

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).

2022 IL App (4th) 210015-U

NO. 4-21-0015

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 20, 2022

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
CHASE BERRYHILL,)	No. 20CF112
Defendant-Appellant.)	
)	Honorable
)	Jennifer Hartmann
)	Bauknecht,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cavanagh and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, holding that the trial court did not abuse its discretion in imposing concurrent sentences of 10 years' imprisonment for defendant's convictions for unlawful possession of a controlled substance and unlawful possession of a weapon by a felon.

¶ 2 Defendant, Chase Berryhill, entered an open plea of guilty to unlawful possession of a controlled substance and unlawful possession of a weapon by a felon. The trial court sentenced him to concurrent terms of 10 years' imprisonment on each count. Defendant appeals, arguing his sentence was excessive because the court failed to consider applicable mitigating factors. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with unlawful possession of a controlled substance (720 ILCS 570/402(a)(7)(A)(ii) (West 2020)) in that he allegedly possessed more than 15 objects containing lysergic acid diethylamide (LSD). Defendant was also charged with unlawful possession of a weapon by a felon (UPWF) (720 ILCS 5/24-1.1(a) (West 2020)) for allegedly possessing firearm ammunition after having been convicted of a Class 2 felony or greater under the Illinois Controlled Substances Act (Act) (720 ILCS 570/100 *et seq.* (West 2020)).

¶ 5 Defendant entered an open plea of guilty to both counts. After hearing a factual basis for the plea and admonishing defendant concerning his rights, the trial court accepted defendant's guilty plea.

¶ 6 A presentence investigation report (PSI) was prepared. Regarding the circumstances of the offenses, the PSI stated police department reports indicated that officers searched defendant's bedroom pursuant to a sexual assault investigation in which defendant was a suspect. Defendant was on parole at the time of the search. Officers recovered 19 LSD tablets, six .380-caliber ammunition rounds, one .30-30 ammunition round, a homemade smoking pipe, and cannabis paraphernalia. The LSD tablets were found in a pink container inside a miniature refrigerator. The .380 ammunition was located in a black container on top of the miniature refrigerator, and the .30-30 ammunition was discovered in a bag in the closet. Officers interviewed defendant, and he admitted he used cannabis and LSD. Defendant told one officer that the ammunition was "from something prior" and that he did not have a gun. He told another officer he had no knowledge of the ammunition.

¶ 7 The PSI indicated that when defendant was asked for his version of the offense, defendant did not deny ownership of the ammunition discovered by the police. He said he thought his conduct was wrong because he " '[I]et [his] young girlfriend talk him into something

[they] didn't need to be doing at all.' ” Defendant stated he committed the offense because he and his girlfriend decided to do LSD together. He did not feel good about the offense because his siblings saw him get arrested, and his ex-girlfriend likely got in trouble as well.

¶ 8 The PSI stated defendant had prior felony convictions for failure to stop at the scene of a motor vehicle accident resulting in injury or death, manufacturing or delivery of cannabis, and unlawful delivery of a controlled substance. Defendant also had several prior adjudications of juvenile delinquency.

¶ 9 The PSI indicated defendant had used various substances during his life, including alcohol, cannabis, cocaine, ecstasy, hallucinogens, and prescription pills. Defendant reported that, prior to his arrest, he used cannabis every day and used LSD occasionally. He did not drink alcohol regularly. He had not used cocaine, ecstasy, or prescription pills in several years. Defendant reported he had undergone inpatient and outpatient treatment for his substance abuse issues in the past and that he completed all programs successfully. However, previous records showed he had completed some programs successfully but failed to complete others.

¶ 10 The PSI stated defendant had been living with his father, his stepmother, and his three half-siblings prior to his arrest. Defendant had been working, and his income helped pay the household bills. Defendant stated he wanted his siblings to look up to him again and he wanted to help give them a better future.

¶ 11 At the sentencing hearing, defendant's father testified that defendant lived with him and paid him rent before defendant was arrested. Defendant helped with his three siblings, and he did things around the house. Defendant's father stated defendant could live with him when he was released on parole. Defendant's father worked for a construction company, and defendant would be able to work there upon his release from prison.

¶ 12 Defendant submitted a character reference letter from Anthony Wright, who stated that he lived with defendant for approximately six months after moving to Illinois from California. Defendant provided Wright with a place to stay and with clothing. Defendant helped Wright get a job, open a bank account, obtain identification documents, and get transportation to work.

¶ 13 The State recommended that the court impose concurrent sentences of 13 years' imprisonment on each count. Defense counsel argued that a sentence of six years' imprisonment and a recommendation for impact incarceration was appropriate. Defense counsel noted defendant had possessed a controlled substance but he had not been charged with delivery or possession with intent to deliver. Defense counsel also noted defendant had only possessed ammunition, not a firearm.

¶ 14 Defendant gave a statement in allocution, stating that he had a substance abuse problem and that he was "done with it." Defendant said he "want[ed] to be successful and complete something and stay on the right track."

¶ 15 The trial court sentenced defendant to concurrent terms of 10 years' imprisonment on each count. The court stated:

"This is *** to me I think a very serious case, and I understand the distinction that [defense counsel] is trying to make for his client that we're dealing with possession and ammunition versus dealing and a weapon. I understand that.

But I also think that I have to point out that despite that, this is still a very serious case and on the high end of serious considering the nature of the charges. And I say that because the legislature, first of all, Count 1 is a Class 1 felony, which is an extremely serious felony offense. The legislature has indicated a

potential of up to 15 years in the Illinois Department of Corrections. So, you know, a lot of times we see possession cases that are Class 4 felonies. This is a Class 1 felony so it's a very, very serious possession charge, possession of a controlled substance.

Also Count 2, again I recognize that it was ammunition, not necessarily a weapon, but that offense is so serious that the legislature which otherwise directs the Court always to consider probation as the preferred disposition has said, no, we don't even want probation for this offense. It's so serious that it's a minimum three years.

So that sends a very, very clear message to the Court that although at first blush this might look like a, in quotes, simple possession case, it's a lot more than that. This is a very, very serious matter."

¶ 16 The court noted probation was not an authorized disposition for the charge of UPWF. The court found probation was not appropriate for the charge of unlawful possession of a controlled substance because it would deprecate the serious nature of the charge and be inconsistent with the ends of justice.

¶ 17 The trial court stated there were "a number of things the Court [was] to take into consideration as identified in the statute," and that it had "considered all of those." The court said it wanted to note a few things that stood out. It noted that defendant's conduct continued to escalate, which showed "a complete lack of respect for the law and the rules of society." The court noted that defendant was on parole at the time of the offenses and that he possessed ammunition and "a lot of very serious drugs." The court found defendant's criminal history to be an aggravating factor. The court also stated defendant had not shown the court, through his

actions, that he wanted to be the person he claimed he wanted to be. Rather, the court stated defendant's actions indicated that defendant did what he wanted to do and had little regard for the rules. The court further noted defendant claimed he wanted to be a good role model for his siblings, yet he committed these offenses in the home they lived in.

¶ 18 The trial court stated every community resource had been exhausted, as defendant had undergone treatment and multiple terms of probation. The court stated:

“But you want to tell me that you have a substance abuse problem; but you're not taking advantage of any of the things that have been put into place to help you overcome that problem; and instead you are doing what you want when you want to do it. So I don't think you are accepting responsibility for your conduct.”

The court also found the need for deterrence to be a strong factor in aggravation.

¶ 19 The court stated:

“And I don't, I really don't think there is [*sic*] any mitigating factors present here. I mean, and I don't mean that in a bad way because, you know, I'm sure your dad appreciates you; and I know that you're lucky that you have him continuing to support you. And I want to believe that you want to be a better person; but there's nothing telling me that you are going to do that; and instead we continue to see problem after problem after problem cultivating [*sic*] in right now a Class 1 felony. There's not a whole lot worse you can do. You are kind of maxing out when it comes to the potential for you to ever become a law abiding citizen.

So you are going to have to make some decisions. You're going to have to think about what you think you want from life and how you are going to get it. But I just, I don't see a lot of potential for rehabilitation because that's been tried over and over and over again. It's not going to happen until you decide it's going to happen.

So I do think that the aggravating factors greatly outweigh the mitigating factors in these cases.”

¶ 20 Defendant filed a motion to reconsider his sentence, arguing his sentence was excessive and disproportionate to the nature of the offense. Defendant argued that the fact that his conduct did not cause serious physical harm to another and the fact that he did not contemplate that his conduct would cause or threaten serious physical harm to another were applicable statutory factors in mitigation.

¶ 21 At a hearing on the motion to reconsider the sentence, defense counsel again noted defendant was charged only with possessing a controlled substance, not delivery or possession with intent to deliver. Defense counsel also noted defendant only possessed ammunition and did not possess a weapon. Counsel stated that “there was no evidence as to the age or condition of the ammunition or really how long it had been there.” Counsel also asserted the trial court failed to consider certain mitigating factors, including that defendant’s conduct did not put anyone else in danger and that the offense affected defendant’s family.

¶ 22 The trial court denied defendant’s motion to reconsider his sentence. The court stated defendant had not set forth any new information, evidence, or arguments that had not been raised at the sentencing hearing. The court indicated that it had previously discussed the factors that “stood out,” but that it had considered all “statutorily required factors.” The court stated it

believed the aggravating factors outweighed the mitigating factors and the sentence was appropriate. This appeal followed.

¶ 23

II. ANALYSIS

¶ 24

On appeal, defendant argues his sentence is excessive because it does not reflect adequate consideration of the mitigating evidence, his rehabilitative potential, or an appropriate balancing of rehabilitation and retribution. Specifically, defendant contends the trial court failed to consider, in mitigation, that he (1) accepted responsibility for the two charges and pled guilty, (2) helped his father financially and assisted in caring for his siblings, (3) helped Wright, (4) struggled with substance abuse and was working to overcome those issues, and (5) maintained consistent employment. Defendant also contends the court failed to consider that his conduct did not cause harm nor did he contemplate that it would cause harm to another, as the offenses were possession-related.

¶ 25

In sentencing a defendant, the trial court must balance the retributive and rehabilitative purposes of punishment, which “requires careful consideration of all factors in aggravation and mitigation, including, *inter alia*, the defendant’s age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education, as well as the nature and circumstances of the crime and of defendant’s conduct in the commission of it.” *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002).

¶ 26

“The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference.” *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). This is because “the trial court is generally in a better position than the reviewing court to determine the appropriate sentence.” *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). “The trial judge has the opportunity to weigh such factors as the defendant’s credibility, demeanor, general

moral character, mentality, social environment, habits, and age.” *Id.* Accordingly, we must not substitute our judgment for that of the trial court merely because we would have weighed these factors differently. *Id.*

¶ 27 We will not alter a defendant’s sentence on review absent an abuse of discretion by the trial court. *Id.* “A sentence will be deemed an abuse of discretion where the sentence is ‘greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.’ ” *Alexander*, 239 Ill. 2d at 212 (quoting *Stacey*, 193 Ill. 2d at 210).

¶ 28 Here, defendant was subject to an enhanced sentencing range of 4 to 30 years’ imprisonment for unlawful possession of a controlled substance due to his prior conviction for violating the Act. See 720 ILCS 570/402(a)(7)(A)(ii), 408(a) (West 2020). Defendant was subject to a sentencing range of 3 to 14 years’ imprisonment for UPWF. See 720 ILCS 5/24-1.1(e) (West 2020).

¶ 29 We find the trial court did not abuse its discretion in imposing concurrent terms of 10 years’ imprisonment for each offense. The court highlighted the seriousness of the offenses, as one was a Class 1 felony and the other carried a minimum sentence of three years’ imprisonment. The court found defendant’s criminal record to be an aggravating factor. The court noted defendant was on parole at the time he committed the offenses and stated defendant’s criminal conduct continued to escalate. As a result, the court found that defendant’s rehabilitative potential was poor. The court noted defendant had not taken advantage of any of the things put in place to help him overcome his substance abuse issues. The court was within its discretion to find defendant’s history of substance abuse to be an aggravating factor rather than a mitigating factor. See *People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 105 (“[A] history of substance abuse is a ‘double-edged sword’ that the trial court may view as a mitigating or

aggravating factor.”). In light of these factors, the trial court’s sentence, which was well within the statutory limits, was not “ ‘greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.’ ” *Alexander*, 239 Ill. 2d at 212 (quoting *Stacey*, 193 Ill. 2d at 210).

¶ 30 We reject defendant’s argument that the court refused to consider the mitigating evidence presented. While the court initially stated it did not believe any mitigating factors were present, it later clarified that it found the aggravating factors to outweigh the mitigating factors. The court expressly noted it believed that defendant’s father appreciated him, acknowledging that it had considered his testimony concerning defendant’s assistance to him. When defendant argued in the proceedings on his motion to reconsider his sentence that the court had failed to consider, in mitigation, that his conduct did not cause harm to another, the court stated that it had considered all of the “statutorily required factors” but had only discussed some that “stood out” to it at the sentencing hearing. This indicated the court had considered the statutory mitigating factors identified in the motion to reconsider the sentence even though it did not explicitly discuss these factors at the sentencing hearing. See *People v. Brown*, 2018 IL App (1st) 160924, ¶ 18 (“[A] trial court is [not] required to *** recite and assign value to each factor presented at the sentencing hearing.”).

¶ 31 While the court did not expressly discuss some of the mitigating evidence defendant identifies, including Wright’s letter, defendant’s employment history, or the fact that defendant pled guilty, it was not required to “recite and assign value to each factor presented at the sentencing hearing.” *Id.* ¶ 18. Also, while “[a]dmission of fault has been recognized as a first step toward rehabilitation and should be treated as a factor in mitigation” (*People v. Pippen*, 324 Ill. App. 3d 649, 653 (2001)), the trial court found, based on other evidence, that defendant’s

rehabilitative potential was poor and that the aggravating factors outweighed the mitigating factors.

¶ 32 Defendant contends in his brief that “[t]he record before the circuit court also showed mitigation when comparing the statutes under which [defendant] was charged and the factual background behind those charges.” Defendant essentially argues his actual conduct was not as serious as other potential conduct that could have been charged as the same offenses and that this should have been considered as a mitigating factor. Specifically, defendant notes he possessed only 19 tablets of LSD, when the statutory section under which he was charged prohibits the possession of 15 or more but less than 200 such objects. See 720 ILCS 570/402(a)(7)(A)(ii) (West 2020). Similarly, defendant notes, with regard to the UPWF offense, he possessed only a few rounds of ammunition when the same offense could be committed by possessing an actual firearm. See 720 ILCS 5/24-1.1(a) (West 2020). Defendant contends the trial court did not account for this, as it stated that this was “a very serious case and on the high end of serious considering the nature of the charges.”

¶ 33 We find no error in the trial court’s discussion of the serious nature of the offenses or in its failure to expressly state it had considered, in mitigation, that the defendant’s actual conduct was less serious than other potential conduct that could have supported the same charges. When the court stated that the case was “on the high end of serious considering the nature of the charges,” it was remarking that although defendant was only charged with possession, the legislature had considered the particular possession offenses charged in this case to be very serious, as it had classified one as a Class 1 felony and provided for a minimum sentence of three years’ imprisonment with no possibility of probation on the other. The court

was not remarking that defendant's actual conduct was "on the high end of serious" as compared to other potential conduct that could have supported the same charges.

¶ 34

III. CONCLUSION

¶ 35

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

¶ 36

Affirmed.