

**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) 150596-U

NO. 4-15-0596

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

March 2, 2016

Carla Bender

4<sup>th</sup> District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
ROBESON GRAHAM-BAILEY,	)	No. 14CF1069
Defendant-Appellant.	)	
	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Steigmann and Appleton concurred in the judgment.

**ORDER**

¶ 1     *Held:* The trial court did not abuse its discretion in sentencing defendant to 3 1/2 years in prison upon his third conviction for driving under the influence of alcohol.

¶ 2         Defendant, Robeson Graham-Bailey, entered an open guilty plea to one count of aggravated driving under the influence of alcohol (DUI) (with two prior DUI violations) (625 ILCS 5/11-501(a)(2), (d)(2)(B) (West 2014)), and the State dismissed other charges. The trial court sentenced defendant to 6 1/2 years in prison. Defendant filed a motion to reconsider and the court reduced defendant's sentence to 3 1/2 years in prison. Defendant appeals, arguing the trial court abused its discretion when it refused to sentence him to probation. We affirm.

¶ 3             I. BACKGROUND

¶ 4         On August 5, 2014, the State charged defendant by information with aggravated DUI with an alcohol concentration of 0.08 or more (with two prior DUI violations) (count I)

(625 ILCS 5/11-501(a)(1), (d)(2)(B) (West 2014)), a Class 2 felony, in that, on May 27, 2014, defendant drove or was in actual physical control of a motor vehicle at a time when the alcohol concentration in defendant's blood or breath was 0.08 or more, and defendant had two prior DUI violations. On October 27, 2014, the State charged defendant by information with aggravated DUI (with two prior DUI violations) (count II) (625 ILCS 5/11-501(a)(2), (d)(2)(B) (West 2014)), a Class 2 felony, in that, on May 27, 2014, defendant drove or was in actual physical control of a motor vehicle while under the influence of alcohol, and defendant had two prior DUI violations.

¶ 5           On November 20, 2014, defendant entered an open guilty plea to count II and the State dismissed count I. Count II carried a possible sentence of three to seven years in prison. 730 ILCS 5/5-4.5-35(a) (West 2014).

¶ 6           A. Sentencing

¶ 7           On January 9, 2015, the trial court held a sentencing hearing and heard evidence presented in aggravation and mitigation. The State relied on the presentence investigation report (PSI), and recommended the court sentence defendant to seven years in prison based on defendant's criminal history, pattern of criminal behavior, and the risk he posed to society.

¶ 8           The PSI indicated defendant's earliest conviction was in Louisiana in 2001, for possession of marijuana, and he was sentenced to 12 months' probation. In 2009, defendant was convicted in California of possession of marijuana for sale and was sentenced to 36 months' probation, with which he failed to comply. In 2010, defendant was convicted in Georgia of DUI and was sentenced to 12 months' probation. In 2012, defendant was convicted in California of DUI (alcohol and drugs) and was sentenced to 90 days in jail. In 2013, defendant was convicted in Nevada of battery (with substantial bodily harm) and sentenced to 36 months' probation. In

December 2014, while the present case was pending and while free on bond, defendant was charged in Champaign County case No. 14-CF-1705 with aggravated DUI.

¶ 9         During an interview conducted for the PSI on December 30, 2014, defendant represented he had not consumed alcohol since his most recent DUI arrest on December 5, 2014. However, a urine sample defendant provided on January 2, 2015, was positive for alcohol. Defendant also represented he had not smoked marijuana since 2011, but probation records indicated defendant tested positive for tetrahydrocannabinol (THC) on October 28, 2013, and October 28, 2014.

¶ 10         At sentencing, defendant argued the State's recommendation of seven years in prison was excessive and emphasized his rehabilitative potential. Defendant was employed part-time and attending school in pursuit of a master's degree. Defendant also submitted letters from several character witnesses as evidence in mitigation.

¶ 11         In imposing its sentence, the trial court identified the following factors it considered in aggravation: (1) defendant's long-standing substance and alcohol abuse dating back to 2001; (2) defendant was intoxicated when he committed the battery in 2013, and the arrest report indicated defendant was verbally aggressive toward officers and in possession of marijuana; (3) at the time of the subject DUI arrest, defendant was on probation for battery; (4) defendant continued to use alcohol and illegal substances while on probation; and (5) defendant continued to use alcohol even after entering his guilty plea in this case. The court stated, "[it] does not seem that probation or a community-based sentence will deter [d]efendant from using alcohol and using THC and committing crimes while being involved in the consumption of alcohol and the consumption of THC." Further, the court stated it did not see a great deal of potential for rehabilitation since defendant continued to commit substance-related offenses, even

while serving a community-based sentence. The court sentenced defendant to 6 1/2 years in prison.

¶ 12

#### B. Motion To Reconsider

¶ 13        On January 21, 2015, defendant filed a motion to reconsider his sentence, stating (1) based on the evidence presented to the court, the sentence imposed was excessive; (2) the sentence violated article I, section 2 of the Illinois Constitution (Ill. Const. 1970, art. I, § 2), stating "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship"; and (3) the sentence imposed was not proportionate to defendant's "past history or criminality, mental history, family situation, economic status, education, occupational[,] or personal habits."

¶ 14

On May 27, 2015, the trial court heard defendant's motion. At the hearing, defendant presented the testimony of five witnesses: (1) Rance Graham-Bailey, (2) Dr. Wendy Heller, (3) Mark Lockwood, (4) Dr. Hayden Noel, and (5) Willy Summerville. In addition, defendant spoke in allocution.

¶ 15

Rance Graham-Bailey, defendant's brother, testified about the family. Rance spoke about the death of defendant's sister from leukemia and defendant's difficulties in coping with the tragedy. Rance stated he believed the family would continue to provide a support network for defendant and that they now have a better understanding of defendant's personal difficulties.

¶ 16

Dr. Heller testified she is a psychology professor at the University of Illinois. She testified that she consulted with defendant's father on the case and examined defendant's clinical records, although she did not examine or treat defendant. Dr. Heller testified regarding defendant's history of attention deficit/hyperactivity disorder (ADHD) and delayed language

acquisition, and she opined that they contributed to his impulsive behavior and difficulty with executive functions and taking consequences into account. Dr. Heller explained that people with a history of both ADHD and delayed language acquisition have a more difficult time processing traumatic experiences and that they are more likely to turn to substances for comfort. Last, Dr. Heller opined defendant's substance-abuse problems could be treated with resources available in the community.

¶ 17           Mark Lockwood testified he is the admissions and alumni relations director of the Master of Business Administration (MBA) program at the University of Illinois. Lockwood testified he had known defendant for about a 1 1/2 years and taught one course in which defendant was enrolled. He further testified that defendant was a strong leader and contributor in the MBA program and excelled academically, although he had only been enrolled in the program for one semester. Lockwood described defendant as extremely intelligent, with a great deal of potential.

¶ 18           Dr. Hayden Noel testified he is a professor in the MBA program at the University of Illinois and defendant was enrolled in two of his classes. Dr. Noel testified defendant is highly intelligent and has the ability to be a great leader. Further, he did not observe any negative interactions between defendant and his peers.

¶ 19           Willy Summerville testified he is a board member for Canaan S.A.F.E. House (House), a substance-abuse-free living environment located in Urbana, Illinois. Summerville testified defendant had previously job-shadowed him, and he believed defendant could benefit from House's services. The first year of the House program consists of intense residential supervision and includes an instructional component with classes through Parkland College and Canaan Church. The second year consists of an aftercare program, where the participants live on

their own but remain involved in House's activities. Summerville believed defendant would greatly benefit from the program.

¶ 20 Finally, defendant made a statement in allocution. Defendant stated he recognized his substance-abuse problems and that his actions have posed tremendous potential harm, and he is now, more than ever, committed to treatment.

¶21 The State objected to defendant's request for a reduction in his sentence, arguing the sentence was appropriate based on defendant's prior criminal and substance-abuse history. Defendant argued for a sentence of probation based on his rehabilitative potential.

¶ 22 In ruling on the motion to reconsider the sentence, the trial court stated, "There is mitigation in this record that was not present at the time that the sentence was entered in 14-CF-1069 and it's significant mitigation. \*\*\* I've got a fuller picture of [d]efendant who is obviously an intelligent and articulate individual who, absent the substance abuse issues, [had and has] the ability to be a contributing member of society." The court went on to state that, prior to this driving under the influence of alcohol conviction, defendant had three prior felony convictions, all of which involved substance abuse. The court stressed defendant previously had been provided a number of opportunities through the court system to address his substance-abuse issues but had not done so. Further, the court noted defendant's risk to the public due to his substance-abuse issues. The court also stated it had considered defendant's lack of candor with court services when he falsely asserted he had not consumed alcohol after the December 2014 DUI charge. The trial court then reduced defendant's sentence to 3 1/2 years in prison.

¶ 23 This appeal followed.

## II. ANALYSIS

¶ 25            On appeal, defendant argues the trial court abused its discretion in sentencing him to 3 1/2 years in prison. Specifically, defendant contends the trial court erred by failing to (1) consider his mental-health issues and (2) sentence him to probation. We disagree.

¶ 26            When imposing a criminal sentence, a trial court must balance the seriousness of the offense and the defendant's rehabilitative potential. Ill. Const. 1970, art. I, § 11; *People v. Lee*, 379 Ill. App. 3d 533, 539, 884 N.E.2d 776, 781 (2008). In doing so, the trial court must consider a number of aggravating and mitigating factors. See 730 ILCS 5/5-5-3.1, 3.2 (West 2014). A trial court's determination is entitled to great deference because it is generally in a better position than the reviewing court to determine the appropriate sentence. *People v. Streit*, 142 Ill. 2d 13, 18-19, 566 N.E.2d 1351, 1353 (1991). "The trial judge has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209, 737 N.E.2d 626, 629 (2000). Consequently, a reviewing court must not substitute its judgment for that of the trial court simply because it might have weighed these factors differently. *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999).

¶ 27            Although a trial court is vested with broad discretion in sentencing, such discretion is not without limitation, as reviewing courts may reduce a punishment imposed if there was an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010); see Ill. S. Ct. R. 615(b)(4) (eff. Jan. 1, 1967). "An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful[,] or unreasonable [citation] or where no reasonable person would agree with the position adopted by the trial court." *People v. Becker*, 239 Ill. 2d 215, 234, 940 N.E.2d 1131, 1142 (2010). A conviction for a third DUI violation carries with it a possible prison sentence of three to seven years. 625 ILCS 5/11-501(d)(2)(B) (West 2014); 730

ILCS 5/5-4.5-35 (West 2014). Defendant was sentenced to 3 1/2 years in prison, which is six months more than the minimum possible prison term. "A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *Fern*, 189 Ill. 2d at 54, 723 N.E.2d at 210.

¶ 28                   A. Consideration of Mental-Health Issues

¶ 29                 First, defendant argues the trial court failed to consider his mental-health issues in mitigation. Defendant contends, "the trial court did not list as one of the mitigating factors any of the mental illnesses from which [d]efendant suffered." The mental-health issues defendant refers to are ADHD and delayed language acquisition, as identified in the PSI and Dr. Heller's testimony.

¶ 30                 "The trial court is not required to expressly indicate its consideration of all mitigating factors and what weight each factor should be assigned." *People v. Kyse*, 220 Ill. App. 3d 971, 975, 581 N.E.2d 285, 288 (1991). Here, the trial court engaged in a lengthy explanation of its considerations prior to ruling on defendant's motion to reconsider his sentence, and the fact it did not specifically mention defendant's mental-health issues does not mean it did not consider them. "When mitigating factors are presented to the trial court, there is a presumption it considered them." *People v. Pippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001) (citing *People v. Payne*, 294 Ill. App. 3d 254, 260, 689 N.E.2d 631, 635 (1998)). Defendant has pointed to nothing in the record rebutting the presumption that the trial court considered all of the factors in mitigation.

¶ 31                   B. Probation

¶ 32            Second, defendant argues the trial court erred when it failed to sentence him to probation. Defendant points to his rehabilitative potential and strong family ties as factors favoring a sentence of probation.

¶ 33            We again note, and now emphasize, that the trial court reduced defendant's prison sentence from 6 1/2 years to 3 1/2 years after hearing additional evidence in mitigation at the hearing on defendant's motion to reconsider. The evidence in mitigation related to defendant's rehabilitative potential and his family ties. Evidently, the trial court was persuaded by this evidence, given that it reduced defendant's original prison sentence by almost half.

¶ 34            "A defendant's rehabilitative potential and other mitigating factors are not entitled greater weight than the seriousness of the offense." *Id.* Here, the trial court considered a community-based sentence, but based on defendant's prior criminal history and continued substance abuse, it believed a community-based sentence would not be in the best interest of public safety. The court emphasized the seriousness of defendant's third DUI violation and indicated the only way to protect the public from defendant's recurring dangerous behavior was to sentence defendant to a term of imprisonment. Thus, it is evident from the record that the trial court did consider defendant's rehabilitative potential and ability to comply with a community-based sentence. It concluded a sentence of imprisonment was warranted and we do not find this was error.

¶ 35            Therefore, we find the trial court did not abuse its discretion in sentencing defendant to 3 1/2 years in prison for a third DUI violation.

¶ 36            III. CONCLUSION

¶ 37        For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 38        Affirmed.