2019 IL App (1st) 172984-U

No. 1-17-2984

August 26, 2019

First Division

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. 16 CR 10082
	)	
ANTOINE JONES,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's 14-year concurrent sentences for armed habitual criminal and attempted residential burglary are affirmed over his contention that the sentences were excessive because the trial court failed to consider the nonviolent nature of the offenses and other mitigating factors.

¶ 2 Following a bench trial, defendant Antoine Jones, was convicted of armed habitual criminal (AHC) (720 ILCS 5/24-1.7 (West 2016)) and attempted residential burglary (720 ILCS

5/8-4, 19-3(a) (West 2016)), and sentenced to concurrent terms of 14 years' imprisonment. On appeal, defendant contends that his sentence is excessive. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was charged by indictment with armed violence, AHC, attempted residential burglary, two counts of unlawful use or possession of a weapon by a felon, two counts of aggravated unlawful use of a weapon, and defacing identification marks of firearms. The State *nolle-prossed* the two counts of aggravated unlawful use of a weapon.

¶ 5 Prior to trial, defendant engaged in a conference pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012). The trial court recommended a sentence of nine years in prison, to be served at 85%, in exchange for a plea of guilty to AHC. Defendant rejected the offer. Defendant waived his right to a jury trial, and the case proceeded to a bench trial.

¶ 6 Jennifer Zavala testified that on the morning of June 14, 2016, she was home alone in her house on the 5100 block of South Fairfield Avenue, and heard aggressive, continuous knocking at her front door.[1] She "peeked" out through a window and saw defendant at the door. After waiting several minutes, she again looked through the window, and saw defendant on a bicycle with a black backpack riding down the block. A short time later, she heard the jiggling of the doorknob to the backdoor. Jennifer called her brother and the police, who both arrived shortly thereafter.

¶ 7 The police presented Jennifer with a backpack found in the trash behind her home, which did not belong to her or to one of her family members. The police drove Jennifer from an alley to

[1] Because Jennifer Zavala's brother Abraham Zavala also testified we refer to both witnesses by their first name.

the front of the house where she positively identified defendant as the person who was at her front door.

¶ 8 Abraham Zavala, Jennifer's brother, testified that he received a phone call from his sister, and then a text saying she believed someone got inside the house. He returned to the house and saw a bike outside in the alley. He let officers into the Zavala family's house and identified that the black backpack and headphones found by the officers were not his.

¶ 9 Chicago police officer Perez testified that on June 14, 2016, he responded to a call regarding a burglary in progress on the 5100 block of South Fairfield Avenue.[2] There, he saw defendant coming from the back of the Zavala family's house. Perez called out to defendant, who was wearing a black backpack. Defendant fled toward an alley and Perez gave chase. During the pursuit, Perez radioed information and lost sight of defendant for "probably no more than five seconds." He again gained sight of defendant in the alley where defendant unsuccessfully attempted to jump a fence. Perez caught defendant and placed him into custody. Defendant did not have the backpack when he was handcuffed.

¶ 10 Chicago police officer Vanboldrik, testified that he met Abraham outside the back of the Zavala family's house.[3] Vanboldrik and his partners entered the house to see if there were any other offenders. Perez informed Vanboldrik that defendant had dropped a black bag. Vanboldrik searched for the backpack and found it "directly" behind the house in a trash can in the alley. The backpack contained a flathead screwdriver, a metal rod, a loaded revolver with the serial number scratched off, a prescription bottle filled with pills, and a glove. Vanboldrik identified each of those items in court. Defendant's name was on the prescription bottle.

[2] Officer Perez's first name does not appear in the record.

[3] Officer Vanboldrik's first name does not appear in the record.

¶ 11 Patricia Gallardo, Zavala's neighbor, testified that on the date in question, she saw a man, wearing a backpack and headphones, standing on Zavala's porch, and attempting to lift open a front window. Gallardo saw the man leave on his bike and come back later through the alley. She observed the police arrest this man after a chase. She identified him to police as the man who was on the porch. She identified the backpack and headphones presented in court as the items the man was wearing. She was not able to make an in-court identification of defendant.

¶ 12 The State presented certified copies of defendant's two convictions for residential burglary in 10 CR 0270801 and 12 CR 1781601. The State then rested. The defense moved for a directed verdict and the trial court denied the motion.

¶ 13 Defendant testified that on June 14, 2016, he was meeting with a woman on the 5100 block of South Fairfield Avenue.[4] Defendant met this woman on Facebook and received the address after a phone call with her. When he arrived at the home he rang the doorbell and after not hearing a response defendant knocked on the door. He also tapped on the window, and he tried to call the woman again. Defendant then called Parish Johnson to pick him up. Johnson suggested defendant try the backdoor to the house. Defendant did so after hearing a sound inside the house.

¶ 14 After knocking on the backdoor and again failing to get a response, defendant left the house. As he did so, he was confronted by an officer who told him to stop or the officer would kill him. Defendant proceeded to run, failed to climb a fence and was caught and arrested. When he attempted to climb the fence his belongings fell to the ground. Defendant stated this included

[4] The record shows that defendant stated a different address than the Zavala's family house.

his prescription medicine bottle, money, cell phone, hat, inhaler, and asthma pump. He testified he never rode a bike or wore any backpack on that day.

¶ 15 The trial court found defendant not guilty of armed violence, but guilty of all other counts. The two counts of unlawful use or possession of a weapon by a felon, two counts of aggravated unlawful use of a weapon, and one count of defacing identification marks of firearms were merged into the AHC count.[5]

¶ 16 At the sentencing hearing, the court heard arguments in aggravation and mitigation. In aggravation, the State recited defendant's criminal history. The presentence investigation report (PSI) highlighted in detail defendant's prior convictions. These convictions included aggravated robbery, for which he received boot camp, distribution of look-alike substance, for which he received two years intensive probation, possession of a controlled substance, for which he received two years' imprisonment, possession of "meth," for which he received 18 months' imprisonment, domestic battery, for which he received 18 months' probation, and two convictions for residential burglary, for which he received sentences of 54 months' and six years' imprisonment respectively.

¶ 17 In mitigation, defense counsel emphasized defendant's family and employment history. Counsel noted defendant resided with his mother, and defendant had a son and daughter. Defendant worked in construction and at a gas station. Defendant spoke in allocution and stated he attended church every Sunday. He also noted the work he did around his family's house and the help he provided to his family. Defendant stated, he "is trying to get home to [his] family and

[5] Although not raised by the parties, we note that the court erred in finding defendant guilty of the two counts of aggravated unlawful use of a weapon where the record shows the State *nolle-prossed* those counts before the bench trial began.

try to be the better example of a man that [he] should've been for the minor mistakes that [he'd] made in [his] past." The court asked defendant if he thought all his convictions were minor mistakes. Defendant stated he was innocent of the current charge and wanted to return to his son to teach him how to become a better man.

¶ 18 The court sentenced defendant to concurrent terms of 14 years in prison for AHC and attempted residential burglary. With respect to the attempted residential burglary sentence, the court sentenced defendant, based on his criminal background, as a Class X offender.[6]

¶ 19 In sentencing defendant, the court noted defendant's "prior background and the facts of the case." The court stated that defendant was "a career criminal" with repeated incarcerations starting when he was a juvenile. The court also stated it had "an obligation not only to be fair to [defendant], but to be fair to the public as well and they need a little relief from [defendant]." The court denied defendant's motion to reconsider the sentence.

¶ 20 ANALYSIS

¶ 21 On appeal, defendant argues that his sentence is excessive. Under the Illinois Constitution "seriousness of the offense" and the rehabilitation of the defendant must be considered in determining a sentence. Ill. Const. 1970, art. I, § 11. Sentencing decisions may be reviewed on appeal under Illinois Supreme Court Rule 615(b)(4) (eff. Jan. 1, 1969). However, such decisions by the trial courts are entitled to "great deference." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000).

[6] Although not raised by either party, the record shows that the trial court orally sentenced defendant to concurrent terms of 14 years' imprisonment for AHC and attempted residential burglary. The criminal disposition sheet for October 30, 2017, reflects this sentence. However, in the written order of commitment and sentence to Illinois Department of Corrections the trial court omitted the sentence for attempted residential burglary. The trial court's oral ruling is the judgment of the court. See *People v.* Carlisle, 2015 IL App (1st) 131144, ¶ 87 (When there is a conflict between the oral ruling and the written order of the trial court, the oral ruling controls).

The trial court is in a better position than the appellate court to "consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age." *People v. Snyder*, 2011 IL 111382, ¶ 36. The trial court shall consider mitigating factors but does not have to list each factor and how it contributes to the sentence. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11. There is a presumption that the trial court considers all mitigating evidence presented to it, absent evidence to the contrary, other than the sentence itself. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 22 The standard for the appellate court in reviewing sentencing is whether there has been an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). There is an abuse of discretion where the sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210. Thus, a reviewing court may not reduce a sentence just because it does not agree with how the trial court weighed mitigating and aggravating factors. *People v. Busse*, 2016 IL App (1st) 142941, ¶ 20.

¶ 23 Here, we find that the trial court did not abuse its discretion in sentencing defendant to concurrent terms of 14 years' imprisonment for AHC and attempted residential burglary. In this case, defendant was convicted of AHC, a Class X offense with a sentencing range of 6 to 30 years in the Illinois Department of Corrections (720 ILCS 5/24-1.7(b) (West 2016); 730 ILCS 5/5-4.5-25(a) (West 2016)) and attempted residential burglary, a Class 2 offense which due to his criminal history was classified as a Class X offense with a sentencing range of 6 to 30 years in the Illinois Department of Corrections (720 ILCS 5/8-4(c)(2), 19-3(c) (West 2016); 730 ILCS 5/5-4.5-25(a), 5-4.5-95(b) (West 2016)). The court sentenced defendant to concurrent terms of 14 years' imprisonment.

¶ 24 Defendant does not argue that his 14-year sentence was outside of the sentencing range. Instead, he argues that there was an abuse of discretion because his actions that gave rise to the convictions did not harm anyone, and he did not threaten anyone. In setting forth this argument, defendant does not present any evidence that the court ignored this or other mitigating or aggravating factors. Instead, defendant relies on the evidence presented to the trial court and asks this court to come to a different conclusion. "A reviewing court must not substitute its judgment for that of a sentencing court merely because it would have weighted the factors differently." *People v. Streit*, 142 Ill. 2d 13, 19 (1991).

¶ 25 The court presided over defendant's trial and heard evidence concerning the nature of the offenses. In addition, the details of the case and defendant's criminal history are contained in defendant's PSI. Defendant's criminal history, in part, includes convictions for aggravated robbery, domestic battery, and residential burglary. The court found that defendant was a "career criminal" with repeated incarcerations starting when he was a juvenile. See *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 13 (" 'criminal history alone' may 'warrant a sentences substantially above the minimum' " where the "defendant was not deterred by previous, more lenient sentences") (quoting *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2d Dist. 2009)). Considering the trial court is presumed to consider all the factors presented in mitigation, and the evidence does not contradict this, we find that the trial court did not abuse its discretion in sentencing defendant to 14 years' imprisonment.

¶ 26 Defendant argues that his sentence is excessive because it is higher than the sentence offered prior to trial for a guilty plea. This court has repeatedly stated that "a defendant cannot be punished by the imposition of a heavier sentence merely because he exercises his constitutional

right to be tried before an impartial judge or jury." *People v. Carroll*, 260 Ill. App. 3d 319, 348 (1st Dist. 1992). However, we do not presume that a sentence was imposed as punishment simply because, following trial, a defendant was given a sentence greater than the one offered. *People v. Andrews*, 2013 IL App (1st) 121623, ¶ 19. Rather, there must be a clear showing in the record. *People v. Means*, 2017 IL App (1st) 142613, ¶ 21. A clear showing exists when a trial court makes explicit remarks concerning the harsher sentence or where the actual sentence is "outrageously higher" than the one offered during plea negotiations. *Carroll*, 260 Ill. App. 3d at 349. In making this determination, we must consider the entire record. *People v. Johnson*, 2018 IL App (1st) 153634, ¶ 18 (quoting *People v. Ward*, 113 Ill. 2d 516, 526–27 (1986)).

¶ 27 Here, after considering the entire record, we find that defendant's sentence was not punishment for exercising his right to stand trial. In announcing sentence, the court did not make any negative statements concerning defendant's decision to proceed to trial. Moreover, defendant's sentence was not considerably greater than that offered prior to trial. *People v. Moss*, 205 Ill. 2d 139, 171 (2001) ("A court may grant dispositional concessions to defendants who enter a guilty plea when the public's interest in the effective administration of justice would thereby be served."); *Ward*, 113 Ill. 2d at 526 ("Although it may be proper in imposing sentence to grant concessions to a defendant who enters a plea of guilty, a court may not penalize a defendant for asserting his right to a trial either by the court or by a jury."). Merely imposing a longer sentence than in the plea deal is not conclusive on whether the sentence was excessive. See, *People v. Brown*, 2018 IL App (1st) 160924, ¶ 13.

¶ 28 After viewing the record as a whole, we can find no evidence that would clearly demonstrate the trial court's intention to punish defendant for exercising his right to trial.

Therefore, we conclude that the trial court did not abuse its discretion and affirm defendant's 14-year sentence.

¶ 29 CONCLUSION

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

¶ 31 Affirmed.