2015 IL App (4th) 130752-U

NO. 4-13-0752

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 12, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
RADLEY MONSON,	)	No. 12CF139
Defendant-Appellant.	)	
	)	Honorable
	)	Paul G. Lawrence,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not abuse its discretion in sentencing defendant to six years in prison upon his conviction for aggravated driving under the influence of alcohol.

¶ 2 (2) The record does not indicate the trial court held an arbitrary personal policy against allowing only certain defendants into the impact incarceration program, but rather, the court's refusal to recommend defendant into the program was based on the determination that a term of imprisonment was more appropriate for deterrence purposes.

¶ 3 Defendant, Radley Monson, pleaded guilty to aggravated driving under the influence of alcohol (625 ILCS 5/11-501(a) (West 2010)) (aggravated pursuant to 625 ILCS 5/11-501(d)(F) (West 2010) (proximate cause of an accident resulting in death)) and improper lane usage (625 ILCS 5/11-709(a) (West 2010)). The trial court sentenced defendant to seven years in prison, but later reduced his sentence to six years. He appeals, claiming he is entitled to a further reduced sentence or, in the alternative, a remand for a new sentencing hearing where the

court should reconsider additional factors in mitigation as well as the appropriateness of the impact incarceration program. He also claims the restitution order of $3,587.50 for the emergency response of the fire protection district should be reduced to $1,000, the maximum allowed by statute. We find (1) defendant's sentence was appropriate in relation to the circumstances of his offense, (2) the court did not abuse its discretion in refusing impact incarceration, and (3) the restitution order exceeds the statutory limit allowed for costs related to emergency response. Therefore, we affirm in part, vacate in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In February 2012, the State charged defendant, who was 19 years old at the time, by information with aggravated driving under the influence of alcohol, a Class 2 felony (625 ILCS 5/11-501(d)(1)(F) (West 2010)), alleging he drove a motor vehicle and was involved in a motor vehicle accident at a time when he was under the influence of alcohol, which was the proximate cause of Nicholas Kauffman's death. The grand jury subsequently issued a superseding indictment.

¶ 6 At a pretrial hearing, defendant indicated he wished to plead guilty as part of an open plea agreement. The trial court admonished him that, on this Class 2 felony, he could receive a sentence between 3 and 14 years in prison, or, if the court made a finding of "extraordinary circumstances," he could receive probation for up to 48 months. After admonishing defendant of the rights he was waiving by pleading guilty, the court asked for a factual basis. The State advised the court as follows. On February 15, 2012, at approximately 1 a.m., the police responded to a single vehicle rollover crash, where a pickup truck was found laying on its top with four occupants trapped inside. Police reconstructionists determined the driver (defendant) had lost control of the truck before it left the roadway and flipped over. Three

male occupants were removed from the truck, but Kauffman was pronounced dead at the scene. Defendant admitted to the police he had been drinking; his blood-alcohol content approximately two-and-a-half hours after the crash was 0.072.

¶ 7 After considering defendant's expressed willingness to plead guilty and the factual basis presented by the State, the trial court found defendant had knowingly and voluntarily entered into this plea agreement. The court accepted the plea and ordered the preparation of a presentence investigation report (PSI).

¶ 8 In August 2012, the trial court conducted a sentencing hearing. Prior to receiving evidence, the trial court admonished defendant he would be required to serve 85% of his sentence, a sentence with a potential range of punishment between 3 and 14 years. Defendant agreed. The court noted it had reviewed 9 victim impact statements and 46 letters in support of defendant.

¶ 9 The State presented the testimony of Cody Stultz, defendant's friend, who testified that, after the incident, he witnessed defendant drinking alcohol. According to Stultz, defendant was quiet and kept to himself, but "you could tell it was on his mind."

¶ 10 Ronald Stoll and Curtis Paine, Normal police officers, testified they were on duty on June 24, 2012, when they were dispatched to an apartment party at which defendant was present. Stoll issued defendant a violation for unlawful possession of alcohol by a minor.

¶ 11 The State also presented as evidence in aggravation "a slightly more detailed version of the factual basis." The prosecutor recounted details from various police interviews, which included the bartender's statement she had served defendant six or seven alcoholic drinks, including beer and shots of liquor. One of the passengers told police defendant had the accelerator "to the floor" as he pulled out of the tavern parking lot. As defendant entered a

curve, he lost control of the vehicle, went into a ditch, hit an embankment, and traveled airborne for approximately 28 feet before the truck flipped and landed on its roof. According to the autopsy results, Kauffman died of compressional asphyxia from being constrained in a motor vehicle after a rollover crash.

¶ 12 Defendant testified in mitigation. He acknowledged he was categorized as "high risk" on his alcohol evaluation. He was recommended for 75 hours of treatment, which he began in May 2012. He had completed 44 hours of treatment at the time of sentencing. He was also attending Alcoholics Anonymous and complying with all requirements of the program. Defendant said he had received permission from the Kauffmans to attend their son's funeral, for which defendant was grateful. He said he had cooperated with police, detectives, and the State regarding all aspects of the case.

¶ 13 Defendant admitted having a "problem" with alcohol. He said he relied on alcohol to cope with stress, including the recent death by suicide of two close friends. Through treatment, he is learning more appropriate ways to handle stress.

¶ 14 On cross-examination, defendant admitted he was not truthful with the probation officer during the preparation of his PSI. He told the officer he had not consumed any alcohol since the incident, which was not true. He also admitted he had minimized his alcohol and drug use to his evaluator with the hope he would get "not as many hours."

¶ 15 Defendant also called Steve Terry, the youth minister at St. John's Lutheran Church in Bloomington. Terry had known defendant for approximately seven years through his active participation in youth ministries at the church. After the incident, Terry ministered to defendant personally on a weekly basis. Terry described the effect of the accident on defendant

as "devastating." According to Terry, defendant has expressed his guilt, remorse, responsibility, and accountability for the incident.

¶ 16 Finally, Traci Monson, defendant's mother, testified. In her opinion, the incident has had a "major impact" on defendant. She said defendant visits Kauffman's gravesite and the site of the accident regularly. She described how important it was for him to be granted permission to attend the visitation and funeral. Defendant is ashamed of his actions. Monson believes defendant needs help with his addiction to alcohol.

¶ 17 Defendant made a statement in allocution, addressing his sorrow and remorse to the Kauffmans. He said he accepts full responsibility for his actions that night and wished it would have been him, "[n]ot so [he] could shirk legal responsibility, but just the pain and suffering that [he's] caused [their] entire family." He hoped one day the Kauffmans would be willing to forgive him.

¶ 18 The State recommended a sentence of nine years in prison, and defendant recommended probation with the maximum amount of jail time available. Defendant's attorney suggested that, if defendant was sentenced to prison, the court consider impact incarceration. The court noted the following as factors in mitigation: (1) defendant's lack of intent to harm, (2) his age, (3) his college attendance, (4) his employment history, (5) his feelings of remorse, (6) his acceptance of responsibility, (7) lack of criminal history, (8) his family and community support, (9) his participation in counseling, and (10) his involvement in his church and community. For factors in aggravation, the court noted: (1) defendant's lack of truthfulness, (2) his failure to complete treatment by sentencing, (3) the fact defendant had driven after drinking on prior occasions, (4) the need for deterrence, and (5) the lack of extraordinary circumstances that would justify a sentence of probation. The court found defendant met the requirements of

impact incarceration, but it did not "feel that [defendant] is the type of defendant that is in need of boot camp." The court stated: "He's not the type of defendant that would benefit from boot camp because he has a lot of things going for him that boot camp attempts to really fix that he really doesn't have issues with."

¶ 19 After considering the evidence, the PSI, the letters from the community members, defendant's statement in allocution, statutory factors in aggravation and mitigation, and the parties' recommendations, the trial court sentenced defendant to seven years in prison. The court also ordered various fines, fees, and restitution. The court denied defendant's motion to reconsider his sentence as excessive. Defendant appealed and this court remanded for compliance with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). *People v. Monson*, 2013 IL App (4th) 130007-U.

¶ 20 Upon remand, defendant's counsel filed a motion to withdraw his guilty plea and a motion to reconsider his sentence. The trial court denied the motion to withdraw the plea, but it partially granted the motion to reconsider his sentence, reducing defendant's sentence from seven years to six years.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Defendant raises three arguments related to his sentencing hearing: (1) he claims the trial court erred in imposing a six-year term, equating to twice the minimum allowable sentence, in light of overwhelming evidence in mitigation; (2) he is entitled to a new sentencing hearing wherein the court should consider the impact incarceration program; and (3) his sentencing judgment needs corrected because it is partially void where it orders defendant to pay

more than the maximum of $1,000 for restitution to an emergency response agency. We will address each issue in turn.

¶ 24 A. Whether Defendant's Six-Year Sentence Is Excessive

¶ 25 "A trial court is given great deference when making sentencing decisions, and if a sentence falls within the statutory guidelines, it will not be disturbed on review unless the court abused its discretion and the sentence is manifestly disproportionate to the nature of the case. [Citation.] Absent an abuse of discretion, a sentence will not be altered on appeal merely because this court might have weighed the mitigating and aggravating factors differently. [Citation.]" *People v. Grace*, 365 Ill. App. 3d 508, 512 (2006).

¶ 26 A person who violates section 11-501(d)(1)(F) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-501(d)(1)(F) (West 2010)) is guilty of a Class 2 felony. 625 ILCS 5/11-501(d)(2)(G) (West 2010). A person convicted of this Class 2 felony where the violation resulted in the death of one person shall receive a term of imprisonment of not less than 3 years and not more than 14 years. 625 ILCS 5/11-501(d)(2)(G)(i) (West 2010).

¶ 27 The Illinois Constitution provides penalties are to be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11. This constitutional mandate calls for balancing the retributive and rehabilitative purposes of punishment, and the process requires careful consideration of all factors in aggravation and mitigation. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). A reasoned sentence must be based on the particular circumstances of each case. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). Because of the trial court's opportunity to assess a defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age, deference is afforded its sentencing judgment. *People v. Stacey*, 193 Ill. 2d 203,

209 (2000). However, the appellate court does not always affirm a sentence within the guidelines. A reviewing court may disturb a sentence within statutory limits if the trial court abused its discretion in imposing a sentence. *Stacey*, 193 Ill. 2d at 209-10.

¶ 28 Defendant claims the trial court abused its discretion by sentencing defendant to twice the allowable minimum term. He insists the nature and circumstances of the offense, coupled with defendant's rehabilitative potential, indicate the sentence should be reduced. He contends the "mitigating evidence here was overwhelmingly in favor of a prison sentence at or near the statutory minimum of three years."

¶ 29 The trial court stated it considered the offense committed, the PSI, aggravating factors, mitigating factors, defendant's remorse for his actions, defendant's lack of a prior criminal history, the need to deter others from similar acts, and the emotional harm done to Kauffman's family. For aggravating factors, the court specifically noted defendant had lied about and minimized the amount of alcohol he consumed before, during, and after the incident. He admitted he had driven while intoxicated from the same tavern on prior occasions. Perhaps most telling, defendant continued to drink alcohol as a minor with the same group of friends after the incident. Defendant's postincident conduct justified the court's reliance on the need for deterrence, as the court specifically emphasized during sentencing the crucial need to deter others from engaging in similar behavior.

¶ 30 Defendant argues the trial court failed to place sufficient weight on his rehabilitative potential. Even if that were so, which we do not believe is the case, defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense, the protection of the public, the need for deterrence, and punishment. See *People v. Klimawicze*, 352 Ill. App. 3d 13, 31 (2004). Here, defendant made a voluntary and conscious choice to drive

while intoxicated—a decision which proximately caused Kauffman's death. *Cf. People v. Martin*, 119 Ill. 2d 453, 459 (1988) (the supreme court found deterrence to be of little significance where the court is sentencing a defendant for an offense involving unintentional conduct). Based on the record before us, it is apparent the trial court carefully considered *all* applicable factors, and weighed them accordingly, before imposing defendant's sentence at the lower end of the sentencing range. Pursuant to our deferential standard of review, we conclude the court did not abuse its discretion in fashioning defendant's sentence of six years in prison.

¶ 31 B. Impact Incarceration Program

¶ 32 Defendant next contends the trial court erred in denying him the opportunity to participate in the impact incarceration program, believing such a program was better suited for other certain types of offenders, not defendant. At the sentencing hearing, the court stated:

> "Mr. Waller [(defense attorney)] has also suggested impact incarceration, which is commonly referred to as boot camp. I did review the statute, and it does look like he meets the requirements of boot camp, although he's not signed the consent for boot camp. But, even—even if I had that consent and he did meet all the requirements, which appears that it does, the court doesn't feel that he is the type of defendant that is in need of boot camp. He's not the type of defendant that would benefit from boot camp because he has a lot of things going for him that boot camp attempts to really fix that he really doesn't have issues with."

At the hearing on defendant's motion to reconsider, the court clarified:

"[T]ypically, the court is looking at someone, for example, who has a long history of discipline problems, oftentimes gang membership. Those are the kind of people that the court is interested in, in placing into boot camp, and in drug and alcohol usage, it's just one factor that the defendant had, and that is why, of course, the court didn't feel that boot camp was appropriate, and plus the court just didn't feel that a sentence of boot camp would be a proper deterrent, which as Mr. Cannell pointed out, the court did rely upon deterrence quite a bit in announcing its decision."

¶ 33 According to the statute, the impact incarceration program is available to the following "eligible offenders":

"(1) The person must be not less than 17 years of age nor more than 35 years of age.

(2) The person has not previously participated in the impact incarceration program and has not previously served more than one prior sentence of imprisonment for a felony in an adult correctional facility.

(3) The person has not been convicted of a Class X felony, first or second degree murder, armed violence, aggravated kidnapping, criminal sexual assault, aggravated criminal sexual abuse or a subsequent conviction for criminal sexual abuse, forcible detention, residential arson, place of worship arson, or

arson and has not been convicted previously of any of those offenses.

(4) The person has been sentenced to a term of imprisonment of 8 years or less.

(5) The person must be physically able to participate in strenuous physical activities or labor.

(6) The person must not have any mental disorder or disability that would prevent participation in the impact incarceration program.

(7) The person has consented in writing to participation in the impact incarceration program and to the terms and conditions thereof.

(8) The person was recommended and approved for placement in the impact incarceration program in the court's sentencing order." 730 ILCS 5/5-8-1.1(b) (West 2010).

¶ 34 Defendant contends that, because he met the objective criteria for the program, the trial court abused its discretion by refusing to recommend him. He argues the court denied defendant boot camp because, in essence, "he had too much rehabilitative potential." Indeed, the court noted defendant had a lot going for him and that boot camp was for more troubled offenders. Defendant suggests the court improperly administered its own personal policy for only certain defendants' admission into the program.

¶ 35 We do not agree with defendant's suggestion the trial court arbitrarily refused to consider defendant for impact incarceration. Instead, as stated above, the court carefully

considered the nature and circumstances of the crime, in light of all factors in aggravation and mitigation, in fashioning defendant's sentence. We find no indication in the record the court held any type of personal belief or arbitrary personal policy as a reason to deny defendant admission to the program. *Cf. People v. Miller*, 2014 IL App (2d) 120873, ¶ 38 (trial judge held a " 'strong' " belief that first-offender probation should be limited to those defendants who plead guilty and not available to those that go to trial). Rather, the court specifically stated impact incarceration would not allow for proper deterrence of this crime. In this case, the judge found the need for deterrence substantially outweighed defendant's good qualities. This court has previously held that the need for deterrence may be a substantial factor in aggravation, as a court may deem it quite important. See *People v. Cameron*, 189 Ill. App. 3d 998, 1009 (1989). Such was the case here. The court determined, under the circumstances of this case, defendant's participation in the impact incarceration program was outweighed by the need for deterrence. We find no reason to disturb that finding. Therefore, again, based upon our deferential standard of review, we conclude the court's decision was not an abuse of discretion.

¶ 36 C. Emergency Response Restitution

¶ 37 Finally, defendant contends the trial court's order of restitution in the amount of $3,587.50 to the community fire protection district is partially void, in that it exceeds the $1,000 maximum allowed by statute. Section 11-501.01(i) of the Vehicle Code (625 ILCS 5/11-501.01(i) (West 2010)) clearly provides "[t]he restitution may not exceed $1,000 per public agency for each emergency response." The State concedes this error and we accept the State's concession. We vacate the emergency-response restitution in the amount of $3,587.50 and order the trial court to reduce the same to $1,000. We otherwise affirm the court's sentencing judgment.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we vacate that part of the trial court's sentencing judgment ordering $3,587.50 for emergency-response restitution and otherwise affirm the court's sentencing judgment. We remand with directions for the trial court to order restitution payable to the community fire protection district in the amount of $1,000, the maximum allowable amount. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 40 Affirmed in part and vacated in part; cause remanded with directions.