2018 IL App (1st) 163301-U

THIRD DIVISION
December 19, 2018

No. 1-16-3301

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 18176
	)	
JOSEPH HARRIS,	)	The Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Ellis and Cobbs concurred in the judgment.

ORDER

HELD: Trial court properly sentenced defendant to 9½ years in prison following his conviction for possession of a stolen motor vehicle; the record shows the trial court adequately considered both aggravating and mitigating factors, including defendant's lengthy criminal history, and fashioned a sentence well within the applicable sentencing range.

¶ 1 Following a bench trial, defendant Joseph Harris (defendant) was convicted of possession of a stolen motor vehicle and was sentenced to 9½ years in prison. He appeals, contending that

his sentence was excessive in light of the nature of the offense, his nonviolent criminal background and his struggle with drug addiction. He asks that we reduce his sentence or, alternatively, that we remand his cause for resentencing. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 At defendant's trial, Alicia Jackson testified that on September 14, 2015, she was driving her car, a 2003 Buick Rendezvous, when she parked it at a gas station on 116th Street and Michigan Avenue in Chicago. She turned the car off, left the keys in the ignition, and went inside the gas station's convenience store to make a purchase. When she returned, her car was gone. She called police and filed a report. Jackson averred that her son's father, Gregory Stephens, was a registered co-owner of the Buick, but she was the primary driver and Stephens had not driven the car for several years. Jackson further testified that later, in October 2015, she was notified by police that her car had been recovered. She went to the police station and saw defendant there, whom she did not know. Jackson stated that she never gave defendant, nor anyone else, permission to take or drive the Buick.

¶ 4 Gregory Stephens testified that, when he was in a relationship with Jackson, he had cosigned a car loan with her for the Buick. He averred that she was the primary driver and that he had not driven the car since they broke up, some four or five years ago. Stephens stated he did not know defendant and had never given him permission to drive the Buick.

¶ 5 Chicago police officer Robert McHale testified that at approximately 11:00 p.m. on October 25, 2015, he was on duty near 7804 South Muskegon Avenue with his partner, officer Robert Brown, when he saw a Buick in the street driving in reverse for at least half a block.

Officer McHale activated his emergency lights, whereupon defendant, who officer McHale identified in court, exited the Buick's driver's side, started to walk away from the car, and then ran. Officer McHale ran the license plate and discovered that the car was stolen. Officer McHale averred that, while officer Brown gave chase to defendant on foot, he went over to the Buick and found a woman inside the passenger seat. Officer McHale took her into custody and secured the car. Officer McHale stated that his partner was able to apprehend defendant, who had run into a backyard and had hid under a stairwell; defendant was holding the Buick's car keys. Defendant was taken into custody and transported to the police station. Officer McHale further testified that, after he was mirandized, defendant told him that he knew the Buick was stolen, but that he did not steal it and, instead, got it from another person who told him not to get caught in it because it was stolen. Defendant's statement was not memorialized.

¶ 6 Sandra Barney testified on behalf of defendant. She stated that on September 14, 2015, she was with defendant and another man named "Kevin" or "Keith" in a car; this man was driving and all three of them were smoking cocaine. At some point during that day, Barney saw defendant give the man drugs and, in exchange, the man gave defendant the car. Barney averred that she was not sure how long defendant was allowed to use the car but, when she later left, he was still in possession of it.

¶ 7 Following the close of evidence, the trial court found defendant guilty of possession of a stolen motor vehicle. In its colloquy, the court noted that it found the State's witnesses "to be credible and compelling," including officer McHale's testimony about defendant's statement to police. It also acknowledged evidence of defendant's flight when police pulled him over,

"showing consciousness of guilt." The court found that there was "every indicia that the car was stolen and not just being bartered for drugs for some short period of time" and, therefore, found him guilty beyond a reasonable doubt. The court then asked the parties about defendant's criminal history, and it was revealed that defendant had over 10 prior felony convictions, including 4 for retail theft, obstruction of justice, residential burglary, possession of a stolen motor vehicle, attempted possession of a stolen motor vehicle and aggravated possession of a stolen motor vehicle. The trial court declared that defendant was "class X by background."

¶ 8 During sentencing, the trial court heard evidence both in mitigation and aggravation of the crime and referred to defendant's presentence investigation report. In aggravation, the State presented defendant's criminal history and reiterated that he was Class X eligible due to his background which, again, demonstrated he had been in prison 10 separate times. In mitigation, defendant argued that, after a long history of drug addiction, he has now remained sober while in custody and desires to continue that sobriety. He also discussed for the court his familiar support and his willingness to work, with a potential construction job waiting for him. And, he expressed a desire to be a positive and sober influence in the lives of his grandchildren and other children in his community.

¶ 9 After considering the evidence, the trial court sentenced defendant. In its colloquy, the court acknowledged that defendant was "surely not anything close to the worst person that's come before here" and that he was "not a violent person." However, the court found defendant to be "a constant thief and burglar and stealer of other people's property all the time." The court noted that, pursuant to the applicable sentencing range, it could sentence him up to 30 years. Yet, it

ultimately stated that, while it was "not going to give him 30 years," it was "going to give him more than the minimum." The court then considered defendant's time served credit and sentenced him to 9½ years in prison. Defendant immediately moved the trial court to reconsider its sentence. The court considered the motion, stating that defendant's "criminal history speaks for itself," and that, "[a]s to the facts of the case, [it] was moderate to the extent [it] could be with the sentence." The court denied defendant's motion to reconsider sentence.

¶ 10 ANALYSIS

¶ 11 Defendant's sole contention on appeal is that his sentence was excessive in light of the nature of the offense, his nonviolent criminal background and his long struggle with drug addiction. While he concedes that he was Class X eligible and that his sentence was within the proper statutory range, he asserts that it simply was not proportionate to the seriousness of the offense. He argues that the trial court failed to consider the facts of the case, namely, that he only received the car and was not involved in its actual theft, as well as his background, which includes poor social conditions, current rehabilitation from addiction, and a criminal history of mainly nonviolent crimes. We disagree.

¶ 12 The law regarding sentencing is well established. Axiomatically, the trial court has broad discretionary powers to determine a defendant's sentence. See *People v. Stacey*, 193 Ill. 2d 203, 209 (2000); *People v. Fern*, 189 Ill. 2d 48, 53 (1999). Its decision merits great deference because the trial judge is in the best position to make a reasoned judgment, weighing factors such as his direct observations of the defendant and his character. See *Fern*, 189 Ill. 2d at 53; see also *People v. Kelley*, 2013 IL App (4th) 110874, ¶ 46, citing *People v. Price*, 2011 IL App (4th)

100311, ¶ 36 (trial court's sentence must be based on particular circumstances of each case, including the defendant's credibility, age, demeanor, moral character, mentality, social environment and habits). A reviewing court must not substitute its judgment with respect to sentencing for that of the trial court merely because it would have weighed factors differently or because it desires to invoke clemency. See *Fern*, 189 Ill. 2d at 53 (reviewing court "must proceed with great caution" in deciding whether to modify sentence); *People v. Hayes*, 159 Ill. App. 3d 1048, 1052 (1987); accord *People v. Coleman*, 166 Ill. 2d 247, 258 (1995) (trial court's decision with respect to sentencing "is entitled to great deference"). Therefore, a sentence imposed by the trial court will not be altered absent an abuse of discretion. See *Stacey*, 193 Ill. 2d at 209-10; accord *Kelley*, 2013 IL App (4th) 110874, ¶ 46, citing *Price*, 2011 IL App (4th) 100311, ¶ 36.

¶ 13 In determining an appropriate sentence for a defendant, the sentencing court must weigh both aggravating and mitigating factors. See 730 ILCS 5/5-5-3.1, 3.2 (West 2008). When such factors have been presented to the court, it is presumed that they have been considered, absent some contrary indication. See *People v. Sutherland*, 317 Ill. App. 3d 1117, 1131 (2000); see also *People v. Cord*, 239 Ill. App. 3d 960, 969 (1993) (when mitigating factors have been presented, it is presumed court considered them in fashioning sentence and burden rests with the defendant to prove that court failed to do so). Statutorily, mitigating factors include that the defendant's criminal conduct did not cause or threaten harm to another, that he did not contemplate doing so, that said conduct was facilitated by another, and his character and attitude toward recidivism. See 730 ILCS 5/5-5-3.1(a)(1), (2), (5), (9) (West 2016). Aggravating factors include the

defendant's history of delinquency and criminal activity, and the seriousness of the offense is the most important of all factors a court should consider in imposing a sentence. See 730 ILCS 5/5-5-3.2(a)(3) (West 2016); *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 52, citing *Coleman*, 166 Ill. 2d at 261.

¶ 14 The sentencing court is not required to recite or assign a value to each factor in mitigation or aggravation that forms part of the record. See *People v. Daniel*, 2014 IL App (1st) 121171, ¶ 14; *People v. Hindson*, 301 Ill. App. 3d 466, 476 (1998). And, "[t]he weight that the trial judge accords each factor in aggravation and mitigation, and the resulting balance that is struck among them, depends on the circumstances of the case." *Sutherland*, 317 Ill. App. 3d at 1131. For example, while it is true that a sentencing court is to keep in mind the "objective of restoring the offender to useful citizenship" (Ill. Const. 1097, art. 1, § 11), it is not required to give that more weight than the seriousness of the crime, protection of the public, punishment and deterrence. See *People v. Harris*, 294 Ill. App. 3d 561, 569 (1998). Nor is it required to do this with the defendant's rehabilitative potential (see *People v. Wilburn*, 263 Ill. App. 3d 170, 185 (1994)), the nonviolent nature of his prior offenses (see *People v. Hill*, 408 Ill. App. 3d 23, 29-30 (2011)), or the fact that he received sentences for prior convictions that was comparatively less (see *Kelley*, 2013 IL App (4th) 110874, ¶¶ 45-57). Ultimately, a sentence within the prescribed statutory range is presumed to be appropriate and will not be deemed excessive unless the defendant affirmatively shows that his sentence varies greatly from the purpose and spirit of the law or is manifestly disproportionate to the nature of the offense. See *Fern*, 189 Ill. 2d at 54; accord *Stacey*, 193 Ill. 2d at 210; see also *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8 (it is

strongly presumed court based sentencing determination on proper legal reasoning, and this presumption is only overcome by the defendant's affirmative showing of the opposite).

¶ 15 We note, at the outset, that defendant concedes his sentence is within the prescribed statutory range. That is, he was convicted of possession of a stolen motor vehicle, a Class 2 felony, but he was Class X eligible because of his background, which included two prior convictions for the same crime. See 730 ILCS 5/5-4.5-95(b) (West 2016) (Class 2 felony conviction elevated to Class X status due to background). He was sentenced to 9½ years in prison, well within the Class X range of 6 to 30 years. Compare 720 ILCS 5/19-1(b) (West 2016) (possession of stolen motor vehicle is Class 2 felony punishable by term of 3 to 7 years' imprisonment), to 730 ILCS 5/5-4.5-25 (West 2016) (Class X sentence requires imprisonment of between 6 and 30 years). Thus, defendant's sentence is presumed appropriate, and the burden here falls to him to affirmatively show that it varies greatly from the purpose and spirit of the law or is manifestly disproportionate to the nature of the offense. See *Fern*, 189 Ill. 2d at 54; accord *Stacey*, 193 Ill. 2d at 210. This, he fails to do.

¶ 16 Defendant's argument that his sentence was excessive is two-fold: he claims that the trial court ignored the facts of the case, namely, that he was not the actual person who stole the car at issue and, thus, he did not physically harm anyone in particular; and that his background does not merit the sentence reached, since he has completed rehabilitation for his addiction and all his past crimes were nonviolent. We in no way minimize defendant's long struggle with drug addiction and his continued efforts to become, and remain, sober, and we acknowledge that his criminal background has yet to involve more than property crimes. However, based upon our thorough

review of the record, we find that the trial court weighed all pertinent factors appropriately.

¶ 17 As the record reflects, at the close of his trial, the court declared, and defendant himself conceded, that he was Class X eligible due to his background. Incidentally, this formed, for the trial court, the basis of the aggravating factors against defendant that he had a multitude of prior convictions and that he had been in prison at least 10 separate times. Yet, the court next took time to hear several factors presented in mitigation, including that defendant, though he had a long history of drug addiction, has been sober since he has been in custody for the instant crime, as well as his desire to maintain that sobriety, his willingness to work (including a potential construction job waiting for him), and familiar support. It also allowed defendant himself to address the court on his own behalf, at which time he expressed a desire to be a positive and sober influence in the lives of his grandchildren and a desire to share his experiences of addiction and crime in the hope of educating young people in his community. Based upon this record, then, it is clear that the trial court undeniably took into consideration all pertinent aggravating and mitigating factors.

¶ 18 This is further evidenced by the trial court's colloquy. At its outset, the court made clear that defendant was certainly "not anything close to the worst person" who has appeared before it. The court also acknowledged that defendant was "not a violent person." And, it explicitly stated that, even though it had the power, it would in no way consider ever sentencing him to the maximum of 30 years in prison. However, at the same time, and as was well within its discretion to do, the trial court reflected on the contrary side of the situation. As much credence as it could give to the considerations that supported mitigating defendant's sentence, it could not ignore

those in opposition that, it eventually concluded, weighed more heavily. The biggest elephant in the room was, naturally, defendant's lengthy criminal history. Defendant had already twice been convicted of possession of a stolen motor vehicle, the very crime for which was convicted herein. This was in addition to a multitude, to put it mildly, of other crimes, such as some four convictions for retail theft, four more for theft, two for obstruction of justice, two for residential burglary, larceny, attempted possession of a stolen motor vehicle and criminal trespass to a vehicle. The list is not exhaustive. While it can be said that these crimes were nonviolent in that they were mainly property crimes, the writing was on the wall for the court; as it stated, defendant is "a constant thief and burglar and stealer of other people's property all the time." Clearly, defendant's "criminal history speaks for itself" and demonstrates chance after chance for reform rejected over the years. The court even reconsidered its sentencing decision, ultimately finding that, "[a]s to the facts of the case, [it] was moderate to the extent [it] could be with the sentence."

¶ 19 In light of the record, we do not find that the trial court abused its discretion in sentencing defendant as it did. Defendant was found guilty of the crime charged, and he has not appealed that finding. That crime saw him take possession of a motor vehicle stolen by another in exchange for drugs, someone who told him not to get caught in the vehicle because it was stolen. He continued to drive that stolen vehicle until he was pulled over by police, at which time he exited the car, ran and hid. He was found with the car's keys in his hand, and he explained as much to police. Again, defendant has never challenged his conviction.

¶ 20 In addition, his criminal history cannot be ignored. Excluding the instant crime, this is comprised of a multitude of felony convictions spanning decades. Defendant clearly has a problem with respecting other people's property. He simply cannot resist stealing it and he has thus far not yet attempted to stop doing so.

¶ 21 Based on the record in its entirety, we conclude that defendant has failed to show that his sentence violates the purpose and spirit of the law or is manifestly disproportionate to the nature of the offense. Rather, at the time of sentencing (and even now on appeal), he clearly knew and understood that anywhere within the 6-to-30-year Class X sentencing range was applicable to him; this was the third time he committed the very same crime. While it is true that his poor upbringing and drug addiction may have provided a context for his crime and that he has shown rehabilitative potential, and perhaps accomplishment, in remaining sober while in custody for this latest conviction, and has yet to harm someone physically, these are only a few of several factors at play here, which the trial court thoroughly discussed and repeatedly considered as a whole. Based on all the particular circumstances of this cause, the court determined it would not give defendant the maximum sentence, but it was "going to give him more than the minimum." And, in fact, that is exactly what it did, sentencing him to only 3 ½ years above that minimum and over 20 years below the maximum. Accordingly, we hold that defendant's sentence was not excessive.

¶ 22 CONCLUSION

¶ 23 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 24 Affirmed.