NOTICE
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2012 IL App (4th) 100974-U

Filed 6/19/12

NO. 4-10-0974

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
RYAN ROBERSON,	)	No. 10CF217
Defendant-Appellant.	)	
	)	Honorable
	)	Peter C. Cavanagh,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice McCullough concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in failing to conduct an inquiry into defendant's claim of ineffective assistance of counsel because (a) defendant sent a letter containing his ineffective-assistance claims to his new trial counsel and not the court, (b) defendant did not bring his claims to the attention of the court, and (c) on appeal defendant does not allege his new counsel was ineffective in failing to bring his claims to the court's attention.

(2) The trial court did not abuse its discretion in sentencing defendant to eight years' imprisonment.

¶ 2 In August 2010, a jury convicted defendant, Ryan Roberson, of aggravated battery with a deadly weapon (720 ILCS 5/12-4(b)(1) (West 2008)) and aggravated battery causing great bodily harm (720 ILCS 5/12-4(a) (West 2008)). In November 2010, the trial court sentenced him to eight years' imprisonment.

¶ 3 Defendant appeals, arguing (1) the trial court erred in failing to hold a hearing

pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), after he made allegations of ineffective assistance regarding his prior trial counsel in a letter to his new trial counsel and (2) the court abused its sentencing discretion by not adequately considering his rehabilitative potential. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2010, the State charged defendant with aggravated battery with a deadly weapon (720 ILCS 5/12-4(b)(1) (West 2008)), battery (720 ILCS 5/12-3(a)(1) (West 2008)), and aggravated battery causing great bodily harm (720 ILCS 5/12-4(a) (West 2008)). The State later dropped the battery charge.

¶ 6 In August 2010, defendant's trial counsel filed two separate motions *in limine*. The first motion sought to preclude the State from introducing defendant's prior conviction for aggravated discharge of a firearm to impeach him if he elected to testify. Defendant's second motion sought to exclude hearsay evidence regarding an informant's statement to police regarding his observations of a "suspect vehicle." The trial court denied defendant's first motion and granted defendant's second motion to the extent it ordered the parties not to use the phrase "suspect vehicle."

¶ 7 During defendant's trial, the victim, Tyrone Brooks, testified he was attacked at his home on April 7, 2010, shortly after 8 a.m. Brooks testified he had just returned from dropping his son off at school and was putting his key in the lock of his back door when two men came running toward him. One man brandished a gun and the other had a steel pipe. According to Brooks' testimony the men "ran up and said, 'Give it to me. Give me what you got.' " Brooks identified defendant and testified defendant struck him in the head and stomach with the pipe.

As a result of his injuries, Brooks required medical treatment and underwent surgery to repair a ruptured blood vessel in his abdomen. Brooks also required stitches to close a laceration to his head.

¶ 8 On August 12, 2010, the jury found defendant guilty of aggravated battery with a deadly weapon and aggravated battery causing great bodily harm.

¶ 9 In October 2010, defendant filed a motion for a new trial, arguing (1) he was not proven guilty beyond a reasonable doubt, (2) the trial court erred in denying his motion *in limine* regarding his prior conviction, and (3) the State failed to provide him with discovery concerning potential impeachable offenses of its witnesses. Following an October 12, 2010, hearing, the trial court denied defendant's motion. At the conclusion of the hearing, defendant's trial counsel, Brian Otwell, the then chief public defender for Sangamon County, notified the trial court his office would be reassigning the case to another attorney because Otwell was leaving the office, presumably due to his appointment as an associate judge for Sangamon County. Thereafter, defendant was assigned a new public defender to represent him.

¶ 10 On a date unclear from the record, defendant wrote a letter to his new trial counsel regarding issues he wanted counsel to raise in a posttrial motion. In the letter, defendant, *inter alia*, claimed his original trial counsel was ineffective for "failure to investigate witnesses to prove [defendant's] innocence; failure to send [defendant] requested transcripts; failure to file requested motions; denying [defendant] the 'counsel' guaranteed by the Sixth Amendment[, which] deprived [defendant] of a fair trial." We note the copy of this letter in the record does not show a file stamp. However, the November 17, 2010, docket entry shows correspondence was filed by defendant on that date.

¶ 11 During defendant's November 1, 2010, sentencing hearing, the State, citing defendant's previous convictions, asked for the maximum extended-term sentence of 10 years' imprisonment. During defendant's allocution, defendant told the trial court his family needed him because he provided for his young children and paralyzed father and asked for the minium sentence of two years in prison. The trial court stated it considered the presentence investigation report (PSI), the victim impact statements, and the factors in aggravation and mitigation. The court recognized defendant was the care giver for his father and children but noted it was also "troubled" by the fact defendant had been recently released from prison and was on mandatory supervised release (MSR) when the instant offense occurred. The court then imposed an eight-year extended-term prison sentence.

¶ 12 On November 16, 2010, defendant filed a motion to reconsider sentence, arguing the trial court failed to adequately consider the factors in mitigation. Specifically, defendant contended his imprisonment "would entail excessive hardship to his dependants (two minor children) and family (quadriplegic father) who depend on defendant for care and support[,] and the character and attitude of defendant indicates he is unlikely to commit another crime and that he has a high rehabilitation potential."

¶ 13 On December 2, 2010, the trial court held a hearing on defendant's motion to reconsider sentence. Defendant was present during this hearing both personally and through his new attorney. The trial court denied defendant's motion, stating, *inter alia*, it "gave great weight" to the fact defendant had minor children. The court also stated it recognized defendant had obtained his general educational development (GED) certificate, completed probation in the past, and was his father's caregiver.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant argues (1) the trial court erred in failing to hold a *Krankel* hearing after he made ineffective-assistance allegations regarding his prior counsel in a letter to his new counsel and (2) the court abused its sentencing discretion by not adequately considering his rehabilitative potential.

¶ 17 A. Ineffective-Assistance Claim

¶ 18 Defendant argues the cause must be remanded for a *Krankel* hearing because the trial court erred in failing to conduct an inquiry after defendant made allegations of ineffective assistance in a letter to his new counsel. We disagree.

¶ 19 In *Krankel*, 102 Ill. 2d at 187-88, 464 N.E.2d at 1048, the defendant filed a *pro se* motion for a new trial alleging ineffective assistance of trial counsel. The trial court denied his request for new counsel to assist him in arguing his motion. *Krankel*, 102 Ill. 2d at 187-88, 464 N.E.2d at 1048. The supreme court, on the recommendation of both parties on appeal, remanded the case for a new hearing on the motion, at which the defendant was entitled to new counsel. *Krankel*, 102 Ill. 2d at 189, 464 N.E.2d at 1049.

¶ 20 However, new counsel is not automatically required when a defendant files a *pro se* posttrial motion alleging ineffective assistance of counsel. *People v. Moore*, 207 Ill. 2d 68, 77, 797 N.E.2d 631, 637 (2003). Instead, "the operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the *pro se* defendant's allegations of ineffective assistance of counsel." *People v. Johnson*, 159 Ill. 2d 97, 125, 636 N.E.2d 485, 497 (1994).

¶ 21 In this case, defendant failed to raise the ineffective-assistance claims contained in

his November 2010 letter to his new counsel before the trial court during his subsequent appearance, *i.e.*, his December 2, 2010, hearing on his motion to reconsider sentence, which he attended personally. A defendant who fails to bring such a claim to the trial court's attention forfeits it despite having presented it in a letter to the court. See *People v. Allen*, 409 Ill. App. 3d 1058, 1077, 950 N.E.2d 1164, 1182 (2011) (quoting *People v. Lewis*, 165 Ill. App. 3d 97, 109, 518 N.E.2d 741, 749 (1988)) (" 'While the trial judge may, in some instances, have a responsibility to act on letters mailed by a defendant to the court, here, defendant subsequently appeared in court with counsel and could have properly presented any matter to the court.' ").

¶ 22 Thus, because defendant did not bring the letter to the trial court's attention, defendant forfeited those claims. *Lewis*, 165 Ill. App. 3d at 109, 518 N.E.2d at 749 (because the defendant did not pursue the matter contained in his letter, he waived any issue contained therein on appeal). While defendant states his letter was filed, and thus should have been known to the trial court, the copy contained in the record is not file stamped and no evidence in the record shows defendant or his attorney made any effort to notify the court of the contents of the letter. We note defendant does not allege his new counsel was ineffective for failing to bring the issue to the trial court's attention. Additionally, defendant's letter was addressed to his counsel and not to the court. Under the circumstances of this case, the trial court did not err in failing to hold a *Krankel* hearing.

¶ 23 B. Sentencing

¶ 24 Defendant argues the trial court abused its discretion in sentencing defendant to eight years in prison. We disagree.

¶ 25 A trial court has broad discretion in imposing a sentence. *People v. Patterson*, 217

Ill. 2d 407, 448, 841 N.E.2d 889, 912 (2005). " 'In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed.' " *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)). "Because the trial court is in a better position to observe the witnesses and consider the relevant factors, its sentencing determination is entitled to great deference." *People v. Kenton*, 377 Ill. App. 3d 239, 245, 879 N.E.2d 402, 407 (2007). Thus, a trial court's decision as to the appropriate sentence will not be overturned on appeal "unless the court abused its discretion and the sentence is manifestly disproportionate to the nature of the case." *People v. Grace*, 365 Ill. App. 3d 508, 512, 849 N.E.2d 1090, 1093-94 (2006). An abuse of discretion may be found where the sentence is excessive and cannot be justified by any reasonable review of the record. *People v. Pippen*, 324 Ill. App. 3d 649, 651-52, 756 N.E.2d 474, 477 (2001).

¶ 26 Defendant was sentenced on the aggravated battery causing great bodily harm conviction (720 ILCS 5/12-4(a) (West 2008)), a Class 3 felony (720 ILCS 5/12-4(e)(1) (West 2010)). A Class 3 felony is punishable by a prison sentence of not less than 2 years and not more than 5 years in prison. 730 ILCS 5/5-4.5-40(a) (West 2010). However, because of defendant's prior criminal history, he was eligible for an extended-term sentence of 5 to 10 years' imprisonment. 730 ILCS 5/5-4.5-40(a) (West 2010). As a result, defendant's eight-year prison sentence was within the statutory range. We will not disturb a sentence within the permissible range absent an abuse of discretion. *People v. Perruquet*, 68 Ill. 2d 149, 153, 368 N.E.2d 882, 883 (1977).

¶ 27 Defendant contends the trial court abused its discretion by not imposing a sentence that would allow him to "utilize his full rehabilitative potential." We understand defendant to be arguing the court failed to adequately consider his rehabilitative potential. Article I, section 11, of the Illinois Constitution provides, "All 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. However, rehabilitative potential is not entitled to greater weight than the seriousness of the offense. *People v. Coleman*, 166 Ill. 2d 247, 261, 652 N.E.2d 322, 329 (1995). Moreover, the existence of mitigating factors does not require the court to reduce a sentence from the maximum allowed. *People v. Payne*, 294 Ill. App. 3d 254, 260, 689 N.E.2d 631, 635 (1998).

¶ 28 In this case, the trial court heard the evidence presented in mitigation as well as the issues involving defendant's children and his father. When mitigating factors are presented to the court, there is a presumption it considered them. *Payne*, 294 Ill. App. 3d at 260, 689 N.E.2d at 635. The court stated it considered the PSI, the victim impact statements, as well as the factors in aggravation and mitigation. A trial court that examines a PSI is presumed to have considered the defendant’s potential for rehabilitation. *People v. Babiarz*, 271 Ill. App. 3d 153, 164, 648 N.E.2d 137, 146 (1995). The PSI shows, *inter alia*, defendant pleaded guilty in 1997 to aggravated discharge of a firearm, a Class 1 felony (see 720 ILCS 5/24-1.2(a)(2) (West 2008)), and received an 11-year prison sentence. The PSI also shows defendant had prior convictions for resisting a peace officer in 2004 and unlawful use of a weapon in 2005.

¶ 29 Regarding defendant's father, the trial court specifically recognized defendant was his father's care provider. The court also commented on defendant's "eloquent statement of

allocution" and stated it believed defendant could "turn things around." However, the court also recognized defendant's criminal history and was troubled by the fact the instant offenses were committed while defendant was on MSR after his recent release from the Department of Corrections.

¶ 30 Here, defendant was eligible for a maximum extended-term sentence of 10 years' imprisonment. The trial court, after considering the aggravating and mitigating factors, fashioned an eight-year sentence, which was within the statutory range. The court did not abuse its discretion in sentencing defendant to eight years in prison.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm defendant's conviction. As part of our judgment, we grant the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 33 Affirmed.