FIFTH DIVISION
February 11, 2016

No. 1-14-0655

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. 13 CR 2569
	)	
ZYRON WASHINGTON,	)	Honorable
	)	Joseph M. Claps,
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:* Judgment entered on defendant's robbery conviction affirmed over his contention that his sentence was excessive; fines and fees order modified to reflect a $50 credit against his fines for time spent in presentence custody.

¶ 2 Following a bench trial, defendant Zyron Washington was found guilty of robbery and sentenced as a Class X offender to 12 years' imprisonment. On appeal, he contends that his sentence was excessive, and requests that his fines and fee order be modified to reflect the proper assessment.

¶ 3 The evidence at trial showed that at 8:30 p.m. on January 3, 2013, the victim, Chadd Hendrickson, and his wife and infant son went to the Amtrak Train Station in Chicago, with a stroller, car seat, two luggage bags, and a baby diaper bag. While they were unloading their baggage, defendant walked up and offered to assist them. Defendant helped bring their luggage into the train station, and while they were waiting, defendant asked the victim for a cigarette. The victim left the station with defendant for a smoke, and while they were outside, defendant grabbed what appeared to be a bulge in his pants, and said that he always carried protection. The victim understood this to mean defendant was carrying a weapon, which did not cause him concern because he is a soldier in the United States Army and is around weapons all the time.

¶ 4 While they were smoking, defendant offered the victim marijuana which he refused. The victim told defendant he had to go back to the station so that he would not be late for his train, and at that point, defendant pulled out a firearm and pointed it "in" his face. The victim described the object as a handgun with a "silver barrel." Defendant told the victim that he needed his money, and the victim handed him $110. Defendant then instructed the victim to keep walking, and they eventually went back to the train station where he told the victim to sit at a bench in front of the station and remain there until he was gone. After he left, the victim ran back to his wife and son, and reported the incident to the police. The victim later identified defendant in a photo array, and defendant subsequently was charged with armed robbery.

¶ 5 At the close of evidence, the court found defendant guilty of the lesser offense of robbery. In doing so, the court noted the victim was in the Army but was unable to describe the weapon other than it was a handgun and that he observed the barrel of the weapon. The court found this insufficient to prove beyond a reasonable doubt that the item was a firearm, as opposed to some other object.

¶ 6 At the start of the sentencing hearing, the court confirmed that all parties had a copy of the presentence investigation report (PSI) which was made part of the file without any changes. The State then informed the court that defendant was Class X mandatory based on his criminal history. The State noted defendant was convicted of delivery of a controlled substance for which he received a sentence of six years' imprisonment in 2006; was convicted of possession of cannabis and sentenced to one-year of imprisonment in 2004; was convicted of possession of a controlled substance and sentenced to four years' imprisonment in 2003; was convicted of delivery of a controlled substance and sentenced to three years' imprisonment in 1999; and was convicted of armed robbery and sentenced to six years' imprisonment in 1989.

¶ 7 In mitigation, counsel informed the court that defendant was 44 years old, and had been in custody for just over a year. Counsel also acknowledged defendant's Class X status by his background and asked that the minimum sentence be imposed.

¶ 8 In announcing its sentencing decision, the court stated it had considered the factors in aggravation and mitigation, and determined defendant was Class X mandatory. The court then sentenced defendant to 12 years' imprisonment, and three years of mandatory supervised release (MSR), and denied defendant's motion to reconsider his sentence.

¶ 9 On appeal, defendant first contends his 12-year sentence was excessive, and requests this court to reduce it or to remand the cause for resentencing. Defendant maintains that the nature and the seriousness of the crime did not warrant the sentence that was imposed, especially where his lengthiest prior sentence was only six years' imprisonment. Defendant also claims the sentence shows the court failed to consider any mitigating factors such as his difficult childhood marked with physical abuse, his mental illness, and history of substance abuse as well as his

potential for rehabilitation as shown through his earning of a GED and close ties with his family, as indicated in the PSI.

¶ 10 We initially observe that defendant's sentence of 12 years' imprisonment falls within the Class X offender sentencing range of 6 and 30 years' imprisonment. 730 ILCS 5/5-4.5-25 (West 2012). As a result, we may not disturb that sentence absent an abuse of discretion. *People v. Bennett*, 329 Ill. App. 3d 502, 517 (2002).

¶ 11 It is well-settled that a trial court is not required to specify on the record the reasons for its sentence (*People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶24; *People v. Acevedo*, 275 Ill. App. 3d 420, 426 (1995)), and in the absence of evidence to the contrary, we presume the trial court considered the mitigating evidence (*People v. Burnette*, 325 Ill. App. 3d 792, 808 (2001)). In addition, the sentencing court is not required to give greater weight to defendant's rehabilitative potential than to the seriousness of the offense. *People v. Phillips*, 265 Ill. App. 3d 438, 450 (1994).

¶ 12 Here, the court stated it had considered the aggravating and mitigating factors presented by the parties. The evidence presented to the court included defendant's extensive criminal history, which reflected poor rehabilitative potential, and outweighing mitigating factors. *People v. Somers*, 2012 IL App (4th) 110180, ¶25. Moreover, the evidence adduced at trial established that defendant identified a family, earned their trust by assisting them, and then isolated the victim before threatening and robbing him. The fact that the court found insufficient proof that defendant used a firearm does not diminish the seriousness of the crime, which included threatening physical violence against the victim.

¶ 13 Based on our review of the record, we are satisfied the trial court gave proper consideration to the factors in aggravation and mitigation. *People v. Perruquet*, 68 Ill. 2d 149,

156 (1977). Although defendant cites other cases in which defendants' sentences were reduced, we note that a sentence cannot be attacked based on the ground that a lesser sentence was imposed in another unrelated case. *People v. Gutierrez*, 402 Ill. App. 3d 866, 900-01 (1994). A claim that a sentence is excessive must be based on the particular facts of the instant case. *Id*. at 901. We thus find no abuse of discretion in the sentence imposed in this case, and accordingly, have no cause for interfering with the sentencing determination entered by the trial court. *People v. Almo*, 108 Ill. 2d 54, 70 (1985).

¶ 14 Defendant next contends the fines and fees order should be reduced by $54 to reflect the proper assessment. He acknowledges he failed to raise this issue in his post-sentencing motion, but contends that void fees may be attacked at any time, citing *People v. Marshall*, 242 Ill. 2d 285, 302 (2011), and that the issue of proper mandatory credit may likewise be raised at any time, citing *People v. Caballero*, 228 Ill. 2d 79, 88 (2008).

¶ 15 In *People v. Castleberry*, 2015 IL 116916, the supreme court abolished the void sentencing rule of *People v. Arna*, 168 Ill. 2d 107 (1995), which was cited in *Marshall*. *Castleberry*, 2015 IL 116916, ¶ 19. However, on appeal the reviewing court may modify the fines and fees order without remanding the case back to the trial court. Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999) ("[o]n appeal the reviewing court may *** modify the judgment or order from which the appeal is taken"); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995) ("[r]emandment is unnecessary since this court has the authority to directly order the clerk of the circuit court to make the necessary corrections"). Accordingly, we will address the issue.

¶ 16 Defendant contends he is entitled to a $5 offset to his fines for each day spent in presentence custody. He specifically contends he is entitled to an offset against the $10 mental health court fine, $5 youth division/peer court fine, $5 drug court fine, $30 children's advocacy

center fine, $2 public defender records automation fee, and $2 State's Attorney records automation fee, for a total reduction of $54. The State concedes defendant is entitled to the offset to all but the public defender and State's Attorney records automation fees, as they are fees, not fines. We agree with the State.

¶ 17 The issue of whether the State's Attorney records automation fee is a fine was recently considered and decided adversely to defendant in *People v. Rogers*, 2014 IL App (4th) 121088, ¶30. In that case, the Fourth District found that the State's Attorney fee was compensatory in nature because it is intended to reimburse the State's Attorneys for their expenses related to automated record-keeping systems, and, accordingly, it is a fee, and there is no *ex post facto* violation. *Rogers*, 2014 IL App (4th) 121088, ¶30. We find *Rogers* persuasive and dispositive of the issue at bar. Furthermore, since the pertinent language in the statute for the Public Defender fee (55 ILCS 5/3-4012 (West 2012)) is identical to the language of the statute for the State's Attorney fee (55 ILCS 5/4-2002.1(c) (West 2012)) at issue in *Rogers*, it follows that the public defender fee is also compensatory in nature and thus a fee. *People v. Bowen*, 2015 IL App (1st) 132046, ¶65. Accordingly, we conclude that defendant was not entitled to have these fees offset by the $5 per day spent in presentence custody.

¶ 18 Notwithstanding, defendant contends this conclusion conflicts with *People v. Jones*, 223 Ill. 2d 569, 600 (2006) and *People v. Graves*, 235 Ill. 2d 244, 250 (2009). We observe that in both *Jones*, 223 Ill. 2d at 600 and *Graves*, 235 Ill. 2d at 250-51, the supreme court held that the most important factor in deciding the issue is whether the charge seeks to compensate the State for any costs incurred as a result of prosecuting defendant, and that if it does, it is a fee. Since the records automation fees are intended to reimburse the State's Attorneys and public defenders for expenses related to automated record-keeping systems as a collateral function of the prosecution

and defense process, and are not meant to be punitive in nature, we find that they are fees. *Rogers*, 2014 IL App (4th) 121088, ¶30.

¶ 19 In light of the foregoing, we modify the fines and fees order to reflect a $50 reduction, and affirm the judgment in all other respects.

¶ 20 Affirmed in part; modified in part.