

No. 1-13-1835

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 12 C 660808
)	
REGINALD SWEET,)	Honorable
)	Frank G. Zelezinski,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court was affirmed where the defendant's sentence was not excessive.

¶ 2 After a bench trial, the defendant, Reginald Sweet, was convicted of aggravated robbery (720 ILCS 5/18-5(A) (West 2012)) and sentenced to seven years' imprisonment. On appeal, he argues that his sentence is excessive and that we should remand for resentencing. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 The defendant was charged by information with armed robbery and aggravated robbery after a June 1, 2012, incident involving his high school classmate, Eddie Everson. At the

defendant's bench trial, Everson testified that he met the defendant on June 1, 2012, the last day of school that year, and they walked through Dahlenburg Park together. He stated that the defendant repeatedly asked him for his cell phone, but Everson refused to give it to him. Everson testified that the defendant then reached toward his waistband, pulled out a gun, pointed it at him and repeated his demand for the phone. He stated that he reached for the defendant's gun and the two began a physical altercation. Eventually, Everson was face-down on the ground with the phone and gun underneath him; the defendant was on top of him. According to Everson, the defendant bit him three times until he released the gun. The defendant then turned Everson over and hit him in the head with the gun and fled with the gun and the phone. Everson chased after the defendant, and the defendant fired the gun twice. Everson then ran to his girlfriend's home and called the police.

¶ 4 Everson identified photographs of his injuries, including the bite marks and laceration to his head. A few days after the incident, he proceeded to Thornwood High School with the police and identified the defendant from a school identification picture. On June 26, 2012, Everson also identified the defendant from a line-up conducted at the police station.

¶ 5 South Holland Police Officer Maurice Roberts testified that he responded to Everson's emergency call and that Everson was bleeding from the face and had several lacerations to his arms and face when he arrived. Officer Roberts' testimony regarding Everson's version of events was consistent with Everson's testimony. Likewise, South Holland Police Detective Phil Williams testified consistently with Everson regarding his photo and line-up identifications of the defendant.

¶ 6 The defendant testified that Everson had previously offered to sell him his cellular phone for \$100 and that, on June 1, 2012, he paid \$40 toward the phone. However, Everson then told

him that he did not have the phone. Later that afternoon, the defendant called Everson and asked him to return his \$40, but Everson told him that he did not have the money. After the call, the defendant saw Everson walking near Dahlenburg Park, and he approached him. As they walked through the park, the defendant offered to pay Everson the remaining \$60 for the phone. Everson stated that he did not have the phone, and the two began wrestling. The defendant testified that they both threw punches at each other and bit each other during the fight. He admitted that the phone was on the ground and that he took the phone with him when he left the scene. He denied, however, that he had a weapon or fired a gun at Everson. No weapon was ever discovered or admitted into evidence.

¶ 7 At the conclusion of the trial, the court determined that Everson's head injury was indicative of being hit with a hard item, such as a weapon or gun. However, because no gun was recovered, the court found the defendant not guilty of armed robbery charge but guilty of aggravated robbery.

¶ 8 At the defendant's sentencing hearing, the State submitted a victim impact statement from Everson and noted the physical disparity in the sizes of the defendant and Everson. The State also pointed out that, at the time of the offense, the defendant was on a five-year probation term from a juvenile adjudication for residential burglary and had not yet completed one year of that probation. Based on the factors, the State requested a six-year term where the available range was four to 15 years (730 ILCS 5/5-4.5-30(a) (West 2012)).

¶ 9 The defense raised numerous factors in mitigation, including that the defendant's presentencing investigation report (PSI) recommended intensive probation. Further, the defendant was only 17 years old at the time of the offense, had the potential to complete classes at Excel Academy in order to graduate and then attend college or technical school, and was an

active member of Mount Calvary Baptist Church. In allocution, the defendant apologized for his actions and asked for a chance to prove that he could be a productive citizen.

¶ 10 The court stated that it did not believe the defendant's version of events and believed that a weapon was involved. The court further stated that it was most troubled by the fact that the defendant was on probation for residential burglary for less than one year at the time of the present offense. The court noted the mitigating factors raised by the defendant; namely that he had no adult prior convictions, was young, and had the support of his family. However, the court stated that it questioned the defendant's ability to rehabilitate when he committed an act of violence so soon after being placed on probation. Accordingly, the court sentenced the defendant to seven years' imprisonment.

¶ 11 On appeal, the defendant argues that his sentence was excessive because the court failed to properly account for the various mitigating factors presented during his hearing. Specifically, he contends that his young age, lack of prior adult convictions, church activity, promising academic future and strong family support favor a shorter sentence.

¶ 12 At the outset, the State points out that the defendant forfeited his sentencing claim when he failed to raise the issue in a post-trial motion. *People v. McDade*, 345 Ill. App. 3d 912, 914 (2004). The State further argues that the plain error doctrine does not apply in this case where no error occurred and where the evidence at sentencing was not closely balanced. See *People v. Thompson*, 238 Ill. 2d 598, 613 (2010) (setting forth two-prongs of plain error doctrine). We agree that the defendant has forfeited the issue by failing to raise it in a post-trial motion and that the plain error doctrine is not invoked here where no error occurred and the evidence at sentencing was not closely balanced. Forfeiture aside, we find no merit in the defendant's argument.

¶ 13 The trial courts are afforded great discretion in fashioning an appropriate sentence within the statutory limits. *People v. Fern*, 189 Ill. 2d 48, 53-54 (1999). "The trial court must base its sentencing determination on the particular circumstances of each case, considering such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *Id.* at 53. When considering the propriety of a sentence, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *Id.* "A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *Id.* at 54.

¶ 14 Here, the 7-year sentence imposed on the defendant was well within the statutory range of four to 15 years' imprisonment. 730 ILCS 5/5-4.5-30(a) (West 2012). In fact, the sentence was at the lesser side of the available range. Moreover, the record clearly indicates that the court considered all aggravating and mitigating factors when it rendered the sentence, including the defendant's age, family support, church and school activities, and the fact that he was on probation for a residential burglary juvenile adjudication for less than one year. Contrary to the defendant's position, we must not substitute our judgment for that of the trial court merely because we would have weighed the factors differently.

¶ 15 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.