

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 (4th) 140154-U

NO. 4-14-0154

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 4, 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
MIRANDA L. MOORE,)	No. 09CF359
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by resentencing defendant to six years in prison for unlawful delivery of a controlled substance.

¶ 2 In November 2009, defendant, Miranda L. Moore, pleaded guilty to the charge of unlawful delivery of a controlled substance with an agreed sentence of 48 months of Treatment Alternatives to Street Crimes (TASC) probation. In October 2012, the State filed a petition to revoke defendant's probation. At an April 2013 hearing, defendant stipulated to the petition. In December 2013, the trial court resentenced defendant to six years in prison. In February 2014, defense counsel filed a motion to reconsider the sentence, which the court denied.

¶ 3 On appeal, defendant argues the six-year prison sentence imposed by the trial court was excessive. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2009, the State charged defendant by information with one count of unlawful delivery of a controlled substance (720 ILCS 570/401(d) (West 2008)), alleging she knowingly and unlawfully delivered less than one gram of a substance containing cocaine, a controlled substance. In November 2009, defendant agreed to plead guilty, and the State agreed to a sentence of TASC probation for a period of 48 months, subject to the standard rules and conditions of that probation. The State's factual basis indicated defendant delivered 0.4 grams of cocaine to a confidential source in exchange for \$50. The trial court found defendant's plea was knowingly and voluntarily made. The court placed defendant on probation through TASC for 48 months, ordered her to serve one day in jail with credit for one day served, and required her to pay various fines and fees.

¶ 6 In October 2012, the State filed a petition to revoke defendant's probation, alleging she failed to report to the court services department, willfully failed to pay her fines and fees, tested positive for cocaine use, stopped attending her outpatient services, and failed to obtain a mental-health assessment.

¶ 7 In April 2013, defense counsel proposed to the trial court that defendant would stipulate to the petition with sentencing at a later date. Counsel explained defendant was attempting to enter long-term residential treatment and, after she completed the treatment, she would then be sentenced. The prosecutor agreed to proceed in this manner. The court accepted defendant's admission to the petition and set the matter for a status hearing as to sentencing.

¶ 8 At a June 2013 status hearing, defense counsel reported defendant was in inpatient treatment and was "doing very well." The State noted defendant would be in the program for 6 to 12 months. At a September 2013 hearing, defense counsel advised the court that defendant had returned from inpatient treatment and was able to go on probation. The court

set the matter for a resentencing hearing.

¶ 9 In December 2013, the trial court conducted the resentencing hearing and indicated it considered the presentence report, an updated TASC suitability evaluation, and an addendum submitted by the probation officer. The State recommended a prison sentence because of defendant's recent noncompliance with the terms of her probation. The State noted defendant had failed to submit to a urinalysis test after arrangements were made to accommodate her. Defendant also showed traces of cocaine in her system when she did show up for her test.

¶ 10 In mitigation, defense counsel argued defendant had made progress and "has a one-year-old child that she needs to care for." Counsel did not believe a prison sentence would help with defendant's underlying addiction. Moreover, counsel stated defendant is bipolar and was undergoing mental-health treatment. Counsel asked that defendant be admitted into the drug court program. In her statement in allocution, defendant stated she had struggled with drugs since she was a teenager but now wanted to come home and be with her daughter.

¶ 11 The trial court noted defendant was 26 years old. She was adjudicated a delinquent minor in 2001 for theft. Within four months, her probation was revoked and she was eventually resentenced to the juvenile division of the Department of Corrections. The court noted defendant's prior conviction for unlawful possession with intent to deliver cannabis in 2006. She received probation, which was revoked, and she was resentenced to four years in prison. As a factor in aggravation, the court found the drug-dealing offense was committed while defendant was on mandatory supervised release for another drug-dealing offense. In considering defendant's rehabilitative potential, the court found it "disturbing that she went out and committed a similar-natured offense shortly after being released from the Department of Corrections."

¶ 12 The trial court noted defendant's compliance with probation was "very poor until she was arraigned on the petition to revoke probation." The court found she failed to report on "multiple occasions," missed home visits, tested positive for or admitted using cocaine, failed to follow through with multiple referrals for treatment, and did not follow through with outpatient treatment.

¶ 13 The trial court acknowledged defendant's young child and her prior work history. However, the court indicated it saw "the same pattern forming, of not following through, not attending, missed appointments." The court found it "more than the bipolar disorder" and believed defendant was "manipulating the situation and not using the resources."

¶ 14 The trial court stated a community-based sentence would deprecate the seriousness of defendant's conduct, "send the wrong message, and be inconsistent with the ends of justice." The court resentenced defendant to six years in prison.

¶ 15 In February 2014, defense counsel filed a motion to reconsider the sentence, which the trial court denied. This appeal followed, and this court has jurisdiction of the cause under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 16 II. ANALYSIS

¶ 17 Defendant's sole argument on appeal is her six-year sentence was excessive because the trial court failed to adequately consider her rehabilitative potential and the sentence conflicts with the constitutional principle aimed at restoring an offender to useful citizenship. We disagree.

¶ 18 The Illinois Constitution mandates "[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. "In determining an appropriate sentence, a

defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed.' " *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)). However, "the seriousness of an offense is considered the most important factor in determining a sentence." *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 53, 23 N.E.3d 430.

¶ 19 With excessive-sentence claims, this court has explained appellate review of 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 (quoting *People v. Hensley*, 354 Ill. App. 3d 224, 234-35, 819 N.E.2d 1274, 1284 (2004) (quoting *People v. Kennedy*, 336 Ill. App. 3d 425, 433, 782 N.E.2d 864, 871 (2002))).

¶ 20 In the case *sub judice*, defendant pleaded guilty to the offense of unlawful delivery of a controlled substance, a Class 2 felony (720 ILCS 570/401(d) (West 2008)). A person convicted of a Class 2 felony is subject to a sentencing range of three to seven years in prison. 730 ILCS 5/5-8-1(a)(5) (West 2008). As the trial court's sentence of six years in prison was within the relevant sentencing range, we will not disturb the sentence absent an abuse of discretion.

¶ 21 Here, the trial court indicated it considered the presentence report; the TASC report; the evidence in aggravation and mitigation; defendant's character, history, and rehabilitative potential; her statement in allocution; and the arguments of counsel. The court noted defendant's age of 26 years and found as "most significant" that she had a conviction for unlawful possession with intent to deliver cannabis in 2006, for which she received a four-year prison sentence after her probation was revoked. In considering her rehabilitative potential, the court found it "disturbing" that she "went out and committed a similar-natured offense shortly after being released from the Department of Corrections." The court noted defendant's failure to report to court services "on multiple occasions," missed home visits, positive tests for or admitted use of cocaine, and her failure to follow through with mental-health referrals and outpatient treatment.

¶ 22 Although defendant argues her age, her attempts to address her drug addiction,

and her lack of an extensive criminal record bode well for her rehabilitative potential, the trial court found defendant had been given repeated chances but had not utilized them. Given the long history of this case and knowing defendant's circumstances, the court indicated it had hoped for a "successful rehabilitation." However, the court found "the same pattern forming, of not following through, not attending, missed appointments," and dirty drug drops. The court believed defendant was "manipulating the situation and not using the resources" and concluded "there is nothing more that can be accomplished with probation." Noting the need to deter others and finding a community-based sentence would deprecate the seriousness of defendant's conduct, the court found a six-year sentence was appropriate. We find no abuse of discretion.

¶ 23

III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 25 Affirmed.