2017 IL App (1st) 152323-U

No. 1-15-2323

Order filed October 19, 2017

Fourth 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. 13 CR 6359
	)	
PATRICK MAYS,	)	Honorable
	)	Lawrence E. Flood,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Burke and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's sentence of 12 years' imprisonment for armed robbery is affirmed over his contention that his sentence was excessive because the trial court failed to consider his rehabilitative potential and other mitigating factors.

¶ 2 Following a bench trial, defendant Patrick Mays was convicted of armed robbery (720 ILCS 5/18-2(a)(1) (West 2012)) and sentenced as a Class X offender to 12 years' imprisonment. On appeal, defendant contends that his sentence is excessive. We affirm.

¶ 3 Defendant was arrested on March 16, 2013, and charged with two counts of armed robbery with a deadly weapon other than a firearm. Defendant waived his right to a jury trial, and the case proceeded to a bench trial. Because defendant does not challenge the sufficiency of the evidence to sustain his convictions, we recount the facts here only to the extent necessary to resolve the issue on appeal.

¶ 4 Kenneth Edwards testified that, at 3:19 p.m., on March 16, 2013, he entered Kenard Jarrett's car after the two men returned from a shopping trip. Edwards had purchased a pair of shoes, which were in a shoebox in his shopping bag. Jarrett's car was parked on Monroe Street, near Pulaski Avenue. Edwards sat in the passenger seat and placed his shopping bag on the floorboard between his legs. As Jarrett started the car, the two rear doors opened and two men entered into the backseat. Defendant entered on the passenger side, seating himself behind Edwards. An unidentified second offender entered on the driver side behind Jarrett.

¶ 5 After entering the car, defendant punched Edwards in the mouth and then put him in a "half-nelson grip." Edwards saw that the second offender had a knife. Kenard was screaming. Edwards reached for the knife and suffered a cut on his thumb. Defendant demanded money from Edwards, but Edwards told him that he did not have any money and, instead, told defendant to take the shoes. Defendant patted Edwards down and discovered cash in one of Edwards's jacket pockets. Defendant tore the pocket pouch from the jacket. The pouch contained $720 dollars. Defendant also took Edwards's shopping bag with his shoes inside. After both offenders exited the car, Edwards saw defendant walk on Monroe Street and make "a left" on Pulaski Avenue.

¶ 6 Edwards flagged down a nearby police car, reported the robbery, and provided the officer with a description of the robbers. Edwards drove with the officers down Pulaski Avenue, in the direction where he saw defendant flee, but could not locate defendant. After Edwards returned to the scene of the crime, he noticed that his hand was bleeding. The officers called an ambulance and Edwards received a bandage for the cut on his hand. About the same time, defendant was apprehended near the scene by responding officers. Defendant was relocated to the ambulance where Edwards identified him as the person who punched him and took his items. Edwards's shoes, which were still in the shoebox in his shopping bag, were recovered and returned to him. Additionally, the pouch pocket torn from Edwards's jacket was recovered, but only $420 of his original $720 dollars was returned to him.

¶ 7 Kenard Jarrett testified that he and Edwards left the Footlocker store and entered Jarrett's car. Jarrett started the car and began to drive away when two men entered his car through the rear doors. The man behind Jarrett put him in a headlock and punched him. Jarrett saw that Edwards's shoes were taken but he did not see who took them. After the offenders left, Jarrett tried to operate his car, but realized that the key was missing. Jarrett did not know who removed the key from the ignition. Jarrett and Edwards flagged down a police car and reported the robbery.

¶ 8 While Jarrett was talking with the officers, a woman approached and told them that "some shoes got dropped off at" Madison Avenue and Pulaski Avenue. Jarrett went to that location and found the shopping bag with Edwards's shoes inside the box. Jarrett then joined Edwards inside the ambulance and police asked Jarrett to identify potential suspects. Jarrett was

unable to identify any of the individuals as the perpetrators. Jarrett's car keys were recovered by officers and returned to him.

¶ 9 Chicago police officer Torres testified that, at 3:30 p.m., she and her partner were driving south on Pulaski Avenue in a marked car when she heard a flash message describing a robbery suspect. Officer Torres saw defendant, who matched the description in the flash message, walking approximately 200 feet away from her squad car. When defendant saw Torres' squad car moving in his direction, he ran northbound on Pulaski Avenue. Torres saw defendant run into a nearby car wash and remove his gym shoes and jogging pants. Defendant then entered into the passenger side of a vehicle that was in line at the car wash. Torres and her partner approached the car on foot and ordered defendant to exit the vehicle. Defendant exited the car and was taken into custody. Torres recovered the gym shoes and jogging pants that defendant discarded in the car wash. Defendant was relocated to the crime scene where the officers conducted a "show-up" with Edwards and Jarrett. Edwards positively identified defendant as one of the robbers. Defendant was placed under arrest. A custodial search of defendant yielded Jarrett's car keys and the torn pocket pouch from Edwards's jacket. The pouch contained $420 dollars inside of it.

¶ 10 Chicago police detective Benavides testified that, at approximately 5:30 p.m., he read defendant his *Miranda* rights and asked if defendant would like to talk with him. Defendant agreed and, after a brief silence, told Benavides that he was "guilty." Defendant began to show remorse and told Benavides that he committed the robbery because "he gets high on weed, drugs, and alcohol." Defendant described following Edwards and Jarrett to their car and entering through the rear door. Once inside the car, defendant said that he "charged" the passenger and took cash that he saw in the passenger's jacket. Defendant also told Benavides that he took a box

of gym shoes from the passenger before exiting the car. Benavides asked defendant to identify the second offender, but defendant insisted he acted alone.

¶ 11 The trial court found defendant guilty of two counts of armed robbery with a deadly weapon other than a firearm. The case then proceeded to sentencing.

¶ 12 At the sentencing hearing, the court heard arguments in aggravation and mitigation. In aggravation, the State emphasized the violent nature of the crime. Additionally, the State noted that defendant had two prior felony convictions for possession of a controlled substance, one of which was a Class 2 offense. Finally, the State informed the trial court that defendant was on parole when he committed this offense.

¶ 13 In mitigation, defense counsel noted defendant's youth and his close relationship with his mother. Counsel informed the court that defendant, like his father, abused drugs and had a drug addiction. Counsel also informed the court that defendant completed a drug rehabilitation program while he awaited sentencing in this matter and that defendant was studying to become a barber, a career he wanted to pursue after completing his sentence. Counsel noted that defendant showed remorse following his arrest and pointed out that the facts of the case established that: defendant was not the person who brandished the knife; the wounds suffered by Edwards were minor and treatable by a bandage; and most of the stolen property was returned to the victims. Finally, counsel read a letter from defendant's mother asking the court for leniency. In the letter, defendant's mother told the court that defendant "owned up to his mistakes" and "was not making any excuses." She informed the court that she has "many health issues," and "desperately" wants help from her son "as soon as possible."

¶ 14 In allocution, defendant asked for leniency, noting that he was 22 years of age when he was arrested, and promised not to "disappoint" the court if given another chance. Defendant encouraged the court to "make an example" out of him if he ever found himself before the court again. Finally, defendant stated that all he cared about was his family, and that he just wanted to go home and help his family out.

¶ 15 In announcing its sentencing decision, the court noted that this was a "violent crime," and, as a Class X offense, probation was not an option. Even if probation were an option, the court explained that it would not be an "appropriate disposition of the case." Instead, the court announced that defendant's sentence would be based on the facts of the case, defendant's background, the presentence investigation (PSI) report, and "all the facts [the court] kn[ew] about [defendant]." The trial court merged Count 1 into Count 2 for sentencing purposes, and sentenced defendant to 12 years' imprisonment. The court stated that "hopefully" defendant would abide by what he had just told the court in allocution. The court further stated that defendant had "all the tools now" because he had completed drug treatment and was learning a trade. Defendant moved to reconsider sentence, which the court denied.

¶ 16 On appeal, defendant contends that his 12-year sentence is excessive given his rehabilitative potential as demonstrated by his strong ties to his family, his completion of a drug treatment program, his vocational training, his expressed remorse, his youth and his work history. Defendant further argues that the sentence is excessive because he was not armed, the victims suffered only minor injuries, and virtually all the stolen items were returned. Defendant asks this court to either reduce his sentence to the statutory minimum of six years, or vacate the sentence and remand for a new sentencing hearing.

¶ 17 The Illinois Constitution requires that a trial court impose a sentence that reflects both the seriousness of the offense and the objective of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. In reaching this balance, a trial court must consider a number of aggravating and mitigating factors, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). 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.

¶ 18 In reviewing a defendant's sentence, this court will not reweigh the factors and substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *People v. Busse*, 2016 IL App (1st) 142941, ¶ 20. The trial court is in the superior position to weigh the appropriate factors and so its sentencing decision is entitled to great deference. *Id.* Where that sentence falls within the statutory range, it is presumed proper and will not be disturbed on review absent an abuse of discretion. *Alexander*, 239 Ill. 2d at 212-13. An abuse of discretion exists where the sentence imposed is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212.

¶ 19 Here, we find that defendant's sentence was not excessive and that the trial court did not abuse its discretion when it imposed the 12-year term. Armed robbery, as charged in this case, is a Class X felony. 720 ILCS 5/18-2(a)(1), 18-2(b) (West 2012). A Class X felony has a

sentencing range of 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2012). Accordingly, the 12-year sentence imposed by the trial court falls well within the permissible statutory range and, thus, we presume it proper. *Wilson*, 2016 IL App (1st) 141063, ¶ 12; *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46.

¶ 20 Defendant does not dispute that his 12-year sentence is within the applicable sentencing range and is therefore presumed proper. Rather, he argues that his sentence "does not reflect adequate consideration of [his rehabilitative] potential or of the constitutional directive of restoring offenders to useful citizenship." Specifically, defendant points to his youth, his relationship with his mother, his completion of a drug treatment program, his vocational training, and his remorse as examples of mitigating factors that were not adequately considered by the trial court.

¶ 21 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. *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. As such, in order to prevail on these arguments, defendant "must make an affirmative showing [that] the sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. Defendant cannot make such a showing here where the record indicates that the trial court expressly considered the factors relied on by defendant. At the sentencing hearing, the court heard from defense counsel about defendant's age, his vocational training, his completion of a drug treatment program, and his remorse. Counsel also presented the court with a letter from defendant's mother, which detailed many of these mitigating factors, including defendant's completion of the drug treatment program, his studying to become a barber, and that he "owned up to his mistakes" and "was not

making any excuses." In allocution, defendant spoke to the court about his youth and told the court that "all he cared about" was his family. After imposing the sentence, the court specifically stated that it was basing the decision on "[defendant's] background, *** the [PSI], and all the facts that [the court] kn[ew] about [defendant]."

¶ 22 Given this record, defendant's argument is, essentially, asking us to reweigh the sentencing factors and substitute our judgment for that of the trial court. As mentioned, 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.). Even if we were to weigh these factors differently, we cannot say that the trial court abused its discretion in sentencing defendant to 12 years' imprisonment, a term well below the statutory maximum, for a violent armed robbery with two victims. See *Alexander*, 239 Ill. 2d at 212-14; see also *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010) (The trial court was not required to impose a minimum sentence merely because mitigation evidence existed.).

¶ 23 In reaching this conclusion, we are not persuaded by defendant's contention that there was no significant aggravation because defendant was unarmed, inflicted no injury, and the injury to Edwards caused by the unknown offender was minor. Again, we must decline defendant's invitation to reweigh the sentencing factors or substitute our judgment for that of the trial court. *Alexander*, 239 Ill. 2d at 213. This aside, even if we were to reweigh the sentencing factors, we would not find that the court abused its discretion in sentencing defendant to 12 years' imprisonment. The record shows that defendant, after entering the vehicle, punched Edwards in the mouth and held him in a "half-nelson grip." Defendant's unknown co-offender was armed with a knife and Edwards suffered a cut during a struggle. The court heard evidence

regarding the severity of Edwards's cut. This evidence supports the trial court's characterization of this event as a "violent crime," which is an appropriate factor to consider in aggravation. *People v. Weiser*, 2013 IL App (5th) 120055, ¶ 32 ("The seriousness of the offense is one of the most important factors for the court to consider."); see also *People v. Coleman*, 166 Ill. 2d 247, 261 (1995) ("A defendant's rehabilitative potential *** is not entitled to greater weight than the seriousness of the offense."). Moreover, defendant has two prior felony convictions for possession of a controlled substance, one of which was a class 2 offense. He was on parole when he committed this robbery. The trial court was required to consider these factors in aggravation when he sentenced defendant. 730 ILCS 5/5-5-3.2(a)(3), (12) (West 2012).

¶ 24 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.