

No. 1-13-1566

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. 09 CR 9112
)	
JOSHEWA BROWN,)	Honorable
)	James L. Rhodes,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Lavin and Mason concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to 25 years' imprisonment for armed robbery.

¶ 2 After a bench trial, the court found defendant Joshewa Brown guilty of armed robbery and aggravated battery with a firearm. The court sentenced Brown to concurrent, respective terms of 25 and 6 years' imprisonment. On appeal, Brown contends that his sentence is excessive, given his personal circumstances, and that this court should reduce his sentence or remand the case for resentencing. After a review of the record, we find Brown's sentence to be

neither manifestly disproportionate to the nature of the offense or greatly at variance with the spirit and purpose of the law.

¶ 3 Background

¶ 4 The incident leading to Brown's arrest took place on April 21, 2009, in the 7-11 store at 3950 West 147th Street, Midlothian, Illinois. At trial, William Alexander testified that about 12:40 a.m. that day, he was working at the register directly behind the counter, when a woman entered, paid for an ice cream bar, and left. As she did so, two black males with bandanas covering the lower half of their faces came into the store. One of the men held a gun and demanded cash from the register; the other man came behind the counter with a bag in his hand, but Alexander could not see what he was doing. The gunman pointed his gun at Alexander's face, prompting him to put his hands up in the air, tender money from the register, and put his hands back up. The gunman then urged the co-offender to "hurry up because he was going to blast [Alexander]," and the co-offender came out from behind the counter, and got behind him. The gunman still had the gun pointed at Alexander's face, and pulled the trigger as the two offenders left the store. When the weapon fired, Alexander heard a "large popping noise." He realized that he had been shot when he looked down and saw blood pouring from his arm. He pressed the panic button under the counter and called police after the offenders fled. Alexander testified that the injury left him with scarring on the left arm, and a 70% loss of the feeling in that arm due to nerve damage.

¶ 5 Raquelle Lilly testified about her involvement in the plan to rob the 7-11 and pled guilty to robbery in exchange for a sentence of four years' probation. On the evening of the incident, she, Brown, Jovan Marshall, and her cousin Boris Lilly, were drinking and smoking marijuana at

her apartment when they ran out of marijuana. Brown proposed a plan to rob the 7-11. Brown assigned everyone a role, and told Lilly to "go in the store and buy something to get the register open." After Lilly left the store, Marshall and Brown would enter, Marshall would go behind the counter, and Brown would "hold the clerk up for hostage[,] while Boris would act as the lookout. Lilly supplied Brown and Marshall with scarves to mask their faces.

¶ 6 Boris stayed in the apartment and the rest of the group went to the 7-11. Lilly entered the store, bought ice cream and sunflower seeds, paid for her items, and walked out. As she left, Brown and Marshall ran in behind her, wearing the scarves she had given them to mask their faces. Lilly watched from the front door of the store and kept a lookout. The clerk was standing at the cash register, and Marshall ran behind the counter and collected cigarettes in a plastic bag, while Brown stood in front of the counter, aimed a gun at the clerk's face, and demanded him to "give [him] all the fucking money." The clerk threw his hands up, handed over the money in the register, and put his hands back in the air. Brown told Marshall to hurry up and take the cigarettes already because "[He was] fin [*sic*] shoot this motherfucker." As Marshall and Lilly ran out the store, she heard a gunshot, and the two of them went back to her apartment and shared the cigarettes. Brown arrived at the apartment later and kept the money.

¶ 7 Detective Adam Thibo testified that he responded to the robbery. He found Alexander "in shock" inside the 7-11 and saw that he had suffered a gunshot wound to his left arm and was bleeding heavily. Alexander told Detective Thibo that the offenders were "two male blacks, wearing masks, one had a gun."

¶ 8 Following argument, the court found Brown guilty of armed robbery and aggravated battery with a firearm. At the sentencing hearing, the court noted that it had the pre-sentence

investigation report and that Brown had no convictions. In aggravation, the State pointed out that Brown aimed the gun at the clerk's face and shot him even though he had complied with every order, and that he could have been killed. The State noted that this was a violent crime, and accordingly, requested that the court sentence Brown to 30 years in prison to deter others from committing a similar crime.

¶ 9 In mitigation, defense counsel pointed out that Brown was 21 years old when the offense occurred, that he had only been arrested a few times, and had never been convicted of a crime. Counsel also noted that Brown had a troubled childhood, met his father only once, and had been placed in foster care when he was six years old because his mother was a drug addict. Counsel pointed out that Brown had graduated from high school, and been employed since he was 13 years old, and had "strong potential for rehabilitation." Accordingly, counsel requested that the court impose a term closer to the minimum (21 years) on the armed robbery conviction, and 10 years for aggravated battery with a firearm.

¶ 10 The court and respective counsel discussed the applicability of consecutive sentencing, and agreed that there was a shooting during the course of an armed robbery and concurrent terms were indicated. In allocution, Brown maintained that the State's theory was not "halfway true," that he had no intention of killing anyone, and asked the court to have mercy on him. In a brief colloquy with the court, Brown claimed that the State was "lying on [him]," but that the court saw it differently. The court sentenced Brown to 10 years in prison and a 15-year firearm enhancement, for a total of 25 years for the armed robbery conviction; and 6 years in prison for aggravated battery with a firearm.

¶ 11 On appeal, Brown does not contest the sufficiency of the evidence to sustain his convictions. He solely contends that the court abused its discretion in sentencing him to 25 years' imprisonment. He acknowledges that his sentence falls within the 21- 45 year statutory range provided for armed robbery (720 ILCS 5/18-2(a)(2), (b) (eff. Jan. 1, 2000)), but asserts that his sentence is excessive, because the trial court failed to consider that he was a "young man with significant rehabilitative potential" and that this was his first offense.

¶ 12 Analysis

¶ 13 A trial court's sentencing decision is afforded great deference, and a reviewing court will not disturb a sentence within statutory limits unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-210 (2000). A sentence within the statutory limits will be deemed excessive only if it is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *People v. Fern*, 189 Ill. 2d 48, 54 (1999). In fashioning a sentence, the court must balance the retributive and rehabilitative purposes of punishment, and undertake careful consideration of all factors in aggravation and mitigation, but it need not explain the exact thought process it used to arrive at the ultimate sentencing decision. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002).

¶ 14 Brown contends that the trial court did not adequately consider mitigating factors, including his young age, difficult childhood, substance abuse issues, and his rehabilitative potential. We disagree. When a trial court is presented with mitigating evidence, we presume that the court considered that evidence, absent some indication, other than the sentence itself, to the contrary. *People v. Hill*, 408 Ill. App. 3d 23, 30 (2011). The sentencing court reviewed the pre-sentence investigation report, noted that Brown had no prior convictions, and heard arguments in

aggravation concerning the seriousness of the offense, and in mitigation about Brown's background, education, and employment history. The court also engaged counsel on the way the terms would be served and Brown on his motivation. Thus, other than the sentence itself, which is four years above the minimum, Brown has failed to rebut the presumption that the trial court considered the mitigating evidence before it, or abused its discretion in imposing the 25-year term. *Hill*, 408 Ill. App. 3d at 30.

¶ 15 In reaching this conclusion, we note that the trial court heard the evidence presented at trial and knew about Brown's personal circumstances and his lack of criminal background, as well as the aggravating factors, particularly, the violent nature of the offense and the permanent injury sustained by the victim. See *People v. Snyder*, 2011 IL 111382, ¶ 36. ("A reviewing court gives substantial deference to the trial court's sentencing decision because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age.") Even if we preferred a different result, we are constrained by long-standing case law not to overturn a sentence imposed within the statutory range unless the sentencing court abuses its discretion by imposing a sentence that is manifestly disproportionate to the nature of the offense or greatly at variance with the spirit and purpose of the law. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007).

¶ 16 Alexander testified that he complied with all of Brown's instructions, but Brown pointed the gun at his face and shot him nonetheless, causing him permanent scarring and significant nerve damage in his left arm. In fashioning a sentence, the court may balance the retributive and rehabilitative purposes of punishment with the seriousness of the offense (*Quintana*, 332 Ill. App. 3d at 109), and we find the sentence imposed on Brown's armed robbery conviction to be neither greatly at variance with the spirit and purpose of the law nor manifestly disproportionate to the nature of the offense (*Fern*, 189 Ill. 2d at 54). Having found no abuse of discretion in the sentencing court's decision, we have no basis to modify it (*People v. Almo*, 108 Ill. 2d 54, 70 (1985)), and affirm the judgment of the circuit court of Cook County.

¶ 17 Affirmed.