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2014 IL App (3d) 120591-U

Order filed February 5, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 10th Judicial Circuit
)	Peoria County, Illinois
Plaintiff-Appellee,)	
)	Appeal No. 3-12-0591
v.)	Circuit No. 10-CF-664
)	
CALEB McCracken,)	Honorable
)	Timothy M. Lucas,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Lytton and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's 10-year sentence for unlawful possession of a weapon by a felon was not an abuse of discretion.

¶ 2 Following a jury trial, defendant, Caleb McCracken, was convicted of unlawful possession of a weapon by a felon. 720 ILCS 5/24-1.1(a) (West 2010). He was sentenced to 10 years' imprisonment. Defendant appeals, arguing that his sentence is excessive. We affirm.

¶ 3 **FACTS**

¶ 4 At trial, the evidence established that on June 30, 2010, the police were dispatched to an apartment complex for a noise complaint. When the police arrived, a man, later identified as defendant, hid behind one of the buildings. One of the officers went toward the back of the building, saw defendant, and illuminated him with a spotlight. Defendant ran and dropped a loaded handgun, which the police later recovered. The police pursued defendant and arrested him. Defendant was not interviewed on the night of the offense because he was under the influence of alcohol.

¶ 5 The parties stipulated that defendant had a prior felony conviction. The jury found defendant guilty of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d)(3) (West 2010)) and unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)).

¶ 6 A sentencing hearing was held on February 17, 2012. Defendant's presentence investigation report (PSI) revealed that he had felony convictions for armed robbery in 1997 and manufacturing or delivering a controlled substance in 2000. The PSI also revealed that defendant was 31 years old and had worked for Panera Bread for 9½ years, until he quit in March 2011. In May 2011, defendant tested positive for cocaine.

¶ 7 Defense counsel argued that defendant had a difficult upbringing, because he was placed in relative foster care at age six. Defendant had stayed out of trouble since his last offense in 2000 and had been gainfully employed for 9½ years. In relation to the instant offense, defendant did not threaten use of the weapon or contemplate that his criminal conduct would cause harm to anyone. Counsel argued that defendant was unlikely to reoffend because he was motivated to get out of jail in order to take care of his seven children.

¶ 8 Defendant made a statement in allocution and apologized for his conduct. Defendant explained that he had a firearm on the night of the offense because he had been robbed twice.

Defendant also stated that his goal was to get out of prison so that he could support and raise his children.

¶ 9 In sentencing defendant, the trial court considered the evidence at trial, the PSI, arguments by counsel, defendant's statement in allocution, defendant's character, history, and attitude, defendant's criminal history, and the factors in aggravation and mitigation. In assessing the case, the court referenced defendant's criminal history, but noted that defendant's steady employment and his history and character were mitigating factors. The court found that defendant's possession of a loaded weapon and involvement in a police chase, despite not causing any actual harm, threatened serious harm to himself and those around him. The court also stated that although defendant had not committed a criminal offense since 2000, he tested positive for cocaine in May 2011. Based on the statutory factors in aggravation and mitigation, the court entered judgment for unlawful possession of a weapon by a felon and imposed a sentence of 10 years' imprisonment. The court did not enter judgment on the count of aggravated unlawful use of a weapon.

¶ 10 On February 21, 2012, defendant filed a motion to reconsider his sentence, which the trial court denied. Defendant appeals.

¶ 11 ANALYSIS

¶ 12 Defendant argues that his 10-year sentence is excessive in light of numerous mitigating factors and his substantial rehabilitative potential.

¶ 13 The Illinois Constitution mandates that all penalties be determined according to both the seriousness of the offense and with the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11. However, a trial court is given wide latitude in sentencing a defendant, so long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation. *People v. Flores*, 404 Ill. App. 3d 155 (2010). As such, the determination and

imposition of a sentence involves considerable judicial discretion, and we will not reverse a trial court's sentence unless we find that the court abused its discretion. *People v. Alexander*, 239 Ill. 2d 205 (2010). A sentence will be deemed an abuse of discretion where the sentence is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Id.* Under this standard, a reviewing court may not substitute its judgment for that of a sentencing court merely because it would have weighed the factors in aggravation and mitigation differently. *Id.*

¶ 14 Here, due to defendant's prior felony conviction, his conviction for unlawful possession of a weapon by a felon was a Class 2 felony punishable by a sentence of 3 to 14 years' imprisonment. 720 ILCS 5/24-1.1(e) (West 2010). A sentence that falls within the statutory range for the offense will not be disturbed on appeal unless the trial court abused its discretion. *Flores*, 404 Ill. App. 3d 155. We do not find defendant's 10-year sentence to be an abuse of discretion.

¶ 15 Defendant contends that the trial court did not give enough weight to several mitigating factors. Defendant points to the fact that he did not contemplate his actions would cause serious harm; that he only possessed the firearm because he had been robbed twice; that he had stayed out of trouble since 2000; his positive character and history; and his strong rehabilitative potential. Despite defendant's contention, all of these factors were presented to and considered by the trial court at his sentencing hearing. As such, defendant is merely asking us to substitute our judgment for that of the trial court in weighing these factors, which we cannot do. See *Alexander*, 239 Ill. 2d 205; *People v. Shaw*, 351 Ill. App. 3d 1087 (2004) (finding that the trial court was not required to give greater weight to defendant's rehabilitative potential and other mitigating factors than to the circumstances of the offense).

¶ 16 Furthermore, a trial court is presumed to have considered all mitigating factors and rehabilitative potential before it, and the burden is on defendant to affirmatively show the contrary. *People v. Brazziel*, 406 Ill. App. 3d 412 (2010). Here, defendant points to nothing in the record to suggest that the court failed to consider any of the factors he presents on appeal. Instead, the record reveals that the court explicitly considered all mitigating factors, including defendant's character and history, before pronouncing its sentence.

¶ 17 Despite the mitigating evidence presented, the court expressed concern regarding the threat of harm defendant posed in committing the instant offense, defendant's two prior felony convictions, and his positive drug test for cocaine. The court determined that in light of the factors presented in aggravation and mitigation, a 10-year sentence was appropriate. Based on the record before us, we find that the trial court did not abuse its discretion in sentencing defendant within the statutory range.

¶ 18 **CONCLUSION**

¶ 19 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 20 Affirmed.