2018 IL App (3d) 150788-U

Order filed March 13, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0788 Circuit No. 14-CF-1820
JONATHON YATES,	)	Honorable Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in sentencing defendant.

¶ 2 Defendant, Jonathon Yates, appeals his sentence of six years' imprisonment, arguing that it was excessive and the court failed to consider the mitigating factor of excessive hardship to his dependents. We affirm.

¶ 3 FACTS

¶ 4 Defendant was charged with unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)), three counts of aggravated battery (*id.* § 12-3.05(a)(5), (d)(2), (c)), and unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)). A bench trial was held. The evidence at trial established, *inter alia*, that Officer Jason Mitchem was dispatched to a domestic battery call at an apartment. He arrested defendant and a search of the apartment was conducted where pills, cannabis, a firearm, and money were found. Defendant admitted the pills, cannabis, and money were his, but stated that he had no knowledge of the firearm. Defendant did not live at the apartment, but visited his girlfriend there.

¶ 5 Mike Zolecki worked at the Will County Adult Detention Facility as a correctional officer. On September 14, 2014, he was assigned to book defendant. He performed a strip search of defendant. When doing an inspection of defendant's private area, a bag fell onto the ground that was either lodged in defendant's butt cheeks or under his testicles. The bag contained five smaller bags of crack cocaine. The court found defendant guilty of unlawful possession of a controlled substance, but not guilty on the other charges.

¶ 6 A sentencing hearing was held on October 1, 2015. The State noted that defendant had a prior criminal history, including two drug convictions in 2010. He had been discharged from parole in February 17, 2014, from those convictions, less than seven months prior to committing the offense in this case. He also had two pending misdemeanor charges in Du Page County. The State noted that defendant was eligible for an extended-term sentence so the range would be one to six years, though he would also be eligible for probation. Defendant noted that he had a nine-month-old daughter and asked for probation. The court took the matter under advisement. The court sentenced defendant to six years in the Illinois Department of Corrections (DOC), stating, "I reviewed thoroughly everything I heard at trial. I reviewed everything I heard at sentencing,

everything that was presented to me at the sentencing hearing, and I have considered all of the relevant statutes, including but not limited to the factors in aggravation and mitigation." Defense counsel stated, "Judge, can we ask for a basis for the six-year sentence? It seems far outside the range." The court then stated:

> "Okay. Well I can do that. Generally what I do is go through the factors in aggravation and mitigation one at a time.
>
> To be perfectly honest with you since I found him not guilty on four out of the five counts, I thought I might not have to do that, but I will do it if you want me to, that's fine."

¶ 7 The court went through each mitigating factor one by one. It found in mitigation that defendant's conduct did not cause or threaten serious physical harm and that defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm. The court noted that defendant had a substantial criminal history, including multiple drug offenses. The court also noted that defendant's conduct was likely to recur, stating: "[B]ut for the time he was in state prison, he has had an annual—several annual contacts with police, just about every year." When considering whether the character and attitude of defendant indicated that he was unlikely to commit another crime, the court noted that it received a letter in mitigation about defendant's past volunteer work. However, the court stated that because of defendant's consistent criminality, this factor did not apply. The court considered whether defendant would be particularly likely to comply with the terms of probation. Though the court noted that defendant had not violated his parole, he did not think that defendant was *particularly* likely to comply, which was the language in the statutory mitigating factor.

¶ 8 As far as the mitigating factor related to excessive hardship to dependents, the court stated:

> "He claims to be the father of one child nine months old but I didn't hear any evidence of paternity. It's kind of common for me to hear about all the children that people have once they're about to be sentenced. But I always note that up until the time they come to court, they really don't claim the children. There's no paternity case that I'm aware of. Correct me if I'm wrong, but he should have manned up and gone out and made sure that he was the father of that child and if the child could be claimed as a dependent.
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> So to that extent, I guess Factor 11 does not apply. And it also uses the word excessive. I don't see anything to indicate there would be any excessive hardship to any dependent even if that is his child."

The court further noted that defendant was in good health and not intellectually disabled.

¶ 9 The court then considered the aggravating factors. The court noted that defendant had a history of prior criminal activity and that the sentence was necessary to deter others. The court then stated:

> "All things considered then, having regard to the nature and circumstances of the offense and to the history, character, and condition of the offender, the defendant in this case, I am of the opinion that his imprisonment is necessary for the protection of the public and a sentence of probation or conditional discharge would deprecate the seriousness of his conduct and would be inconsistent with the ends of justice. Those are my reasons for six years in DOC."

¶ 10 Defendant filed a motion to reconsider sentence. Defense counsel argued, *inter alia*, the court failed to consider in mitigation the undue hardship on defendant's dependent because defendant was unmarried.

¶ 11 The court denied the motion, stating:

> "I wish I had a transcript because I don't recall in this case, or any case I have ever sentenced anybody on for anything, that I ever said that I was holding his marital status against him. I don't recall ever saying that.
>
> I don't care if he is married or not married. It doesn't matter to me one bit. That is his lifestyle. I don't take it into consideration at all, so if he wants to have children out of wedlock, fine. That is not an aggravating factor. Is not. Okay? But what the statute says, in particular, the one you just cited regarding hardship to dependents, mitigating factor number 11 is—and I'll quote it: The imprisonment of the defendant would entail excessive hardship to his dependents. So I not only have to find that he has dependents, I have to find that there would be excessive hardship to his dependents if he went to prison.
>
> I would imagine there is always some hardship to dependents when mom or dad goes to prison. I can't imagine why there wouldn't be, but the statute says excessive.
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> Now the first thing I need to know is does he have any dependents. I looked at his Affidavit of Assets and Liabilities, and before that child was even born, he had listed dependents. Children—one child. I have had people come in here with wife's—I guess they are stepchildren they don't even have custody of

and claim them as dependents. I have had literally people come in with their neighbor's children and say: Look at all my children. Don't send me to prison.

Everybody has children when they are ready to go to DOC. Always. Okay? So I always ask: Well, if these are your children, then you show me either the divorce degree where you have custody; mom has custody, you pay child support; or show me the paternity; or he could have signed something when the child was born. It doesn't even have to have a paternity order in Illinois. The birth certificate is not sufficient in my opinion, the fact that he is listed on that. I don't even know if he is. Nobody ever told me that that I recall, but there is a document he could have signed at the time of birth which would have acknowledged paternity, and that is good because I have to determine what the hardship to that child is, if any, and I will note that he apparently is unemployed. He's worked in the past. Now he works for cash for some—for a relative. An uncle maybe. I don't have it open to that page right now. So there is really no set amount that he is giving for child support.

During the trial, it was his position that he didn't live at the apartment which is where mother of the child lives, so obviously he is not paying towards rent. They are not living together as husband and wife, whether they are married or not, so the child is not living in his household. He is not providing a household for the child. I don't see that he is paying any child support for the child. I don't even see a receipt for a box of diapers for the child, so how then do I get to the point of excessive hardship? And that is the word that the statute uses. Excessive hardship.

> If the mother of the child is supporting that child just fine without [defendant], then she can support the child just as fine without him while he is in DOC, so there is no excessive hardship, whether he is married or not. I don't care if he's married. It doesn't matter. I want to make sure that is clear. I'm not holding it against him that he is not married, but I want—if you want me to consider that mitigating factor, then present something to me that says there is an excessive hardship. You know, he is paying a thousand dollars a week in child support, and that is going to dry up if he goes to DOC. Well, there may be an excessive hardship there depending on the circumstances of all the parties, but short of that, I can't reach the excessive issue.
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> Did he pay for all the gynecology bills, the obstetrician, all the doctors involved? Did he pay the hospital bill? I don't know any of that. I don't see any of that. It's all zero. Zero as far as I'm concerned, so there is—he hasn't done diddly squat to support that child from what I have in the PSI and the record, so then don't come to me and say the child is going to have an excessive hardship with dad in DOC. It doesn't fly, okay? So that is my thinking behind No. 11 on the factors in mitigation."

¶ 12 ANALYSIS

¶ 13 On appeal, defendant contends that the circuit court erred in sentencing defendant to six years' imprisonment. Specifically, defendant argues that (1) the sentence was excessive in light of the circumstances, and (2) the court failed to consider the mitigating factor of excessive hardship to defendant's dependents. We find that the court did not abuse its discretion in imposing a sentence of six years' imprisonment.

¶ 14 A circuit court's sentencing decisions are entitled to great deference and will not be altered by a reviewing court absent an abuse of discretion. *People v. Jackson*, 375 Ill. App. 3d 796, 801 (2007). The circuit court is granted great deference by reviewing courts because it is in a better position to determine the appropriate sentence since it has the opportunity to weigh factors like "the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). A sentence which falls within the statutory range is not an abuse of discretion unless it is manifestly disproportionate to the nature of the offense or greatly at variance with the spirit and purpose of the law. *People v. Alexander*, 239 Ill. 2d 205, 215 (2010).

¶ 15 It is up to the circuit court "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 court cannot ignore a pertinent mitigating factor (*People v. Burnette*, 325 Ill. App. 3d 792, 808-09 (2001)), although the weight to be given each factor depends on the facts and circumstances of each case. *People v. Gross*, 265 Ill. App. 3d 74, 80 (1994). When mitigating evidence is before the circuit court, it is assumed that the court considered it, unless the record indicates otherwise. *People v. Burton*, 184 Ill. 2d 1, 34 (1998). It is not our duty on appeal to reweigh the factors involved in the circuit court's sentencing decision. *People v. Coleman*, 166 Ill. 2d 247, 261-62 (1995).

¶ 16 First, we note that defendant's six-year sentence was within the applicable extended-term range. 730 ILCS 5/5-4.5-45 (West 2014). Second, when rendering its decision, the sentencing court stated, "I reviewed thoroughly everything I heard at trial. I reviewed everything I heard at sentencing, everything that was presented to me at the sentencing hearing, and I have considered all of the relevant statutes, including but not limited to the factors in aggravation and mitigation."

This statement shows that the court considered all the evidence before him, including the factors in aggravation and mitigation. Third, the court meticulously considered the aggravating and mitigating evidence, going through each specific factor and determining whether or not it applied in defendant's case. The court spent a great deal of time considering the mitigating factor of excessive hardship to defendant's dependents, both at sentencing and at the motion to reconsider sentence. The court first considered whether defendant even had dependents, noting that the only evidence presented that defendant had a child was his own statement. The court then considered whether any hardship on that child would be "excessive." The court noted that defendant had stated that he did not live with the child's mother, and he did not present any evidence that he had custody of the child or that he provided any support for her. Based on the evidence presented, the court found that the mitigating factor did not apply. Therefore, the record shows that the court considered and weighed the evidence presented when reaching its decision. Though defendant may believe the mitigating factor should have applied or been given more weight, the court was not required to agree. Viewed in totality, we cannot say that defendant's sentence was "greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 17 In coming to this conclusion, we reject defendant's contention that "the trial judge punished the defendant for not establishing his parenthood through the court system." The record shows that the court solely commented on the evidence presented regarding whether defendant had a dependent and, if so, whether there would be excessive hardship on that dependent.

¶ 18 We further reject defendant's contention that "the judge may have given the defendant a longer sentence than the facts of this case warranted simply because the State failed to meet its

burden of proof on the other charges." We find no indication in the record that this was the case. The court balanced the factors and made a reasoned decision.

¶ 19 CONCLUSION

¶ 20 The judgment of the circuit court of Will County is affirmed.

¶ 21 Affirmed.