2013 IL App (1st) 111562-U

FOURTH DIVISION
January 31, 2013

No. 1-11-1562

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. 09 CR 18708
	)	
ANTHONY HILSON,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to 12 years' imprisonment for delivery of 122.7 grams of cocaine where the statutory sentencing range was 9 to 40 years and the trial court properly considered defendant's role in cocaine delivery and factors in aggravation and mitigation. Affirmed.

¶ 2 Following a jury trial, defendant Anthony Hilson was convicted of delivery of 100 grams or more but less than 400 grams of cocaine. The trial court sentenced defendant to 12 years in prison and three years of mandatory supervised release. He appeals his conviction and contends that the trial court abused its discretion in sentencing him to an above-minimum sentence where

(1) evidence suggested defendant played a relatively minor role in distribution of 122.7 grams of cocaine, and (2) where defendant had no prior convictions and had a history of gainful employment, social involvement and familial support.

¶ 3 The evidence adduced at trial was undisputed that defendant engaged in two drug deals with a confidential source of law enforcement. The State elected to proceed on a single case against defendant for one of the drug deals involving delivery of 122.7 grams of cocaine.

¶ 4 Daniel Person, the confidential source, testified for the State. Person faced drug possession charges and agreed to work with authorities to supply them with information about his drug suppliers in exchange for either no charges being brought against him or for leniency.

¶ 5 On May 26, June 8, and June 18, 2009, Person went to Chicago to set up and complete the drug deals with defendant. Law enforcement audio and video recorded the telephone calls and meetings between Person and defendant and the State admitted the recordings into evidence.

¶ 6 On May 26, Person met with defendant at defendant's home in Chicago and they arranged a deal for Person to purchase an eighth of a kilogram of cocaine from defendant, which defendant said would cost $4,400.

¶ 7 On June 8, Person called defendant and informed defendant that he could only purchase 63 grams for $2,200. The deal was completed in the alley behind defendant's home. While Person and defendant were seated in defendant's vehicle, Person gave defendant $2,200. Defendant then entered a Mercedes that had also arrived in the alley and then came back to his car and gave Person the drugs.

¶ 8 When Person returned to Chicago on June 18, 2009, after initially meeting at defendant's home, defendant and Person drove separate vehicles to a store parking lot. When they arrived at the parking lot, defendant got into Person's vehicle and Person gave defendant $4,400. After the

Mercedes also arrived, defendant got into the Mercedes, and then returned to Person's car and gave Person an eighth of a kilogram of cocaine.

¶ 9 Person also testified regarding the audio recording, namely that defendant told him that he would "take care of" Person and that "coke is going down," meaning that the price of cocaine is going down, and that defendant would eventually reduce the cocaine price for Person.

¶ 10 On cross-examination, Person denied having any contact with defendant between February 2, 2009, and May 26, 2009. On redirect examination, Person testified that defendant never told Person that he could not or would not sell Person cocaine. Person did not have any difficulty getting the cocaine from defendant.

¶ 11 Officer John Knezevich testified that he worked for the Chicago Police Department narcotics unit and was assigned to the DEA Task Force investigating defendant. Knezevich received the suspect cocaine after the June 8 and June 18 meetings between Person and defendant. Forensic Chemist Angelo Bommarito testified that the narcotics recovered on June 18 tested positive for cocaine and weighed 122.7 grams. Defendant's motion for a directed finding was denied.

¶ 12 Defendant testified that he was 39 years old and that between 1995 and 2008, he was employed as a counselor at the Cook County Juvenile Temporary Detention Center. After going on administrative leave from that job, he began working at a furniture company as a warehouse manager. Defendant and Person were friends since they were teenagers and they played basketball together.

¶ 13 Defendant also testified that between February 2 and May 26, 2009, Person contacted him six or seven times to purchases narcotics. Person said that drugs were stolen from his home and he was indebted to the people that owned the drugs. Person’s family was in jeopardy unless he could buy an eighth of a kilogram of cocaine. Person asked defendant to set up a deal with Larry

Smith, whom defendant had been friends with since childhood, because Person could not buy directly from Smith since he owed Smith money.

¶ 14 Defendant testified that on June 8, he received money from Person, went to Smith's car, and exchanged the money for Smith's drugs. Defendant returned to his car and provided the drugs to Person. Later, Person called defendant and again asked defendant to help him get an eighth of a kilogram of cocaine from Smith, so that Person could pay off his debt to Smith. On June 18, 2009, defendant again met Person and Smith at a Walgreens parking for another drug transaction. Once again, defendant exchanged Person's money for Smith's drugs. Person asked for defendant's help again on June 23 when they met at a bar, but defendant refused, saying that he had already helped Person enough. Defendant testified that he received no compensation for his role in the transactions and that he had never sold drugs, aside from the June 8 and June 18, 2009 transactions.

¶ 15 In rebuttal, Person testified that he and his uncle purchased cocaine from defendant in front of defendant's house in 2008 and that he purchased cocaine from defendant approximately 10 times. He denied playing basketball with defendant during their youth. He denied telling defendant that he needed drugs because someone stole his drugs from his home. Person never met Larry Smith and prior to 2009, he never purchased drugs from him and did not owe Smith money. The June 23, 2009, drug deal was not completed because the police did not provide Person with money. Person told defendant that he would not give defendant the money until he saw the cocaine and defendant replied that he observed suspicious cars and no longer wanted to complete the deal.

¶ 16 The jury found defendant guilty of delivering more than 100 grams but less than 400 grams of cocaine on June 18, 2009. Defendant's motion for a new trial was denied. During sentencing, the State argued in aggravation that defendant was involved in significant narcotics

activity, despite his education, family life, and access to opportunities. In mitigation, defendant offered various letters from friends, family and his employer and live testimony from his mother. Defendant also argued in mitigation that his role in the transaction was small and that he was merely a middleman. In allocution, defendant asserted he was entrapped and he never before sold illegal drugs. Defendant stressed his employment history and social activities. He also apologized for his actions.

¶ 17 The trial court found that based on the evidence, defendant was a drug dealer. It rejected defendant's claim that he was simply helping a friend whom defendant believed was in trouble, stating "I don't believe you when you say that this is not you, that this was an isolated incident, or that you did this because somebody says his family was in jeopardy. I heard the tapes. That was somebody who was comfortable in his role." The court believed defendant was lying when he argued he was entrapped. It also rejected that selling drugs is a victimless crime. After identifying that the sentencing range for defendant's offense was 9 to 40 years the trial court stated:

> "After considering all the facts in this case, the matters set forth in the presentence investigation, the arguments of counsel, all the factors in aggravation and mitigation, your social, your educational, family history, your potential for rehabilitation, the letters submitted by your family, I find an appropriate sentence to be 12 years in the Illinois Department of Corrections.

Defendant was also sentenced to three years of mandatory supervised release and $3,310 in fines and fees. On May 10, 2011, the trial court denied defendant's motion to reconsider sentence, in which defendant argued that the trial court abused its discretion by improperly balancing factors in aggravation and mitigation. Defendant appeals his sentence in the instant action.

¶ 18 On appeal, defendant contends that the trial court abused its discretion in sentencing him to 12 years, where the minimum sentence available was 9 years. He argues that he should have been sentenced to the minimum because he played a minor role in the distribution of cocaine and because he had no prior convictions and he had a history of gainful employment, social involvement, and familial support.

¶ 19 It is well-settled that a reviewing court will not disturb the sentence imposed by the trial court absent an abuse of discretion. *People v. Cabrera*, 116 Ill. 2d 474, 494 (1987). We also note that a trial court's decision on sentencing, especially when it is within the statutory range, is entitled to great deference. *People v. Manuel*, 294 Ill. App. 3d 113, 127 (1997). "The trial judge is in a better position to assess the situation and determine a proper sentence. On review, it is presumed the trial court gave proper consideration to all factors, including rehabilitative potential, and the defendant has the burden of affirmatively showing the contrary." *Id.*

¶ 20 Where, as here, the sentence falls within the prescribed statutory limits, it will not be disturbed unless it is greatly at variance with the purpose and spirit of the law or is manifestly disproportionate to the offense. *Cabrera*, 116 Ill. 2d at 493-94. A sentence will not be found disproportionate where it is commensurate with the seriousness of the crime and adequate consideration was given to any relevant mitigating circumstances. *People v. Perez*, 108 Ill. 2d 70, 93 (1985).

¶ 21 In this case, defendant's conviction of delivering more than 100 grams but less than 400 grams of cocaine was punishable by a sentence of 9 to 40 years' imprisonment (720 ILCS 570/401(a)(2)(B) (West 2010)). The 12-year sentence imposed by the trial court fell within the prescribed range. Defendant unconvincingly attempts to minimize his role in cocaine distribution, alleging he was a "link between two sides of an alley, or two cars in a Walgreens parking lot." The facts belie this allegation. Rather, the evidence showed that when Person

contacted defendant to set up a drug deal for large amounts of cocaine, defendant set up the deal with his contact, Larry Smith, and collected the money from Person in exchange for cocaine supplied by Smith. Defendant argues that he should have received the minimum sentence because he was gainfully employed prior to his arrests and that the most severe punishments are warranted for those people who have no visible means of support separate from drug dealing. Defendant in no way received the most severe punishment where the maximum sentence available for his offense was 40 years' imprisonment. The trial court had the opportunity to hear and observe the evidence, including the audio tapes, and determined that based on the evidence, defendant was a drug dealer and was comfortable in that role. It also rejected defendant's contention that he was merely a middleman.

¶ 22 In requesting a reduction in sentence, defendant is essentially asking this court to re-balance the appropriate factors and independently conclude that his sentence is excessive, which is not our function. *People v. Burke*, 164 Ill. App. 3d 889, 902 (1987). Rather, the trial court considered the mitigating factors that defendant cites as requiring this court to reduce his sentence to the minimum 9 years. After considering the record and the trial court's statements of its reasons for imposing a 12-year sentence, we find that the trial court did not abuse its discretion in sentencing defendant to 12 years' imprisonment, which, we note is on the low end of the sentencing range for defendant's offense. See *e.g.*, *Manuel*, 294 Ill. App. 3d at 127-28 (affirming trial court's imposition of 12-year sentence for delivery of 243 grams of cocaine where the statutory range was between 9 and 40 years and the evidence suggested the defendant had been in the drug business for some time, defendant received remuneration since he was in the business of selling drugs for profit, and there was a societal harm in the sale of drugs, although defendant had no prior convictions or arrests).

¶ 23 Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 24 Affirmed.