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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-706
)	
WILLIE MCGEE,)	Honorable
)	Kathryn E. Creswell,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing the defendant.

¶ 2 The defendant, Willie McGee, appeals from the October 4, 2013, order of the circuit court of Du Page County revoking his probation and sentencing him to five years imprisonment for class 2 felony burglary (720 ILCS 5/19-1 (West 2012); 730 ILCS 5/5-4.5-35(a) (West 2012)). On appeal, the defendant argues that his sentence is excessive. We affirm.

¶ 3 BACKGROUND

¶ 4 On April 13, 2013, the defendant was charged with six counts of retail theft and class 2 felony burglary. The charges arose from the defendant stealing two bottles of rum, valued at \$15.99 each, from a Dominick's store in Aurora on March 30, 2013.

¶ 5 On May 6, 2013, the defendant pled guilty to one count of class 2 felony burglary. As a factual basis, the State presented evidence that Dominick's video surveillance showed a person taking two bottles of rum without paying for them. (One of the bottles was later returned.) Two Dominick's employees recognized the defendant as the same person who had committed a similar theft at the store two days earlier on March 28, 2013. The defendant acknowledged that he was the person in the surveillance video and that he took alcohol from Dominick's on both March 28 and March 30, 2013. The trial court accepted the defendant's guilty plea and set the case for sentencing.

¶ 6 On June 10, 2013, the trial court conducted a sentencing hearing. The State presented evidence of the defendant's extensive criminal history which included three felony offenses and four theft-related convictions. The State also presented evidence that the defendant had been given the opportunity in the past to participate in a 30-day substance abuse treatment program but he failed to complete that program and he continued to abuse alcohol and other drugs. Thus, the State stressed that another sentence of probation would deprecate the serious nature of the offense.

¶ 7 The defendant argued that treatment would more likely be successful if it lasted for more than 30 days. He also expressed remorse for his past criminal behavior.

¶ 8 At the close of the hearing, the trial court indicated that it had considered all of the evidence as well as the statutory factors in aggravation and in mitigation. The trial court indicated that, despite the defendant's extensive criminal record, it still wanted to give him one

more opportunity to reform his ways. The trial court therefore sentenced the defendant to 180 days in jail followed by 24 months of TASC probation. The probation was conditioned on the defendant not consuming any alcohol and wearing a secure continuous remote alcohol monitor (SCRAM) device to detect any alcohol consumption. The trial court stated that it would consider removal of the SCRAM device if the defendant's SCRAM device detected no alcohol consumption after 90 days. The trial court warned the defendant of the possibility of a prison sentence if he violated any of the terms of his probation.

¶ 9 On June 28, 2013, the defendant was released from jail. However, he failed to report to the probation department in order to receive the SCRAM device. One week later, on July 5, 2013, defendant reported to the probation office. The probation visit revealed that the defendant had consumed alcohol and cocaine. A probation office employee subsequently placed the SCRAM device on the defendant. Thereafter, the SCRAM device recorded that the defendant consumed alcohol on July 8 through July 21 and that he attempted to tamper with the device on July 17 and July 18. On July 22, 2013, as a result of the SCRAM recordings, the State filed a petition to revoke the defendant's probation.

¶ 10 On October 2, 2013, the trial court conducted a hearing on the State's petition. Dan Boivin, the defendant's probation officer, testified that the defendant had repeatedly failed to communicate with him and comply with the terms of his probation. The State also presented evidence of the defendant's past failures to use the treatment opportunities he had been given. The State pointed to the defendant's admissions that he had consumed both alcohol and cocaine upon his release from jail. The State further argued that the SCRAM recordings demonstrated that the defendant had used alcohol on multiple occasions and had attempted to tamper with the device.

¶ 11 The defendant acknowledged that alcohol currently controlled his behavior. However, he insisted that he was eager to recover. He argued that this was evident from his entering into treatment in 2013.

¶ 12 At the close of the hearing, the trial court noted that it had considered all of the applicable factors in aggravation and mitigation. The trial court noted that it had placed the defendant in outpatient probation and had given him an opportunity to recover from his alcohol addiction. However, upon his release from jail, the defendant failed to report to the probation office until several days after his release, and instead consumed alcohol and cocaine. Moreover, the SCRAM device recorded multiple occasions in which the defendant consumed alcohol during his probation period as well as device tampering. The trial court found that the defendant was unlikely to be rehabilitated through another term of probation. Additionally, due to his extensive criminal history and alcoholic behavior, the trial court found that the defendant was a safety risk to the public. As a result, the trial court revoked the defendant's probation and resentedenced him to five years' imprisonment.

¶ 13 Following the denial of his motion to reduce sentence, the defendant thereafter filed a timely notice of appeal.

¶ 14 ANALYSIS

¶ 15 On appeal, the defendant's sole contention is that his sentence of five years' imprisonment is excessive. Specifically, he argues that his stealing one bottle of rum worth only \$15.99 does not warrant a five-year prison sentence. Further, he contends that the trial court improperly found that his alcohol addiction prevented him from being rehabilitated.

¶ 16 The trial court has great discretion in imposing a sentence. *People v. Jones*, 168 Ill. 2d 367, 373 (1995). Accordingly, a sentence within the statutory range may only be disturbed when

it is unlawful or reflects an abuse of discretion. *Id.* at 374. A trial court abuses its discretion only when its ruling is arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Anderson*, 367 Ill. App. 3d 653, 664 (2006). Moreover, we must not substitute our judgment for that of the trial court simply because we would have weighed factors differently. *People v. Streit*, 142 Ill. 2d 13, 19 (1991). The necessity of protecting the public may outweigh any mitigating factors and the rehabilitative objective. *People v. Gagliani*, 251 Ill. App. 3d 1019, 1029 (1993). Finally, the court is not obligated to impose the minimum sentence when mitigating factors are presented. *People v. Madura*, 257 Ill. App. 3d 735, 740-41 (1994).

¶ 17 The offense of felony burglary is a class 2 felony and has a sentencing range from three to seven years' imprisonment. 720 ILCS 5/19-1 (West 2012); 730 ILCS 5/5-4.5-35(a) (West 2012).

¶ 18 Based on our review, we do not believe that the trial court abused its discretion in sentencing the defendant to five years' imprisonment. The record shows that the trial court considered all of the relevant aggravating and mitigating factors. The trial court displayed its willingness to give the defendant another chance when it found TASC probation to be appropriate. However, following his release from jail, the defendant decided to drink alcohol and consume drugs. Not only that, the defendant also continued to drink alcohol while he wore the SCRAM device. He also attempted to tamper with the SCRAM device. These acts displayed the defendant's lack of commitment to treatment and unwillingness to overcome his addiction. Although the defendant argues that the trial court should have placed greater weight in mitigation on his alcohol addiction and his rehabilitative potential, the trial court was not required to overlook the fact that the defendant had been given opportunities to complete treatment

programs but had failed to do so. See *People v. Gilkey*, 263 Ill. App. 3d 706, 713-14 (1994) (trial court may consider defendant's conduct on probation in assessing his history, character and rehabilitative potential). Moreover, although the defendant accentuates that his most recent burglary conviction was for a relatively small amount of alcohol, that fact did not obligate the trial court to impose the minimum sentence. See *Madura*, 257 Ill. App. 3d at 740-41. Instead, the trial court considered the mitigating factors and imposed a sentence that was right in the middle of the statutory range; the sentence was two years above the minimum requirement. Accordingly, we will not disturb the trial court's sentencing decision.

¶ 19

CONCLUSION

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 21 Affirmed.