2017 IL App (1st) 152128-U

No. 1-15-2128

Order filed December 19, 2017

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 4875
	)	
ANTHONY EVANS,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Neville and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's four concurrent 15-year sentences for aggravated battery are affirmed over his contention that they were excessive in light of the minimal harm caused by his conduct.

¶ 2 Following a bench trial, defendant Anthony Evans was convicted of four counts of aggravated battery (720 ILCS 5/12-3.05(d)(4)(i), (g)(3) (West 2014)) and sentenced, based on his criminal background, as a Class X offender to four concurrent terms of 15 years' imprisonment, to run consecutively with his sentences from two unrelated cases. Defendant

appeals, arguing that his sentence is excessive in light of the minimal harm caused by his conduct and his "unremarkable" criminal background. For the reasons set forth herein, we affirm.

¶ 3 Defendant was charged by indictment with two counts of aggravated battery of a peace officer (720 ILCS 5/12-3.05(d)(4)(i) (West 2014)) and two counts of aggravated battery in which he knowingly caused a correctional officer to come in contact with urine or feces (720 ILCS 5/12-3.05(g)(3) (West 2014)). On June 18, 2015, defendant waived his right to a jury trial, and the case proceeded to a bench trial. Because defendant solely challenges his sentence, and not the sufficiency of the evidence to sustain his conviction, we recount the facts to the extent necessary to resolve the issue raised on appeal.

¶ 4 Correctional officer Steve Gluszek testified that, on December 21, 2014, as he and his partner, Officer Williams, were assisting other correctional officers in distributing medication in Tier 1-F of the Cook County jail, an inmate was injured while jumping off of a table and attempting to hang from a second story platform. Gluszek described Tier 1-F as a large open room with 11 cells on the ground floor and 11 cells on a second story platform. As Gluszek was assisting medical personnel who had been called to tend to the injured inmate, he and Williams were struck with a liquid substance that had "a very strong odor of urine." The substance came from cell 1235. Gluszek testified that defendant, whom he identified in court, was the only inmate who was housed in cell 1235, and that no inmates were being housed in the cells next to cell 1235. After he was stuck by the liquid, Gluszek heard defendant scream "that he had hit [them] with piss." Gluszek identified a video of the incident, which was published to the court.

¶ 5 The trial court found defendant guilty as charged, and the case proceeded to a sentencing hearing. At the hearing, defendant was sentenced in the instant case and two unrelated cases in which he was found guilty of, respectively, armed robbery and aggravated battery, and resisting a peace officer.

¶ 6 In aggravation, the State noted that defendant was subject to mandatory Class X sentencing, because he was convicted of unlawful use of a weapon by felon in 2009, for which he received a 3-year sentence, and armed robbery in 2002, for which he received a six-year sentence. The State also argued that defendant "didn't stop picking up cases" while awaiting trial, and that the sentences for each case would run consecutively to each other.

¶ 7 In mitigation, defense counsel noted that defendant was 32 years old and that both of his parents died when he was young. Before defendant was incarcerated, he was employed with a landscaping company and was contributing to rent while living with his sister. Defendant had a history of depression and substance abuse.

¶ 8 In allocution, defendant stated that he did not throw the liquid on the officers, that he and one of the officers "got into it plenty of time[s]," and that he had submitted a grievance after he told the guard that the water in his cell was not working.

¶ 9 The trial court sentenced defendant as a Class X offender to four concurrent terms of 15 years' imprisonment to run consecutively to his sentences on the unrelated cases. On the unrelated cases defendant was sentenced to a term of eight years for robbery, eight years for aggravated battery, to run concurrently with each other, but consecutively to a two-year term for resisting a peace officer. In announcing its decision, the court noted that the resisting a peace officer case and the instant aggravated battery case arose while defendant was awaiting trial for

the robbery case. The court described the act of throwing urine on a correctional officer as "disgraceful."

¶ 10 Defendant filed a motion to reconsider sentence. In denying defendant's motion to reconsider, the trial court noted:

> "Well, I'm looking at pre-sentence investigation, his history of criminology, the facts and circumstances as to each individual case. The maximum was much higher, actually. He's looking at a maximum of 66 years. I gave him less than half of that. Motion to reconsider sentence is timely filed, respectfully denied."

¶ 11 On appeal, defendant first contends that his 15-year sentences for aggravated battery are excessive in light of the minimal harm caused by his conduct, and the "unremarkable and mostly non-violent" nature of his criminal background.

¶ 12 A trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference on review. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). This is because a trial court has a superior 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 (2000). Although the trial court's consideration of mitigating factors is required, it has no obligation to recite each factor and the weight it is given. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11. Absent some indication to the contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 13 In reviewing a defendant's sentence, this court will not reweigh the aggravating and mitigating factors and substitute its judgment for that of the trial court merely because it would

have weighed these factors differently. *People* v. *Busse*, 2016 IL App (1st) 142941, ¶ 20. Reviewing courts will not alter a defendant's sentence absent an abuse of discretion. *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 50. A sentence which falls within the statutory range is presumed to be proper and " '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.' " *People v. Brown*, 2015 IL App (1st) 130048, ¶ 42 (quoting *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 14 Here, we find that the trial court did not abuse its discretion in sentencing defendant to 15 years' imprisonment. Defendant was convicted of aggravated battery, a Class 2 felony with a sentencing range of 3-7 years' imprisonment. 720 ILCS 5/12-3.05(h) (West 2014); 730 ILCS 5/5-4.5-35(a) (West 2014). However, because of his criminal background, defendant was subject to mandatory Class X sentencing of 6 to 30 years. 730 ILCS 5/5-4.5-95(b) (West 2014); 730 ILCS 5/5-4.5-25(a) (West 2014). The trial court's 15-year sentence falls within the statutory range and, thus, we presume that it is proper. *Brown*, 2015 IL App (1st) 130048, ¶ 42.

¶ 15 Defendant does not dispute that he was subject to a mandatory Class X sentence, or that his sentence fell within the permissible range and is presumed proper. Rather, he argues that his sentence is excessive in light of the minimal harm caused by his conduct, the "unremarkable and mostly non-violent" nature of his criminal background. He also claims that the trial court failed to give adequate consideration to the financial impact of his sentences. See 730 ILCS 5/5-4-1(a)(3) (West 2014). However, as noted above, absent some indication to the contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19. That presumption may be

overcome by an affirmative showing that the sentencing court failed to consider factors in mitigation *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. Defendant is unable to make such a showing.

¶ 16 Here, the record shows that the court presided over defendant's trial, and heard evidence concerning the allegedly "non-violent" nature of the charge. In addition, the details of the case and defendant's criminal background, including a 2009 felony possession conviction, a 2002 armed robbery conviction, and a 2001 possession of a controlled substance conviction, are contained in defendant's PSI. In denying defendant's motion to reconsider sentence, the court specifically stated that it was looking at defendant's PSI report and "his history of criminology." Moreover, the trial court noted that defendant was awaiting trial for other offenses when he committed the instant offenses. See *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009) (Criminal history alone can warrant a sentence "substantially above the minimum").

¶ 17 Given this record defendant essentially asks us to reweigh the sentencing factors and substitute our judgment for that of the trial court. As noted above, this we cannot do. See *Busse*, 2016 IL App (1st) 142941, ¶ 20 (a reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently). As the trial court is presumed to have considered all evidence in mitigation, and the evidence suggests that it did, we find that the trial court did not abuse its discretion in sentencing defendant to 15 years' imprisonment for aggravated battery.

¶ 18 Finally, defendant cites social science research and law review articles for the proposition that we should reduce his sentence because "the mass incarceration of African-American men for non-violent offenses has caused devastating social, political, economic, and moral harm to the

community and the public" and that "longer sentences are not effective in achieving" penological goals. However, as a court of review assessing whether a trial court abused its discretion in imposing a sentence, we are constrained from considering facts and materials that were not presented to the trial court at the time of sentencing. See *People v. Heaton*, 266 Ill. App 3d 469, 477 (1994) ("Judicial notice cannot be extended to permit the introduction of new factual evidence not presented to the trial court"); *People v. Mahlberg*, 249 Ill. App. 3d 499, 531-32 (1993) (citations to such studies on appeal constituted "an attempt to interject expert-opinion evidence into the record" that was neither subject to cross-examination by the State nor considered by the trial court.) As these studies and articles were not presented to the trial court, we will not now substitute our judgment and find that the trial court abused its discretion for not considering these materials.

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.