

No. 1-13-2983

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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. 13 CR 11113
)	
ANTHONY HARRIS,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

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

O R D E R

- ¶ 1 *Held:* The trial court did not rely on its apparent misstatements of the evidence in sentencing defendant for aggravated robbery where the court mistakenly stated defendant used "guns" during the crime because the court noted earlier in the sentencing hearing that it was aware defendant pled guilty to only aggravated robbery, and the record indicates the trial court's contemplation of defendant's previously afforded rehabilitative opportunity and criminal background.
- ¶ 2 Following a nonnegotiated guilty plea to aggravated robbery, the trial court sentenced defendant Anthony Harris to five years in prison. On appeal, defendant contends that the trial court relied on improper aggravating factors in sentencing him because the court's sentence was

based on the mistaken belief that he was armed with a gun and hurting people when he committed aggravated robbery. For the reasons that follow, we affirm.

¶ 3 On June 26, 2013, defendant entered a nonnegotiated guilty plea to one count of aggravated robbery along with codefendant Moshawn Thomas, who is not a party to this appeal. The State then presented the factual basis supporting defendant's guilty plea. At approximately 8:50 p.m. on May 20, 2013, the victim in this case was walking on 56th Street in Chicago when defendant approached her from behind. Defendant "intimated" that he had a gun by placing his hand underneath his shirt as if he was armed. He demanded the victim's cell phone, and she complied. Defendant then ran east on 56th Street and entered a car driven by codefendant. The victim was able to read the license plate of codefendant's car and provide the number to police. Police eventually identified an address associated with the car's license plate. Upon a search of the home at that address, police found defendant and codefendant, and the victim's cell phone. Police subsequently arrested both of them.

¶ 4 The trial court accepted the factual basis and defendant's guilty plea, and sentenced him to Cook County "boot camp."

¶ 5 Approximately one month later, the trial court learned that defendant had not completed boot camp because of a "mental[] disab[ility]." As a result, the trial court ordered a presentence investigation report and a new sentencing hearing.

¶ 6 At the subsequent sentencing hearing, prior to the parties presenting evidence, the court stated:

"[Defendant] is here. I have conferred [in chambers] and received some information from his family about some things about him, and I have a pre-sentence investigation. The boot camp program was not available for him. It did not work out."

¶ 7 The State then argued defendant was given the opportunity to enter boot camp, but could not complete it. It also argued defendant had a "violent background," including a robbery conviction as a juvenile, and that he was not an appropriate candidate for probation.

¶ 8 In mitigation, defense counsel stated, "I don't believe there was a firearm. I think it may have just been an armed robbery or aggravated robbery." The trial court interjected and said "[t]his [was] an aggravated robbery. Indicted, not actually." Defense counsel then argued that defendant had "strong family support" and was involved in a community group to help address his "mental health issues."

¶ 9 In sentencing defendant to five years in prison, the trial court stated:

"You've got some issues here and this is the second time.

* * *

You're out there with guns and you're trying to rob people. No. You're not a good candidate for probation. You're just not somebody that I can see.

* * *

That's not the first time you've said [you want to turn your life around.] *** Boot camp didn't work out."

Later in the hearing after the trial court had already sentenced defendant to five years in prison, it said "[defendant's] dangerous. He's hurting people."

¶ 10 Defendant moved to reconsider the sentence, but the court denied his motion.

¶ 11 On appeal, defendant contends the trial court relied on an improper sentencing factor when it mistakenly believed he was armed with a gun and hurting people when he committed aggravated robbery and was sentenced to 5 years in prison, for which the range of sentencing was 4 to 15 years. See 720 ILCS 5/18-1(c) (West 2012); 730 ILCS 5/5-4.5-30 (West 2012).

¶ 12 Defendant concedes, and the State agrees, that he has forfeited his contention for review by not specifically including his alleged errors in his motion to reconsider the sentence. However, defendant asks us to review his claim for plain error.

¶ 13 In the sentencing context, a defendant alleging the application of the plain-error doctrine must show either "the evidence at the sentencing hearing was closely balanced" or "the error was so egregious as to deny the defendant a fair sentencing hearing." *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The doctrine is narrow and limited, and only utilized when "a clear or obvious error occurs." *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). The defendant bears the burden of persuasion of both prongs. *Hillier*, 237 Ill. 2d at 545. And if he fails to meet this burden, we will honor the procedural default. *Id.* The first step in a plain-error review is to determine whether any error occurred at all. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 14 Initially, we note that defendant asks us to review his contention *de novo* citing *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8. The State argues that the proper standard of review is for an abuse of discretion citing *People v. Bailey*, 409 Ill. App. 3d 574, 590-91 (2011). We agree with the State and will apply the abuse-of-discretion standard to which this district has adhered. See *id.*; see also *People v. Cotton*, 393 Ill. App. 3d 237, 264-65 (2009) (first district case applying abuse-of-discretion review to a trial court's consideration of improper sentencing factors); but see *People v. Arbuckle*, 2015 IL App (3d) 121014, ¶ 48 (applying *de novo* review to

a trial court's consideration of improper sentencing factors); *People v. Mauricio*, 2014 IL App (2d) 121340, ¶ 15 (applying *de novo* review to a trial court's consideration of improper sentencing factors). However, we note that in light of the facts of this case, under either standard of review, the outcome would remain the same.

¶ 15 When sentencing a defendant, the trial court "must exercise care to insure the accuracy of information considered." (Internal quotation marks omitted.) *People v. Jackson*, 149 Ill. 2d 540, 549 (1992). It is not enough to show the trial court misstated the sentencing evidence, the defendant must demonstrate that the court "relied on the particular" misstatements when it sentenced the defendant. *People v. Valadovinos*, 2014 IL App (1st) 130076, ¶ 47. We must look at the entire record, not just "a few words or statements" from the trial court. *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010). Moreover, a strong presumption exists that the trial court based its sentence on proper legal reasoning. *People v. Dowding*, 388 Ill. App. 3d 936, 942-43 (2009). However, where the trial court's reliance on an improper aggravating factor leads to a greater sentence, a reviewing court must remand back to the lower court for resentencing. *People v. Csaszar*, 375 Ill. App. 3d 929, 952 (2007).

¶ 16 In determining whether the trial court relied on its misstatements of the sentencing evidence, we find *People v. Zapata*, 347 Ill. App. 3d 956 (2004) and *Cotton*, 393 Ill. App. 3d 237, instructive in our analysis. In *Zapata*, during sentencing of a defendant for murder, the trial court stated "the senseless nature of this case just really typifies the senselessness of gang violence in this city." *Id.* at 965. However, there was no evidence that the defendant's murder was gang-related. The appellate court held "[a] distaste or disgust for gang violence is entirely understandable, but it is an improper sentencing factor where there is no evidence that the

murder was gang-related" and remanded the case back for resentencing. *Id.* at 966. In *Zapata*, it was clear that the trial court's disdain for gang violence was the "dominant" factor in the defendant's sentence. See *id.* at 965.

¶ 17 In contrast, in *Cotton*, during the sentencing of a defendant for murder and aggravated discharge of a firearm, the trial court stated "[the defendant] hung out of and fired into a van. A van full of people." *Cotton*, 393 Ill. App. 3d at 265. However, there was no evidence that the defendant knew the van he shot at contained multiple passengers. *Id.* The appellate court held that "the defendant's sentence was not the product of the trial court's failure to recall the trial evidence correctly." *Id.* at 266. Unlike *Zapata*, the trial court in *Cotton* based its sentence on the defendant's mitigating evidence, his criminal history and that he did not "avail himself" to previously afforded rehabilitative opportunities. *Id.*

¶ 18 We believe the present case is more analogous to *Cotton* than *Zapata*. Prior to stating that defendant was "out there with guns," the trial court explicitly acknowledged that defendant was not convicted of any gun-related offense when it stated, "[t]his is an aggravated robbery." The record also reveals that the trial court based its decision on defendant's failure to "avail himself" to a previously afforded rehabilitative opportunity (not completing boot camp) and his criminal background. See *Cotton*, 393 Ill. App. 3d at 266. Furthermore, the record indicates the trial court received additional information about defendant from his family, which also may be used in sentencing defendant. See *Sims*, 403 Ill. App. 3d at 23 (stating a trial court "may search anywhere, within reasonable bounds, for other facts which tend to aggravate or mitigate the offense") (Internal quotation marks omitted.) When we view the entire record (see *id.* at 24), we are not persuaded that the trial court "relied on the particular" statement that defendant was "out

there with guns" when it sentenced him. See *Valadovinos*, 2014 IL App (1st) 130076, ¶ 47; *Cotton*, 393 Ill. App. 3d at 266.

¶ 19 Defendant also argues that the trial court improperly held against him the fact that he was never married to his daughter's mother when the court stated that defendant "had an out of wedlock child that [he is] not supporting." However, the record reveals the trial court's comment about defendant's child was only in response to defendant attempting to obtain leniency by telling the court that he had a three-year-old daughter. The court merely rejected this fact as a mitigating factor in sentencing him. Accordingly, we are unconvinced that the trial court improperly held this fact against defendant.

¶ 20 Defendant finally argues the trial court failed to consider significant mitigating evidence about defendant, including his age, rehabilitative potential, minimal criminal history and his "strong network of *** family support." However, his arguments are unavailing. The record indicates that the trial court examined the presentence investigation report, which contained defendant's age, background about his family and support network, and his criminal history. When the court examines the presentence investigation report, there is a presumption that it took into account the defendant's potential for rehabilitation. See *People v. Gutierrez*, 402 Ill. App. 3d 866, 900 (2010). Additionally, the trial court is not required to recite each sentencing factor with a corresponding value attached to it. See *People v. Beasley*, 314 Ill. App. 3d 840, 847 (2000). Therefore, we do not believe the trial court failed to consider defendant's mitigating evidence.

¶ 21 Because the trial court did not rely on its apparent misstatements that defendant was "out there with guns" and "hurting people" in sentencing him and there is no evidence the court failed to consider defendant's mitigating evidence, we cannot say that the trial court abused its

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discretion by sentencing defendant to five years in prison for aggravated robbery. Since we do not find that the trial court relied on its apparent misstatements, there cannot be plain error. See *Thompson*, 238 Ill. 2d at 613. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 22 Affirmed.