2015 IL App (2d) 130683-U
No. 2-13-0683
Order filed May 12, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. STEPHEN H. DRYDEN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 10-CF-1195 Honorable Daniel P. Guerin, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to 20 years' imprisonment (on a 6-to-30 range) for aggravated DUI: despite the mitigating factors, which the court considered, the sentence was justified by defendant's lengthy criminal history and the need to protect the public from defendant.

¶ 2 Defendant, Stephen H. Dryden, pleaded guilty to aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2), (d)(2)(E) (West 2010)) and was sentenced to 20 years' imprisonment. He appeals, contending that his sentence was an abuse of discretion. We affirm.

¶ 3 Defendant was charged with DUI under nine different theories as well as driving while his license was revoked. Defendant pleaded guilty to count XI of the indictment, charging aggravated DUI, a Class X felony, on the basis of having five or more prior DUI convictions.

¶ 4 The factual basis for the plea showed that defendant was arrested after officers found him unresponsive in his vehicle while it was stopped in the middle of an intersection. He was unable to complete field sobriety tests, because he was too intoxicated.

¶ 5 The presentence investigation report (PSI) showed that defendant had delinquency adjudications for criminal damage to property in 1970, theft in 1972, and robbery in 1974. He had the following criminal convictions: driving with no valid driver's license (1976), unlawful use of a license (1979), disorderly conduct (1980), criminal damage to property (1998, 2002), criminal trespass to land (1981), resisting or obstructing a peace officer (1979, twice in 1989, 1996), unlawful use of a weapon (1980, 1991), battery (1977, 1981, 1988, 1993), aggravated battery of a police officer (1999), home invasion, armed robbery, and residential burglary (1982), illegal transportation of alcohol (1978, 1996), consumption of alcohol in public (1992), possession of alcohol on public property (1996), DUI (1978, 1979, twice in 1986, twice in 1990, 1992, 2000), driving on a suspended license (1980, twice in 1986 1999), driving on a revoked license (twice in 1989, 1990, 1992, 1996, 2000), retail theft (1993), attempted obstruction of justice (1993), and obstruction of justice (1996 and 2000). In the present case, defendant submitted to a Breathalyzer test showing that his breath-alcohol content (BAC) was 0.285.

¶ 6 In allocution, defendant asserted that he was not a violent person and "never wanted to hurt anyone." He acknowledged that he was an alcoholic and promised to seek help for his addiction. The trial court sentenced defendant to 20 years in prison, stating that defendant had committed his eleventh DUI.

¶ 7 This court remanded for strict compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Dryden*, 2012 IL App (2d) 110646. On remand, defendant waived counsel and filed a *pro se* motion to reconsider the sentence.

¶ 8 In the motion, defendant asserted that he had had no prior treatment for his addiction, his previous DUI sentence was four years, he had gone nine years without a DUI, the present offense was precipitated by marriage problems, and he was suffering from seizures.

¶ 9 At the hearing on the motion, defendant's cousin, Pamela Dryden, testified that defendant's parents, as well as most of his relatives, were alcoholics. Defendant stayed home to help his mother deal with an abusive relationship with her husband. Paula Watson Dryden, defendant's sister, testified that defendant's home life was abusive and that his stepfather was extremely violent.

¶ 10 The trial court noted that it was not clear from the PSI whether defendant had been convicted of DUI in No. 89-TR-73021. The report showed that defendant had been charged with DUI and other offenses in that case and had been convicted and sentenced to two years' probation. However, the report also showed that the DUI count had been nol-prossed. Accordingly, the court gave defendant the "benefit of the doubt" and assumed that the present case was his tenth DUI conviction. However, the court stated that its mistake about the precise number of DUIs did not affect the sentence in any measurable way. The court stated that the prior 20-year sentence would stand. Defendant timely appeals.

¶ 11 Defendant contends that the 20-year sentence was an abuse of discretion given that no one was injured in the incident, he accepted responsibility by pleading guilty, and he expressed sincere remorse. He recounts the evidence of his troubled childhood, points out that his previous

DUI conviction occurred approximately 10 years earlier, and contends that the present offense was the result of a single stressful incident.

¶ 12 The State responds that defendant's criminal record consists of 16 prior convictions, including at least 9 DUIs. The State further contends that, while defendant pleaded guilty, he continued to insist that he had passed out due to a seizure and had no recollection of the incident resulting in his arrest. Moreover, given that defendant was found nearly unconscious in the middle of an intersection, it was merely fortuitous that no one was hurt in the incident.

¶ 13 Our constitution requires that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. We will not disturb a sentence within the applicable range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). A sentence is an abuse of discretion only if it is at great variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Stacey*, 193 Ill. 2d at 210. It is the trial court's function to balance the relevant aggravating and mitigating factors and make a reasoned decision about the appropriate punishment (*People v. Latona*, 184 Ill. 2d 260, 272 (1998)), and we may not substitute our judgment for the trial court's merely because we might have weighed the pertinent factors differently (*Stacey*, 193 Ill. 2d at 209).

¶ 14 We cannot agree that defendant's sentence is excessive. Although defendant points to some mitigating factors, the trial court was not required to ignore his lengthy criminal record. See *People v. Hay*, 362 Ill. App. 3d 459, 468-69 (2005) (affirming sentence where defendant had extensive criminal history despite mitigating factors that defendant was young and had a drug problem and no one was hurt during the offense).

¶ 15 Here, the trial court acknowledged the mitigating factors that defendant cites, although in some cases it did not find that they had substantial mitigating value. The court noted, for example, that no one was hurt in the incident. However, observing that defendant drove with a BAC of 0.285 and was found essentially passed out in his car in the middle of an intersection, it properly found his driving "troubling." In any event, acknowledging the mitigating factors, the court imposed a sentence just above the midpoint of the 6-to-30-year range for a Class X felony (730 ILCS 5/5-4.5-25(a) (West 2010)). Given defendant's criminal history and the danger he poses to the public, that sentence was justified. See *People v Flores*, 404 Ill. App. 3d 155, 158 (2010) (presence of mitigating factors does not require the court to impose the minimum sentence available). Defendant essentially asks us to reweigh the aggravating and mitigating factors, which we may not do. *Stacey*, 193 Ill. 2d at 209.

¶ 16 Defendant contends that his sentence is excessive given the cost to the taxpayers of his incarceration for at least 10 years. While the trial court is required to consider this factor in imposing a sentence (730 ILCS 5/5-4-1(a)(3) (West 2010)), this factor alone does not require the minimum sentence. Based on defendant's criminal history and his failure to change his behavior despite numerous previous sentences, the court could properly conclude that the need to protect the public from defendant and the need to deter others outweighed the monetary cost of defendant's incarceration.

¶ 17 The judgment of the circuit court of Du Page County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs or this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 18 Affirmed.