No. 2—10—0510
Order filed May 6, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lee County.
Plaintiff-Appellee,	)	
v.	)	No. 07—CF—355
MATTHEW L. SANDERS,	)	Honorable Ronald M. Jacobson,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in sentencing defendant to the maximum 10-year extended prison term for aggravated battery; the court considered the factors that defendant cited as mitigating but found them either not actually mitigating or outweighed by the aggravating factors, and we would not reweigh them; the court properly declined to reconsider the sentence in light of events occurring after the original sentencing.

Defendant, Matthew L. Sanders, pleaded guilty to aggravated battery (720 ILCS 5/12—4(b)(8) (West 2006)), and the trial court sentenced him to the maximum extended term of 10 years' imprisonment. He now appeals, arguing that the sentence is excessive. More specifically, defendant argues that the court abused its discretion by (1) failing to adequately consider the

mitigating evidence and (2) refusing to reconsider in light of hardships that had befallen his family after sentencing. For the reasons that follow, we affirm.

I. BACKGROUND

Defendant was charged with two counts of aggravated battery (720 ILCS 5/12—4(a), (b)(8) (West 2006)). On December 21, 2007, he pleaded guilty to one count. According to the factual basis for the plea, on October 29, 2007, Tom Dvorak, the high-school-aged victim, was involved in an incident at school with some other students. When the victim was driving home, he received a phone call from an unknown male, who asked him to meet him behind the cement plant. The victim went to the location, exited his car, and shook hands with a man in an orange shirt, who then began striking the victim in the face. Another man, identified as defendant, exited his car and began hitting and kicking the victim. The victim was able to get away from the attackers and call the police. The victim drove to the hospital, where lacerations to his face, his arm, and the back of his head were treated and closed with stitches. The phone call to the victim's phone was made from a phone belonging to "one of the parties in this case." The victim identified defendant from a photo lineup.

A sentencing hearing took place on February 5, 2008. At the hearing, defense counsel provided the court with the following information about defendant. Defendant was divorced and had three children: Stormee, 20 years old; Jordan, 16 years old; and Seth, 14 years old. Stormee lived in Bloomington; Jordan and Seth lived in Sterling with their mother. Defendant had "joint custody" of his children and saw them almost daily. Defendant did not pay child support. Jordan recently began suffering from seizures, the cause of which was unknown. Defendant had attended high school but did not graduate. He later earned his GED while serving in the National Guard from 1985 through 1987. Although he was currently unemployed, prior to his incarceration he was a self-

employed carpenter. Prior to that, defendant worked for about six months for Climco, until suffering burns to his lungs. A worker's compensation case was currently pending. Since successfully completing a drug rehabilitation program in 1988, defendant had not used marijuana or cocaine. He occasionally drank beer.

Defense counsel told the court that, when defendant learned that the police were looking for him in connection with the incident, he voluntarily turned himself in and provided the following statement (which defense counsel read to the court):

> "My nephew Luke had called my son—that would be his son Jordan, Your Honor—wanted him to talk to a kid that he said was threatening to break out his car windows, and I'm quoting here from the written—or the transcription of [defendant's] statement, because he didn't want to get into it with him because the kid was underage and has a baby now and was trying to stay out of trouble. So myself, my son, and Luke went to meet this kid. One of them had called him—I don't recall who, it might have been Luke—on my phone. And I told my son don't get into it with the kid. We got there, my son got out and talked to him. They got in a fight. I got out of the truck and as I was getting out of the truck he got on top of my son and grabbed the kid off. The kid threw me to the ground, hit my head on the rocks and I couldn't get him off me so I grabbed something—it might have been a rock, that's probably what it was—and hit him in the head to get him to let me go. I got up, got in the truck and I left the area, and that's the end of it."

Defense counsel acknowledged that defendant had an "extensive" criminal background and "that there have been a number of times when he has been placed on probation and Petitions have been filed to violate [*sic*] his probation." Defense counsel emphasized that defendant's longest prison

sentence had been 3 years and asked that, if the court were to sentence defendant to prison, the term be less than the 10-year term requested by the State.

The victim testified that he had agreed to meet the unknown caller at the cement plant because he had thought that the caller was his friend's dad and that they wanted him to meet them to go four-wheeling. When he arrived, he exited his car and saw a young man, whom he did not know. This person later turned out to be Jordan, defendant's son. The victim shook Jordan's hand. Jordan started swinging at the victim, hitting him in the head several times. Defendant exited his car and approached the victim. Jordan held the victim as defendant hit him. They threw the victim into a pile of rocks and hit the victim in the head with a rock. The victim was able to get into his car. As he did so, defendant told him that if he called the police defendant would kill him and his family. The victim denied ever hitting Jordan. The victim thought that the incident happened as a result of a problem that the victim and his friend were having with Lucas Swift, defendant's nephew.

Deborah Dvorak, the victim's mother, testified that the incident has left her fearful. She said that it has been a nightmare for her family. The victim still suffers from soreness in his head, and he has scars on his elbows and shoulder.

Defendant stated: "The only thing I can say is my son was on the ground, I don't know if he remembers that or not. That's the only reason I got out of the truck or I would have never have been there, got in that. And I'm just truly, truly sorry about it, especially after seeing the pictures and hearing his family."

In sentencing defendant, the trial court stated that it had considered all of the evidence offered in aggravation and mitigation, the information in the presentence investigation report, and the financial impact statement. The court specifically noted the fact that defendant had turned himself

in and voluntarily provided a statement. The court found that defendant's incarceration would not cause excessive hardship to his family.

The court concluded:

> "[Defendant], if I—as I sit here and listened to everything, this sounded like a rock 'em sock 'em western right out of the movies. I—I'm appalled that for any reason you and anybody else could think that you could in a vigilante matter take justice into your own hands. I don't even call it justice. I specifically don't see how your conduct is even the slightest bit understandable. In fact, it's just the opposite, it's reprehensible. That fact that you would go with two other people out to a cement plant and then hurt somebody in the manner that I've just talked about has absolutely no redeeming value. And you put that together with your record and I have no other option but to sentence you to ten years in the Illinois Department of Corrections. You look at me and you don't understand why. And I understand your attorney's argument and your attorney did a very good job for you, quite frankly. But the fact of the matter is, just because you've been to the Department of Corrections before for a lot less time doesn't mean that you shouldn't go to the Department of Corrections in this case for ten years. Those other offenses had nothing to do with the kind of injury that you caused to this young man. That will be the sentence of this Court. Ten years in the Illinois Department of Corrections."

Following sentencing, defendant moved for reconsideration of his sentence. For reasons not relevant to the issues raised in the present appeal, the hearing on defendant's motion did not occur until April 29, 2010, more than two years later. See *People v. Sanders*, No. 2—08—0253 (2008) (unpublished order under Supreme Court Rule 23) (appeal dismissed as premature); *People v.*

Sanders, No. 2—09—0673 (2009) (unpublished order under Supreme Court Rule 23) (summary remand for defense counsel's failure to file a proper Rule 604(d) certificate).

At the hearing on his motion to reconsider his sentence, defendant testified that his son Jordan had died on April 12, 2010, and that the cause of death was unknown. Defendant's daughter, Stormee, who lived in Bloomington at the time of sentencing, had since moved to Galena. She had a baby in the summer of 2009 who had died on the day of birth. Stormee suffered from "a lupus nephritis-type symptom, her kidneys are failing." The lupus symptoms had appeared two years earlier but had since worsened. Stormee had use of only 20% of her kidneys, and she was on dialysis three times a week. Defendant's son Seth was 16 and attended high school in Sterling. Seth had lived with Jordan prior to Jordan's death, and he had since moved in with Stormee. Defendant's parents tried to help Stormee and Seth, but they had limited income and were in poor health.

The State objected to the court's consideration of anything that had happened in defendant's life since the original sentencing hearing. The court sustained the objection.

On May 19, 2010, the court denied defendant's motion to reconsider his sentence. The court stated:

> "When I read the sentencing hearing comments that I made, I feel as firmly about my comments that I made at that time now as I did then. We make choices in life and you chose to do something that was reprehensible. There's nothing that I'm aware of now that changes my feeling about that at all based on the information presented."

Defendant timely appealed.

II. ANALYSIS

On appeal, defendant first argues that the sentence imposed by the trial court is excessive "in light of the hardship his imprisonment would entail for his family and his acceptance of responsibility for his conduct by his cooperation with the police, his plea of guilty to the charged offense, and his expression of remorse." He asks that we reduce the sentence to a lesser term. After reviewing the record, we conclude that the trial court did not abuse its discretion in sentencing defendant.

Defendant was subject to a term of imprisonment between 5 and 10 years. 720 ILCS 5/12—4(e)(1) (West 2006); 730 ILCS 5/5—5—3.2(b)(1), 5—8—2(a)(6) (West 2008). A sentence within the statutory limits for the offense will not be disturbed unless the trial court has abused its discretion. *People v. Coleman*, 166 Ill. 2d 247, 258 (1995). An abuse of discretion occurs if the trial court imposes a sentence that "is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). It is well established that "[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 (2003). The existence of mitigating factors does not mandate imposition of the minimum sentence (*People v. Garibay*, 366 Ill. App. 3d 1103, 1109 (2006)) or preclude imposition of the maximum sentence (*People v. Pippen*, 324 Ill. App. 3d 649, 652 (2001)). It is the trial court's responsibility "to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case." *People v. Latona*, 184 Ill. 2d 260, 272 (1998).

The Illinois Constitution requires that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, §11. The rehabilitative potential of the defendant is only one of the factors

that must be weighed in deciding a sentence, and the trial court does not need to expressly outline its reasoning for sentencing or explicitly find that a defendant lacks rehabilitative potential. *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007). The most important sentencing factor is the seriousness of the offense. *Id.* There is a presumption that the trial court considered all relevant factors in determining a sentence, and that presumption will not be overcome without explicit evidence from the record that the trial court did not consider mitigating factors or relied on improper aggravating factors. *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998). The reviewing court is not to reweigh factors considered by the trial court. *Pippen*, 324 Ill. App. 3d at 653.

The record from the sentencing hearing establishes that, prior to rendering its sentencing decision, the trial court weighed the factors that defendant cites. The court specifically noted that defendant had turned himself in and that he had voluntarily spoken to police officers and provided a statement. However, the court found that imprisonment would not entail excessive hardship to his dependents. The court further noted that defendant's conduct caused serious harm and that he had a prior history of criminal activity. The court specifically assessed, based upon defendant's criminal history as well as his character and attitudes, whether his criminal conduct was a result of circumstances likely to recur and whether he was likely to commit another crime. Observing that the nature and circumstances of defendant's conduct were "reprehensible" and had "no redeeming value," the court concluded that the seriousness of the crime, as well as the need to prevent his criminal conduct from recurring and to deter others, warranted the maximum sentence. Thus, the record does not support defendant's contention that the court failed to consider appropriate mitigating evidence. Given that the court specifically commented on and considered these factors, we may not reweigh them.

Next, we find that the trial court did not abuse its discretion by refusing to consider evidence regarding changes in the lives of defendant's family since his incarceration. Defendant concedes that under *People v. Vernon*, 285 Ill. App. 3d 302, 305-06 (1996), the trial court was not required to consider events that occurred after sentencing. Nevertheless, relying on *People v. Smith*, 258 Ill. App. 3d 633, 645 (1994), defendant argues that the uniqueness of his family situation warranted consideration.

In *Smith*, the defendant was sentenced to 12 years' imprisonment for aggravated arson. After her commitment to the Department of Corrections, the defendant was diagnosed with cancer and released on appeal bond to receive treatment. On appeal, the First District found that the trial court's 12-year sentence was not an abuse of discretion. Nevertheless, without discussion, the reviewing court remanded the cause to the trial court to determine what effect, if any, the defendant's health and treatment should have on her sentence.

Defendant asks us to interpret *Smith* as requiring remand when "unique" facts are sought to be added to the sentencing evidence. We reject defendant's request. First, *Smith* is distinguishable, as defendant is not seeking to present evidence that he has a potentially fatal disease. Second, to the extent that *Smith* suggests that a court may consider events occurring after sentencing when deciding a motion to reconsider sentence, this court rejected it in *Vernon*.

In *Vernon*, this court held that "[w]hen ruling on a motion to reconsider a sentence, the trial court should limit itself to determining whether the initial sentence was correct; it should not be placed in the position of essentially conducting a completely new sentencing hearing based on evidence that did not exist when [the] defendant was originally sentenced." *Vernon*, 285 Ill. App. 3d at 304. There, the defendant pleaded guilty to aggravated criminal sexual assault. *Id.* at 303. The

defendant moved to reconsider his sentence, the trial court denied the motion, and the defendant appealed. We reversed the denial of the defendant's motion and remanded the cause for defense counsel to comply with Rule 604(d). On remand, the defendant sought to introduce evidence of his good behavior and his accomplishments while in prison during the pendency of his first appeal. The State objected, and the trial court refused to consider any evidence not before it during the first sentencing hearing. On appeal, this court affirmed, noting that "[t]he evidence [the] defendant wishes to admit is clearly outside that which a trial court is required to consider." *Id.* at 304. We distinguished *Smith* on its facts and further stated that "[t]o the extent that *Smith* suggests that evidence of events occurring after the original sentencing hearing is admissible in a hearing on a motion to reconsider sentence, we decline to follow it." *Id.* at 306. Accordingly, based on *Vernon*, we hold that the trial court did not abuse its discretion in failing to consider evidence of events occurring after defendant's sentencing hearing. See also *People v. Johnson*, 286 Ill. App. 3d 597, 600 (1997) (trial court properly refused to consider events of the defendant's conduct that occurred after sentencing), *rev'd on other grounds*, *Latona*, 184 Ill. 2d at 269.

III. CONCLUSION

Based on the foregoing, we affirm the judgment of the circuit court of Lee County.

Affirmed.