2016 IL App (3d) 140354-U

Order filed February 29, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0354 Circuit No. 13-CF-705
PAULA KENEALY,	)	Honorable Carla Alessio-Policandriotes,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant.

¶ 2 Defendant, Paula Kenealy, appeals from her sentence of six years' imprisonment, arguing the trial court abused its discretion by failing to adequately consider mitigating evidence. We affirm.

¶ 3 FACTS

¶ 4 On December 19, 2013, defendant entered a blind plea of guilty to theft (720 ILCS 5/16-1(a)(1)(A) (West 2012)). The State presented the factual basis for the plea as follows: between July 25, 2011, and November 27, 2012, RJW Transport reported to the police that, following an audit, they learned defendant had been stealing checks and depositing them into her personal bank accounts. Defendant stole approximately $171,000 that had been intended for truck drivers. They did not discover the theft earlier because every time someone questioned why a truck driver did not receive a check, defendant would pay the driver with a new check. Defendant's bank account records showed that she either forged the truck driver's signature or wrote deposit only before depositing the checks into her account at various automated teller machines. Her bank records further revealed defendant used the funds for cars, home improvements, and liposuction. When confronted, defendant admitted to the theft and explained her actions. The court accepted the plea and continued the matter for sentencing.

¶ 5 A sentencing hearing was held on February 26, 2014. The presentence investigation report (PSI) showed defendant had one prior conviction for misuse of a credit card. The PSI stated she was on probation for that offense from March 9, 2011, to September 24, 2012, during which time she started embezzling money in the current case.[1] Defendant had graduated high school and maintained employment. She had three children that lived with her. At the time of the PSI, her children were ages 21, 22, and 27. Her youngest son suffered from severe obsessive-compulsive disorder and was disabled. Defendant suffered from a wide range of health issues, including endometriosis, ulcerative colitis, and migraine headaches.

[1]Defendant denied being on probation at the time of the offense in this case, however, no evidence was ever presented supporting defendant's claim.

¶ 6 The State began the hearing by noting defendant's previous conviction was for a similar offense in which she fraudulently had a company credit card put in her name at her previous employment. Her fraudulent use of the credit card amounted to $5,000-$10,000, with which she purchased items such as a television and an Xbox. Within a year of that offense, she began stealing money from RJW Transport, while still on probation.

¶ 7 Randall Chapple, chief financial officer of RJW Transport, testified for the prosecution. Prior to discovering the theft, Chapple said defendant was a good employee, and they had a good relationship. The company's losses totaled $171,000, which was covered by insurance. The company's insurance premiums were increased by $7,500 after this incident. Chapple had to work weekends and an extra "80 plus hours" to fix the issue.

¶ 8 In closing, the State said defendant stated she had mental issues and had to take care of her family, but the police reports indicated that some of the money was used in ways that were not necessary to take care of her family, such as liposuction and home repairs. The State recommended defendant be sentenced to six years in the Department of Corrections (DOC), stating that based on the short duration of time from her first felony to the instant offense, the sentence should not be the minimum.

¶ 9 Eleven letters in mitigation were submitted to the court on defendant's behalf, attesting to her good character and dedication as a parent. Defense counsel also submitted a "pre-sentence supplementation." The defense said defendant had acknowledged her actions, apologized for them, and did the best she could to make it right. When defendant's theft was discovered, she confessed, cooperated, and volunteered to work for free to make up for the losses. She liquidated $70,000 from her retirement fund to pay restitution and had no assets left. Defendant

paid RJW Transport's insurance company $100,000 for restitution and covered the policy's $5,000 deductible. She also got another full-time job.

¶ 10 The defense noted defendant had three children and a fourth person who lived with her. Her youngest son had severe psychiatric problems. Her daughter also had psychiatric problems. They both had attempted suicide. She cared for her children without any aid. The defense noted defendant's medical issues. She was hospitalized five times since January 2013 and was on 14 different medications. The defense said she did not take the money out of greed, but because she was physically and mentally sick trying to support three children. She also had taken in her son's girlfriend. She had no contacts with law enforcement other than her two felonies. The defense said "this case begs for leniency," and asked for the maximum period of probation. Lastly, defendant made a statement in allocution in which she accepted responsibility and apologized to RJW Transport.

¶ 11 The court said:

> "Prior to calling this matter to hearing, the Court had a full opportunity to review everything that is contained in this [PSI] that was prepared by the Will County Adult Probation. I also had a full opportunity to review what was submitted to the Court by [defendant's attorney], including his supplementing the record relative to the defendant's health. That, and the family situation, along with the letters that are attached in support of the defendant.
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> There is consistency that is required by this Court mandated by the appellate court and suggested through our legislatures. We look to factors in mitigation and aggravation on whether or not we have made enough consideration

regarding what the appropriate sentence is. I'm very fortunate in that a number of my cases that I have had where employees steal large sums of money from a small business have gone up on appeal, so it gives me direction on whether or not I am accurate in my findings.

* * *

If the only people that get sent to prison are people who are healthy, who have no children, and who did not have a chance in the past to do what was right or learn from their mistakes, we would have empty prisons. They're all not healthy. We all have kids. But the statute does not tell me that a 28-year-old is a child. That taking in a 25-year-old out of kindness is a dependency. That having one son at 23 that is healthy, one apparently is unhealthy. We refer to these people as children. They're not children. The statute does not recognize them as children except for maybe the one youngest."

¶ 12 The court further stated defendant received a "windfall" as she took $171,000 tax free and only had to pay back $105,000 over a year and a half. The court said if she was to get probation again, that would "not [be] a bad deal" for her, stating:

"But I have no comfort level this is an appropriate case for probation. It would diminish the seriousness of the offense. It would have me not recognize the nature of her prior felony. It wouldn't have any–suggest that while she's on probation she can steal this level of money, and the Court can disregard the fact that it is my responsibility to protect the public from someone like this defendant."

¶ 13 The court found defendant "made a substantial effort in which to make her victim whole." The court sentenced defendant to six years in the DOC. There was an outburst in the courtroom when defendant's sentence was declared, to which the court said, "I don't do drama. Get them out of here if they decide they have drama. Okay? Ladies, I don't do it. Suck it up or walk out." The court said $2,000 of defendant's $10,000 cash bond would go toward fines and costs and "[t]he balance of the $8,000 goes back to the victim to assist them in recouping costs of being a victim, which is difficult to assess based upon the position held by the witness before this Court, but we are certain that we know that at least in addition to the premium against their loss was $7500."

¶ 14 After defendant was remanded to the sheriff's department, the judge was called back into the court room, and defense counsel asked the court if he could give defendant a Xanax from defendant's own prescription as she was having a panic attack. The court said, "Once someone is remanded, [counsel], her care, control, and decision-making regarding her health, goes over to the Will County Sheriff's Department. That is not my judgment to make."

¶ 15 On March 10, 2014, defendant filed a *pro se* motion for reduction of sentence, which the court construed as a motion to reconsider sentence. The motion alleged defense counsel was ineffective for failing to obtain and provide the court documentation showing that her probation had been terminated before she committed the conduct charged in this case. The motion was denied.

¶ 16 ANALYSIS

¶ 17 On appeal, defendant contends that her

> "sentence of six years' imprisonment was excessive and an abuse of discretion and therefore should be reduced based on substantial mitigating factors, including

> the 49-year-old defendant's largely law-abiding background, her having raised three children as a single mother and her continuing to be their sole support, her history of employment, her payment of restitution prior to sentencing, her guilty plea and her expression of remorse."

¶ 18 At the outset, we find that defendant has forfeited this issue as she failed to raise it in her posttrial motion. "[T]he failure to raise an issue in a posttrial motion results in the forfeiture of that issue on appeal." *People v. McCarty*, 223 Ill. 2d 109, 122 (2006). The only claim alleged in defendant's "Motion for Reduction of Sentence" was that her trial counsel was ineffective for failing to obtain and provide the court with information that would show that her probation had been terminated before the conduct charged in this case, which was not brought on appeal. As she never raised the issue before us in her posttrial motion, it is forfeited on appeal.

¶ 19 The court then specifically addressed many of the mitigating and aggravating factors brought to its attention by the parties. When mitigating evidence is before the trial court, it is assumed that the court considered it, unless the record indicates otherwise. *People v. Burton*, 184 Ill. 2d 1, 34 (1998). We interpret defendant's argument as an invitation to reweigh the sentencing factors, which we are unable to do as a result of procedural forfeiture.

¶ 20 The record does not support defendant's suggestion that the court exhibited an "overly harsh attitude" by requiring restitution to be paid out of posted bond, maintaining decorum in the courtroom with stern remarks, or refusing to allow her attorney to provide defendant with a substance purported to be prescription Xanax. Rather, defendant parses out the record while ignoring the serious nature of her offense. The sentence imposed was not "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense[s]." See *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 21 CONCLUSION

¶ 22 The judgment of the circuit court of Will County is affirmed.

¶ 23 Affirmed.