

2013 IL App (1st) 120536-U

FOURTH DIVISION
September 12, 2013

No. 1-12-0536

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. 11 CR 9706
)	
RONALD COLEMAN,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse and Justice Lavin concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly considered mitigating factors when sentencing defendant to six years in prison for possession of heroin with intent to deliver.
- ¶ 2 Following a bench trial, defendant Ronald Coleman was convicted of possession of a controlled substance with intent to deliver and sentenced to six years in prison. On appeal, defendant contends the trial court did not adequately consider mitigating factors in imposing his sentence. We affirm.

¶ 3 The evidence at trial established that an undercover narcotics operation revealed defendant and codefendant Alvin Thompson, who is not a party in this appeal, were selling drugs near 726 North Lawndale about 11:30 a.m. on May 25, 2011. The court found defendant guilty of possession of heroin with intent to deliver.

¶ 4 The pre-sentence investigation (PSI) report detailed defendant's criminal history, including felony convictions for aggravated battery in 2003, forgery in 2001, and drug-related offenses in 2001, 1999, 1998, 1995, and 1991. Although defendant completed rehabilitation in 1994, he admitted to using heroin every day, and marijuana and cocaine at least once a week. The PSI also stated defendant had been self-employed as a barber from 2005-2011, earning approximately \$1,600 monthly.

¶ 5 At the sentencing hearing, defendant maintained that his last felony conviction was nine years ago, and since then he had been gainfully employed as a barber. Defendant conceded he had a drug problem, and asked the court for probation with drug treatment.

¶ 6 Defendant also presented testimony of his mother, daughter, son, and two sisters. His mother, Ali Jenkins, testified that defendant lost his father when he was 10 years old, and was a trusting person led astray by friends. She knew defendant had a drug problem, and would support his rehabilitation efforts. Jenkins also mentioned her own struggle with drug addiction, but noted she had been clean for almost 20 years.

¶ 7 Defendant's daughter, LaRonda Coleman, a 22-year-old nursing student, testified that defendant was active in each of his four children's lives, but hid his drug use from the family. Defendant was supporting his youngest son, Keshawn Coleman, a senior in high school.

¶ 8 Defendant's son, Ronald Coleman, III, a 20-year-old employed student, testified that although he lived with his mother, his father had always been his best friend. He knew about his father's "problems", but was never exposed to his drug use.

¶ 9 Defendant's younger sister, Arlene Hill, testified that defendant never displayed negative behaviors around the family, and his 14 nephews looked up to him as he was their only uncle. Defendant was a dependable barber despite his drug addiction, and simply needed help.

¶ 10 Defendant's older sister, Latrisha Rencher, testified that defendant used drugs, but was not a drug dealer. Defendant's positive influence was the reason none of her nephews had been in jail.

¶ 11 In response to defendant's mitigation, the State presented aggravating evidence that the 40-year-old defendant had a 20-year history of felony convictions. The State also added two felony convictions for retail theft in 1996 and 2001 which were omitted from the PSI. The State maintained that although defendant never brought drugs or violence around his family, given his criminal background, he should be sentenced to time in prison.

¶ 12 In sentencing defendant, the court considered "the evidence, the gravity of the offense, the pre-sentence investigation report, the financial impact of incarceration, and the evidence and testimony in aggravation and mitigation, the substance abuse issues and treatment, and the potential for rehabilitation, the possibility of sentencing alternatives, the statement of the defendant, and all other matters deemed relevant and reliable." The court stated that although defendant is not bringing drugs around his family, he is a drug dealer who is affecting other people's families. The court alluded to the testimony of family members as the impetus for reducing defendant's sentence by four years, and imposed a six-year sentence. Upon the recommendation of the court, defendant was assigned to serve his term at a prison dedicated to substance abuse treatment.

¶ 13 On appeal, defendant asserts six years in prison is an excessive sentence where he is an addict convicted of possessing narcotics, has been gainfully employed since 2005, is an

important and valued member of his family, and has already received the drug treatment he needs in prison. He contends the mandatory minimum of four years would be more sufficient.

¶ 14 A reviewing court may not modify a defendant's sentence absent an abuse of discretion by the trial court. *People v. Snyder*, 2011 IL 111382, ¶ 36. When mitigating factors are presented to the trial court, there is a presumption that the court considered them, absent some contrary evidence from the record. *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998). In reviewing a claim that a sentence within statutory limits is excessive, an abuse of discretion occurs when the sentence is "greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54 (1999). A reviewing court may not substitute its judgment for that of a sentencing court merely because it would have weighed the factors in aggravation and mitigation differently. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010).

¶ 15 Here, the trial court properly considered mitigating and aggravating factors and did not abuse its discretion in imposing defendant's sentence. Defendant was convicted of possession of a controlled substance with intent to deliver, a Class 1 felony carrying a sentence of "not less than 4 years and not more than 15 years." 730 ILCS 5/5-4.5-30 (Westlaw 2010). The court sentenced defendant to six years, only two years more than the statutory minimum.

¶ 16 Defendant's drug addiction, employment as a barber since 2005, and status as an important family member were conveyed through the testimony of his family members. The court specifically referenced the testimony of his family members as prompting its decision to reduce defendant's sentence by four years. Additionally, defendant's PSI detailed his on-going drug addiction and attempts at treatment, which resulted in defendant being assigned to a prison dedicated to substance abuse treatment. We reject defendant's assertion that his sentence should be reduced because, at the time of filing this appeal, defendant had received almost two years of

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drug treatment in prison. As a reviewing court, it would be improper to substitute our judgment for that of the trial court to weigh this mitigating factor. A review of the record shows the court properly weighed mitigating evidence against defendant's multiple felony conviction and the harm he posed to society as a drug dealer and found that he warranted a prison term above the statutory minimum. In light of this record, we cannot find that the trial court abused its discretion in imposing sentence.

¶ 17 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 18 Affirmed.