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IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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) Honorable
) Richard L. Tognarelli,
) Judge, presiding.

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father, Daniel "Kevin" McCoy, visited the store during that argument. The defendant left the store and entered his nearby home. The defendant emerged with a gun while Chad and Kevin both ran to their separate vehicles outside the store. The defendant proceeded to shoot in Chad's direction. The defendant then moved toward Kevin and pulled the trigger while the gun was near Kevin's face, but the gun did not discharge.

Bethalto police officer Ed Smith arrived at the scene and apprehended the defendant. The defendant gave the firearm to Officer Smith. The firearm was sent to a forensic scientist, Thomas Gamboe, Jr., at the Illinois State Police crime lab, who found that the weapon was in good working condition. He identified it as a .380-caliber semiautomatic pistol. Gamboe analyzed three discharged cartridge cases found at the crime scene and positively identified them as being fired from that weapon.

On November 8, 2007, the defendant was charged with two counts of attempt to commit first-degree murder in violation of section 8-4(a) of the Criminal Code of 1961 (Code) (720 ILCS 5/8-4(a) (West 2008)), aggravated discharge of a firearm in violation of section 24-1.2(a)(2) of the Code (720 ILCS 5/24-1.2(a)(2) (West 2008)), and aggravated unlawful restraint in violation of section 10-3.1(a) of the Code (720 ILCS 5/10-3.1(a) (West 2008)).

On January 7, 2008, the defendant pled guilty to aggravated discharge of a firearm and aggravated unlawful restraint. The attempted murder charges were dropped, and no agreement was made concerning sentencing. The trial court accepted the plea, and a sentencing hearing was held on December 17, 2008.

At the defendant's sentencing hearing, Kevin testified that the defendant repeatedly exclaimed that he (the defendant) was going to kill Kevin and Chad during the incident. Both Kevin and Chad testified that they believed that the defendant tried to shoot them. Arguing that factors in aggravation were applicable, including that the McCoy's were

confronted directly by a loaded weapon and that shots were fired from that weapon, the State asked the court to impose sentences in excess of the statutory minimums due to the seriousness of the defendant's conduct.

Noting that the defendant was over 50 years of age, had lived as a law-abiding, productive citizen prior to the occurrence, had adhered to the conditions of his bond, and had participated in anger management classes and therapy, defense counsel suggested that probation was appropriate. Defense counsel argued that the defendant did not pose a threat to the public. In allocution, the defendant first stated that he was remorseful to the McCoys for what he had done. The defendant then stated he was trying to surrender after he fired the first few shots, but he "had no other choice" when Kevin "tried to run [him] down" with his (Kevin's) van.

When imposing the sentences, the trial court found that the defendant's conduct threatened serious harm. The court explained as follows:

"I am concerned about whether or not this kind of conduct could be repeated again by [the defendant] because I don't know if you've put this out of your mind. Certainly, *** the conduct did cause or threatened to cause very serious harm. Again, *** fortunately nobody was killed in this incident. *** I do think that [the defendant] remain[s] a threat not only to the McCoys, but maybe to others."

The court made similar comments when discussing the defendant's statement made at the sentencing hearing:

"I am concerned *** even by your statement because I don't see *** even now that you're taking any direct responsibility for what's happened. *** [Y]ou've indicated that you feel that you're sorry for firing the gun at [the McCoys], but then you tell me that you were afraid that [the McCoys] were going to run you down."

The trial court also noted the defendant's lack of a criminal record and full-time employment as factors in sentencing the defendant to four years of imprisonment for the aggravated-discharge-of-a firearm conviction and to three years of imprisonment on the aggravated-unlawful-restraint conviction, with the sentences to run concurrently. The defendant's aggravated-discharge-of-a-firearm conviction is a Class 1 felony that carries a minimum prison term of 4 years and a maximum prison term of 15 years. 720 ILCS 5/24-1.2(b) (West 2008); 730 ILCS 5/5-4.5-30(a) (West 2008). The defendant's conviction for aggravated unlawful restraint is a Class 3 felony that carries a minimum prison term of two years and a maximum prison term of five years. 720 ILCS 5/10-3.1(b) (West 2008); 730 ILCS 5/5-4.5-40(a) (West 2008). The defendant received the minimum sentence of imprisonment for his conviction for the most serious offense, aggravated discharge of a firearm, and he received one year above the minimum sentence for the aggravated-unlawful-restraint conviction. 730 ILCS 5/5-4.5-30(a), 5-4.5-40(a) (West 2008).

On January 13, 2009, the defendant's attorney filed a motion to reconsider his sentences or, alternatively, for a reduction in his sentences. The court denied the motion after a hearing on July 22, 2009. On August 17, 2009, the defendant filed a second, *pro se* motion to reconsider his sentences or, in the alternative, for a reduction in his sentences, which was denied by the court on September 24, 2009, following a hearing. The defendant appeals his sentences.

STANDARD OF REVIEW

The standard of review for a trial court's sentencing decision is whether the trial court exercised discretion and whether that discretion was abused. *People v. Kuesis*, 83 Ill. 2d 402, 407, 415 N.E.2d 323, 326 (1980). The trial court's sentencing decisions are entitled great deference and weight, and the trial court is the proper forum for determining a defendant's sentence. *People v. Latona*, 184 Ill. 2d 260, 272, 703 N.E.2d 901, 908 (1998). Accordingly,

a reviewing court may only reduce a sentence if the trial court abused its discretion in imposing the sentence. *People v. Stacey*, 193 Ill. 2d 203, 209-10, 737 N.E.2d 626, 629 (2000). When a sentence falls within the statutory range, there exists no abuse of discretion unless the defendant's sentence is manifestly disproportionate to the nature of the offense. *Stacey*, 193 Ill. 2d at 210, 737 N.E.2d at 629.

Further, "[t]he standard *** as to whether the trial court should impose probation or conditional discharge as opposed to imprisonment is contained in section 5-6-1" of the Unified Code of Corrections (the Code). *Kuesis*, 83 Ill. 2d at 408, 415 N.E.2d at 326; 730 ILCS 5/5-6-1(a) (West 2008). In light of this statute, "whenever a sentence of imprisonment or periodic imprisonment is imposed, the record must indicate that the judge is of the opinion that imprisonment is necessary for the protection of the public or that probation or conditional discharge would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice." *People v. Cox*, 82 Ill. 2d 268, 281, 412 N.E.2d 541, 548 (1980)

The trial court does not have to specifically state that "imprisonment is necessary for the protection of the public" or that "probation or conditional discharge would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice" for substantial compliance with the sentencing standard. *Cox*, 82 Ill. 2d at 281, 412 N.E.2d at 548. "If the record demonstrates substantial compliance with this requirement, then a reviewing court may alter the sentencing judge's disposition only upon a finding of an abuse of discretion." *Cox*, 82 Ill. 2d at 281, 412 N.E.2d at 548.

DISCUSSION

On appeal, the defendant raises one issue: whether the trial court abused its discretion when it sentenced him to imprisonment. The defendant contends that the record fails to indicate that imprisonment was necessary to protect the public; therefore, the defendant

argues that he should have been sentenced to probation rather than imprisonment. Further, the defendant alleges that he was remorseful and that his remarks at the sentencing hearing reflected that he was both sorry and wanted to explain and justify to the court why he fired the shots at the McCoy's. He argues that his statement was not an attempt to escape responsibility.

The State maintains that, under section 5-6-1(a)(1) of the Code (730 ILCS 5/5-6-1(a)(1) (West 2008)), the defendant's concurrent sentences of three and four years in prison are appropriate because the record shows that the defendant may be a danger to the public. Alternatively, the State argues that the defendant's sentences are appropriate pursuant to section 5-6-1(a)(2) of the Code (730 ILCS 5/5-6-1(a)(2) (West 2008)). Section 5-6-1(a) of the Code provides in relevant part as follows:

"[T]he court shall impose a sentence of probation or conditional discharge upon an offender unless, having regard to the nature and circumstance of the offence, and to the history, character and condition of the offender, the court is of the opinion that:

(1) his imprisonment or periodic imprisonment is necessary for the protection of the public; or

(2) probation or conditional discharge would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice[.]"

730 ILCS 5/5-6-1(a)(1), (a)(2) (West 2008).

We agree with the State that the defendant's sentences of imprisonment were appropriate under sections 5-6-1(a)(1) and (a)(2) of the Code. First, concerning section 5-6-1(a)(1) of the Code, the record supports a finding that imprisonment, rather than probation, is necessary for the protection of the public. The defendant discharged a firearm in the direction of Chad and Kevin while they were in their vehicles, and the defendant knew that they were in the vehicles. The defendant's conduct indicates a risk to the public. The trial

court specifically stated that it was "concerned about whether or not [the defendant's] conduct could be repeated again." Additionally, the court noted the seriousness of the crime. This led the trial court to the conclusion that the defendant "remain[s] a threat not only to the McCoys, but maybe to others." Consequently, the defendant's action of shooting a firearm at the McCoys is serious enough to create concern for the public, and imprisonment is appropriate under section 5-6-1(a)(1) of the Code.

Second, in regards to section 5-6-1(a)(2) of the Code, imprisonment is appropriate because probation would deprecate the seriousness of the defendant's conduct. The court stated during sentencing that the defendant's conduct "threatened to cause very serious harm" and that it was "fortunat[e] [that] nobody was killed" in the incident in question. In *People v. Outland*, the court held that in order to modify a sentence within statutory limits, the sentence must be disproportionate to the crime and must be a clear departure from the spirit and purpose of the fundamental law. *People v. Outland*, 226 Ill. App. 3d 1034, 1040, 590 N.E.2d 106, 110 (1992). In *Outland*, the court determined that probation would deprecate the seriousness of the defendant's conduct and was inconsistent with the ends of justice. *Outland*, 226 Ill. App. 3d at 1040, 590 N.E.2d at 110. Moreover, the court in *Outland* found that the defendant's continued denial of responsibility for his actions was a factor that justified his imprisonment. *Outland*, 226 Ill. App. 3d at 1040, 590 N.E.2d at 110. In the instant case, the trial court commented on the defendant's statement at the sentencing hearing as follows:

"I don't see that in your statement that—that even now that you're taking any direct responsibility for what's happened. I mean, you've indicated that you feel that you're sorry for firing the gun at [the McCoy's], but then you tell me that you were afraid that they were going to run you down."

When sentencing the defendant, the trial court appropriately considered the defendant's denial of responsibility, and this is consistent with the court's holding in *Outland*. Therefore, because of the serious nature of the crime (discharging a firearm at two individuals) and the defendant's apparent lack of responsibility for his actions, the defendant's imprisonment is appropriate under section 5-6-1(a)(2). See *People v. Aguirre*, 30 Ill. App. 3d 854, 858, 334 N.E.2d 123, 128 (1975).

The trial court did not abuse its discretion in sentencing the defendant because the record demonstrates substantial compliance with the requirement that the trial court believes that imprisonment is necessary for the protection of the public or that probation or conditional discharge would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice. See *Kuesis*, 83 Ill. 2d at 409, 415 N.E.2d at 327. While the trial court did not specifically state the exact language of the Code when sentencing the defendant, the court's statements reflected that opinion and illustrated substantial compliance with the sentencing standard. See *Kuesis*, 83 Ill. 2d at 409-10, 415 N.E.2d at 326-27. The trial court did not abuse its discretion in sentencing the defendant to four years' imprisonment for aggravated discharge of a firearm and to three years' imprisonment for aggravated unlawful restraint, to be served concurrently.

The State argues, alternatively, that this court lacks jurisdiction over the defendant's appeal. We addressed the issue of appellate jurisdiction on February 4, 2010, when we granted the defendant's motion for leave to file a late notice of appeal over the State's objection. We have considered the State's arguments in its brief and conclude that we have no reason to revisit the issue of appellate jurisdiction. Accordingly, the State's motion to cite additional authority on the issue of revestment is denied.

CONCLUSION

For the foregoing reasons, the defendant's sentences are hereby affirmed.

Motion denied; judgment affirmed.