

No. 1-13-2803

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 22370
)	
TRACY JAMASON,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Pucinski and Justice Hyman concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Defendant, who conceded he was subject to Class X sentencing, did not receive an excessive sentence where court considered all factors in aggravation and mitigation, was aware of the correct sentencing range and had before it defendant's accurate criminal history. The nine-year sentence defendant received was at the low end of the 6 to 30-year sentencing range and did not constitute an abuse of discretion.
- ¶ 2 Following a bench trial, defendant Tracy Jamason was found guilty of the delivery of a controlled substance, and sentenced, because of his criminal background, to a Class X sentence of nine years in prison.¹ On appeal, Jamason contends that his sentence is excessive when the

¹ Defendant's surname is also spelled "Jameson" in the record. We choose the spelling reflected in the indictment and the arrest report.

mitigating circumstances and his potential for rehabilitation are weighed against the "seriousness" of the offense. He also contends that the trial court relied upon the incorrect sentencing range. We disagree and affirm.

¶ 3

BACKGROUND

¶ 4 On October 24, 2012, Jamason participated in the sale of heroin to an undercover police officer. As part of an ongoing investigation of drug sales in the area, the undercover officer approached a woman at the corner of 43rd and Indiana in Chicago and asked to buy three "blows," a street term for heroin. The officer gave the woman, who identified herself as "Sonja," \$28 in marked funds and, at Sonja's direction, walked with her a block east to the corner of 43rd and Prairie, where Sonja asked one of several men standing in a group for three blows. There is no dispute that the man Sonja spoke to was Jamason. Jamason told Sonja to walk a block because the area was "hot" with police activity. When Sonja and the undercover officer arrived at 44th and Indiana, Jamason was waiting for them in a vacant lot. Sonja handed Jamason the funds and Jamason handed her three bags of suspect heroin. Sonja then handed the undercover officer the drugs. Shortly after the buy, police detained Jameson and filled out a contact card for him; he was ultimately arrested on November 15, 2012.

¶ 5

ANALYSIS

¶ 6 Prior to his sentencing hearing, Jameson sent two letters to the trial judge. At a status hearing, the trial judge informed Jamason that he should not be communicating with the court directly and asked him if there was anything in the letters the court needed to know about, to which Jamason responded, "No." The court indicated that it would not read the letters.

¶ 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).

¶ 8 Here, Jamason does not dispute 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 5/5-4.5-25(a) (West 2012).

¶ 9 The record reveals that at sentencing, the parties presented evidence in aggravation and mitigation including Jamason's criminal record and the fact that he was "dealing" heroin, as well as Jamason's decision to end his gang membership when he became a parent and his potential to still become a productive member of society due to his relative youth. Defense counsel acknowledged that Jamason was subject to a Class X sentence, but argued that he should be sentenced to the minimum six years in prison because he was a nonviolent offender and had accepted responsibility for his actions. Jamason declined to make any statement in allocution. In sentencing Jamason, the trial court stated that it had considered all the factors in aggravation and mitigation, the presentence investigation, the financial impact of incarcerating Jamason, and his potential for rehabilitation. Based on our review of the record, this court cannot say that a prison

term of nine years was an abuse of discretion when Jamason was sentenced to a term only slightly above the statutory minimum and at the low end of the range of possible sentences. See *Patterson*, 217 Ill. 2d at 448.

¶ 10 At the sentencing hearing, the prosecutor described Jamason's criminal history incorrectly by referring to two drug-related Class 1 convictions in 2001 and 2004. Jamason correctly points out and his presentence investigation report correctly reflects that he was originally sentenced to probation in 2001. After he violated probation, he was resentenced on his 2001 case at the same time he was sentenced on his 2004 case. Jamason contends that the prosecutor's error led the court to believe that he had two drug-related Class 1 offenses for purposes of Class X sentencing. But while the prosecutor misspoke, the trial court had before it Jamason's accurate criminal history, which included three prior drug-related offenses as well as a conviction for possession of a firearm by a felon, and, given Jamason's concession that he is eligible for Class X sentencing, we find no basis to conclude that the misstatement induced the court to impose a higher sentence.

¶ 11 Jamason also contends that the trial court's silence when the State asserted that he was subject to a sentencing range of between 6 and 60 years in prison is evidence that court relied upon the wrong sentencing range. We disagree as nothing in the record supports Jamason's contention that the trial court "misapprehended" the applicable sentencing range. Jamason was admonished before trial that the sentencing range for the offense was 6 to 30 years and the prosecution agreed. The trial court's silence during the State's arguments did not manifest agreement or disagreement with any particular argument by the State. The record further reveals that the trial court specifically stated that it was sentencing Jamason to a "mandatory Class X sentence." Ultimately, the trial court did not abuse its discretion when, after properly

considering factors in mitigation and aggravation (*Brazziel*, 406 Ill. App. 3d at 433-34), it sentenced Jamason to a Class X sentence of nine years in prison (*Patterson*, 217 Ill. 2d at 448).

¶ 12 Jamason argues that the trial court failed to consider in mitigation, among other factors, the nonviolent nature of the offense and his potential for rehabilitation. But the trial court is not required to explain the value it assigned to each factor in mitigation and aggravation; rather, 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, Jamason cannot meet that burden. Much of Jamason's argument regarding mitigation and, particularly, rehabilitation potential, is based on the contents of the letters he sent to the trial judge, which, as noted, the trial judge indicated he would not consider. Thus, Jameson argues on appeal that he only resorted to selling drugs as a means to support himself and his three year-old daughter after being laid off as a laborer and unsuccessfully looking for other work. These arguments are improper given that this information is not contained in the presentence investigation and Jamason declined the opportunity to make a statement in allocution. Further, although the trial court did not mention that no one was injured during the offense, it is obvious that the court was aware of that fact and expressly stated that it had considered all evidence in mitigation and aggravation as well as Jameson's potential for rehabilitation.

¶ 13 CONCLUSION

¶ 14 Accordingly, the judgment of the circuit court is affirmed. This order is entered in accordance with Supreme Court Rule 23(c)(7) (eff. July 1, 2011).

¶ 15 Affirmed.