2022 IL App (4th) 200468-U

NOS. 4-20-0468, 4-20-0469, 4-20-0471 cons.

FILED
February 7, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JUSTIN J. MORRIS, Defendant-Appellant.	)	Appeal from the Circuit Court of Champaign County Nos. 18CF1708 19CF356 19CF511 Honorable Jeffrey B. Ford, Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to six years' imprisonment for felony retail theft.

¶ 2 In April 2019, defendant, Justin J. Morris, pleaded guilty to (1) felony retail theft in two separate cases (Champaign County case Nos. 18-CF-1708 and 19-CF-356) and (2) felony domestic battery (Champaign County case No. 19-CF-511). The trial court sentenced defendant to 30 months of drug-court probation for the three convictions. In August 2019, the State filed petitions to revoke defendant's probation. Defendant admitted the allegations in the State's petitions, and the court revoked his probation. At a January 2020 sentencing hearing, the court resentenced defendant to consecutive prison sentences of seven years for each felony retail theft (case Nos. 18-CF-1708 and 19-CF-356), and five years for felony domestic battery (case No. 19-CF-511). In February 2020, defendant filed a motion to reconsider his sentences, and

following a hearing, the trial court reduced defendant's consecutive sentences to six years in prison for each retail theft (case Nos. 18-CF-1708 and 19-CF-356) and four years in prison for felony domestic battery (case No. 19-CF-511).

¶ 3 Defendant appeals, arguing the trial court abused its discretion in ordering he serve a six-year sentence in case No. 19-CF-356 (retail theft from Walmart), because his actions were less serious than in case No. 18-CF-1708 (retail theft from Macy's), for which he was also sentenced to six years in prison. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In December 2018, the State charged defendant with felony retail theft (720 ILCS 5/16-25(a)(1) (West 2016)) in Champaign County case No. 18-CF-1708. In March 2019, while defendant was released on bond in case No. 18-CF-1708, the State charged defendant with a second felony retail theft (720 ILCS 5/16-25(a)(1) (West 2018)) in Champaign County case No. 19-CF-356. In April 2019, the State charged defendant with (1) unlawful interference with the reporting of domestic violence (720 ILCS 5/12-3.5(a) (West 2018)) and (2) felony domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2018)) in case No. 19-CF-511.

¶ 6 On April 25, 2019, defendant entered into a negotiated plea agreement with the State in which defendant pleaded guilty to felony retail theft in case Nos. 18-CF-1708 and 19-CF-356, and felony domestic battery in case No. 19-CF-511. In exchange for defendant's plea of guilty, the State agreed to dismiss (1) Champaign County case Nos. 18-CF-896 and 18-CF-897 ("PTR withdrawn and probation terminated" in two theft cases); (2) Champaign County case Nos. 19-CF-112 and 19-CF-506 (felony retail thefts); and (3) the unlawful interference with the reporting of domestic violence charge in case No. 19-CF-511. The trial court sentenced defendant to 30 months of drug-court probation. Pursuant to defendant's

probation, defendant was "prohibited from using alcohol, cannabis, or any controlled substances except those prescribed by a licensed physician."

¶ 7 In August 2019, the State filed petitions to revoke defendant's probation, alleging defendant tested positive for cocaine on August 22, 2019. At a hearing on October 10, 2019, defendant admitted and stipulated to the allegation contained in the State's petitions to revoke his probation. The trial court accepted defendant's admission and revoked defendant's probation.

¶ 8 On January 21, 2020, the trial court held a resentencing hearing. The State recommended the court impose consecutive sentences of seven years' imprisonment in case No. 18-CF-1708, seven years' imprisonment in case No. 19-CF-356, and five years' imprisonment in case No. 19-CF-511. The State offered the following argument in support of its recommendation:

> "Judge, it's the People's position that a sentence of imprisonment is necessary in this case both for the protection of the public, and that a further sentence of probation would deprecate the seriousness of the defendant's conduct and be inconsistent with the ends of justice in this matter. Your Honor, in making its determination as to whether these factors are present, the court will first look to the nature and circumstances of the offenses. I will reiterate the factual basis of these cases. In 18-CF-1708, on December 11th of 2018 Macy's loss prevention associate observed the defendant to enter the store, select multiple items, and as he was doing so, appeared to be looking around for surveillance cameras. The defendant then exited the store past all points of sale without attempting to pay for items he had taken. He exited the store with fourteen items for a total value of $1,005.80. When loss prevention approached the defendant, he became combative. They had to use pepper spray to subdue him. The defendant was

searched pursuant to arrest and—strike that. The defendant stated that he had been stealing to support cocaine and heroin habits.

In 19-CF-356, Your Honor, on March the 3rd of last year officers of the Urbana Police Department responded to Wal-Mart in Urbana for a reported retail theft in progress. Loss prevention officer Montgomery stated that he observed a black male who was later identified as the defendant enter the store and take several plastics [*sic*] bags from the recycling bin and place them in the shopping cart. He selected numerous items from different departments and place them in empty bags. He headed past all final points of sale towards the exit and was stopped by loss prevention at that time. The total amount of items he intended to take was $577.49. The defendant told the officers that he hadn't left the store so he hadn't had a chance to steal anything. He said he forgot his wallet and was going to have his friend pay for everything and didn't see a problem with pushing a cart full of unpaid merchandise out of the store. The defendant was later discovered to have a cutting wire device in his coat pocket which was determined to have been stolen from Wal-Mart as well."

¶ 9 Defense counsel recommended the trial court provide defendant "more drug court." Alternatively, defense counsel argued "as far as the two theft cases," defendant's conduct did not cause or threaten serious harm "when he is stealing from stores," nor did defendant contemplate harm. Following argument, the trial court sentenced defendant to seven years' imprisonment in case No. 18-CF-1708, seven years' imprisonment in case No. 19-CF-356, and five years' imprisonment in case No. 19-CF-511.

¶ 10 On February 19, 2020, defendant filed a motion to reconsider his sentence. After a hearing on the motion, the trial court reduced defendant's consecutive sentences to six years' imprisonment for case No. 18-CF-1708 (theft from Macy's), six years' imprisonment for case No. 19-CF-356 (theft from Walmart), and four years' imprisonment for case No. 19-CF-511 (felony domestic battery).

¶ 11 This appeal followed. The appeal of case No. 18-CF-1708 was docketed as case No. 4-20-0469, the appeal of case No. 19-CF-356 was docketed as case No. 4-20-0471, and the appeal of case No. 19-CF-511 was docketed as case No. 4-20-0468. In May 2021, this court allowed defendant's motion to consolidate the appeals.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues the trial court abused its discretion in ordering a six-year sentence in case No. 19-CF-356, the Walmart theft, because his actions were less serious than in case No. 18-CF-1708, the Macy's theft, for which he was also sentenced to six years in prison. Defendant argues his six-year sentences demonstrate the court's failure to consider the nature of each theft offense and is inconsistent with the constitutional mandate that all sentences reflect the seriousness of the offense committed and the objective of returning defendant to useful citizenship. As a result, defendant argues this court should reduce his sentence in case No. 19-CF-356 to the minimum term of two years in prison or, alternatively, remand for resentencing. The State disagrees and asserts defendant has forfeited his argument his six-year sentence in case No. 19-CF-356, the Walmart theft, is excessive, by failing to raise it in his motion to reconsider his sentence. In his reply brief, defendant asserts the State has forfeited its forfeiture argument for failing to present well-reasoned argument or "conform its arguments

to the cited authority." Alternatively, defendant argues, if this court finds he forfeited his issue, plain-error review is warranted. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

¶ 14 We need not decide whether defendant has forfeited his claim because regardless of whether we review on the merits or for plain error, we conclude no error occurred. See *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010) (stating the first step in plain-error analysis is to determine whether error occurred).

¶ 15 We afford a trial court's sentencing decision substantial deference. *People v. Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d 656. A reviewing court will not disturb a sentence within the statutory limits for the offense unless the trial court abused its discretion. *People v. Flores*, 404 Ill. App. 3d 155, 157, 935 N.E.2d 1151, 1154 (2010). "A sentence within the statutory guidelines provided by the legislature is presumed to be proper." *People v. Wheeler*, 2019 IL App (4th) 160937, ¶ 38, 126 N.E.3d 787. A trial court abuses its discretion only when imposing a sentence "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000).

¶ 16 The six-year sentence imposed in case No. 19-CF-356, the Walmart theft, was neither greatly at variance with the spirit or purpose of the law nor manifestly disproportionate to the nature of the offense. Defendant pleaded guilty to a Class 3 retail-theft felony committed while on probation for a Class 3 (retail theft) and Class 4 felony (theft), and while released on bond for two separate felony retail thefts, including the theft from Macy's. Defendant faced a minimum possible sentence of probation or conditional discharge, or 2 to 10 years' extended-term imprisonment, with a one-year period of mandatory supervised release, and a fine up to $25,000. The State requested a sentence of seven years. We note defendant's extensive criminal

history, which includes armed robbery, multiple traffic violations, possession of drug paraphernalia, and multiple thefts. Moreover, defendant committed the instant offense, theft from Walmart, while on probation for theft-related offenses and while released on bond in case No. 18-CF-1708 (theft from Macy's) and another retail theft charge. Given these circumstances, a sentence closer to the middle of the statutory guidelines—such as the six-year sentence ultimately imposed in this case—is not manifestly disproportionate to the nature of the offense or greatly at variance with the spirit and purpose of the law. See *Stacey*, 193 Ill. 2d at 210.

¶ 17 Defendant also claims his six-year sentence in case No. 19-CF-356 is inconsistent with the constitutional mandate that "[a]ll penalties shall 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. Sentencing decisions must be based on a consideration of all relevant factors and the specific circumstances of each case. *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999). "To find the proper balance, the trial court must consider a number of aggravating and mitigating factors including: 'the nature and circumstances of the crime, the defendant's conduct in the commission of the crime, and the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education.' " *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46, 19 N.E.3d 1070 (quoting *People v. Maldonado*, 240 Ill. App. 3d 470, 485-86, 608 N.E.2d 499, 509 (1992)). The trial court, having observed the defendant and the proceedings, is better able to consider these factors, and a reviewing court must not reweigh the factors or substitute its judgment for that of the trial court. *People v. Jones*, 2014 IL App (1st) 120927, ¶¶ 55-56, 8 N.E.3d 470.

¶ 18 Defendant argues his theft from Walmart (case No. 19-CF-356) was less serious than his theft from Macy's (case No. 18-CF-1708) and thus, he should have been sentenced to two years in prison in case No. 19-CF-356 and not six years as in case No. 18-CF-1708. We note the trial court expressly stated it considered "the reports, recommendations of counsel, evidence presented this date, statement of the defendant, [and] factors in aggravation and mitigation in the Criminal Code." Defendant had an extensive criminal history, which included multiple theft-related convictions. Moreover, we do not agree the offenses, theft from Macy's and theft from Walmart, "were clearly different." Defendant took possession of merchandise from both establishments, having a value exceeding $300 in each instance, with the intent of depriving the merchant of its merchandise. The trial court did not abuse its discretion in sentencing defendant to a six-year prison term, which is the midpoint of the extended-term sentencing range. As noted above, defendant committed the theft from Walmart while on probation for two theft-related offenses and while released on bond in case No. 18-CF-1708 (theft from Macy's) and for a separate felony retail theft. The record clearly shows the trial court carefully considered all relevant factors, including the seriousness of the offense and defendant's potential for rehabilitation. We conclude the trial court did not abuse its discretion in sentencing defendant to six years' imprisonment in case No. 19-CF-356.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the trial court's judgment.

¶ 21 Affirmed.