2011 IL App (4th) 100065-U

Filed 7/14/11

NO. 4-10-0065

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
MASON WILLIAMS,	)	No. 06CF207
Defendant-Appellant.	)	
	)	Honorable
	)	Robert M. Travers,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ *1* *Held*: Defendant failed to demonstrate that the trial court relied upon inaccurate information or upon improper factors in determining defendant's sentence.

¶ 2 Defendant, Mason Williams, appeals from the trial court's sentencing judgment, ordering him to serve a term of six years in prison, consecutive to the sentence he was currently serving, upon his conviction by a jury of unlawful possession of a weapon by an inmate. He claims the trial court erred in denying his objections to the presentence investigation report (PSI). Because we find the court did not err, we affirm defendant's conviction and sentence.

¶ 3 I. BACKGROUND

¶ 4 In August 2006, defendant was an inmate at Pontiac Correctional Center. During a disciplinary "shakedown" of defendant's cell, correctional officers found what they deemed to be a weapon in defendant's shoe. Defendant had filed an earpiece to a pair of eyeglasses down to a sharp

point and wrapped a sock around the other end as a handle. Defendant received a disciplinary ticket relating to this incident. In addition, the State charged defendant with unlawful possession of a weapon by a person confined in a penal institution (720 ILCS 5/24--1.1(b) (West 2004)), a Class 1 felony (720 ILCS 5/24--1.1(e) (West 2004)). The public defender was appointed to represent defendant.

¶ 5 In June 2008, a jury found defendant guilty of the offense as charged. The trial court ordered the preparation of a PSI. The content of the prepared PSI is the subject of this appeal. In general, defendant claims the trial court failed to consider his objections to the contents of the report, and accordingly, considered inaccurate information when imposing defendant's six-year sentence. Probation investigating officer R. Beasley prepared the report. Defendant reviewed the report and filed *pro se* written objections, which included the following. First, defendant claimed Beasley's description of the "circumstances of the offense" as a "search" conducted by correctional officers was inaccurate, as the officers' actions would be better described, according to defendant, as "criminal conduct of mob action by confiscating the defendant's personal property without cause or justification."

¶ 6 Second, defendant challenged Beasley's inclusion of the entries listed under a section entitled "Defendant's History of Delinquency and Criminality" as follows:

> "[October 23, 1981] Attempt Rape, Cook Co., IL 81-8495. [November 25, 1981], 4 years probation. [September 30, 1987], revoked, 7 years IDOC.
>
> [January 13, 1990] Aggravated Criminal Sexual Assault, Cook Co., IL 90CR8370 filed [March 28, 1990]. [September 24,

1991], 18 years IDOC.

Comment: The defendant indicated that he pled guilty, but states he is innocent. He also indicated that the sexual assault incident was not by force[,] but it was consensual. He added, 'It was something that just got out of hand.'

[August 11, 1993,] Aggravated Battery of Peace Officer, Livingston Co., IL 93CF286. [July 8, 1994], 10 years IDOC.

Comments: Illinois Bureau of Identification records revealed arrests in Cook County, IL on [August 30, 1981,] for Possession of Cannabis and on [August 9, 1986,] for Armed Robbery.

As per Cook County Circuit Clerk's office, there are no addition [*sic*] criminal history records on file from 1981 to 1996.

The defendant indicated that the Cook County [p]robation case was revoked based on an Armed Robbery case."

With regard to these entries, defendant claims (1) he did not plead guilty to the 1990 aggravated-criminal-sexual-assault charge, but he did plead guilty to the 1981 attempt (rape) charge; (2) the jury was never instructed on a "consent" defense in his trial on aggravated criminal sexual assault; (3) his comment about "something that just got out of hand" was not meant to imply his guilt; (4) he was innocent of the aggravated-battery-of-a-peace-officer charge; (5) that charge is over 10 years old and should be "overlooked"; and (6) "the State S.O.L. the armed robbery case, where it was determined that the alleged victim was committing perjury."

¶ 7 Third, defendant challenged Beasley's inclusion of the following statement under the

section entitled "Family History/Marital Status": "The defendant reports that his family was 'dysfunctional.' When asked if he was sexually abused, he stated, 'not by my parents' and he declined to discuss this further." Defendant claimed this mention of sexual abuse was not relevant to any issue related to sentencing and was only included for the purpose of promoting a "theory" that those who have been sexually abused have a poor rehabilitative potential. He claimed this statement was included to demonstrate to the court that he would be "likely to sexually abuse someone."

¶ 8 Fourth, defendant challenged Beasley's statement in the section entitled "Education" that defendant completed the ninth grade and received his general equivalency diploma (GED) in prison. He claims this statement was misleading because he not only obtained his GED, but he (1) enrolled in Malcolm X college, majoring in business; (2) participated in paralegal studies; (3) participated in "theology Bible" courses; and (4) assisted other inmates with legal matters.

¶ 9 Fifth, defendant challenged Beasley's inclusion of the statement under the section entitled "Physical Health" that defendant injured his mouth three to four years ago–an injury which did not heal properly and has resulted in the formation of large scar tissue on his upper lip. Defendant objected to this statement as irrelevant.

¶ 10 Sixth, Beasley noted in the section entitled "Mental Health" that defendant had no problematic sexual addiction, "merely a 'fetish.' " Defendant claimed he never discussed any "sexual addictions" with Beasley and he objected to the relevancy of this statement. Defendant accused Beasley of misstating what defendant had mentioned during their discussion as a generalization about prisoners' sexual conduct.

¶ 11 Seventh, defendant challenged Beasley's characterization of defendant's religious practice as having "experimented" with various religions. Contrary to Beasley's statement, defendant

insisted he never practiced Islam or Buddhism, and he claimed Beasley's statement was meant "only to mislead the court."

¶ 12 Eighth, defendant claimed Beasley's reference to defendant's 80 prison disciplinary tickets is "unreliable." He claimed he "filed numerous lawsuits and grievances," presumably challenging his infractions.

¶ 13 Finally, defendant challenged the following statement:

> "Offender has a long assaultive disciplinary behavior during his current IDOC incarceration. His disciplinary card documents numerous instances of abuse towards staff and other offenders involving assault and sexual misconduct consisting of masturbating in front of female staff or other types of sexual misbehavior. ***
>
> The defendant indicated that the incidents for which he has been disciplined for sexual misconduct, he has not meant to offend anyone or dominant [*sic*] or control women and that his acts have been for sexual gratification only."

Defendant claimed these statements demonstrate Beasley's bias against defendant. He insisted these statements do not accurately reflect their conversation. He claimed Beasley's statements were merely an attempt to convince the trial court to sentence defendant as a "sexually dangerous person."

¶ 14 At the start of defendant's sentencing hearing, defendant's counsel directed the court's attention generally to defendant's *pro se* written objections. However, counsel only added argument related to the statement referring to defendant's "long assaultive disciplinary" history in prison. After his argument, the following exchange occurred:

"THE COURT: All right. Mr. Morgan [defense counsel], do you have any further argument in relation to the defendant's objections to the pre-sentence report?

MR. MORGAN: No, Your Honor. No further argument on those objections that Mr. Williams has. Thank you."

THE COURT: All right. The objections to the pre-sentence report are denied. I would note that in relation to his complaints about references to religion, the court will pay no attention to religious preferences or his prior religious habits unless he wishes to make those an issue at today's hearing."

The trial court proceeded with the sentencing hearing. The State presented no additional evidence in aggravation and defendant presented no evidence in mitigation. Defendant made a statement in allocution, advising the court he was "very remorseful for everything" and asked for leniency. After considering the PSI, defendant's statement, the statutory factors in aggravation and mitigation, and counsels' recommendations, the court stated:

"All right. As factors in mitigation, I find none. As factors in aggravation, I find that the defendant's conduct threatened serious harm. That the defendant has a history of prior criminal activity and that a sentence is necessary to deter others from committing the same crime. I would note that the defendant has received what would be significant punishment in the Department of Corrections for this particular act. He was reduced to grade C for one year, segregation

for one year, good conduct credit was lost. Three months restriction on his audio visual privileges and loss of commissary privileges.

I do not believe that, although the defendant qualified for extended term, that [*sic*] extended term is appropriate. I will sentence him to six years in the Illinois Department of Corrections consecutive to his previous sentences, including the one that he is now serving."

¶ 15 Defendant filed a motion to reconsider his sentence, claiming it was excessive in light of the applicable factors in mitigation. The trial court denied defendant's motion, finding the six-year sentence was "well within the range of penalties" and "appropriate." This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant claims the trial court erred in denying his written objections to the PSI, and as a result of the denial, the court considered inaccurate information in imposing defendant's sentence. A defendant's sentence will be disturbed on appeal only if the sentencing court abused its discretion. *People v. Perruquet*, 68 Ill. 2d 149, 153 (1977).

¶ 18 Absent an agreed disposition, a trial court must consider a written PSI before sentencing a defendant on a felony conviction. 730 ILCS 5/5--3--1(West 2004). We have previously held that *all* information in the PSI may be relied upon by the sentencing judge if he or she finds the information probative and reliable. *People v. Powell*, 199 Ill. App. 3d 291, 295 (1990). Regardless, this court does not require the judge to specify on the record those portions of the PSI upon which the judge relied. *Powell*, 199 Ill. App. 3d at 294.

¶ 19 "[P]resentence reports are not subject to formal limitations as to their content and may rest on hearsay and contain information bearing no relation whatsoever to the crime with which the

defendant is charged." *People v. Cook*, 31 Ill. App. 3d 363, 367 (1975) (citing *Gregg v. United States*, 394 U.S. 489, 492 (1969)). "In determining the appropriate sentence, the trial judge must consider all matters reflecting upon the defendant's personality, propensities, purposes, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding." *People v. Ward*, 113 Ill. 2d 516, 527 (1986). The reviewing court defers to the trial court's decisions concerning sentencing and presumes that the court considered only appropriate factors in sentencing, unless the record affirmatively shows otherwise. *People v. Lurks*, 241 Ill. App. 3d 819, 827 (1993).

¶ 20 Here, the trial court sentenced defendant to 6 years, a term at the low end of the 4-to-15-year potential range of punishment for a Class 1 felony. See 730 ILCS 5/5--8--1(a)(4) (West 2004). The court stated that it considered defendant's history of criminal activity and the fact that defendant's conduct threatened serious harm. Based solely on the nature of the offense and defendant's undisputed criminal history, which included convictions for attempt (rape), aggravated criminal sexual assault, and aggravated battery of a peace officer, the sentence imposed was not improper. Whether defendant pleaded guilty to the attempt charge or to the aggravated-criminal-sexual-assault charge was of no consequence to defendant's sentence. The court considered only that defendant was convicted of both, as both were part of defendant's criminal history.

¶ 21 Likewise, the trial court did not seem to place any significant consideration on (1) defendant's "assaultive disciplinary behavior" in prison, (2) defendant's comments regarding his or other inmates' sexual conduct, or (3) whether defendant was sexually abused. Further, the court specifically said it would "pay no attention to religious preferences or [defendant's] prior religious habits unless he wishes to make those an issue at [the sentencing] hearing." Defendant did not make it an issue and, in fact, presented no evidence at the hearing. Based on this record, it is not evident

that the court considered any of the alleged inaccurate information from the PSI and instead it appears the court relied only on proper factors when imposing the sentence. Without evidence to the contrary, we cannot assume the court considered improper information. See *Lurks*, 241 Ill. App. 3d at 827 (absent evidence to the contrary, reviewing courts must presume the court considered proper factors).

¶ 22 We find the sentence of six years not inappropriate in this case. We do not find that the trial court relied on inaccurate information or otherwise erred in sentencing defendant. See *People v. Kimpel*, 78 Ill. App. 3d 929, 932 (1979) (where we cannot determine that the alleged error reasonably affected the result, the judgment of the trial court will be affirmed).

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 25 Affirmed.