2014 IL App (3d) 120915-U

Order filed November 7, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0915
v.	)	Circuit No. 10-CF-381
	)	
CHARLES A. McRAE,	)	Honorable Walter D. Braud,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to extended-terms of 45 years of imprisonment on his Class X felony convictions. The trial court erred in sentencing defendant to an extended-term of 14 years of imprisonment on his Class 2 felony conviction because it was not of the most serious class for which defendant was convicted to warrant the extended-term.

¶ 2 Following a bench trial, defendant, Charles A. McRae, was found guilty of the Class X felonies of home invasion (720 ILCS 5/12-11(a)(1) (West 2010)) and armed robbery (720 ILCS 5/18-2(a)(1) (West 2010)) and the Class 2 felony of unlawful possession of a stolen motor

vehicle (625 ILCS 5/4-103(a)(1) (West 2010)). He was given concurrent extended-term sentences of 45 years, 45 years, and 14 years of imprisonment, respectively. Defendant appeals, arguing his sentence was excessive. Defendant also argues that the trial court erred in sentencing him to an extended term on the Class 2 felony conviction because it was not the most serious offense of which he was convicted. We modify defendant's sentence for unlawful possession of a stolen motor vehicle to seven years and otherwise affirm.

¶ 3 FACTS

¶ 4 The evidence at trial indicated defendant suffers from bipolar disorder. Prior to the incident in this case, defendant had been incarcerated, during which time he was taking psychotropic medication. Defendant was released from incarceration in 2009 and functioned well for the following eight months while living with his girlfriend. In February of 2010, defendant experienced a great deal of stress when his daughter was born. As a result, symptoms of his bipolar disorder emerged. In March of 2010, defendant's girlfriend asked him to leave her home. Defendant lived out of his brother's truck for a period of time and started using cocaine.

¶ 5 On April 22, 2010, at 4 a.m., defendant went to the home of his stepsister and asked if he could borrow money, but she refused. At 6 a.m., defendant went to another relative's house, asked for her credit card, and instructed her to report the card stolen. The same morning, defendant forced his way into the apartment of Sakiv and Hana Hadzikadunic while armed with a knife.

¶ 6 The Hadzikadunics testified that they tried to hold the door closed, but defendant overpowered them and entered. Defendant asked for water. Hana gave defendant water. Defendant repeatedly told the Hadzikadunics "no police." Defendant asked for their car keys. They gave him the keys to their car, and defendant forced them outside by knife-point.

Defendant removed his shirt and cut it with his knife. Defendant approached Hana and put his hands in the prayer position. Sakiv told defendant they did not speak English and would not call the police. Defendant left in the Hadzikadunics' automobile. Defendant was armed with a knife during the entire encounter.

¶ 7 Police pursued defendant and a high-speed car chase ensued. Defendant repeatedly swerved into oncoming traffic. The vehicles reached speeds of up to 107 miles per hour. After the tire of defendant's vehicle blew out, defendant got out of the car and ran from police while armed with a knife. When police officers caught up to him, defendant was stabbing and slashing at himself. Police tasered defendant and placed him in handcuffs.

¶ 8 At trial, defendant asserted an insanity defense. Dr. Kirk Witherspoon testified defendant was not criminally responsible for his conduct because it was the result of defendant's mental illness, and defendant lacked the substantial capacity to appreciate the criminality of his act. Witherspoon testified he was familiar with defendant because in 1998 and 2002 he had found defendant fit to stand trial in other cases. On August 28, 2010, Witherspoon made a report of his interview with defendant. Witherspoon recommended defendant not be considered legally sane at the time of the offenses because he did not have the ability to appreciate the criminality of his behavior.

¶ 9 Witherspoon indicated defendant had started cycling into an "extremely bad" manic episode in February of 2010, which was triggered by defendant not being able to afford his psychotropic medications and the stress of his girlfriend having his child and both his girlfriend and his child becoming sick. Witherspoon testified defendant was suicidal and manic in the months prior to the incident, during which time he heard voices and believed that police were attempting to kill him. He was agitated and suffered from prolonged sleeplessness. He started

using cocaine because he thought it would clarify his thoughts. He had been using cocaine and remained awake for the 10 days leading up to the incident with the Hadzikadunic and was in a "full-blown severe manic episode." In the days prior to this incident, defendant took his brother's truck, drove it erratically, and rolled it over. Witherspoon opined that defendant was reacting to his thoughts that police officers were chasing him when he said, "no police" to the Hadzikadunics. Defendant did not recall anything that took place on the day of the incident or for five days thereafter.

¶ 10 On cross-examination, Witherspoon testified defendant had a history of going on "drug binges," during which time he would use drugs for many days and be unable to sleep. Defendant had also consumed alcohol and cannabis to excess since the age of 12. Defendant received mental health treatment for most of his life. Between 2002 and 2009 defendant had been taking four different mental health medications to treat both psychotic symptoms and his bipolar disorder. Defendant was released from prison in 2009 and could not afford to fill his prescriptions. In March of 2010, defendant went on a cocaine binge.

¶ 11 Dr. William Hillman examined defendant for three hours on August 12, 2011. He also reviewed defendant's mental health records and police reports. Defendant had indicated to Hillman that he was surprised he was not stopped by police prior to the incident because he believed there was a warrant out for his arrest for failing to meet with his parole officer. Hillman acknowledged defendant suffered from a mental disorder but opined that on the day of the incident defendant's judgment was not impaired to the point that he could not understand the criminality of his conduct. Hillman noted that defendant's actions in telling the victims not to call police and fleeing from police implied he did not want to be arrested.

¶ 12 The trial court found defendant guilty but mentally ill. Defendant was remanded to the Department of Mental Health.

¶ 13 Prior to sentencing, the prosecutor indicated that she intended to call witnesses to prove evidence in aggravation at the sentencing hearing. Defendant inquired as to "what the intention of the proving up in aggravation is actually for, the intention of that action?" The trial judge explained that a judge will generally consider a defendant's criminal history and the circumstances surrounding the crime and defendant's life when issuing a sentence. The trial judge indicated that it was the prosecutor's job to inform the court of the aggravating factors and the job of the defense counsel to inform the court of the mitigating factors. The following colloquy took place:

> "THE DEFENDANT: *** Am I correct in–in stating that the purpose of proving crimes in aggravation that have not been charged is specifically to–in order for you to able to sentence somebody past the mandatory maximum sentence?
>
> THE COURT: Not necessarily.
>
> [THE PROSECUTOR]: He can't go beyond it. There's no–nothing in the code, Your Honor, that allows the Court to sentence him in the excess of mandatory. You know, the minimum, the max. There's nothing. I mean . . .
>
> * * *
>
> THE COURT: No one–No one is going to ask that you be sentenced beyond the mandatory, and I wouldn't do it if they asked.
>
> [THE PROSECUTOR]: The maximum.
>
> THE COURT: So you don't need to defend yourself from that.
>
> THE DEFENDANT: *** [M]y understanding of it, was that there's that part of

the complied—compiled statutes that says that in *** proving crimes up in aggravation that are not actual elements of the actual crime that you were convicted of, that in order for the State to do that and the specific reason, I believe, may be to possibly raise the bar of the mandatory maximum in doing that.

THE COURT: *** [The prosecutor] can't go beyond the bar.

* * *

THE DEFENDANT: *** [A]s far as the code says, is that in order for that happen, the issue needs to be addressed before trial and needs to be in writing.

THE COURT: *** Those motions are limine in the trial to try to prevent that information from coming out in the trial, not in the sentencing."

The prosecutor indicated she intended to present evidence of two other crimes in aggravation and that she had disclosed the evidence to defendant as required and had given ample notice of her intent to do so.

¶ 14 At sentencing, the State provided evidence in aggravation that defendant robbed a Family Dollar store and a Family Video store at knife-point within days of the incident at hand. He was also previously convicted of armed robbery of a Hy-Vee grocery store and a Gold Smith Jewelry store while armed with a gun in 2002. Although defendant may have been eligible for consecutive extended-term sentences, the State requested defendant be sentenced to concurrent extended-term sentences.

¶ 15 The trial court noted defendant's criminal history of armed robberies and his lack of remorse. The trial court found a need to protect the public from defendant. Defendant was sentenced to concurrent extended-term sentences of 45 years for home invasion, 45 years for

armed robbery, and 14 years for possession of a stolen vehicle. Defendant filed a motion to reconsider sentence, which the trial court denied. Defendant appealed.

¶ 16 ANALYSIS

¶ 17 On appeal, defendant argues his extended-term sentence of 45 years' imprisonment was excessive "given the unique facts of this case." First, defendant argues the extended-term sentence the court imposed was excessive simply because the trial court promised he would not receive a sentence beyond the normal sentencing range. In addition, defendant notes the sentence the court imposed was excessive in light of the fact that defendant is mentally ill and did not hurt anyone but himself. Alternatively, defendant argues this court should remand for a new sentencing hearing because the trial court erred in sentencing him to an extended term for possession of a stolen motor when it was not the most serious offense of which he was convicted.

¶ 18 I. Excessive Sentence

¶ 19 A reviewing court may not alter a defendant's sentence unless there was an abuse of discretion by the trial court. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A sentence will be deemed an abuse of discretion where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *Id.* at 212. A trial court's sentencing decisions are entitled to great deference because the trial judge has a better opportunity, having observed the defendant and the proceedings, to weigh factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Id.* at 212-13. A reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *Id.* at 213.

¶ 20 First, defendant argues the trial court advised it would not impose a sentence beyond the "normal" sentencing range. Since the "normal", *i.e.* nonextended, range of punishment for a

Class X felony is not less than 6 years and not more than 30 years, defendant contends the 45 year extended-term sentence was excessive. 730 ILCS 5/5-4.5-25(a) (West 2010).

¶ 21 After a careful review of the record, it appears defendant has taken the court's remarks about a "normal" sentence out of context. Here, the prosecutor advised the court that the State would be offering evidence of uncharged offenses in aggravation during the sentencing hearing. Defendant feared the evidence of uncharged crimes would cause the court to impose punishment for those crimes, above and beyond the sentencing range for the Class X felony he had been convicted of committing. The trial court assured defendant the uncharged offenses could not result in an increased sentence above the "normal" range for the Class X felony he was facing. The court's remarks did not advise defendant that an extended-term sentence for the Class X conviction would be beyond the "normal" range of punishment.

¶ 22 Factors in aggravation that may be considered by the court to determine whether defendant is eligible for an extended-term sentence include whether defendant was previously convicted of the same class of felony or a greater class of felony within the past 10 years. 730 ILCS 5/5-5-3.2(b)(1) (West 2010). Here, defendant was convicted of such a felony within the past 10 years, making him eligible for an extended-term sentence. Defendant does not dispute that he was extended-term eligible.

¶ 23 Based on his prior record, defendant received an extended-term sentence within the applicable normal extended-term sentencing range for a Class X felony. A sentence that falls within the statutory range does not amount to an abuse of discretion unless it is manifestly disproportionate to the nature of the offense. *People v. Jackson*, 375 Ill. App. 3d 796, 800 (2007). Even though defendant misinterpreted the court's comment as being an assurance that an extended-term sentence was not a possibility, the court's comment did not rise to the level of a

contractual negotiated plea agreement on which defendant detrimentally relied upon. Defendant was well aware that he was to be sentenced in accordance with the court's discretion and the applicable statutory guidelines since he was being sentence after being found guilty at his bench trial.

¶ 24 It is clear from this record that defendant was extended-term eligible for both the Class X felony offenses of home invasion and armed robbery. The Illinois Supreme court has interpreted section 5-8-2(a) as meaning a defendant who is convicted of multiple offenses may be sentenced to an extended-term sentence for those offenses that are within the most serious class of which the offender was convicted. *People v. Jordan*, 103 Ill. 2d 192, 205 (1984). More than one extended-term sentence may be imposed if the accused is convicted of multiple offenses within the most serious class. *Id.* at 207. Thus, the "normal," range of punishment included an extended-term sentence for the Class X felonies of not less than 30 years and not more than 60 years. See 730 ILCS 5/5-4.5-25(a) (West 2010). Defendant's 45-year sentence was a mid-range extended-term sentence and was not excessive.

¶ 25 II. Aggravating and Mitigating factors

¶ 26 Next, defendant argues his well-documented mental illness was not appropriately considered by the court in mitigation. The State responds that the trial court did not abuse its discretion in sentencing defendant in light of defendant’s substantial criminal record, his lack of remorse, and the seriousness of the crimes.

¶ 27 Unless the record affirmatively shows otherwise, the trial court is presumed to have considered all relevant factors, including any mitigating evidence. *People v. Hernandez*, 319 Ill. App. 3d 520, 529 (2001). A trial court is not required to give greater weight to defendant's

rehabilitative potential and other mitigating factors than to the seriousness of the offense. See *Alexander*, 239 Ill. 2d at 214.

¶ 28 The circumstances surrounding the crime in this case show defendant went on a cocaine binge and committed multiple armed robberies over the course of a few days. He also endangered the lives of other drivers and the police officers during the high-speed chase that took place when defendant was fleeing from police. The trial court was in a better position than this court to consider defendant's credibility, demeanor, and character, and the trial court found defendant lacked any remorse. For these reasons, defendant's sentence was not excessive.

¶ 29 III. Extended-Term Sentence for Possession of a Stolen Motor Vehicle

¶ 30 Defendant argues that this court should reduce his extended-term sentence for possession of stolen motor vehicle because it was not within the most serious class of offenses to be eligible for extended-term sentencing. The State concedes that the trial court's imposition of an extended-term sentence on the Class 2 felony of possession of a stolen motor vehicle conviction was improper.

¶ 31 The trial court may impose an extended-term sentence only for the most serious class of offense committed during a single court of conduct. 730 ILCS 5/5-8-2(a) (West 2010); *People v. Bell*, 196 Ill. 2d 343 (2001). Here, in addition to the two Class X felonies of home invasion and armed robbery, defendant was convicted of the Class 2 felony of unlawful possession of a stolen motor vehicle. The offenses were part of a single course of conduct. Therefore, defendant could not have been given an extended-term sentence for the lesser class offense of possession of stolen motor vehicle. Consequently, we modify the extended-term portion of defendant's concurrent sentence for unlawful possession of stolen motor vehicle to the maximum nonextended-term sentence for a Class 2 felony, which is seven years of imprisonment. See 730

ILCS 5/5-4.5-35(a) (West 2010) (providing that the sentence of imprisonment for a Class 2 felony shall be not less than three years and not more than seven years).

¶ 32 CONCLUSION

¶ 33 For the foregoing reason, the judgment of the circuit court of Rock Island County is affirmed as modified.

¶ 34 Affirmed as modified.