2019 IL App (4th) 170354-U

NO. 4-17-0354

FILED
July 18, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ROBERT M. SIMPSON, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Livingston County No. 16CF231 The Honorable Jennifer H. Bauknecht, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed defendant's conviction and sentence.

¶ 2 In October 2016, the State charged defendant, Robert M. Simpson, with (count I) unlawful possession with intent to deliver a controlled substance and (count II) unlawful possession of a controlled substance. 720 ILCS 570/401(a)(1)(A), 402(a)(1)(A) (West 2016). In January 2017, a jury found him guilty of both counts. During the trial, the State played an interrogation video that purportedly contained hearsay statements and other-crimes evidence. Defense counsel failed to preserve these potential issues. In February 2017, the trial court merged defendant's convictions and sentenced him to 23 years in prison.

¶ 3 Defendant appeals, arguing (1) the trial court admitted improper hearsay statements, (2) the State introduced improper other-crimes evidence, and (3) the trial court's sentence was an abuse of discretion. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Charges

¶ 6 In October 2016, the State charged defendant with (count I) unlawful possession with intent to deliver a controlled substance in that defendant knowingly possessed with the intent to deliver more than 15 grams of a substance containing heroin and (count II) unlawful possession of a controlled substance in that defendant knowingly possessed more than 15 grams of a substance containing heroin. 720 ILCS 570/401(a)(1)(A), 402(a)(1)(A) (West 2016).

¶ 7 B. The Jury Trial

¶ 8 In January 2017, defendant's case proceeded to a jury trial. Officer Zachary Benning of the Livingston County Sherriff's Department testified that he observed a vehicle speeding on the interstate. Benning stated that he had received an anonymous tip that this vehicle may be involved in drug trafficking. Benning stated that he contacted the Dwight Police Department to initiate a traffic stop.

¶ 9 Officer Maier of the Dwight Police Department testified that he performed the traffic stop. Maier noted that the vehicle's license plate was only partially illuminated, which was a traffic violation. Maier stated that three individuals were in the vehicle: (1) Kelly Dougherty, the driver of the vehicle, (2) defendant, who was in the passenger seat, and (3) Bruce Melvin, who was in the back seat. Maier testified that all three individuals were acting nervous. He further testified that he began to conduct inquiries incident to the traffic stop, such as checking for proof of insurance, verifying whether any of the vehicle's occupants had outstanding warrants, and checking whether Dougherty had a valid driver's license. Maier stated that while he was conducting these inquiries, Officer McKee arrived on the scene and conducted a "free air sniff" with his drug-sniffing canine. Maier stated that the canine alerted for the presence of drugs. He

also stated that Dougherty's license was suspended.

¶ 10 Maier testified that he arrested Dougherty for driving on a suspended license. He stated that he "asked her if she had anything illegal on her. She stated 'no, I don't have any pockets.' I requested that she remove her shoes. She removed her right shoe. *** I found a large plastic bag with multiple other plastic bags inside that. Those small plastic baggies had a white powder residue in each bag." Ultimately, Maier stated that there were 94 small bags of heroin found in Dougherty's sock.

¶ 11 Maier stated that he interviewed defendant at the scene of the traffic stop. Maier testified that defendant told him that he went to Chicago to purchase heroin for a drug dealer in Pontiac who went by the name of "Jon-Jon." Maier then arrested defendant, Dougherty, and Meyer and took them to the police station for further questioning.

¶ 12 The State played a video of Maier's interrogation of defendant to the jury. During the video, defendant stated that they went to Chicago to purchase heroin for Jon-Jon. Defendant stated that Jon-Jon gave them around $400 to purchase the heroin and that Jon-Jon arranged the purchase. Defendant noted that he planned to purchase $200 worth of heroin from Jon-Jon when he got back from Chicago.

¶ 13 Also during the video, Maier asked defendant whether he told Dougherty to put the heroin in her sock. Defendant responded by saying "[n]o, no *** I didn't have it. I didn't touch it at all. *** It was in the center console the whole time. Then she grabbed it. *** I didn't even know she had it in her sock. She said she had it in her crotch." In response, Maier told defendant that "I can tell you right now, [Dougherty is] telling me that you told her to put it in her sock *** that's exactly what she's telling me." Defense counsel objected to this portion of the video.

¶ 14 Outside the presence of the jury, counsel argued that "Officer Maier's statement that Kelly [Dougherty] said that he told her to put it in her sock. I know we can't delete it, erase it, but at least an admonition to disregard." The prosecutor noted that the statement was "not being offered for the truth of the matter asserted. It's just being offered to show what *** his response to that was. *** So I have no objection to a limiting instruction ***." In response, the trial court instructed the jury as follows:

> "Okay. Before we resume the tape, the statement of the [*sic*] Kelly Dougherty that the defendant told her to put the heroin in her socks, that's only being admitted to show what the defendant did later, not to prove that he actually said that. So you can only consider that as it affects [defendant's] future actions. You can resume the tape."

¶ 15 Following this limiting instruction, the remainder of the interrogation video was played to the jury. In response to Maier's accusation, defendant stated that he "did not tell her to put it in her sock. I swear I did not tell her to put it in her sock. I didn't tell her to do anything with it." He further stated that he rode with Dougherty "to make sure she was okay. She didn't want to go alone."

¶ 16 Later in the video, Maier asked defendant how many times he has gone to Chicago to purchase heroin. In response, defendant said he went up to Chicago to purchase heroin about 10 times. He further stated that he "just started doing it in the last six months." Defendant then went on to describe the economics and logistics of purchasing heroin in Chicago and his heroin usage. Defense counsel did not object to this portion of the video.

¶ 17 After the video concluded, Maier testified that based on his experience as a police officer, possessing 94 bags of heroin was inconsistent with personal use. Insteaad, he stated that

possessing 94 bags of heroin was consistent with selling drugs. Angela Nealand, a forensic scientist with the Illinois State Police, testified that the substance inside the bags weighed 15.6 grams and tested positive for heroin.

¶ 18 After the State rested, defendant elected to testify in his defense. On direct examination, defendant testified as follows:

"Q. Do you remember the events of October 5th of last year?

A. Yes, sir.

Q. And that involved a trip to Chicago, you and Kelly Dougherty and Bruce Melvin?

A. Yes.

* * *

Q. How did you get to Chicago?

A. Bruce Melvin's car.

Q. Okay. And who drove?

A. Kelly drove there, and then we switched spots right before we got to the city *** because Kelly couldn't drive very good so I said I would drive in the city."

* * *

Q. Okay. After you switched drivers, what did you do?

A. We *** went to [a] Wendy's and waited for a phone call.

Q. And what was the phone call for?

A. To go to Popeyes [Louisiana Kitchen] and meet the guy there.

Q. Okay. And was it the individual you were to meet, he called you?

A. He called Kelly's phone.

Q. Okay. And you went to Popeyes?

A. Yes.

Q. Who drove?

A. I drove.

Q. When you got *** to Popeyes, what happened?

A. We sat there in the parking lot for about a half hour and a blue minivan pulled up and honked; we followed, I drove around the block and followed it into an alley. And a black lady jumped out and came walking up towards the car. Kelly [Dougherty] jumped out; and they stood in front of the vehicle; and she bought some drugs, got back in the car, gave me two bags and put the rest of them in her sock. She did one. And then I drove to Dwight.

Q. What happened—why did she give you two bags?

A. Because I was pretty sick. I was going through bad withdrawals.

Q. So you used the two bags there?

A. Yes.

Q. When you got to Dwight, you pulled off and traded drivers again?

A. Yes.

Q. Okay. Why was that?

A. Because we thought Kelly had a driver's license and I didn't want to drive into Livingston County.

Q. Okay. And then you got back on the highway, and shortly afterwards you were stopped?

A. Yes, sir.

Q. Were any controlled substances found on you at the traffic stop?

A. No. I didn't have anything on me.

Q. And you heard the video interview that was played earlier today, this afternoon. I believe there—did you set up the deal? Did you set up the meeting?

A. No. Jon-Jon gave Kelly some money, and he had already called down. He used my phone. ***.

* * *

Q. What was your reason for going to Chicago? I mean, it was to buy drugs, but for what purpose?

A. Kelly asked me to ride along with her so she didn't get robbed when she went down there. She said she was going to give me some free stuff, and I was trying to have my girlfriend come with $200 for me when we got back because I was going to try to buy some also.*** I was trying to buy two jabs.

Q. Okay. The money that Kelly gave to the lady in Chicago, was any of that yours?

A. No.

Q. Okay. You were hoping to have money to buy some of the heroin once you got back [from] Chicago. Is that correct?

A. Yes.*** I was trying to purchase 28 bags.

Q. Okay. And why 28 bags?

A. Because I did about four of them at a time.

Q. And 28 bags would have lasted you about how long?

A. About a day maybe and a half. ***.

* * *

Q. Okay. Did you have any money invested in [the] 94 bags that the police came up with?

A. No, sir.

Q. You were going to *** buy some of those when you got back to Pontiac?

A. Yes. My girlfriend was trying to come up with the money. She was trying to borrow it from her mom before I got back."

¶ 19 On cross-examination, defendant stated that he only went to Chicago to protect Dougherty. Defendant noted that she gave him two bags of heroin and that he immediately used this heroin. Defendant was also impeached based on his prior criminal history. The defense also called Melvin to testify. Melvin—who was later impeached on cross-examination regarding his criminal history—testified that Dougherty, rather than defendant, was responsible for purchasing the heroin. Later that day, the jury found defendant guilty of (count I) unlawful possession with intent to deliver a controlled substance and (count II) unlawful possession of a controlled substance. *Id.*

¶ 20 C. The Motion for a New Trial and Defendant's Sentence

¶ 21 In February 2017, defense counsel filed a motion for new trial in which counsel argued only that the State failed to prove defendant guilty beyond a reasonable doubt. Later that month, the trial court denied defense counsel's motion.

¶ 22 Immediately thereafter, the trial court conducted a sentencing hearing. The State introduced defendant's presentence investigation report into evidence. In pertinent part, defend-

ant's prior criminal history included convictions for driving under the influence of alcohol, possession of drug paraphernalia, burglary, possession of a controlled substance, battery, and delivery of a controlled substance. In aggravation, the State argued that the trial court should sentence defendant in excess of 20 years in prison because (1) defendant's conduct threatened serious injury, (2) defendant had a lengthy history of prior criminal history, and (3) a long sentence was necessary to deter others. In mitigation, defense counsel conceded that defendant's conduct threatened serious physical harm. However, defense counsel argued that a sentence of under 10 years in prison was appropriate because (1) "this would be his first felony in six years," (2) defendant had a stable work history, and (3) defendant was addicted to heroin. Defendant also made a statement in allocution, during which he stated as follows:

> "I don't try to say that what I did wasn't wrong because I do know what I did was wrong; but I didn't have any control over my addiction. I was not trying to sell drugs. And I have three daughters that I love a lot. And I think that heroin has taken enough away from a lot of people where they don't need to be the victims in this as well. I'm not trying to make excuses for what I did because I know what I did was wrong, but please take that into consideration."

¶ 23 The trial court then discussed how heroin had negatively affected the local community. The court reasoned that "some of the drugs that you purchased were meant for distribution in this county. That's contributing to the problem. That's more than being a part of the problem. It's making the problem worse." The court further reasoned as follows:

> "When I look at the factors in aggravation and I look at the factors in mitigation, unfortunately there really are no mitigating factors here. I'm looking at the list, and not one applies. There are aggravating factors. I think the fact that your

> conduct ultimately threatened serious harm I think is *** implicit in the charge so that's not a strong factor. But certainly your prior record is a very strong aggravating factor.
>
> And I have to agree with the State in this particular case that deterrence is a very strong factor in this case. Bottom line is we don't want people selling drugs in our community, especially heroin. We don't want it. Period. And we do need to take a hard line on that, and we do need to send a strong message. The people that are dealing the drugs, selling the drugs in our community are the problem because they are making it available for the addicts. So here there are just very strong aggravating factors. There are really no mitigating factors."

¶ 24 Based upon this, the trial court merged defendant's convictions and sentenced him to 23 years in prison for unlawful possession with intent to deliver to be served at 50%. See 720 ILCS 570/401(a)(1)(A) (West 2016) (sentencing range for possession with intent to deliver 15 grams but less than 100 grams of a substance containing heroin is a 6-year minimum to a 30-year maximum). The court also imposed various fines and fees and credited defendant for the 145 days he had already spent in custody.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 Defendant appeals, arguing (1) the trial court admitted improper hearsay statements, (2) the State introduced improper other-crimes evidence, and (3) the trial court's sentence was an abuse of discretion. We address these issues in turn.

¶ 28 A. The Evidence Was Not Closely Balanced

¶ 29 Defendant argues that "Officer Brian Maier stated [during the interrogation video]

that Kelly Dougherty had accused [defendant] of instructing her to put the heroin in her shoe during the traffic stop. In the context of the entire interview, the statement served no purpose other than to prove that [defendant] had possession of the heroin." Accordingly, defendant argues that the trial court admitted improper hearsay statements. Defendant also argues that Maier's statements during the interrogation video "elicited [defendant's] description of Jon-Jon's arrangement for purchasing heroin in Chicago, how often [defendant] traveled to Chicago for heroin, and the steps taken to buy the heroin." Thus, defendant argues that these statements were improper other-crimes evidence. Defendant concedes that these arguments can only be evaluated under the first prong of the plain-error doctrine, but argues that reversal is warranted because the evidence was closely balanced. We affirm because the evidence was not closely balanced.

¶ 30 1. *The Applicable Law*

¶ 31 To preserve a purported error for appeal, a defendant must raise the issue before the trial court and in a posttrial motion. *People v. Colyar*, 2013 IL 111835, ¶ 27, 996 N.E.2d 575. Failure to do either results in forfeiture. *People v. Sebby*, 2017 IL 119445, ¶ 48, 89 N.E.3d 675. However, the plain-error doctrine bypasses normal forfeiture principles and allows a reviewing court to consider an unpreserved error when (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *People v. Ely*, 2018 IL App (4th) 150906, ¶ 15, 99 N.E.3d 566.

¶ 32 When a defendant claims first-prong error, he must demonstrate that (1) an error occurred and (2) the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him. *Sebby*, 2017 IL 119445, ¶ 48. "In determining if the evidence was close, a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of the evidence within the context of the case." *People v.*

Bates, 2018 IL App (4th) 160255, ¶ 71, 112 N.E.3d 657; see also *Sebby*, 2017 IL 119445, ¶ 53. "The evidence is closely balanced if the outcome of this case turned on how the finder of fact resolved a contest of credibility." (Internal quotation marks omitted.) *People v. Westfall*, 2018 IL App (4th) 150997, ¶ 74, 115 N.E.3d 1148. "A contest of credibility exists when (1) both sides presented a plausible version of events and (2) there is no extrinsic evidence to corroborate or contradict either version." (Internal quotation marks omitted.) *Id.* However, an otherwise plausible version of events can be undercut by the defendant's illogical, implausible, or contradictory statements. See *id.* ¶ 81 (the evidence was not closely balanced—notwithstanding an otherwise plausible defense theory—due to the defendant's contradictory and illogical statements that he made to the police).

¶ 33 The defendant bears the burden of persuasion under the plain-error doctrine. *People v. Suggs*, 2016 IL App (2d) 140040, ¶ 61, 57 N.E.3d 1261. If the defendant meets his burden, he has demonstrated actual prejudice, and his conviction should be reversed. *Sebby*, 2017 IL 119445, ¶ 44. "If the defendant fails to meet his burden, the issue is forfeited and the reviewing court will honor the procedural default." *People v. Marzonie*, 2018 IL App (4th) 160107, ¶ 55, 115 N.E.3d 270.

¶ 34 Defendant was charged with and convicted of unlawful possession with intent to deliver a controlled substance. 720 ILCS 570/401(a)(1)(A) (West 2016). "Possession can be actual or constructive." *People v. Scott*, 2012 IL App (4th) 100304, ¶ 19, 966 N.E.2d 340. "Actual possession is the exercise by the defendant of present personal dominion over the illicit material and exists when a person exercises immediate and exclusive dominion or control over the illicit material, but does not require present personal touching of the illicit material." *People v. Givens*, 237 Ill. 2d 311, 335, 934 N.E.2d 470, 484 (2010). "The rule that possession must be exclusive

does not mean, however, that the possession may not be joint." *Id.* "If two or more persons share the intention and power to exercise control, then each has possession." *Id.* "Constructive possession is shown where the defendant exercises no actual personal present dominion over the narcotics, but there is an intent and a capability to maintain control *** over them." (Internal quotation marks omitted.) *Scott*, 2012 IL App (4th) 100304, ¶ 19. Constructive possession is often proved by circumstantial evidence. *Id.* Likewise, "direct evidence of the intent to deliver a controlled substance is rare; thus, intent must usually be proved by circumstantial evidence." *People v. Johnson*, 2013 IL App (4th) 120162, ¶ 28, 986 N.E.2d 782. Courts "examine the nature and quantity of the circumstantial evidence presented in support of the inference of intent to deliver." *Id.* Factors indicative of intent to deliver include (1) whether the quantity of the drugs is too large to be viewed as being solely for personal use and (2) the manner in which the substance is packaged. *Id.*

¶ 35 2. *This Case*

¶ 36 In this case, even though the police did not find the heroin on defendant's person, the evidence was not closely balanced because defendant did not present a plausible version of events. For example, during the interrogation video that was played to the jury, defendant stated that he went to Chicago to purchase $400 worth of heroin for Jon-Jon. The police ultimately found 94 bags of heroin in Dougherty's sock, and defendant was sitting in the passenger seat next to Dougherty. At trial, defendant claimed that he only went to Chicago to protect Dougherty from being robbed. Notwithstanding this purported justification, defendant went on to testify about (1) his heroin addiction, (2) his heroin use on the day of his arrest, and (3) his plan to purchase 28 bags of heroin from Jon-Jon once he returned to Pontiac. Due to defendant's own statements, he did not present a plausible version of events.

¶ 37 Moreover, during the interrogation video, defendant claimed that the heroin was in the center console and that Dougherty took the drugs while they were getting pulled over. In the video, defendant elaborated by saying he "didn't even know she had it in her sock. She said she had it in her crotch." However, during trial, defendant testified that Dougherty "bought some drugs [in Chicago], got back in the car, gave me two bags, and put the rest of them in her sock." Accordingly, defendant's statements at trial were undercut by the statements he previously made to the police.

¶ 38 If defendant had exercised his right to remain silent, this case might have been closely balanced. However, similar to *Westfall*, 2018 IL App (4th) 150997, ¶¶ 77-81, we conclude that the evidence is not closely balanced. Accordingly, we affirm defendant's conviction.

¶ 39 B. The Trial Court's Sentence

¶ 40 Defendant also argues that the trial court's sentence was an abuse of discretion. We disagree.

¶ 41 1. *The Applicable Law*

¶ 42 "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. "Criminal punishment serves four key purposes: (1) retribution, (2) deterrence, (3) incapacitation, and (4) rehabilitation." *People v. Wheeler*, 2019 IL App (4th) 160937, ¶ 37. "Which of these purposes predominates in a given case is a matter left to the sound discretion of the trial court." *Id.*

¶ 43 The Unified Code of Corrections (Unified Code) (730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2016)) establishes mitigating and aggravating factors that the trial court must consider when determining an appropriate sentence. *People v. Brunner*, 2012 IL App (4th) 100708, ¶¶ 43-

45, 976 N.E.2d 27. As relevant to this case, aggravating factors include (1) conduct that caused serious harm, (2) the defendant's prior criminal history, and (3) the need for deterrence. 730 ILCS 5/5-5-3.2(a)(1), (3), (7) (West 2016). A reviewing court presumes that the trial court considered all relevant aggravating and mitigating factors and will not substitute its judgment for that of the trial court merely because it could have weighed these factors differently. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11, 65 N.E.3d 419.

¶ 44 However, "[a] trial court abuses its discretion when it considers an improper factor in aggravation." *People v. Musgrave*, 2019 IL App (4th) 170106, ¶ 55. "Whether the trial court relied upon an improper factor during sentencing is a question of law reviewed *de novo*." *Id.* "There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court." *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 22, 979 N.E.2d 1014. Likewise, the defendant bears the burden to establish that his sentence was based upon an improper factor. *People v. Williams*, 2018 IL App (4th) 150759, ¶ 18, 99 N.E.3d 590.

¶ 45 "The sentence imposed by the trial court is entitled to great deference and will not be reversed on appeal absent an abuse of discretion." *People v. McGuire*, 2017 IL App (4th) 150695, ¶ 38, 92 N.E.3d 494. "The trial court's imposition of a sentence is given great deference because the trial court is in the best position to consider the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Etherton*, 2017 IL App (5th) 140427, ¶ 15, 82 N.E.3d 693. We also presume that a sentence within the statutory framework provided by the legislature is proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46, 19 N.E.3d 1070. "The trial court abuses its discretion at sentencing only when the

sentence varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." *Wheeler*, 2019 IL App (4th) 160937, ¶ 39.

¶ 46 2. *This Case*

¶ 47 In this case, the trial court considered defendant's criminal record and the need for deterrence as "very strong" factors in aggravation. Although the court discussed the dangers of heroin, the court ultimately concluded that "the fact that your conduct ultimately threatened serious harm I think is *** implicit in the charge so that's not a strong factor [in aggravation]." The court determined that there were no factors in mitigation. Based upon this, the court sentenced defendant to 23 years in prison.

¶ 48 Defendant argues that the trial court's sentence was an abuse of discretion because the court "[(1)] improperly considered the threat of harm caused by heroin trafficking as an aggravating factor; [(2)] did not consider [defendant's] addiction and attempts to enter rehabilitation in mitigation; and [(3)] failed to give adequate weight to [defendant's] rehabilitative potential."

¶ 49 First, although the trial court did discuss the dangers of heroin, the court explicitly stated that this was not a strong factor in aggravation for defendant's sentence. See 730 ILCS 5/5-5-3.2(a)(1) (West 2016) (aggravating factors include a defendant's conduct which caused or threatened serious harm). There is a strong presumption that the trial court based its sentence upon proper reasoning. *Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 22. Defendant fails to demonstrate that the trial court abused its discretion merely because it discussed the dangers of heroin at length.

¶ 50 Second, we conclude that the trial court did not err by refusing to consider defendant's drug addiction as a mitigating factor. Drug addiction is not an explicit factor in mitiga-

tion under the Unified Code. See 730 ILCS 5/5-5-3.1 (West 2016). For this reason, "the trial court is not required to view drug addiction as a mitigating factor." *People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 105. "Instead, a history of substance abuse is a 'double-edged sword' that the trial court may view as a mitigating or aggravating factor." *Id.* (citing *People v. Mertz*, 218 Ill. 2d 1, 83, 842 N.E.2d 618, 662 (2005)). Accordingly, this argument is without merit.

¶ 51 Third, the trial court—rather than this court—was in the best position to determine defendant's rehabilitative potential. *Etherton*, 2017 IL App (5th) 140427, ¶ 15. To that point, defendant had a lengthy criminal history that included various drug offenses. Defendant also openly admitted that he was addicted to heroin. Based upon this, the trial court "could have properly concluded that defendant's drug addiction lessened his rehabilitative potential *** and increased the need for deterrence." *Sturgeon*, 2019 IL App (4th) 170035, ¶ 108. Hence, defendant's rehabilitation argument fails.

¶ 52 Defendant also concedes that his sentence was within the statutory framework provided by the legislature. 720 ILCS 570/401(a)(1)(A) (West 201). As such, we presume that his sentence was proper. *Knox*, 2014 IL App (1st) 120349, ¶ 46. Finally, we conclude that defendant's sentence did not greatly vary from the spirit and purpose of the law nor was it manifestly disproportionate to the nature of the offense. *Wheeler*, 2019 IL App (4th) 160937, ¶ 39. We therefore affirm defendant's sentence.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm defendant's conviction and sentence. We also grant the State its $50 statutory assessment against defendant as the cost of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 55 Affirmed.