2015 IL App (4th) 140717-U

NO. 4-14-0717

FILED
April 27, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
DENZEL K. SMITH,	)	No. 13CF825
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Pope and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court found the trial court did not abuse its discretion in sentencing defendant to 13 years in prison on the offense of attempt (aggravated arson).

¶ 2 In March 2014, defendant, Denzel K. Smith, pleaded guilty to one count of attempt (aggravated arson). In May 2014, the trial court sentenced him to 13 years in prison. In June 2014, defendant filed a motion to reconsider sentence, which the court denied.

¶ 3 On appeal, defendant argues his 13-year sentence for attempt (aggravated arson) was excessive. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2013, the State charged defendant by information with one count of aggravated arson (count I) (720 ILCS 5/20-1.1 (West 2012)), alleging he, while committing an arson, knowingly partially damaged a building of Evelyn Womack knowing or at a time he

reasonably should have known that Womack was present therein. In March 2014, the State charged defendant by information with one count of attempt (aggravated arson) (count II) (720 ILCS 5/8-4, 20-1.1 (West 2012)), alleging he, with intent to commit aggravated arson, took a substantial step toward the commission of that offense in that he lit an accelerant in close proximity to the dwelling place of Evelyn Womack.

¶ 6 In March 2014, the trial court conducted a plea hearing, wherein defendant agreed to plead guilty to count II and the State agreed to dismiss count I. In its factual basis, the State indicated defendant returned to his apartment at approximately 10:30 p.m. on May 25, 2013, to find the door kicked in and his laptop stolen. Defendant's roommate, Benjamin Buffett, told police defendant became irate, fixated on Larry Green as a suspect, and talked about "getting him back." Defendant convinced Buffett to go with him to Green's house. In doing so, they came upon Green's brother and two other men in the driveway at 916 West Eads in Urbana, which was three doors down from Green's actual residence. After talking with the men, defendant and Buffett returned to their apartment. Defendant left around midnight and returned one hour later "reeking of gasoline," according to Buffett. Defendant told Buffett he "tried to burn a house down but it didn't work." Defendant then asked Buffett to help him research how to burn a house down on the Internet, but Buffett refused. Defendant left.

¶ 7 The following morning, Green and his brother realized the windows of their mother's car had been broken out in front of her residence at 910 West Eads. Evelyn Womack, who lived at 916 West Eads, woke up around 6 a.m. and thought she smelled something "burnt in the kitchen but could not identify it." She called the fire department. An investigation revealed a lighter on the rear side of the home and three separate locations in close proximity to the home where it appeared an accelerant had been used to attempt to start a fire. During the

evening, Womack had been sleeping inside the house along with her disabled son and two grandsons. Police located defendant and an officer noted an "overwhelming odor of gasoline coming from inside defendant's vehicle."

¶ 8 Following the State's factual basis, defendant pleaded guilty to count II. The trial court found the plea was knowingly and voluntarily made.

¶ 9 In May 2014, the trial court conducted the sentencing hearing. The court considered the victim-impact statement of Evelyn Womack. In mitigation, the court considered the independent psychological evaluation of defendant conducted by Dr. Thomas Campion, a licensed clinical psychologist. The evaluation indicated defendant graduated high school and had completed college courses. Defendant reported a "difficult" relationship with his mother, who he felt was "unreasonable in her demands and abusive in her comments." Based on psychological testing, Dr. Campion found defendant showed "a desire to appear adequate, competent, and in control." Defendant scored in the 12th percentile on the cognitive assessment, "indicating difficulties learning, processing, and applying new material quickly when compared to others." Campion also found as follows:

> "He attempts to project an appearance of intellectual thoughtfulness but appears to have limited abilities with more academic-minded tasks or thoughts. This can create difficulties in concentration, judgment, and complex thinking. With the proper amount of time, self-discipline, and focus, he is able to achieve average results. Overall, he tends to deny problematic situations or psychological difficulties. It is difficult for him on both a desire and ability level to connect with underlying emotions. This

> process can uncover insecurities. He is becoming more aware that the underlying emotions need to be addressed in order to move forward with a healthier lifestyle and thought process."

¶ 10 Dr. Campion opined defendant understood what he did was wrong and appeared to be "genuinely remorseful." He realized "his emotions had gotten the best of him and made that realization once the fire went out." Dr. Campion believed "the most effective rehabilitation" for defendant was counseling and anger-management classes. Dr. Campion concluded defendant "appears to have a genuine desire to be a productive citizen, go to school, and contribute to society," does not appear to have underlying antisocial tendencies, and with proper counseling and anger-management courses, "the ultimate risk to himself and others is marginal."

¶ 11 Defendant gave a statement in allocution, indicating he was sorry for his behavior. He understood it was a serious crime and he should have let the authorities handle the situation. He apologized to the victims and hoped they could forgive him.

¶ 12 The trial court noted defendant was 21 years old. The court found defendant failed to follow through and help in the preparation of the sentencing report authored by the court services department. Defendant had three prior juvenile adjudications for unlawful use of weapons, residential burglary, and criminal trespass. The court found defendant's conduct "extremely serious" and, if successful, "could have been tragic." Defendant had opportunities to withdraw but chose not to. Further, there was "a disturbing element of planning and persistence here that Mr. Smith demonstrates that belies the suggestion that this was just a rash decision or a momentary loss of control." The court found defendant "unacceptably dangerous to the public." The court sentenced defendant to 13 years in prison and ordered him to pay $6,200 in restitution.

¶ 13 In June 2014, defendant filed a motion to reconsider sentence, arguing the 13-year

sentence was excessive. In August 2014, the trial court denied the motion. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant argues his 13-year sentence for attempt (aggravated arson) was excessive and should be reduced in light of substantial mitigating factors, including his youth, his minimal criminal history, the support of his friends and family, and his potential for rehabilitation. We find no abuse of discretion.

¶ 16 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)).

¶ 17 "A reviewing court gives substantial deference to the trial court's sentencing decision because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age." *People v. Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d 656. Because a trial court has broad discretion in imposing a sentence, this court will not overturn the sentence absent an abuse of discretion. *People v. Chester*, 409 Ill. App. 3d 442, 450, 949 N.E.2d 1111, 1118-19 (2011). "A sentence will be deemed an abuse of discretion where the sentence is 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *People v. Alexander*, 239 Ill. 2d 205, 212, 940

N.E.2d 1062, 1066 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000)).

¶ 18 In the case *sub judice*, defendant pleaded guilty to the offense of attempt (aggravated arson). Aggravated arson is a Class X felony (720 ILCS 5/20-1.1(b) (West 2012)), and the sentence for attempt to commit a Class X felony is the sentence for a Class 1 felony (720 ILCS 5/8-4(c)(2) (West 2012)). A person convicted of a Class 1 felony is subject to a sentencing range of 4 to 15 years in prison. 730 ILCS 5/5-4.5-30(a) (West 2012). As the trial court's sentence of 13 years in prison was within the relevant sentencing range, we will not disturb the sentence absent an abuse of discretion.

¶ 19 The trial court indicated it had considered the presentence report, the evidence in mitigation, defendant's statement in allocution, and the statutory factors in mitigation and aggravation. The court found defendant "relatively young," being 21 years old, and noted he had three juvenile adjudications, including unlawful use of weapons, residential burglary, and criminal trespass. The court also found defendant's conduct was "extremely serious." Although the court stated defendant's youth was a factor in mitigation, it was "overshadowed" by defendant's failure to learn from his mistakes as a juvenile and redirect his actions. Moreover, the court found "the arguable mitigation from his youth is attenuated by the deliberate planned and premeditated nature of the act."

¶ 20 Defendant acknowledges the attempt to ignite Womack's home is "an unquestionably serious offense," but he argues the trial court failed to weigh the seriousness of the offense with the mitigating factor of his cognitive dysfunction. He points to Dr. Campion's evaluation that indicated defendant scored in the 12th percentile on the cognitive assessment, "indicating difficulties in learning, processing, and applying new material quickly when

compared to others." Defendant also argues the court failed to recognize his difficulties in concentration, judgment, and complex thinking likely contributed to his conduct.

¶ 21 The trial court indicated it reviewed Dr. Campion's evaluation but found defendant's recitation of the offense was inaccurate, which "calls into question Dr. Campion's ability to fairly assess the risk that he poses." The court also noted Dr. Campion did not make a diagnosis of mental illness. In pointing out defendant's failure to cooperate with the preparation of the presentence report, the court noted Dr. Campion did not have information as to defendant's juvenile cases. By being selective in the information he provided, the court stated defendant was "still resisting the system" and "trying to control the situation."

¶ 22 Defendant also argues the trial court failed to consider that he was a student, had letters in support, and rehabilitative potential. While defendant may have shown some rehabilitative potential, such potential " 'is not entitled to greater weight than the seriousness of the offense.' " *Alexander*, 239 Ill. 2d at 214, 940 N.E.2d at 1067 (quoting *People v. Coleman*, 166 Ill. 2d 247, 261, 652 N.E.2d 322, 329 (1995)); see also *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 53, 23 N.E.3d 430 (stating "the seriousness of an offense is considered the most important factor in determining a sentence").

¶ 23 The trial court noted the dire consequences had defendant succeeded in carrying out the offense. The court found "a disturbing element of planning and persistence" that "belies the suggestion that this was just a rash decision or a momentary loss of control."

> "Again it had to be premeditated, planned. He had to get the gasoline, transport the gasoline, bring the lighter, try to enlist the roommate when he was not successful, had all of that time to withdraw, to derail his plans, and instead he was very committed to

> carrying this out. And that opportunity to abort his plans repeatedly, and instead persist in trying to successfully carry it out is certainly very frightening."

¶ 24 The trial court also considered protection of the public to be a compelling factor and stated as follows:

> "We have a man whose rage was so extreme from a perceived theft that it spilled over into this very dangerous and potentially fatal misdirected act of retribution where he was perfectly willing to pick out a household without even knowing who it belonged to, apparently, and tried to set it on fire. He was willing to burn down a house with people in it because he thought one of the people in it might have stolen his computer. That makes him unacceptably dangerous to the public."

The court agreed with the State's reliance on the deterrence factor and stated "[v]igilantism is something the court cannot condone, and that's exactly what this was." The court concluded the paramount consideration was the safety of the community.

¶ 25 The record shows the trial court considered appropriate factors in aggravation and mitigation, the presentence report, the arguments of counsel, and defendant's statement. While defendant had some mitigating factors in his favor, the court found those factors outweighed by the seriousness of the offense, the need to deter, and the protection of the public. We find the sentence imposed on defendant by the trial court was not "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210, 737 N.E.2d at 629. Accordingly, we hold the court did not abuse its discretion in

sentencing defendant to 13 years in prison.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 28 Affirmed.