

NOTICE

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2014 IL App (4th) 140037-U

NO. 4-14-0037

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 5, 2014

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,
v.
TOMAS P. REKASIUS,
Defendant-Appellant.

) Appeal from
) Circuit Court of
) Champaign County
) No. 13CF198
)
) Honorable
) Thomas J. Difanis,
) Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Appleton and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's imposition of a nine-year prison sentence was not an abuse of discretion when (1) the court considered statutory mitigating factors, and (2) the sentence was not manifestly disproportionate to the nature of the offense.

¶ 2 Defendant, Tomas P. Rekasius, pleaded guilty to possession of cocaine with intent to deliver, a Class 1 felony (720 ILCS 570/401(c)(2) (West 2012)) eligible for a sentence of 4 to 15 years in prison (730 ILCS 5/5-4.5-30(a) (West 2012)). Following an extensive sentencing hearing, the trial court sentenced defendant to nine years in prison. Defendant appeals, arguing the court failed to consider statutory mitigating factors. The State argues the court did not abuse its discretion, as it considered all evidence relating to mitigating factors presented. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. The Charges

¶ 5 On February 4, 2013, the State charged defendant with two Class X felonies. Count I alleged on February 2, 2013, defendant possessed 100 grams or more but less than 400 grams of a substance containing 3, 4 methylenedioxy-N-methylamphetamine (MDMA) (a controlled substance commonly referred to as Ecstasy) with intent to deliver. 720 ILCS 570/401(a)(7.5)(B)(i) (West 2012). Count II alleged on February 2, 2013, defendant possessed 15 grams or more but less than 100 grams of a substance containing cocaine with intent to deliver. 720 ILCS 570/401(a)(2)(A) (West 2012). On August 5, 2013, the State added count III, a Class 1 felony, alleging defendant unlawfully possessed 1 gram or more but less than 15 grams of a substance containing cocaine with intent to deliver. 720 ILCS 570/401(c)(2) (West 2012).

¶ 6 B. Guilty Plea

¶ 7 On August 5, 2013, defendant entered an open plea of guilty to count III, a Class 1 felony. The offense was nonprobationable and defendant could be sentenced to between 4 and 15 years in prison. 730 ILCS 5/5-4.5-30 (West 2012). In exchange for defendant's plea, the State dismissed counts I and II. The trial court admonished defendant of his rights and the nature of the offense.

¶ 8 The State presented the factual basis for the plea, stating on February 2, 2013, University of Illinois police officers saw defendant and other individuals standing around a vehicle in a campus parking lot. The officers witnessed defendant drop a plastic bag containing pink pills. The officers then ordered defendant to take his hand out of his pocket. He complied, revealing he was holding a large roll of cash. The officers searched the vehicle and found cocaine and almost 375 pills of MDMA. Other testimony would have established defendant and his codefendants came from the western suburbs of Chicago, Illinois, to Champaign-Urbana, Illinois, to sell drugs during a concert near the University of Illinois campus.

¶ 9

C. The Sentencing Hearing

¶ 10

1. *Evidence Presented*

¶ 11 At the October 2, 2013, sentencing hearing, the State presented the testimony of Erin Seaton, one of the codefendants in this case. Seaton dated defendant's friend, Marshall Giorango, sold drugs with defendant and Giorango, and lived with defendant and Giorango from November 2012 until January 2013. Seaton testified she would go to concerts with defendant and Giorango to sell drugs. They sold "everything; [E]cstasy to Molly to acid and a lot of fake chemical drugs." At defendant's request, she sold drugs at fraternity houses in Champaign-Urbana.

¶ 12 She also testified defendant was physically violent toward her. In one incident, defendant put his hands around her throat and lifted her off the ground. On another occasion, defendant "smashed [her] face up against the car" when she refused to allow him to drive because he appeared intoxicated. In the last incident, she and defendant were arguing and he spit in her face. During two of these incidents, defendant was on drugs. She also testified she and defendant had a somewhat decent relationship and would socialize with each other.

¶ 13 Next, the State presented the testimony of Officer William Reynolds, who participated in defendant's arrest on February 2, 2013. Reynolds described how he walked up to defendant and saw him drop a plastic bag on the ground. Reynolds picked up the bag and recovered pink pills, which turned out to be Ecstasy (or MDMA, as it was described in the charging instrument). Reynolds asked defendant if he was under the influence of drugs, and defendant "advised [him] that he doesn't do drugs, that he sells drugs, and kind of chuckled." Reynolds also testified defendant was holding a roll of cash, totaling about \$3,000, in his hand. Defendant was also found with a 100-pound nitrous oxide tank.

¶ 14 Defendant's family addressed the trial court on his behalf. Violet Rekasius, defendant's mother, stated defendant was 13 when his older brother died and defendant was shattered. After his brother's death, defendant made very poor choices "to forget his pain." In jail, however, he was making many positive changes and was a role model to some other inmates. She asked the court to be lenient in sentencing defendant. Casey Rekasius, defendant's father, also testified as to defendant's positive changes and asked for leniency. Victoria Rekasius, defendant's sister, also testified about how difficult defendant's brother's death was on defendant and how defendant had made positive changes in jail.

¶ 15 Alex Rhema Zachariah, M.D., a retired physician living in Urbana, Illinois, testified on defendant's behalf. For the last two years, Dr. Rhema has visited the Champaign County jail as a health educationist and has worked with around 1,000 inmates. He described defendant as "an extremely positive person." Dr. Rhema explained defendant attended his health class, where Dr. Rhema teaches relaxation techniques. Defendant had put the techniques into practice and now trains others. When asked if he believed defendant would likely reoffend, he testified, "I'm not a psychiatrist, but I was the dean of one of the top medical schools, so I have to evaluate persons and their character, behavior, [sic] as the dean *** so it didn't take me long to come to a [] behavioral personality assessment. As I said, very positive, very focused, very committed, enthusiastic and [sic] able to achieve goals in the limited time." Defendant also presented various character-reference letters, which were not included in the trial court record.

¶ 16 *2. Statements by the Parties*

¶ 17 The State first argued for economic obligations, including \$112 in restitution to the University of Illinois police department, a \$7,500 mandatory street-value fine, a \$2,000 mandatory assessment for lab and court costs, the Violent Crime Victim's Assessment Act fee,

and a deoxyribonucleic acid (DNA) testing fee. The State then asked the trial court to consider defendant's prior criminal history in determining his sentence. Defendant had previously been convicted of delivery of cannabis and possession of a controlled substance in Cook County. The State argued this was a serious offense, as defendant had a substantial amount of drugs. Further, the State argued this specific crime was deterrable and asked the court to "send a strong message" to the defendant and others who would consider coming to downstate towns to sell drugs at college events. The State asked the court to sentence defendant to 10 years in prison.

¶ 18 Defense counsel asked the trial court to consider defendant's rehabilitative potential. Counsel described how defendant had a hard time dealing with his grief, and in high school, he had low self-esteem, was overweight, and had few friends. Defendant attended the University of Illinois and in his first year experienced another tragedy. His good friend drowned while she and defendant were rafting on a rafting trip in West Virginia. Defendant was called upon to identify her body. Counsel stated her death profoundly impacted defendant, and he dropped out of school shortly afterward. Counsel described how the tragedies in defendant's life led to his conviction and asked for leniency.

¶ 19 Defendant made a statement, describing how he began selling drugs and pushed aside a promising academic career for the ability to be numb. He stated he now realized the cost of his behavior and took full responsibility for his "bad choices." Defendant described the changes he made in jail, such as working with Dr. Rhema, and apologized for the harm he caused.

¶ 20 *3. The Sentence*

¶ 21 The trial court stated it had considered the presentence report, counsels' comments, defendant's comments, testimony presented by the State and defendant, and the

statutory factors in mitigation and aggravation. The court then stated, "[t]here aren't any statutory mitigation factors that apply to this defendant to this type of an offense. There's mitigation in this record, not necessarily statutory." The court found two statutory factors in aggravation, defendant's criminal history and the need to deter others who were similarly situated.

¶ 22 The trial court stated the tragedy in defendant's life explained how defendant ended up sitting in front of it for sentencing. The court clarified, however, it could not consider the tragedy as an excuse for defendant's actions. The court stated, "based on the documents that have been presented, he has tremendous rehabilitative potential." The court then said other mitigating factors included defendant's guilty plea and defendant was furthering his education.

¶ 23 The trial court noted, "is [defendant] going to find himself sitting in another courtroom sometime in the future waiting to be sentenced on another felony? No. I doubt that. I would sincerely hope and believe, based upon everything that's been presented, that this is his last stop on the felony highway ***." The court again referenced the need to deter others and the seriousness of defendant's crime. The court then concluded a nine-year prison sentence would be appropriate.

¶ 24 D. Defendant's Motion To Reconsider

¶ 25 On October 9, 2013, defendant filed a motion to reconsider, arguing the trial court's nine-year sentence was excessive. The motion claimed the court erred by failing to consider statutory mitigating factors, when the court's comments at sentencing demonstrated it found statutory mitigating factors applied.

¶ 26 At the March 3, 2014, hearing on the motion, defense counsel argued all the evidence demonstrated defendant would not reoffend and asked the court to reconsider its nine-

year sentence. The court stated defendant was charged with "very serious offenses" and it had also considered defendant's criminal history. The court then stated, "there was mitigation in this record as evidenced by the fact that instead of a 15[-]year sentence he got a sentence of [nine] years." The court concluded the sentence was appropriate given all the evidence presented, the deterrence factor, and defendant's prior record.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 A. Standard of Review

¶ 30 In this case, defendant was eligible for Class 1 sentencing, or between 4 and 15 years in prison. The State asked for a 10-year sentence. The trial court imposed a nine-year prison sentence, which is within the statutorily permissible range. "Where a sentence falls within statutory guidelines, it will not be disturbed on review absent an abuse of discretion." *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 40, 2 N.E.3d 333. " 'A reviewing court must afford great deference to the trial court's judgment regarding sentencing because that court, having observed the defendant and the proceedings, is in a far better position to consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits than a reviewing court, which must rely on a "cold" record.' " *Id.* ¶ 41, 2 N.E.3d 333.

¶ 31 B. The Nine-Year Prison Sentence

¶ 32 1. *Statutory Mitigating Factors*

¶ 33 Defendant argues the trial court failed to consider statutory mitigating factors, as required by section 5-5-3.1(a) of the Unified Code of Corrections (Unified Code). 730 ILCS 5/5-5-3.1(a) (West 2012). The State argues the court did not abuse its discretion, as the record

does not demonstrate it failed to consider the statutory mitigating factors. We agree with the State.

¶ 34 "A trial court has wide latitude in sentencing a defendant, so long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation." *People v. Roberts*, 338 Ill. App. 3d 245, 251, 788 N.E.2d 782, 787 (2003). "The weight attributed to such factors depends on the circumstances of a given case" and we do not overturn a trial court's sentencing decision because we would have weighed the factors differently. *Id.* "A trial court need not articulate the process by which it determines the appropriateness of a given sentence." *People v. Wright*, 272 Ill. App. 3d 1033, 1045-46, 651 N.E.2d 758, 766 (1995).

¶ 35 "[W]hen mitigating evidence is before the trial court, the court is presumed to have considered it." *Roberts*, 338 Ill. App. 3d at 251, 788 N.E.2d at 787. To overcome this presumption, "[a] defendant must point to something beyond the sentence itself to establish that such evidence was not considered." *Id.* Similarly, "[w]here the sentencing court examines a presentence report, it is presumed that the court considered the defendant's potential for rehabilitation." *Wright*, 272 Ill. App. 3d at 1046, 651 N.E.2d at 766. "The court, however, need not accord greater weight to defendant's potential for rehabilitation than to the seriousness of the crime." *Id.*

¶ 36 Here, a review of the record indicates the trial court considered proper mitigating and aggravating factors in making its sentencing decision. The record demonstrates the court considered the lack of harm, defendant's age, the unlikelihood defendant would reoffend, and defendant's rehabilitative potential. As aggravating factors, the court considered the need to deter others from traveling downstate to sell drugs to college students. Also, the court properly considered the seriousness of the crime; defendant was found with \$3,000, a large quantity of

MDMA pills, and cocaine. At the hearing on the motion to reconsider, the court stated "there was mitigation in this record as evidenced by the fact that instead of a 15-year sentence he got a sentence of 9 years."

¶ 37 In arguing the trial court failed to consider statutory mitigating factors, defendant relies primarily on the court's statement: "There aren't any statutory mitigation factors that apply to this defendant in this type of offense. There's mitigation in the record, not necessarily statutory mitigation." Defendant claims this shows the court did not consider any statutory mitigating factors. Defendant's focus on this isolated statement is misplaced. In determining if the trial court improperly imposed a sentence, reviewing courts should not focus on a few words or statements but consider the entire record as a whole. *People v. Ward*, 113 Ill. 2d 516, 526-27, 499 N.E.2d 422, 426 (1986). The record, viewed as a whole, demonstrates the court in fact considered the mitigating evidence defendant presented.

¶ 38 Defendant claims the trial court failed to consider that his attitude indicated he was unlikely to commit another crime (see 730 ILCS 5/5-5-3.1(a)(9) (West 2012)), despite its statement this was likely defendant's "last stop on the felony highway." However, the court specifically stated it did consider defendant's "tremendous rehabilitative potential" to be a factor in mitigation. Even if the court erred in determining defendant's rehabilitative potential was not a statutory mitigating factor, it is clear the court considered this factor. The court properly weighed this factor against the seriousness of the crime and the need to deter others in sentencing defendant to nine years. On review, we do not reweigh the factors considered by the court.

¶ 39 Next, defendant argues the trial court's comments indicate it found substantial grounds tending to excuse or justify the criminal conduct, though failing to establish a defense, but it failed to consider this statutory mitigating factor. See 730 ILCS 5/5-5-3.1(a)(4) (West

2012). We disagree. The court specifically stated, while the tragedies in defendant's life explained why he turned to drugs, it could not consider them an excuse for defendant's conduct. The court specifically found this statutory mitigating factor did not apply.

¶ 40 Defendant next argues this case is "almost identical" to *People v. Markiewicz*, 246 Ill. App. 3d 31, 55, 615 N.E.2d 869, 886 (1993), where the sentencing judge stated he would not consider defendant's evidence in mitigation because he believed it did not fit into the mitigating factors enumerated in section 5-5-3.1 of the Unified Code. We disagree. In *Markiewicz*, the trial court erred by failing to "consider all matters reflecting upon the defendant's personality, propensities, purposes, tendencies, and every aspect of his life relevant to the sentencing proceeding," when it specifically stated it would not consider such evidence. *Id.* Here, the court made no such statement indicating it would not consider any factor in mitigation or any evidence presented by defendant. Rather, the court stated it considered all the evidence presented and referred to the specific mitigating factors it found to apply.

¶ 41 The record demonstrates the trial court was presented with and considered evidence in mitigation and in aggravation. The record gives no indication the court failed to consider any statutory mitigating factors. Rather, it appears the court balanced all relevant factors in determining a nine-year sentence was appropriate.

¶ 42 *2. The Sentence Imposed Was Not Excessive*

¶ 43 Defendant also argues the trial court's sentence was excessive. The State argues the court's sentence was not an abuse of discretion, and we agree. "A sentence within the statutory range will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *Halerewicz*, 2013 IL App (4th) 120388, ¶ 41, 2 N.E.3d 333. The 9-year sentence was well within the 4- to 15-year

sentencing range. The court considered the seriousness of the crime and the need to deter others and weighed those considerations against mitigating factors such as defendant's rehabilitative potential.

¶ 44 The trial court's sentence was not at odds with the purpose and spirit of the law or disproportionate to the crime at issue here. The court did not abuse its discretion in sentencing defendant to nine years in prison.

¶ 45 III. CONCLUSION

¶ 46 We affirm the trial court's judgment. As part of this judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 47 Affirmed.