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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 1408
)	
GREGORY DONNER,)	Honorable
)	John A. Wasilewski,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when it admitted defendant's statement, "I know the system, hurry up and take me to jail" because it was an admission from which guilt may be inferred. The trial court did not abuse its discretion when it sentenced defendant, because of his background, to a Class X sentence of 17 years in prison.

¶ 2 After a jury trial, defendant Gregory Donner was convicted of burglary and sentenced to 17 years in prison. On appeal, defendant contends that he was denied a fair trial by the admission of his statement, "I know the system, hurry up and take me to jail." He further contends that he was denied effective assistance of counsel by trial counsel's failure to file a motion *in limine* to bar this statement. Defendant finally contends that his sentence is excessive in light of the nature of the offense and his untreated addictions. We affirm.

¶ 3 Defendant's arrest and prosecution arose from a January 2010 incident during which a brick was thrown through the car window of the victim Mary Tully.

¶ 4 Officer Andrew Riley, the victim's neighbor, testified that when he heard the sound of breaking glass coming from the alley he looked out of the kitchen window. He saw "the lower half of a torso, butt, and legs" protruding from the passenger side of the victim's car. Riley grabbed his gun, badge, and cellular phone, and went outside. As he approached the car, he identified his office and instructed the person to get on the ground. The person removed himself from the car, looked in Riley's direction and fled. At trial, Riley identified defendant as the person who extricated himself from the car. As Riley gave chase, he also called 911. Although he lost sight of defendant for two or three seconds during the pursuit, he ultimately took defendant into custody in a backyard equipped with motion activated lights. He later told the responding officers that defendant was the person he saw in the victim's car.

¶ 5 Officer Joseph Montesdeoca testified that when he and his partner arrived, defendant was on the ground. After speaking to Riley, Montesdeoca placed defendant into custody. He then gave defendant the *Miranda* warnings, and his partner performed a custodial search.

¶ 6 The State then asked what defendant said to Montesdeoca. The defense objected on the basis of hearsay and foundation. The court ruled that this statement was admissible hearsay and the State needed to lay a foundation for it.

¶ 7 Montesdeoca then testified that defendant stated, " I know the system, hurry up and take me to jail." " After officers obtained the victim's contact information, defendant was taken to a police station.

¶ 8 During closing argument, the State argued that defendant's statement that he knew the system and that he wanted to be taken to jail was his acknowledgment that he had done something that he knew he should not have done. The defense, on the other hand, argued that no

physical evidence tied defendant to the victim's car and that Riley lost sight of the person he was pursuing. In rebuttal, the State argued that defendant admitted that he was "the guy" when he stated that he knew the system and asked to be taken to jail.

¶ 9 Ultimately, defendant was convicted of burglary. The defense then filed a motion for a new trial alleging, *inter alia*, that defendant's statement was improperly admitted. The trial court denied the motion for a new trial. At sentencing, the State highlighted that defendant was a member of a gang and had 11 prior felony convictions. The defense responded that defendant had a weakness for alcohol and drugs that was his "downfall." Defendant also stated that his life was in a "constant downward spiral" due to his addiction. After considering the arguments in aggravation and mitigation, the court sentenced defendant based upon his background to a Class X sentence of 17 years in prison.

¶ 10 On appeal, defendant contends that the trial court erred in admitting his statement, "I know the system, hurry up and take me to jail" because it does not allow an inference of guilt necessary to constitute an admission. He further contends that he was denied effective assistance of counsel by counsel's failure to file a motion in *limine* to bar the statement.

¶ 11 Our supreme court has defined an "admission" as "'a statement or conduct from which guilt may be inferred, when taken in connection with other facts, but from which guilt does not necessarily follow.'" *People v. Ervin*, 297 Ill. App. 3d 586, 590 (1998), quoting *People v. Stewart*, 105 Ill. 2d 22, 57 (1984). These admissions do not fall under the rule against hearsay evidence. *Ervin*, 297 Ill. App. 3d at 590; see also Ill. R. Evid. 801(d)(2) (eff. Jan. 1, 2011) (excluding an opposing party's admissions or statements from the definition of hearsay). The admission of evidence rests within the sound discretion of the trial court and its determination regarding admissibility will not be disturbed absent an abuse of that discretion. *People v. Tenney*, 205 Ill. 2d 411, 436 (2002).

¶ 12 Before reaching the merits of defendant's arguments on appeal, this court notes that the State argues, relying on *People v. Aguilar*, 265 Ill. App. 3d 105, 110 (1994), that "[a]ny statement by an accused person, unless excluded by the privilege against self-incrimination or other exclusionary rules, may be used against him as an admission." However, until our supreme court provides authority to the contrary, this court will analyze defendant's statement "under the traditional and more stringent formula which requires an inference of guilt before the statement is admissible." *Ervin*, 297 Ill. App. 3d at 590; accord *People v. Milka*, 336 Ill. App. 3d 206, 232 (2003), *aff'd*, 211 Ill. 2d 150 (2004).

¶ 13 Here, defendant's statement that he knew how the system worked and wanted to be taken to jail, taken in connection with the facts that he was taken into custody after being identified by Riley as the person who emerged from the victim's car and fled, leads to the inference of guilt. See *Ervin*, 297 Ill. App. 3d at 590. Therefore, defendant's "admission" was properly admitted at trial. *Ervin*, 297 Ill. App. 3d at 590.

¶ 14 Defendant, however, relies on *People v. Rodriguez*, 291 Ill. App. 3d 55 (1997), and *People v. Kurzydlo*, 23 Ill App. 3d 791 (1974), to argue that his statement is not one from which guilt can be inferred. Rather, he contends that it merely shows his familiarity with the "system." We disagree.

¶ 15 In *Rodriguez*, the defendant was charged with several weapons offenses after an incident during which gunshots were fired at a car. At trial, the court permitted a witness to testify that when he asked the defendant about the shooting, the defendant responded " 'I am a sharp shooter.' " *Rodriguez*, 291 Ill. App. 3d at 60-61. On appeal the court determined that this statement was not an "admission," because taken with the other facts of the case, the statement was not one from which guilt could be inferred. *Rodriguez*, 291 Ill. App. 3d at 61. Therefore, the statement was inadmissible hearsay because it was offered to prove the truth of the matter

asserted, *i.e.*, that the defendant was the shooter. *Rodriguez*, 291 Ill. App. 3d at 61. In *Kurzydlo*, the court determined that the defendant's statement to a codefendant, " 'You don't got nothing to worry about, they ain't got nothing. So say you don't know nothing and we will beat the case in court' " was not an admission which would lead to an inference of guilt. *Kurzydlo*, 23 Ill. App. 3d at 796. Rather, it was an articulation of the defendant's belief that the charges at issue could not be substantiated. *Kurzydlo*, 23 Ill. App. 3d at 796.

¶ 16 In *Rodriguez*, the defendant said that he was a sharp shooter, however, this statement did not imply that he was the person who had actually fired at the victim's car. In other words, the statement did not permit an inference of guilt. Similarly, in *Kurzydlo*, the defendant, who had the right to remain silent expressed his belief that the charges against him and a codefendant could not be proven. In the case at bar, on the other hand, defendant indicated that he knew the system and should be taken to jail, *i.e.*, he had done something that necessitated a trip to jail. Accordingly, because defendant's statement was one which permitted an inference of guilt when considered with the fact that defendant was identified as the man who fled after extricating himself from the victim's car (*Ervin*, 297 Ill. App. 3d at 590), the trial court did not abuse its discretion when it permitted the officer to testify regarding defendant's "admission" (*Tenney*, 205 Ill. 2d at 436).

¶ 17 Defendant next contends that he was denied the effective assistance of counsel by counsel's failure to file a motion *in limine* seeking to bar his statement. However, defendant's claim must fail because the statement was properly admitted at trial, and, consequently, defendant cannot show he was prejudiced by trial counsel's failure to include this issue in a motion *in limine*. See *People v. Campbell*, 2012 IL App (1st) 101249, ¶ 35 (a defendant's failure to satisfy either prong of *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984), defeats his claim of ineffective assistance of counsel).

¶ 18 Defendant finally contends that his sentence of 17 years in prison was excessive given the nonviolent nature of the offense, his untreated addiction to drugs and alcohol, and his potential for rehabilitation.

¶ 19 A trial court has broad discretion in determining the appropriate sentence for a particular defendant and its determination will not be disturbed absent an abuse of that discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A sentence within the statutory range will not be considered excessive unless it varies greatly from the spirit of the law or is manifestly disproportionate to the nature of the offense. *People v. Brazziel*, 406 Ill. App. 3d 412, 433-34 (2010). When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, *inter alia*, a defendant's age, habits, credibility, criminal history, character, education, and environment, as well as the nature and circumstances of the crime and the defendant's actions in the commission of that crime. *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010). It is presumed that the trial court properly considered all mitigating factors before it; it is the defendant's burden to affirmatively show the opposite. *Brazziel*, 406 Ill. App. 3d at 434. A reviewing court should not substitute its judgment for that of the trial court merely because it may have analyzed the sentencing factors differently. *People v. Streit*, 142 Ill. 2d 13, 19 (1991).

¶ 20 Here, defendant was convicted of burglary of a motor vehicle, a Class 2 felony with a sentencing range of between three and seven years in prison. See 720 ILCS 5/19-1 (West 2010); 730 ILCS 5/5-4.5-35 (West 2010). However, because of his background, defendant was sentenced as a Class X offender to 17 years in prison. See 730 ILCS 5/5-4.5-25 (West 2010) (Class X sentencing range is between 6 and 30 years in prison).

¶ 21 The record reveals that at sentencing, the parties presented evidence in aggravation and mitigation including, defendant's criminal history, membership in a gang, and "weakness" for

drugs and alcohol. Defendant also admitted that due to addiction his life was a "constant downward spiral." In sentencing defendant, the court noted his criminal record and made a recommendation to the Department of Corrections that defendant receive drug treatment while in prison. This court cannot say that a prison sentence of 17 years was an abuse of discretion when defendant threw a brick into the window of a car and had 11 prior felony convictions. See *Patterson*, 217 Ill. 2d at 448 (a trial court has broad discretion in sentencing).

¶ 22 Defendant points to nothing in the record to indicate that the trial court did not take either his addictions or his potential for rehabilitation into consideration when determining his sentence. While a defendant's potential for rehabilitation must be considered, the court is not required to give more weight to a defendant's chance of rehabilitation than to the nature of the crime (*People v. Evans*, 373 Ill. App. 3d 948, 968 (2007)), or to explain the value the court assigned to each factor in mitigation and aggravation (*Brazziel*, 406 Ill. App. 3d at 434). It is presumed that the court properly considered the mitigating factors presented and the defendant's potential for rehabilitation; it is the defendant's burden to show otherwise. *Brazziel*, 406 Ill. App. 3d at 434. In the case at bar, defendant cannot meet that burden, as he points to nothing in the record to indicate that the court did not take his long-term addictions and potential for rehabilitation into consideration when imposing sentence. See *Brazziel*, 406 Ill. App. 3d at 434. To the contrary, the court made a specific recommendation that defendant receive drug treatment while incarcerated. Ultimately, the trial court did not abuse its discretion when, after properly considering factors in mitigation and aggravation (*Brazziel*, 406 Ill. App. 3d at 433-34), it sentenced defendant to 17 years in prison (*Patterson*, 217 Ill. 2d at 448).

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

¶ 24 Affirmed.