2016 IL App (1st) 140836-U

FIFTH DIVISION
February 19, 2016

No. 1-14-0836

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 869
	)	
PATRICK COBIGE,	)	Honorable
	)	Thomas V. Gainer,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Gordon concurred in the judgment.

O R D E R

¶ 1 *Held*: Sentence of eight years' imprisonment for burglary by mandatory Class X offender not excessive.

¶ 2 Following a jury trial, defendant Patrick Cobige was convicted of two counts of burglary and sentenced as a mandatory Class X offender to concurrent prison terms of eight years. He contends on appeal that his sentence was excessive. For the reasons stated below, we affirm.

¶ 3 Defendant was charged with two counts of burglary for, on or about December 18, 2012, allegedly entering two motor vehicles with vehicle identification numbers (VINs) ending in 9499 (a Lincoln) and 5374 (a Buick), owned by Chapin Auto Sales, Inc., without authority and with the intent to commit theft therein.

¶ 4 The evidence at the November 2013 trial was that the owner and employee of a used-car sales business were moving cars from the owner's sales lot to his storage lot on the evening in question. On returning to the sales lot, the employee and owner observed defendant inside the lot despite its fencing and locked gates; a previously-repaired hole in the fence was now reopened. Defendant was under the open hood of a Buick Park Avenue with his hands near its battery. The battery had already been removed from a nearby Lincoln with its hood open. (Neither the owner nor his employee gave defendant permission to enter the lot or remove anything; the owner confirmed owning the Lincoln and Buick with certain VINs, and that their hoods were closed and batteries in place when he left.) The owner phoned the police while the employee stood near the hole in the fence and defendant hid from the large dog kept in the lot. The owner did not observe anyone leave the lot until the police arrived several minutes later. The owner leashed the dog and admitted officers to the lot, and defendant was arrested without incident. The arresting officer testified that defendant had been holding a pair of pliers just before his arrest, was carrying a wrench set and another pair of pliers, and appeared uninjured; defendant told the officer "that he only took one battery" at the scene and in a later interview.

¶ 5 Defendant testified that he fled into the sales lot to escape two men who had punched him in the mouth, breaking one of his teeth and a denture, while attempting to rob him. He denied removing a battery from any of the cars or admitting to the same, though he admitted to not mentioning the attempted robbery to the police. He had picked up a pair of pliers to arm himself if his attackers found him but denied carrying the other tools. He had not phoned the police to

report the attempted robbery as he hid in the sales lot because his cellphone battery was dead. He admitted to a felony conviction in 2002 for a controlled substance offense.

¶ 6 Following closing arguments and instructions on the offenses of burglary and criminal trespass to real property, the jury found defendant guilty of two counts of burglary.

¶ 7 Defendant filed a posttrial motion claiming that the evidence was insufficient to convict him. The court denied the motion, finding the evidence sufficient, and the case proceeded immediately to sentencing.

¶ 8 The presentencing investigation report (PSI) states that defendant has prior felony convictions for controlled substance offenses in 1995, 1998, 1999, 2001, and 2002 for which he received sentences of (respectively) one year of probation, four years of probation, 18 months in prison, three years in prison, and six years in prison. He was also convicted of retail theft in 1995 and received two days in jail, and received one year of supervision in 1975 for possession of a stolen motor vehicle.

¶ 9 The PSI also indicates that defendant was born in 1955 and raised by his mother in a "loving home" where "all of his basic needs were met" and he suffered no abuse. He reported a "good" relationship with his father and that he had a "good" relationship with his mother until her death in 1992. He has a "close" relationship with all but one of his two sisters and four brothers. Before this arrest, he lived with one of his brothers. He has two adult children and maintains a "good" relationship with one. He attended school until leaving high school in the third year to join the military – National Guard service as a mechanic from 1984 to his 1990 honorable discharge – and received certification as an auto mechanic. He worked from 1990 to 2005 as a self-employed auto mechanic, and his career goal is to be trained in "custodial maintenance" and work as a custodian. Defendant claimed good physical and mental health except for "flat feet" affecting his ability to stand or walk for long durations. He denied abusing

alcohol or drinking regularly, admitted daily use of cocaine from ages 21 to 58, and completed drug treatment while in jail "years ago." He admitted to being a member of the Vice Lords and Four Corner Hustlers gangs, with the rank of "Five Star Universal," from age 18 until 2006. He spent his free time before arrest "working side jobs with his brothers" and reads the Bible to pass time in jail.

¶ 10 At sentencing, neither party had any corrections to the PSI nor evidence in aggravation or mitigation. The State argued that defendant has multiple felony convictions rendering him a mandatory Class X felon and sought a prison sentence above the minimum. The defense argued that defendant is a 58-year-old man with two children and that no one was injured nor was any property actually stolen or damaged in the instant offense, and requested the minimum six-year prison sentence. Defendant addressed the court: "I want to apologize for being in the lot, period. I am sorry that I had to go through all this, having to go to court for this here."

¶ 11 The court stated that it remembered the trial evidence and considered all matters in light of the statutory aggravating and mitigating factors. The court noted defendant's significant criminal history and found it to be "a result of his drug use" but also that "he was given a chance to right the ship" with probation but then received prison sentences for his subsequent crimes. The court sentenced defendant "notwithstanding his age" to concurrent prison terms of eight years. Defendant immediately filed a motion to reconsider his sentence, the court denied the motion, and this appeal followed.

¶ 12 On appeal, defendant contends that his eight-year prison sentence is excessive and he should receive the minimum sentence of six years' imprisonment.

¶ 13 Burglary is a Class 2 felony. 720 ILCS 5/19-1(b) (West 2012). A defendant over 21 years old convicted of a Class 1 or Class 2 felony after two separate and sequential convictions for felonies of Class 2 or greater must be sentenced as a Class X offender, with a prison term of 6 to

30 years. 730 ILCS 5/5-4.5-25(a), -95(b). A sentence within statutory limits is reviewed on an abuse of discretion standard, so that we may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. So long as the trial court does not consider incompetent evidence or improper aggravating factors, nor ignore pertinent mitigating factors, it has wide latitude to sentence a defendant to any term within the applicable range. *People v. Jones,* 2014 IL App (1st) 120927, ¶ 56. This broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *Id.*, citing *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010).

¶ 14 "All 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. 1, § 11. The trial court must balance the relevant factors, including the nature of the offense, protection of the public, and the defendant's rehabilitative potential. *Jones*, ¶ 55, citing *Alexander*, 239 Ill. 2d at 213. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Snyder*, ¶ 36. The court does not need to expressly outline its reasoning for sentencing, and we presume that the court considered all mitigating factors on the record absent some affirmative indication to the contrary other than the sentence itself. *Jones*, ¶ 55. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Id.*, citing *Alexander*, 239 Ill. 2d at 214. Similarly, the court is not required to view a defendant's troubled childhood, history of mental health issues, or substance abuse problems as inherently mitigating. *People v. Holman*, 2014 IL App (3d) 120905, ¶ 75, citing *People v. Ballard*, 206 Ill. 2d 151, 189-90 (2002).

¶ 15 Here, defendant does not challenge that he was subject to mandatory class X sentencing, with a minimum sentence of six years imprisonment, due to his prior felony convictions. He argues in mitigation that his offense was non-violent, he did not carry a weapon or resist arrest, and there was no evidence that he damaged the vehicles. However, that does not make his offense minor; the cost to property owners of such offenses, or of securing their property against them (such as the fencing and dog here), is considerable. In mitigation, defendant also cites his drug abuse, ten years without a conviction until the instant case, military service, certification and employment as a mechanic, and goals for future employment. However, the PSI disclosed these factors and the trial court was free to weigh them appropriately. Indeed, the court expressly took defendant's age and drug abuse into consideration. Lastly, defendant argues that "while [he] continued to maintain his innocence of the instant offense at sentencing, he nevertheless apologized for his involvement in the instant case." However, the trial court was not required to weigh defendant's apology for "being in the lot" and "having to go to court for this here" as his apology for committing burglary. In sum, we cannot find under these circumstances that the court abused its sound discretion by sentencing defendant to 8 years' imprisonment, 2 years more than the minimum sentence and 22 years less than the maximum applicable sentence.

¶ 16 Accordingly, the judgment of the circuit court is affirmed.

¶ 17 Affirmed.