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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

|                                      |   |                   |
|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the   |
|                                      | ) | Circuit Court of  |
| Plaintiff-Appellee,                  | ) | Cook County.      |
|                                      | ) |                   |
| v.                                   | ) | No. 11 CR 9583    |
|                                      | ) |                   |
| GREGORY SHAW,                        | ) | The Honorable     |
|                                      | ) | Dennis J. Porter, |
| Defendant-Appellant.                 | ) | Judge Presiding.  |

PRESIDING JUSTICE HYMAN delivered the judgment of the court.  
Justices Neville and Pucinski concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly considered the nature of the offense, defendant's criminal record, and other mitigating factors and did not abuse its discretion when sentencing defendant to 21 years in prison for aggravated domestic battery. Affirmed; fines and fees order corrected.

¶ 2 A jury convicted defendant Gregory Shaw of aggravated domestic battery. Section 12-3.3(a-5) of the Criminal Code of 1961 (720 ILCS 5/12-3.3 (a-5) (West 2010)). Based on his criminal background, Shaw was sentenced to a Class X sentence of 21 years in prison. On appeal, Shaw contends that the trial court abused its discretion at sentencing by placing undue weight on defendant's criminal history while placing little weight on mitigating factors. The record convinces us otherwise, and we affirm. In addition, Shaw contends that he is entitled to a

\$5 per day credit against his domestic-violence fine for the time he spent in presentence custody.

We agree, and modify the fines and fees order to reflect the credit to which Shaw is entitled.

#### Background

¶3 At trial, Linda Howard testified that in early May 2011, she ended a three and a half month relationship with Shaw. On June 2, 2011, she was walking on 95<sup>th</sup> Street in Chicago when she heard Shaw yell out her name. She ignored Shaw, and ended a phone call she was having with another ex-boyfriend, Tony. After she refused to let Shaw see her phone, Shaw grabbed it and said that there "better not be any text messages from Tony." Shaw then pushed her up against a fence, put his hand around her neck, and tried to choke her. Shaw knew Howard suffered from asthma, and she told him she was having trouble breathing during the attack, but Shaw said he did not care. Shaw then took her to a nearby alley, and continued to choke her until she was "just barely able to breathe." As Shaw was attacking Howard, the police pulled into the alley. Shaw told her to tell the police that everything was okay or he would kill her. The officers arrested Shaw. Howard testified that she did not seek medical attention because the injuries she sustained were not "severe enough."

¶4 Howard also testified that on June 1, 2011, the night before the choking incident, she was at home when she heard banging on the door. Howard was expecting Shaw because they had arranged for him to pick up some clothes she had washed for him. She looked through the peephole and saw Shaw kicking the door. She called the police, but Shaw left before the police arrived. The police returned with Shaw in custody. Similarly, on May 6, 2011 Shaw called and told her that he wanted her home at a certain time or that he would "kick [her] ass." After she went home, Shaw arrived and broke a window that was in Howard's bedroom. Again, Shaw fled after Howard called the police. Shaw was then taken into custody. The arresting officers

testified at trial, and corroborated Howard's testimony in part, describing the circumstances of each of the three arrests.

¶ 5 At sentencing, Howard read a victim impact statement in which she stated that because of Shaw's actions she was attending counseling, and hoped that he would get the help he needed. In aggravation, the State informed the court of Shaw's lengthy criminal background involving seven felony convictions including burglary and attempted robbery from 1980 to 1995. The State contended that because of his criminal history, the court was mandated to sentence Shaw as a Class X offender, so that he was required to serve 6 to 30 years. Shaw also had two previous incidents of domestic battery in 2005 and 2006. In mitigation, defense counsel argued the absence of no physical injuries in this case, and that Shaw simply let his emotions get the best of him. Counsel also urged the court to be a little bit more lenient than it might in a normal case because there were no physical wounds. In allocution, Shaw apologized to Howard, and stated that he did not strangle her.

¶ 6 During pronouncement, the court noted that Shaw had "a criminal record which is lengthy and violent." The court stated, "I have very grave doubts about the safety of the victim in this case," and in fashioning the sentence, considered protecting the public and Shaw's rehabilitation. The court accounted for the mitigating factors, stating that:

"the defendant did not seriously injure physically [sic] the victim in this case. And that is the biggest single factor in the sentence I'm going to give you, Mr. Shaw. The defendant had a difficult childhood with alcoholic mother, ran away from home, a broken home situation. It's apparent that this did not start out well and it's not ending well either."

The court also stated that it considered Shaw's presentence investigation report. The report included Shaw's history of mental health, including information that Shaw was diagnosed with schizophrenia and bipolar disorder, and received a referral and prescription for medication but never filled his prescription. The court sentenced Shaw to 21 years in prison.

#### Analysis

¶ 7 Shaw contends that the trial court abused its discretion in sentencing him to 21 years in prison for a Class 2 offense that inflicted no physical injuries, and that the court overemphasized Shaw's criminal history and failed to give proper consideration to the mitigating factors present in this case.

¶ 8 We review a sentence within the statutory limits on an abuse of discretion standard. We may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. So long as the trial court does not consider incompetent evidence or improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). This broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). In imposing a sentence, the trial court must balance the relevant factors, including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *Id.* at 213. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Snyder*, 2011 IL 111382, ¶ 36. We presume that the court considered all mitigating factors on the record absent some

affirmative indication to the contrary other than the sentence itself. *People v. Powell*, 2013 IL App (1st) 111654, ¶ 32.

¶ 9 Shaw had two prior Class 2 felonies that made Class X sentencing mandatory under section 5-4.5-95(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-95(b) (West 2010)). The minimum sentence Shaw could have received was 6 years' imprisonment and the maximum was 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2010). The court's 21 year sentence is within the statutory range.

¶ 10 In light of the record, we cannot find that the trial court abused its discretion in imposing the sentence. Shaw argues that the court placed too much emphasis on his criminal history instead of the seriousness of the offense. We disagree. Although Howard did not sustain any serious physical injuries, she testified that she suffered from emotional and psychological issues resulting from Shaw's physical abuse of her. She also testified that this was not the only incident during which Shaw attempted to physically harm her. Shaw, who had knowledge of Howard's asthma, posed a grave danger to Howard by choking her until the point where she could no longer breathe. Furthermore, Shaw halted his attack on Howard only when the police arrived on the scene and threatened to kill her if she did not tell the police that everything was okay. Thus, Shaw's behavior had the potential to cause Howard great physical injury or death. Because we find that Shaw's actions carried with them a significant risk of harm, his 21-year sentence does not greatly vary from the spirit and purpose of the law and is not manifestly disproportionate to the nature of the offense. See *Snyder*, 2011 IL 111382, ¶ 36.

¶ 11 Contrary to Shaw's contentions, the court placed considerable weight on the mitigating factors that he presented. The court explicitly stated that the single, biggest factor in Shaw's sentence was that he did not seriously injure Howard during his attack. The court also

emphasized Shaw's troubled upbringing. Shaw asserts that the court failed to consider his history of mental illness as a mitigating factor; however, this information was well documented in Shaw's PSI report, which the court examined before sentencing. Moreover, our supreme court has repeatedly held that "information about a defendant's mental or psychological impairment is not inherently mitigating." *People v. Richardson*, 189 Ill. 2d 401, 420 (2000); *People v. Coleman*, 183 Ill. 2d 366, 406 (1998); *People v. Tenner*, 175 Ill. 2d 372, 382 (1997). In *Richardson*, the court explained that "proof of defendant's mental handicaps not only could evoke compassion from the trial judge, but also could have demonstrated defendant's continued dangerousness." *Richardson*, 189 Ill. 2d at 420. Nothing in the record indicates that court did not consider all of the mitigating factors before it; accordingly, we find that the court properly considered all of the relevant evidence and appropriately fashioned defendant's sentence. See *Powell*, 2013 IL App (1st) 111654, ¶ 32. We find that the trial court was in the best position to evaluate the facts, and did not abuse its discretion in sentencing Shaw to 21 years' imprisonment. *Snyder*, 2011 IL 111382, ¶ 36.

¶ 12 Shaw also contends, and the State concedes, that he is entitled to \$235 pre-sentencing credit against his fines for the time he spent in presentence custody pursuant to Section 110–14(a) of the Code of Criminal Procedure of 1963. 725 ILCS 5/110–14(a) (West 2010). Section 110–14(a) provides that “[a]ny person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated.” 725 ILCS 5/110–14(a) (West 2006). This credit may be used to offset certain qualifying fines assessed by the court. *Id.* According to his order for fines, fees, and costs, Shaw was entitled to credit of \$5 against his Drug Court fine pursuant to section 5-1101 (f)(2) of the Counties Code (55 ILCS 5/5-1101(f)(2) (West 2010)); \$30 against

his Children's Advocacy Center fine pursuant to section 5-1101(f-5) of the Counties Code (55 ILCS 5/5-1101(f-5) (West 2010)); and \$200 against his Domestic Violence Fine pursuant to section 5-9-1.5 of the Unified Code of Corrections (730 ILCS 5/5-9-1.5 (2010)). But, these credits were not reflected in Shaw's total assessment. Thus, we correct Shaw's fines and fees order to reflect a total amount due of \$415.

¶ 13 We affirm Shaw's sentence and correct the order for fines and fees as stated.

¶ 14 Affirmed; fines and fees order corrected.