

NOTICE

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2015 IL App (4th) 130858-U

NO. 4-13-0858

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 1, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
MICHAEL C. WILKINS,)	No. 12CF307
Defendant-Appellant.)	
)	Honorable
)	Harry E. Clem,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pope and Justice Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed as modified, concluding the trial court did not abuse its discretion in sentencing defendant to 12 years' imprisonment but remanded, directing the trial court to issue an amended sentencing judgment reflecting a sentence credit of 286 days.
- ¶ 2 In November 2013, defendant, Michael C. Wilkins, entered an open guilty plea to residential burglary (720 ILCS 5/19-3(a) (West 2010)). In January 2013, the trial court sentenced defendant to 12 years' imprisonment with credit for 268 days served in presentence custody. Defendant appeals, arguing (1) the trial court failed to adequately consider his rehabilitative potential in fashioning his sentence, and (2) he is entitled to an additional 18 days of sentencing credit for time served in presentence custody. We affirm defendant's conviction and sentence as modified and remand with directions that the trial court issue an amended sentencing judgment reflecting a sentence credit of 286 days.

¶ 3

I. BACKGROUND

¶ 4 In February 2012, the State charged defendant by information with home invasion, a Class X felony (720 ILCS 5/12-11(a)(2), (c) (West 2010)) (count I); residential burglary, a Class 1 felony (720 ILCS 5/19-3(a), (b) (West 2010)) (count II); and aggravated battery, a Class 3 felony (720 ILCS 5/12-4(b)(10), (e)(1) (West 2010)) (count III). The State alleged defendant, or one for whose conduct he was legally responsible, entered the dwelling place of Verna Hewitt, knowing one or more persons was present, with the intent to commit a theft and intentionally caused injury to Hewitt, a person 60 years of age or older, by striking her about the face.

¶ 5 In November 2012, defendant and the State reached a partially negotiated plea agreement. Under the agreement, defendant offered to plead guilty to residential burglary in exchange for the State's (1) dismissal of the home-invasion charge in count I, (2) dismissal of the aggravated-battery charge in count III, (3) dismissal of a battery charge in case No. 12-CF-354, and (4) agreement not to file a petition to revoke probation relative to a prior burglary conviction in case No. 11-CF-1707. That same month, the plea was presented to the trial court.

¶ 6 The State offered the following factual basis: On June 10, 2011, Hewitt, then 93 years old, was at her residence. Around 12:30 a.m., the doorbell rang. Hewitt went to the door and saw the silhouette of a man standing outside. She did not answer the door but turned around and went to bed. Sometime later, Hewitt was awakened by a man standing next to her bed. As she began to get up, the man grabbed her by her arms, moved her to a sitting position, and then took a pair of pants and tied them around her head. While struggling with the man, Hewitt was struck in the face and sustained a black eye and injuries to her hand. After several minutes, she was able to untie the blindfold and noticed the door between the kitchen and the garage, which

had been closed earlier, was now open. There was no one in the house. Police officers were dispatched to the scene and found broken glass near an exterior door to the garage. Hewitt discovered her 42-inch flat screen television, wallet, cash, and identification, as well as her late husband's wallet, cash, identification, and gloves were missing. During the course of the investigation, police officers spoke with Jose Morrison, who implicated defendant in the burglary. Specifically, Morrison indicated defendant (1) entered Hewitt's residence with Morrison, (2) pushed or struck Hewitt, and (3) took a wallet from Hewitt's purse. Morrison also admitted to personally taking a television and cash from Hewitt's residence.

¶ 7 Defendant acknowledged the State could present sufficient evidence to sustain the charge of residential burglary. The trial court found the factual basis sufficient and defendant's plea to be knowing and voluntary and therefore accepted his guilty plea to residential burglary. It further granted the State's motion to dismiss the home-invasion and aggravated-battery charges (counts I and III, respectively) and the battery charge in case No. 12-CF-354, and noted for the record the State would not be filing a petition to revoke probation in case No. 11-CF-1707.

¶ 8 In January 2013, the trial court held a sentencing hearing. Both parties confirmed the accuracy and completeness of the presentence investigation report. Ladonna Uken, Hewitt's niece, testified for the State. Uken testified Hewitt received a black eye and swollen right middle finger from the incident. Uken testified that after the incident Hewitt accidentally hit her life-line bracelet, a device used for medical emergencies. In response, Uken went to Hewitt's home but Hewitt did not answer the door. Uken used her key and upon entering, found Hewitt hiding. Uken testified Hewitt was very afraid. Since the incident Hewitt had experienced severe distress. Defendant did not present any evidence.

¶ 9 The State requested a sentence of 15 years' imprisonment. Defendant requested a sentence of less than eight years' imprisonment and to be considered for the Department of Corrections boot-camp program in light of his age, admission of fault, admission "he is legally accountable for the actions of his co-[d]efendants," the belief the evidence would have shown defendant did not personally attack the victim, and his health. Defendant personally addressed the court, apologizing and accepting responsibility for his actions and requesting leniency.

¶ 10 In determining defendant's sentence, the trial court stated it had considered all relevant information before it. In mitigation, the court found defendant pleaded guilty. However, the court also noted, as part of the plea agreement the State "agreed to dismiss a charge which would have exposed *** [d]efendant to a mandatory prison sentence of [6] to [30] years, *** dismissed another felony charge in this cause, dismissed a felony charge *** in a separate offense, and agreed not to [file a petition to revoke defendant's probation] in yet a third cause." The court also found defendant had a disadvantaged childhood. However, the court noted, defendant "had chances, he simply didn't take them." The court further found, defendant was a relatively young man. However, the court noted, for a person his age, he had a "significant criminal record." The court accepted defendant's assertion he no longer used drugs. However, the court noted defendant had not used drugs because he had been incarcerated.

¶ 11 In aggravation, the court found the offense to be a serious one—the invasion of an elderly person's home. The court found, regardless of whether defendant personally took part in the physical assault of Hewitt, he was fully accountable for the actions of his companions— "He could have said, no, I don't do that kind of stuff and walked away. He did not. He joined in and is responsible as an accessory to the offense that was committed." The court also considered the impact of the offense on the victim. The court found the victim was terrorized by what happened

and will have to cope with it for the rest of her life. The court noted the victim was "entitled to know that the defendant is not anywhere that he can harm her or any other person for an extended period of time."

¶ 12 The trial court sentenced defendant to 12 years' imprisonment with credit for 268 days served in presentence custody and imposed certain assessments. The court also denied defendant's motion for participation in an impact incarceration program, finding defendant was not an appropriate candidate. That same month, defendant filed a motion to reconsider sentence, arguing the court gave inadequate consideration to defendant's potential for rehabilitation as a mitigating factor.

¶ 13 In September 2013, the trial court held a hearing on defendant's motion. The court denied defendant's motion, finding it had adequately considered defendant's potential for rehabilitation in fashioning an appropriate sentence.

¶ 14 This appeal followed.

¶ 15 **II. ANALYSIS**

¶ 16 On appeal, defendant argues his sentence is excessive because the trial court failed to adequately consider mitigating factors. Specifically, defendant contends the court gave insufficient weight to his rehabilitative potential as reflected by his youth, remorse and desire to change, and difficult family circumstances. In response, the State argues defendant's claim is refuted by the record and the sentence imposed was within the trial court's discretion. Defendant further asserts, and the State concedes, he is entitled to an additional 18 days of sentencing credit for time served in presentence custody.

¶ 17 With excessive-sentence claims, this court has explained its role in reviewing a defendant's sentence as follows:

"A trial court's sentencing determination must be based on the particular circumstances of each case, including factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Generally, the trial court is in a better position than a court of review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case. [Citation.] Thus, the trial court is the proper forum for the determination of a defendant's sentence, and the trial court's decisions in regard to sentencing are entitled to great deference and weight. [Citation.] Absent an abuse of discretion by the trial court, a sentence may not be altered upon review. [Citation.] If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341.

¶ 18 In his brief, defendant acknowledges the trial "court was correct to note the heinousness of the offense—in which [defendant] and two other persons broke into the home of 92-year old [*sic*] Verna Hewitt, robbed her of a 42-inch flat-screen television and cash, among other items, blindfolded her, and struck her." However, he contends, the court failed to adequately consider as mitigating factors his young age (18 years old at the time of the offense), his remorse and acceptance of responsibility, and his difficult childhood. Our review of the

transcript of defendant's sentencing hearing leads us to conclude the trial court did in fact consider these factors at sentencing.

¶ 19 While noting defendant's relative youth, the trial court also found defendant had a significant criminal record. As for defendant's remorse and acceptance of responsibility for the offense, the court noted its reservations as to defendant's sincerity in light of the beneficial terms of the plea agreement defendant was receiving. Finally, the court noted defendant's disadvantaged childhood. However, it also found defendant had "had chances, he simply didn't take them." The court recognized the above mitigating factors but found a 12-year sentence was warranted due to the need for deterrence and in light of defendant's prior burglary conviction, the seriousness of the offense, and the injuries caused to the victim. Defendant essentially asks us to reweigh the factors considered by the trial court, which we cannot do. See *People v. Alexander*, 239 Ill. 2d 205, 214-15, 940 N.E.2d 1062, 1067 (2010).

¶ 20 Defendant's sentence falls within the applicable statutory guidelines. Residential burglary is a Class 1 felony (720 ILCS 5/19-3(a), (b) (West 2010)), and the sentencing range for a Class 1 felony is 4 to 15 years' imprisonment (730 ILCS 5/5-4.5-30(a) (West 2010)). Defendant was sentenced to 12 years' imprisonment. Based on our review of the record, the trial court did not abuse its discretion in sentencing defendant.

¶ 21 Defendant further asserts, and the State concedes, he is entitled to an additional 18 days of sentencing credit for time served in presentence custody. We have calculated the number of days defendant was in presentence custody, agree with defendant, and accept the State's concession. We direct the trial court to issue an amended sentencing judgment reflecting a credit for time served in presentence custody of 286 days.

¶ 22

III. CONCLUSION

¶ 23 For the reasons stated, we affirm defendant's conviction and sentence. We direct the trial court to issue an amended sentencing judgment reflecting a credit for time served in presentence custody of 286 days. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 24 Affirmed as modified; cause remanded with directions.