

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 120077-U
NO. 4-12-0077
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
July 30, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
JESSICA REMESCH,)	No. 10CF1475
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Appleton and Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court did not abuse its discretion in sentencing defendant to 40 months in prison following revocation of her probation.
- (2) The trial court erred by imposing a \$300 public-defender-reimbursement fee without a proper hearing.
- ¶ 2 Defendant, Jessica Remesch, pleaded guilty to one count of financial identity theft (720 ILCS 5/16G-15(a)(1), (d)(1)(B) (West 2008)) and the trial court sentenced her to 12 months' probation. Later, defendant admitted a probation violation and the court resentenced her to 40 months in prison. Defendant appeals, arguing (1) her sentence was excessive and (2) the court erred by imposing a \$300 public-defender-reimbursement fee without first conducting a proper hearing to determine her ability to pay. We affirm in part, vacate in part, and remand for further proceedings.

¶ 3

I. BACKGROUND

¶ 4 On August 26, 2010, the State charged defendant with financial identity theft (720 ILCS 5/16G-15(a)(1), (d)(1)(B) (West 2008)), a Class 3 felony, alleging she knowingly used the personal identification of another for the purpose of fraudulently obtaining credit in that person's name. On November 1, 2010, defendant pleaded guilty to the charged offense. The State presented the following factual basis:

"The Defendant received a credit card offer in the mail for her brother, the named victim, who used to live with her. She called the number on the credit card offer and pretended to be [her brother]. She opened a credit card account in his name and charged a total of \$458.23 on the card. She did not pay it back when requested by the named victim. The Defendant ultimately confessed to police that she had done this."

The trial court accepted defendant's plea and, pursuant to the parties' agreement, sentenced her to 12 months' probation. As a condition of probation, defendant was required to report to the Champaign County court services department twice per month or as directed by that department.

¶ 5 On February 22, 2011, the State filed a petition to revoke defendant's probation, alleging she failed to report to the court services department as directed on November 10 and December 16, 2010. On September 28, 2011, the trial court conducted a hearing on the petition and defendant admitted violating her probation. The State presented a factual basis that defendant's assigned probation officer would testify defendant never reported for probation. The probation officer sent letters to defendant's last known address, obtained from jail records,

directing defendant to report on November 10 and December 16, 2010. Defendant did not respond to those letters and the letters were not returned. As of February 15, 2011, defendant's probation officer had not heard from defendant. The court accepted defendant's admission and stipulation to the allegations in the petition to revoke.

¶ 6 On October 31, 2011, defendant's resentencing hearing was held. The trial court noted it had received and considered defendant's presentence investigation report. That report showed defendant was 30 years old and the mother of 3 children, ages 11, 5, and 4. She was married but separated from her husband, the father of her two youngest children, who was serving a five-year prison sentence on drug-related charges. The father of defendant's oldest child resided in Colorado and had been ordered to pay child support in the amount of \$45 per week, as well as \$20 biweekly for arrearages. Defendant was a high school graduate and, in 2000, attended college for one semester. Since September 2006, she had been employed on a part-time basis as a package handler for United Parcel Service (UPS). Defendant earned \$14 an hour and received benefits. With respect to her prior criminal history, the report showed defendant had a misdemeanor conviction for theft in 1998; misdemeanor convictions for possession of drug paraphernalia in 2001 and 2009; and 14 convictions for traffic-related offenses from 1997 to 2010, including the offenses of leaving the scene in 2002, being unlicensed in 2003, and driving on a suspended license in 2003.

¶ 7 At the resentencing hearing, neither party presented any additional evidence. The trial court resentenced defendant to 40 months in prison, finding a further sentence of probation or conditional discharge would deprecate the seriousness of her conduct and be inconsistent with the ends of justice. The court also assessed a public-defender-reimbursement fee of \$300.

¶ 8 On November 30, 2011, defendant filed a motion to reconsider, arguing her sentence was excessive. On January 19, 2012, the trial court denied her motion.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant first argues her 40-month prison sentence was excessive in light of the nature of her crime and her circumstances. She contends her sentence was wholly disproportionate to the nature of the offense and her conduct while on probation; the trial court failed to adequately consider the hardship her sentence would be to her minor children, for whom she was the sole support; and the court placed too much emphasis on concerns about deprecating the seriousness of her conduct and protecting the public.

¶ 12 "The sentence imposed by a trial court is granted great deference because the court is generally in a better position than a reviewing court to weigh factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits."

People v. Brunner, 2012 IL App (4th) 100708, ¶ 40, 976 N.E.2d 27. "On review, a defendant's sentence will not be altered absent an abuse of discretion by the trial court." *People v. Mendez*, 2013 IL App (4th) 110107, ¶ 37, 985 N.E.2d 1047. "A sentence that is within statutory limits is excessive and, thus, an abuse of the court's discretion only when it is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense."

Brunner, 2012 IL App (4th) 100708, ¶ 40, 976 N.E.2d 27.

¶ 13 "After revoking a sentence of probation, the trial judge may resentence a defendant to any sentence that would have been appropriate for the original offense." *People v. Risley*, 359 Ill. App. 3d 918, 920, 834 N.E.2d 981, 983 (2005). "[W]hen resentencing after a revocation

of probation, trial courts are entitled to consider the defendant's conduct on probation." *People v. Rathbone*, 345 Ill. App. 3d 305, 312, 802 N.E.2d 333, 339 (2003).

¶ 14 In this case, defendant pleaded guilty to a Class 3 felony and was subject to a sentencing range of two to five years in prison. 730 ILCS 5/5-4.5-40(a) (West 2008). The trial court resentenced her to 40 months in prison, a sentence well within the applicable statutory range. In reaching its decision, the court listed mitigating factors it considered, including defendant's relatively young age, that she received her high school diploma, her employment with UPS for at least five years, her guilty plea, and the fact that she supported three children. In aggravation, the court considered the deterrent factor and defendant's criminal history. The court acknowledged that defendant's criminal record was "not the worst record the Court's ever seen, but nonetheless, [was] something that the court ha[d] to consider." Again, defendant's criminal record included three misdemeanor convictions and 14 convictions for traffic-related offenses.

¶ 15 The trial court also considered the propriety of a community-based sentence for defendant; however, it determined that, although defendant was not dangerous, "a further sentence of probation or conditional discharge [would] deprecate the seriousness of her conduct and be inconsistent with the ends of justice." The court noted the circumstances surrounding defendant's offense and her failure to comply with her initial sentence of 12 months' probation.

¶ 16 Here, the record does not reflect any improper considerations by the trial court or that it placed too much or too little weight on any one factor. Instead, the court properly exercised its discretion in weighing the relevant sentencing factors. Under such circumstances, it is not the function of this court on review to substitute its judgment for that of the trial court. See *People v. Christy*, 271 Ill. App. 3d 966, 967, 650 N.E.2d 12, 14 (1995) ("[C]ourts of review must

grant great deference to the sentencing decisions of trial courts and must not substitute their judgment for that of sentencing courts ***."). We find no abuse of discretion by the trial court in its sentence.

¶ 17 Defendant also argues the trial court erred in imposing a \$300 public-defender-reimbursement fee at resentencing without first conducting a proper hearing to determine her ability to pay. The State concedes the error. Both parties agree the appropriate remedy is to remand for a hearing regarding defendant's ability to pay.

¶ 18 Section 113-3.1(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/113-3.1(a) (West 2010)) provides as follows:

"Whenever *** the court appoints counsel to represent a defendant, the court may order the defendant to pay to the Clerk of the Circuit Court a reasonable sum to reimburse either the county or the State for such representation. In a hearing to determine the amount of the payment, the court shall consider the affidavit prepared by the defendant *** and any other information pertaining to the defendant's financial circumstances which may be submitted by the parties. Such hearing shall be conducted on the court's own motion or on motion of the State's Attorney at any time after the appointment of counsel but no later than 90 days after the entry of a final order disposing of the case at the trial level."

¶ 19 "To comply with the statute, the court may not simply impose the fee in a perfunctory manner" and must, instead, "give the defendant notice that it is considering imposing

the fee," as well as "the opportunity to present evidence regarding his or her ability to pay and any other relevant circumstances." *People v. Somers*, 2013 IL 114054, ¶ 14, 984 N.E.2d 471. "The hearing must focus on the costs of representation, the defendant's financial circumstances, and the foreseeable ability of the defendant to pay." *Somers*, 2013 IL 114054, ¶ 14, 984 N.E.2d 471. Forfeiture does not apply when the trial court ignores statutory requirements for reimbursement. *People v. Love*, 177 Ill. 2d 550, 564, 687 N.E.2d 32, 39 (1997). Additionally, where the hearing held pursuant to section 113-3.1(a) was insufficient to comply with the statute, the proper remedy is to remand the cause for a proper hearing. *Somers*, 2013 IL 114054, ¶¶ 17-18, 984 N.E.2d 471.

¶ 20 As stated, at defendant's resentencing hearing, the trial court imposed a \$300 public-defender-reimbursement fee. During the hearing, the following colloquy occurred between the court and defense counsel:

"THE COURT: *** I'm going to set court-appointed counsel fees. [Defendant's] affidavit from August 1 of '11, showed the employment. I have the presentence report, the number of children. Any change at this point?

MR. SCHMIDT [(Assistant Public Defender)]: No, Your Honor.

THE COURT: All right. I'm going to assess court-appointed counsel fees in the amount of [\$300] to be taken out of the cash bond posted."

¶ 21 Here, the trial court's action in imposing the public-defender-reimbursement fee

fell short of statutory requirements. We accept the State's concession and agree that the appropriate remedy is to vacate the \$300 fee imposed by the court and remand the matter for a proper hearing.

¶ 22

III. CONCLUSION

¶ 23 For the reasons stated, we vacate the \$300 public-defender-reimbursement fee imposed by the trial court but otherwise affirm the court's resentencing judgment. The cause is remanded for compliance with section 113-3.1(a) of the Code. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 24

Affirmed in part and vacated in part; cause remanded.