2012 IL App (4th) 110155-U

Filed 6/15/12

NO. 4-11-0155

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANTOINE D. WRICKS, Defendant-Appellant.	)	Appeal from Circuit Court of Champaign County No. 09CF1300 Honorable Charles McRae Leonhard, Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices McCullough and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not abuse its discretion in sentencing defendant to seven years in prison for aggravated battery.

(2) Defendant is entitled to an available credit up to $845 for time spent in pretrial custody, which may be applied to satisfy his $5 drug court fine.

(3) The $25 violent-crime-victim-assistance fine must be reduced to $4.

¶ 2 Following a November 2010 bench trial, the trial court found defendant, Antoine D. Wricks, guilty of aggravated battery. In January 2011, defendant was sentenced to seven years in prison to run consecutively to a four-year prison term on an unrelated driving-with-a-suspended-license, subsequent offense, charge in Champaign County case No. 10-CF-1156. A January 3, 2011, docket entry shows $330 in costs were assessed against defendant. The record

also contains a copy of a computer screen shot showing defendant was assessed a $5 drug-court fine and a $25 violent-crime-victim-assistance (VCVA) fine as part of the $330 costs.

¶ 3 Defendant appeals, arguing (1) his sentence is excessive in light of his age and rehabilitative potential, (2) he is entitled to monetary credit against his drug-court fine for time spent in pretrial custody, and (3) the $25 VCVA fine must be reduced to $4.

¶ 4 We affirm as modified and remand with directions.

¶ 5 I. BACKGROUND

¶ 6 In August 2009, the State charged defendant by information with aggravated battery, a Class 2 felony, punishable by three to seven years in prison. 720 ILCS 5/12-4(b)(18), (e)(2) (West 2008); 730 ILCS 5/5-4.5-35(a) (West 2010). The information alleged on August 1, 2009, defendant headbutted a peace officer engaged in the execution of his official duties.

¶ 7 In January 2010, defendant's first jury trial for aggravated battery commenced. The jury was unable to come to a unanimous decision and the trial court declared a mistrial. Defendant's second jury trial was conducted in October 2010. The second jury was also unable to come to a unanimous decision and the court declared another mistrial.

¶ 8 On November 17, 2010, defendant waived his right to a third jury trial and consented to a bench trial. On November 24, 2010, defendant's bench trial was conducted and the trial court found defendant guilty of aggravated battery.

¶ 9 In January 2011, the trial court conducted defendant's sentencing hearing for his aggravated-battery conviction and the unrelated driving-on-a-suspended-license, subsequent offense, conviction in Champaign County case No. 10-CF-1156.

¶ 10 At the sentencing hearing, the State focused on defendant's lengthy criminal

history as provided in the presentence investigation report (PSI) to support its recommendation of six years in prison on the aggravated-battery conviction and six years on the driving-on-a-suspended-license conviction. Specifically, the State pointed out defendant's criminal career began at age 12 with an ordinance violation for theft. In 2000, defendant was sentenced to probation as a juvenile for aggravated battery. In March 2001, defendant violated his probation by committing a second aggravated battery and was resentenced to intensive probation. In October 2001, defendant violated his probation a second time by committing misdemeanor theft and was subsequently resentenced to five years in the juvenile division of the Illinois Department of Corrections (DOC). After his release, defendant was cited in 2004 for driving without a license and one month later was charged with unlawful possession with intent to deliver cannabis. Defendant was sentenced to 24 months' probation on the drug-possession charge; he later admitted violating his probation, and his probation was terminated unsuccessfully. In 2006 and 2007, defendant received six traffic citations, the last of which was his first driving with a suspended license.

¶ 11 In 2008, defendant was convicted of unlawful possession of a weapon by a felon, a Class 3 felony, and was sentenced to five years six months in DOC. In 2009, defendant was cited for operating an uninsured motor vehicle and driving under the influence and subsequently was convicted of both offenses. In August 2009, while on mandatory supervised release for the weapons offense, defendant committed the instant offense of aggravated battery. In July 2010, while on bond in the instant case, defendant was charged with obstructing justice, a Class 4 felony, and driving with a suspended license (for the second time), a Class 4 felony (Champaign County case No. 2010-CF-1156). In November 2010, defendant was charged with Class 2 and

Class 4 felony drug offenses. Those charges were still pending at the time of sentencing in this case. In December 2010, defendant was convicted of illegal transportation of alcohol by a passenger.

¶ 12 Defense counsel noted while awaiting trial and sentencing in the instant case, defendant had not committed any violent acts. Counsel also mentioned defendant's "demonstrated" drug and alcohol problem and his young age in asking for a drug-court sentence. In allocution, defendant accepted responsibility for the bad decisions he made, noted he had three children with whom he recently started building a relationship, and asked for a drug-court sentence to address his problem.

¶ 13 After considering the PSI and arguments from both parties, the trial court sentenced defendant to seven years in prison for aggravated battery, the maximum penalty available, to run consecutively to the four-year prison term for driving with a suspended license, with credit for time served of 169 days.

¶ 14 In January 2011, defendant filed a motion to reconsider his sentence, arguing (1) defendants in similar situations have received sentences closer to the minimum, (2) the sentence was excessive, (3) the trial court should have considered the two mistrials in mitigation, (4) the court should have considered in mitigation the injuries defendant received from the Champaign police prior to defendant striking back, and (5) evidence at defendant's bench trial indicated severe provocation by the police, which should have been considered in mitigation. After a February 2011 hearing, the court denied the motion.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues (1) his seven-year sentence for aggravated battery is excessive in light of his age and rehabilitative potential, (2) he is entitled to monetary credit against his drug-court fine for time spent in pretrial custody, and (3) the $25 VCVA fine must be reduced to $4.

¶ 18 A. Excessive Sentence

¶ 19 1. *Standard of Review*

¶ 20 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. *Jones*, 168 Ill. 2d at 373, 659 N.E.2d at 1308 (citing *People v. Younger*, 112 Ill. 2d 422, 427, 494 N.E.2d 145, 147 (1986)). "The trial court must base its sentencing determination on the particular circumstances of each case, considering such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999) (citing *People v. Streit*, 142 Ill. 2d 13, 19, 566 N.E.2d 1351, 1353 (1991); *People v. Perruquet*, 68 Ill. 2d 149, 154, 368 N.E.2d 882, 884 (1977)).

¶ 21 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." *Fern*, 189 Ill. 2d at 54, 723 N.E.2d at

210. The spirit and purpose of the law are upheld when the sentence imposed reflects the seriousness of the offense and gives adequate consideration to the defendant's rehabilitative potential. *People v. Murphy*, 72 Ill. 2d 421, 439, 381 N.E.2d 677, 686 (1978).

¶ 22 2. *Defendant's Sentence Is Not Excessive*

¶ 23 The record indicates the trial court properly considered defendant's age and rehabilitative potential in fashioning the seven-year prison sentence. The court was well aware of defendant's young age, as defense counsel, the State, and the PSI all pointed out defendant was 23 years old at the time of sentencing. However, defendant's lengthy criminal record and unsuccessful history while serving community-based sentences showed his lack of rehabilitative potential and supports the court's sentence.

¶ 24 After considering defendant's PSI and hearing argument from both parties, the trial court noted although defendant was eligible for a community-based sentence, the court was "convinced that a sentence other than a sentence of imprisonment would deprecate the seriousness of the offender's conduct or be inconsistent with the ends of justice or is necessary to protect the public from the criminal conduct of the accused." The court recognized a goal of sentencing should be, if possible, restoration of an offender to useful citizenship. However, the court pointed out defendant's lengthy criminal record and noted defendant's history of unsuccessful completion of previous community-based sentences was "perhaps the most informative and even perhaps predictive component of the record when it comes to sentencing [defendant] for these, his third and fourth felony offenses."

¶ 25 The trial court continued as follows:

"The circumstances of the offense of which [defendant]

> was found guilty [the instant aggravated battery] is also informative. And his conduct in gratuitously becoming bellicose and combative with police officers is also a rather predictive facet of the case and also provides a window into [defendant's] character, the view through which does not bode well for his future or the future safety of the public.
>
> The record here establishes that [defendant] became progressively antisocial and bellicose and combative with no justification whatsoever toward police officers ***.

¶ 26 On appeal, defendant points out he received his high school diploma in 2008 and was attending community college, both factors indicating his potential for rehabilitation. Further, defendant notes a letter submitted on his behalf by Dr. David L. Adcock, Director of Urbana Adult Education, where defendant received his high school diploma. The letter recommends "the Safe House is the appropriate place for [defendant] to make the positive changes in his life." Our review of the record indicates this letter was actually written by Sheri Langendorf, an Adult Performance Level (APL) Instructor. Regardless of the author, the letter did not persuade the trial judge of defendant's rehabilitative potential. Defendant received his high school diploma in 2008 and the instant crime was committed in 2009. Langendorf also acknowledges in the letter defendant "continued to make some of the same mistakes" after receiving his diploma as he had before. Further, a letter written by Pastor D.L. Jenkins indicates defendant had been attending the Men's Safe House since November 2010 and the Macedonia Baptist Church for the past year in an effort to better himself. While we recognize defendant's young age and his possible

rehabilitative potential, these mitigating factors, which we note were considered by the trial court, do not override defendant's lengthy criminal history and failure to successfully complete previously imposed community-based sentences.

¶ 27 Defendant further asserts the trial court assumed he "embellished his history of drug and alcohol abuse because he was requesting drug court," but contends the record affords no support for this. Thus, defendant argues the court improperly considered his "forthright admission of drug and alcohol abuse as a basis for completely rejecting his potential for rehabilitation." However, defendant's argument is directly disputed by the record. While the court did find defendant's alleged drug problem to be "a post[]trial presentencing artifice" and not credible, the court elaborated as follows:

> "That, however, is not in the court's assessment dispositive of the request for a disposition of drug court, and the Court will take as established the diagnostic impressions of alcohol abuse that are objectively set forth in the prior drug and alcohol evaluation filed in the DUI case. And so, at least in theory, there is some arguable factual basis for a drug court disposition in this case."

Further, the court noted:

> "The [c]ourt is of the view, irrespective of the position of the State here, that a drug court disposition is not appropriate. And the [c]ourt so finds because [defendant] has demonstrated that he is either constitutionally or attitudinally disinclined to comply with any species of a community-based sentence. And the evidence at

> trial, viewed with reference to the cited pages of the [PSI], establishes that [defendant] is dangerous."

Additionally, the court stated based on defendant's belief "it was alright to commit a forcible felony against a police officer who was taking and did execute a legitimate and compelling law enforcement function," defendant was "a threat to public safety."

¶ 28 The trial court imposed the seven-year prison sentence for aggravated battery based on defendant's lengthy criminal history—despite his young age—and his failure to successfully complete several previous community-based sentences, not because the court felt defendant's drug problem was fabricated. As defendant's sentence falls within the statutory range permissible for the offense and upholds the spirit and purpose of the law, the trial court did not abuse its discretion and we will not disturb the sentence.

¶ 29 B. Presentence-Detention Credit

¶ 30 Next, defendant asserts he is entitled to monetary credit against his drug-court fine for time spent in pretrial custody. The State concedes defendant is entitled to a credit for time spent in pretrial custody, which may be applied to any fines assessed against him. See 725 ILCS 5/110-14 (West 2008). We accept the State's concession.

¶ 31 Sentence credit against a fine based on time served in pretrial custody is governed by section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2008)), which provides in relevant part:

> "(a) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so

> incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine." *Id.*

Such credit may only be applied to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580, 861 N.E.2d 967, 974 (2006). The State concedes this court recently held the $5 drug-court assessment imposed against defendant is actually a fine because it was not sought to reimburse the State for any costs incurred as a result of prosecuting defendant. *People v. Jake*, 2011 IL App (4th) 090779, ¶¶ 28, 29, 960 N.E.2d 45, 52.

¶ 32 In this case, the trial court awarded defendant 169 days' credit against his seven-year prison sentence for time spent in pretrial custody. Therefore, defendant is entitled to an available credit up to $845 ($5 per day for 169 days spent in custody), which may be applied to any fines assessed against him. 725 ILCS 5/110-14 (West 2008). Defendant is entitled to apply this credit to satisfy his $5 drug-court fine. We remand for issuance of an amended sentencing judgment to reflect this credit.

¶ 33 C. Violent-Crime-Victim-Assistance Fee

¶ 34 Last, defendant asserts the $25 VCVA should be reduced to $4. The State concedes defendant should only have been assessed a $4 VCVA fee. We accept the State's concession.

¶ 35 Pursuant to section 10(c)(1) of the Violent Crime Victims Assistance Act, the $25 VCVA assessment is to be imposed only where the defendant is convicted of a crime of violence and no other fine is imposed. 725 ILCS 240/10(c)(1) (West 2008). If other fines are imposed, the penalty is "$4 for each $40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West

2008). This fine is not creditable based on time served. 725 ILCS 240/10(b) (West 2008).

¶ 36 Here, defendant was assessed a $5 drug-court fine. Because defendant's fine is less than $40, the VCVA assessment should be $4. Thus, we remand for issuance of an amended sentencing judgment so reflecting.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm as modified and remand with directions for issuance of an amended written sentencing judgment reflecting defendant's credit for the $5 drug-court fine and reduction of the VCVA fine to $4. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 39 Affirmed as modified and cause remanded with directions.