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2013 IL App (3d) 120460-U

Order filed November 27, 2013

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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 10th Judicial Circuit,
Plaintiff-Appellee,	)	Peoria County, Illinois,
	)	
v.	)	Appeal No. 3-12-0460
	)	Circuit No. 11-CF-24
JORDAN TENNON,	)	
	)	Honorable
Defendant-Appellant.	)	Timothy M. Lucas,
	)	Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Wright and Justice Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in imposing a 27-year sentence of imprisonment for home invasion where the minimum available sentence was 21 years and the parties agreed to a 38-year sentencing cap.

¶ 2 Defendant, Jordan Tennon, was indicted on five counts of home invasion (720 ILCS 5/12-11(a)(2), (3) (West 2010)), three counts of armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)), and one count of residential burglary (720 ILCS 5/19-3(a) (West 2010)). The cause proceeded to a stipulated bench trial on one count of home invasion under section 12-11(a)(3);

the State dismissed the other counts. Defendant was found guilty. The trial court sentenced defendant to 27 years' imprisonment. Defendant appeals, arguing that the court abused its discretion when imposing defendant's sentence. We affirm.

¶ 3

### FACTS

¶ 4 The following facts were presented at the stipulated bench trial. Seth Minton was at home when he heard a knock at the door. He opened the door, and several people wearing all black clothing and armed with guns and knives forced their way into his home. Minton was struck with the butt of a gun as the intruders demanded money and cannabis. Minton was taken upstairs and saw his roommate, Travis Miller, being assaulted. Minton directed the intruders to his room where they found \$2,000 and marijuana paraphernalia. Someone shouted that police were nearby, and the intruders fled the house.

¶ 5 Officers subdued and arrested defendant as he ran from the house and attempted to jump the backyard fence. Defendant was in possession of \$1,000 and a handgun holster. During an interview after his arrest, defendant admitted to carrying a loaded handgun inside Minton's residence and directed officers to the location of the gun. Defendant explained that codefendant Ellis Trevino had planned the heist because he thought there would be large amounts of cash, cocaine, and marijuana inside the house. When defendant entered the house, he ordered one of its residents to lie down on the ground. When the resident refused, defendant struck him with the butt of his gun and took a large wad of cash from the resident's pocket. When police arrived, defendant attempted to flee but was caught. The court found defendant guilty.

¶ 6 At sentencing, the court explained that defendant's sentence was subject to a mandatory 15-year add-on, resulting in an effective sentencing range of 21 to 45 years' imprisonment. In

addition, the parties had agreed to a 38-year sentencing cap.

¶ 7 The court stated that had the police not arrived when they did, the violence that occurred could have been much worse. The court considered a letter of support from defendant's teacher and found significant that defendant was taking general education development (GED) classes while being held in presentence incarceration. In addition, the court recognized that defendant had no prior criminal history. In aggravation, the court found that defendant's conduct caused and threatened serious harm. The court sentenced defendant to 12 years' imprisonment, plus the 15-year mandatory add-on, for a total of 27 years' imprisonment. Defendant's motion to reconsider sentence was denied. Defendant appeals.

¶ 8 ANALYSIS

¶ 9 Defendant claims the trial court abused its discretion by imposing an excessive sentence. In support of that contention, defendant points to his lack of criminal history, his young age (defendant was 19 years old at the time of the offense), his supportive family and high school teacher, and the trial court's reliance on evidence defendant characterizes as outside the record.

¶ 10 To craft an appropriate sentence, a court must consider all matters reflecting upon the defendant's personality, propensities, purposes, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding. *People v. Ward*, 113 Ill. 2d 516 (1986). All sentences must "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. The trial court need not explain the value it places on each fact presented during sentencing. *People v. Merritte*, 242 Ill. App. 3d 485 (1993). When mitigating evidence is before the court, we presume that the court considered it, absent evidence to the contrary. *People v. Flores*, 404 Ill. App. 3d 155 (2010).

The most important factor to consider in sentencing is the seriousness of the offense. *Id.*

¶ 11 A trial court is invested with great discretion in imposing sentences. *People v. Alexander*, 239 Ill. 2d 205 (2010). 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. *Id.*

¶ 12 Home invasion is a Class X felony for which the sentencing range is usually 6 to 30 years' imprisonment. 720 ILCS 5/12-11 (West 2010); 730 ILCS 5/5-4.5-25 (West 2010). However, a conviction for home invasion under section 12-11(a)(3) requires that 15 years be added to a defendant's sentence. 720 ILCS 5/12-11(c) (West 2010). The effective sentencing range in the present case was therefore 21 to 45 years' imprisonment, limited by the 38-year cap imposed by agreement of the parties.

¶ 13 In the present case, the court properly considered the evidence in mitigation. The court mentioned on the record that it was considering the letters written in support of defendant, defendant's lack of any criminal history, and defendant's progress toward rehabilitation by pursuing his GED. Defendant argues that other mitigating factors applied, including that defendant made a statement of remorse and that defendant's choice of a bench trial saved government resources. There is no evidence in the record that the court did not consider these other factors in creating a sentence. Nor does defendant cite any authority for the premise that a defendant's jury trial waiver should be considered in mitigation. We presume that the trial court considered all appropriate mitigating evidence because the record does not establish otherwise. *Flores*, 404 Ill. App. 3d 155.

¶ 14 The court's statement during sentencing that "Mr. Minton and his girlfriend were thrown

to the floor of their home, and told to disrobe" did not constitute consideration of an improper aggravating factor. Defendant argues that the information contained in the statement was not presented to the court as evidence, and, as a result, the court should not have considered it during sentencing. Defendant is correct that a court should consider only the knowledge acquired through the introduction of evidence or through judicial notice. *People v. Barham*, 337 Ill. App. 3d 1121 (2003). In the present case, the knowledge that the residents were told to disrobe was not introduced as evidence. Therefore, the court should not have considered it. However, no error occurred because the knowledge played an insignificant role in the court's sentencing decision. See *People v. Burdine*, 362 Ill. App. 3d 19 (2005).

¶ 15 No error resulted from the court's statement that greater harm may have occurred had the police not shown up when they did. Defendant argues that the court relied on "prejudice, speculation, and conjecture," (*People v. Dempsey*, 242 Ill. App. 3d 568, 597 (1993)) and that defendant's sentence should be vacated. We believe the court's statement evinced its proper consideration of the statutory aggravating factor that "the defendant's conduct caused *or threatened* serious harm[.]" (Emphasis added.) 730 ILCS 5/5-5-3.2(a)(1) (West 2010). The court's consideration of the possible results of defendant's conduct represents a consideration of the threat of harm caused by defendant's actions. Therefore the court was correct to consider it.

¶ 16 We may not substitute our judgment for that of the trial court merely because we would have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d 205. The trial court properly considered factors in aggravation and mitigation and imposed a sentence within the statutory range. Therefore, the court did not abuse its discretion in imposing defendant's sentence.

¶ 17

CONCLUSION

¶ 18 The judgment of the circuit court of Peoria County is affirmed.

¶ 19 Affirmed.