

NOTICE
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2013 IL App (4th) 110704-U
NO. 4-11-0704
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
March 8, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
AJAYE R. MEEKS,)	No. 10CF500
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* In view of defendant's criminal history, the sentence is not so severe as to be an abuse of discretion; therefore, the sentence is affirmed.

¶ 2 Defendant, Ajaye R. Meeks, appeals from his sentence of seven years' imprisonment for aggravated battery (720 ILCS 5/12-4(b)(15) (West 2010)). He argues the sentence is too severe in view of the mitigating factors. Because we are unable to characterize this sentence as an abuse of discretion, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. The Charges and the Guilty Plea

¶ 5 In the case before us, Champaign County case No. 10-CF-500, the State charged defendant with one count of theft (with a prior theft conviction) (720 ILCS 5/16-1(a)(1) (West 2010)) and one count of aggravated battery (720 ILCS 5/12-4(b)(15) (West 2010)).

¶ 6 During the pendency of this case, the State charged defendant with burglary in Champaign County case No. 10-CF-1732 and with another burglary in Champaign County case No. 11-CF-124.

¶ 7 On April 14, 2011, in the present case, defendant agreed to plead guilty to count II, aggravated battery, in return for the dismissal of the theft charge as well as the dismissal of the burglary charges in the other two cases. There was no agreement as to the sentence.

¶ 8 The prosecutor provided the following factual basis:

"March 3, 2010 about a quarter to seven in the evening, defendant was in the Wal-Mart store on High Cross Road in Urbana. Michael Whalen, loss prevention officer, stopped defendant who he believed to have stolen some tools. Defendant became angry. When Mr. Whalen tried to detain him, Mr. Meeks put his hands on Mr. Whalen and pushed him away from himself and left the store. He was located because store security got his license plate and another store security officer identified him in a photo line-up."

¶ 9 After giving defendant all the required admonitions and after confirming with him that no threats or promises had been made to him other than the promise to dismiss the remaining charges, the trial court accepted his plea of guilty to aggravated battery.

¶ 10 B. The Sentencing Hearing

¶ 11 On May 27, 2011, the trial court held a sentencing hearing. In addition to arguments by counsel, the court considered the following.

¶ 12 1. *Letters Written in Support of Defendant*

¶ 13 Several people had written letters in support of defendant. Jacqueline Peoples wrote that she had known defendant since he was a teenager. She described him as respectful and mild-mannered, a hard worker who showed concern for others. She pointed out that he was the sole provider of his family and that he had completed an apprenticeship.

¶ 14 Defendant's mother, Judith L. Meeks, described him as a "very productive" man who had maintained employment to support his family: a teenage son, a two-year-old daughter, and his wife. Defendant worked hard to "maintain a solid relationship with his family," and he "continued to pursue employment opportunities and career training to increase his income."

¶ 15 Otis Noble III, a campus and community outreach specialist, wrote that defendant had participated in a 20-week construction trades opportunity program. The goal of the program was to help participants pass the union test and interview requirements for entry into a union apprenticeship program in the construction industry. According to Noble, defendant "brought a wealth of knowledge to the program, as he had been working for years as a[n] HVAC [(heating, ventilation, and air conditioning)] specialist." Defendant's "love for his family and his dedication to construction trades quickly became apparent." Noble would recommend defendant for a job in the construction trades "without hesitation."

¶ 16 A letter by a minister, Donald Jones, observed that defendant had maintained steady employment since 2006, all the while continuing his education and employment training.

¶ 17 *2. Education*

¶ 18 Defendant graduated from Mattoon High School in 1992 and from Southern Illinois University in 2002, earning a bachelor of arts degree.

¶ 19 *3. Defendant's Criminal History*

¶ 20 In April 1994, the Coles County circuit court sentenced defendant to two years of probation for the Class A misdemeanors of resisting or obstructing a peace officer and aggravated assault of a peace officer or fireman. The next year, the court resentenced him to 230 days in jail.

¶ 21 In February 1995, the Coles County circuit court sentenced him to 30 days in jail for the Class A misdemeanor of reckless conduct and 230 days in jail, plus payment of \$1,050 in restitution, for the Class 3 felony of aggravated battery causing great bodily harm.

¶ 22 In August 1996, the Coles County circuit court fined him for the misdemeanor of resisting a peace officer or correctional employee.

¶ 23 In December 1999, the Jackson County circuit court sentenced him to 24 months of conditional discharge for the Class A misdemeanor of retail theft.

¶ 24 In May 2003, the Coles County circuit court sentenced him to 4 years of probation, 180 days in jail, and 180 days of home confinement for the Class 2 felony of burglary and the Class 4 felony of conspiracy to commit residential burglary. In July 2004, the court resentenced him to five years' imprisonment. He was released on correctional supervision in July 2005.

¶ 25 In January 2006, the Clinton County circuit court sentenced him to 27 days in jail for the Class A misdemeanor of retail theft.

¶ 26 In June 2007, the Coles County circuit court fined him for the Class A misdemeanor of driving with a suspended driver's license.

¶ 27 In September 2008, the Coles County circuit court fined him for the Class C misdemeanor of possessing cannabis.

¶ 28 In October 2008, the Jackson County circuit court sentenced him to 24 months of probation and 20 days in jail for the Class 3 felony of retail theft.

¶ 29 It follows that, when defendant committed the aggravated battery in the present case in March 2010, he still was on probation in the Jackson County case.

¶ 30 *4. Defendant's Statement in Allocution*

¶ 31 Defendant made a statement in allocution. He told the trial court that he had "always stay[ed] working" for his wife and children and that he had "continue[d] to do positive things throughout [his] life to make [himself] a better individual." Because he was the sole provider for his family members, "not to be there would be detrimental to [them]." He insisted he had "given back a lot of [himself] to the community and the public in positive ways." Therefore, he requested the court to sentence him to probation, not imprisonment.

¶ 32 *5. The Sentence*

¶ 33 For the purpose of mitigation, the trial court took into account that defendant had pleaded guilty, that he had earned a high-school diploma and a college degree, that he had maintained employment, and that he had been supporting his family.

¶ 34 For the purpose of aggravation, the trial court took into account defendant's criminal history and the need to deter him and others from committing aggravated battery. The court said:

"A community-based sentence would deprecate the seriousness of your conduct, it would be inconsistent with the ends of justice, and quite frankly, given this record, make a mockery out of probation. You are going to think that this is Jackson County or Coles County where you get probation over, and over, and over again. It's not, Mr. Meeks. The sentence today is going to deter others like you, and that will be a sentence of 84 months in the Illinois

Department of Corrections, the extended term."

¶ 35 *6. Defendant's Motion To Reduce the Sentence*

¶ 36 On June 22, 2011, defendant filed a motion to reduce the sentence, in which he argued that the sentence of seven years' imprisonment was excessive and "not in keeping with alternatives available to the Court to assist the Defendant in his rehabilitation."

¶ 37 On August 5, 2011, the trial court held a hearing on the motion to reduce the sentence. Defense counsel argued in the hearing:

"Well, Your Honor, we would reiterate the arguments we made at the time that Mr. Meeks was sentenced, that he was employed, that he was supporting his dependents, the child that lives with him and his other dependent, Your Honor. That he is employed. That he is an educated man, so that we, again, as I said, would reemphasize the arguments that we made that we believe that he does have a great deal of rehabilitative potential, such that a sentence of probation, we believed, would have been an appropriate sentence under the facts and circumstances of the case that he pled guilty to, that being an aggravated battery, which was aggravated because the victim of the aggravated battery was a store employee at a store, but there was no injuries sustained."

¶ 38 The trial court responded:

"Well, the Court considered the appropriate statutory factors in mitigation, which I don't believe there were any, but there were some

mitigating factors, the statutory factors in aggravation, obviously the two was [*sic*] the deterrent factor, and the Defendant's extensive criminal history. I believe the sentence that was imposed was and is appropriate. I'm going to deny the motion to reconsider."

¶ 39 This appeal followed.

¶ 40 II. ANALYSIS

¶ 41 Defendant argues that he has been "a productive and contributing member of society," earning a bachelor's degree and thereafter supporting his family by doing construction work. He says he has "had a close and loving relationship with his family, as reflected in numerous letters of support and attestations to [his] character and potential for productive citizenship." He reminds us that he pleaded guilty, and he notes that the store employee whom he pushed sustained no injury, judging from the factual basis. (We note, however, that "bodily harm to a merchant who detains the person for an alleged commission of retail theft" is an element of the offense to which defendant pleaded guilty. 720 ILCS 5/12-4(b)(15) (West 2010).) According to defendant, "[a]ll these factors bode well for [his] rehabilitative potential and mitigate in favor of sentence reduction."

¶ 42 Defendant admits he has "failed to take proper advantage of community-based sentences" and that he has "violated the terms of some of his past community-based sentences." Nevertheless, he points out that most of his convictions are misdemeanors and traffic offenses, and he notes that he did successfully complete probation in 1984 as well as 24 months of conditional discharge in 1999.

¶ 43 In sum, defendant argues that "[t]he judge here failed to balance the retributive purpose of its punishment, which required him to take into account both the seriousness of the

offense and the objective of restoring [defendant] to useful citizenship." See Ill. Const. 1970, art. I, § 11; *People v. Cooper*, 283 Ill. App. 3d 86, 95 (1996).

¶ 44 The offense to which defendant pleaded guilty, aggravated battery (720 ILCS 5/12-4(b)(15) (West 2010)), is a Class 3 felony (720 ILCS 5/12-4(e)(1) (West 2010)), normally punishable by imprisonment for not less than two years and not more than five years (730 ILCS 5/5-4.5-40(a) (West 2010)). Because defendant, however, committed this aggravated battery within 10 years after his previous conviction of a Class 3 felony, excluding time in custody (730 ILCS 5/5-5-3.2(b)(1) (West 2010)), he was eligible for an extended term of imprisonment for not less than 5 years and not more than 10 years (730 ILCS 5/5-4.5-40(a) (West 2010)). The sentence the trial court imposed, seven years' imprisonment, was within the extended range. See *id.*

¶ 45 Even though a sentence is within the statutory range, we should overturn the sentence if it is so severe as to be an abuse of discretion, that is, if no reasonable person would regard the sentence as corresponding to both " 'the seriousness of the offense' " and " 'the objective of restoring the offender to useful citizenship.' " *People v. Steffens*, 131 Ill. App. 3d 141, 151 (1985) (quoting Ill. Const. 1970, art. I, § 11); *People v. Anderson*, 2012 IL App (1st) 103228, ¶ 33 ("Abuse of discretion will be found where no reasonable person could agree with the position of the lower court.").

¶ 46 A "useful citizen" is one who refrains from committing crime. If a person keeps on committing crime despite being punished, a more substantial prison term can have the effect of restoring the person to useful citizenship by deterring that person from committing further crimes when he or she is released. If several community-based sentences and several shorter terms of confinement failed to deter a person from committing further crimes, a trial court could reasonably

conclude that a rather substantial prison term is necessary to have a deterrent effect. With his criminal record, defendant should not be surprised that the court reached that conclusion.

¶ 47 This is not to deny the mitigating factors that defendant has identified in his brief. Evidently, the trial court thought those mitigating factors were worth three years. We are unable to characterize that determination as unreasonable, given defendant's criminal history.

¶ 48 In short, the sentence is not an abuse of discretion, and therefore we uphold the sentence. See *Steffens*, 131 Ill. App. 3d at 151.

¶ 49 III. CONCLUSION

¶ 50 For the foregoing reasons, we affirm the trial court's judgment. We award the State \$50 in costs.

¶ 51 Affirmed.