

SECOND DIVISION
December 22, 2015

No. 1-13-3108

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 17533 |
| |) | |
| ROY WHITE, |) | Honorable |
| |) | Thaddeus L. Wilson, |
| Defendant-Appellant. |) | Judge Presiding. |

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Hyman concurred in the judgment.

O R D E R

¶ 1 **Held:** Sentence of 15 years' imprisonment for burglary by mandatory Class X offender not excessive.

¶ 2 Following a bench trial, defendant Roy White was convicted of burglary and sentenced as a mandatory Class X offender to 15 years' imprisonment. On appeal, he contends that his sentence was excessive. For the reasons stated below, we affirm.

¶ 3 Defendant and codefendants Anthony Stephen and Timothy Clark were charged with burglary for, on or about September 10, 2012, allegedly entering a building at 10822 South Dr. Martin Luther King Drive in Chicago ("the premises"), owned by Altisource, without authority and with the intent to commit theft therein.

¶ 4 Briefly stated, the evidence at the April 2013 trial was that the premises were an unoccupied single-family house owned by Altisource with a "for sale" sign posted, and an Altisource manager had visited and cleaned the premises on the morning in question. At about 2:30 p.m., police officers responded to a report of trespassing in progress and saw defendant, and then codefendants, exit from the side-door of the house at the premises. Defendant and codefendant Clark fled and were arrested nearby, while codefendant Stephen complied with an order to stop. In particular, Clark was arrested after entering a pickup truck in the alley behind the premises. In the back of that pickup truck were pieces of air duct, baseboard radiators, and pipes. The manager returned to the premises and confirmed that the material in the truck was from the house and that a missing kitchen sink, broken bathroom sink, a stove pulled away from the wall, and pipes and wood on the floor had not been in that state that morning. She testified that none of the defendants, by name or appearance, had permission to remove material from the premises. The premises were photographed by the police, and at trial the manager and officers identified items and scenes in the photographs.

¶ 5 Following arguments, the court denied defendant's motions for directed findings. Defendant elected not to testify and, following closing arguments, the court found defendant guilty of burglary. The court noted that defendants exited the premises in rapid succession and at

least one defendant was "associated" with the truck containing materials from the premises. The court found that "the damage to the property in the photographs is consistent with the type of theft common with respect to vacant property" – breaking walls and sinks to obtain metal underneath – rather than poor management by the Altisource manager as defendants argued. The trial of codefendants was continued to a later date.

¶ 6 Defendant filed a post-trial motion in May 2013 and amended it in June 2013.

¶ 7 Based on defendant's statement in the pre-sentencing investigation report (PSI) that he had been diagnosed with schizophrenia, the court in June 2013 ordered a behavioral clinical examination (BCX) for fitness to stand trial retroactive to the April trial and fitness to be sentenced. In August 2013, a psychiatrist submitted his BCX report opining that defendant was fit to be sentenced and was fit to stand trial, finding that "he is not suffering from a mental condition that would compromise his ability to understand the nature of the proceedings against him or to assist in his defense" and noting that he is not prescribed any psychotropic medication. In the psychological summary underlying the BCX report, the psychiatrist additionally opined that defendant was "malingering psychotic symptoms and, more prominently, cognitive defects" based on psychological testing as well as the psychiatrist's examination.

¶ 8 On September 6, 2013, defense counsel acknowledged the BCX report and told the court that she had no *bona fide* doubt of defendant's fitness. Following arguments, the court denied defendant's post-trial motion. In doing so, the court noted that codefendants had been found not guilty since trial ended for defendant "because the court believed beyond a reasonable doubt that [defendant] was the ringleader and *** there was reasonable doubt as to whether or not the other

two defendants knew exactly what was going on and what they were being lead to by" defendant.

The case proceeded immediately to sentencing.

¶ 9 The PSI states that defendant has multiple prior felony convictions: robbery in 1980, 1982, and 1985, possession of a stolen motor vehicle (PSMV) in 1987 and 1994, residential burglary in 1994, and various controlled substance offenses in 1991, 2007, and 2010. He was also convicted of battery in 2009 and obstructing identification in 2011. For these offenses, he was sentenced to two years of probation in 1980, three years in prison in 1982, four and one-half years in prison in 1985, six years in prison in 1987, four years in prison in 1991, consecutive prison terms of ten and six years in 1994, one year of prison in 2007, ten days in jail in 2009, one year in prison in 2010, and four days in jail in 2011.

¶ 10 The PSI also indicates that defendant was born in 1961 and was raised by his grandmothers after his parents died during his infancy. He denied any childhood abuse or neglect. He has three children. He attended school through, but not completing, high school. The PSI stated that defendant has no employment history. He was homeless for four to five years before this arrest, though a friend "took him in" for about four months. Defendant has asthma and hypertension treated with medication, and he was diagnosed with schizophrenia in 2009 but has not been taking psychotropic medication. He admitted daily use of alcohol, marijuana, cocaine, and heroin from his youth until this arrest, and also admitted prior "syrup" usage and one use of PCP at age 24. He denied any treatment for alcohol or substance abuse. He admitted to being a member of the Gangster Disciples street gang from 1980 to 2000 and a "board member" thereof.

¶ 11 At sentencing, the defense corrected the PSI, stating that defendant had been employed as a maintenance worker for about a year and a half by Sibley & Company and worked "odd jobs" before that, clarifying that defendant has been off medication since 2011, and reiterating that he is not a current member of the Gangster Disciples. The State argued that defendant has multiple felony convictions, with "very little gaps in the defendant's life that have not involved his involvement in the criminal justice system as an offender or serving time on a sentence," and sought a prison sentence of 23 years. The defense argued that defendant has a history of mental health issues, which diminished his impulse control and made him susceptible to drug use and gang involvement. Counsel asked for leniency and suggested a prison sentence of less than 10 years, and defendant addressed the court: "I apologize to you, sir, and your courtroom."

¶ 12 The court recited that it "considered the evidence at trial, the gravity of the offense, the [PSI], the financial impact of incarceration, all evidence [and] testimony in aggravation and mitigation, any substance abuse issues and treatment, potential for rehabilitation, a possibility of sentencing alternatives, the statement of defendant, and all hearsay presented deemed reliable." The court stated that codefendants' implication of defendant was not a factor in defendant's sentencing and found that "the evidence against this defendant was overwhelming without anything finger-pointed by his codefendants." The court found defendant to be a mandatory Class X offender and sentenced him to 15 years' imprisonment with fines and fees. Defendant immediately filed a motion to reconsider his sentence, the court denied the motion, and this appeal timely followed.

¶ 13 On appeal, defendant contends that his 15-year prison sentence is excessive and he should receive the minimum sentence of six years' imprisonment.

¶ 14 Burglary is a Class 2 felony. 720 ILCS 5/19-1(b) (West 2012). A defendant over 21 years old convicted of a Class 1 or Class 2 felony after two separate and sequential convictions for felonies of Class 2 or greater must be sentenced as a Class X offender, with a prison term of 6 to 30 years. 730 ILCS 5/5-4.5-25(a), -95(b). A sentence within statutory limits is reviewed on an abuse of discretion standard, so that we may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. So long as the trial court does not consider incompetent evidence or improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable range. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 56. This broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *Id.*, citing *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010).

¶ 15 In determining whether the trial court based its sentence on proper aggravating and mitigating factors, we consider the record as a whole rather than focusing on a few words or statements by the court. *People v. Scott*, 2015 IL App (4th) 130222, ¶ 55. Even when a court relies upon an improper sentencing factor, remand for resentencing is unnecessary where it can be determined from the record that the weight placed on the improperly considered factor was so insignificant that it did not lead to a greater sentence. *Id.*, ¶ 53, citing *People v. Bourke*, 96 Ill. 2d 327, 332 (1983).

¶ 16 In imposing a sentence, the trial court must balance the relevant factors, including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *Id.*, citing *Alexander*, 239 Ill. 2d at 213. "All penalties shall be determined *both* according to the seriousness of the offense *and* with the objective of restoring the offender to useful citizenship." (Emphasis added.) Ill. Const. 1970, Art. 1, § 11. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Snyder*, 2011 IL 111382, ¶ 36. The court does not need to expressly outline its reasoning for sentencing, and we presume that the court considered all mitigating factors on the record absent some affirmative indication to the contrary other than the sentence itself. *Jones*, 2014 IL App (1st) 120927, ¶ 55. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Id.*, citing *Alexander*, 239 Ill. 2d at 214. Similarly, the court is not required to view a defendant's troubled childhood, history of mental health issues, or substance abuse problems as inherently mitigating. *People v. Holman*, 2014 IL App (3d) 120905, ¶ 75, citing *People v. Ballard*, 206 Ill. 2d 151, 189-90 (2002).

¶ 17 Here, defendant does not challenge that he was subject to mandatory class X sentencing, with a minimum sentence of six years imprisonment, due to his multiple prior felony convictions. He challenges the State's argument at sentencing that he was serving life on the installment plan, arguing that the long gap between his more serious convictions of the 1980s and 1990s and his less serious offenses in the 2000s and 2010s "show that he was not resistant to

correction." However, defendant's later record is not insubstantial, with 2007 and 2010 felony convictions each receiving a one-year prison sentence. Moreover, the trial court did not find defendant resistant to correction, neither expressly nor implicitly, merely by giving him a sentence above the minimum, but imposed a sentence in the middle of the sentencing range and between the recommendations of the parties.

¶ 18 Defendant argues in mitigation that his offense did not cause or threaten physical harm. However, that does not render his offense either minor or victimless. An unoccupied house is not un-owned nor necessarily abandoned, and the cost to property owners of offenses such as defendant's, or of securing their property against them, is considerable. As the trial court was aware, here the premises were not abandoned but owned and being managed. In mitigation, defendant also cites his mental health issues and drug abuse. First and foremost, the PSI disclosed and trial counsel duly argued these factors, which the court was then free to weigh appropriately. Secondly, the record is mixed regarding defendant's mental illness: the PSI as corrected shows that he was not taking psychotropic medication after 2011, and the BCX shows that he was not prescribed such medication and was fit to stand trial and be sentenced. We cannot find under these circumstances that the court abused its sound discretion by sentencing defendant to 15 years' imprisonment, firmly in the middle of the applicable sentencing range.

¶ 19 Accordingly, the judgment of the circuit court is affirmed.

¶ 20 Affirmed.