FOURTH DIVISION
October 29, 2015

No. 1-13-3402

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. 12 CR 5569
	)	
RANDOLPH DAY,	)	Honorable
	)	William O'Brien,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Defendant's 10-year prison sentence for attempted residential burglary is not an abuse of discretion, as the record establishes that the trial court adequately considered all appropriate factors.

¶ 2 Following a bench trial, defendant Randolph Day was convicted of attempted residential burglary and sentenced as a Class X offender to 10 years in prison. On appeal, defendant contends that the trial court's sentence was an abuse of discretion in view of research describing the uncertain benefits and social, financial, and human costs of lengthy incarceration. Defendant also argues that his sentence is disproportionate to his offense and hinders his chances of being restored to useful citizenship where the court failed to adequately consider his age, heroin addiction, family ties, employment, and the minimal harm caused by his conduct. We affirm.

¶ 3 On August 7, 2011, two apartments were burglarized in a building located at 11104 and 11106 South Bell in Chicago. On December 23, 2011, a resident of the building saw defendant trying to pry and kick open the door of a neighboring unit. The resident confronted defendant, who brandished a large screwdriver and fled. Another resident saw defendant enter a van and recalled seeing defendant and the van's driver in the building on August 7, 2011. The resident provided the van's license plate number to police, who determined the vehicle was registered to defendant. Both residents identified defendant in photo arrays, in physical lineups, and in court.

¶ 4 The court found defendant guilty of the December 2011 attempted residential burglary but not guilty of the two residential burglaries in August 2011.

¶ 5 At sentencing, the court determined that defendant was a Class X offender based on his criminal history, which included convictions for residential burglary (2004, 2005, and 2007), theft (2004), attempted possession of a controlled substance (2011), and possession of a controlled substance (1994). The State requested a lengthy sentence, observing that the present

offense occurred while defendant was on parole for residential burglary and that his "actions towards society and towards the rules of society show that he has no respect for them."

¶ 6 In mitigation, defense counsel argued that defendant's conduct was nonviolent and that he fled the building when confronted. Defense counsel urged that defendant used the screwdriver as a burglary tool, not a weapon, and did not intend to harm anyone. Additionally, defense counsel noted that defendant worked as a cook in a bowling alley, supported his three daughters, and used his time in custody to plan for a different future. Defense counsel proffered a certificate showing that defendant completed a custodial training program while in jail, along with a letter from the instructor, who described defendant as an "exemplary student."

¶ 7 Defendant spoke in allocution, apologizing to the people "involved in the bad decisions that I made on that day." He stated that he participated in the inmate behavioral modification program and attended Alcoholics Anonymous and Narcotics Anonymous. During one meeting, he admitted abusing heroin and that, during the 10 years he was addicted, he had "started committing crimes to supply that habit." He did not previously seek help for his addiction because he was in denial. Defendant loved his children and was "a part of their life every day," but because of his addiction, "was still doing foolish things." He requested a lenient sentence.

¶ 8 According to the presentence investigation report (PSI), defendant was 42 years old on the date of the offense and 43 years old at sentencing. He was the youngest of his mother's five children and had a good childhood, although his father was not involved in his upbringing. He graduated from high school and attended college for 1 ½ years. Defendant's oldest daughter, age 12 in 2013, lived with his ex-wife. He had a good relationship with his daughter and paid child

support while working. His younger daughters, ages 8 and 9 in 2013, lived with their mother. Since 2010, defendant sometimes lived with them and described their relationship as "wonderful." Before his arrest, defendant worked as a cook at a bowling alley for eight months, did odd jobs, and sometimes volunteered as a coach for little league basketball. Before incarceration in 2005, he worked for three years as a dock clerk.

¶ 9 The PSI further indicated that defendant first tried marijuana at age 15, alcohol at age 17, and heroin at age 32. After using heroin on the weekends for six months, he engaged in daily use interrupted only by imprisonment.

¶ 10 In imposing a sentence, the court stated that it considered the facts of the case and reviewed the PSI. The court noted that defendant had three convictions for residential burglary and was mandated to be sentenced as a Class X offender. The court stated:

> "I've considered the factors in aggravation and statutory factors in mitigation, the arguments of both sides in regards to this case, and the fact that you were on parole at the time that this offense was committed; and I'm going to sentence you to 10 years Illinois Department of Corrections. That is going to be—and you are sentenced as a Class X offender based upon prior criminal background."

At defendant's request, the court recommended that he receive drug treatment while in prison. Defendant's motion to reconsider sentence was denied.

¶ 11 On appeal, defendant contends that the trial court's sentence was an abuse of discretion in view of research describing the uncertain benefits and social, financial, and human costs of lengthy incarceration. Defendant also argues that his sentence is disproportionate to his offense and hinders his chances of being restored to useful citizenship where the court failed to

adequately consider his age, heroin addiction, family ties, employment, and the minimal harm caused by his conduct.

¶ 12 We review for abuse of discretion to determine whether a sentence is excessive. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Id*. at 212-13.

¶ 13 A sentence should reflect both the seriousness of the offense and the objective of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. The trial court is presumed to consider all relevant factors and any mitigation evidence presented but is not obligated to recite or assign a value to each factor. *People v. Meeks*, 81 Ill. 2d 524, 534 (1980); *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 48. To rebut this presumption, a defendant must make an affirmative showing that the trial court did not consider the relevant factors. *Jackson*, 2014 IL App (1st) 123258, ¶ 48. A reviewing court will not substitute its judgment merely because it would have weighed the factors differently. *Alexander*, 239 Ill. 2d at 213.

¶ 14 A sentence within the statutory range is presumed proper and will not be disturbed absent an affirmative showing that the sentence is at variance with the purpose and spirit of the law or is manifestly disproportionate to the nature of the offense. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. Attempted residential burglary is a Class 1 felony with a sentencing range of three

to seven years. 720 ILCS 5/19-3 (West 2010); 720 ILCS 5/8-4(c)(3) (West 2010); 730 ILCS 5/5-4.5-35(a) (West 2010). Where, as here, prior felony convictions require the defendant to be sentenced as a Class X offender, a Class X sentence ranges from 6 to 30 years. 730 ILCS 5/5-4.5-25(a) (West 2010); 730 ILCS 5/5-4.5-95(b) (West 2010).

¶ 15 We find no abuse of discretion in defendant's sentence. The 10-year prison term is presumed proper, as it falls well within the Class X statutory sentencing range and is not disproportionate to defendant's fourth conviction involving residential burglary in approximately nine years. Moreover, as the trial court noted, defendant was on parole for residential burglary when he committed the present offense. *People v. Thomas*, 171 Ill. 2d 207, 227-28 (1996) (in Class X sentencing, nature and circumstances of prior convictions, among other factors, affect length of term); *People v. Starnes*, 88 Ill. App. 3d 1141, 1149 (1980) (declining to reduce defendant's sentence "[i]n view of his prior record and the fact that the present repeated offense was committed while on parole").

¶ 16 Further, we find no affirmative showing that the trial court failed to adequately consider the mitigating factors. To the contrary, the court stated that it considered the factors in mitigation and aggravation, the PSI, counsels' arguments, and the facts of the case. The court knew that defendant was 43 years old, that he attributed his conduct to heroin addiction, and that he desired treatment. *People v. Peoples*, 2015 IL App (1st) 121717, ¶ 117 (presuming court considered defendant's age); *People v. Daniel*, 2014 IL App (1st) 121171, ¶¶ 40-41 (presuming court considered defendant's addiction and desire for treatment). While defendant urges that a shorter sentence will expedite his access to treatment, the court had discretion to weigh the mitigating

effect of defendant's addiction. *People v. Shatner*, 174 Ill. 2d 133, 159 (1996) ("Simply because the defendant views his drug abuse history as mitigating does not require the sentencer to do so."). In fact, the court recommended drug treatment for defendant while in prison. The court also knew that defendant had a relationship with his three children, was employed as a cook, and worked odd jobs before his arrest. *Jackson*, 2014 IL App (1st) 123258, ¶¶ 52-53 (employment and family ties do not mandate reduced sentence). Additionally, while defendant's offense was an attempt crime that caused minimal harm, the court was not obliged to impose a term comparable to his three previous sentences for residential burglaries. *People v. Storms*, 254 Ill. App. 3d 139, 142-44 (1993) (although burglary was nonviolent and nothing was stolen, defendant's three prior burglary convictions precluded reduced sentence). Defendant's potential for rehabilitation, in view of the aggravating and mitigating factors, was a question for the trial court. *People v. McGowan*, 2013 IL App (2d) 111083, ¶ 13 (trial court balances between "rendering justice and rehabilitating the defendant"). Where, as here, the court did not fail to consider the mitigating factors, we will not substitute our judgment by reweighing the factors on review. *People v. Lake*, 2015 IL App (3d) 140031, ¶ 26 (declining to reweigh mitigating factors considered at sentencing).

¶ 17 Defendant also contends that the trial court failed to give adequate consideration to the financial costs of his incarceration. However, a trial court is not required to specify on the record the reasons for a defendant's sentence, and, absent evidence to the contrary, we will presume that the trial court performed its obligations and considered the financial impact before sentencing

defendant. *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 24 (presuming the court considered the financial impact).

¶ 18 Finally, we note that defendant relies on studies, articles, and an address by a justice of the Supreme Court to show that his sentence hinders his chances for rehabilitation. Citing these sources, defendant urges that longer sentences for aging offenders offer limited benefits, increase recidivism, cause hardship to families, and marginalize disadvantaged social groups. However, these secondary sources do not qualify as relevant authority here. See, *e.g.*, *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 166 (1983); *People v. Magee*, 374 Ill. App. 3d 1024, 1029-30 (2007); *People v. Heaton*, 266 Ill. App. 3d 469, 477 (1994); *People v. Mehlberg*, 249 Ill. App. 3d 499, 531-32 (1993). A secondary source is not the law but, rather, a commentary on the law, and can be used as persuasive authority in the absence of Illinois law. *E.g.*, *Tilschner v. Spangler*, 409 Ill. App. 3d 988, 994 n.2 (2011). In light of the substantial case law developed for sentencing purposes, we are guided by the prior well-established law in Illinois. See *People v. Kneller*, 219 Ill. App. 3d 834, 841 (1991).

¶ 19 For all the foregoing reasons, we cannot say the trial court abused its discretion. We affirm defendant's sentence.

¶ 20 Affirmed.