

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).

2015 IL App (3d) 140572-U

Order filed November 10, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 13th Judicial Circuit,
)	La Salle County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-14-0572
v.)	Circuit No. 10-CF-156
)	
ALEJANDRO ARTEAGA,)	Honorable
)	H. Chris Ryan Jr.,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in weighing the aggravating and mitigating factors at defendant's resentencing hearing.
- ¶ 2 Defendant, Alejandro Arteaga, appeals from his sentence of three concurrent terms of 16 years' imprisonment, arguing that the trial court: (1) considered an improper factor in aggravation that was inherent in defendant's offense; and (2) failed to consider applicable factors in mitigation. We affirm.

¶ 3

FACTS

¶ 4

In 2012, defendant was convicted of two counts of unlawful delivery of a controlled substance (720 ILCS 570/401(a)(2)(A), (B) (West 2010)), and one count of possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2010)). The court sentenced defendant to three concurrent sentences of 16 years' imprisonment. Defendant appealed, and this court remanded for resentencing, determining that the court considered compensation, a factor inherent in the offense, when sentencing defendant. *People v. Arteaga*, 2014 IL App (3d) 120207-U. The facts from the first sentencing hearing were discussed in our previous order. See *id.*

¶ 5

In 2014, a resentencing hearing was held. As factors in aggravation, the State argued: (1) deterrence; (2) defendant's criminal history; (3) the toxicity of the substance sold; (4) the fact that defendant was not an addict; and (5) societal harm. The State also noted that the court could consider that defendant "was a man who was in control of his criminal enterprise and was making conscious decisions to maximize those profits." The State asked the court to sentence defendant to 16 years' imprisonment.

¶ 6

In mitigation, defendant said that he had large family ties and that a long sentence of imprisonment would be a hardship on his family, as evidenced by the 11 letters that his family and friends sent to the court. Defendant also noted that: (1) he was young and did not have much criminal history and was therefore able to be rehabilitated; and (2) he was getting treatment for his drug and alcohol problem. He asked for a sentence from 8 to 10 years' imprisonment. Defendant said he took full responsibility and regretted his actions.

¶ 7

After hearing arguments from both sides, the court said:

"The first thing we have to address is I should [sic], I cannot take into consideration, as properly pointed out by the Appellate Court, any type of compensation. It's inherent in the offense. We won't do that.

I have considered the factors in aggravation, mitigation, the statements of counsel, argument of counsel, statement by the defendant, the Presentence Investigative Report [(PSI)], as well as the letters of reference and recommendation."

¶ 8 The court discussed defendant's PSI, noting specifically his employment history, education, minimal history of drug and alcohol abuse, and his substance abuse treatment.

¶ 9 The court examined the factors in aggravation that were present: deterrence, potential for harm, and continuing distribution. The court noted that defendant was convicted of a subsequent drug offense in Bureau County. The court said:

"There is an indication by the Bureau County conviction, or disposition, that there was continuing distribution. In this particular county there were two separate occasions. Bureau County was the third.

It appears to be a distribution for a furtherance of a business concept.

In other words, he was employed; but he's also got some employment distributing drugs.

I understand. But it appears as the State has argued, and that came from the Appellate Court Decision, it's an argument that is strong and this is furtherance of an enterprise.

It's furthering his business. He's furthering his income to continue on with the sales and distribution."

¶ 10 The court then discussed the factors in mitigation. The court noted that it considered the hardship to the family. The court said, "The three offenses I have indicated in the past, mitigation in this particular matter is the hardship one. That's the one I touched. I can't find any others."

¶ 11 Before sentencing defendant, the court stated,

"I have considered the factors in aggravation and mitigation and the fact that this is necessary to deter others, sales and distribution of controlled substances.

The fact that the same is not a single one, it's a continuing enterprise to further that. I have considered the mitigation and the hardship."

¶ 12 The court again sentenced defendant to three concurrent sentences of 16 years' imprisonment. The defendant filed a motion to reconsider his sentence, which was denied.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant again argues: (1) the court improperly considered compensation, a factor inherent in the offense, when sentencing defendant; and (2) the court failed to consider "significant mitigating evidence." We reject both of defendant's arguments.

¶ 15 I. Compensation

¶ 16 The imposition of a sentence is a matter of judicial discretion and, absent an abuse of that discretion, the sentence of the trial court may not be altered upon review. *People v. Perruquet*, 68 Ill. 2d 149, 153 (1977); see also *People v. McAfee*, 332 Ill. App. 3d 1091, 1096-97 (2002) (reviewing the consideration of an improper factor in aggravation for abuse of discretion). Great

deference is given to the trial court's sentencing determination as the trial court is in the best position to determine the appropriate sentence. *People v. Reed*, 376 Ill. App. 3d 121, 127 (2007).

¶ 17 "[T]he trial court may search anywhere within reasonable bounds for facts which may serve to aggravate or mitigate the offense." *Id.* at 128. However, a trial court may not consider a factor inherent in the offense as an aggravating factor in sentencing. *People v. Phelps*, 211 Ill. 2d 1, 11 (2004). As the legislature already considered all inherent factors when determining an appropriate sentencing range for the offense, considering the factor again when sentencing results in an improper double enhancement. *People v. Conover*, 84 Ill. 2d 400, 404-05 (1981). The fact that a defendant received compensation is inherent in offenses involving the delivery of drugs. *People v. M.I.D.*, 324 Ill. App. 3d 156, 159 (2001).

¶ 18 In considering the appropriateness of the trial court's consideration of compensation in sentencing defendant, the court in *People v. Rios* stated:

"While the proceeds of the crime are not an aggravating factor under section 5-5-3.2(a)(2), they can be proper considerations at sentencing when the proceeds relate to such things as the extent and nature of a defendant's involvement in a particular criminal enterprise, a defendant's underlying motivation for committing the offense, the likelihood of the defendant's commission of similar offenses in the future and the need to deter others from committing similar crimes. [Citation.] For example, a 'court may properly consider a defendant's efforts to maximize profits from a drug enterprise in sentencing for unlawful possession, to the extent that such evidence reflects on the nature of the crime.' " *People v. Rios*, 2011 IL App (4th) 100461, ¶ 15 (quoting *M.I.D.*, 324 Ill. App. 3d at 159-60).

¶ 19 Here, the court explicitly said at the beginning of the sentencing hearing that it was not allowed to consider compensation in sentencing defendant and that it would not do so. The court then considered, as the State had argued, that defendant's actions, particularly as related to the third incident while defendant was on bail, showed that defendant was trying to further his drug enterprise and maximize his profits. When taken as a whole, the record shows that the court was not considering compensation, but instead took into consideration the extent and nature of defendant's involvement in the criminal enterprise and his likelihood of committing similar offenses in the future. We cannot say it was an abuse of discretion for the court to do so.

¶ 20 In coming to this conclusion, we reject defendant's contention: "[t]hat the judge was still considering a fact inherent in the offense is illustrated by the fact that no evidence either at trial or the resentencing hearing described specific efforts by Arteaga to maximize profits or apply an expansive business model to his sales; the evidence described simple drug supply transactions."

¶ 21 Courts in other cases have considered the amount of money that defendant made, the amount of drugs involved, the fact that defendant tried to multiply the drugs by mixing it with something else, and/or the number of people defendant was supplying in determining that a court's compensation-related comments related to the extent and nature of a defendant's involvement in a particular criminal enterprise, a defendant's underlying motivation for committing the offense, the likelihood of the defendant's commission of similar offenses in the future, and/or the need to deter others from committing similar crimes. See *Rios*, 2011 IL App (4th) 100461 (holding that the discussion of defendant's proceeds of the crime addressed the extent and nature of defendant's involvement in selling drugs, her underlying motivation for committing the offense, and the nature of the offenses where defendant was making \$400 or more a day selling drugs to five or six people and had been involved in selling drugs for a long

time); *M.I.D.*, 324 Ill. App. 3d at 159-60 (holding that the judge's comments about defendant's receipt of compensation showed that he considered the profits from defendant's criminal enterprise as bearing on the nature of the offense where the court noted that defendant sold a substantial amount of drugs over a period of time); *People v. McCain*, 248 Ill. App. 3d 844, 851 (holding that the amount of profit defendant received and the actions taken to maximize that profit, such as multiplying the quantity of the cocaine, as well as the amount of cocaine involved related to the extent and nature of defendant's involvement in the criminal enterprise and the need for deterrence).

¶ 22 Here, when sentencing defendant, the court reviewed the evidence from trial, as well as defendant's other drug conviction while out on bond in the instant case. Taken as a whole, the court could have concluded that these efforts related to the extent and nature of defendant's involvement in the criminal enterprise and the likelihood that defendant would commit similar offenses in the future. See *Rios*, 2011 IL App (4th) 100461, ¶ 15; *M.I.D.*, 324 Ill. App. 3d at 159-60; *McCain*, 248 Ill. App. 3d at 851.

¶ 23 II. Mitigation

¶ 24 Defendant further claims that the trial court failed to consider relevant mitigating factors, including defendant's "long employment history, strong ties to his family and community, and his substance abuse treatment."

¶ 25 The Unified Code of Corrections lists factors in mitigation that the trial court must consider when imposing a sentence of imprisonment. 730 ILCS 5/5-5-3.1(a) (West 2010). The court cannot ignore a pertinent mitigating factor (*Burnette*, 325 Ill. App. 3d at 808-09), but the weight to be given each factor depends on the facts and circumstances of each case. *People v. Gross*, 265 Ill. App. 3d 74, 80 (1994). When mitigating evidence is before the trial court, it is

assumed that the court considered it, unless the record indicates otherwise. *People v. Burton*, 184 Ill. 2d 1, 34 (1998). The reviewing court should not focus on a few words or statements of the trial court, rather, the determination of whether or not the sentence was improper must be made by considering the entire record as a whole. *People v. Ward*, 113 Ill. 2d 516, 526-27 (1986). " 'An isolated remark made in passing, even though improper, does not necessarily require that defendant be resentenced.' " *Reed*, 376 Ill. App. 3d at 128 (quoting *People v. Fort*, 229 Ill. App. 3d 336, 340 (1992)).

¶ 26 Here, the court specifically noted defendant's employment history, education, minimal history of drug and alcohol abuse, and his substance abuse treatment when considering defendant's PSI. The court heard defendant's statement and read all of the letters that had been sent on his behalf. The court said, multiple times, that it had considered the factors in mitigation. Therefore, we conclude that the court considered all of the mitigating evidence before it.

¶ 27 In coming to this conclusion, we reject defendant's reliance on the court's isolated statement that, "mitigation in this particular matter is the hardship one. That's the one I touched. I can't find any others." Defendant interprets this statement to mean that the court did not consider any of the mitigating evidence other than hardship on defendant's family. However, taking the record as a whole, as we must (*Ward*, 113 Ill. 2d at 526-27), the court considered all of the mitigation that was before it, but gave more weight to the hardship than to anything else. This is made clear by the court's acknowledgement of all of the mitigating evidence before it, including the statements made about each particular area of the PSI, as well as the multiple times the court said it had considered the factors in aggravation and mitigation.

¶ 28 CONCLUSION

¶ 29 The judgment of the circuit court of La Salle County is affirmed.

¶ 30 Affirmed.