FIRST DIVISION
June 29, 2015

No. 1-13-2308

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. 12 CR 10953
	)	
EUGENE WHITE,	)	Honorable
	)	Colleen Ann Hyland,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 ***Held:*** The trial court did not abuse its discretion in sentencing defendant to two Class X 12-year prison terms for residential burglary and possession of a stolen motor vehicle; the record does not reflect that trial court failed to consider mitigating evidence.

¶ 2 Following a bench trial, defendant Eugene White was convicted of residential burglary and possession of a stolen motor vehicle. Due to his criminal background, he was sentenced to two concurrent Class X sentences of 12 years in prison. On appeal, defendant contends that his sentence is excessive in light of certain mitigating evidence, including his age, history of mental

health issues, and expression of remorse at sentencing. He also contests the imposition of certain fines and fees. We affirm, and correct the fines and fees order.

¶ 3 The evidence at defendant's trial, which included defendant's inculpatory written statement, established that defendant and his three friends drove a stolen Jeep around until they decided to do a "lick," that is, break into a house. Defendant stayed in the Jeep to act as the "getaway driver" and his friends went inside. When the other men returned with certain electronics and a camera, the Jeep would not start, so they all ran away on foot. Defendant and two of his friends hid for several hours but were ultimately taken into custody. At trial, defendant denied making and signing the statement. He testified that he spent the day at home and with his brother at a McDonald's restaurant. In finding defendant guilty of residential burglary and possession of a stolen motor vehicle, the trial court concluded that his testimony amounted to "a bag of lies."

¶ 4 At sentencing, the State argued that defendant, due to his criminal record, was subject to a mandatory Class X sentence. The defense responded that defendant planned to go back to school and that the minimum sentence would give him a chance to be rehabilitated and reunited with his child. The defense further argued that the minimum sentence was appropriate because no one was injured, and that defendant was only 20 years old and had potential for rehabilitation. Defendant then expressed remorse and asked for forgiveness.

¶ 5 The trial court stated that it reviewed the presentence investigation report as well as defendant's prior criminal history, which included convictions for residential burglary, possession of a stolen motor vehicle and unlawful use of a weapon by a felon, and that defendant was "making a career" out of being a criminal. In sentencing defendant to two concurrent 12-year prison terms, the court stated that it took into consideration the mitigating evidence

provided by defendant's counsel as well as defendant's remorse, mental health issues and past alcohol and drug abuse. In denying defendant's motion to reconsider sentence, the trial court again stated that it considered all evidence presented in mitigation including defendant's age and family situation and balanced that with the evidence presented at trial and defendant's "extensive" criminal history.

¶ 6 On appeal, defendant does not contest that he was subject, due to his criminal background, to a Class X sentence of between 6 and 30 years in prison. See 730 ILCS 5/5-4.5-95 (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). However, he contends that a 12-year sentence is excessive in light of certain mitigating factors including, his age, history of mental illness, nonviolent criminal history, and expression of remorse. He also argues that no one was injured during the commission of the offense.

¶ 7 A trial court has broad discretion in determining the appropriate sentence for a particular defendant and its determination will not be disturbed absent an abuse of that discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A sentence within the statutory range will not be considered excessive unless it varies greatly from the spirit of the law or is manifestly disproportionate to the nature of the offense. *People v. Brazziel*, 406 Ill. App. 3d 412, 433-34 (2010). When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, *inter alia*, a defendant's age, criminal history, character, education, and environment, as well as the nature and circumstances of the crime and the defendant's actions in the commission of that crime. *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010). "Even where there is evidence in mitigation, the court is not obligated to impose the minimum sentence." *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010)

¶ 8 The record reveals that at sentencing, the parties presented evidence in aggravation and mitigation including defendant's criminal record, his youth, his plans to reunite with his child and continue his education, and the fact that no one was injured during the commission of the instant offense. Defendant also expressed remorse and asked for forgiveness. In sentencing defendant, the trial court stated that it had considered defendant's criminal history and the evidence presented in mitigation by defense counsel as well as defendant's mental health issues and expression of remorse. The trial court reiterated, when denying defendant's motion to reconsider sentence, that it had balanced the evidence presented at trial and defendant's criminal history against defendant's age and family situation when sentencing defendant. This court cannot say that defendant's sentence of 12 years was an abuse of discretion when it fell within the statutory range. See *Patterson*, 217 Ill. 2d at 448.

¶ 9 We reject defendant's contention that the trial court failed to consider the mitigating evidence presented because it is presumed that the court properly considered the mitigating factors presented and it is the defendant's burden to show otherwise. *Brazziel*, 406 Ill. App. 3d at 434. Here, defendant cannot meet that burden, as the trial court acknowledged the mitigating factors that defendant raises on appeal including his expression of remorse, history of mental health issues and prior abuse of alcohol and drugs. *Id*. The seriousness of the offense is the most important factor in determining a sentence (*People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002)), and the trial court is not required to find significant mitigation in a defendant's history of mental health issues (*People v. Holman*, 2014 IL App (3d) 120905, ¶ 75), nor impose a minimum sentence merely because mitigation evidence exists (*Sims*, 403 Ill. App. 3d at 24). Here, the trial court did not abuse its discretion merely by giving the evidence presented in mitigation a different weight than defendant would prefer, nor was it required to ignore his criminal record.

See *People v. Hay*, 362 Ill. App. 3d 459, 468-69 (2005) (affirming sentence where the defendant had an extensive criminal history despite the mitigating factors that he was young and had a drug problem, and no one was hurt during the offense).

¶ 10 Defendant next contests the imposition of certain fines and fees. We review the imposition of fines and fees *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 11 Defendant contends, and the State agrees, that pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)), he is entitled to a $2,195 credit based on 439 days of presentence custody. The parties agree that defendant was assessed certain fines that may be offset by the presentence custody credit: the $10 Mental Health Court fine (55 ILCS 5/5-1101(d-5) (West 2010)); the $5 Youth Diversion/Peer Court fine (55 ILCS 5/5-1101(e) (West 2010)); the $5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2010)); the $30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2010)); the $30 Juvenile Expungement Fund assessment (730 ILCS 5/5-9-1.17 (West 2010)); and the $15 State Police Operations Fee (705 ILCS 105/27.3a (West 2010)). Therefore, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order that the $10 Mental Health Court fine, the $5 Youth Diversion/Peer Court fine, the $5 Drug Court fine, the $30 Children's Advocacy Center fine, the $30 Juvenile Expungement Fund assessment, and the $15 State Police Operations Fee be offset by defendant's presentence custody credit.

¶ 12 The parties also agree that the Violent Crimes Victims Assistance Fund (VCVA) assessment (see 725 ILCS 240/10 (West 2010)), should be reduced from $20 to $8 because defendant was assessed $80 in fines. Pursuant to section 10(c) of the VCVA statute (725 ILCS 240/10(c) (West 2010), a $20 fine is improper when another fine is imposed, and, therefore, defendant's VCVA fine should be reduced to $8 because he was assessed $80 in other fines. See

725 ILCS 240/10(b) (West 2010) (when other fines are assessed, section 10 imposes a VCVA assessment of $4 for each $40, or fraction thereof, of fines imposed).

¶ 13 Defendant also argues that he is entitled to offset the $50 Court System fee with his presentence custody credit. 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.

¶ 14 Section 5-1101(c) of the Counties Code states that for a felony conviction, a defendant shall pay a fee of $50. 55 ILCS 5/5-1101(c)(1) (West 2010). The State maintains that the use of the term "fee" indicates that the assessment should be categorized as a fee. However, in *People v. Graves*, 235 Ill. 2d 244, 253 (2009), our supreme court held that the charges in section 5-1101 of the Counties Code represent "monetary penalties to be paid by a defendant" upon a judgment of guilty of certain offenses. The court concluded that because the costs assessed pursuant to section 5-1101 are not intended to compensate the State for the prosecution of any particular defendant, they are fines. *Graves*, 235 Ill. 2d at 252-53, accord *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21; *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17; *People v. Smith*, 2014 IL App (4th) 121118, ¶ 54; *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30. Although the State maintains that *Smith* was wrongly decided, we choose to follow it as it relied upon the holding of our supreme court in *Graves*. Accordingly, we find that $50 Court System fee was a fine that defendant may offset with his presentence custody credit.

¶ 15 Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct defendant's mittimus to reflect (1) 439 days of presentence custody credit, (2) a $2,195 credit based on 439 days of presentence custody credit, (3) that the $10 Mental Health Court fine, the $5 Youth Diversion/Peer Court fine, the $5 Drug Court fine, the $30 Children's Advocacy Center fine, the $30 Juvenile Expungement Fund assessment, the $15 State

Police Operations Fee, and the $50 Court System fee are offset by defendant's presentence custody credit, and (4) the reduction of the VCVA assessment from $20 to $8, for a new total due of $337. We affirm the judgment of the circuit court of Cook County in all other aspects.

¶ 16 Affirmed; mittimus corrected.