

2013 IL App (1st) 120040-U

FIFTH DIVISION  
August 16, 2013

No. 1-12-0040

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 999
	)	
DEVON HARRIS,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PALMER delivered the judgment of the court.  
Justices Howse and Taylor concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Class X term of 10 years affirmed over defendant's claim that sentence was excessive and an abuse of discretion.
- ¶ 2 Following a bench trial, defendant Devon Harris was found guilty of burglary, and sentenced as a Class X offender to 10 years' imprisonment. On appeal, defendant solely contends that his sentence was excessive in light of the nature of the crime and his nonviolent criminal background.

¶ 3 Defendant was convicted of this offense on evidence showing that on the morning of December 30, 2010, he and two others were found inside the single-family residence at 6951 South Loomis Street in Chicago. The house was a rental property owned by Karl Frazier, unoccupied at that time and "boarded up[.]" Frazier maintained a security system in the home which was managed by ADT. On December 30, 2010, he received the third phone alert in a week concerning suspicious activity at the property.

¶ 4 After receiving the alert, Frazier asked that police be called. Frazier met them at the property, and used his keys to open the door for the officers who went inside and brought out defendant and two other men. Frazier subsequently inspected the property and found copper piping in the living room. He also observed that the shower, bathroom and water heater were damaged by someone removing the copper pipes. Frazier noted that after the previous alert from ADT, he "went through the whole house[.]" and did not see the copper piping or damage at that time.

¶ 5 Chicago police officer Spisak responded to the burglar alarm call at the subject property, and upon arrival, he heard a loud banging noise and commotion inside. He and his partner positioned themselves around the house, and his partner subsequently informed him that she observed a man stick his head out of a broken window, and then retreat back into the house. The broken window was located on the side of the house directly above a milk crate stacked on top of a garbage can. The officer radioed for assistance, and additional officers arrived on the scene and surrounded the house. Frazier subsequently opened the door for the officers, and upon entering the residence, Officer Spisak immediately observed a large pile of copper piping in the living room and saw defendant and another man run upstairs. The officers pursued the men, placed them under arrest, and found a third suspect hiding in the basement.

¶ 6 Defendant testified that he and two friends had entered the house on South Loomis to "get out of the cold so that [they] could smoke marijuana." One friend entered the house through a broken window and let defendant and the other man inside. The men started to smoke but did not finish because the police arrived and arrested them. Defendant denied ripping out the copper piping and stacking it in the living room. He stated that he had previously smoked marijuana on the porch of the house, but had not previously been inside.

¶ 7 In rebuttal, the State recalled Officer Spisak, who testified that he did not recover cannabis or cannabis paraphernalia inside the house, or from the suspects. The State also called Detective Kim Perez, who testified that she interviewed defendant after his arrest, and he told her that he had been inside the home on two other occasions. As part of her investigation, she asked the responding officers whether cannabis had been recovered from the scene, and they told her that it had not.

¶ 8 Defendant was subsequently found guilty of burglary, and the court ordered a pre-sentence investigation report (PSI). At sentencing, the State informed the court that defendant had two prior Class 2 convictions for possession of a stolen motor vehicle and burglary, for which he was sentenced to Cook County boot camp. The State contended that defendant failed to take advantage of those opportunities, and instead chose to break the law again. The State further argued the seriousness of the crime, which showed that defendant had "no regard for a community and a neighborhood."

¶ 9 In mitigation, defense counsel requested the minimum Class X term of six years' imprisonment. Counsel stated that defendant was 21 years old, that he had a full life ahead of him, and that his problems started after he left high school. Counsel also stated that defendant had the support of family members, that her interactions with defendant had "been all positive[,]" and that it seemed that "deep down he's a good kid." In allocution, defendant stated

that he "wanted to do right" for himself and his family, and wanted to prove that he could be "productive in society if given one more chance."

¶ 10 The court sentenced defendant to 10 years' imprisonment. In imposing that term, the court announced that it had considered the PSI and the statutory factors in aggravation and mitigation. The court observed that defendant had previously been given the benefit of the boot camp program, and that his recidivism showed that it was unsuccessful. As to the offense at bar, the court found that he "was there not just for the purpose of drugs[,] but he was there once again, involving himself with other people's property." The court denied defendant's motion to reconsider that sentence, and defendant appealed.

¶ 11 In this court, defendant contends that his sentence should be reduced to the 6-year minimum for a Class X sentence, or, in the alternative, that the matter be remanded for resentencing. He asserts that the 10-year sentence was excessive because the offense was nonviolent, and because the felonies elevating him to Class X status were also nonviolent. He also claims that the court did not properly weigh certain factors, including his prior employment as a maintenance man at a church, and the hardship his incarceration would cause to his one-year-old child.

¶ 12 The imposition of sentence is a matter of judicial discretion, and the trial court's sentencing decision is entitled to great deference and weight. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). Where a sentence falls within the statutory range for the offense of which defendant was convicted, a reviewing court may not modify that sentence absent an abuse of discretion by the trial court. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995).

¶ 13 In this case, defendant was sentenced as a Class X offender to a term of 10 years, which falls within the sentencing range of 6 to 30 years provided for this class of offense. 730 ILCS 5/5-4.5-25(a) (West 2010). The record shows that in reaching its sentencing determination, the

court explicitly relied on the PSI, the factors in aggravation and mitigation, the facts of the case, and defendant's background. The 10-year sentence is near the lower end of the range of sentences that could have been imposed under Class X sentencing (730 ILCS 5/5-4.5-25(a) (West 2010)), and the trial court believed that this term was appropriate because defendant had been given leniency in the past, but failed to take advantage of the opportunities presented, and again resorted to criminal activity.

¶ 14 Although defendant claims that the sentence is excessive and was imposed without proper consideration of certain mitigating factors, the record shows otherwise. *People v. Burke*, 164 Ill. App. 3d 889, 890 (1987). The court specifically referred to its consideration of the PSI and the factors in aggravation and mitigation, and also spoke to defendant's history and his propensity to prey on the rights of others. The court thus decided that a term above the minimum was appropriate, and it is not our prerogative to rebalance these same factors differently and independently conclude that this sentence is excessive. *People v. Burke*, 164 Ill. App. 3d at 902. We thus find no abuse of discretion, and have no basis to disturb the 10-year sentence imposed by the trial court. *People v. Almo*, 108 Ill. 2d 54, 70 (1985).

¶ 15 Notwithstanding, defendant asserts that the deference afforded to the trial court's decision is not unfettered, and that reviewing courts have not hesitated to reduce a sentence when it is "greatly at variance with the purpose and spirit of the law." *People v. Center*, 198 Ill. App. 3d 1025, 1032 (1990). He cites, *inter alia*, *People v. Maggette*, 195 Ill. 2d 336, 355 (2001), *Center*, 198 Ill. App. 3d at 1035, and *People v. Anderson*, 142 Ill. App. 3d 240, 243 (1985) as examples of instances where reviewing courts have exercised their authority to reduce burglary sentences, and notes the ways in which he believes his case presents similar or more favorable facts and circumstances than those presented in those cases.

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¶ 16 The supreme court has held, however, that "a claim that a sentence is excessive must be based on the particular facts and circumstances of that case. If a sentence is appropriate given the particular facts of that case, it may not be attacked on the ground that a lesser sentence was imposed in a similar, but unrelated, case." *People v. Fern*, 189 Ill.2d 48, 62 (1999). Thus, we find defendant's arguments unpersuasive, and affirm the judgment of the circuit court of Cook County.

¶ 17 Affirmed.