

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).

2014 IL App (3d) 120683-U

Order filed June 4, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

| | | |
|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE |) | Appeal from the Circuit Court |
| OF ILLINOIS, |) | of the 10th Judicial Circuit, |
| |) | Peoria County, Illinois, |
| Plaintiff-Appellee, |) | |
| |) | Appeal No. 3-12-0683 |
| v. |) | Circuit No. 11-CF-24 |
| |) | |
| CHARLES MORRIS, |) | Honorable |
| |) | Timothy M. Lucas, |
| Defendant-Appellant. |) | Judge, Presiding. |

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Lytton and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's 24-year sentence for home invasion was not an abuse of discretion.

¶ 2 Defendant, Charles Morris, was indicted on five counts of home invasion (720 ILCS 5/12-11(a)(2), (3) (West 2010)), three counts of armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)), and one count of residential burglary (720 ILCS 5/19-3(a) (West 2010)). Defendant elected to proceed to a stipulated bench trial on one count of home invasion (720 ILCS 5/12-11(a)(3) (West 2010)), and was found guilty. The trial court entered a sentence of 24 years'

imprisonment. Defendant appeals, arguing that the trial court abused its discretion when imposing the sentence. We affirm.

¶ 3

FACTS

¶ 4

The following facts were presented at defendant's stipulated bench trial, which took place on May 22, 2012. On the night of January 9, 2011, Seth Minton and Kylee Wright were at Minton's residence when there was a knock on the door. When Minton answered the door, several men, some carrying guns, forced their way inside the residence. One of the men forced Wright to the ground and struck her head with his gun. Another man took Minton upstairs to look for drugs and money. Minton was later hit on the head with the man's gun. The men took a safe as well as Minton's wallet and Wright's purse.

¶ 5

When officers arrived at Minton's residence, they surrounded the house and ordered those inside to exit. Several people ran out, and Officer Ryan Winkle chased one. Winkle captured the man and identified him as defendant. Winkle recovered a black mask and a wallet that contained Minton's driver's license from defendant. Officers also captured three codefendants running from the residence, including one who had a pistol holster. A pistol was later recovered in the yard of the residence next door to Minton's home.

¶ 6

Detective Shawn Curry was called to investigate the home invasion and interviewed defendant. Defendant told Curry that he had been picked up from the Peoria County jail by two of his codefendants the day he was released from incarceration for retail theft. They went out to eat, and one of the codefendants told defendant about his plan to rob Minton. Defendant agreed to the plan because he needed the money. The trial court found defendant guilty of home invasion. 720 ILCS 5/12-11(a)(3) (West 2010).

¶ 7

At the bench trial, the parties informed the court that they agreed to a 27-year cap on defendant's sentence. The court advised defendant that his sentence was a Class X felony that

required a 6- to 30-year sentence. The sentence was also subject to a mandatory 15-year enhancement because firearms were involved in the offense, making the applicable sentencing range 21 to 45 years' imprisonment.

¶ 8 A sentencing hearing was held on July 13, 2012. At the hearing, the State presented defendant's presentence investigation report (PSI), which revealed that defendant had a delinquency adjudication for retail theft and adult misdemeanor convictions for theft, battery, aggravated assault, and possession of drug paraphernalia. The PSI also included defendant's letter of apology and showed that he was working toward his General Education Diploma (GED). In sentencing defendant, the trial court considered the PSI, defendant's statement in allocution, and the factors in aggravation and mitigation. The court noted that defendant was only 18 years old at the time of the offense, did not have as serious a criminal record as his codefendants, and had expressed remorse for what he had done. The trial court sentenced defendant to 24 years' imprisonment and emphasized the seriousness of the offense as the reasoning behind the decision. Defendant's motion to reconsider was denied. Defendant appeals.

¶ 9 ANALYSIS

¶ 10 On appeal, defendant argues that his 24-year sentence was excessive in light of several mitigating factors. He argues that the trial court failed to properly consider his age, lack of felony convictions, acceptance of responsibility, rehabilitation potential, and GED courses he took while in pretrial detention.

¶ 11 The Illinois Constitution mandates that all sentences should reflect both the seriousness of the crime and the objective of rehabilitation and returning the offender to useful citizenship. Ill. Const. 1970, art. I, § 11. The court must consider all mitigating factors including age, demeanor, mentality, criminal history, and potential for rehabilitation. *People v. Ward*, 113 Ill.

2d 516 (1986). It is presumed that the sentencing court has considered all relevant mitigating factors and has reached the correct decision, unless the record presents evidence to the contrary. *People v. Flores*, 404 Ill. App. 3d 155 (2010).

¶ 12 Trial courts are given great deference when imposing sentences, and a sentence that falls within the statutory guidelines will not be changed on review absent an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205 (2010). An abuse of discretion occurs when the sentence is in great variance with the spirit and purpose of the law, or it is manifestly disproportionate to the nature of the offense. *Id.* Under this standard, a reviewing court may not substitute its judgment for that of a sentencing court merely because it would have weighed the factors in aggravation and mitigation differently. *People v. Stacey*, 193 Ill. 2d 203 (2000).

¶ 13 Here, defendant's conviction of home invasion was a Class X felony, punishable by a sentence of 6 to 30 years' imprisonment. 720 ILCS 5/12-11(a)(3), (c) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). In addition, the statute provides that a violation under subsection (a)(3) is a felony for which a mandatory firearm enhancement of 15 years shall be added to the term of imprisonment imposed by the trial court. 720 ILCS 5/12-11(c) (West 2010). Therefore, the effective sentencing range in this case was 21 to 45 years' imprisonment, which was limited by the 27-year cap imposed by agreement of the parties. We do not find defendant's 24-year sentence -- which was three years above the minimum and 21 years less than the maximum, to be an abuse of discretion.

¶ 14 Defendant contends that the trial court did not give enough weight to several mitigating factors. Defendant points to his age, the GED courses he took while incarcerated, his relatively minor criminal record, and the fact that he was not the person in possession of a firearm at the time of the offense. Despite defendant's contention, all of these factors were presented to and considered by the trial court at his sentencing hearing. There is also a presumption that the trial

court considered any mitigating evidence presented to it, unless there is affirmative evidence to the contrary. *Flores*, 404 Ill. App. 3d 155. Defendant points to nothing in the record to suggest that the court failed to consider any of the factors he presents on appeal. Instead, the record reveals that the trial court explicitly considered defendant's age, criminal history, and remorse when imposing its sentence.

¶ 15 Despite this mitigating evidence, the court expressed concern over the seriousness of the crime and the need to deter others from committing similar offenses. The seriousness of the crime has been called the most important sentencing factor the court considers, and the court is not required to give greater weight to mitigating factors than to the circumstances of the offense. *Flores*, 404 Ill. App. 3d 155; *People v. Shaw*, 351 Ill. App. 3d 1087 (2004). Thus, the court determined that in light of all the factors, both in aggravation and mitigation, a 24-year sentence was appropriate. Based on the record before us, we find that the trial court did not abuse its discretion in sentencing defendant within the statutory range.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Peoria County is affirmed.

¶ 18 Affirmed.