

No. 1-16-2693

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the
) Circuit Court of
 Plaintiff-Appellee,) Cook County.
)
 v.) No. 15 CR 11780
)
 JOHNNY ANDREWS,) Honorable
) James B. Linn,
 Defendant-Appellant.) Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s 7½-year sentence for armed habitual criminal is affirmed over his contention that the sentence was excessive in light of the nature of his offense, his criminal history, and his potential for rehabilitation. The trial court’s consideration of defendant’s two prior felonies as an aggravating factor was not an improper double enhancement.

¶ 2 Following a bench trial, defendant Johnny Andrews was convicted of armed habitual criminal and sentenced to 7½ years’ imprisonment. Defendant appeals, arguing that his sentence is excessive in light of the nature of his offense, his criminal history, and his rehabilitative potential. Additionally, he contends that the trial court improperly considered his prior felony

convictions as both an element of the armed habitual criminal offense and as an aggravating factor at sentencing. We affirm.

¶ 3 Defendant was charged by indictment with, *inter alia*, one count of armed habitual criminal in that he knowingly possessed a handgun after having been convicted of two predicate felonies (720 ILCS 5/24-1.7(a) (West 2012)), and one count of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)). Because defendant does not challenge the sufficiency of the evidence to sustain his conviction, we recount only the facts necessary to resolve the issues on appeal.

¶ 4 The evidence at trial established that, on July 12, 2015, Chicago police officers Mendoza and Rodriguez were patrolling Tuley Park in an unmarked squad car. They toured the park slowly because many children were playing there. The officers noticed defendant in the park, adjusting a “large bulge” on his right side. Rodriguez stepped out of the car to interview defendant, but defendant fled and dropped a “chrome-plated object” by a vehicle parked on the street. The officers pursued and detained defendant. Minutes later, Mendoza recovered a chrome-colored revolver with six live rounds in its chamber approximately 50 feet from the park, at the location where Rodriguez had seen defendant drop the chrome-plated object. The State also produced certified records of defendant’s prior felony convictions—one for robbery in 2013, and one for aggravated unlawful use of a weapon in 2011.

¶ 5 Based on this evidence, the trial court found defendant guilty of armed habitual criminal and unlawful possession of a weapon by a felon. The court stated that the latter count would merge into the former count.

¶ 6 The case proceeded to a sentencing hearing, where the trial court received defendant's presentence investigation (PSI) report. According to the report, defendant's criminal history included two felonies and one misdemeanor. He was sentenced to 18 months' probation for aggravated unlawful use of a weapon in 2011 and three years' imprisonment for robbery in 2013. Defendant also had a 2013 reckless conduct charge for which he received six months' conditional discharge. Additionally, the PSI report indicated that defendant maintained relationships with his parents, siblings, and two daughters. He had been employed for six months at Dawson Technical Institute, but lost the job after his arrest in this matter. He expressed a desire to obtain his GED and attend cosmetology school. Defendant stated that he belonged to a church, where he had volunteered in the past. He joined a street gang at age 13, but terminated his gang affiliation in 2013.

¶ 7 In aggravation, the State mentioned only defendant's criminal history.¹ In mitigation, defense counsel noted that defendant was 22 years old at the time of the sentencing hearing and had been incarcerated on other charges for only 1½ years, significantly less time than the minimum sentence for armed habitual criminal. Defense counsel also mentioned that, although defendant was raised by his aunt, he now maintains a relationship with his mother.

¶ 8 In allocution, defendant stated that his time in custody made him realize that he did not want to "lose [his] life to the system." He did not want to miss watching his children grow up. He also said that he planned on changing his life to be a better person, father, and son.

¹ The State also observed that defendant had "two misdemeanors" from 2013, but the nature and outcome of those cases is unclear from the record. The trial judge did not mention those misdemeanors in delivering defendant's sentence.

¶ 9 Following arguments, the court stated that it hoped defendant would follow his plan to change his life because he was “starting to get quite a bit of a record.” Then, the court sentenced defendant to 7½ years’ imprisonment. The court explained that it did not impose a maximum sentence because “[t]his is a possessory offense.” However, the court also found that more than the six-year minimum sentence was required.

¶ 10 Defendant filed *instanter* a motion to reconsider sentence, which the trial court denied. In denying the motion, the court found that defendant’s sentence was appropriate under the totality of the circumstances. It emphasized that defendant had recently been released from imprisonment before offending again, and that this was the second time that he had been convicted of a felony gun crime.

¶ 11 On appeal, defendant contends that his 7½-year sentence is excessive in light of the nature of his offense, the lack of harm caused by his conduct, his criminal history, and his potential for rehabilitation. Relatedly, defendant argues that the trial court improperly considered his prior felony convictions as an aggravating factor at sentencing. In response, the State maintains that the trial court did not abuse its discretion in considering defendant’s full criminal history, along with other relevant factors, in imposing a sentence within the statutory range.

¶ 12 The Illinois Constitution requires that a sentence reflect both the seriousness of the offense and the goal of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11. A trial court has broad discretionary powers when imposing a sentence, and its sentencing decisions are entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). This is because the trial court is in the best position to evaluate such factors as the defendant’s demeanor, moral character, mentality, credibility, and age. *People v. Snyder*, 2011 IL

111382, ¶ 36. A reviewing court may not alter a defendant's sentence absent an abuse of discretion by the trial court. *Alexander*, 239 Ill. 2d at 211. Accordingly, a reviewing court will not reweigh these factors or substitute its own judgment for that of the trial court merely because it would have weighed the factors differently. *People v. Streit*, 142 Ill. 2d 13, 19 (1991). Although the trial court must consider all mitigating factors, it need not recite each factor and the weight it was given. *People v. Neasom*, 2017 IL App (1st) 143875, ¶ 48. Absent some indication to the contrary, other than the sentence itself, we must presume that the trial court considered the relevant mitigating circumstances. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 13 A reviewing court should exercise its power to reduce a sentence “cautiously and sparingly.” (Internal quotation marks omitted.) *Alexander*, 239 Ill. 2d at 212. When a sentence falls within the statutory range, it is presumed to be proper and we will not reduce the sentence unless the trial court abused its discretion. *People v. Fern*, 189 Ill. 2d 48, 53-54 (1999). The trial court abuses its discretion when it imposes a sentence that varies greatly from the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *Id.* at 54.

¶ 14 Turning to the present case, we find that the trial court did not abuse its discretion in sentencing defendant. Defendant was convicted of armed habitual criminal, a Class X felony. 720 ILCS 5/24-1.7(b) (West 2012). The sentencing range for a Class X felony is 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2012). Thus, defendant's 7½-year sentence is presumed to be proper, as it is well within and, in fact, near the low end of the statutory sentencing range for a Class X felony.

¶ 15 Additionally, we cannot say that defendant's sentence is manifestly disproportionate to the seriousness of his offense given his criminal background and the circumstances surrounding

his arrest. The seriousness of the offense is the most important factor for the trial court to consider when fashioning an appropriate sentence. *People v. Decatur*, 2015 IL App (1st) 130231, ¶ 12. The trial court, in its discretion, placed significance on the fact that this was defendant's third felony conviction overall and his second involving a firearm. Although the offense involved the possession, rather than use, of a firearm, and, as defendant notes, he caused minimal harm, this was not the least serious gun possession conceivable. Defendant created a dangerous situation by manipulating a loaded gun in a crowded park and then fleeing from police. He then left the gun, unattended, less than 50 feet from a park where children played. While defendant points out that the police recovered the gun within minutes, this does not make his conduct any less serious.

¶ 16 Further, defendant does not contest that the trial court considered all relevant mitigating factors outlined in the PSI report, including his familial relationships, his church membership, his lack of gang affiliation, his desire to complete his education, and his plan to change his life. The trial court was not required to assign more weight to these factors than to the seriousness of the offense. *Alexander*, 239 Ill. 2d at 214. Under these circumstances, the trial court's imposition of a sentence near the bottom of the statutory range was not an abuse of discretion.

¶ 17 Defendant also argues that it was improper for the trial court to consider his prior felony convictions as an aggravating factor because the existence of those convictions was an element of the armed habitual criminal charge. There is a general prohibition against "double enhancements," or the use of a single factor as an element of an offense and as an aggravating factor to justify a longer sentence than might have otherwise been imposed. *People v. Gonzalez*, 151 Ill. 2d 79, 83-84 (1992). The prohibition is based on the assumption that the legislature, in

setting an appropriate sentencing range for an offense, already considered the gravity of all factors inherent to that offense. *Id.* at 84.

¶ 18 In *People v. Saldivar*, 113 Ill. 2d 256, 264-69 (1986), the Illinois Supreme Court held that reconsideration of a factor inherent in the definition of an offense as an aggravating factor at sentencing is impermissible. However, in *People v. Thomas*, 171 Ill. 2d 207, 226-28 (1996), our supreme court clarified that this rule should not be applied so rigidly that it impedes sentencing courts from considering all relevant factors to fashion appropriate sentences and to fulfill the legislature’s objective to punish recidivists more severely. Thus, while the existence of prior felony convictions, in part, may determine a defendant’s eligibility for a Class X sentence, it is the “*nature and circumstances*” of the prior convictions, along with other aggravating and mitigating factors, that determines the exact length of a sentence within that range. (Emphasis in original.) *Id.*

¶ 19 Here, the trial court reviewed defendant’s PSI report and heard the parties’ arguments in aggravation and mitigation. For reasons we have explained, the court found that a sentence above the statutory minimum was necessary in view of the nature and circumstances of both the instant offense and defendant’s prior convictions, including his prior conviction for a firearm-related felony. As such, the trial court did not act outside the bounds of our supreme court’s holdings in *Saldivar* and *Thomas*. Accordingly, we reject defendant’s double enhancement argument and find that his sentence was proper.

¶ 20 As a final matter, defendant cites social science research and a law review article in arguing that we should reduce his sentence because “the mass incarceration of African-American men for nonviolent offenses has caused devastating social, political, economic, and moral harm

to the community,” and because longer sentences are ineffective in rehabilitating offenders. However, as a reviewing court, we cannot consider materials that were not presented to the trial court at the time of sentencing. See *People v. Heaton*, 266 Ill. App. 3d 469, 477 (1994); *People v. Mahlberg*, 249 Ill. App. 3d 499, 531-32 (1993). Because these studies were not presented to the trial court, we will not find the trial court abused its discretion in not considering the information therein.

¶ 21 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.