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2015 IL App (3d) 130863-U

Order filed November 20, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal Nos. 3-13-0863 & 3-13-0864 Circuit Nos. 13-CF-5 & 13-CF-256
TRISHA THOMPSON,)	
Defendant-Appellant.)	Honorable Kevin R. Galley, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice McDade and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to an aggregate term of 18 years' imprisonment where the court properly considered both mitigating and aggravating factors and the sentences were within the permissible sentencing range.

¶ 2 Defendant, Trisha Thompson, pleaded guilty to two charges of residential burglary and the trial court sentenced her to consecutive terms of 8 and 10 years in prison. She appeals, claiming that the aggregate term is excessive and the trial court's decision is an abuse of discretion. We affirm.

BACKGROUND

¶ 3

¶ 4 In January of 2013, defendant broke into Aaron Wagle's empty apartment and left with a PlayStation gaming console, a video game and two video game controllers. Officers investigated the burglary, and Wagle informed them that he suspected his ex-girlfriend, defendant. Investigators questioned defendant, and during her interview, she admitted that she and her brother entered Wagle's apartment and stole the items. She pawned the PlayStation and the controllers and gave the video game to her uncle. The State charged defendant with residential burglary and theft (No. 13-CF-5). Thompson pled not guilty and was released on bond.

¶ 5 Three months later, the State charged defendant with residential burglary in another case (No. 13-CF-256). According to the probable cause affidavit, defendant entered Anna Zuke's apartment on May 20, 2013, through a broken door and took two rings and a jar of quarters. A neighbor indentified defendant as the woman who entered the apartment. Defendant admitted that she took a ring from the apartment, which investigators recovered and returned to Zuke. Defendant pled not guilty to residential burglary.

¶ 6 Defendant appeared on July 1, 2013, and pled guilty to the residential burglary charges in both cases. The State dismissed the theft count in the Wagle burglary, but the parties did not agree to a sentence. The State then informed the court that defendant was eligible for extended terms and that the sentences should run consecutively because she was out on bond for the first offense when she committed the second one. The court took judicial notice of the probable cause affidavits as the factual basis for the guilty pleas and accepted defendant's pleas.

¶ 7 The presentencing investigation report (PSI) indicated that defendant had prior convictions for retail theft and residential burglary in 2012. She was serving parole for those

offenses when she committed the burglaries in this case. The report also listed 2008 and 2009 Florida felonies for burglary and larceny.

¶ 8 The PSI also revealed that defendant's grandfather sexually abused her for three years, beginning at four years of age. In addition, defendant struggled with drug abuse and addiction from a young age. She started using marijuana, psychedelic mushrooms and LSD when she was 15 years old. Defendant reported that during her adolescent years her mother provided drugs for her and used them with her. The report further indicated that defendant has a six-year-old son who lives with his father's family.

¶ 9 At the sentencing hearing, defense counsel asked the court to consider defendant's life history and her struggles with drug addiction and depression. Defendant spoke in allocution and apologized for her conduct.

¶ 10 The trial court considered the presentencing investigation report and the factors in aggravation and mitigation and sentenced defendant to 18 year in prison: 8 years for the Wagle burglary and 10 years for the Zuke burglary. Although the court noted that defendant's conduct did not cause or threaten serious physical harm, it found that she had a "lengthy and significant" criminal history. The court also found that 18 years in prison was necessary to deter others from committing similar offenses.

¶ 11 Defendant moved to reconsider. The trial court denied the motion, noting that it had considered the statutory factors in mitigation and defendant's history of substance abuse.

¶ 12 ANALYSIS

¶ 13 On appeal, defendant acknowledges that the court had to sentence her to a consecutive term of at least eight years. She also recognizes that a sentence above the authorized minimum was appropriate given her criminal history. Defendant argues, however, that the nature of the

crimes, her decision to plead guilty, and her abusive childhood all indicate that the imposed sentence was excessive.

¶ 14 The trial court has broad sentencing discretion. *People v. Phippen*, 324 Ill. App. 3d 649, 651 (2001). If a sentence falls within statutory guidelines, we will not disturb the sentence unless the court abused its discretion and the sentence is manifestly disproportionate to the nature of the crime. *People v. Grace*, 365 Ill. App. 3d 508, 512 (2006). An abuse of discretion may be found where the sentence is excessive and cannot be supported by any reasonable view of the record. *Phippen*, 324 Ill. App. 3d at 651-52. A reviewing court may not substitute its judgment for the trial court's simply because it would have weighed the factors differently. *People v. Fern*, 189 Ill. 2d 48, 53-54 (1999).

¶ 15 When mitigating evidence is presented at a sentencing hearing, we presume the court took the evidence into consideration. *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 42; *People v. Sole*, 357 Ill. App. 3d 988, 993-94 (2005). This presumption will not be overcome absent explicit evidence from the record that the trial court failed to consider the mitigating factors. *Halerewicz*, 2013 IL App (4th) 120388, ¶ 43. The existence of mitigating factors does not require the trial court to reduce a sentence from the maximum term allowed. *Id.* ¶ 42.

¶ 16 Defendant was convicted of residential burglary, a Class 1 felony. 720 ILCS 5/19-3(a) (West 2012). A Class 1 felony is punishable by a prison sentence of not less than 4 years and not more than 15 years. 730 ILCS 5/5-4.5-30(a) (West 2012). In addition, defendant was eligible for an extended term of not less than 15 years and no more than 30. 730 ILCS 5/5-4.5-30(a) (West 2012); 730 ILCS 5/5-8-2 (West 2012). As a result, defendant's 8-year and 10-year sentences were within the statutory range. A sentence within the statutory range will not be

deemed excessive unless it is manifestly disproportionate to the nature of the offense or deviates from the spirit and purpose of the law. *People v. Spencer*, 303 Ill. App. 3d 861, 871 (1999).

¶ 17 Defendant argues that her sentences are manifestly disproportionate to the nature of the offense given her nonthreatening conduct in committing them and her abusive social environment. However, the trial court referenced the PSI and stated it considered defendant's drug dependency and the lack of serious physical harm during the burglaries. A trial court that considered the PSI is presumed to have considered the defendant's potential for rehabilitation. See *Sole*, 357 Ill. App. 3d at 993-94; *People v. Babiarz*, 271 Ill. App. 3d 153, 164 (1995).

¶ 18 Here, the PSI showed defendant had numerous prior felony convictions for burglary, theft and larceny. During the sentencing hearing, the trial court referenced the PSI and specifically discussed defendant's drug addiction and criminal history. In aggravation, the court found defendant's history of criminal activity was long and included several felony offenses. The court also noted that rehabilitation without clinical intervention was unlikely.

¶ 19 Because defendant committed residential burglary while awaiting trial for residential burglary and theft, she was eligible for an extended maximum term of 30 years in prison for both convictions. After considering the aggravating and mitigating factors, the court imposed sentences of 8 years and 10 years. The trial court did not abuse its discretion in sentencing defendant to terms within the statutory sentencing range.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Tazewell County is affirmed.

¶ 22 Affirmed.