

No. 1-13-0865

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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 3806
)	
DON WARD,)	Honorable
)	Dennis J. Porter,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Simon and Justice Neville concurred in the judgment.

O R D E R

- ¶ 1 **Held:** Judgment entered on defendant's conviction for burglary affirmed over his claim that his sentence is excessive; fines and fees order modified.
- ¶ 2 Following a bench trial, defendant Don Ward was found guilty of burglary and sentenced to 14 years' imprisonment. He was also assessed fines and fees totaling \$660. On appeal, defendant contends that the 14-year sentence was excessive given his potential for rehabilitation, and the non-violent nature of the offense. He also contends that he was incorrectly assessed a \$5

court system fee and a \$5 electronic citation fee, and that he is entitled to offset his \$50 court system fee with presentence incarceration credit.

¶ 3 The record shows that defendant was charged with burglary in connection with an incident that occurred on the far south side of Chicago the morning of February 24, 2011. At trial, Ursula Sawyer testified that she was working as the branch manager of Insure One at 11649 South Halsted Street. When she left the banking facility on February 23, 2011, she did not notice any damage to the front or back doors. Sawyer further testified that she received a phone call at about 4 a.m. the following morning, notifying her that there had been a burglary at her facility. When she arrived there, she observed that the front glass door was shattered, the frame of the rear door was broken, and the safe was missing.

¶ 4 Chicago police officer Christopher Green testified that he arrived at Insure One shortly after 4 a.m. and saw a black male wearing a black and white bandana over his face enter a Chevrolet Monte Carlo with Indiana license plates in the alley behind Insure One. Officer Green observed this man, later identified as defendant, place a large box in the passenger seat of his car before he saw Officer Green, who told him to stop. Defendant, however, got into his car and sped out of the alley. Officer Green sent out a flash radio message describing defendant, his car, and his direction of travel. Officer Green made an in-court identification of defendant as the man he saw enter the Monte Carlo.

¶ 5 Chicago police officer John Helsel testified that he received a radio flash message the morning of February 24, 2011, describing a Chevrolet Monte Carlo being driven toward his patrol area. About nine blocks from the Insure One office, Officer Helsel spotted a car matching

that description. When he and his partner attempted to stop the car, defendant sped up and made evasive maneuvers until he crashed into a fence. Defendant attempted to escape on foot, but he was detained by Officer Helsel's partner. Defendant was wearing a black and white bandana around his neck at the time, and the officers recovered a safe from the passenger seat of defendant's car that was later identified as the safe from Insure One.

¶ 6 The parties stipulated that no one employed by Insure One had given defendant permission to enter that facility or to remove any item from it. The trial court found defendant guilty of burglary, as charged, based on the overwhelming circumstantial evidence presented.

¶ 7 At the sentencing hearing, the State informed the court that defendant was mandatory Class X by background and outlined his nine prior felony convictions beginning in 1985. The State noted the sentencing range of 6 to 30 years and requested a term in the upper range for this, defendant's tenth felony conviction.

¶ 8 In mitigation, defense counsel pointed out that defendant had a steady job and a girlfriend who was present in court in support of him. He stated that defendant would be able to work upon release, as he has a commercial driver's license, and that he helps support his 20-year-old son. Counsel also stated that despite defendant's long criminal record, his last felony conviction was in 1995, and requested the court to sentence him to a term at the lower end of the 6- to 30-year range. Defendant spoke in allocution stating that he was sorry for what he had done and expressed his thankfulness for his girlfriend who had stayed with him.

¶ 9 In announcing its sentencing decision, the trial court referred to defendant's criminal record, stating that it was "the worse thing" for defendant in aggravation. In mitigation, the trial

court noted that defendant has a family and a good employment history, and recognized the lack of any drug, alcohol or gang activity on his record. Finally, after considering the circumstances of the offense, defendant's character and background, and the presentence investigation report, the court sentenced defendant to 14 years' imprisonment. The court then credited him with 700 days of time served, and assessed certain fines and fees.

¶ 10 In this appeal from that judgment, defendant first contends that his 14-year sentence for burglary is excessive in light of the non-violent nature of the offense and his strong potential for rehabilitation. The State responds that the trial court entered a sentence within the statutory range after considering the appropriate sentencing factors, and did not abuse its discretion in sentencing defendant to a 14-year term.

¶ 11 The imposition of a sentence within the statutory range provided for the class of offense of which defendant was convicted is a decision committed to the sentencing court. *People v. Barney*, 111 Ill. App. 3d 669, 679 (1982). A reviewing court will not disturb that sentence absent an abuse of discretion. *People v. Cabrera*, 116 Ill. 2d 474, 494 (1987). A reasoned judgment as to a proper sentence must be based upon the particular facts of each case (*People v. Smith*, 258 Ill. App. 3d 1003, 1028 (1994)), and where, as here, the sentence imposed by the trial court falls within the prescribed statutory range, the sentence will not be disturbed unless it is greatly at variance with the purpose and spirit of the law, or is manifestly disproportionate to the offense. *Cabrera*, 116 Ill. 2d at 493-94.

¶ 12 In this case, defendant was convicted of the Class 2 felony of burglary (720 ILCS 5/19-1 (West 2013)), but subject to mandatory Class X sentencing because of his criminal history. 730

ILCS 5/5-4.5-25 (West 2012). The 14-year sentence imposed by the trial court fell within the prescribed range (730 ILCS 5/5-4.5-25(a) (West 2012)), and was imposed after the court considered the appropriate sentencing factors, including defendant's potential for rehabilitation and criminal history.

¶ 13 Defendant nonetheless argues that his sentence was excessive given the non-violent nature of the offense, and his potential for rehabilitation. In support of his argument, defendant relies on *People v. Stacy*, 193 Ill. 2d 203, 209-12 (2000) and *People v. Maggette*, 195 Ill. 2d 336, 355 (2001), where sentences were reduced on findings that they were disproportionate to the crimes committed. The supreme court has held, however, that the severity of a sentence cannot properly be judged by the sentence imposed in a similar, but unrelated case (*People v. Fern*, 189 Ill. 2d. 48, 56 (1999)), and we decline to do so here.

¶ 14 In announcing its sentencing decision in this case, the trial court found it significant that defendant had so many felonies on his record. Although more than a decade had passed since his last conviction, the court did not believe that such a lapse in time warranted a lesser sentence, and later commented that defendant had evidently not learned his lesson. The court also considered the same mitigating factors that defendant calls to our attention on appeal, including the rehabilitation factor, before sentencing him to a term eight years above the minimum. It is not our prerogative to reweigh these same factors and independently conclude that the sentence was excessive. *People v. Burke*, 164 Ill. App. 2d 889, 902 (1987). A defendant's potential for rehabilitation is but one factor that must be weighed against other countervailing factors (*People v. Evans*, 373 Ill. App. 3d 948, 968 (2007)); and, in this case, we find no abuse of discretion in

the sentence imposed given defendant's felonious past and the nature of the offense to permit this court to disturb the decision rendered. *People v. Almo*, 108 Ill. 2d 54, 70 (1985).

¶ 15 Defendant next challenges the calculation and assessment of certain pecuniary penalties imposed by the court. The imposition of court-ordered fines and fees raises a question of statutory interpretation, which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 16 Defendant first contends, the State concedes, and we agree, that the trial court erroneously assessed a \$5 electronic citation fee and the \$5 court system fee. A defendant must pay the electronic citation fee only in a "traffic, misdemeanor, municipal ordinance, or conservation case" (705 ILCS 105/27.3e (West 2011)), and, as burglary is not one of the offenses enumerated in the statute, we vacate the \$5 electronic citation fee. Similarly, the \$5 court system fee applies only when a defendant commits an offense under the Illinois Vehicle Code. 55 ILCS 5/5-1101(a) (West 2013); 625 ILCS 5/1-100 *et seq.* (West 2008). Since defendant was convicted of burglary, the \$5 electronic citation fee was inappropriate and we vacate it.

¶ 17 Defendant finally argues that he is entitled to apply a \$5 per day presentence custody credit to offset his \$50 court system "fine." The State responds that presentence custody credit may be used only for the payment of fines, not fees, and that the court system cost is a fee.

¶ 18 An offender who has been assessed a fine is entitled to a \$5 credit for each day he spends in presentence custody up to the amount of any applicable fines levied against him. 725 ILCS 5/110-14(a) (West 2005). A "fine" is a charge that is punitive in nature and not intended to compensate the State for costs incurred in prosecuting the defendant, but instead to finance the

court system. *People v. Breeden*, 2014 IL App (4th) 121049 ¶ 83. A fee, on the other hand, seeks to recoup expenses incurred by the State in prosecuting the defendant. *People v. Jones*, 223 Ill. 2d 569, 582 (2006).

¶ 19 Section 5-1101(c) of the County Code states that for a felony conviction, a defendant shall pay a fee of \$50. 55 ILCS 5/5-1101(c)(1) (West 2013). The State maintains that this designation is strong evidence as to how the charged should be categorized. In *People v. Graves*, 235 Ill. 2d 244, 253 (2009), however, the supreme court held that the charges in section 5-1101 of the Counties Code represent "monetary penalties to be paid by a defendant" who pleads or is found guilty of certain offenses. The supreme court determined that as the costs under that section are not intended to compensate the State for the prosecution of that particular defendant, they are fines. *Id.* at 252. A number of reviewing courts in this state have relied on the holding in *Graves* for the proposition that the assessments listed under 5-1101 are fines. See *People v. Smith*, 2013 IL App. (2d) 120691, ¶ 21; *People v. Ackerman*, 2014 IL App. (3d) 120585, ¶ 30 (noting that *Graves* refers to the assessments under section 5-1101(c) are fines). In line with that authority, we hold that the \$50 court system fee was a fine that defendant may offset with his presentence custody credit.

¶ 20 For the reasons stated, we order the clerk to modify defendant's fines and fees order to reflect the offset of the \$50 court systems fee by defendant's presentence custody credit, vacate the \$5 electronic citation fee and the \$5 court system fee, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 21 Affirmed, fines and fees order modified.