2018 IL App (1st) 170135-U
No. 1-17-0135
Order filed December 31, 2018

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	No. 16 CR 9747
v.	)	
	)	Honorable Timothy J. Joyce,
ERIC BRADFORD,	)	Judge presiding.
	)	
Defendant-Appellant.	)	

JUSTICE GRIFFIN delivered the judgment of the court.
Justices Pierce and Walker concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's seven-year sentence for delivery of a controlled substance as a Class X offender is not excessive; it is presumed the clerk of the circuit court will apply monetary credit against eligible fines; claim that additional fees constitute fines entitled to credit is moot where defendant has exhausted his presentence credit.

¶ 2 Following a bench trial, defendant Eric Bradford was convicted of delivery of a controlled substance for selling heroin to an undercover police officer. The trial court sentenced defendant to seven years' imprisonment as a Class X offender. The court also assessed defendant fines, fees and court costs totaling $1814. On appeal, defendant does not challenge the guilty finding, but contends that his sentence is excessive in light of the nature of the crime and his nonviolent background. Defendant also contends that his fines and fees order should be amended

by applying monetary credit against several assessments. We amend the fines and fees order to correct the total of defendant's assessments prior to applying any credit, and affirm his conviction and sentence in all other respects.

¶ 3 At trial, Chicago police officer Kathy Schmidt testified that about 9:30 a.m. on May 28, 2016, she was working as an undercover narcotics "buy" officer. She drove a covert vehicle to the area of Adams Street and Springfield Avenue where she observed defendant wearing a black shirt, black pants, and red shoes. Schmidt identified defendant in court. Schmidt pulled over to the curb and asked defendant if he had any "soft," a street term for heroin. Defendant approached Schmidt's driver's window and asked her how many she wanted. Schmidt asked for two. Defendant handed Schmidt two bags of heroin in exchange for a $20 bill in prerecorded police funds. Defendant told Schmidt that his name was "Snake," gave her his phone number, and told her to call him if she needed more heroin. Schmidt drove away. She confirmed over her police radio that she had made a positive buy and gave a description of defendant's clothes. Minutes later, defendant was detained by enforcement officers. Schmidt drove past the location where defendant was detained and identified him as the man who sold her the heroin.

¶ 4 Chicago police officer Michael Vasquez testified that he was working as the surveillance officer when he observed the narcotics transaction in this case. From a distance of 200 feet, Vasquez observed Schmidt pull over to the curb and defendant approached the driver's door of her vehicle. Vasquez identified defendant in court. Vasquez observed Schmidt and defendant engage in a brief conversation. Defendant handed Schmidt a small item through her window in exchange for money. Schmidt drove away and defendant walked out of Vasquez's view.

¶ 5 Chicago police officer Jorge Mendez testified that he was working as an enforcement officer at the time of the narcotics transaction in this case. Mendez heard over his police radio that a positive drug buy had occurred and was given a clothing description of the offender. Mendez drove to Jackson Boulevard and saw defendant, who matched the description. Mendez identified defendant in court. Mendez detained defendant, and after Schmidt identified him, arrested him. During a custodial search, Mendez recovered from defendant's pants pocket the $20 bill of prerecorded funds that Schmidt used to make the narcotics purchase.

¶ 6 The State presented a written stipulation signed by both parties of the laboratory analysis of the heroin Schmidt received from defendant. The stipulation is not contained in the record.

¶ 7 The trial court found that the testimony from the three police officers was credible and corroborated each other. It noted that one of the two bags Schmidt received from defendant was tested and found to contain 0.3 gram of heroin. Accordingly, the trial court found defendant guilty of delivery of less than one gram of heroin.

¶ 8 At sentencing, in aggravation, the State pointed out that defendant had 10 prior felony convictions consisting of possession of a stolen motor vehicle, two burglary convictions, two convictions for possession of a controlled substance with intent to deliver, and five convictions for possession of a controlled substance. The State confirmed that defendant was subject to mandatory sentencing as a Class X offender. The State also noted that defendant had another case pending under number 15 CR 18503 in which he was charged with delivery of a controlled substance and possession of a controlled substance with intent to deliver. In that case, during a narcotics investigation, police stopped defendant's vehicle and recovered from him four items that tested positive for 1.88 grams of heroin. The State requested that the court consider

defendant's possession of those four items as aggravation in this case, and stated that it would nol-pros that case following sentencing in this case.

¶ 9 In mitigation, defense counsel pointed out that the presentence investigation report (PSI) indicated that both of defendant's parents had drug addictions, and that defendant was introduced to narcotics when he was 15 years old by his mother's boyfriend. Counsel argued that defendant had been abusing narcotics ever since, which fueled much of his criminal behavior. Counsel noted that defendant lives with his mother, had been in a relationship with his girlfriend for seven years, and has three children. Defendant worked for a temporary agency for several years, and is an avid chess player. Counsel acknowledged that defendant was subject to mandatory Class X sentencing, but pointed out that there was no violence in this case, and requested that he be sentenced to the minimum term.

¶ 10 In allocution, defendant apologized for his behavior and requested help. He stated that he was 42 years old.

¶ 11 The trial court stated that it had listened carefully to the arguments of counsel and defendant's statement. It further stated that it had reviewed the PSI, which showed "a substantial number of convictions," but no felonies for the last 10 years. The court found that defendant's criminal history was consistent with having a life-long drug problem of which he still did not have control. The court expressly stated that it considered all of the factors in aggravation and mitigation, and sentenced defendant to seven years' imprisonment as a Class X offender.

¶ 12 After explaining that it was prohibited from giving defendant an additional half day of credit for his involvement in a work program, the court stated "I think the sentence I'm giving you is such that I'd rather see you out sooner rather than later." The court recommended that

defendant receive drug treatment in prison. The court awarded defendant credit for 206 days served in presentence custody, and assessed him $1814 in fines, fees and court costs. The State nol-prossed case number 15 CR 18503.

¶ 13 On appeal, defendant contends that his seven-year sentence is excessive in light of the relatively minor nature of the crime and his nonviolent background. Defendant points out that he did not resist arrest, and argues that the only harm he caused in this case was to himself. He argues that any sentence above the minimum term is manifestly disproportionate to the nature of his conduct. Defendant asserts that the court did not give adequate consideration to the information in his PSI regarding his drug abuse and addiction, which showed he was snorting four to five bags of heroin daily at the time of his arrest. Defendant claims the court also ignored his family circumstances and support as critical mitigating evidence indicating his potential for rehabilitation. Finally, defendant argues that lengthy sentences cause social harm by creating negative and long-lasting consequences on defendants, their families, and their communities. Defendant asks that this court reduce his sentence to the minimum term of six years.

¶ 14 The State responds that defendant's sentence is proper where the trial court expressly stated that it considered all of the relevant factors in aggravation and mitigation, and imposed a sentence within the statutory range. The State notes that the court was required to sentence defendant as a Class X offender based on his lengthy criminal history, which includes 10 prior felony convictions, and imposed a sentence that was merely one year above the minimum term.

¶ 15 As a Class X offender, defendant is subject to a statutory sentencing range of 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-95(b) (West 2016); 730 ILCS 5/5-4.5-25(a) (West 2016). The trial court has broad discretion in imposing an appropriate sentence, and where, as here, that

sentence falls within the statutory range it will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). An abuse of discretion exists where a sentence is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010).

¶ 16 The Illinois Constitution mandates that criminal penalties be determined according to the seriousness of the offense, and with the objective of restoring the offender to useful citizenship. Ill. Const.1970, art. I, § 11; *People v. Ligon*, 2016 IL 118023, ¶ 10. In light of these objectives, "[t]he trial court is charged with fashioning a sentence based upon the particular circumstances of the individual case, including the nature of the offense and the character of the defendant." *People v. Fern*, 189 Ill. 2d 48, 55 (1999). The court's sentencing decision is entitled to great deference because, having observed the defendant and the proceedings, it had the opportunity to weigh defendant's demeanor, credibility, general moral character, mentality, habits, social environment and age. *Alexander*, 239 Ill. 2d at 213. "The sentencing judge is to consider 'all matters reflecting upon the defendant's personality, propensities, purposes, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding.' " *Fern*, 189 Ill. 2d at 55, quoting *People v Barrow*, 133 Ill. 2d 226, 281 (1989).

¶ 17 Here, we find no abuse of discretion by the trial court in sentencing defendant to a term of seven years' imprisonment, which falls within the statutory guidelines and is just one year above the minimum term. The record shows that when imposing the sentence, the trial court expressly stated that it considered all of the factors in aggravation and mitigation. The court further stated that it had reviewed all of the information contained in the PSI, and considered the arguments of counsel and defendant's statement in allocution. The record shows that defendant

had 10 prior felony convictions. The court noted that defendant had "a substantial number of convictions," but acknowledged that he had no felonies in the last 10 years. The court found that defendant's criminal history was consistent with having a life-long drug problem of which he still did not have control. The court also considered that defendant was found in possession of 1.88 grams of heroin in an unrelated case. The State requested that the court consider that fact as aggravation in this case, and stated that it would then nol-pros the unrelated case following sentencing in this case. Based on its consideration of all of these factors, the trial court determined that the appropriate sentence in this case was seven years' imprisonment.

¶ 18 Defendant's claim that the trial court did not give adequate consideration to his drug abuse and addiction is contradicted by the record. During his argument in mitigation, defense counsel specifically discussed defendant's lengthy history of drug abuse and its impact on defendant's life. Counsel pointed out that both of defendant's parents suffered from drug addiction, and that defendant was introduced to narcotics when he was just 15 years old by his mother's boyfriend. Counsel argued that defendant had been abusing narcotics ever since, which fueled much of his criminal behavior. The trial court agreed that defendant's criminal history was consistent with having a life-long drug problem of which he had never obtained control, and recommended that defendant receive drug treatment in prison. The court expressly stated "I think the sentence I'm giving you is such that I'd rather see you out sooner rather than later." The record thereby shows that the trial court gave a great deal of consideration to defendant's history of drug addiction as mitigating evidence when it imposed the seven-year prison term.

¶ 19 Defendant's claim that the trial court ignored his family circumstances and support as mitigating evidence of his potential for rehabilitation is also unpersuasive. Defense counsel noted

in mitigation that defendant was living with his mother, that he had been in a relationship with his girlfriend for seven years, and that he had three children. Counsel also noted that defendant had worked for a temporary agency for several years. In addition, counsel informed the court that defendant was an avid chess player who actively engaged in matches in jail, and enjoyed pickup games in Lincoln Park when not in custody. The record thus shows that the trial court considered defendant's evidence of his rehabilitative potential when determining the proper sentence.

¶ 20 This court will not reweigh the sentencing factors or substitute our judgment for that of the trial court. *Alexander*, 239 Ill. 2d at 213. Based on the record before us, we cannot say that the sentence imposed by the court is excessive; manifestly disproportionate to the nature of the offense, or that it departs significantly from the intent and purpose of the law. *Fern*, 189 Ill. 2d at 56.

¶ 21 Defendant next contends that his fines and fees order should be amended by applying monetary credit for the days he spent in presentencing custody against several assessments. Defendant contends that he is entitled to apply a credit of $50 against four fines that are designated as subject to offset by the presentence monetary credit. He further argues that four additional assessments that are labeled as fees are actually fines which are also eligible to be offset by his monetary credit.

¶ 22 Defendant acknowledges that he did not preserve these issues for appeal because he did not challenge the assessments in the trial court. See *People v. Harvey*, 2018 IL 122325, ¶ 15. Nevertheless, he urges this court to review his assessments under either the plain error doctrine, Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), or as a claim of ineffective assistance of counsel. The State does not acknowledge the forfeiture, and instead, addresses the merits of

defendant's claims. The rules of forfeiture and waiver also apply to the State, and where the State fails to argue that defendant forfeited the issue, it waives the forfeiture. *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46. We therefore address the merits of defendant's claims. The propriety of the imposition of fines and fees is a question of law which we review *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 23 As a threshold matter, we note that the fines and fees order incorrectly indicates, in handwriting, that the total of defendant's assessments, prior to applying any credit, is $1819. Our calculations indicate that the correct amount is $1814. We direct the clerk of the circuit court to amend the fines and fees order to reflect that the total of defendant's assessments, before any credit is applied, is $1814.

¶ 24 Pursuant to section 110-14 of the Code of Criminal Procedure (Code) (725 ILCS 5/110-14 (West 2016)), a defendant is entitled to have a credit applied against his fines of $5 for each day he spent in *presentence* custody. Here, defendant spent 206 days in presentence custody, and is therefore entitled to a maximum credit of $1030.

¶ 25 The credit under section 110-14 can only be applied to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). To determine whether an assessment is a fine or a fee, we consider the nature of the assessment rather than its statutory label. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Our supreme court has defined a "fine" as "punitive in nature" and "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." (Internal quotation marks omitted.) *Id.* (quoting *Jones*, 223 Ill. 2d at 581). A "fee," on the other hand, is "a charge that 'seeks to recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant." *Id.* (quoting *Jones*, 223 Ill. 2d at 582).

¶ 26 Defendant contends, and the State agrees, that he is entitled to apply $50 of credit against four fines that are expressly designated as required to be offset by the monetary credit pursuant to section 110-14 of the Code. These fines include: the $10 mental health court fine (55 ILCS 5/5-1101(d-5) (West 2016)), the $5 youth diversion/peer court fine (55 ILCS 5/5-1101(e) (West 2016)), the $5 drug court fine (55 ILCS 5/5-1101(f) (West 2016)), and the $30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2016)).

¶ 27 We concur that defendant is entitled to offset his eligible fines with his presentence credit. However, it appears defendant has overlooked three additional fines he was assessed that are also entitled to offset. Those fines are: the $25 state police services fund fine (730 ILCS 5/5-9-1.1(e) (West 2016)), the $100 Trauma Center Fund fine (730 ILCS 5/5-9-1.1(b) (West 2016)), and the $1000 controlled substance fine (720 ILCS 570/411.2(a) (West 2016)).

¶ 28 The total of the seven fines entitled to offset is $1175. Defendant's entire credit of $1030 should be applied against these fines.

¶ 29 This court, however, need not reduce the amount due on defendant's fines and fees order because the clerk of the circuit court has been charged with applying the credit. The fines and fees order indicates the total amount due prior to the presentence credit, the number of days of credit, the fines and fees to which the credit applies, and that the allowable credit will be calculated. Given this information, application of the credit and calculation of the final total is a simple ministerial act. Absent some contrary evidence, we will presume that the office of the clerk of the circuit court has fulfilled its duty to follow the order of the circuit court, and we will not interfere in its operations.

¶ 30 Defendant next contends that four additional assessments labeled as fees are actually fines that should also be subject to offset by his presentence monetary credit. Specifically, defendant challenges the $190 felony complaint filed fee (705 ILCS 105/27.2a(w)(1)(A) (West 2016)), the $50 court system fee (55 ILCS 5/5-1101(c) (West 2016)), the $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2016)), and the $2 Public Defender records automation fee (55 ILCS 5/3-4012 (West 2016)).[1]

¶ 31 In response, the State agrees that defendant is entitled to apply presentence credit to the $50 court system fee. The State argues that the remaining three fees are not fines, and thus, not entitled to offset because they compensate the State for costs incurred as a result of prosecuting defendant.

¶ 32 We find that defendant's challenges to these four assessments are moot because there is no effectual relief that can be granted by this court. *Harvey*, 2018 IL 122325, ¶¶ 17-19. Defendant has already exhausted his entire $1030 in presentence monetary credit by applying it to his eligible fines. Accordingly, we need not address defendant's claims that he is entitled to apply credit to these additional fees because it is impossible for us to grant him any such relief. *In re Hernandez*, 239 Ill. 2d 195, 201 (2010).

¶ 33 For these reasons, we direct the clerk of the circuit court to amend the fines and fees order to reflect that the total of defendant's assessments, before any credit is applied, is $1814. Defendant's presentence credit of $1030 should be applied against his eligible fines. We affirm defendant's conviction and sentence in all other respects.

[1] Whether the felony complaint filed, automation, document storage, Public Defender records automation, and State's Attorney records automation assessments are fees or fines is currently pending before the Illinois Supreme Court in *People v. Clark*, 2017 IL App (1st) 150740-U, *pet. for leave to appeal granted*, No. 122495 (Sept. 27, 2017).

¶ 34 Affirmed as modified; fines and fees order amended.