

No. 1-13-2471

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. 12 CR 18646
)	
TIMOTHY WARD,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

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

ORDER

¶ 1 **Held:** We affirm the sentence imposed on defendant’s conviction for robbery despite his contention that it is excessive.

¶ 2 Following a bench trial, defendant Timothy Ward was found guilty of robbery and sentenced to five years’ imprisonment. On appeal, defendant contends that the trial court abused its discretion in sentencing him to five years’ imprisonment, given the mitigating evidence presented.

¶ 3 The record shows that defendant was charged with armed robbery with a firearm in connection with an incident that occurred on the west side of Chicago, on September 5, 2012. At

trial, Antoinette Newell testified that, on that date, she was employed as an assistant manager at the Popeye's Chicken restaurant at 3457 West Roosevelt Road. She arrived before the restaurant opened that morning, collected her paycheck, and left to deposit the money earned in sales the previous night. On the way to the bank, she stopped at a nearby beauty supply store to run a personal errand.

¶ 4 Before going into the store, she noticed defendant, whom she recognized as a regular customer of Popeye's, standing in the parking lot. Defendant was still there when she left, and as she moved toward her car, defendant approached, pulled out a silver gun, and held it near his waist. He then told her to give him her purse, which contained her paycheck and the deposit money from Popeye's. Newell complied, and then ran back to Popeye's to call police and observed defendant running down an alley. When police arrived 5 to 10 minutes later, Newell told the officer about the incident, and later that day she identified defendant in a photo array and in a lineup.

¶ 5 On cross-examination, Newell stated that she described defendant to the officer as a short, black male with short "dreads." She also stated that before speaking to a detective later that day, she learned that defendant's name was "Tim" by describing him to an unidentified person. She told the responding officer that defendant was a regular customer at Popeye's and was wearing a gray sweater and blue jeans.

¶ 6 The court granted defendant's motion for a directed finding on the armed robbery charge finding that Newell was credible, but that it was not certain that defendant had a gun. The court thus gave him the benefit of the doubt on that element, and the case continued on the lesser-included offense of Class 2 robbery.

¶ 7 The defense presented the stipulated testimony of Chicago police officer Raymond Raddatz, who, if called, would testify that he responded to Newell's call at Popeye's. He would also testify that, according to his case incident report, Newell indicated that the incident took place as she was exiting her car to open Popeye's, and there was no mention of the offender being a regular customer of that Popeye's restaurant or that he was wearing blue jeans and a gray sweater. Following closing arguments, the court found defendant guilty of robbery stating that Newell was a credible and compelling witness, and that the State met its burden of proof on the lesser-included offense.

¶ 8 At the sentencing hearing, the State argued in aggravation that defendant was on probation for aggravated battery to a police officer at the time of this offense, and a threat to public safety. The State noted that Newell was an innocent victim who was just going about her work, and defendant robbed her of well over \$2,000. Therefore, the State asked for a "very high" prison sentence.

¶ 9 In mitigation, defense counsel informed the court that defendant was only 24 years old and had been respectful throughout the proceedings. He also pointed out that defendant's aunt and father had been present for every court date and that he has a family to go to when he is released from prison. Defense counsel noted defendant's work history and asked for leniency, requesting the court to consider IDOC Boot Camp within the penalty range. Defendant's father then told the court that defendant was a "good kid," that he is dependable and trustworthy, and that he has learned from the wrong decisions he made in his life. He also stated that defendant was attentive to his five children, which the court noted were from four different mothers. In allocution, defendant acknowledged that he had made mistakes and that he was sorry for what happened to Newell.

¶ 10 In announcing its sentencing decision, the court stated that it had reviewed defendant's criminal history, the facts of the case, and the factors in mitigation and aggravation that were presented and contained in the presentence investigation report (PSI). The court noted that defendant was on felony probation for aggravated battery at the time of the offense, and that this was a premeditated robbery because he picked a woman who appeared to be weak and vulnerable. The court also referred to defendant's "history of irresponsibility," which included his convictions for domestic battery, trespass to vehicle, and small marijuana cases. The court finally noted that it considered Boot Camp as a possibility, but found that it would deprecate the seriousness of the offense, and sentenced defendant to five years' imprisonment.

¶ 11 In this appeal from that judgment, defendant does not challenge the sufficiency of the evidence to sustain his conviction, but contends that his sentence is excessive. As evidence, he cites his age, 23 years, that he is a high school graduate who had been steadily employed for three years, and that his longest prior period of incarceration was 100 days.

¶ 12 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).

¶ 13 In this case, defendant was convicted of the Class 2 felony offense of robbery (720 ILCS 5/18-1(a) (West 2012)), which carries a sentencing range of 3 to 7 years' imprisonment (730 ILCS 5/5-4.5-35(a) (West 2012)). The five-year sentence imposed by the trial court fell within that prescribed range, and was entered after the court considered the appropriate sentencing factors, including the nature of the offense and defendant's criminal history.

¶ 14 The record also shows that in making its sentencing decision, the trial court considered the same mitigating factors defendant brings to our attention. The court discussed his criminal history, the matters brought to its attention in court and contained in the PSI, and also considered the seriousness of the offense. Moreover, notwithstanding the victim's certain testimony of defendant's use of a silver gun, the court gave defendant the benefit of a doubt and concluded it was not certain that defendant had a gun. Ultimately, the court believed that defendant's actions necessitated a sentence in the middle of the sentencing range because he was on probation at the time of the offense, and committed a "premeditated" robbery. 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). In addition, the court considered IDOC Boot Camp as requested, but found that it would "deprecate the seriousness of the offense." Thus, the record shows that the court properly considered the appropriate factors in aggravation and mitigation and entered a sentence within the prescribed statutory range.

¶ 15 Under these circumstances we find no abuse of discretion in the sentence imposed, and, have no basis for disturbing that decision. *Cabrera*, 116 Ill. 2d at 493-94. Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.