SECOND DIVISION
JUNE 21, 2016

No. 1-14-0730

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 1753
	)	
JARREL DISMUKES,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce concurred in the judgment.
Justice Hyman specially concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's sentence for the Class X felony, armed habitual criminal, affirmed over claim that the sentence was excessive in light of mitigating factors.

¶ 2 Following a bench trial, defendant Jarrel Dismukes was found guilty of one count each of armed habitual criminal, unlawful possession of a weapon by a felon, and aggravated unlawful use of a weapon. The counts merged, and the court sentenced defendant on the Class X felony, armed habitual criminal, to 14 years' imprisonment with three years of mandatory supervised

release. On appeal, defendant contends that his sentence is excessive in light of certain mitigating factors. For the following reasons, we affirm.

¶ 3 Because defendant does not contest his convictions, we need not discuss in detail the evidence presented at trial. The evidence established, in relevant part, following a traffic stop on January 5, 2013, defendant fled from the police while in possession of a loaded gun. That evening, Chicago police officer Rozillius Cain and his partner were in the area of 3700 South Indiana Avenue responding to a call that shots were fired. At about 8:30 p.m., Officer Cain observed that the occupants of a white Buick were not wearing seatbelts and switched on the police vehicle's lights. When the Buick stopped in a parking lot, defendant exited from the rear passenger side and ran.

¶ 4 Officer Cain pursued defendant on foot and observed him "trying to retrieve something from the sweater he had on." He followed defendant over a fence and "saw defendant pull a gun out of the sweater" as he ran. Defendant turned around the corner of a building and Officer Cain lost sight of him until he also turned the corner.

¶ 5 The chase continued over a second fence, diagonally across a street, and then through an alley. Defendant approached a vehicle in the alley and Officer Cain "saw him yank on the door to try to get in, and the vehicle took off and left him there." Defendant ran through the alley and then jumped over a third fence. Officer Cain had been in contact with other officers during the pursuit. They detained defendant in a parking lot on the other side of the third fence. When Officer Cain reached that parking lot, he learned that the officers had not recovered a gun from defendant. Officer Cain backtracked the path of the pursuit and eventually recovered a loaded

gun from where he lost sight of defendant during the pursuit. It was the same gun that Officer Cain saw defendant retrieve from his sweater as they ran.

¶ 6 It was stipulated that defendant had never been issued a Firearm Owner's Identification card and that defendant had prior felony convictions for manufacture and delivery of a controlled substance, and aggravated unlawful use of a weapon. Defendant then moved for a directed finding, which the court denied.

¶ 7 Defendant testified on his own behalf. He claimed that he did not possess a gun during the pursuit. According to defendant, he ran from the police because he believed the presence of drugs in the Buick "would violate [the] bond that [he] was out on." The State offered a certified copy of defendant's prior conviction for possession of a defaced firearm as rebuttal evidence, which the court allowed.

¶ 8 The court found defendant guilty on all three counts. Defendant filed a posttrial motion. In denying the motion, the court found "the testimony of the officer credible and not at all within the realm of impossibility."

¶ 9 At sentencing, the State recommended a 15-year term for his Class X felony conviction for armed habitual criminal. In aggravation, the State noted that defendant committed the instant crime while out on bond on a pending felony.

¶ 10 Defense counsel requested the minimum sentence and argued the following in mitigation. Although defendant made some poor choices over the course of his life, he did not have a history of violence. As a young man, defendant was "still susceptible to reform and [could become] a good citizen." It was important that defendant's children see him in a state other than confinement while they were still young. The court should show leniency with respect to

defendant's pending narcotics case because there had not been a finding of guilt. Defendant did not speak in allocution.

¶ 11 In announcing sentence, the court stated:

> "For purposes of sentencing, the court has considered the evidence at trial, the gravity of the offense, the presentence investigation report, the financial impact of incarceration, all evidence, information and testimony in aggravation and mitigation, any substance abuse issues and treatment, the potential of rehabilitation, the possibility of sentencing alternatives and all hearsay presented and seemed reliable."

¶ 12 The court merged the remaining counts and sentenced defendant on his armed habitual criminal conviction to 14 years' imprisonment and three years of mandatory supervised release. The court subsequently denied defendant's motion to reconsider sentence, and this appeal followed.

¶ 13 On appeal, defendant maintains that the court abused its discretion in sentencing defendant to 14 years' imprisonment without adequately considering the seriousness of his non-violent gun crime, certain mitigating factors, or the financial impact of incarceration.

¶ 14 Defendant was convicted of the Class X felony of armed habitual criminal in that he possessed a firearm after having been convicted of two or more offenses defined in section 24-1.7 of the Criminal Code. 720 ILCS 5/24-1.7 *et seq.* (West 2012). His conviction carries a sentencing range of 6 to 30 years. 720 ILCS 5/5-4.5-25(a) (West 2012). Reviewing courts must not disturb the sentence imposed by the trial court absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). Where, as here, the sentence falls within the prescribed statutory

limits, it will not be disturbed unless it is greatly at variance with the purpose and spirit of the law or is manifestly disproportionate to the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010).

¶ 15 In this case, the evidence at trial established that defendant possessed a loaded handgun on a public way during his flight from the police, after having been convicted of two prior felonies. The presentence investigation (PSI) report shows defendant had a third prior felony conviction. In addition, defendant was out on bond for another offense when he committed this crime. The mitigating evidence, including defendant's education, employment history, his children, and that he committed the crime at the age of 25, was presented to the court in the PSI. Defense counsel further highlighted defendant's age and his children at sentencing. In announcing sentence, the court stated that it considered the evidence presented at trial, the gravity of the offense, the PSI, and all evidence in mitigation and aggravation, including any substance abuse issues and treatment. The court rejected the State's 15-year sentencing recommendation and imposed a lesser term within the prescribed statutory range.

¶ 16 Considering the factors in aggravation and mitigation, we cannot say that defendant's sentence was greatly at variance with the purpose and spirit of the law or manifestly disproportionate to the offense. See *id.* at 215 (finding that the appellate court erred in reweighing the sentencing factors where the sentencing judge adequately considered the appropriate factors). We therefore find that the court did not abuse its discretion in sentencing defendant to 14 years in the Illinois Department of Corrections.

¶ 17 Defendant nevertheless maintains that the court did not give appropriate weight to "his youth and rehabilitative potential and failed to take into account the financial impact of

incarcerating someone for a non-violent offense long beyond the time he is likely to have matured out of criminal behavior." We disagree. The court need not detail precisely for the record the process by which it determines a sentence or the weight afforded to the mitigating and aggravating factors. *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007). The court expressly stated that it considered the potential for rehabilitation, the financial impact of incarceration, and the possibility of sentencing alternatives, both in announcing sentence, and in denying defendant's motion to reconsider his sentence.

¶ 18 Although the sentence imposed by the trial court must strike a proper balance between the protection of society and the rehabilitation of defendant, the court is not required to give defendant's rehabilitative potential more weight than the seriousness of the offense. *People v. Anderson*, 325 Ill. App. 3d 624, 637 (2001). "So long as the trial court does not ignore pertinent mitigating factors or consider either incompetent evidence or improper aggravating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range." *People v. Jones*, 2014 IL App (1st) 120927, ¶ 56. Defendant cannot rebut the presumption that the trial court considered the mitigating evidence without some indication to the contrary. *People v. Canet*, 218 Ill. App. 3d 855, 864 (1991). Defendant has made no such showing and we cannot reweigh the factors in mitigation and aggravation as defendant requests. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.

¶ 20 JUSTICE HYMAN, specially concurring.

¶ 21 I specially concur for the reasons I gave in *People v. Levie Bryant*, 2016 IL App (1st) 140421 (Hyman, J., specially concurring). I believe the law of Illinois should require sentencing

courts to articulate on the record why they imposed the particular sentence. The mere inventory of the statutory factors, without an explanation of how the factors entered into the sentence or any supporting rationale for the sentence, disregards a defendant's procedural due process rights. And it makes meaningful review exceedingly difficult.

¶ 22 Let me be clear—the judge here followed the law and no criticism is made of the learned judge. Rather, I believe giving every convicted person an analytical basis for his or her sentence is fundamental to the perceived legitimacy, fairness, and consistency of our criminal justice system. And not just for the defendant; as other judges have observed, our legitimacy in the eyes of the public rests on us being *seen* to do justice. See *People v. Davis*, 93 Ill. 2d 155, 168 (1982) (Simon, J., dissenting) (if judges are not required to put sentencing reasons into record, "the sentencing procedure *** may appear to be arbitrary and capricious. Numbers may seem to have been taken out of a hat. * * * The result will be the creation in the eyes of the public of an imperial judiciary."). There is enough distrust of the criminal justice system already; efforts on our part to make our decisions transparent can only benefit the citizenry.

¶ 23 The sentencing court weighs the sentencing factors and the facts of the case and the defendant's background and character to determine an appropriate sentence. As Dismukes states in his reply brief, the judge's failure to expressly outline the reasons for the sentence means the State must speculate "about the factors the court may have considered that might justify the sentence." Not only the State. The appellate court also has no idea what was in the judge's mind.

¶ 24 As the law now stands, the person affected, whose liberty has been taken away, and the victims, if any, are left guessing as to how the judge arrived at the sentence. This practice needs to end.

¶ 25 I also wish to express my disagreement with the majority issuing this decision as an unpublished order under Supreme Court Rule 23. A concurrence or dissent, I believe, should command a published opinion whenever its author so requests, and not be dependent on the preference of the majority of the panel.

¶ 26 Among the reasons to write a concurrence or dissent is to bring forth disagreements in the law, inspire new or reframed legal arguments, influence and contribute to the development of the law, draw attention to an issue's potential for further consideration by the supreme court or the legislature, or send a positive or negative signal to lower courts. A Rule 23 order, which "is not precedential and may not be cited by any party" except in limited circumstances, needlessly marginalizes the impact, character, and value of a concurrence or dissent. Ill. S. Ct. R. 23(e).

¶ 27 Difference of opinion is deserving of notice and should be made visible, not relegated to background noise by Rule 23 treatment. As Thomas Jefferson once said, "Difference of opinion leads to inquiry, and inquiry to truth." Letter from Thomas Jefferson to P.H. Wendover, March 13, 1815.