years of imprisonment, expressly basing the sentence on defendant's prior convictions and "the necessity to deter others from committing the same offense." The trial court noted that "it does appear *** throughout [] your testimony at trial that you are attempting to paint yourself in an unbelievably good position" and found his trial testimony to be "incredible."

¶ 11 Defendant's motion to reconsider his sentence alleged that his 14-year prison sentence was excessive in light of his background, that the court improperly considered matters implicit in the offense, and that the sentence improperly penalized defendant for exercising his right to a trial. Following arguments by the parties, the trial court denied the motion to reconsider. The trial court noted that while some people in defendant's neighborhood of Englewood "are attempting to save or perhaps rehabilitate that neighborhood," defendant's actions demonstrated that others believe that "just because a house is for sale or under rehab that they can break in there." The trial court found defendant's sentence to be appropriate "to send a notice to the public." The court based its ruling on defendant's background as well as the fact that he was "not only in denial but insists that he is attempting to better his neighborhood" through the block club committee and "consistently lied

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throughout the course of his testimony." This appeal followed.¹

¶ 12 On appeal, defendant contends that the court abused its discretion in sentencing him to the maximum extended-term sentence for his offense, particularly by: (1) misapprehending the law and facts in considering his denials of guilt as an aggravating factor and in finding that he lied regarding block club committee membership; and (2) not properly considering the nature of his offense in light of his rehabilitative potential.

¶ 13 Burglary is a Class 2 felony, punishable by imprisonment for 3 to 7 years or an extended term of 7 to 14 years. 720 ILCS 5/19-1(b); 730 ILCS 5/5-4.5-35(a) (West 2010). An extended-term sentence may be imposed for a felony where the defendant has a prior conviction for a felony of the same or greater class within the previous 10 years, excluding time spent in custody. 730 ILCS 5/5-5-3.2(b)(1) (West 2010).

¶ 14 A sentence within statutory limits is reviewed on an abuse of discretion standard, so that we may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. So long as the trial court does not consider incompetent evidence or improper aggravating factors, nor ignore pertinent mitigating factors, it has wide latitude to sentence a defendant to any term within the applicable statutory range. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). This broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010).

¶ 15 In imposing a sentence, the trial court must balance the relevant factors, including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *Id.* at 213. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor,

¹Defendant filed a notice of appeal within 30 days of the post-trial and sentencing hearing. He was also granted a late notice of appeal from the denial of his post-sentencing motion. Both appeals have been consolidated here.

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character, mental capacity, social environment, and habits. *Snyder*, 2011 IL 111382, ¶ 36. The court does not need to expressly outline its reasoning for sentencing, and we presume that the court considered all mitigating factors on the record absent some affirmative indication to the contrary. *Perkins*, 408 Ill. App. 3d at 763. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Alexander*, 239 Ill. 2d at 214; *People v. Brewer*, 2013 IL App (1st) 072821, ¶ 57.

¶ 16 While a trial court should not arbitrarily consider a defendant's insistence on his innocence as an aggravating factor, a continued insistence on innocence and accompanying lack of remorse may legitimately convey to the court that "the defendant is an unmitigated liar and at continued war with society," thus affecting his prospects for rehabilitation. *Perkins*, 408 Ill. App. 3d at 763, quoting *People v. Ward*, 113 Ill. 2d 516, 528 (1986). Circumstances that may distinguish the latter from the former include the credibility of the victim and his account of events compared to the defendant's credibility and account of events. *Id.* at 763. Conversely, the fact that the trial court used certain language such as "aggravating," or did not use certain other language such as "remorse" or the like, in pronouncing sentence is not dispositive; that is, the determination of whether the trial court punished a defendant for claiming innocence or properly considered his lack of remorse as an aggravating factor should not focus on a few words or statements by the court but consider the record as a whole. *Ward*, 113 Ill. 2d at 526-28.

¶ 17 Here, defendant does not challenge that he was eligible for an extended-term prison sentence of up to 14 years, but contends that his 14-year sentence is excessive in light of the court's alleged: (1) misapprehension of the law and facts; and (2) failure to consider the nature of his offense in light of his rehabilitative potential. However, as to the latter, the trial court was properly apprised of all the mitigating factors now cited by defendant, many of which were expressly argued by defense

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counsel at the sentencing hearing.

¶ 18 As to the court's references to defendant's ongoing denial of the offense, as stated above, that is not a *per se* inappropriate sentencing factor. Notably, the trial court addressed one of the points distinguishing appropriate and inappropriate use of ongoing denial of guilt when it found that defendant's trial testimony was not credible. The court's finding is supported by the record: a neighbor testified to seeing defendant enter the vacant house with tools, police officers discovered him in the bathroom with a tire iron, and one of the officers saw him breaking a bathroom wall and prying at the pipes therein.

¶ 19 Nor did defendant enhance his credibility by falsely claiming membership in a neighborhood committee intended in part to fight crimes such as his instant offense. We reject defendant's argument that he refuted the falsehood of the claim with a vague assertion that he assisted the committee or attended a committee meeting several months before the day in question. Neither diminishes the irony and audacity of invoking membership in the neighborhood watch in an effort to evade punishment for the sort of crime that necessitates that watch. It is reasonable to conclude that this falsehood established that defendant is "an unmitigated liar and at continued war with society" so that the court's sentencing consideration of his denial of guilt was appropriate.

¶ 20 Moreover, the court did not rest its sentencing decision solely or even mainly upon defendant's ongoing denials of guilt. Rather, the court expressly relied upon two other appropriate aggravating factors. One such aggravating factor is defendant's history of felony convictions, including a 2005 burglary conviction, indicating that he was not deterred by previous prison sentences but indeed escalated his conduct from offenses such as drug possession and possession of burglary tools. The other factor is the need to deter persons from breaking into unoccupied homes in neighborhoods such as Englewood to steal pipes and other recyclable materials, thus rendering once-liveable homes into ruined shells and furthering the decline of the neighborhood. In short, defendant's offense was nonviolent but far from victimless. We conclude that the trial court did not

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abuse its discretion in sentencing defendant to 14 years of imprisonment.

¶ 21 Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 22 Affirmed.