2011 IL App (1st) 102528-UB

THIRD DIVISION
October 12, 2011

No. 1-10-2528

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	APPEAL FROM THE
	)	CIRCUIT COURT
Plaintiff-Appellee,	)	OF COOK COUNTY
	)	
v.	)	No. ACC 70089
	)	
JAMES PETTIS,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

Presiding JUSTICE STEELE delivered the judgment of the court.
Justices Quinn and Neville concurred in the judgment.

O R D E R

¶1 *HELD*: The circuit court of Cook County sentenced James Pettis to nine years in prison after being found guilty by a jury of one count of indirect criminal contempt. Pettis appealed, alleging the sentence was unconstitutional. He contends the unlimited range of punishment for criminal contempt violates both the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, §11), and the eighth amendment to the United States Constitution (U.S. Const., amend. VIII). The trial court abused its discretion in imposing an excessive sentence for indirect criminal contempt. Consequently, defendant's sentence is reduced from nine years to four years' imprisonment. The circuit court's judgment is affirmed as modified.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant James Pettis was

found guilty of indirect criminal contempt and sentenced to nine years in prison. The trial court denied Pettis's postsentencing motion to reconsider. Pettis now appeals. We affirm the judgment of the circuit court, but modify the judgment to impose a sentence of four years' imprisonment.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses that Pettis was convicted of indirect criminal contempt for his failure to appear as a witness against Steven Hebron in the jury trial arising from the shooting death of Keith Tiggs.

¶ 5 On September 27, 2004, Tiggs was shot and killed at the Prop House, a club in Chicago, in front of approximately 200 people. Three witnesses came forward with information about the shooting, including Pettis. Months later, Pettis informed the police he witnessed Hebron shoot Tiggs. He then provided the Chicago police department and Cook County State's Attorney's office with a handwritten description of what he witnessed. He later testified before a grand jury about these events. Based on the testimony of Pettis and two other witnesses, Jeremy House and Quentin Houston, Hebron was arrested and charged with first degree murder.

¶ 6 On June 18, 2007, the day Hebron's murder trial was scheduled to begin, Pettis failed to appear in court to testify against Hebron. The court issued a warrant to arrest Pettis for contempt of court. On August 7, 2009, Pettis was arrested on the warrant, brought into court, and made a statement to the trial judge. Pettis explained that his life was threatened inside and out of court, and that the officers forced him to say he saw certain things. He also stated he did not know the person who shot Tiggs.

¶ 7 The State filed a petition for adjudication of indirect criminal contempt, and notified Pettis of its intent to seek a sentence in excess of six months in prison. The contempt case ultimately proceeded to a jury trial, commencing on May 10, 2010.

¶ 8 At trial, Assistant State's Attorney Michael Golden testified he was the lead prosecutor in the murder prosecution against Hebron. Police and assistant State's Attorneys interviewed Pettis and learned that he, Hebron and House drove together to the Prop House the night of the incident to perform rap music at "open mic night." Once inside, Hebron saw Tiggs, who was Hebron's musical rival. Hebron left the Prop House alone, but he eventually returned and shot Tiggs. After the shooting, Pettis, Hebron and House left the Prop House in two separate vehicles.

¶ 9 Golden also testified that after speaking with investigators, Pettis gave a handwritten statement detailing his knowledge of the events on the night of the murder to which he later testified before a grand jury. In May 2007, Golden prepared a subpoena commanding Pettis's appearance to testify at Hebron's trial on June 18, 2007. Investigator Michael DeLacy testified he served Pettis with a subpoena on May 10, 2007. On June 18, 2007, none of the witnesses showed up in court. Golden submitted a petition for rule to show cause to Judge Brown, who then issued an arrest warrant for Pettis. Efforts were made to locate Pettis at his last known address and other locations. Golden called Pettis's last known telephone number and spoke with someone who claimed to be Pettis's relative. Hebron's case eventually went to trial without Pettis. On August 7, 2009, Pettis was brought into court on the warrant issued by Judge Brown. The State filed a petition for adjudication for indirect criminal contempt and gave notice of its intent to seek a sentence in excess of six months in prison.

¶ 10 Pettis testified on his behalf that on May 10, 2007, he was living with his sister, Debra Pettis, and that no police officers or investigators came to his sister's apartment on that day to serve him with a subpoena. He denied receiving or seeing the subpoena advising him to appear before Judge Brown for Hebron's trial on June 18, 2007.

¶ 11 Pettis stated that he did witness Tiggs's shooting in September 2004, and that his handwritten statement and grand jury testimony were both truthful. He denied knowing why he was arrested in August 2009. Pettis acknowledged his statement to Judge Brown when he was arrested and appeared before him in court on August 7, 2009. Although Pettis told Judge Brown, "I know I didn't show up for court," he stated he was only aware of the Hebron trial because Judge Brown said he issued a warrant for Pettis's arrest for failure to appear in court pursuant to the subpeona. The attorney representing Pettis that day also told Pettis why he was arrested. Pettis testified he informed Judge Brown that he "tried to tell the officers that picked me up on this whole situation, that I didn't know anything."

¶ 12 Furthermore, Pettis denied that he avoided coming to court, because he did not want to testify against Hebron. Pettis stated he would never have made a statement or testified to the grand jury if he did not want to testify against Hebron. He stated he "tried to bring justice to light," but he never knew the matter was scheduled for trial. Pettis claimed he never knew anyone was looking for him from May 2007, to August 2009. During that time, he was working, going to college, and living at home. He denied he was in hiding. He also testified, "I didn't know anything. They forced me to say everything that was said against me. You know, I didn't actually know nothing. I tried to explain that to a lot of people. My life was threatened inside

and outside the court." Pettis further testified:

> "This is all just a total misunderstanding against me. If I knew anything and if I was, I would have come to court, simple as that. *** I don't know this person who did this. I didn't know him personally. I didn't hang with him or none of that. You know, I would have came. It wouldn't have been no reason for me not to."

¶ 13 On May 11, 2010, a jury found Pettis guilty of one count of indirect criminal contempt of court.

¶ 14 At the sentencing hearing on July 23, 2010, Assistant State's Attorney Michael Golden testified again about the prosecution of Steven Hebron for the murder of Keith Tiggs. He stated that none of the three witnesses (Pettis, Houston, and House) who identified Hebron as the man who shot Tiggs cooperated at trial. He explained that Houston recanted his grand jury testimony. House was arrested, granted immunity in exchange for his testimony, and still refused to testify. House subsequently pled guilty to direct contempt of court, and received a negotiated sentence of 13 years in prison. Houston was never prosecuted for perjury.

¶ 15 Golden further testified that Judge Brown "indicated he believed Steven Hebron was involved in the murder. However, based on the evidence we were able to present in court, he found the [d]efendant not guilty." Golden opined the effect of Pettis's failure to testify was "devastating" to the State's case because his testimony would have "produced additional evidence, an eyewitness to the murder of Mr. Tiggs. It would have provided us with corroboration to the Grand Jury testimony of Quentin Houston. It would have provided the evidence we would have needed to convict Mr. Hebron."

¶ 16 Golden acknowledged that Hebron is currently serving a 60-year sentence in the Illinois Department of Corrections for a prior murder conviction, and will not be released until he is approximately 90 years old.

¶ 17 In mitigation, Pettis presented evidence that he graduated from high school, and completed one year of college at the Academy of Design and Technology in Chicago. He was raised by his single mother, along with five siblings. Prior to his arrest in the contempt case, Pettis lived with his fiancée and their four-year-old son. He also had a 10-year-old-son, whom he saw during the summers because the child lived in Tennessee. He paid child support for both children. Moreover, Pettis stated he was employed part-time at Foot Locker from February 2007, to January 2009. Prior to his job at Foot Locker, he worked at a Popeye's Chicken restaurant, and a clothing store.

¶ 18 After the trial court considered evidence of aggravation and mitigation, the judge sentenced Pettis to nine years in the Illinois Department of Corrections. On July 20, 2010, the trial court denied defendant's motion to reconsider. A timely appeal to this court was filed on September 2, 2010.

¶ 19 DISCUSSION

¶ 20 I.

¶ 21 "It is well established that a trial court has broad discretionary authority in sentencing a criminal defendant." *People v. Evans*, 373 Ill. App. 3d 948, 967 (2007). Reviewing courts have the power to reduce sentences under our Rule 615(b)(4) (eff. Aug. 27, 1999). *People v. La Pointe*, 88 Ill. 2d 482, 492 (1981) (citing *People v. Robinson*, 83 Ill. 2d 424, 427 (1980)). A

reviewing court may not alter a defendant's sentence absent an abuse of discretion by the trial court. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010) (citing *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007)). A circuit court abuses its discretion when its ruling "is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Caffey*, 205 Ill. 2d 52, 89 (2001).

¶ 22 "In determining an appropriate sentence, the trial judge is further required to consider all factors in aggravation and mitigation, which includes defendant's credibility, demeanor, general moral character, mentality, social environments, habits, and age, as well as the nature and circumstances of the crime." *Evans*, 373 Ill. App. 3d at 967. "Generally, the trial court is in a better position than a court of review to determine an appropriate sentence considering the particular facts and circumstances of each individual case." *People v. Starnes*, 374 Ill. App. 3d 132, 143 (2007). "If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." *Starnes*, 374 Ill. App. 3d at 143 (citing *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 23 Pettis first contends the unlimited range of punishment for criminal contempt violates both the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, §11), and the eighth amendment to the United States Constitution (U.S. Const., amend. VIII).

¶ 24 The State argues Pettis's nine-year sentence for indirect criminal contempt of court comports with the requirements under both federal and state constitutions. The State further contends that Pettis's challenge is inherently a cross-comparison challenge precluded by our

supreme court's ruling in *People v. Sharpe*, 216 Ill. 2d 481 (2005). While the court in *Sharpe* abandoned the proportionate penalties clause to judge a penalty in relation to the penalty for an offense with different elements, we base our decision on sentences issued in contempt cases. *Spallone v. United States*, 493 U.S. 265, 276 (1990); *People v. Hodge*, 23 Ill. 2d 425, 427 (1961).

¶ 25 Commonly referred to as the proportionate penalties clause, section 11 of article I in our state's constitution provides, in pertinent part, "All penalties shall be determined * * * according to the seriousness of the offense * * *." Ill. Const. 1970, art. I, §11. The proportional penalties clause applies to all penalties, which includes sentencing imposed for criminal contempt. *In re G.B.*, 88 Ill. 2d 36, 43-44 (1981). The clause is violated where the sentence "is greater than the sentence for an offense with identical elements." *People v. Gibson*, 403 Ill. App. 3d 942, 949 (2010) (citing *Hauschild*, 226 Ill. 2d at 74). "In contrast, a majority of the United States Supreme Court has concluded either that the eighth amendment does not guarantee proportionality between a criminal offense and the length of a sentence of incarceration, or "forbids only extreme sentences that are 'grossly disproportionate' to the crime." See *People v. Farmer*, 165 Ill. 2d 194, 210-11 (1995) (and discussion therein).

¶ 26 Challenges to a sentence for violating the proportionate penalties clause of the Illinois Constitution are traditionally raised only in the context of challenging the constitutionality of a particular statutory sentencing scheme or in arguing that a codefendant received a lesser sentence. See *People v. Hindson*, 301 Ill. App. 3d 466, 478 (1998) (and cases cited therein). The case before us involves neither a challenge to a statutory scheme nor a codefendant's sentence.

¶ 27 The State is correct in its contention that contempt is an inherent power of the court, and the legislature is precluded from infringing on separation of powers by attempting to set a sentencing range. *G.B.*, 88 Ill. 2d at 41. "It is well established that the courts are vested with an inherent power to punish for contempt as essential to maintain their authority and to administer and execute judicial power." *City of Quincy v. Weinberg*, 363 Ill. App. 3d 654, 666 (2006) (citing *Central Production Credit Ass'n v. Kruse*, 156 Ill. App. 3d 526, (1987)). Contempt power, inherent in the judiciary, is not dependent on a constitutional grant or subject to legislative restriction. *Id.* The *G.B.* court recognized the constitutional limitation in that case, but the court reaffirmed that "[i]n the exercise of the court's inherent power to punish for contempt, it may provide such reasonable punishment as it determines is required." See *G.B.*, Ill. 2d at 46. The Illinois Supreme Court has not suggested that the flexibility of the contempt power renders its exercise constitutionally questionable in general. Similarly, this court cannot impose any scheme limiting the contempt power, as we lack the supervisory powers vested in the Illinois Supreme Court under our state constitution. See *People v. Lyles*, 217 Ill. 2d 210, 216 (2005).

¶ 28 The State cites *Frank v. United States*, 395 U.S. 147 (1969), to support its contention that a crime is measured to be as serious as the sentence granted someone committing that crime. In *Frank*, the issue was whether the defendant should receive a jury trial where he was charged with criminal contempt for violating an injunction restraining him from using interstate facilities in selling certain oil interests without having filed a registration statement with the United States Securities and Exchange Commission. *Id.* at 148. The United States Supreme Court started its analysis by noting jury trials are not guaranteed for "petty" offenses. *Id.* A crime is considered

"petty" based on the objective seriousness of the crime. The objective seriousness of a crime is determined by "the severity of the penalty authorized for its commission." *Id*. Sentencing for contempt varies because contempt, by its nature, is varied. Therefore, if we were to follow the State's interpretation of *Frank* to form a general rule for contempt, we would, in effect, argue there are no limitations on contempt power, and that the trial court has no limits in its sentencing for contempt convictions. However, the United States and Illinois Supreme Courts hold otherwise. See *Spallone*, 493 U.S. at 276; *Hodge*, 23 Ill. 2d at 427.

¶ 29 II.

¶ 30 Pettis argues the nine-year sentence imposed against him is excessive. Generally, we can only disturb a trial court's sentence that falls within the statutory range of the charged crime for an abuse of discretion. *E.g.*, *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). However, a sentence within an offense's statutory limits is deemed excessive where the sentence is "greatly at variance with the spirit, and purpose of the law, or manifestly disproportionate to the nature of the offense." See *People v. Stacey*, 193 Ill. 2d 203, 210 (2000); *Fern*, 189 Ill. 2d at 54.

¶ 31 The Illinois Supreme Court recently revisited the issue of disproportionate sentencing in *People v. Alexande*r, 239 Ill. 2d 205 (2010). In *Alexander*, the defendant was sentenced as a Class X felon to 24 years' imprisonment for firing several shots at a classmate in the hallway of their high school. *Alexander*, 239 Ill. 2d at 208. Sentencing ranges for a Class X felony is 6 to 30 years. *Id*. The trial court considered proper aggravating and mitigating factors before sentencing. *Id.* at 213. The *Alexander* court held the trial court did not abuse its discretion in sentencing defendant to 24 years' imprisonment, because the sentence was not "greatly at

variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Id.* at 215.

¶ 32 We find *Alexander* distinguishable. In the contempt case before us, there is no statutory range for sentencing in indirect criminal contempt offenses. Appellate courts bear a "special responsibility" to prevent abuse of the contempt power, in part because there are few limits on that power. See, *e.g., United States v. Bukowski*, 435 F.2d 1094, 1110 (7th Cir. 1970). In a contempt case, "[t]he punishment imposed must be measured by, and limited to the gravity of the contemptuous conduct." *People v. Colclasure,* 48 Ill. App. 3d 988, 991 (1977). A punishment for contempt should involve the "least possible power adequate" to the purpose. See *Spallone*, 493 U.S. at 276 (quoting *United States v. City of Yonkers*, 856 F.2d 444, 454 (2nd Cir. 1988)); *City of Quincy v. Weinberg*, 363 Ill. App. 3d 654, 667 (2006).

¶ 33 In *Hodge*, 23 Ill. 2d at 425, a woman was sentenced to a year in jail for direct criminal contempt after prompting by a witness's suggestive head and hand gestures in a robbery prosecution to change her testimony to provide a consistent alibi. The Illinois Supreme Court affirmed the conviction, but held that the sentence was excessive and reduced the sentence to time served, which was just short of four months. *Hodge*, 23 Ill. 2d at 427. Similarly, in *People v. Kennedy*, 43 Ill. App. 2d 299, 302 (1963), where the defendant struck his stepdaughter in violation of a court order, this court reduced his six month contempt sentence to the five days he had already served in the county jail. In contrast, in *People v. Levinson*, 75 Ill. App. 3d 429, 438 (1979), this court upheld a five-year sentence for criminal contempt where a disbarred attorney filed false documents with the circuit court in connection with an embezzlement scheme.

¶ 34 Here, the transcript of proceedings shows that the trial court considered the aggravating and mitigating factors at Pettis's sentencing hearing. Pettis argues the court did not consider his initial cooperation with the State, his handwritten statement, and grand jury testimony, or his personal background. Yet, the trial court did not have to mention all of the mitigating evidence considered in its sentence. Where mitigation evidence is before the court, it is presumed that a sentencing court considered it. *People v. Trimble*, 220 Ill. App. 3d 228, 255-56 (1991). To rebut this presumption, defendant must affirmatively show that the court did not consider the relevant factors. *People v. Canet*, 218 Ill. App. 3d 855, 864 (1991). Pettis fails to make such a showing here to overcome the presumption.

¶ 35 Nevertheless, without reweighing these factors, we conclude that the sentence is manifestly disproportionate to the nature of the offense, and therefore unreasonable. We disagree with the State's assertion that a lesser sentence may induce further lawlessness. Pettis's defiance of the subpoena was an affront to the judicial system and may have weakened the prosecutions of Hebron. Yet, we find a nine-year sentence for indirect criminal contempt is excessive because Such a sentence does not represent the "least possible power adequate" to punish Pettis, vindicate the judiciary, and deter similar acts in the future. The United States Supreme Court has stated that "in selecting contempt sanctions, a court is obliged to use the "least possible power adequate to the end proposed." *Spallone*, 493 U.S. 265 at 276 (quoting *United States v. City of Yonkers*, 856 F.2d 444, 454 (2d Cir.1988), quoting *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 231(1821)). "The inherent power of contempt is a powerful one; it is not to be used lightly nor when other adequate remedies are available; if it is used, it must conform

strictly to the dictates of the law." *Weinberg*, 363 Ill. App. 3d at 667 (citing *In re Johnson*, 134 Ill. App. 3d 365, 378 (1985)). We must adhere to our state constitution's mandate that penalties be determined according to the severity of the offense, and insure it is not greater than the sentence for an offense with identical elements. Ill. Const. 1970, art. I, §11; *Gibson*, 403 Ill. App. 3d at 949. We therefore find the trial court abused its discretion in imposing an unreasonable sentence.

¶ 36 Having determined that Pettis's nine-year sentence is manifestly excessive and therefore unreasonable, we must now determine whether to impose a new sentence or remand the matter for resentencing by the trial court. In this case, we find it unnecessary to remand to the trial court for resentencing. See *Stacey*, 193 Ill. 2d at 211. In the exercise of our authority under Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999), we reduce defendant's sentence to four years imprisonment, which still remains one of the longest reported sentences imposed for indirect criminal contempt in Illinois. We conclude reducing Pettis's sentence comports with the seriousness of the offense while not diminishing the seriousness of his actions.

¶ 37 CONCLUSION

¶ 38 For all of the reasons stated, the judgment of the circuit court is affirmed in all aspects. However, we modify the judgment to reduce his sentence to four years' imprisonment for indirect criminal contempt.

¶ 39 Affirmed as modified.