

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2023 IL App (4th) 220835-U

NO. 4-22-0835

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 1, 2023

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
JAMES SYNOWIECKI,)	No. 21CF311
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.
Justices Turner and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted appellate counsel's motion to withdraw and affirmed the trial court's judgment where no meritorious issues could be raised on appeal.

¶ 2 In May 2022, the trial court sentenced defendant James Synowiecki to four years' imprisonment. Defendant appealed and counsel was appointed to represent him. Appellate counsel now moves to withdraw on the basis that no meritorious argument can be raised on appeal. After reviewing the record and counsel's motion, we grant the motion to withdraw and affirm the court's judgment.

¶ 3 I. BACKGROUND

¶ 4 On October 7, 2021, the State charged defendant with one count of participation in methamphetamine manufacturing (720 ILCS 646/15(a)(1), 2(A) (West 2020)), a Class 1 felony; one count of possession of methamphetamine manufacturing materials (*id.* § 30(a), (b)), a

Class 2 felony; and one count of possession of methamphetamine precursor (*id.* § 20(a)(1), 2(A)), a Class 2 felony. At the time defendant was charged, he was out on bond for other pending felony matters.

¶ 5 On February 9, 2022, defendant entered into a partially negotiated guilty plea to one count of possession of methamphetamine precursor, a Class 2 felony, in exchange for the State's agreement to dismiss the remaining charges, along with the dismissal of a misdemeanor theft case. The plea was open as to sentencing. The trial court ordered an updated presentence investigation report (PSI), and the matter was continued for consolidation with defendant's sentencing in his other pending felony matters.

¶ 6 On May 10, 2022, the trial court held a sentencing hearing. The PSI was admitted with minor modifications and without objection. Neither the State nor defendant offered any evidence in aggravation or mitigation. The State sought concurrent five-year prison sentences in defendant's other felony matters and a four-year consecutive prison sentence in the instant matter, for a total of nine years in prison. Defendant sought a term of probation, and he provided a statement in allocution emphasizing his physical health issues, substance abuse issues, and hardships. The court noted that it considered the sentencing factors of both deterrence and the seriousness and harm of defendant's various convictions; the court agreed with the State that probation would deprecate the seriousness of the offenses and be inconsistent with the ends of justice. The court also noted that while defendant's other felony matters were pending, defendant committed additional offenses (the possession of methamphetamine precursor charge at issue here), which made the court skeptical defendant could comply with the terms of, or successfully complete, probation. The court sentenced defendant to two concurrent five-year terms of imprisonment in defendant's other matters and a consecutive four-year prison sentence in the

instant matter.

¶ 7 On May 18, 2022, defendant filed a motion to reconsider the sentence.

¶ 8 Following a September 2022 hearing, the trial court denied defendant's motion to reconsider the sentence, finding there were aggravating and mitigating factors in defendant's cases, but the "aggravating factors outweigh[ed] the mitigating factors," and defendant's sentence was "well within" the statutory range.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 A. Defendant's Other Appeals

¶ 12 Before proceeding to the analysis of defendant's appeal, we note that defendant's sentencing in this matter also included sentencing on defendant's other felony convictions. Defendant has filed direct appeals in those cases, which we will address by separate decisions in those separate appeals. Livingston County case No. 20-CF-227 will be addressed in appellate court case No. 4-22-0832, and Livingston County case No. 20-CF-228 will be addressed in appellate court case No. 4-22-0834. As such, this order is limited to addressing defendant's contentions on appeal regarding Livingston County case No. 21-CF-311.

¶ 13 B. The Instant Appeal

¶ 14 Appellate counsel has filed a motion to withdraw as counsel and has attached to the motion a supporting memorandum pursuant to *Anders v. California*, 386 U.S. 738 (1967). The proof of service shows service of the motion upon defendant. This court granted defendant leave to file a response on or before April 6, 2023, but none was filed.

¶ 15 Pursuant to *Anders*, a brief must accompany counsel's motion to withdraw and outline any issues in the record that might arguably support the appeal, explain why counsel

finds those issues frivolous, and conclude that the case presents no viable grounds for appeal.

People v. Meeks, 2016 IL App (2d) 140509, ¶ 10. The appellate court will then review the record to determine whether the available arguments are wholly without merit. *Id.*

¶ 16 Appellate counsel asserts she has reviewed the record on appeal and has concluded that an appeal in this case would be without arguable merit. Specifically, counsel asserts she considered whether the trial court abused its discretion when denying defendant's motion to reconsider his sentence. According to appellate counsel, there is no nonfrivolous argument that can be made on appeal. For the reasons that follow, we agree this appeal presents no issues of arguable merit, grant appellate counsel's motion to withdraw, and affirm the court's judgment.

¶ 17 "The legislature sets forth by statute the range of permissible sentences for each class of criminal offense." *People v. Fern*, 189 Ill. 2d 48, 53 (1999). "A sentence within statutory limits will not be deemed excessive and an abuse of the court's discretion unless it is 'greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.' " *People v. Pina*, 2019 IL App (4th) 170614, ¶ 20 (quoting *Fern*, 189 Ill. 2d at 54). A reviewing court affords great deference to a trial court's sentencing judgment because "having observed the defendant and the proceedings, [it] 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. A sentence that falls within the applicable statutory limits is reviewed for an abuse of discretion. *People v. Price*, 2011 IL App (4th) 100311, ¶ 36.

¶ 18 Here, defendant pleaded guilty to one count of possession of methamphetamine precursor (720 ILCS 646/20(a)(1), 2(A) (West 2020)), a Class 2 felony. The Unified Code of

Corrections provides a term of imprisonment for Class 2 felonies of not less than three years and not more than seven years. 730 ILCS 5/5-4.5-35(a) (West 2020). Defendant was sentenced to a consecutive term of four years' imprisonment. Defendant's sentence falls within the applicable statutory limits. Because defendant's sentence was within the permissible range, we begin with the presumption the sentence is proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46.

¶ 19 In denying defendant's motion to reconsider his sentence, the trial court noted that it considered both aggravating and mitigating factors in sentencing defendant, but it specifically found the aggravating factors outweighed the mitigating factors. The court is not required to recite each factor it considers. *People v. McDonald*, 322 Ill. App. 3d 244, 251 (2001). Where mitigating evidence is before the court, it is presumed the court considered it. *Id.* Additionally, "that presumption will not be overcome without explicit evidence from the record that the *** court did not consider mitigating factors." *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010). Moreover, a trial court is not required to afford greater weight to mitigating factors than to the severity of the offense. *People v. Alexander*, 239 Ill. 2d 205, 214 (2010). Nor does the presence of mitigating factors require a minimum sentence. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55.

¶ 20 Here, the trial court not only noted the seriousness of the possession of methamphetamine precursor offense, but it also emphasized the fact defendant committed the crime while released on bond on two other very serious felony charges. The court stated that defendant's commission of this offense while out on bond demonstrated his inability to comply with a term of probation. The court also found probation would deprecate the seriousness of the offense. The record does not rebut the presumption the court appropriately considered the relevant factors in mitigation in fashioning defendant's four-year sentence. As the court

observed, defendant's sentence for possession of methamphetamine precursor falls well within the statutory range for a Class 2 felony. 730 ILCS 5/5-4.5-35(a) (West 2020) (providing for a term of imprisonment for a Class 2 felony of not less than three and not more than seven years).

¶ 21 Accordingly, we cannot say defendant's sentence—which was near the minimum available to the trial court—varies greatly from the spirit and purpose of the law or is manifestly disproportionate to nature of the offense. Therefore, we agree with appellate counsel that no colorable argument can be made that the court abused its discretion in sentencing defendant or in denying his motion to reconsider that sentence.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 24 Affirmed.