2011 IL App (2d) 100524-U
No. 2-10-0524
Order filed November 9, 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. 08-CF-104
RYAN L. PROELL,	)	Honorable Ronald M. Jacobson,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in sentencing defendant to 15 years' imprisonment (on a 6-to-30 range) for harassment of a witness: although the nature of the offense was mitigating, the sentence was justified by the factors in aggravation, particularly defendant's extensive criminal history.

¶ 1 Defendant, Ryan L. Proell, pleaded guilty to harassment of a witness (720 ILCS 5/32-4a(a)(2) (West 2008)) and was sentenced to 15 years' imprisonment. He now appeals, arguing that the sentence imposed is excessive. For the reasons that follow, we affirm.

¶ 2 BACKGROUND

¶ 3 Defendant was charged with one count of harassment of a witness and four counts of violating an order of protection (720 ILCS 5/12-30(a)(1) (West 2008)). On May 29, 2008, defendant entered a blind guilty plea on the charge of harassing a witness. According to the factual basis for the plea, while incarcerated on a charge of domestic battery, defendant telephoned Megin Steeb, the victim of the domestic battery. Steeb was expected to be a witness in the domestic battery proceeding against defendant. During his telephone conversation with Steeb, defendant told Steeb, with reference to a written statement by Steeb that she wanted the charges against defendant dropped, to "take it to the library and have it notarized and get it up there you stupid ass hoe [*sic*]."

¶ 4 On July 14, 2008, defendant having failed to appear, the trial court sentenced defendant *in abstentia* to 15 years' imprisonment on the harassment-of-a-witness conviction. The charges of violating an order of protection were nol-prossed. On July 28, defendant's attorney filed a motion to reconsider the sentence. The matter was continued a number of times, and on May 19, 2009, a hearing was held on defendant's motion to reconsider, with defendant acting *pro se*. The trial court denied defendant's motion, and defendant brought this timely appeal.

¶ 5 ANALYSIS

¶ 6 On appeal, defendant argues that his sentence is excessive in light of the facts and circumstances of the crime. He asks that we reduce the sentence or remand for a new sentencing hearing. After reviewing the record, we conclude that the trial court did not abuse its discretion in sentencing defendant.

¶ 7 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). 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. *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998). Relative to aggravating factors, a trial court may consider criminal history, likelihood of recidivism and deterrence in formulating a sentence. *People v. Rader*, 272 Ill. App. 3d 796, 807-808 (1995). The reviewing court is not to reweigh factors considered by the trial court. *Pippen*, 324 Ill. App. 3d at 653.

¶ 8 Defendant argues on appeal that the trial court, in fashioning defendant's sentence, failed to adequately weigh the facts and circumstances surrounding the offense. According to defendant, his act of calling Steeb a "stupid ass hoe [*sic*]" did not involve any threat of violence and amounted to nothing more than a personal insult. Defendant acknowledges that, as a Class X offender, he was subject to a sentencing range of 6 to 30 years' imprisonment (730 ILCS 5/5-8-1(a)(3) (West 2008)), but he contends that, given the nature of the offense, the imposition of a sentence in the middle of that range was an abuse of discretion. We disagree. In sentencing defendant, the trial court specifically stated that it had considered the nature of the offense, noting that defendant's conduct had not caused or threatened physical harm to Steeb. However, in addition to the nature of the offense, the trial court also commented on defendant's extensive criminal history, his likelihood of

committing another similar crime in the future, and the effects that incarceration would have on defendant, defendant's dependents, and the public. From the trial court's comments, it is clear that the trial court took into consideration and weighed a multitude of factors in reaching its sentencing determination. Defendant asks us to discount the consideration and weighing conducted by the trial court and substitute our own, giving more weight to the nature of the offense. As the reviewing court, we are not permitted to do this. *Pippen*, 324 Ill. App. 3d at 653.

¶ 9 CONCLUSION

¶ 10 For the reasons stated, the judgment of the circuit court of Lee County is affirmed.

¶ 11 Affirmed.