NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2018 IL App (4th) 170066-U

NO. 4-17-0066

FILED
March 12, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court
v.	)	of Logan County
CHRISTOPHER L. FULK,	)	No. 14CF29
Defendant-Appellant.	)	
	)	Honorable
	)	William G. Workman,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not consider a factor inherent in the offense as an aggravating factor when it imposed defendant's sentence.

¶ 2 In October 2014, defendant, Christopher L. Fulk, was sentenced to 20 years' imprisonment after pleading guilty to aggravated unlawful participation in methamphetamine production. Defendant appeals his sentence, arguing the trial court improperly considered a factor inherent in the offense—that the offense threatened serious harm—as a factor in aggravation. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2014, the State charged defendant with unlawful methamphetamine conspiracy (720 ILCS 646/65(a) (West 2014)), aggravated unlawful participation in manufacture

of methamphetamine (*id.* § 15(a)(2)(A)), unlawful participation in methamphetamine production (*id.* § 15(a)(2)(A)), unlawful possession of methamphetamine precursors (*id.* § 20(a)(1)), and unlawful possession of methamphetamine manufacturing materials (*id.* § 30(a)(1)). In August 2014, defendant pleaded guilty to aggravated unlawful participation in manufacture of methamphetamine (*id.* § 15(b)(1)(G)), a Class X felony (*id.* § 15(b)(2)(A)). The remaining charges were dismissed. The parties made no agreement as to sentence.

¶ 5 In October 2014, the sentencing hearing was held. Matthew Comstock, a corporal for the Lincoln Police Department, testified he was assigned to the Illinois State Police Drug Task Force. In April 2014, Corporal Comstock participated in an investigation of methamphetamine production. Defendant and Robert Sanderson were the targets of the investigation. Agents learned Sanderson and defendant were in Decatur, Illinois, collecting items to manufacture methamphetamine in Logan County. Law enforcement in Decatur initiated a traffic stop of the vehicle that carried Sanderson, defendant, and Sanderson's stepdaughter. Officers found approximately $1100 on defendant. In the passenger side of the vehicle where defendant was sitting, officers found Sudafed products, lithium batteries, and lighter fluid. Sanderson's residence was also searched. There, officers found 3.5 grams of methamphetamine.

¶ 6 Corporal Comstock testified they learned from sources defendant was the main cook in charge of a crew. Sanderson told Corporal Comstock he and defendant used the "shake and bake" method and conducted 6 to 10 "cooks." Sanderson reported each "cook" resulted in four to seven grams. For the purpose of producing methamphetamine, Sanderson drove members of a buying group to purchase pseudoephedrine. This group contained approximately 20 people.

¶ 7 Mary Shaffer, chief jailer with the Logan County sheriff's office, identified tapes

of telephone conversations defendant had with his family. In these conversations, defendant bragged he had soldiers, would make the bond money quickly, and the charges would not stick because they used his partner's house and car.

¶ 8 Chris Olesuk, a correctional officer at the Logan County sheriff's office, testified in June 2014, defendant was an inmate at the jail. Defendant flooded his cell by stuffing the toilet with toilet paper. Defendant rubbed feces on the sheets and his belongs. Defendant reported being suicidal, at which point he was placed on suicide watch. This put defendant near Sanderson's cell. Officer Olesuk testified as they moved Sanderson, defendant screamed down the hall, calling Sanderson names like snitch and bitch and threatening "to get his ass when he gets in prison."

¶ 9 Stephanie Stopher, a correctional officer at the Logan County sheriff's office, testified one of her responsibilities as an officer was to screen the inmates' mail. In performing this duty, Officer Stopher found he had been sending threats to his family.

¶ 10 The trial court observed it reviewed the presentence report and defendant's criminal record. Defendant's criminal history, listed on three pages, began in 1992. In May 1993, defendant was sentenced to three years' imprisonment for two counts of burglary. Defendant also was charged with disorderly conduct in January 2012 and fined. The remaining offenses were traffic offenses, including speeding, no-insurance, no-seatbelt, and child-restraint violations.

¶ 11 At the close of evidence, the State recommended a sentence of 20 years' imprisonment. The State began by addressing the statutory aggravating factors. The State maintained, in part, a lengthy sentence was necessary because the production of methamphetamine threatened serious harm.

¶ 12 In response to the State's arguments, defense counsel argued the aggravating factors of threatening serious harm did not apply in this case as it was a factor inherent in the offense. Asking the trial court to sentence defendant like most individuals who face their first Class X sentence, defense counsel recommended a prison sentence of six years.

¶ 13 Before imposing sentence, the trial court stated the following:

> "The Court has considered the presentence investigation, the exhibits and testimony that [have] been received today in both aggravation and mitigation. The Court has looked through the factors in aggravation and factors in mitigation, and the Court does believe that the factors in aggravation greatly outweigh the factors in mitigation in this case. Drugs are a problem in this country and they've been a problem for a long time, and probably one of the drugs that has the most impact on society at this time is methamphetamine, and it's hard to believe that people will put that stuff into their system. It's hard to believe that people will operate and produce that type of material. The testimony we received today, it's dangerous. It's even dangerous after the materials are completed. Realtors have to advise potential buyers if it's ever been and knowledge of it has been in that residence, because it's such a dangerous drug not only putting it in your system but even just being around and having it in the vicinity.
>
> When I looked at your letter, Mr. Fulk, one of the things

that kind of stood out to me was that you teach your kids that drugs are bad and you want to keep them off of it. But here you are involved in producing that drug, and you're right, that is no type of example to be setting for them. But I also can't ignore the fact that you were involved in the production of this very dangerous drug--that you were involved in. When I read the letters and I hear the testimony, the threats that were made about what's going to happen when you get out, talking about the puffery and the bragging, it certainly came through. Even though you knew that those phone lines were being monitored and being recorded, it didn't stop you from bragging about it and how you were going to be able to do the time with no problem. And, as the State's Attorney pointed out, and it was one of the factors that I've got down that I looked at is and wrote down your quote once you get out, [']I'm going to do it again.['] There's no indication in your conduct here that whatever happens today is going to stop your conduct. So I guess the best thing to do is make sure it's going to be a while before you can do that.

As pointed out, your prior criminal record consists of one prior felony, a Class 2 felony, almost 20 years ago. It's amazing, when I look at the evidence of this case and I look at your criminal history, there's only one prior felony in there. You do have seven

prior misdemeanors. No prior felonies – or the one prior felony. You did go to [the Department of Corrections] and right away, looks like about 3 months later, they came back on a motion to change the sentence, and they did change it to probation. So basically I mean when people talk about second chances, you had a second chance 20 years ago.

And then I start looking at basically almost four pages or at least three-and-a-half pages of offenses, while they're not felonies and the majority of them aren't misdemeanors, they're traffic offenses that go all the way back from [1992] to last year, and while they're traffic, they're not serious offenses, but it just shows that there is just the pure number of them I think also speaks to your character, Mr. Fulk, in that you have just a disregard for the law of the State of Illinois. You can't seem to abide by the laws. You indicate in your bravado that you haven't and you will be involved in this again. I don't believe that the State's recommendation is out of line in this case, given the seriousness of this offense, given the seriousness of the problem that we have with drugs, given your attitude, and I am going to follow the State's recommendation and sentence you to 20 years in the Illinois Department of Corrections."

¶ 14 After sentencing, defendant filed two *pro se* motions: one to withdraw his guilty

plea and the other for the reduction of his sentence. Defendant argued, in part, his counsel was ineffective. The trial court appointed new counsel for defendant.

¶ 15 In June 2015, defendant filed amended motions to reconsider sentence and withdraw his guilty plea. In his motion to reconsider sentence, defendant asserted, in part, the trial court improperly considered his conduct threatened serious harm as that was a factor inherent in the offense. Defendant further asserted his sentence was disproportionate to the sentence Sanderson received.

¶ 16 At the conclusion of the hearing on the amended motions, the trial court held the following:

> "As for the motion to reconsider sentence, both sides have argued that motion very diligently. I recall this sentencing hearing, some of the items that were talked about, some of the letters that were produced, some of the recordings that were made, and the court, in its mind, recalls some of the talk about the threats. The court considered those threats that were voiced by the defendant.
>
> A couple of other points that the court remembers from both of those phone calls, the phone calls with the defendant's son, which the court also looked at where he's basically advising his son not to get involved in what he's been getting involved in—not to do the drugs. And the court just felt that it was good advice to his son. And I hope his son follows that advice, but the court finds that it was a little bit – I'm losing the word here that I was looking

for, but, I mean, he doesn’t want his children to go and take the drugs, but he’s willing to produce it and sell it to other people’s children.

There is also the idea that there [were] threats in there made to Mr. Sanderson. And I think he knew exactly what he was doing when he was calling him a snitch inside the jail, making it a little bit more difficult for him. And one of the reasons, I guess, he was calling him a snitch, and I guess this goes more to the situation with the disparity of sentence that’s been argued here today. The defendant did plead open and his sentence was within the range of penalties. Looking at his prior history, and while he had not very many felonies in his past, when you look at his prior record, we have got at least three pages of prior conduct, although albeit most of it is ordinance violations and traffic offenses, some misdemeanors involved in there, the felony that he had prior to this was back in [1993], but there is still a long history of criminal activity in there, albeit it’s not all felony, and I don’t think it has to be all felony for the court to consider a defendant’s prior criminal record.

And I think in looking at that also, another point that the court recalls from the sentencing hearing and one of the things that the court should consider is the defendant’s rehabilitative potential.

> And I recall in one of those phone calls that defendant made was, and I think it was also to his son, telling him not to do what he did, he voiced that he's an old individual, too old to change, and that when he got out, he was going to do the same thing again. He wasn't going to be leaving this type of lifestyle. That told the court that his rehabilitative potential was small."

¶ 17 The trial court then compared the culpability of defendant with Sanderson's culpability and found defendant "was the more culpable of the individuals." The court emphasized (1) defendant was the ringleader, (2) defendant offered to purchase Sanderson's stepdaughter an Easter basket if she purchased pseudoephedrine, and (3) Sanderson cooperated in the investigation.

¶ 18 The trial court concluded an appropriate sentence was imposed. Defendant appealed. Because the certificate filed pursuant to Rule 604(d) was insufficient, this court remanded the case. *People v Fulk*, No. 4-15-0795 (Sept. 2, 2016) (unpublished agreed order remanding with directions for a new Rule 604(d) certificate and proceedings thereon). In January 2017, defense counsel filed a new Rule 604(d) certificate and a hearing was held on defendant's motions. Counsel stood on their previous filings and arguments. The trial court denied the motions.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Defendant argues the trial court improperly considered a factor implicit in his offense—that his conduct in producing methamphetamine threatened serious societal harm—as a

factor to aggravate his sentence (see 730 ILCS 5/5-5-3.2(a)(1) (West 2014)). In support of his contention, defendant emphasizes the court's lengthy comments during sentencing that stressed the serious harm caused to society by methamphetamine. Defendant further argues the trial court, at the hearing on the motion to reconsider, did not explain its societal-harm comments. In contrast, the State argues the court's statements upon denying the motion to reconsider clarified the court committed no error. We note the parties do not dispute the threat of serious harm is a factor inherent in the offense to which defendant pleaded guilty.

¶ 22 In fashioning a sentence, a trial court must not consider a factor inherent in the offense as a factor to aggravate a sentence. *People v. Johnson*, 2017 IL App (4th) 160920, ¶ 46, 87 N.E.3d 1073; *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 22, 979 N.E.2d 1014. In deciding whether a trial court applied an improper factor in aggravation, we consider the record as a whole and do not focus on a few words or statements made by the trial court. *Id.* ¶ 23. Our consideration of the record includes court statements made at a hearing on a motion to reconsider, during which the court may clarify the sentencing factors it considered. See *People v. Malin*, 359 Ill. App. 3d 257, 264, 833 N.E. 440, 446 (2005) (observing a purpose of a motion to reconsider sentence is to allow the trial court to review the propriety of the sentence and correct any errors). Because the issue of whether a trial court considered an improper factor in sentencing is a question of law, we review the matter *de novo*. *People v. Winchester*, 2016 IL App (4th) 140781, ¶ 72, 66 N.E.3d 601.

¶ 23 We agree with the State and find the trial court did not improperly inflate defendant's sentence by considering a factor inherent in the offense as an aggravating factor. Defendant raised the issue in his motion to reconsider. At the hearing on that motion, the parties

argued the matter. The court then expressed the considerations underlying defendant's sentence and found the sentence appropriate. The court focused on defendant's conduct that demonstrated his lack of respect for the laws of this state, emphasizing defendant's intent to return to methamphetamine production upon his release. The court further noted defendant's lengthy criminal record. At no point in the pronouncement of its ruling did the trial court mention the threat of societal harm. This holding clarified the sentencing factors applied in defendant's sentencing, of which the threat of serious harm was not one.

¶ 24 III. CONCLUSION

¶ 25 We affirm the trial court's judgment.

¶ 26 Affirmed.