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2014 IL App (3d) 121017-U

Order filed September 16, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 9th Judicial Circuit, Knox County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-12-1017
	)	Circuit No. 12-CM-680
CHERYL L. TURLEY,	)	Honorable
Defendant-Appellant.	)	James B. Stewart, Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices Carter and Schmidt concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court did not abuse its discretion by not sentencing defendant to court supervision, against the State's recommendation, despite defendant's lack of criminal history.
- ¶ 2 Defendant, Cheryl L. Turley, was convicted after a bench trial of retail theft of less than \$300 (720 ILCS 5/16-25(a)(1) (West 2012)). At sentencing, the State recommended that defendant receive a sentence of court supervision. The court rejected that advice and imposed a \$150 fine instead. Defendant appeals, arguing that the court's decision not to impose court

supervision was an abuse of discretion. We affirm.

¶ 3

### FACTS

¶ 4

Defendant was arrested and charged with retail theft of under \$300 (720 ILCS 5/16-25(a)(1) (West 2012)). The court appointed a public defender, and the cause proceeded to a bench trial.

¶ 5

At trial, Kelly Cox testified that on the afternoon of August 4, 2012, she was working as an asset protection associate at Wal-Mart in Galesburg, when she noticed a suspicious shopper, whom she identified in court as defendant. Cox observed defendant take several items off shelves and place them in her cart. Defendant pushed the cart through an empty cash register lane and through the first set of exit doors. In a foyer area between the first and second sets of exit doors, Cox approached defendant and asked her to come into the asset protection office. Defendant complied. However, Cox described defendant as uncooperative, and testified that defendant would not divulge any information during questioning in the office. As a result, Cox called the police. Cox testified that defendant had \$98.86 worth of merchandise in her cart.

¶ 6

Galesburg Police Officer Donovan Godsil testified that he responded to a call from Wal-Mart on August 4. Upon arrival, he found defendant in the asset protection office. Defendant was uncooperative and stated that she did nothing wrong. Godsil arrested defendant for retail theft.

¶ 7

Defendant testified that she received disability benefits because of a knee replacement and arthritis in her leg. On August 4 at Wal-Mart, she was looking for a place to sit down when she pushed her cart through the checkout lines and out the first set of exit doors. She testified that the only place to sit down in Wal-Mart was the area between the first and second exit doors. Defendant stated that she did not intend to steal the merchandise in her cart, but was merely

resting. She offered to pay for the merchandise after she was approached by Cox.

¶ 8 The court found defendant guilty. It stated that its verdict came down to credibility; it did not believe defendant's testimony and found that she was attempting to use her disability as a defense.

¶ 9 The cause proceeded to sentencing:

"THE COURT: Does—[defendant] have any prior record?

[THE STATE]: No, Judge. Six months supervision, \$150 fine, \$100 PD fee if you don't mind.

THE COURT: I—I was honestly thinking about jail.

[THE STATE]: Oh.

THE COURT: But I will impose \$150 in costs, but I will not impose court supervision as I don't believe it's in your best interest or the public's best interest that you receive court supervision for this."

¶ 10 Defendant was sentenced to pay a \$150 fine, a \$100 public defender fee, and court costs, but no jail time. Defendant filed a motion for a new trial and to reconsider sentence. Defendant testified at the hearing on that motion that she was 57 years old and had no criminal history. She volunteered with several organizations and would be prohibited from doing some of that volunteer work if the present criminal conviction were to stay on her record. She argued that it was in her own and the public's best interest that she receive court supervision, allowing her criminal history to remain unblemished. The court denied the motion, finding that court supervision was not in the public's best interest.

¶ 11 Defendant appeals, arguing that the court abused its discretion by declining to sentence defendant to court supervision. We affirm.

ANALYSIS

¶ 12

¶ 13

Retail theft of less than \$300 is a Class A misdemeanor, punishable by up to one year in jail and up to a \$2,500 fine. 720 ILCS 5/16-25(a)(1), (f)(1) (West 2012); 730 ILCS 5/5-4.5-55 (West 2012).

¶ 14

The court has broad discretion to impose a sentence. *People v. Alexander*, 239 Ill. 2d 205 (2010). A court abuses its discretion when its sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *Id.* We will not substitute our judgment for that of the trial court merely because we would have weighed the sentencing factors differently. *Id.* The trial court is not required to recite and assign value to each fact presented at a sentencing hearing. *People v. Merritte*, 242 Ill. App. 3d 485 (1993). When mitigating evidence is before the court, it is presumed the court considered it, absent explicit evidence to the contrary. *People v. Flores*, 404 Ill. App. 3d 155 (2010).

¶ 15

Court supervision is not a right of the defendant but, rather, a sentencing alternative to be used at the discretion of the court. *People v. Hall*, 251 Ill. App. 3d 935 (1993). The trial court is not bound by the sentencing recommendation of the State. *People v. Streit*, 142 Ill. 2d 13 (1991).

¶ 16

Defendant is essentially asking us to reweigh the sentencing factors. Although defendant's crime was minor and she had no prior criminal history, the trial court determined that it was in the best interest of defendant and the public not to impose court supervision. We will not substitute our judgment for the trial court's on that point. The court was influenced by defendant denying responsibility for her crime and attempting to use her disability as an excuse. The trial court was in the best position to weigh such factors as "credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). We note that the trial court was initially considering jail time but decided

against it in light of the State's recommendation that defendant receive court supervision. The court's sentence was not an abuse of discretion.

¶ 17

#### CONCLUSION

¶ 18

The judgment of the circuit court of Knox County is affirmed.

¶ 19

Affirmed.