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2018 IL App (3d) 160421-U

Order filed September 28, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Henry County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-16-0421
DENZEL DAVENPORT,)	Circuit No. 15-CF-33
Defendant-Appellant.)	Honorable Jeffrey W. O'Connor, Judge, Presiding.

JUSTICE O'Brien delivered the judgment of the court.
Presiding Justice Carter and Justice Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) Circuit court did not abuse its discretion in sentencing defendant; and (2) defendant is entitled to 22 additional days of presentence credit.
- ¶ 2 Defendant, Denzel Davenport, was convicted of attempted first degree murder, home invasion, armed robbery, and residential burglary. On appeal, he argues that the circuit court abused its discretion in sentencing him. He also argues that he is entitled to 22 additional days of presentence custody credit toward those sentences. We affirm defendant's sentences and remand the matter so the mittimus may be amended to reflect 22 additional days of sentencing credit.

¶ 3

FACTS

¶ 4

Following a bench trial, defendant was found guilty of, *inter alia*, attempted first degree murder (720 ILCS 5/9-1(a)(1), 8-4(a) (West 2014)), home invasion (*id.* § 19-6(a)(2)), armed robbery (*id.* § 18-2(a)(1)), and residential burglary (*id.* § 19-3(a)). The circuit court announced defendant’s sentences as follows: “[T]he sentence on Count I, attempted murder, will be ten years, with three years of mandatory supervised release. The second count [home invasion] will be five consecutive, and the third count [armed robbery], five consecutive.” The court also sentenced defendant to a four-year term of imprisonment for residential burglary, to be served concurrently with the other sentences.

¶ 5

Immediately following the announcement of those sentences, the State interjected, informing the court that the offenses of home invasion and armed robbery are Class X felonies, for which the minimum term of imprisonment is six years. The court responded: “It will be six.” The ensuing written sentencing order imposed six-year sentences for both home invasion and armed robbery. The order also indicated that defendant would receive credit for the 577 days he served in custody from December 15, 2014, through July 13, 2016. The record shows that defendant’s continuous custody began on November 23, 2014.

¶ 6

ANALYSIS

¶ 7

On appeal, defendant argues that the circuit court abused its discretion when it increased his sentences for home invasion and armed robbery. He also argues that he is entitled to an additional 22 days of credit against his sentences.

¶ 8

I. Arbitrary Sentencing

¶ 9

Defendant contends that the circuit court acted arbitrarily—and thus abused its discretion—when it increased defendant’s sentences for home invasion and armed robbery from

five years' imprisonment to six years' imprisonment. He maintains that decision was arbitrary because the court had not heard any new evidence or aggravating factors that would properly form a basis for the increase in sentence. While defendant concedes that the error in question was not properly preserved below, he contends that counsel's failure to object to the court's adjustment of his sentence constituted ineffective assistance. See, e.g., *People v. Wood*, 2014 IL App (1st) 121408, ¶¶ 53-55 (claims of ineffective of assistance of counsel need not be preserved).

¶ 10 The offenses of attempted first degree murder, home invasion, and armed robbery are each Class X felonies, for which the prescribed sentencing range is between 6 and 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2014). Thus, the circuit court was actually obligated to increase those sentences to at least the minimum of six years' imprisonment. Had it failed to do so, the court would have erred by imposing illegally low sentences.

¶ 11 Nevertheless, defendant argues that the court acted arbitrarily by increasing his *aggregate* sentence, when such a result was not strictly necessary. He insists that while the court was obligated to increase his home invasion and armed robbery sentences to conform with statute, it should have, in turn, *decreased* the attempted first degree murder sentence by two years so the aggregate sentence would remain 20 years' imprisonment.

¶ 12 Defendant's argument relies wholly on the unsupported presumption that the circuit court fashioned its sentence based upon the aggregate total, rather than basing each sentence on each individual offense. The court, however, never referenced the sentences in aggregate, instead explicitly imposing individual sentences for each of the offenses. Indeed, this method of crafting the sentences reflects what our supreme court has described as "established case law holding that each consecutive sentence constitutes a distinct sentence for one particular offense and that

consecutive sentences may not be lumped together as one.” *People v. Carney*, 196 Ill. 2d 518, 531 (2001); see also *People v. Nieto*, 2016 IL App (1st) 121604, ¶ 42 (“Illinois typically treats consecutive sentences as individual sentences and does not aggregate them for purposes of evaluating whether a sentence is excessive.”); *People v. Harris*, 366 Ill. App. 3d 1161, 1165 (2006) (“Although consecutive, defendant’s two sentences must be viewed individually in determining whether a sentence has been increased [upon resentencing].”)

¶ 13 The record here demonstrates that the circuit court adhered to the notion that consecutive sentences must be considered individually. It is apparent that the court concluded that the appropriate sentence for defendant’s commission of attempted first degree murder was 10 years’ imprisonment, and that minimum sentences for home invasion and armed robbery were similarly appropriate. Thus, when it adjusted the sentences for the latter offenses to fall in line with statutory minimums, the court was under no obligation, legally or logically, to alter its judgment with respect to the attempted first degree murder sentence. Accordingly, the circuit court did not abuse its discretion in sentencing defendant. Because there was no error to preserve, it follows that counsel did not render ineffective assistance by failing to object.

¶ 14 II. Custody Credit

¶ 15 Defendant next argues that he is entitled to 22 days of additional sentencing credit. He points out that the written sentencing order incorrectly listed his initial custody date as December 15, 2014, while his custody actually began on November 23, 2014, 22 days earlier. The State concedes that defendant’s custody began on that date, and agrees that he is entitled to 22 additional days of credit.

¶ 16 The Uniform Code of Corrections provides that “the offender shall be given credit on the determinate sentence *** for the number of days spent in custody as a result of the offense for

which the sentence was imposed.” 730 ILCS 5/5-4.5-100(b) (West 2014). Defendant was in presentence custody from November 23, 2014, through July 13, 2016, a period of 599 days. Because the sentencing order only credited defendant with 577 days, we accept the State’s concession and remand the matter for the entry of a new order reflecting the proper amount of sentencing credit.

¶ 17

CONCLUSION

¶ 18

The judgment of the circuit court of Henry County is affirmed and remanded with directions.

¶ 19

Affirmed and remanded with directions.