

NOTICE
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2013 IL App (4th) 111045-U

NO. 4-11-1045

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.)	Sangamon County
CONTAVIOUS KIDD,)	No. 10CF898
Defendant-Appellant.)	
)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's judgment, rejecting the defendant's claim that the court's imposition of a five-year sentence was excessive.

¶ 2 In May 2011, defendant, Contavious Kidd, pleaded guilty to possession of a controlled substance (less than 15 grams of a substance containing cocaine) (720 ILCS 570/402(c) (West 2010)), and the trial court later sentenced him to five years in prison. Defendant appeals, arguing that the court abused its discretion by imposing an excessive sentence. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2010, the State charged defendant with possession of a controlled substance (less than 15 grams of a substance containing cocaine) (720 ILCS 570/402(c) (West 2010)). In May 2011, defendant entered an open guilty plea to that charge. The State's factual

basis for the guilty plea showed that defendant was the driver of a vehicle stopped by the police. When they searched defendant, they found a plastic Baggie in his pocket, which contained two individually wrapped packages of suspected crack cocaine. The contents later tested positive for the presence of cocaine, which weighed approximately 3 1/2 grams. The trial court accepted defendant's guilty plea, ordered the preparation of a presentence investigation report (PSI), and set the matter for a sentencing hearing.

¶ 5 Even though the defendant pleaded guilty to a Class 4 felony, which normally carries a sentencing range of one to three years (730 ILCS 5/5-4.5-45(a) (West 2010)), defendant was eligible to be sentenced for an extended term of up to six years in prison based upon his two prior felony convictions as an adult (730 ILCS 5-5-3.2(b)(1) (West 2010)).

¶ 6 In August 2011, the trial court conducted a sentencing hearing and stated that it had received and considered the PSI. The court also determined that both parties had received the PSI as well.

¶ 7 At the conclusion of the sentencing hearing, the trial court sentenced defendant to five years in prison, explaining, in part, as follows:

"You're very young, but for a very young person, you have a very seasoned adult criminal history. I'm troubled by the fact that you didn't have some of the other advantages that others have, but you come to me a little late, to the point that I can't afford to give you a fourth, fifth, sixth chance. You violate your parole. I understand you have an explanation as to why you don't succeed with your stints on felony probation, but you have a resume of failure with

regard to the criminal justice system."

¶ 8 Defendant filed a motion to reconsider his sentence, arguing that the trial court failed to give adequate mitigating consideration to the following:

"(1) his age; (2) the fact that his imprisonment will entail excessive hardship to his dependents; (3) his potential to be rehabilitated and restored to useful citizenship if subjected to meaningful supervision, including substance abuse treatment; and (4) the likelihood that he will comply with the terms of a period of probation, again, if subjected to meaningful supervision, including substance abuse treatment."

¶ 9 In November 2011, the trial court conducted a hearing on that motion and denied it.

¶ 10 This appeal followed.

¶ 11 II. DEFENDANT'S CLAIM THAT HIS SENTENCE IS EXCESSIVE

¶ 12 Defendant appeals, arguing that his sentence is excessive. In support of that argument, he raises the same contentions that he raised in his motion to reconsider sentence. We are not persuaded.

¶ 13 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."

¶ 14 The PSI in this case provided great detail about the defendant, who was 23 at the time of the sentencing hearing. The PSI concludes with the following observations:

"The defendant's criminal history began approximately two months prior to his tenth birthday. He has continued to be involved in the criminal justice system since this time. He has been to both [j]uvenile and [a]dult [d]epartment of [c]orrections. He has violated his [j]uvenile and [a]dult [p]arole several times by committing new offenses and absconding from parole. His history indicates a long term non-compliance with the [c]riminal [j]ustice [s]ystem."

¶ 15 Our review of this record shows that the PSI's assessments are fully justified.

Based on everything before the trial court at the time of sentencing, and in view of the deference

to that court's judgment we are required to show, we find no abuse whatsoever in the court's discretion by the five-year sentence it imposed upon defendant in this case.

¶ 16 In closing, we note the following. First, in defendant's brief, although he acknowledges that he has an "extensive juvenile record," he points out that he "has only two prior convictions, [aggravated] unlawful use of a weapon and possession of a controlled substance." Given that defendant had just turned 23 at the time of the sentencing hearing, it is not clear to this court why having "only" two prior felony convictions (including one that resulted in a prison sentence) should be viewed as somehow mitigating.

¶ 17 Second, defendant never explains exactly how his imprisonment "will entail excessive hardship to his dependents." One of our difficulties with that contention is determining just who defendant's "dependents" may be. After all, he is 23 years old and has never been employed. Although the PSI shows that he has two children with two different women, he has never been married, and the record contains no indication that he is paying any support for either child. He reported to the probation office that his relationships with these two women were good, indicating that regarding one of them, he and the woman are "like friends."

¶ 18 The term "dependents" suggests that a person to whom that term applies might actually *depend* upon defendant for something, like financial support or even the sharing of parental supervision of the children. Given that defendant at the time of the sentencing hearing was not providing any financial support to either of his children or their mothers and was apparently not living with either of them, it is not clear to us why they fit the term "dependents" at all. In any event, we reject defendant's claim that his imprisonment "will entail excessive hardship to his dependents" as being utterly groundless.

¶ 19

III. CONCLUSION

¶ 20 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.

¶ 21 Affirmed.