NO. 4-10-0112 Order Filed 5/13/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Pike County
GARY W. SMITH,	)	No. 01CF66
Defendant-Appellant.	)	
	)	Honorable
	)	Michael R. Roseberry,
	)	Judge Presiding.

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

ORDER

Held: The trial court did not abuse its discretion in sentencing defendant to six years in prison upon his conviction of burglary where he had prior multiple unsuccessful attempts at community-based sentences.

Defendant, Gary W. Smith, files this direct appeal from his conviction and sentence for burglary. Defendant was initially sentenced to 30 months' probation; however, the trial court revoked his probation upon certain violations of the terms. The court revoked defendant's probation two more times before it sentenced him to six years in prison for his Class 2 offense. Because we find the court did not abuse its discretion, we affirm.

I. BACKGROUND

In August 2001, the State charged defendant with burglary (720 ILCS 5/19-1(a) (West 2000)) and theft (720 ILCS 5/16-5(a) (West 2000)) after he and two other men

broke open a coin-operated detergent dispenser inside the Laundry Stop and stole $24 in coins. Defendant pleaded guilty to burglary in exchange for the State's agreement to dismiss the theft charge. In October 2001, the trial court sentenced defendant to 30 months' probation.

In December 2003, the State filed a petition to revoke defendant's probation after he was arrested and charged with burglary to a vehicle (Pike County case No. 03-CF-106). Defendant admitted the violation and, in March 2004, was resentenced to 48 months' probation. (In his 2003 case, defendant was sentenced to seven years in prison and participated in the impact incarceration program.)

In May 2005, the State filed a second petition to revoke probation after defendant failed to report to his probation officer and failed to provide his address after his release from prison. (The disposition of this petition is not noted in the record.)

In September 2007, the State filed a third petition to revoke, again alleging, *inter alia*, that defendant failed to report to his probation officer upon his release from prison in October 2004. In November 2007, defendant admitted the violations and was sentenced to 36 months' probation.

In May 2009, the State filed a fourth petition to revoke after defendant admitted he was arrested twice for driving under the influence of alcohol and once for "criminal entry" in the State of Wyoming. He also admitted he consumed alcohol on multiple occasions, contrary to the terms of his probation. In November 2009, the trial court resentenced defendant to six years in prison. In doing so, the court stated: "I know [defense attorney] argued that, and rightfully so, that this was merely the theft of some

change from the laundromat but obviously the legislature has determined that entering into a building that is closed or not open for business at the time and stealing things is a serious offense." Though defendant's criminal history was "not really substantial," the court believed the sentence was appropriate because defendant's rehabilitation potential was poor and a sentence was needed to deter others from committing the same crime. The court "had no reason to believe that [defendant] would comply with any period of probation."

In December 2009, defendant filed a motion to reconsider sentence, claiming his sentence was excessive. The trial court denied defendant's motion. This appeal followed.

II. ANALYSIS

Defendant claims the six-year sentence imposed was excessive based on the nature of the crime. He contends that the record, which includes his repeated inability to comply with the terms of his probation, does not support a sentence of six years for this "picayune offense." We disagree.

As defendant is aware, the sentencing court has broad discretionary powers in choosing an appropriate sentence, and this court will overturn a sentence only if it is discovered that the trial court abused its discretion. See *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). 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." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). We recognize that it is the function of the trial court to balance the relevant factors and make a reasoned

decision as to the appropriate sentence, and we will not substitute our own judgment for that of the trial court. *People v. Rathbone*, 345 Ill. App. 3d 305, 313 (2003).

Defendant was convicted of burglary, a Class 2 felony (720 ILCS 5/19-1(b) (West 2000)), which has an applicable sentencing range of 3 to 7 years in prison. See 730 ILCS 5/5-8-1(a)(5) (West 2000). Defendant's sentence of six years is within that range. See *Jones*, 168 Ill. 2d at 373-74 (if the sentence is within the statutory range, a reviewing court has the power to disturb the sentence only if the trial court abused its discretion). Though this was defendant's first criminal offense, it was only the beginning of a chain of offenses and resulting probation revocations. The trial court properly considered defendant's conduct while on probation. See *Rathbone*, 345 Ill. App. 3d at 312.

After three failed attempts at a community-based sentence, the trial court determined that a term of imprisonment was its only appropriate option for defendant. At the resentencing hearing, the court stated that it had given the matter "a great deal of consideration." The court (1) considered the relevant statutory factors in aggravation and mitigation, (2) determined that defendant was "not likely to be rehabilitated," and (3) concluded that a sentence of "imprisonment was necessary for the protection of the public." Based on defendant's history, in particular, his failure to comply with any of his community-based sentences, it is evident that he holds little regard for authority and the law, making his rehabilitative potential limited, or more likely, nonexistent. As the court stated, defendant committed a "serious offense," and therefore, we conclude defendant's sentence is not at variance with the spirit and purpose of the law, nor is it manifestly disproportionate to the nature of the offense. Reviewing the evidence in accordance with

the applicable standard of review, we conclude that the court did not abuse its discretion by sentencing defendant to six years in prison.

III. CONCLUSION

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.

Affirmed.