FIRST DIVISION
June 28, 2019

No. 1-16-1618



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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County |
| | ) | |
| v. | ) | No. 14 CR 21447 |
| | ) | |
| | ) | |
| JOSEPH McCOY | ) | Honorable |
| | ) | Thomas J. Hennelly, |
| Defendant-Appellant. | ) | Judge Presiding. |

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justice Griffin concurred in the judgment.
Justice Pierce concurred in part and dissented in part.

## ORDER

¶ 1 *Held*: Court affirms defendant's conviction because it finds that defendant was not improperly denied his right to present a defense. Court vacates defendant's sentence because the record supports defendant's claim that he was punished for exercising his right to reject the State's plea offer in favor of a jury trial.

¶ 2 Defendant Joseph McCoy was convicted of delivery of a controlled substance (720 ILCS 570/401(D)(I) (West 2014)) and sentenced to 19 years' imprisonment. On appeal, Mr. McCoy argues that (1) he was denied the right to present a defense when the trial court precluded him from introducing relevant, competent evidence supporting his defense, and (2) the trial court improperly penalized him with a lengthy sentence for rejecting a plea offer and exercising his

right to go to trial. Mr. McCoy also argues that at sentencing the trial court relied on matters outside of the record and considered factors inherent in the offense. For the following reasons, we affirm the finding of guilt, but vacate the sentence imposed, and remand for resentencing.

¶ 3 I. BACKGROUND

¶ 4 The trial court in this case granted the State's motion *in limine* to bar the introduction of two Independent Police Review Authority (IPRA) complaints about one of the arresting officers. The motion also sought to bar Mr. McCoy from testifying about an alleged conversation he had with Officer Davila two days prior to his arrest in which, according to defense counsel, "Officer Davila wanted information from him about crime in the neighborhood," and Mr. McCoy "could not provide the information."

¶ 5 Following an *in camera* review, the trial court found that the IPRA complaints were not relevant to any issue in the case. The court also ruled that the alleged conversation between Mr. McCoy and Officer Davila was not admissible because the existence of such a conversation did not "imply that the officers will *sua sponte* make up or put a case on somebody who doesn't cooperate or assist in their investigation." The court also viewed the conversation as an inadmissible "prior consistent statement."

¶ 6 At trial, Officer Fraction of the Chicago Police Department testified that he was assigned to the narcotics team and was stationed on the 700 block of North Homan Avenue between 3 and 3:30 p.m. on November 20, 2014. While surveilling the area he saw a black man pacing back and forth on the sidewalk. The officer described the individual as about five feet, three inches to five feet, four inches tall, weighing 250 to 275 pounds, and wearing dark clothing and a white knit cap. Officer Fraction identified Mr. McCoy at trial as the individual he saw.

¶ 7 On two separate occasions, Officer Fraction saw Mr. McCoy engage in a short conversation and exchange small items with other people. Officer Fraction radioed his observations to Officer Morales, who was dressed in civilian clothing and acting as an undercover buyer. Officer Fraction directed Officer Morales to come to the location in the 700 block of North Homan Avenue.

¶ 8 Officer Morales approached the location on foot. He spotted a black man wearing dark clothing and a white knit hat, approached the individual, and asked him where he could get some "D," which the officer testified is slang for heroin. The man indicated for Officer Morales to follow him. They walked together for about 30 seconds. The man then retrieved two baggies containing a clear, white substance from his left pants pocket. Officer Morales gave him two pre-marked $10 bills and returned to his car.

¶ 9 From his car, Officer Morales radioed to his team that he had made a buy. Officers Mielcarz, Davila, and Reyes were sitting in an unmarked police car when they received the radio report from Officer Morales. The team spotted an individual on the 600 block of Homan Avenue who matched the description that Officer Morales provided.

¶ 10 Mr. McCoy was detained by Officers Davila and Reyes. Officer Morales drove his unmarked car slowly past the detaining officers and the individual they had in custody. Officer Morales testified that the individual they had detained was the same person who sold Officer Morales the suspected narcotics.

¶ 11 Mr. McCoy was taken to the police station, where Officer Mielcarz recovered from him, in addition to the two pre-marked $10 bills, $141 in unmarked cash. No narcotics were found on Mr. McCoy's person.

¶ 12 Illinois State Police forensic scientist Tina Joyce tested the suspected narcotics that Officer Morales had purchased from Mr. McCoy and determined that it was heroin.

¶ 13 Officer Davila did not testify at trial.

¶ 14 The jury found Mr. McCoy guilty of delivery of a controlled substance. Mr. McCoy was sentenced to 19 years' imprisonment. This appeal followed.

¶ 15 II. JURISDICTION

¶ 16 Mr. McCoy was sentenced on April 25, 2016, and timely filed his notice of appeal on May 19, 2016. This court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606 (eff. Feb. 6, 2013), governing appeals from final judgments of conviction in criminal cases.

¶ 17 III. ANALYSIS

¶ 18 A. Mr. McCoy Was Not Denied the Right to Present a Defense

¶ 19 Mr. McCoy argues that he was denied his constitutional right to present a defense in this case because the trial judge precluded him from introducing relevant, competent evidence about the IPRA complaints and the alleged conversation that he had with Officer Davila two days before to his arrest. Mr. McCoy's theory at trial was that "officers had framed [him] with the instant drug case in retaliation for [his] failure to cooperate with them two days earlier." He now argues that the excluded evidence would have lent support to that defense.

¶ 20 "Evidentiary rulings are within the sound discretion of the trial court and will not be reversed unless the trial court has abused that discretion." *People v. Reid*, 179 Ill. 2d 297, 313 (1997); *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person

would take the view adopted by the court. *Caffey*, 205 Ill. 2d at 89; *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). This discretion includes whether to admit evidence that is collateral to a material issue in a case, in that it affects only the credibility of a witness. See *People v. Renslow*, 98 Ill. App. 3d 288, 293-94 (1981); *People v. Stack*, 311 Ill. App. 3d 162, 178-79 (1999).

¶ 21 With respect to Mr. McCoy's testimony about the conversation he had with Officer Davila, the court stated:

> "Simply based on what they told me, simply having a conversation making an inquiry where drug sales or where drugs [are] available in and of itself does not imply that the officers will *sua sponte* make up or put a case on somebody who doesn't cooperate or assist in their investigation. Frankly, it's a stretch. It's a prior consistent statement, and for those reasons, the State's request to bar that is granted."

¶ 22 Although we agree with Mr. McCoy that the trial court incorrectly viewed this proposed testimony as an inadmissible prior consistent statement, we may affirm the judgment of the trial court on any basis found in the record. *People v. Anderson*, 401 Ill. App. 3d 134, 138 (2010). We find that testimony regarding Mr. McCoy's prior conversation with Officer Davila was properly excluded on relevance grounds. Ill. R. Evid. 401 (eff. Jan. 1, 2011).

¶ 23 To the extent that Mr. McCoy argues this evidence was probative of Officer Davila's credibility, his argument is misplaced. Officer Davila's credibility was never at issue because he did not testify at trial. Mr. McCoy's remaining arguments are based on his theory that Officer Davila had a motive to "frame" Mr. McCoy in retaliation for Mr. McCoy's failure to cooperate in an earlier investigation and his belief that the other officers were cooperating with this scheme. For this purpose, the evidence was so speculative as to be irrelevant. There was simply

nothing to support any claim or inference that, if the purported conversation between Mr. McCoy and Officer Davila indeed took place, it was either known to the testifying officers or that they all agreed to testify falsely against Mr. McCoy and fabricate physical evidence against him in accordance with a retaliatory scheme. The trial court did not abuse its discretion when it found that the connection between the alleged conversation and Mr. McCoy's defense was "a stretch."

¶ 24 We also find the trial court did not abuse its discretion by granting the State's motion *in limine* to bar Mr. McCoy's request to introduce the IPRA complaints. The complaints that were tendered by Mr. McCoy's counsel are in the record and they are both directed against Officer Mielcarz. Although the court seems to have viewed both of the complaints as not sustained, it appears from our review that the investigation on one complaint was still open. However, that complaint had to do only with excessive force. The other complaint did include a threat to plant drugs, but it was investigated and found "not sustained." Neither of the IPRA complaints were made by Mr. McCoy or had anything to do with any of the testifying officers' dealings with Mr. McCoy.

¶ 25 Whether evidence of past misconduct by the police is relevant in a given case is a determination to be made by the trial court based on the strength of the misconduct evidence, the temporal proximity of the past misconduct, whether there is a repetition of similar misconduct, and the similarity of the past misconduct to the conduct at issue in the case before the court. *People v. Porter-Boens,* 2013 IL App (1st) 111074, ¶ 17.

¶ 26 The open complaint that Officer Mielcarz used excessive force has nothing to do with the misconduct that Mr. McCoy claims he was trying to show in this case. The other charge, which included an allegation that Officer Mielcarz threatened someone that he would plant drugs on

them, is certainly closer to Mr. McCoy's allegations, but it was found to be "not sustained" after a completed investigation. Moreover, Officer Mielcarz was only one of approximately nine officers who worked on this case and his role in arresting Mr. McCoy appears to have been relatively minor. On this record, we cannot find that the trial court abused its discretion when it found that these IPRA complaints were not admissible because they were not relevant.

¶ 27 Moreover, even if the court erred by barring any of this evidence, it would have been harmless error. To determine whether error is harmless beyond a reasonable doubt we consider (1) whether the error contributed to the defendant's conviction, (2) whether the other evidence in this case overwhelmingly supported the defendant's conviction, and (3) whether the excluded evidence would have been duplicative or cumulative. *People v. Blue*, 205 Ill. 2d 1, 26 (2001).

¶ 28 Mr. McCoy's suggestion that he could have built a successful defense that the case against him was manufactured by a group of police officers through his own testimony about a conversation with Officer Davila and these two IPRA charges against Officer Mielcarz is simply too speculative to accept as a basis for finding that barring this evidence contributed to his conviction. We reject Mr. McCoy's claim that the trial court improperly interfered with his constitutional right to present a defense and affirm his conviction.

¶ 29 B. The Record Supports Mr. McCoy's Argument That He Was Punished For Going to Trial

¶ 30 Mr. McCoy also argues that he was denied a fair sentencing hearing because the trial court penalized him for asserting his right to a trial, relied on matters outside the record, considered factors inherent in the offense, and imposed an excessive sentence. We find that the record supports Mr. McCoy's argument that he was improperly penalized for asserting his right

to go to trial. Because this requires us to remand the case for resentencing, we need not consider the other arguments Mr. McCoy makes regarding his sentence.

¶ 31 The offense in this case was the hand-to-hand sale to an undercover officer of two packets of heroin. One packet was not weighed and the other weighed 0.3 grams. Mr. McCoy was a Class X offender based on his lengthy criminal background, so the minimum sentence he could have received was six years. However, the State does not dispute that none of that background involved violence. And although much of it involved narcotics, almost all of Mr. McCoy's prior convictions were for possession, rather than distribution. While Mr. McCoy, who was 46 years old when he was sentenced, had spent much of his adult life in and out of prison, it was apparent from his criminal history that he was a heroin addict, not a violent criminal.

¶ 32 At the plea conference in this case, the State offered Mr. McCoy the minimum possible sentence of six years. At the sentencing hearing, although the State recommended a sentence of 10 to 15 years, the trial court imposed a sentence of 19 years. Mr. McCoy argues that this was excessive because it was more than three times greater than the State's pretrial offer of six years, was significantly longer than the sentence recommended by the State, and, as reflected by the trial court's comments, was imposed to penalize Mr. McCoy for exercising his right to reject the plea offer and go to trial.

¶ 33 Our supreme court has made clear that "[w]hen it is evident from the judge's remarks that the punishment was, at least in part, imposed because the defendant had refused to plead guilty but had instead availed himself of his constitutional right to trial, the sentence will be set aside." *People v. Ward*, 113 Ill. 2d 516, 526 (1986). The "mere fact" that Mr. McCoy was given a greater sentence than that offered during the plea bargaining does not, in and of itself, support an

inference that the greater sentence was imposed as a punishment for his demanding trial. *People v. Carroll*, 260 Ill. App. 3d 319, 348-49 (1992). It must be "clearly evident" from the record that the harsher sentence resulted from the trial demand. *Ward*, 113 Ill. 2d at 526. Evidence to establish this can come from a trial court's explicit remarks regarding the harsher sentence *(id.*) or when the imposed sentence is outrageously higher than the one offered during plea negotiations *(People v. Dennis*, 28 Ill. App. 3d 74, 78 (1975)).

¶ 34 The trial court in this case made the following statements at Mr. McCoy's sentencing hearing:

> "I urged you a long time ago not to pursue this. I urged you, and I pleaded with you not to do this. I asked you to take the State's offer. We had a 402 conference, which you had the unmitigated gall to ask for probation after you've already had probation way back in the past unsatisfactorily. You rejected that. You got your day in court, and you got your day in front of a jury and now comes time to feel the consequences."

¶ 35 The State maintains Mr. McCoy has forfeited this argument by not raising it in a post-sentencing motion. But the State does not dispute that Mr. McCoy filed a post-sentencing motion in which he claimed that his sentence was excessive and an abuse of discretion, and the three sentencing arguments that Mr. McCoy makes on appeal all go to support that claim. As our supreme court has made clear: "We require parties to preserve issues or claims for appeal; we do not require them to limit their arguments here to the same arguments that were made below." *Brunton v. Kruger*, 2015 IL 117663, ¶ 76. The rule of forfeiture does not bar Mr. McCoy's argument that the trial court abused its discretion by improperly punishing him for going to trial.

¶ 36 The State also argues that we must consider the trial court's statement at Mr. McCoy's

sentencing hearing "in context." The State points to a conversation on May 5, 2015, when the court explained to Mr. McCoy:

> "Because your background then, Mr. McCoy, you have to understand that if you are not successful in your defense and if you're convicted of this, you'd be sentenced as a class X offender, which means the minimum you would get is six years. The maximum is 30 years. However, that could be increased or enhanced up to 30 years to 60 years if your background warrants that and I'm not really aware of that, but that's the possibility. So you're looking at anywhere from 6 to 60 if you are not successful in your defense. That's what you are looking at. Okay."

A similar exchange took place at Mr. McCoy's August 25, 2015, court appearance. On January 6, 2016, right before the trial started, the court again addressed Mr. McCoy and asked him, "Do you understand that the offer of six years is revoked; you are looking at 6 to 30 or 30 to 60 depending how things go out; do you understand that?" Mr. McCoy answered, "Yes."

¶ 37 These previous conversations between the trial court and Mr. McCoy reflect that the court was trying to persuade Mr. McCoy to take the plea deal he had been offered. There is nothing wrong with the court engaging in such persuasive tactics. However, what is wrong—indeed what is unconstitutional—is the court punishing a defendant when these tactics are not successful.

¶ 38 In our view, the relevant context in which we should view the court's statements includes the nature of Mr. McCoy's crime—the sale of a very small amount of narcotics—the State's recommended sentence of 10 to 15 years, and the nonviolent nature of Mr. McCoy's past criminal history. All of this further supports, rather than undermines, Mr. McCoy's claim.

¶ 39 The State also argues that the sentence imposed was not "outrageously higher" than the one offered in exchange for the plea like in *Dennis*, where the defendant had been offered two to six years during plea negotiations but was sentenced to 40 to 80 years after trial. *Dennis*, 28 Ill. App. 3d at 77. However, in *Dennis*, the defendant's entire claim rested on that disparity. We have recognized that even when the sentence imposed is only slightly higher than the one offered during plea negotiations, the sentence cannot stand where the trial court's remarks reflect that the court is punishing a defendant for going to trial. *People v. Young*, 20 Ill. App. 3d 891, 894–95 (1974) (minimum sentence increased only by one year).

¶ 40 In short, we find that the record supports Mr. McCoy's argument that his 19-year sentence was "at least in part, imposed because [he] had refused to plead guilty but had instead availed himself of his constitutional right to trial." *Ward*, 113 Ill. 2d at 526. This requires that the sentence be set aside. *Id.*

¶ 41 Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994) gives us, as the reviewing court, the power to reassign a matter to a new judge on remand. In an excess of caution and to overcome any perception that Mr. McCoy's choice to go to trial played a role in his sentence, we remand this case to the presiding judge of the criminal division of the circuit court of Cook County for assignment to a different judge for the purpose of resentencing Mr. McCoy. In light of this remand, we find it unnecessary to reach Mr. McCoy's remaining arguments regarding the sentence that was imposed.

¶ 42 Affirmed in part, sentence vacated; remanded for resentencing.

¶ 43 JUSTICE PIERCE, concurring in part and dissenting in part:

¶ 44 I concur in the judgment as it relates to affirming defendant's conviction. I respectfully dissent as to the portion of the judgment ordering a resentencing.

¶ 45 The majority agrees with defendant that he was denied a fair sentencing hearing where "his 19-year sentence was 'at least in part,' imposed because [he] had refused to plead guilty but had instead availed himself of his constitutional right to trial." *Infra* ¶ 40. Based on my review of the record, I cannot agree because vacating this sentence unjustifiably invades the discretion conferred on an experienced trial judge possessed of direct knowledge of defendant, defendant's demeanor and attitude concerning his regard (or lack thereof) of the crime he was convicted of, his criminal history and his rehabilitative potential.

¶ 46 It is axiomatic that a defendant may not be penalized for choosing to exercise his right to stand trial. *People v. Ward*, 113 Ill. 2d 516, 526 (1986). But "the mere fact that the defendant was given a greater sentence than that offered during the plea bargaining does not, in and of itself, support an inference that the greater sentence was imposed as a punishment for demanding trial." See *People v. Carroll*, 260 Ill. App. 3d 319, 348-49 (1992). It must be "clearly evident" from the record that the harsher sentence resulted from the trial demand. *Ward*, 113 Ill. 2d at 526. Evidence to establish this can come from a trial court's explicit remarks regarding the harsher sentence (*Ward*, 113 Ill. 2d at 526), or where the imposed sentence is outrageously higher than the one offered during plea negotiations (*People v. Dennis*, 28 Ill. App. 3d 74, 78 (1975)). In making this determination, we should consider the entire record rather than focus on a few words or statements of the trial court. *Ward*, 113 Ill. 2d at 526-27. Defendant cites to a statement made by the trial court during the sentencing hearing where the court told defendant:

> "I urged you a long time ago not to pursue this. I urged you, and I pleaded with you not to do this. I asked you to take the State's offer. We had a 402 conference, which you had the unmitigated gall to ask for probation after you've already had probation way back in the past unsatisfactorily. You rejected that. You got your day in court, and you got your day in front of a jury and now comes time to feel the consequences."

¶ 47 If one were to consider the above-complained-of comments by the trial court in a vacuum, one could argue that it appears that the court punished defendant for exercising his right to a jury trial. However, taking this comment in context and looking at the record as a whole, I must conclude that the trial court was not punishing defendant for electing a jury trial: the court was merely referring to his earlier admonishments wherein the court informed defendant of the possible penalties he faced if he chose to forego accepting a more than generous offer from the State in exchange for a plea of guilty.

¶ 48 For example, on May 5, 2015, defendant expressed his displeasure with his public defender because she kept telling him that a plea deal would consist of jail time. After learning about defendant's criminal history, and that defendant was required to be sentenced as a Class X offender, the court explained to defendant:

> "Because your background then, Mr. McCoy, you have to understand that if you are not successful in your defense and if you're convicted of this, you'd be sentenced as a class X offender, which means the minimum you would get is six years. The maximum is 30 years. However, that could be increased or enhanced up to 30 years to 60 years if your background warrants that and I'm not really aware of that, but that's the possibility. So you're looking at anywhere from 6 to 60 if you are not successful in your defense. That's

what you are looking at. Okay."

A similar exchange took place at defendant's August 25, 2015, court appearance. This defendant, with 13 previous felony convictions, was clearly delusional about both the likelihood that he could beat a hand-to-hand sale to a police officer and his entitlement to probation if he lost his case. On January 6, 2016, right before the trial started, the court again addressed defendant and asked him, "Do you understand that the offer of six years is revoked; you are looking at 6 to 30 or 30 to 60 depending how things go out; do you understand that?" Defendant answered, "Yes."

¶ 49 Looking at the record as a whole, it is clear that the trial court properly and thoroughly informed defendant, several times, of the possible sentence he could receive if he chose to forego pleading guilty, went to trial and was found guilty. The experienced trial judge was obviously attempting to confirm that defendant knew and understood what he was doing. These warnings about the potential jail time defendant faced if he went to trial did not amount to threats: the court was obligated to make certain that defendant understood the range of sentences that applied. Had the court failed to do this, defendant's argument would be the reverse: he would argue that he was not sufficiently apprised of the sentencing range and therefore he should be resentenced because he would have accepted the State's offer if he understood he ran the risk of a lengthy sentence upon conviction. Throughout this case, the trial court went to great efforts to ensure that defendant understood the magnitude of his decision in light of the nature of the evidence and defendant's background.

¶ 50 The reviewing court should adhere to long established principles that recognize the discretion afforded the circuit court in sentencing a defendant. It is simply too easy to second guess the circuit court or to read into a judge's comments when one might have imposed a lesser

sentence had he or she been the sentencing judge. But it is the sentencing judge who is in the best position to exercise reasoned judgment as to the proper sentence based upon the particular circumstances of each individual case and dependent upon the defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). "In determining an appropriate sentence, the defendant's history, character, rehabilitative potential, the seriousness of the offense, the need to protect society and the need for deterrence and punishment must be equally weighed." *People v. Jones*, 295 Ill. App. 3d 444, 455 (1998). The potential for rehabilitation need not be given any greater weight than the seriousness of the offense. *People v. Sharpe*, 216 Ill. 2d 481, 525 (2005). There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and the court is presumed to have considered any evidence in mitigation that is before it. *People v. Partin*, 156 Ill. App. 3d 365, 373 (1987). The imposition of a sentence is a matter within the trial court's discretion, and a reviewing court has the power to disturb the sentence only if the trial court abused its discretion. *Jones*, 168 Ill. 2d at 373-74.

¶ 51 Although the majority appears to be influenced by the fact that a small quantity of narcotics was sold versus defendant's long history of narcotics possession, I cannot dismiss the fact of defendant's criminal history of 14 felony convictions and his obvious insistence on a continual course of criminal conduct. Defendant has not remotely demonstrated that he can be rehabilitated. Whether defendant is an addict is not the point: he was convicted of his fourteenth felony; it was a Class X offense. The legislature has determined that the penalty is a sentencing range of 6 to 30 years regardless of whether the defendant is an addict and regardless of the amount of narcotics sold. If the sale of a small quantity of narcotics was an important sentencing

consideration, the legislature would surely have provided for a graduated sentencing scheme to address that concern.

¶ 52 Shortly before being sentenced, defendant asked "Why do I have to be judged by my past?" The court made clear that his past was an important factor in considering defendant's potential for rehabilitation. The court read defendant's criminal history into the record, noting that defendant had 14 felony convictions in 19 years, primarily for possession of narcotics. The court stated that it considered the evidence presented at trial, the presentence investigation report (PSI), the evidence offered in aggravation and mitigation, the statutory factors in aggravation and mitigation, the financial impact of incarceration, the arguments of the attorneys regarding what they believed to be an appropriate sentence, the statements made by defendant on his behalf and defendant's potential for rehabilitation. The court also noted that defendant was a "career criminal" in a "revolving door coming into the courtroom and then going in the penitentiary, coming out of the penitentiary, going back into the streets, committing crimes, back in the courtroom." The court told defendant that "that's what you've done your entire life. There is absolutely in this record no hope of rehabilitation for you whatsoever."

¶ 53 The court also commented on the seriousness of the offense and the need to protect society, factors properly considered by the court in imposing sentence. See *Jones*, 295 Ill. App. 3d at 455. The court found selling narcotics to be a "serious crime" because it was a crime of "providing people with things that they need to come out from under." *People v. Jones*, 295 Ill. App. 3d 444, 455 (1998). Contrary to defendant's argument, I do not find that the court considered anything improper or punished him for exercising his right to a jury trial in imposing sentence.

¶ 54 The trial court properly considered all of the necessary factors in imposing sentence. I would find that the trial court did not abuse its discretion here in imposing the 19 year sentence, a sentence that was well within statutory guidelines and reflective of defendant's obvious unwillingness to conform his conduct to requirements of the law.