

FIFTH DIVISION
DECEMBER 11, 2015

No. 1-13-2981

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 21962
)	
MARQUICE THOMPSON,)	Honorable
)	Munari Angela Petrone,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Reyes and Justice Palmer concurred in the judgment.

O R D E R

¶ 1 **Held:** The trial court did not abuse its discretion by sentencing defendant to 16 years' imprisonment for robbery because defendant failed to establish that the trial court ignored applicable mitigating factors or engaged in impermissible double enhancement.

¶ 2 Following a bench trial, defendant Marquice Thompson was convicted of robbery and sentenced to 16 years in the Illinois Department of Corrections (IDOC) as a Class X offender based on his criminal background. On appeal, defendant contends that the trial court abused its discretion because his sentence is excessive.

¶ 3 Defendant was charged with armed robbery for allegedly robbing the victim, Raven Thomas, at gunpoint on November 12, 2012, in the presence of her two young children. At trial, Thomas testified that defendant approached her as she was attempting to place her daughters into her vehicle after picking them up from the babysitter's house. Thomas was placing her newborn child in her car seat, when she heard a "ch-ch" sound and felt a hard metal object pressed against the back of her head. Thomas quickly closed the vehicle door before turning around, and observed defendant holding a "black" semiautomatic handgun. With the gun pointed at her chest, defendant demanded that Thomas "give [him] everything [she's] got." Thomas handed defendant her purse. Defendant grabbed the purse and took \$1,000 in cash and Thomas' identification card from the wallet inside, then dropped the purse and wallet and fled.

¶ 4 Thomas recognized defendant because he was friends with her ex-boyfriend, Kenny Banks. Defendant's face was not covered during the commission of the offense. After the incident, Thomas called Banks who brought a photograph of himself and defendant to her. She supplied this photograph to police officers while reporting the incident at the police station later that night. On cross-examination, Thomas confirmed she told police officers that the gun was a "silver handgun" when she made the initial report. There were no other witnesses to the incident.

¶ 5 Chicago police officer Israel Roa testified that he spoke with Thomas at the police station the night of the incident. He and his partners recognized the person from the photograph provided as defendant and were able to match this photograph to a photograph of defendant from the police database. Police officers arrested defendant at his residence the same night and recovered \$1,344 from his pocket; however, they were refused consent to search the residence and did not attempt to obtain a warrant. The gun allegedly used during the robbery was not recovered.

¶ 6 Defendant presented the testimony of Chicago police officer William Beck. Officer Beck confirmed Thomas initially reported the gun was silver. The parties also stipulated that if Chicago police officer Erik Chopp were called to testify, he would state that he interviewed Thomas who said she told Banks she had been robbed by his friend "Fox." Banks then gave her a photograph of him and defendant. Defendant did not testify on his own behalf.

¶ 7 The trial court ultimately found defendant guilty of the lesser included offense of robbery, concluding that the State did not prove the presence of a gun beyond a reasonable doubt where Thomas' testimony was inconsistent regarding the gun's color, first claiming it was black and later claiming it was silver, and the gun was never recovered. Despite this finding, the trial court concluded Thomas testified credibly.

¶ 8 At sentencing, the State argued defendant's "life [was] ripe with misbehavior and criminal activity" that began when defendant was a juvenile. The State also pointed out that defendant has never been gainfully employed, and has a history of gang affiliation, delinquency, and daily substance use. The State then outlined defendant's criminal history from the presentence

investigation report, highlighting that the current offense was his sixth felony conviction making defendant Class X mandatory, that the current offense was his third robbery conviction, and that he has proven himself a danger to society due to his drug and violent criminal background. The State also argued that the nature of the offense, allegedly robbing a mother at gunpoint in front of her children, warrants a harsher sentence.

¶ 9 In mitigation, defense counsel argued that defendant was only 27 years old, that his criminal background does not indicate he has a violent history, that no violence was used in the commission of the present offense, that he was cooperative with police officers during the arrest, that he had a rough childhood, and that he obtained his GED while in prison and intends to seek gainful employment.

¶ 10 After hearing the evidence in aggravation and mitigation, the trial court sentenced defendant to 16 years' imprisonment, finding that although "the maximum sentence [was] not necessary here," the minimum sentence was also not appropriate due to defendant's criminal background. In so finding, the trial court considered "in mitigation the fact that *** [d]efendant was able to get his GED when he was in school. So he's certainly capable of doing something when he puts his mind to it." The trial court also listed all the statutory mitigating factors that it did not believe applied in defendant's case and ultimately concluded:

"I don't see any other factors in mitigation. ***

So I will consider the mitigation of him getting his GED and hopefully at some point to try to seek employment being on the right track."

¶ 11 Defendant subsequently filed a motion to reduce his sentence which the trial court denied. The motion alleged only that the balance of aggravating and mitigating factors warranted a lesser prison sentence than that which defendant received.

¶ 12 On appeal, defendant argues that his sentence was excessive for two reasons: (1) because the trial court improperly engaged in a "kind of double enhancement" when it relied on defendant's prior convictions for robbery and possession of a stolen motor vehicle, and delivery of a controlled substance both to enhance the class of his offense and in aggravation during sentencing to impose a lengthier sentence, and (2) that the trial court improperly balanced the aggravating and mitigating factors when it ignored applicable mitigating evidence.

¶ 13 Before proceeding to challenge defendant's contention that the trial court engaged in double enhancement on its merits, the State briefly argues that defendant has forfeited this claim by failing to raise it in a motion to reduce his sentence. 730 ILCS 5/5-4.5-50(d) (West 2012). Defendant responds that he has preserved this issue on appeal by arguing his sentence was excessive because double enhancement serves to improperly lengthen the sentence; or in other words, that excessive sentencing encompasses issues of double enhancement. Simultaneously, defendant also asserts that he did not argue the trial court engaged in "strict double enhancement," rather that the trial court's actions were merely a "kind of double enhancement."

¶ 14 Whether the issue has been preserved or may be considered under plain error, the primary question in either analysis is whether an error has occurred. *People v. Walker*, 392 Ill. App. 3d 277, 294 (2009). We find no error; therefore, there can be no plain error. See *People v. Hillier*, 237 Ill. 2d 539, 549 (2010).

¶ 15 The parties do not dispute that defendant was subject to Class X sentencing having previously been convicted of two separately committed and tried offenses of Class 2 or greater. See 730 ILCS 5/5-4.5-95(b) (West 2012). Nonetheless, defendant argues that we must consider the severity of his Class X sentence in light of the standard Class 2 sentencing term for purposes of double enhancement. Our legislature, however, has determined that recidivists, like defendant, are subject to enhanced penalties under the Class X sentencing scheme. See 730 ILCS 5/5-4.5-95(b) (West 2012). Moreover, defendant's contention that the trial court engaged in improper double enhancement has clearly been rejected by our supreme court in *People v. Thomas*, 171 Ill. 2d 207 (1996), and defendant provides us no reason to reconsider that precedent. In *Thomas*, our supreme court held that using a defendant's prior convictions both to determine a defendant's status as a Class X offender and to "fashio[n] a particular sentence *** within the available parameters" does not constitute double enhancement because "judicial exercise of this discretion" "is a requisite part of every individualized sentencing determination" and not "properly understood as an enhancement." *Thomas*, 171 Ill. 2d at 224-25. Thus, whether a "kind of double enhancement" or "strict double enhancement," defendant's argument fails. Because defendant was no longer eligible for standard sentencing, the proper question, and the one which we address, is whether defendant's Class X sentence within the Class X sentencing range was an abuse of discretion.

¶ 16 Defendant next argues that the trial court erred when it improperly balanced the evidence in mitigation and aggravation during sentencing by failing to consider several applicable

mitigating factors and cites *People v. Nelson*, 106 Ill. App. 3d 838 (1982), in support of his contention that his circumstances merited a lesser sentence.

¶ 17 The trial court has broad discretion in sentencing and a reviewing court may only alter a defendant's sentence if the trial court abused its discretion. *People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010). In order to prove an abuse of discretion, a defendant must show that the sentence was based upon improper considerations or was otherwise erroneous, either because the sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977); *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 18 As we have previously discussed, defendant was subject to enhanced sentencing under the Class X sentencing scheme. For Class X offenders, sentencing guidelines mandate a term of imprisonment of not less than 6 years and not more than 30 years. 730 ILCS 5/5-4.5-25(a) (West 2012). In the case before us, defendant's 16-year sentence fell well within the applicable statutory sentencing range. Accordingly, we give great deference to the trial court's judgment because the trial judge is in a better position to determine the punishment than the reviewing court and we will only reverse the judgment when we find an abuse of discretion. *Perruquet*, 68 Ill. 2d at 154.

¶ 19 All sentences should reflect the seriousness of the crime and the objective of returning the offender to useful citizenship. *People v. Null*, 2013 IL App (2d) 110189, ¶ 55. Although careful consideration must be given to all mitigating and aggravating factors, the sentencing court should not substitute its judgment for that of the trial court simply because it would have balanced the appropriate sentencing factors differently. *Alexander*, 239 Ill. 2d at 213. When mitigating factors

are presented to the trial court, it is presumed these factors were considered, absent some contrary indication other than the sentence itself. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004).

¶ 20 Before imposing defendant's 16-year sentence, the trial court engaged in a lengthy discussion regarding the aggravating and mitigating factors before ultimately concluding that neither the minimum nor maximum sentence was warranted. Defendant contends, however, that the trial court ignored the following mitigating factors: (1) that defendant's crime was non-violent because it resulted in no physical harm to the victim; (2) that defendant had a difficult childhood background; (3) the financial costs of incarceration; and (4) that defendant cooperated during his arrest. Defendant argues the trial court's statement, "I don't see any other factors in mitigation. *** So I will consider the mitigation of him getting his GED and hopefully at some point to try to seek employment being on the right track," supports his argument.

¶ 21 Although the trial court did not articulate a specific finding with regard to each of the potential statutory mitigating factors, the trial court is not required to specify on the record its reasons for a sentence. See *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 24. Instead, we presume the trial court considered the evidence presented to it. See *Benford*, 349 Ill. App. 3d at 735 (reviewing court will presume the trial court considered all evidence presented to it). Taken in context, the trial court's statement that "it [did not] see any other factors in mitigation," was merely an identification of the only mitigating factor it found relevant – not its decision to improperly ignore applicable mitigating evidence presented in general. See *People v.*

Powell, 2013 IL App (1st) 111654, ¶ 35 ("While the trial court cannot ignore evidence in mitigation, it may determine the weight to attribute to mitigating evidence.").

¶ 22 There was an abundance of aggravating factors including, *inter alia*, defendant's history of violent crimes, delinquency, extensive criminal background, and recidivist tendencies with regard to the present offense. Moreover, the nature of the crime is serious where defendant robbed an unarmed woman in front of her young children. Accordingly, we cannot say the trial court abused its discretion by sentencing defendant to 16 years in prison and we decline to reduce defendant's sentence or to remand the cause for resentencing.

¶ 23 Defendant relies on *People v. Nelson*, 106 Ill. App. 3d 838 (1982), and similar cases to identify situations where the sentence imposed on a defendant with similar mitigating factors was found to be an abuse of discretion. The Illinois Supreme Court, however, has expressly declined to engage in comparative sentencing by comparing a defendant's sentence to sentences imposed in unrelated cases. *People v. Fern*, 189 Ill. 2d 48, 62 (1999). Defendant, nonetheless, asserts that *Fern* does not prohibit a reviewing court from " 'using other reviewing court opinions as legal precedent in deciding excessive-sentencing claims.' " *Fern*, 189 Ill. 2d at 62.

¶ 24 While the *Fern* court stated that other reviewing courts may consider it "useful to look at the reasoning employed by another court in rejecting, or accepting, an excessiveness claim," it nonetheless held that "if a sentence is appropriate given the particular facts of that case, it may not be attacked on the ground that a lesser sentence was imposed in a similar, but unrelated, case." *Fern*, 189 Ill. 2d at 62. *Nelson* merely applied the familiar standard that all mitigating and aggravating factors must be considered. See *Nelson*, 106 Ill. App. 3d at 847. Although the

reviewing court in *Nelson* found that the trial court abused its discretion and reduced the sentence, we find no such similar error in the present case. Because this court has determined that the trial court appropriately considered all available evidence in mitigation and aggravation, we need not justify the disparity between the sentences in this case and the cases defendant cites by distinguishing the facts. See *Fern*, 189 Ill. 2d at 56-57.

¶ 25 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.