

NOTICE
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2012 IL App (4th) 100881-U

Filed 3/1/12

NO. 4-10-0881

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
MATTHEW R. ANDERSON,)	No. 10CF744
Defendant-Appellant.)	
)	Honorable
)	Theodore E. Paine,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.

Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly exercised its discretion in sentencing defendant. The court properly weighed the aggravating and mitigating factors, and determined that a five-year prison sentence was appropriate based on defendant's criminal history. There was no abuse of discretion and defendant's sentence is not excessive.

¶ 2 In August 2010, a jury convicted defendant, Matthew R. Anderson, of two counts of burglary (720 ILCS 5/19-1(a) (West 2010)). In October 2010, the trial court sentenced defendant to five years in prison, plus two years' mandatory supervised release (MSR). Defendant immediately filed a motion to reconsider sentence, which the trial court denied following a hearing later that month.

¶ 3 Defendant appeals, arguing his five-year sentence is excessive. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5

In May 2010, defendant was charged herein by information with two counts of burglary. Count I was based on an accountability theory, in that defendants, without authority, knowingly entered a motor vehicle with the intent to commit a theft therein. Count II alleged that defendant, without authority, knowingly entered a second motor vehicle with the intent to commit a theft therein.

¶ 6

At defendant's August 2010 jury trial, his codefendant, Edward Allen, testified that he and defendant had an agreement on May 13, 2010, that they were going to take loose change from vehicles parked along the street and split the proceeds. Defendant was to take the money from the vehicles while Allen acted as a lookout. At approximately 12:45 a.m., defendant and Allen were in the Christine Lane neighborhood. Upon arriving at Penny Harman's home, Allen stated that both he and defendant each searched a vehicle, both of which were parked in the driveway. Allen admitted that he took a Garmin GPS navigation system (GPS) from Harman's vehicle, while defendant entered John Barry's vehicle. Allen did not know if defendant took anything from Barry's vehicle. Allen and defendant then proceeded to walk down the street and were approached by a man who asked them what they were doing. Allen testified that he hid from the man, but defendant did not. After speaking to the man, defendant and Allen continued to walk down the street and were stopped by police approximately 10 minutes later. Allen admitted he had initially lied to the police by telling them the GPS found on his person belonged to his girlfriend. (Allen had previously pled guilty to the burglaries, in hopes that his prison term would be significantly reduced by being able to participate in the impact incarceration program. At the time of his testimony, he was serving a five-year prison sentence.)

¶ 7 Courtney Friel testified that he was home watching television when he heard voices and car doors outside. From his front door, he saw defendant and Allen walking down the driveway across the street. Friel stepped out of his house and saw Allen duck down behind his Blazer. Friel asked them what they were doing and defendant said he was drunk and they were out walking around. When Friel questioned defendant about where his "buddy" was, Allen stood up from behind the Blazer. Friel asked both men what business they had at the house across the street and Allen responded that his grandmother lived there. Defendant and Allen told Friel they were going to a friend's house and continued walking. Friel called the police.

¶ 8 Upon obtaining a description of the men from Friel, the police stopped defendant and Allen, as they matched the descriptions of the suspicious persons Friel reported. Friel later identified both men as the persons he saw earlier. Upon searching the men, the police found that defendant had \$4.62 in change and three one-dollar bills in his pocket, while Allen had \$9.81 in coins and a GPS, that listed Harman's address as the "home" address.

¶ 9 One of the officers went to the "home" address listed in the GPS and found Harman's and Barry's vehicles parked in the driveway; both vehicles had been ransacked—the glove compartments were open and items were strewn around. The officer then woke Harman and Barry. After looking in their vehicles, Harman reported she was missing approximately one-dollar in loose change and a GPS. Barry did not see anything missing from his vehicle but could not recall if he had any loose change in the car.

¶ 10 Based on this evidence, the jury found defendant guilty of two counts of burglary. Defendant was convicted on an accountability theory for Allen's entry into Harman's vehicle with the intent to commit a theft and for his own entry into Barry's vehicle with the intent to commit a

theft.

¶ 11 At the close of defendant's trial, counsel for defendant filed a motion for a new trial, arguing (1) the evidence was insufficient to prove his guilt beyond a reasonable doubt and (2) the trial court erred by allowing the accountability theory to be used in the jury instructions.

¶ 12 In September 2010, defendant filed a *pro se* motion for a new trial, arguing ineffective assistance of counsel. In this motion, defendant argued trial counsel was ineffective because counsel failed to (1) inform defendant of his right to select jurors that had not been victims of burglaries; (2) prepare for trial; (3) "strategize any plan for trial" or do any type of investigation on defendant's case and only spoke with defendant on two occasions prior to trial; (4) file a "motion for a bond reduction, motion for lack of evidence, motion for evidence to be suppressed and motion for sufficiency of the evidence"; and (5) make objections to "certain valid points" and the "relevancy of Co[u]rtney Friel's testimony." Following a hearing on defendant's *pro se* motion for a new trial based on ineffective assistance of counsel, the trial court denied defendant's motion. Specifically, the court found as follows:

"the things [defendant] is complaining about in large part [are] related to trial strategy, which are decisions to be made by counsel.

And I find that there are legitimate reasons for counsel to have made those determinations and decision. I don't find that there's any indication that [defense counsel] neglected the case or in any other way improperly presented defense on behalf of [defendant]."

¶ 13 On October 7, 2010, the trial court conducted proceedings on defendant's motion for a new trial filed by counsel immediately following defendant's trial. The court also denied

this motion for a new trial, finding as follows:

"the evidence in the case was a mixture of direct evidence and circumstantial evidence. The credibility of the co-defendant who testified is a matter for determination by the jury, and I believe they were properly instructed with the law concerning testimony of an accomplice and appropriately instructed *** in accountability."

The court then proceeded to conduct defendant's sentencing hearing.

¶ 14 During the sentencing hearing, the State asked for a nine-year prison sentence, pointing out that due to defendant's prior criminal history, he was extended-term eligible. According to the presentence investigation report, defendant was convicted of two counts of residential burglary in 2007 and was sentenced to five years in prison. He was allowed to participate in impact incarceration on those two charges; however, defendant committed the instant burglary offenses while on MSR from the 2007 offenses. Additionally, defendant had two misdemeanors on his criminal record, one for battery in 2006 and the other for criminal trespass to land in 2007. Defendant also had a juvenile record. The State also stated that defendant had a "bad criminal history," did not have a good family support system, had \$14,000 in credit card debt, and no source of income.

¶ 15 Defense counsel asked for a four-year prison sentence. Counsel argued that contrary to the State's assertions, defendant did have a good family support system, evidenced by the fact that three of his family members were currently in the courtroom. Additionally, defendant was only 22 years old and he was not "past the time and age in his life where he can be rehabilitated" and that defendant was not "set in his criminal ways." In his statement in

allocution, defendant stated he was only 22 years old and he had a loving family and goals and dreams he wished to accomplish. Defendant further stated he had been a productive citizen of the community following his release from prison, was working at the time of his arrest, and was in the process of completing his associate's degree. He had also regularly checked in with his parole officer and fulfilled all other requirements of his parole.

¶ 16 In sentencing defendant to five years in prison, to run consecutive to any sentence he received for violating his MSR, the trial court acknowledged that defendant was a young man who still "has an opportunity to make something of his life[,] and "the potential to be a productive member of society." On the other hand, the court stated that defendant,

"at the age of 22, has now a total of *** six [criminal] convictions in four different cases. ***

[Defendant] has been given the opportunity by way of impact incarceration *** and while he may have taken advantage of some of the benefits therein, it didn't keep him from committing these new offenses while he was on mandatory supervised release.

Having considered all the evidence in mitigation in light of the statutory factors and the possible range of sentences for those offenses which is anywhere from 3 to 14 years, the Court determines that five years [in prison] would be an appropriate sentence."

¶ 17 Defendant immediately filed a motion to reconsider sentence, arguing the sentence was excessive in light of his record and the crime for which he was convicted. After a

hearing, the trial court denied the motion, holding nothing had been presented that convinced the court that the sentence was not appropriate. This appeal followed.

¶ 18

II. ANALYSIS

¶ 19 Defendant argues his sentence is excessive in light of the circumstances surrounding the offense and his potential for rehabilitation. Specifically, defendant points to the following mitigating factors: (1) the offenses for which he was convicted were nonviolent offenses and no one was injured during or after the commission of the crimes; (2) no property was damaged; (3) he was only 22 years old at the time of the offenses; (4) he was employed as a dishwasher at the time of the offenses; (4) he planned to obtain his associate's degree; (5) he had not used illegal drugs since 2007; (6) he had been diagnosed with bipolar disorder but was not taking medication for his condition or receiving medical or psychiatric assistance; and (7) the total amount of money possessed by defendant and Allen when they were stopped by police was less than \$18.

¶ 20

A. Standard of Review

¶ 21 A trial court has broad discretionary powers in determining an appropriate sentence for a defendant. *People v. Jones*, 168 Ill. 2d 367, 373, 659 N.E.2d 1306, 1308 (1995). This is because the trial court is better able to assess the credibility of witnesses and to weigh evidence presented during the sentencing hearing. *Id.*, (citing *People v. Younger*, 112 Ill.2d 422, 427, 494 N.E.2d 145, 147 (1986)). Where the sentence imposed by the trial court falls within the statutory range permissible for the offense, a reviewing court will disturb the sentence only if the trial court abused its discretion. *Jones*, 168 Ill. 2d at 373-74, 659 N.E.2d at 1308. An abuse of discretion exists where the sentence imposed is "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, 723 N.E.2d 207, 210 (1999).

¶ 22 B. Excessive-Sentence Analysis

¶ 23 The record indicates that the mitigating factors specified by defendant in this appeal were appropriately considered by the trial court. At defendant's sentencing hearing, the trial court acknowledged that defendant was a young man, was fairly well spoken, and had an opportunity to make something of his life. The court stated that it believed defendant did have the potential to become a productive member of society. Additionally, the court recognized that in "the greater scheme of things, perhaps getting into cars and removing change and other minor items of property isn't the biggest crime in the world." The court heard testimony that defendant had not used any illegal drugs since his release from prison and that he had been employed as a dishwasher at Cheddar's for approximately one month before the instant offenses. Defendant testified that he had been diagnosed with bipolar disorder, but when counsel asked if his bipolar disorder contributed to his criminal behavior, defendant responded "[n]o, sir." Defendant also did not feel he needed counseling or other help for his bipolar disorder. The court heard conflicting testimony as to defendant's relationship with his family; defendant admitted there were issues but countered with "who doesn't have problems in their family?" In his statement in allocution, defendant informed the court he was in the process of finishing his associate's degree.

¶ 24 However, the trial court determined that defendant's criminal history and the fact that the instant offenses were committed while defendant was on MSR after a prior conviction for residential burglary outweighed the mitigating factors. The presentence investigation report, considered by the trial court prior to imposing defendant's sentence, reveals that by the age of 22,

