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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Winnebago County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-5081
	)	
GARY W. TILLET,	)	Honorable
	)	Joseph G. McGraw,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Schostok and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* Because the trial court considered the proper factors when sentencing defendant, it did not abuse its discretion in sentencing defendant to the maximum extended-term sentence for his burglary conviction. Further, we vacated defendant's \$200 DNA fee, modified his probation fee, and applied a full credit toward the child advocacy center and mental health court fees. Thus, we affirmed as modified.

¶ 2 On February 3, 2010, defendant, Gary W. Tillett, pleaded guilty to the offense of burglary with intent to commit theft (720 ILCS 5/19-1(a) (West 2008)), and the trial court sentenced him to 24 months' probation. Defendant was also assessed various fees and fines. Thereafter, the State filed an amended petition to vacate probation alleging that defendant committed the misdemeanor

offense of possessing drug paraphernalia, failed to report to the probation department as directed, failed to submit to random drug testing, failed to pay his probation fee, and had used heroin. Following a hearing, the trial court found that defendant failed to report to the probation department on certain dates, failed to submit to random drug testing, and willfully failed to pay his monthly probation fee. Thereafter, the trial court revoked defendant's probation and conducted a sentencing hearing. Following that hearing, the trial court sentenced defendant to the maximum extended-term sentence of 14 years' imprisonment. Defendant appeals, contending that (1) the trial court's imposition of the maximum extended prison term was excessive and constituted an abuse of discretion, and (2) various fees and fines imposed must vacated and the amount owed recalculated. We affirm as modified.

¶ 3

#### I. Background

¶ 4 On March 4, 2009, the State filed an indictment against defendant alleging that he committed burglary with the intent to commit theft. On February 10, 2010, defendant entered into a guilty plea. The trial court admonished defendant that, based on his prior criminal record, he would be eligible for extended-term sentencing, which carried a sentencing range of 3 to 14 years' incarceration. During the plea hearing, the State provided a factual basis which reflected that, on December 16, 2008, Amelia Diaz Daleon was shoveling snow in her driveway when defendant, who was using a walker, approached her and helped her shovel. Daleon heard her phone ring inside her house and left to answer it; and later realized that she left her purse inside her City of Rockford work vehicle, which was not locked. Upon returning, her purse, along with defendant, were gone. Shortly after the incident, defendant's neighbor saw defendant running away from the scene while not using his walker. Defendant stipulated to the State's factual basis. The trial court sentenced defendant to 24 months' probation in addition to 180 days in the county jail, with a credit of 42 days for time served

and staying the remaining 96 days. The trial court also imposed \$25-per-month probation fee, a \$200 DNA fee, \$10 for a child advocacy center fee, and \$10 for a mental health court fee.

¶ 5 On September 13, 2010, the State filed a petition to revoke probation. The petition alleged that, on September 4, 2010, defendant possessed drug paraphernalia, namely 20 hypodermic needles and “corner baggies” used to inject heroin. On October 7, 2010, the trial court lifted the stay on defendant’s jail term and ordered him to serve the remaining 96 days of his 180-day term.

¶ 6 On November 4, 2010, the State filed an amended petition to revoke probation. In addition to the drug paraphernalia allegation, the amended petition alleged that defendant had failed to report to the probation department as directed, had failed to submit to random testing, had willfully failed to pay probation fees, and had used heroin. The State subsequently struck the possession-of-drug-paraphernalia and drug-use allegations.

¶ 7 On July 29, 2011, the trial court conducted a hearing on the amended petition’s remaining allegations. Following the hearing, the trial court found that defendant had violated the terms of his probation by failing to appear at the probation department on March 16, 2010, and April 1, 2010; by failing to submit to random drug-and-alcohol testing on each of those dates; and by willfully failing to pay his monthly probation fee. The trial court ordered a presentence investigation report (PSI) to be prepared.

¶ 8 Defendant’s PSI reflected that he had a criminal history dating back to 1982, which included an aggravated battery conviction in 1986; a conviction in 1997 for residential burglary; convictions in 1990 and 2000 for forgery; a felony theft conviction in 2000; convictions in 2005 and 2006 for violating an order of protection; and traffic violations. On various occasions, defendant had been given a sentence of probation, which he subsequently failed to complete. With respect to defendant’s health, the PSI reflected that he had undergone a hip replacement, had suffered broken

spine discs, and had lifting restrictions. Defendant had been prescribed medication for pain relief and seizures. Defendant was also diagnosed as bipolar and having anxiety and depression. The PSI further reflected that defendant believed that he suffered from drug abuse; “there was not one drug that he had not used”; and he “preferred opiates.” The PSI reflected that defendant had attempted suicide as recent as January 2011. Since being incarcerated following the revocation of his probation, defendant had been prescribed Citalopram, Naproxen, Omeprazole, Phenytoin, and Tramadol.

¶ 9 On October 14, 2011, the trial court conducted a sentencing hearing. The State did not present any evidence in aggravation. Defendant’s mother, Linda Palmer, testified on defendant’s behalf. Palmer testified regarding defendant’s medical issues. Palmer testified that defendant “is \*\*\* a very loving, caring son who is very interested in his family and their welfare, and he’s very beneficial to our family.” Palmer asked for leniency due to defendant’s health issues.

¶ 10 Defendant gave a statement in allocution. Defendant acknowledged that he “failed to honor [his] end of [the] contract.” Defendant apologized to the trial court for “wasting the court’s time.”

¶ 11 In sentencing defendant, the trial court noted that it considered the PSI, evidence offered in mitigation, and defendant’s history of substance abuse. The trial court concluded that “a sentence of probation would be inconsistent with the ends of justice and would deprecate the seriousness of the offense.” The trial court noted that defendant’s burglary did not cause or threaten serious harm, but that his “criminal conduct is a result of circumstances likely to recur.” The trial court noted that defendant “has some physical conditions which may cause some hardship, but at least [at] the time of this burglary was committed he was able to flee on foot away from the crime scene.”

¶ 12 The trial court further noted that defendant’s burglary demonstrated his decision to “take property from another person, using his stealth or cunning to create circumstances where he would

have the opportunity to take that property from them, or from their car.” The trial court concluded that “[a] substantial sentence is necessary to deter others” and that defendant was eligible for an extended-term sentence. The trial court noted that, because of drugs or other reasons, defendant had “become a career criminal.” The trial court sentenced defendant to a term of 14 years’ imprisonment, and in doing so, noted that “society has to be protected from a criminal like you who continues to re-offend and blame others, which you did right to the very end.”

¶ 13 Defendant timely appealed.

¶ 14 II. Discussion

¶ 15 A. Sentence

¶ 16 Defendant’s first contention on appeal is that the trial court’s imposition of the maximum extended-term sentence for burglary after his probation was revoked constituted an abuse of discretion. Defendant argues that, “in light of the minimal nature of the charge” for which he was being sentenced, along with his physical and mental health issues, the trial court abused its discretion by giving him the maximum prison term possible.

¶ 17 A reviewing court will give substantial deference to the trial court’s sentencing decision because the trial court, having observed the defendant and the proceedings, is in a better position to consider relevant factors, such as the defendant’s credibility, demeanor, moral character, mentality, environment, habits, and age. *People v. Snyder*, 2011 IL 111382, ¶ 36. “ ‘Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently.’ ” *People v. Alexander*, 239 Ill. 2d 205, 213 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 209 (2000)). Therefore, a reviewing court may not modify a defendant’s sentence absent an abuse discretion, which 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. *Snyder*, 2011 IL 111382, ¶ 36. Further, a sentence that falls within the statutory limits will not be disturbed unless it is manifestly disproportionate to the nature of the offense. *People v. Goyer*, 265 Ill. App. 3d 160, 169 (1994).

¶ 18 In this case, the trial court did not abuse its discretion when it sentenced defendant to the maximum extended-term sentence. The record reflects that the trial court considered the appropriate factors in mitigation and aggravation. With respect to mitigation, the trial court noted that defendant's conduct did not cause or threaten serious harm (see 730 ILCS 5/5-5-3.1(a)(1) (West 2010)) and that defendant suffered from physical conditions that "may cause some hardship" (see 730 ILCS 5/5-5-3.1(a)(12) (West 2010)). With respect to aggravation, the trial court noted that defendant had an extensive criminal history (see 730 ILCS 5/5-5-3.2(a)(3) (West 2010)) and that the sentence imposed was necessary to deter others (see 730 ILCS 5/5-5-3.2(a)(7) (West 2010)). The record further reflects that the trial court considered other relevant factors, such as defendant's moral character, mentality, and habits. For example, the trial court noted defendant "used stealth or cunning" to create circumstances where he could take property from the victim's vehicle, and further, that defendant blamed others for his failure to adhere to his probation requirements.

¶ 19 The trial court properly considered the appropriate sentencing factors. For us to reweigh those factors and substitute our judgment for that of the trial court would be an improper exercise of our powers as a reviewing court. See *Alexander*, 239 Ill. 2d at 214-15 (holding that the reviewing court improperly exercised its powers by reweighing the trial court's consideration of sentencing factors). Accordingly, because the trial court properly weighed the sentencing factors, we conclude that defendant's sentence was not greatly at variance with the spirit or purpose of the law, or manifestly disproportionate to the nature of the offense. See *id.* at 215.

¶ 20

B. Fees and Fines

¶ 21 Defendant's next contention is that various fees imposed against him must be vacated or reduced. Specifically, he argues that the \$200 DNA fee should not have been imposed because his DNA had already been collected on May 7, 2003, following a prior theft conviction. Defendant argues that the \$600 fee assessed for probation services must be reduced because, as a result of his probation being revoked, he was not under the supervision of the probation department for the full 24 months for which the \$25 monthly fee was assessed. Further, defendant argues that he is entitled to a \$5-per-day credit against fines for the 42 days that he was incarcerated, and therefore, is entitled to full monetary credit toward the \$10 child advocacy center fee and the \$10 mental health court fee. Defendant acknowledges that he raises this issue for the first time on appeal, but argues that this claim has not been forfeited. In response, the State does not challenge our authority to review defendant's contention and confesses error with respect to each of the fees and fines that defendant challenges.

¶ 22 Initially, we agree that defendant has not forfeited this issue by not raising it before the trial court. See *People v. Marshall*, 242 Ill. 2d 285, 302 (2011) (holding that a challenge to an improper DNA fee was not forfeited because the defendant argued the fee was void, and void orders are not subject to forfeiture); *People v. Caballero*, 228 Ill. 2d 79, 88 (2008) (“[W]e also hold that [a claim for monetary credit under section 110-14] may be considered as an ‘application of the defendant’ made under the statute and may be raised at any time and at any stage of court proceedings, even on appeal in a postconviction proceeding.”); *People v. Thompson*, 209 Ill. 2d 19, 24 (2004) (“[A] sentence which does not conform to a statutory requirement is void.”).

¶ 23 We agree with the parties, and accordingly, we modify the fees and fines assessed to defendant as follows. Because we take judicial notice of the Illinois State police report reflecting that defendant's DNA sample was received on May 7, 2003, we vacate defendant's \$200 DNA fee.

See *Marshall*, 242 Ill. 2d at 302-03 (taking judicial notice of a letter from the Illinois Department of State Police to defense counsel reflecting that the defendant's DNA had been previously collected and, as a result, vacating the defendant's \$200 DNA fee). Further, we modify defendant's probation fee to reflect the 17 months that he was on probation. That period was from February 2010, the month defendant was originally sentenced to probation, through July 2011, the month when the trial court revoked defendant's probation. Accordingly, defendant's probation fee is modified from \$600 to \$425. See 730 ILCS 5/5-6-3(i) (West 2010) (providing that the probation fee "shall be imposed upon an offender who is actively supervised by the probation and court services department").

¶ 24 Finally, we modify the judgment to reflect that defendant be given a full credit against the \$10 child advocacy center and \$10 mental health fees for the 42 days he spent in custody prior to sentencing. See generally *People v. Sulton*, 395 Ill. App. 3d 186, 189 (2009) ("Whether a defendant received a proper credit against his fine is a question of law that we review *de novo*"). Section 110-14(a) of the Code of Criminal Procedure (the Criminal Procedure Code) provides:

"Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine." 725 ILCS 5/110-14(a) (West 2008).

As the State concedes, the child advocacy center and mental health court fees, while being known as "fees," are fines subject to the monetary offset provided in section 110-14(a) of the Criminal Procedure Code. *People v. Graves*, 235 Ill. 2d 355, 251 (2009) (holding that the mental health court fee is a fine); *People v. Jones*, 397 Ill. App. 3d 651, 660 (2009) (holding that the child advocacy center fee is a fine). Accordingly, we modify the judgment to reflect a full credit against the \$10 child advocacy center fee and the \$10 mental health fee.

¶ 25

III. Conclusion

¶ 26 For the foregoing reasons, we affirm defendant's sentence but modify the judgment by voiding defendant's \$200 DNA fee, modifying the probation fee from \$600 to \$425, and applying a full credit toward the \$10 child advocacy center and \$10 mental health fees.

¶ 27 Affirmed as modified.