

NOTICE
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2013 IL App (4th) 110613-U

NO. 4-11-0613

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 6, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Adams County
GLENN D. WOODEN,)	No. 10CF392
Defendant-Appellant.)	
)	Honorable
)	William O. Mays,
)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding that the trial court did not abuse its discretion by sentencing defendant to eight years in prison.

¶ 2 In September 2010, a jury convicted defendant, Glenn D. Wooden, of aggravated battery (720 ILCS 5/12-4(b)(8) (West 2010)), and the trial court later sentenced him to eight years in prison. Defendant appeals, arguing only that the court abused its discretion by sentencing him to eight years in prison because it (1) did not adequately consider certain mitigating factors and (2) considered a factor inherent in the offense. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In July 2010, the State charged defendant with aggravated battery (720 ILCS 5/12-4(b)(8) (West 2010)), alleging that he caused bodily harm to Derek Faler by striking and kicking him about the head while they were in the Adams County jail, which is public property. At

defendant's September 2010 jury trial, Faler testified about how defendant beat him in the jail when they were both inmates. A correctional officer testified and substantially corroborated Faler's testimony. After the jury found defendant guilty of aggravated battery, the trial court set a date for a sentencing hearing and ordered the preparation of a presentence report (PSI).

¶ 5 At the December 2010 sentencing hearing, the trial court noted that it had received the original PSI and three different supplements to it, and both counsel acknowledged receiving them, as well. The State pointed out that defendant was only 25 years old and was to be sentenced for having committed his sixth felony offense. Defendant had also been sentenced to prison on four of those prior offenses. The State argued that defendant was subject to an extended-term sentence because of his prior record and recommended a sentence of eight years. The State also noted that any sentence was required to be consecutive to the sentence defendant was then currently serving in a felony case in which he had been held pretrial in the Adams County jail when he committed the present offense of aggravated battery.

¶ 6 Defense counsel did not dispute the State's representations regarding either defendant's eligibility for an extended-term sentence or the requirement of consecutive sentences. However, counsel argued that the trial court should impose the minimum sentence of two years because of certain mitigating factors. The first was that he was employed, currently married, and had a four-year-old child. Counsel argued that defendant's going to prison was "certainly going to be a hardship on that dependent" even if defendant was "not contributing financially to the support of that child at the moment." Counsel further maintained that the child could benefit from defendant's being involved in that child's life.

¶ 7 Defense counsel also argued that defendant's childhood "certainly leaves a lot to

be desired." Counsel explained that defendant was essentially raised by his mother with little to no male influence in his life before defendant entered the foster-care system.

¶ 8 In sentencing defendant, the trial court noted that because defendant was eligible for an extended term, his sentencing range was between 5 and 10 years in prison. The court then sentenced defendant to eight years in prison, explaining, in part, as follows:

"[Y]ou have a terrible record, and you don't seem to be learning too much.

It seems to me that if you can't control your anger when you're in an environment like the jail, how are you ever going to do that while you are out in society?"

¶ 9 Defendant filed a motion for reduction of sentence in which he asserted that his sentence was excessive because the trial court did not adequately consider (1) the hardship to defendant's dependent child and (2) defendant's troubled childhood. In that motion, defendant also asserted that his sentence was excessive because the court erred by considering a factor in aggravation that is inherent in the offense itself—namely, that the offense occurred in the county jail.

¶ 10 In July 2011, the trial court denied the motion for reduction of sentence. The court supplemented its original remarks at the sentencing hearing on why it imposed the eight-year sentence by reiterating that it had reviewed prior to sentencing the original PSI and the three supplements thereto. The court also noted that it had looked at all of the mitigating and aggravating factors in this case and took all of that into consideration:

"Whether I actually say anything about it or not. All of those

things were factors that I look[ed] at in every sentencing hearing.

I don't go through the laundry list. I don't check them or not check them on the record each time, but I do look at them, so all of that comes into play."

¶ 11 The trial court also stated that it understood one of the elements that is necessary for the defendant to be found guilty of aggravated battery is the fact that the battery occurred in the jail. The court explained that it did not consider this factor inherent in the offense to be aggravating; it merely considered it to be a reflection of defendant's rehabilitative potential. That is, "If he cannot control his anger and his actions while he's in a controlled environment, *** I have to balance the rehabilitation of the defendant versus the protection of the public."

¶ 12 Last, the trial court emphasized that "the key factor is still [defendant's] past criminal record." Nonetheless, the court noted that it gave defendant less than the maximum sentence possible after considering all of the factors in aggravation and mitigation.

¶ 13 This appeal followed.

¶ 14 II. DEFENDANT'S CLAIM THAT THE TRIAL COURT ABUSED ITS DISCRETION BY IMPOSING AN EIGHT-YEAR SENTENCE

¶ 15 Defendant appeals, arguing only that the trial court abused its discretion by imposing an eight-year sentence in this case. In support of his argument, defendant claims that the trial court (1) did not adequately consider the mitigation evidence before it and (2) improperly considered a factor inherent in the offense. We are unpersuaded.

¶ 16 In *People v. Brunner*, 2012 IL App (4th) 100708, ¶ 40, 976 N.E.2d 27, this court explained the law applicable to a defendant's appeal of his sentence, as follows:

"The sentence imposed by a trial court is granted great deference because the court is generally in a better position than a reviewing court to weigh factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits. *People v. Calabrese*, 398 Ill. App. 3d 98, 126, 924 N.E.2d 6, 29 (2010). This deference provides a trial court the latitude to impose a sentence that falls within the statutory range prescribed for the offense. *People v. Perkins*, 408 Ill. App. 3d 752, 763, 945 N.E.2d 1228, 1238 (2011). A sentence that is within statutory limits is excessive and, thus, an abuse of the court's discretion only when it is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense."

¶ 17 In *People v. Shaw*, 351 Ill. App. 3d 1087, 1093-94, 815 N.E.2d 469, 474 (2004), this court addressed one of the same arguments presented by defendant in this case regarding the trial court's alleged failure to consider mitigating evidence and wrote the following:

"[I]f mitigating evidence is present at the sentence hearing, this court presumes that the trial court took that evidence into consideration, absent some contrary evidence. *People v. Anderson*, 325 Ill. App. 3d 624, 637, 759 N.E.2d 83, 94 (2001). The trial court 'is not obliged to recite or assign a value to each factor presented at the sentencing hearing.' *People v. Beasley*, 314 Ill.

App. 3d 840, 847, 732 N.E.2d 1122, 1128 (2000). Further, a defendant's rehabilitative potential and other mitigating factors are not entitled to greater weight than the seriousness of the offense. *People v. Phippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001)."

What this court wrote in *Shaw* fully applies to the present case. Even leaving aside the trial court's remarks when it denied the motion for reduction of sentence that the court had considered all aggravating and mitigating evidence at the sentencing hearing despite not mentioning doing so, we would still presume that the court had done so and reject defendant's contention otherwise.

¶ 18 Further, we similarly reject as being utterly without merit defendant's claim that the trial court improperly considered a factor inherent in the offense—namely, that the battery occurred in the Adams County jail, which was public property. The court clearly—and appropriately—mentioned that fact in its correct assessment of the defendant's minimal rehabilitative potential.

¶ 19 In closing, we note our agreement with the trial court that the compelling circumstance regarding defendant is that he had five prior felony convictions at the age of 25 as he stood before the court to be sentenced for his sixth felony. That fact alone trumps any possible claims defendant could have made regarding his sentence being allegedly excessive.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment as costs of this appeal.

¶ 22 Affirmed.