2012 IL App (4th) 110199-U Filed 8/1/12

NO. 4-11-0199

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
MAURICE A. SAYLES,	)	No. 07CF1747
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court held that the trial court did not abuse its discretion in resentencing defendant to six years' imprisonment after revocation of probation for unlawful possession of a controlled substance.

¶ 2 In August 2008, defendant, Maurice A. Sayles, entered a negotiated guilty plea to unlawful possession of a controlled substance (720 ILCS 570/402(c) (West Supp. 2007)), a Class 4 felony, and the trial court sentenced defendant to 30 months' probation, including as a condition that he serve 90 days in jail. In September 2010, after a hearing on a petition to revoke probation, the court revoked defendant's probation and resentenced him to six years' imprisonment.

¶ 3 On appeal, defendant argues a sentence on revocation of six years' imprisonment for possession of a controlled substance is excessive. We disagree.

¶ 4 I. BACKGROUND

¶ 5 In August 2008, defendant entered a negotiated guilty plea to unlawful possession of a controlled substance (720 ILCS 570/402(c) (West Supp. 2007)), a Class 4 felony.

¶ 6 At the August 2008 plea hearing, the trial court admonished defendant that if he was extended-term eligible, as represented by the State, he could be sentenced to three to six years' imprisonment. According to the factual basis, on October 3, 2007, defendant was in a vehicle stopped for not displaying a front license plate. Subsequently, defendant was arrested for driving with a suspended license and searched incident to arrest. The search revealed a pipe in defendant's right front pants pocket. Defendant denied ownership of the pants he was wearing and the pipe. The pipe tested positive for cocaine. In exchange for his plea, the State agreed to recommend a sentence of 30 months' probation, subject to 90 days in jail. The same day, the trial court sentenced defendant to 30 months' probation, including among the conditions that defendant serve 90 days in jail.

¶ 7 In April 2010, the State filed a petition to revoke probation on the grounds that defendant failed to (1) report to the Court Services Department, (2) obtain a substance-abuse evaluation as ordered, (3) abstain from the use of illegal drugs in that he tested positive for cocaine on June 22, 2009, and admitted cocaine use on August 27, 2009, and October 19, 2009, and (4) pay all fees, fines, and court costs.

¶ 8 In June 2010, defendant stipulated to the allegations contained in the petition to revoke probation. The trial court, again, admonished defendant he could serve an extended-term sentence of three to six years' imprisonment.

¶ 9 At the August 3, 2010, resentencing hearing, the State presented evidence in

aggravation, including a presentencing investigation report (PSI). The PSI showed defendant was 49 years old and as an adult committed three felonies in Illinois, two burglaries and a grand theft from a person in California, two misdemeanors, and numerous traffic violations. The PSI stated defendant failed to report for probation appointments on 19 different dates since August 2008. Additionally, defendant unsuccessfully completed probation three previous times.

¶ 10 Defendant testified that he is diabetic and takes insulin three times a day. While he believes he has bipolar disorder, he has never been formally diagnosed with a psychiatric or mental illness. He has used illegal drugs since the age of 11. In the late nineties, defendant spent four months in the Men's Safe House drug program before walking out and failing to complete the program. At some point, he sought drug treatment in the Gateway Treatment Program for 22 days. Defendant never attended an Alcoholics Anonymous or Narcotics Anonymous meeting. Defendant explained that he missed his probation appointments because "I just didn't devote myself to probation, like I did—like I should have. And you know, I look back on it now, I kind of regret it. But when I came to court, and [the judge] set this date for sentencing, it was like a wake-up call, you know." Defendant specifically requested drug court. During the State's closing argument, defendant expressed symptoms of physical distress and received medical assistance. The hearing was recessed and continued.

¶ 11 On August 23, 2010, the resentencing hearing resumed. Defendant asserted ineffective assistance of counsel and requested a continuance to hire private counsel. The court found this was a tactic to delay the proceedings and denied the motion. The State presented additional evidence in aggravation from Officer David Roesch of the Urbana police department. Officer Roesch testified that on August 9, 2010, just six days after the initial resentencing

hearing, defendant and another man used a stolen debit card at a gas station to fill up three vehicles with gasoline. Defendant and the man attempted to fill up a fourth vehicle and purchase a 12-pack of beer and cigarettes when the card was declined for insufficient funds. The victim told Roesch that defendant had been in his home earlier in the evening before his wallet was stolen, no one had permission to have his wallet, and he did not give anyone permission to use his debit card. Defendant told Roesch that the victim gave him the debit card and permission to purchase beer and cigarettes.

¶ 12 At the close of State's evidence, the trial court continued the hearing to allow defendant an opportunity to present additional evidence and seek private counsel.

¶ 13 On September 2, 2010, the resentencing hearing resumed. The trial court considered the PSI and the evidence in aggravation and mitigation. The court stated, in pertinent part, as follows:

> "[Defendant] missed an eye-opening number of appointments, 19 appointments, with Court Services officers. That may be a new record for Probation. Certainly that has to be the most fundamental condition to comply with. ***
>
> [Defendant] hasn't made one payment towards his financial obligations. He tested positive for cocaine in June of last year. He admitted to continued use of cocaine in August and October of 2009 and again in February of [2010]. ***
>
> * * *
>
> No sentence has deterred [defendant] or stopped him; and

> he's, frankly, jeopardizing his life with those medical conditions by continuing to embrace the use of cocaine. Again that help has been offered, ordered, extended and encouraged for decades now and [defendant] hasn't even tried.
>
> He acknowledges the choices he made, and the record reflects that he continues to pursue the lifestyle of his own choosing whenever he's out on a community-based sentence.
>
> * * *
>
> It is unfortunate, but there is not a scintilla of evidence to support any reasonable prognosis that he would be successful on T.A.S.C. or drug court. Everything has been tried."

Thereafter, the court resentenced defendant to six years' imprisonment.

¶ 14 In September 2010, defendant filed a *pro se* motion to reconsider his sentence arguing, among others, excessive sentence and ineffective assistance of counsel. Later that month, defendant, by new counsel, filed a first amended motion to reconsider. In November 2010, defendant filed a second amended petition to withdraw his admission and stipulation to the petition to revoke probation, or in the alternative, a motion to reconsider his sentence. Thereafter, the trial court denied both posttrial motions.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues a sentence of six years' imprisonment for possession of a controlled substance on revocation of probation is excessive. We disagree.

¶ 18 Where a sentence falls within statutory guidelines, it will not be disturbed on review absent an abuse of discretion. *People v. Bridgewater*, 388 Ill. App. 3d 787, 797, 904 N.E.2d 171, 179-80 (2009) (quoting *People v. Grace*, 365 Ill. App. 3d 508, 512, 849 N.E.2d 1090, 1093-94 (2006)). A sentence is an abuse of discretion when the sentence is greatly at variance with the spirt and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000)). "A reviewing court must afford great deference to the trial court's judgment regarding sentencing because that court, having observed the defendant and the proceedings, is in a far better position to consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits than a reviewing court, which must rely on a 'cold' record." *People v. Little*, 2011 IL App (4th) 090787, ¶ 24, 957 N.E.2d 102, 105-06.

¶ 19 "A sentence within the statutory range for the original offense will not be set aside on review unless the reviewing court is strongly persuaded that the sentence imposed after revocation of probation was imposed as a penalty for the conduct that was the basis of revocation and not for the original offense." *People v. McMann*, 305 Ill. App. 3d 401, 414-15, 712 N.E.2d 935, 938 (1999).

¶ 20 When resentencing after revocation of probation, the trial court is entitled to consider the defendant's conduct while on probation. *People v. Rathbone*, 345 Ill. App. 3d 305, 312, 802 N.E.2d 333, 339 (2003). This court in *People v. Young*, 138 Ill. App. 3d 130, 140, 485 N.E.2d 443, 449 (1985), considering the issue of whether evidence of conduct occurring after revocation of probation can be considered in determining the proper sentence, stated:

> "An analysis which suggests that the trial court (1) cannot consider the conduct which resulted in the probation being revoked, or (2) cannot consider such conduct past a certain point in the sentencing hearing, or (3) that thereafter a sentencing judge must specifically state that he nevertheless is sentencing the defendant solely on the basis of the original offense—and has considered the conduct which was the basis for the revocation only to the extent of the defendant's rehabilitative potential—is not only without merit but reflects a head-in-the-sand attitude. When the trial court originally imposed the sentence of probation, it made that determination on the basis of all of the records and reports available. Conduct which leads to revocation of probation has been regarded as a 'breach' of the court's trust, or as otherwise causing the court to lose confidence in the defendant's rehabilitative potential."

¶ 21 Section 402(c) of the Illinois Controlled Substances Act provides, in pertinent part, as follows: "Any person who violates this Section with regard to an amount of controlled substance *** is guilty of a Class 4 felony." 720 ILCS 570/402(c) (West Supp. 2007). The Unified Code of Corrections provides for an extended-term sentence of not less than three years and no more than six years' imprisonment when, as here, a defendant is convicted of a Class 4 felony. 730 ILCS 5/5-8-2(a)(6) (West 2006).

¶ 22 Defendant, in summary fashion, contends "[t]he nature of this offense is not

sufficiently grave as to warrant a sentence of six years' imprisonment." Additionally, defendant asserts the trial court was "more concerned with [defendant's] conduct while on probation than with the nature of the offense itself." We are unpersuaded.

¶ 23 The record in this case shows the trial court considered the nature and circumstances of the offense and the evidence in aggravation and mitigation at defendant's resentencing hearing. As previously discussed, the evidence presented showed defendant possessed cocaine, while on probation tested positive for cocaine, admitted cocaine usage, and failed to appear for 19 probation appointments. At the resentencing hearing, the court commented "there is not a scintilla of evidence to support any reasonable prognosis" defendant would be successful in drug court. Moreover, the PSI showed defendant had been previously convicted of several felonies—including, among others, burglary, unlawful possession of a controlled substance, and obstructing justice—rendering him eligible for an extended-term sentence at the time of his initial sentencing. His criminal record, as outlined in the State's brief and detailed in the PSI, spans 34 years.

¶ 24 Given defendant's (1) eligibility for an extended-term sentence of three to six years in prison and (2) inability to comport his actions with the laws of this state, we conclude the trial court did not abuse its discretion by resentencing defendant to six years' imprisonment.

¶ 25 Defendant's assertion the trial court was overly concerned about his conduct on probation is misguided. As we stated in *Young*, the notion a trial court cannot consider a defendant's conduct while on probation and the conduct resulting in revocation at resentencing reflects a head-in-the-sand approach. Defendant concedes his conduct while on probation was "abysmal," and he provides no support for his contention that the imposed sentence was a penalty

for this conduct other than his blanket assertion his sentence is "manifestly disproportionate to the nature of the offense." Thus, defendant has failed to show how the sentence imposed after revocation of probation was imposed as a penalty for the conduct that was the basis of revocation and not for the original offense. As previously stated, the sentence imposed is statutorily authorized and not an abuse of discretion.

¶ 26 III. CONCLUSION

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

¶ 28 Affirmed.