



¶ 3 At trial, three police officers from the narcotics task force testified. Their testimony established that defendant sold less than one gram of heroin to an undercover police officer near Chicago Avenue and Trumbull in Chicago at approximately 8:30 a.m. on July 16, 2012.

¶ 4 The court found defendant guilty of delivery of a controlled substance. At sentencing, the parties agreed that defendant was a Class X offender based on his criminal history, which included two prior convictions for Class 2 felony possession of a controlled substance (1998 and 2002) and four other convictions for possession of a controlled substance (1994, 2001, 2002, and 2004). More recently, defendant was convicted of endangering the life of a child (2007) and criminal damage to property (2011). The State cited defendant's history of selling and possessing drugs and observed that his background "does not show that [he] has done anything additional to further his contribution to society." The State argued that because defendant denied using drugs in the presentencing investigation report (PSI), his involvement with drugs was only for monetary gain and warranted a substantial sentence.

¶ 5 In mitigation, defense counsel observed that defendant was "making strides to try to turn his life around." Defendant had no drug convictions in the last seven years and was attempting to be a positive influence on his two children. Defense counsel argued that defendant is nonviolent, has rehabilitative potential, and sought work through temporary employment agencies but could not find a full-time job due to his criminal background. According to the PSI, defendant was 36 years old at his arrest. His children, ages 9 and 10 in 2013, resided with their mother in Chicago. Defendant was raised by his maternal grandmother. He never had a relationship with his father and his mother is a recovering drug addict and alcoholic. Defendant left school in 10<sup>th</sup> grade and worked as a temporary laborer from 2006 until his arrest in 2012.

¶ 6 Defendant addressed the court and stated that he "grew up without no momma and daddy." He said he worked for many years, was not a bad person, and "did a lot of good out [sic] my life." Defendant requested a lenient sentence so that he could quickly return to his daughter.

¶ 7 In imposing a sentence, the court stated that it considered the PSI, defendant's criminal history, and the mitigating factors. The court sentenced defendant to seven years in prison.

¶ 8 Defendant filed a motion to reconsider. At the hearing on the motion, defense counsel conceded the sentence was not "particularly excessive" but emphasized defendant's rehabilitative potential. Defense counsel noted defendant's work history and asked for a reduced sentence to let him "give back to his family in a quicker period of time." The State argued the sentence was generous given defendant's "numerous opportunities" on probation, aside from imprisonment.

The court stated:

"You've been through the criminal justice system before, and so, no, I can't reduce [the sentence] even if by one year because you made the choice to keep selling drugs. So now you have to suffer the consequences.

I hope that when you go down to the Illinois Department of Corrections, you will think about the choices that you've made in the past and resolve to make better choices in the future, and also try to acquire some skills so that when you are released, you don't have to go back to selling drugs to support yourself."

The court denied defendant's motion.

¶ 9 On appeal, defendant contends that his sentence is excessive given his employment history, social background, and the length of time since his last imprisonment for drug charges.

Defendant argues that selling drugs was a "last-resort trade" and claims that his incarceration would not be an appropriate use of public resources.

¶ 10 As an initial matter, the State alleges that defendant forfeited review of this issue because he failed to object to the sentence on the record at the sentencing hearing. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010) ("to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required."). Defendant urges our review under the plain error doctrine. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1970). The first inquiry before determining whether there was a plain error is to determine whether there was a clear and obvious error. *People v. Eppinger*, 2013 IL 114121, ¶ 19. Absent an error, there can be no plain error and defendant's forfeiture will be honored. *Id.* For the reasons that follow, we find no error.

¶ 11 We review for abuse of discretion to determine whether a sentence is excessive. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A sentence in the statutory range is excessive if it is manifestly disproportionate to the nature of the offense or contradicts the spirit and purpose of the law by failing to consider both the seriousness of the offense and the defendant's rehabilitative potential. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000); *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 50. On review, sentencing receives great deference because the trial court is better positioned to weigh aggravating and mitigating factors. *Stacey*, 193 Ill. 2d at 209. The trial court is presumed to consider mitigating evidence and need not recite or assign a value to each fact presented at sentencing. *People v. Meeks*, 81 Ill. 2d 524, 534 (1980); *People v. Hill*, 408 Ill. App. 3d 23, 30 (2011). A reviewing court will not substitute its judgment merely because it would have weighed the aggravating and mitigating factors differently. *Stacey*, 193 Ill. 2d at 209.

¶ 12 Delivery of a controlled substance is a Class 2 offense. 720 ILCS 570/401(d) (West 2012). The sentence for a Class 2 offense ranges from three to seven years. 730 ILCS 5/5-4.5-35(a) (West 2012). Where, as here, prior felony convictions require the defendant to be sentenced as a Class X offender, a Class X sentence ranges from 6 to 30 years. 730 ILCS 5/5-4.5-25(a) (West 2012); 730 ILCS 5/5-4.5-95(b) (West 2012).

¶ 13 We find no error, as defendant's seven-year prison term is only one year above the six-year minimum in the Class X sentencing range and is not disproportionate to defendant's seventh drug-related felony conviction in approximately 17 years. The court considered defendant's criminal history and stated that "[y]ou've been through the criminal justice system before" but "made the choice to keep selling drugs." *People v. Scott*, 2015 IL App (4th) 130222, ¶ 56 (declining plain-error review where imprisonment was "well below the maximum sentence and based significantly on defendant's extensive criminal history and prior delinquency."). The trial court also considered defendant's rehabilitative potential, describing the sentence as an opportunity for defendant to "acquire some skills" for finding employment and avoiding recidivism. The court reviewed the PSI and considered the mitigating factors defendant now raises on appeal, including his work history at employment agencies, his inability to find a full-time job due to his criminal record, his limited education, unstable childhood, and two minor children.

¶ 14 Defendant contends that the trial court failed to give adequate consideration to the financial costs of his incarceration. However, a trial court is not required to specify on the record the reasons for a defendant's sentence, and, absent evidence to the contrary, we will presume that the trial court performed its obligations and considered the financial impact before sentencing

defendant. *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 24 (presuming the court considered the financial impact).

¶ 15 Defendant requested leniency to be with his children and his counsel noted that several years passed since defendant's last drug conviction. However, defendant was subsequently convicted and imprisoned for other offenses, including criminal damage to property and endangering the life of a child. *People v. Coleman*, 201 Ill. App. 3d 803, 809 (1990) (recognizing that "[r]ehabilitative potential may be evidenced by a defendant's criminal record."). In light of this record, we cannot say the trial court abused its discretion.

¶ 16 For the foregoing reasons, we affirm the sentence of the trial court.

¶ 17 Affirmed.