

NOTICE
This order was filed under Supreme
Court Rule 23 and may not be cited as
precedent by any party except in the
limited circumstances allowed under
Rule 23(e)(1).

2011 IL App (4th) 100717-U

Filed 11/15/11

NO. 4-10-0717

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|--------------------------------------|---|---------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | McLean County |
| JOSHUA M. WILLIAMS, |) | No. 09CF537 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Charles G. Reynard, |
| |) | Judge Presiding. |

JUSTICE McCULLOUGH delivered the judgment of the court.
Justice Pope concurred in the judgment. Justice Appleton specially concurred.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to 35 years in prison.

¶ 2 Defendant, Joshua M. Williams, pleaded guilty to unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2008)) and the trial court sentenced him to 35 years in prison. He appeals, arguing the imposed sentence was excessive. We affirm.

¶ 3 On July 1, 2009, a grand jury indicted defendant with unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2008)), alleging he possessed and intended to deliver more than 15 grams but less than 100 grams of a substance containing cocaine. It also stated defendant was eligible for an extended-term sentence based upon his prior criminal record.

¶ 4 On September 18, 2009, defendant entered an open plea of guilty to the charged offense. In exchange for his plea, the State agreed to dismiss petitions to revoke filed in an unrelated case and unsuccessfully discharge defendant from probation. Pursuant to the plea agreement, the parties also agreed that defendant would not face federal drug or weapons charges arising out of the same conduct that resulted in defendant's arrest for the offense at issue.

¶ 5 At defendant's plea hearing, the trial court provided admonishments and defendant acknowledged that he faced an extended-term sentence within the range of 6 to 60 years in prison. The State presented a factual basis, showing defendant's arrest arose out of a vice unit investigation into cocaine sales in Bloomington, Illinois. Several controlled buys were made with the assistance of an informant. During one controlled buy, an undercover officer had contact with defendant who confirmed the price for the sale. A search warrant was obtained and executed on defendant's residence where police discovered 90 grams of powdered cocaine and \$7,700 in cash, including cash the police had used in their controlled buys.

¶ 6 On December 17, 2009, the trial court conducted defendant's sentencing hearing. His presentence investigation report showed defendant was 25 years old at the time he committed the offense at issue and 26 at the time of sentencing. His criminal history included convictions as a juvenile for battery in 1998, and aggravated battery in 2000, as well as a term of imprisonment in the juvenile division of the Department of Corrections (DOC). As an adult, defendant had a felony conviction for armed robbery in 2001, for which he was sentenced to a six-year term of imprisonment in DOC, and a felony conviction for obstructing justice in 2007, for which he was on probation at the time he was arrested for the offense at issue. Defendant

also had a misdemeanor conviction for domestic battery in 2006, and a conviction for resisting or obstructing a peace officer in 2007. Finally, the report showed defendant had over 20 convictions for traffic-related offenses.

¶ 7 At the sentencing hearing, Steven Brown testified for the State that he was a detective with the police department's vice unit and was involved in the search of defendant's residence. Brown confirmed that, in the home, police found \$7,749 in cash and 90 grams of cocaine, as well as brass knuckles; 84 grams of cannabis; and materials associated with the packaging and sale of drugs, including a large scale and several empty plastic baggies with suspected cocaine residue. Additionally, police discovered three semiautomatic handguns, including a .45-caliber Hi-Point handgun, a .45-caliber Vulcan handgun described as "a look-alike MAC-10 type weapon," and a .32-caliber chrome magnum. Brown noted that all of the weapons were loaded and found in a bedroom in close proximity to the money and drugs. Testimony at the hearing also showed a fingerprint that matched defendant was found on one of the live rounds inside of one of the weapons.

¶ 8 Todd McClusky, an agent involved in defendant's case, testified defendant was identified as the source supplier on three controlled buys. Acting undercover, McClusky would contact Guy Brown, whom he described as a middleman, to purchase cocaine. Guy lived in close proximity to defendant. After being contacted by McClusky, Guy would then go to defendant's residence or defendant would come to Guy's residence to supply the cocaine. During the third controlled buy, McClusky met and spoke with defendant who confirmed the price of the cocaine. The three controlled buys occurred on June 15, 18, and 23, 2009, and McClusky purchased 3.8 grams, 8.1 grams, and 15.2 grams, respectively. He testified all three transactions

occurred within 1,000 feet of a church.

¶ 9 Carrie Shields testified on defendant's behalf. Shields stated she had known defendant for 11 years and had previously dated him. Defendant was also the father of Shields' three-year-old son. Shields described defendant as a great father who spent time with his son and provided for the child both financially and emotionally.

¶ 10 During argument, the State recommended the trial court sentence defendant to a 46-year term of imprisonment while the defendant argued for a sentence at or near the midrange of the unextended sentencing range of 6 to 30 years. The court determined an extended term of imprisonment was appropriate and necessary and sentenced defendant to 35 years in prison.

¶ 11 On January 19, 2010, defendant filed a motion to reconsider his sentence, alleging it was excessive in light of the evidence presented. Specifically, he argued the trial court failed to follow the Illinois Constitution's requirement that penalties must "be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." See Ill. Const. 1970, art. I, § 11. Defendant further maintained the imposed sentence was not consistent with his past history of criminality, family situation, economic status, education, occupational, or personal habits. On May 20, 2010, the court denied defendant's motion.

¶ 12 This appeal followed.

¶ 13 On appeal, defendant argues the trial court abused its discretion by sentencing him to 35 years in prison. He argues his sentence was excessive considering his criminal history and potential for rehabilitation.

¶ 14 "The trial court has broad discretionary powers in imposing a sentence, and its

sentencing decisions are entitled to great deference." *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010). On review, a defendant's sentence will not be altered absent an abuse of discretion by the trial court. *People v. Hauschild*, 226 Ill. 2d 63, 90, 871 N.E.2d 1, 16 (2007). Where a sentence falls within statutory guidelines, it will not be deemed excessive and an abuse of the court's discretion unless " 'the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *Hauschild*, 226 Ill. 2d at 90, 871 N.E.2d at 16, quoting *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000). Additionally, "[w]e 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, 802 N.E.2d 333, 340 (2003).

¶ 15 Here, defendant was convicted of possession of a controlled substance with intent to deliver, a Class X felony that is subject to a sentencing range of 6 to 30 years in prison. 720 ILCS 570/401(a)(2)(A) (West 2008). However, due to having a prior conviction for a Class X felony, defendant was eligible for an extended-term sentence of up to 60 years in prison. 730 ILCS 5/5-5-3.2(b)(1) (West 2008); 730 ILCS 5/5-8-2(a)(2) (West 2008). During plea proceedings, the trial court informed defendant that he faced a term of imprisonment in the extended-term sentencing range and, on appeal, defendant acknowledges that he was eligible for a sentence of up to 60 years in prison.

¶ 16 Defendant argues the trial court, in sentencing him to 35 years in prison, failed to consider his rehabilitative potential and imposed a sentence that is too harsh when compared with the seriousness of the offense. However, the record shows defendant's sentence was well

within the applicable statutory guidelines and the court considered relevant aggravating and mitigating evidence, including defendant's potential for rehabilitation. We find no error.

¶ 17 Although, at the time of sentencing, defendant was only 26 years and the father of a small child, he had a significant criminal history. That history included two juvenile convictions, two felony convictions, and two misdemeanor convictions for offenses, including battery, aggravated battery, domestic battery, and armed robbery. Defendant had served a term of imprisonment in DOC's juvenile division and a six-year sentence in DOC as an adult. Also relevant were the approximately 20 convictions defendant had for traffic-related offenses. As the court aptly noted, defendant's numerous traffic convictions were evidence of his inability to conform his behavior with the requirements of the law. Specifically, it stated as follows:

"[N]obody mentioned the 20 traffic violations, which I suppose we're just expected to write off because it's traffic, but the fact of the matter is that's a living breathing representation of *** defendant's decision to, day in and day out, live outside of the law."

In discussing defendant's criminal history, the trial court found defendant's regard for the law was "so low that it correspond[ed] with a tremendously increased risk of re-offending." Additionally, it pointed out that evidence showed defendant had three loaded weapons in his home at the time of his arrest. The court stated it was "very mindful of the presence of dangerous weapon [*sic*] and the threat that is implicit in the possession of such weapons."

¶ 18 Here, defendant had a significant criminal record that included convictions for violent crimes and prior terms of imprisonment. His numerous convictions evidenced his inability to act as a law-abiding citizen. Additionally, three loaded handguns were found in his

possession at the time of his arrest. Although the sentence imposed by the trial court may not have been the one defendant desired or the same sentence as would have been imposed by a different court, it does not follow that the court committed error. The record shows it considered relevant sentencing factors and imposed a sentence within applicable statutory guidelines. Defendant's sentence is neither "greatly at variance with the spirit and purpose of the law" nor is it "manifestly disproportionate to the nature of the offense" (*Hauschild*, 226 Ill. 2d at 90, 871 N.E.2d at 16). The court did not abuse its sentencing discretion.

¶ 19 For the reasons stated, 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.

¶ 20 Affirmed.

¶ 21 JUSTICE APPLETON, specially concurring:

¶ 22 While I wholly agree with the majority's decision, I write separately to address the argument of defendant that this sentence should be found excessive by comparison to the Federal Sentencing Guidelines, (18 U.S.C.S. app. §§ 1A3.1 through 8F1.1 (Lexis Nexis 2011)). As the sentence imposed here by the trial court shows, under Illinois law, a sentence is imposed on a person based, *inter alia*, on his prior record and the demonstrated likelihood of his rehabilitation. *People v. Perrequet*, 68 Ill. 2d 149, 154-55 (1977). The Federal Sentencing Guidelines provide little ability for a sentencing judge to recognize either an individual's capacity to return to a useful life in society, or the risk to the community of an individual's dedication to a life of crime. See *e.g.*, *United States v. Bryson*, 163 F.3d 742, 747 (2nd Cir. 1998) (a sentencing judge may exercise discretion and depart from the applicable guideline range only if defendant's efforts toward rehabilitation are extraordinary).

¶ 23 In short, I believe the sentencing construct provided by the Illinois General Assembly provides a much greater ability for a trial court to "do justice" than the cookie-cutter approach to sentencing mandated by the Federal Sentencing Guidelines.