

No. 1-13-3321

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 7833
)	
RONALD ROBINSON,)	Honorable
)	Frank G. Zelezinski,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's 16-year sentence for aggravated battery with a firearm was not excessive where the sentence did not greatly vary from the spirit and purpose of the law nor was it manifestly disproportionate to the nature of the offense.

¶ 2 After a bench trial, defendant Ronald Robinson (defendant) was found guilty of aggravated battery with a firearm, aggravated discharge of a firearm and eleven counts of aggravated battery. After merging the counts, the trial court sentenced him to concurrent terms of

16 years in the Illinois Department of Corrections (IDOC) for aggravated battery with a firearm and 5 years in IDOC for one count of aggravated battery. On appeal, defendant contends that: (1) his 16-year sentence was excessive because he was found guilty only by being legally accountable for his co-offender, he has a non-violent criminal background and has strong family support; and (2) his mittimus must be corrected to reflect 882 days of presentence custody credit instead of 878 days. For the reasons that follow, we affirm the trial court's sentence and order a correction of the mittimus.

¶ 3 Defendant's convictions arose from the April 14, 2011, shooting of Darrius McDaniel and beating of Brandon Martin. The State charged defendant, along with co-offender Antoine Barnes,¹ with attempted first-degree murder, aggravated battery with a firearm, aggravated discharge of a firearm and eleven counts of aggravated battery.

¶ 4 The evidence at trial demonstrated that in the morning of April 14, 2011, Martin was at McDaniel's house in Matteson along with McDaniel's girlfriend, Tamara Hatchet. McDaniel and Hatchet left the residence to walk to the store, and while they were walking, defendant and Barnes exited an apartment building behind them. Defendant and Barnes began to follow McDaniel and Hatchet. Martin observed this and ran over to help McDaniel. When Martin arrived, Barnes pointed a handgun at both him and McDaniel, and told everyone not to move. Martin and McDaniel then ran in opposite directions, but Barnes shot McDaniel in the leg. While running, Martin fell to the ground. Defendant came over to Martin, and began kicking and hitting him. Barnes came over, as well, and he began striking Martin with the handgun. The attack

¹ Co-offender Barnes separately appealed in case No. 1-14-0512.

lasted about five minutes. After they finished, defendant and Barnes ran back toward the apartment building from where they initially appeared.

¶ 5 While Lamonica Chambers was at her aunt's apartment in Matteson that morning, she heard a knock at the door, and noticed defendant and Barnes outside. Chambers recognized defendant because he lived next door to her aunt. Both Barnes and defendant were standing by the stairs. Defendant was "nervous" and "shaking." Suddenly, a handgun fell out of defendant's pocket and onto the ground. Defendant picked up the weapon and asked Chambers if she would take it. Her uncle, John Glenn, came to the door, and Chambers and her uncle refused to accept the weapon. Barnes then grabbed the firearm from defendant, and they both left. Chambers recalled that the previous day, defendant had been involved in a fight outside their apartment building. After the fight, in Chambers' apartment, defendant yelled into a phone that he was "going to get them at the end of the night" and "going to kill them."

¶ 6 As a result of the attack, Martin and McDaniel went to the hospital. Martin received six staples on the side of his head. He also had a scratched face and swollen knuckles from shielding the weapon.

¶ 7 After argument, the trial court found defendant guilty of aggravated battery with a firearm and aggravated discharge of a firearm for the crimes perpetrated on McDaniel, and guilty of eleven counts of aggravated battery for the crimes perpetrated on both McDaniel and Martin. The court, however, found defendant not guilty of the attempted first-degree murder of McDaniel. The court observed that the evidence did not indicate defendant fired the weapon. However, the court noted defendant and Barnes, who did fire the weapon, "came out of the

apartment together, performed the shooting together, and in tandem beat Brandon Martin together.” After the crime, the court remarked that defendant and Barnes left together and tried to give the firearm to Chambers.

¶ 8 At sentencing, Reesie Fields, the mother of defendant’s daughter, testified that defendant was a “very loving” and “caring person.” She remarked that when he leaves IDOC, he “plans to take care of his children,” obtain “a stable job” and “create a living family atmosphere for his children so they can have a better future.” Fields noted that defendant had a job waiting for him after his release from IDOC at Sims Recycling. Lastly, she noted that many members of defendant’s family attended his sentencing hearing to support him.

¶ 9 According to the presentence investigation report, from 1993 to 2005, defendant had four drug convictions, and in 2005, he was convicted of aggravated unlawful use of a weapon by a felon.

¶ 10 In aggravation, the State argued that defendant had a lengthy criminal history, consisting mostly of felony drug cases. Additionally, the State asserted that the instant crimes were violent where someone was shot and another person badly beaten.

¶ 11 In mitigation, defense counsel noted that defendant did not fire the handgun and was only found guilty for the firearm offenses under a theory of accountability. Counsel further argued that defendant had no history of violence until the instant crimes. Counsel also observed that defendant’s family had been extremely supportive of defendant and many attended his sentencing hearing.

¶ 12 Defendant briefly spoke in allocution, stating he “didn’t do anything to anybody” and “didn’t hurt anybody.” He never knew anyone had a weapon and was only trying to protect himself when the altercation occurred.

¶ 13 In sentencing defendant, the court stated it considered the mitigating circumstances, including “defendant was not the shooter of the weapon” and there were many “people in support” of him at the hearing. The court also highlighted defendant’s potential for rehabilitation, finding he had a supportive family and planned to obtain a job after his release from IDOC. The court also discussed the aggravating circumstances, most importantly in the court’s eyes that this was “a violent crime case” in which one person was shot and another person “was beat very badly.” The court recounted defendant’s lengthy criminal history, stating the “presentence investigation report indicates for some 21 years plus.” While the court acknowledged none of his past crimes were violent ones, it observed that “his crimes have now escalated to violence.” The court merged all of defendant’s convictions into one count of aggravated battery with a firearm and one count of aggravated battery. It subsequently sentenced defendant to 16 years in IDOC for aggravated battery with a firearm and 5 years for aggravated battery, to run concurrently. Defendant moved the court to reconsider his sentence, and the court denied the motion. This appeal followed.

¶ 14 Defendant first contends that his 16-year sentence for aggravated battery with a firearm was excessive because his guilt was premised upon accountability, he did not know his co-offender had a weapon, he had a non-violent criminal background and had strong family support.

¶ 15 In determining the proper sentence to give a defendant, trial courts are given broad discretionary powers. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A sentence will not be reversed absent an abuse of that discretion. *People v. Geiger*, 2012 IL 113181, ¶ 27. A reviewing court gives such deference to the trial court because it “has the opportunity to weigh such factors as the defendant’s credibility, demeanor, general moral character, mentality, social environment, habits, and age.” *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The reviewing court presumes the trial court considered all of the defendant’s relevant mitigating factors unless there is affirmative evidence to the contrary. *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. The reviewing court will not reverse a sentence merely because it would have weighed the factors differently. *Id.* ¶ 28.

¶ 16 When a sentence is within the statutory range, it is presumed proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. A sentence within the statutory range for the offense may only be “deemed excessive and the result of an abuse of discretion” where it is “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. The spirit and purpose of the law are furthered if the trial court’s sentence reflects both the seriousness of the offense and gives sufficient consideration to the defendant’s rehabilitative potential. *People v. Butler*, 2013 IL App (1st) 120923, ¶ 31.

¶ 17 In the instant case, we cannot say that the trial court excessively sentenced defendant. Defendant was convicted of aggravated battery with a firearm, which is a Class X felony with a sentencing range between 6 and 30 years in IDOC. 720 ILCS 5/12-4.2 (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). Therefore, defendant’s 16-year sentence was within the statutory

range, and it is presumed proper. Furthermore, the record reveals that the trial court specifically focused on each reason defendant now argues on appeal renders his sentence excessive. The court was well aware of the facts of defendant's case and acknowledged his role in the crimes, specifically that he did not shoot the weapon. The court observed defendant's ability to be rehabilitated, finding he had strong family support and intends to work after his release from IDOC. Additionally, the court recognized that defendant's criminal background was devoid of any violent convictions. The court, however, also considered the seriousness of the crime, which was "a violent crime case." The court highlighted defendant's lengthy criminal history, observing that his crimes had escalated from drug cases to the instant violent crime. Moreover, in determining defendant's sentence, the court remarked that its goal was to make "[defendant's] criminal cases end" with the instant sentence. In light of the trial court's careful consideration of the seriousness of the crime and defendant's rehabilitative potential (see *Butler*, 2013 IL App (1st) 120923, ¶ 31), we find that defendant's sentence did not greatly vary from the spirit and purpose of the law nor was it manifestly disproportionate to the nature of the offense. See *Stacey*, 193 Ill. 2d at 210. Therefore, his 16-year sentence was not excessive and not an abuse of discretion.

¶ 18 Furthermore, we disagree with defendant's argument that his sentence reflected insufficient consideration of the fact that he was only convicted of the crime because he was legally accountable for Barnes' actions. Although the trial court may consider the nature and circumstances of the crime and defendant's participation therein, the fact that defendant has been convicted under an accountability theory is not, by itself, a statutory mitigating factor. See 730

ILCS 5/5-5-3.1 (West 2010). Moreover, while defendant did not fire the weapon, defendant and Barnes arrived at the scene of the crime together, left the scene of the crime together, and defendant tried to give the handgun to his neighbor after the crime. See *People v. Williams*, 262 Ill. App. 3d 734, 746-47 (1994) (rejecting the defendant’s argument that his sentence was excessive in light of his “co-defendant actually fir[ing] the fatal shot” because this fact “does not lessen a defendant’s culpability when it is based on the theory of accountability”).

¶ 19 Finally, we are not persuaded by defendant’s reliance on *People v. Juarez*, 278 Ill. App. 3d 286 (1996) and *People v. Newell*, 196 Ill. App. 3d 373 (1990). In *Juarez*, the reviewing court found a defendant’s sentence for aggravated discharge of a firearm excessive because the trial court failed to specify the mitigating and aggravating factors that led to its sentence, and failed to adequately consider the defendant’s evidence in mitigation and his rehabilitative potential. *Juarez*, 278 Ill. App. 3d at 294-95. Unlike *Juarez*, here, the trial court specified the mitigating and aggravating factors that led to its sentence, expressly considered defendant’s evidence in mitigation and seriously considered his rehabilitative potential. In *Newell*, the reviewing court found a defendant’s sentence for felony murder excessive because the trial court failed to adequately consider the defendant’s rehabilitative potential, especially in light of his diminished mental capacity. *Newell*, 196 Ill. App. 3d at 383. Unlike *Newell*, here, the trial court sufficiently considered defendant’s rehabilitative potential, and he did not have a diminished mental capacity.

¶ 20 Defendant next contends, the State concedes, and we agree, that the trial court miscalculated his presentence custody credit and his mittimus must be corrected to reflect 882 days of presentence custody credit instead of 878 days.

¶ 21 A defendant held in custody for any part of a day should be given credit against his sentence for that day. *People v. Williams*, 2013 IL App (2d) 120094, ¶ 37; see 730 ILCS 5/5-4.5-100(b) (West 2010).

¶ 22 Defendant was arrested on April 14, 2011, and sentenced on September 12, 2013, which totals 882 days in custody prior to his date of sentencing. His mittimus reflects credit for only 878 days. Therefore, pursuant to our authority under Illinois Supreme Court Rule 615 (eff. Aug. 27, 1999), and our ability to correct a mittimus without remand (see *People v. Hill*, 408 Ill. App. 3d 23, 31 (2011)), we order the clerk of the circuit court to correct defendant's mittimus to reflect 882 days of presentence custody credit.

¶ 23 For the reasons stated above, we affirm the judgment of the circuit court of Cook County in all other respects.

¶ 24 Affirmed; mittimus corrected.