

No. 1-13-1220

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 15877
	)	
CHARLES REMBERT,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Hall and Lampkin 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 jury trial, defendant Charles Rembert was convicted of burglary and sentenced to 18 years' imprisonment and three years of mandatory supervised release. He was also assessed certain fines and fees. On appeal, defendant contends that the trial court abused its discretion in sentencing him to 18 years' imprisonment and incorrectly assessed a \$5 court system fee. For the reasons that follow, we affirm, as modified, the judgment of the circuit court.

¶ 3 Defendant was charged with burglary in connection with an incident that occurred at J.B. Metals, a metal scrapping and recycling company located at 2910 West Carroll Avenue in the early morning hours of August 17, 2011. Defendant subsequently elected to represent himself after being admonished by the court on a number of occasions.

¶ 4 At trial, Gene Eydelman, a security manager at J.B. Metals, explained that the company has a 24-hour surveillance system with 12 cameras that stamp the date and time of its recordings. When Eydelman arrived at work on the morning of August 17, 2011, several employees told him that someone had used a sledgehammer to create a hole in the building and had stolen some copper pipes. He called police and then viewed the security footage from the night before. On the video, he observed two men enter the building, and then walk back and forth, carrying bags, through the hole in the wall. He also saw video from another camera showing a Dodge Intrepid with a shattered rear window parked outside the building. Eydelman identified defendant as one of the men on the video who had been inside the building. He estimated that about 300 to 400 pounds of copper pipe, worth approximately \$1000, had been removed from the business that night.

¶ 5 Jacob Eydelman, the owner of J.B. Metals, testified that, when he arrived at the business on August 17, 2011, he noticed a hole in the side of the building. He also viewed the security footage from the previous night and identified defendant as one of the men shown in the video using a sledgehammer to break a hole into the side of the building.

¶ 6 Ricky Davis, a J.B. Metals' employee, testified that, when he viewed the security footage from August 17, 2011, he recognized defendant as someone who had visited the company a few

days before the burglary seeking to sell a car battery and some iron gate poles. Davis stated that, on both occasions, defendant was driving a two-tone green and white Dodge Intrepid with a broken rear window, the same vehicle shown in the security footage.

¶ 7 Davis further testified that, on the afternoon of August 25, 2011, defendant drove into the lot of J.B. Metals in the two-tone Dodge Intrepid with a newly repaired rear windshield. Davis recognized defendant as the man he had seen on the security footage and indicated to the owner that defendant was in the yard and that they should shut the gate so he could not escape. Defendant fled and Davis chased after him onto the street where he saw two police officers. Chicago Police Officers Carrilo and Challis eventually detained the defendant a few blocks away from J.B. Metals.

¶ 8 Detective Rose testified that he arrested the defendant and transported him to J.B. Metals for identification. While there, Detective Rose observed defendant's car parked in the lot. The car was transported to Area Four headquarters where Detective Rose examined the vehicle and discovered small pieces of glass scattered in the trunk, and two large bags, one of which contained small pieces of copper pipe.

¶ 9 Defendant testified that he did not break into J.B. Metals on August 17, 2011, and had never been to that business before August 25, 2011. He admitted that, on August 25, he drove a two-toned Dodge Intrepid to J.B. Metals, seeking to sell a broken copy machine. However, defendant explained that the car belonged to a friend and did not contain any bags in the trunk. Defendant testified that he believed that Detective Rose planted the bagse once the car was transported to Area Four headquarters.

¶ 10 In rebuttal, the State introduced certified copies of three of defendant's prior felony convictions. The jury subsequently found defendant guilty of burglary, and defendant then accepted the appointment of counsel, who filed a motion for a new trial. Counsel was subsequently granted leave to withdraw when defendant again elected to represent himself.

¶ 11 At the sentencing hearing, the State informed the court that defendant was subject to sentencing as a Class X offender based on his background. The State outlined the defendant's ten prior felony convictions, noting also that he was on parole at the time of this offense. The State requested a term within the Class X sentencing range of six to 30 years' imprisonment.

¶ 12 In mitigation, defendant denied that he was on parole at the time of the offense, and pointed out that his previous convictions occurred long ago when he was young. He also pointed out that his prior felony convictions were more than ten years old and argued that, he should be sentenced in the range for a Class 2 offense, which was three to seven years' imprisonment rather than the six to 30-year range for Class X.

¶ 13 In announcing its sentencing decision, the court outlined the factors in mitigation and aggravation that were appropriate in this case. The court referred to defendant's lengthy criminal record, and stated that the sentence was necessary for the safety of the public and for defendant's rehabilitation "should such a thing be possible." The court also noted the sophisticated nature of the burglary involving tunneling through a wall. In mitigation, the court recognized that some of defendant's felony convictions were old, but noted that they were constant and regular over the course of his life. The court then observed that defendant had some work history and that no one was hurt during the commission of the burglary. After considering the circumstances of the

offense, the character and background of defendant, the pre-sentence investigation report, and the arguments of the parties, the court sentenced defendant to 18 years' imprisonment.

¶ 14 After the court announced its sentence, defendant stated that he did not want to be sentenced that day because he had some documents he wanted to submit to the court which he claimed established that some witnesses had lied at trial. After reviewing the documents, the court vacated its original sentence and stated that it would start the sentencing proceedings "from scratch." When the State informed the trial court that defendant had, in fact, been on parole at the time of the offense, the court reinstated its original sentence. In doing so, the court commented that, although it had considered the new information in the documents provided, it again noted the sophisticated nature of the burglary and found that defendant's record did not warrant a minimum sentence regardless of the classification of the offense.

¶ 15 In this appeal from that judgment, defendant first contends that his 18-year sentence for burglary is excessive in light of the seriousness of the offense and that the trial court improperly considered his recidivism in determining the length of sentence. The State responds that the trial court did not abuse its discretion when it entered a sentence within the statutory range after considering the appropriate sentencing factors.

¶ 16 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).

¶ 17 In this case, defendant was convicted of a Class 2 felony (720 ILCS 5/19-1 (West 2012)); however, he was subject to mandatory Class X sentencing because of his criminal history (730 ILCS 5/5-4.5-25 (West 2012)). The 18-year sentence imposed by the trial court fell within the prescribed 6-to-30-year range (730 ILCS 5/5-4.5-25(a) (West 2012)), and was entered after the court considered the appropriate sentencing factors, including the nature of the offense, and defendant's criminal history.

¶ 18 Defendant nonetheless argues that his sentence was excessive given the non-violent nature of the offense. In support of his argument, defendant cites *People v. Center*, 198 Ill. App. 3d 1025, 1035 (1990), as an example of a case where the court reduced a sentence for being disproportionate to the crime committed. The supreme court has since 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.

¶ 19 In announcing its sentencing decision in this case, the trial court found it significant that defendant had several felony convictions on his record. Although many of the convictions were old, the court noted the pattern of continuous felonies in his history and expressed doubt as to his ability to be rehabilitated. *People v. Shumate*, 94 Ill. App. 3d 478, 485 (1981). The court also considered the same mitigating factors that defendant calls to our attention on appeal, including

the non-violent nature of the offense. However, it is not our function to reweigh these same factors and independently conclude that the sentence was excessive. *People v. Burke*, 164 Ill. App. 3d 889, 902 (1987).

¶ 20 Defendant next contends that the trial court improperly considered his recidivism as an aggravating factor to further increase his sentence. He argues that, since the court had already used his recidivism in determining his status as a Class X offender, it could not again consider his criminal history in aggravation.

¶ 21 The State points out that the supreme court decided this issue adversely to defendant in *People v. Thomas*, 171 Ill. 2d 207, 227-28 (1996). In that case, defendant, who was convicted of second-degree murder, was sentenced as a Class X offender because he had two prior felony convictions. *Id.* at 210. Defendant appealed his 15-year sentence, arguing that by enacting section 5-5-3(c)(8) of the Unified Code of Corrections (730 ILCS 5-5-3(c)(8) (West 1992), now 730 ILCS 5/5-4.5-95 (West 2009)), the legislature intended to preclude a sentencing court from considering defendant's complete criminal history in fashioning a sentence in the Class X range. *Id.* at 226. In rejecting this argument, the supreme court stated that, although defendant's prior convictions determine his eligibility for a Class X sentence, "it is the *nature and circumstances* of [defendant's] prior convictions [], along with other factors in mitigation and aggravation, [that] determine the exact length of the sentence." *Id.* at 227-28 (emphasis in original). Thus, we find that the trial court in this case did not abuse its discretion when it considered defendant's criminal history both in finding him eligible for Class X sentencing, and in determining the length of his sentence. *Id.*

¶ 22 Defendant further contends that the trial court failed to consider the financial impact of an extended period of incarceration on the State of Illinois. There is nothing in the record, however, to suggest that the trial court did not consider this factor in its sentencing decision. In the absence of evidence to the contrary, we presume that the court considered the financial impact of defendant's incarceration. *People v. Acevedo*, 275 Ill. App. 3d 420, 426 (1995).

¶ 23 Defendant finally contends, the State concedes, and we agree, that the \$5 court system fee imposed by the court should be vacated. 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 not convicted of Vehicle Code offense, the assessment of the fee was inappropriate, and we vacate it.

¶ 24 For the reasons stated, we order the clerk to modify defendant's fines and fees order to vacate the \$5 court system fee, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 25 Affirmed as modified.