

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).

2016 IL App (4th) 150532-U

NO. 4-15-0532

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 21, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Douglas County
TYLER E. DUPONT,)	No. 12CF110
Defendant-Appellant.)	
)	Honorable
)	Richard L. Broch,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justice Turner concurred in the judgment.
Justice Pope specially concurred.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court (1) did not err by not admonishing defendant regarding the consequences of truth-in-sentencing; (2) did not err when it found a factual basis existed supporting defendant's admission; and (3) properly considered mitigating factors in sentencing defendant.

¶ 2 In December 2012, the State charged defendant, Tyler E. DuPont, with two counts of aggravated driving under the influence (DUI) resulting in great bodily harm to Kristen N. Rocke and Makayla R. Rocke (counts I and II, respectively) (625 ILCS 5/11-501(a)(6), (d)(1)(C) (West 2012)) and one count of DUI (count III) (625 ILCS 5/11-501(a)(6) (West 2012)). Pursuant to plea negotiations, defendant pleaded guilty to count I and the State dismissed the other charges. Defendant was sentenced to 60 days in jail and 30 months' probation.

¶ 3 In September 2014, the State filed a petition to revoke defendant's probation. Defendant subsequently admitted violating the terms of his probation. The trial court accepted defendant's admission and sentenced him to five years' imprisonment on the underlying aggravated DUI conviction.

¶ 4 Defendant appeals, arguing the trial court (1) failed to advise him of the effect of truth-in-sentencing on his sentence, (2) was not provided an adequate factual basis in support of his admission, and (3) failed to properly consider certain mitigating factors in sentencing defendant. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In July 2013, defendant entered a negotiated plea of guilty to count I of the information, which alleged aggravated DUI resulting in great bodily harm to Kristen N. Rocke (625 ILCS 5/11-501(a)(6), (d)(1)(C) (West 2012)). The State dismissed count II, which alleged aggravated DUI resulting in great bodily harm to Makayla R. Rocke (625 ILCS 5/11-501(a)(6), (d)(1)(C) (West 2012)), and count III, which alleged DUI (625 ILCS 5/11-501(a)(6) (West 2012)). Pursuant to the plea deal, defendant was sentenced to 30 months' probation and 60 days in jail.

¶ 7 On November 14, 2014, the State filed an amended petition to revoke defendant's probation. The State alleged defendant violated the terms of his probation when he (1) committed the offense of domestic battery on March 6, 2014, and was convicted of the offense on September 18, 2014, and committed the offenses of unlawful possession of cannabis and illegal transportation of alcohol on August 27, 2014, all in Macon County, Illinois; (2) failed to report for drug testing; (3) tested positive for cannabis use; (4) failed to complete alcohol and substance-abuse treatment in the time allotted and failed to provide proof of completion; (5)

failed to attend a victim-impact panel in the time allotted; and (6) failed to provide proof of completion of the required 100 hours of public-service work in the time allotted.

¶ 8 On November 17, 2014, the trial court arraigned defendant on the amended petition to revoke probation. No transcript of the arraignment appears in the record but the court's docket entry for November 17, 2014, states, in part, "[d]efendant furnished in open court with a copy of the [a]mended [p]etition to [r]evoke [p]robation and is advised of the allegations." Defendant was arraigned on the original petition to revoke probation on October 14, 2014, at which time the trial court admonished defendant regarding his rights, the petition's allegations, and the possible penalties, which included a prison sentence of between 1 and 12 years.

¶ 9 On December 3, 2014, the trial court held a hearing on the amended petition to revoke probation. Defense counsel addressed the court as follows:

"Your honor, I've talked with [defendant] and what we would offer to do at this point is, [defendant] would offer to make an open admission to the violation of Article one, being the offense that allegedly occurred March 6, 2014, [d]omestic [b]attery, which he was convicted of in Macon County. We [*sic*] would make an open admission to that violation, then we would ask the matter be set for sentencing."

When asked by the trial court if the admission was limited to the domestic battery violation, the State indicated the admission should include the "technical violations resulting in failing to complete treatment, public service and victim impact panel." Defense counsel responded, "we [*sic*] can admit the technicals judge, if that's what is required." The court then verified defendant was admitting to not only the alleged "technical violations," but also "specifically the violation of

Article I, and that he had violated [his probation] by committing a new offense, [d]omestic [b]attery, in Macon County, cause number 14-CM-186." After admonishing defendant of his rights, the court found "a factual basis for the admission, based upon the information as contained in the [a]mended [p]etition to [r]evoke [p]robation."

¶ 10 In February 2015, a sentencing hearing was held. A presentence investigation report (PSI) was submitted and supplemented with proof of defendant's completion of a victim-impact panel and public-service work. A substance-abuse evaluation was also filed. The State offered evidence in aggravation, including the circumstances surrounding the underlying aggravated DUI and defendant's failure to comply with the terms of his probation. Defendant testified in mitigation about his employment and participation in substance-abuse treatment. Defendant also made a statement in allocution.

¶ 11 After addressing the statutory factors in aggravation and mitigation, the court sentenced defendant to five years' imprisonment.

¶ 12 Defendant subsequently filed a motion to withdraw his admission, a motion for reduction of sentence, and a motion for relief from judgment. Defendant argued (1) the trial court failed to properly consider mitigating factors, (2) he was not advised of the effect of truth-in-sentencing on his sentence, (3) no factual basis was given by the State for the admission, and (4) defendant was not properly admonished of the maximum possible sentence pursuant to Illinois Supreme Court Rule 402(a)(2) (eff. July 1, 2012). In June 2015, the court denied the motions.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues (1) he was not advised of the effect of truth-in-sentencing on his sentence, (2) the State did not provide an adequate factual basis for his admission, and (3) the trial court failed to consider mitigating factors in its sentence. In response, the State contends (1) the trial court was not required to advise defendant of the effect of truth-in-sentencing on his sentence, (2) a sufficient factual basis supported defendant's admission, and (3) the trial court properly considered factors in mitigation. We agree with the State and affirm.

¶ 16 A. Admonishment of Truth-In-Sentencing Law's Effect

¶ 17 Defendant claims his admission to the amended petition to revoke probation was not knowing and intelligent due to the trial court's failure to admonish him regarding the effect of truth-in-sentencing on his sentence. Although he does not specify the relief requested, we presume defendant seeks to be allowed to withdraw his admission. Whether a trial court's admonishments were adequate depends on whether the admission was "affirmatively shown to have been made voluntarily and intelligently." *People v. Fuller*, 205 Ill. 2d 308, 322, 793 N.E.2d 526, 537 (2002).

¶ 18 With respect to voluntariness, the relevant "knowledge to be provided by the court prior to accepting [an admission] includes only the direct consequences of a defendant's plea." *People v. Delvillar*, 235 Ill. 2d 507, 520, 922 N.E.2d 330, 338 (2009). "Direct consequences of a plea are those consequences affecting the defendant's sentence and other punishment that the circuit court may impose." *Id.* "Collateral consequences, on the other hand, are effects upon the defendant that the circuit court has no authority to impose. A collateral consequence is one that results from an action that may or may not be taken by an agency that the trial court does not control." *Id.* "A knowing and intelligent plea is premised on the defendant's full awareness of

only the direct consequences flowing from it." *People v. Guzman*, 2015 IL 118749, ¶ 25, 43 N.E.3d 954. "Consequently, a plea may be knowing and intelligent even if the defendant is unaware of its nondirect consequences [citation][.]" *Id.*

¶ 19 "Truth in sentencing" is a label attached to a change in the statutory method the Department of Corrections uses to calculate the amount of good-conduct credit available to a defendant. *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 556, 778 N.E.2d 701, 703 (2002). According to this statutory provision, individuals convicted of particular enumerated offenses, including aggravated DUI, shall receive no more than 4.5 days of good conduct credit for each month of the sentence of imprisonment. 730 ILCS 5/3-6-3(a)(2.3) (West 2012). Here, defendant was convicted of aggravated DUI. Accordingly, he must serve at least 85% of his sentence. *Id.* As other courts have observed, trial courts do not control the manner in which good-conduct credit is earned by a prisoner or the amount, if any, that will be applied to his sentence. *People v. Castano*, 392 Ill. App. 3d 956, 960, 912 N.E.2d 320, 324 (2009); *People v. Davis*, 405 Ill. App. 3d 585, 602-03, 940 N.E.2d 712, 728 (2010). Therefore, any possible effect of truth-in-sentencing on defendant's sentence must be considered a collateral consequence of which the trial court had no duty to advise defendant.

¶ 20 This issue was addressed by the Second District in *People v. Frison*, 365 Ill. App. 3d 932, 851 N.E.2d 890 (2006). In *Frison*, the defendant argued the trial court erred by failing to admonish him regarding truth-in-sentencing, making his plea involuntary. *Id.* at 933-34, 851 N.E.2d at 892. The court disagreed, finding that while truth-in-sentencing might well affect the sentence served by the defendant, it did not affect the sentence imposed by the trial court. *Id.* at 934, 851 N.E.2d 893. It found the effect of truth-in-sentencing was a collateral consequence. *Id.* at 935, 851 N.E.2d at 894.

¶ 21 Here, the trial court was not required to admonish defendant regarding the effect of truth-in-sentencing on his sentence as it was a collateral consequence of his admission. Accordingly, defendant's admission was not involuntary and he may not seek to withdraw his admission on that basis.

¶ 22 B. The Factual Basis in This Case

¶ 23 Defendant next argues no factual basis was provided for his admission to the amended petition to revoke probation in violation of Illinois Supreme Court Rule 402A(c) (eff. Nov. 1, 2003). Rule 402A(c) states as follows:

"The court shall not revoke probation, conditional discharge[,] or supervision on an admission or a stipulation without first determining that there is a factual basis for the defendant's admission or stipulation." Ill. S.Ct. R. 402A(c) (eff. Nov. 1, 2003).

The language contained in Rule 402A(c) is very similar to that used in Rule 402(c) relating to guilty pleas. This court has previously found "that the law governing what constitutes an appropriate factual basis for a guilty plea under Rule 402(c) applies as well as to what constitutes an appropriate factual basis for an admission or stipulation in proceedings to revoke probation under Rule 402A." *People v. Bassette*, 391 Ill. App. 3d 453, 456, 908 N.E.2d 1062, 1064 (2009).

¶ 24 "The factual basis for a guilty plea consists of an express admission by the accused that he committed the acts alleged in the [charging instrument], or a recital of evidence to the court which supports the allegations in the [charging instrument]." *People v. Banks*, 213 Ill. App. 3d 205, 211, 571 N.E.2d 935, 939 (1991). In addition, information comprising a factual basis "may come from the defendant himself, competent witnesses, the prosecuting attorney, or a presentence report." *People v. Porter*, 61 Ill. App. 3d 941, 944, 378 N.E.2d 788, 790 (1978),

abrogated on other grounds, People v. Wilk, 124 Ill. 2d 93, 529 N.E.2d 218 (1988). Further, this court has held, "even though the plea had already been accepted, facts disclosed at the sentencing hearing can be considered in determining whether an adequate factual basis for the plea has been established." *People v. Bleitner*, 199 Ill. App. 3d 146, 150, 556 N.E.2d 819, 821 (1990).

¶ 25 Here, defendant correctly states that at the time of his admission, the State did not provide a factual basis, and neither defendant nor his counsel acknowledged specific acts which supported defendant's admission. Defendant points out that the trial court stated it found a "factual basis for the admission, based upon the information as contained in the [a]mended [p]etition to [r]evoke [p]robation." Defendant argues this was an insufficient factual basis. We do not need to determine whether the information contained in the amended petition to revoke probation, alone, was sufficient, as we find that the PSI and other information presented at the sentencing hearing were more than adequate to establish a factual basis for defendant's admission.

¶ 26 In the PSI, the probation officer clearly documented defendant's noncompliance with probation, including defendant's failure to engage in substance-abuse treatment, use of alcohol and substances while on probation, failure to complete public-service work, and failure to report to his probation officer as directed. At the sentencing hearing, the prosecutor noted these same defects in defendant's compliance with probation and further highlighted his conviction for domestic battery, the criminal offense alleged in the amended petition to revoke probation. The above-described acts or omissions by defendant constituted the allegations by the State in its amended petition to revoke probation, which defendant later admitted. Furthermore, at the sentencing hearing, the trial court stated it had considered "the fact that there was a factual basis for the plea *** which has been fleshed out in argument of the [State] at this hearing."

¶ 27 Although defendant's admission had already been accepted by the trial court before sentencing, the facts disclosed in the PSI and at the sentencing hearing may properly be considered in determining whether a factual basis for the plea has been established. *Bleitner*, 199 Ill. App. 3d at 150, 556 N.E.2d at 821 (1990); *see also People v. Warship*, 6 Ill. App. 3d 461, 465, 285 N.E.2d 224, 228 (1972) ("The facts disclosed at the hearing on aggravation and mitigation were more than adequate to constitute a basis for the plea entered by the defendant. Although the plea had already been accepted at that time, it was sufficient under [Rule 402(c)] to support the plea on which the conviction was entered."). Thus, we find a sufficient factual basis existed to support defendant's admission to the amended petition to revoke probation.

¶ 28 C. Mitigating Factors

¶ 29 Finally, defendant challenges the trial court's sentence, arguing the court failed to "properly consider the mitigating factors." Specifically, defendant argues the trial court disregarded his "employment and support of his children."

¶ 30 Absent an abuse of discretion by the trial court, a sentence may not be altered by a reviewing court. *People v. Stacey*, 193 Ill. 2d 203, 209-10, 737 N.E.2d 626, 629 (2000). A court's ruling constitutes an abuse of discretion when it is " 'arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *People v. Sutherland*, 223 Ill. 2d 187, 273, 860 N.E.2d 178, 233 (2006) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)). Sentences imposed within the statutory guidelines are presumed to be proper and will not be overturned unless the sentence substantially departs from the spirit and purpose of the law and the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90, 871 N.E.2d 1, 16 (2007).

¶ 31 A trial court may not ignore relevant evidence presented in mitigation. *People v. Markiewicz*, 246 Ill. App. 3d 31, 55, 615 N.E.2d 869, 886 (1983). One of the statutory factors in mitigation for a court's consideration is whether "[t]he imprisonment of the defendant would entail excessive hardship to his dependents." 730 ILCS 5/5-5-3.1(a)(11) (West 2012). Here, defendant claims the trial court disregarded his "employment and support of his children." However, the transcript of the sentencing hearing indicates otherwise. According to the transcript, the trial court, in addressing the relevant factors in aggravation and mitigation, stated, "[t]he court also does not find that imprisonment would entail excessive hardship to his dependents as he is not really providing monetary support for them anyway." Thus, defendant's assertion the trial court failed to consider a relevant factor in mitigation is not well-founded.

¶ 32 To the extent defendant suggests the trial court erred in evaluating the evidence at sentencing, we decline his implicit invitation to reweigh the evidence. "A trial court has wide latitude in sentencing a defendant, so long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation." *People v. Roberts*, 338 Ill. App. 3d 245, 251, 788 N.E.2d 782, 787 (2003). "The weight attributed to such factors depends on the circumstances of a given case." *Id.* We will not overturn a trial court's sentencing decision because we would have weighed the factors differently. *People v. Phippen*, 324 Ill. App. 3d 649, 653, 756 N.E.2d 474, 478 (2001). The trial court's sentence was within the sentencing range and was not an abuse of discretion.

¶ 33 III. CONCLUSION

¶ 34 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 35

Affirmed.

¶ 36 JUSTICE POPE, specially concurring:

¶ 37 I agree with the result of the majority decision but write separately to note defense counsel stated to the trial court defendant was *convicted* of domestic battery in Macon County and the offense occurred during the term of probation. See *supra* ¶ 9. In my opinion, this was a sufficient factual basis for defendant's admission.