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2013 IL App (3d) 120273-U

Order filed November 7, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellee,)	Henry County, Illinois,
)	
v.)	Appeal No. 3-12-0273
)	Circuit No. 11-CF-196
JESSE S. McPHERSON,)	
)	Honorable
Defendant-Appellant.)	Charles H. Stengel,
)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in imposing a 14-year sentence of imprisonment for attempted armed robbery.
- ¶ 2 After a bench trial, defendant, Jesse S. McPherson, was found guilty of attempted armed robbery (720 ILCS 5/18-2(a), 8-4 (West 2010)), a Class 1 felony for which the sentencing range was 4 to 15 years' imprisonment. After a hearing, the court sentenced defendant to 14 years' imprisonment. Defendant appeals, arguing that his sentence was excessive as it did not account

for his rehabilitative potential. We affirm.

¶ 3

FACTS

¶ 4 Defendant was charged with attempted armed robbery (720 ILCS 5/18-2(a), 8-4 (West 2010)), attempted robbery (720 ILCS 5/18-1(a), 8-4 (West 2010)), aggravated battery (720 ILCS 5/12-4 (West 2008)), and two counts of battery (720 ILCS 5/12-3(a)(1), (2) (West 2010)).

¶ 5 At a bench trial, the victim, Jeremy Malone, testified that on January 15, 2011, he visited his friend Marcus Welcome at the apartment of Welcome's girlfriend. Malone entered the apartment and saw Welcome and defendant sitting on a couch smoking a marijuana cigar. Malone sat down on the couch, and defendant got up and walked into the kitchen. When defendant returned, he pointed a handgun at defendant and demanded his money and the contents of his backpack. Malone refused, explaining to defendant that his "whole life was in that bag" and that he was not carrying a wallet. Malone said he was leaving and began to walk toward the front door. Defendant and Welcome stopped Malone and handed him a cellular telephone, telling him to call his girlfriend and have her bring Malone his wallet.

¶ 6 When Malone refused to make the call, defendant hit Malone in the head with the butt of the handgun. Malone fled toward the front door, and defendant chased him while repeatedly striking him about the head and back with the butt of the gun. Welcome attempted to restrain Malone, but Malone was able to dive through the front door's plexiglass window. Defendant followed Malone onto the porch and pointed the handgun at defendant's face at close range. Malone scurried down the porch stairs and stumbled over a snowbank in the yard. Defendant stood over Malone with the gun pointed at his face and demanded that he go back inside. Malone refused and continued stumbling through the snow. After he tripped again, defendant

put the gun in defendant's face and threatened to kill him if he did not go back inside the house. Welcome then bolted out of the front door and ran toward the back of the house. Defendant followed Welcome. Malone heard car doors slamming and tires squealing as a vehicle drove away from behind the house.

¶ 7 Welcome testified that he alone tried to rob Malone and that defendant was not present. That testimony was impeached by a transcript of the testimony Welcome gave at his own sentencing hearing resulting from the present facts. At his sentencing hearing, Welcome had testified to facts consistent with Malone's testimony.

¶ 8 Horace Johnson testified as an alibi witness for the defense. He testified that on the day in question, he and defendant were at a friend's residence all day playing video games and drinking. Defendant testified on his own behalf to the same story as Johnson.

¶ 9 After the conclusion of evidence, the trial court found Malone's testimony credible and the testimony of defendant, Welcome, and Johnson incredible. The court found defendant guilty of attempted armed robbery and scheduled a sentencing hearing.

¶ 10 At the sentencing hearing, defendant presented the court with letters from two of his former counselors and a former teacher. Defendant read a statement explaining that since being incarcerated on the present conviction, he had recognized the need to become a better person, particularly in light of his fatherly responsibilities to his one-year-old daughter. Defense counsel argued for a limited sentence in light of defendant's youth—defendant was 23 at the time of sentencing—and potential for rehabilitation.

¶ 11 The State focused its argument on defendant's extensive prior criminal record. In 2003, as a 15-year-old juvenile, defendant was charged with four counts of aggravated battery and was

sentenced to probation. His probation was revoked after he pled guilty to reckless discharge of a firearm (720 ILCS 5/24-1.5 (West 2004)) and aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1)(3)(A) (West 2004)). In 2005 he was convicted of aggravated battery (720 ILCS 5/12-4(b)(6) (West 2004)) and placed on conditional discharge, which he violated within a month. In 2006 he was convicted of aggravated battery (720 ILCS 5/12-4(b)(8) (West 2006)) while incarcerated. In 2007 he was convicted of criminal trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2006)), and in 2008, possession of a controlled substance (720 ILCS 570/402 (West 2008)). The State argued that, based upon defendant's criminal history and the seriousness of the present offense, the court should sentence defendant to the maximum term of 15 years' imprisonment.

¶ 12 The court then addressed one-by-one the potential aggravating and mitigating factors. The court found as mitigating factors that defendant's criminal conduct was induced or facilitated by someone other than defendant and that defendant would compensate the victim for the damage or injury sustained. In aggravation, the court found that defendant's conduct threatened serious physical harm; that defendant had a history of delinquency and criminal activity; and that a sentence was necessary to deter others from committing the same crime. After considering the presentence investigation (PSI) report and the evidence in aggravation and mitigation, the court sentenced defendant to 14 years' imprisonment. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 Defendant argues that his sentence was excessive because it did not properly account for his rehabilitative potential. See, e.g., *People v. Juarez*, 278 Ill. App. 3d 286 (1996).

¶ 15 A trial court's sentencing decision will not be reversed absent an abuse of discretion.

People v. Hauschild, 226 Ill. 2d 63 (2007). A sentence that falls within the statutory range does not amount to an abuse of discretion unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205 (2010).

¶ 16 The Illinois Constitution requires that all sentences "be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. However, the most important factor is the seriousness of the offense. *People v. Flores*, 404 Ill. App. 3d 155 (2010). When mitigating evidence is put before the trial court, we will presume the court considered the evidence unless the record explicitly establishes otherwise. *Id.*

¶ 17 Defendant argues that his rehabilitative potential was evidenced by his work history, family ties, steps taken toward self-improvement, and a recent nonviolent criminal history. Defendant's PSI documented that defendant worked as a telemarketer for 2 weeks in 2006 and 1½ weeks in 2010. In addition, he worked as a roofer for four months in 2010. Defendant has a young daughter and keeps in touch with his parents. In 2007 while incarcerated, defendant earned his general education diploma. He has also participated in counseling and anger management programs. His two most recent convictions were for nonviolent offenses—possession of a controlled substance and criminal trespass to a residence. Prior to the present offense, defendant had not been charged with a violent crime since January of 2006. Defendant argues that in light of these facts establishing his rehabilitative potential, the court abused its discretion when it sentenced defendant to 14 years' imprisonment.

¶ 18 We find that the court did not abuse its discretion. The court explicitly considered the

factors in aggravation and mitigation when fashioning defendant's sentence. The trial court engaged in a thoughtful consideration of the evidence presented at sentencing and was particularly concerned with defendant's extensive criminal history, much of it violent. Although defendant very well may have rehabilitative potential, the court determined that such potential was outweighed by the serious nature of the present offense and defendant's past history of violent crime. The court properly exercised its discretion in fashioning a sentence.

¶ 19

CONCLUSION

¶ 20 The judgment of the circuit court of Henry County is affirmed.

¶ 21 Affirmed.