

No. 1-13-0920

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 C6 60218
)	
DENNIS TABB,)	Honorable
)	Luciano Panici,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Taylor concurred in the judgment.

O R D E R

¶ 1 **Held:** The trial court did not abuse its discretion in sentencing defendant to 21 years' imprisonment on remand.

¶ 2 Following a bench trial, defendant Dennis Tabb was convicted of residential burglary and sentenced to 25 years' imprisonment. On appeal, this court affirmed defendant's conviction, but remanded his cause to the trial court for resentencing. *People v. Tabb*, 2012 IL App (1st) 110363-U, ¶ 4. On remand, the trial court reduced defendant's sentence to 21 years'

imprisonment, and, in this appeal, defendant contends that the sentence constitutes an abuse of discretion. He therefore requests this court to reduce his sentence or remand for resentencing before a different judge.

¶ 3 Defendant and codefendant Antoine Smith, who is not a party to this appeal, were found guilty of residential burglary following a bench trial. Because of defendant's prior criminal history, including nine prior felony convictions, defendant was sentenced as a Class X offender to 25 years' imprisonment.

¶ 4 On appeal, we determined that the trial court abused its discretion in sentencing defendant to 25 years in prison where the punishment, although within the sentencing guidelines, was disproportionate to the seriousness of the offense, and the court sought to punish rather than restore defendant to useful citizenship. We also found that the trial court failed to give defendant an opportunity to provide full allocution prior to imposing the sentence, and failed to consider defendant's drug problems and lack of treatment. *Tabb*, 2012 IL App (1st) 110363-U, ¶¶ 4, 25.

¶ 5 At the resentencing hearing on January 23, 2013, defense counsel reviewed the facts of the case, and defendant's involvement as the lookout who was later found in possession of some watches and jewelry taken from the residence. Counsel pointed out that this was a property offense, and no one was at home at the time of the burglary. Counsel also pointed out that defendant was 45 years old, that he had an 18-year-old daughter who lives with her mother and has a supportive family, and that he is a high school graduate with informal automotive repair experience. Counsel then referred to defendant's substance abuse problems with alcohol, cocaine, and heroin, which began when he was 13 years old, and pointed out that he never received treatment or therapy for those problems, and had never received probation for any of his convictions. Counsel attributed defendant's criminal activity to his drug addiction, and argued

that he could be returned to useful citizenship if his addiction was addressed. Given the nature of defendant's crime and the role he played in the crime, defense counsel requested a sentence of eight years, acknowledging his status as a Class X offender.

¶ 6 In aggravation, the State commented on defendant's characterization of the crime and his level of participation, then addressed defendant's potential for rehabilitation, recounting his lengthy criminal history, which involved four prior convictions of robbery, one conviction of armed robbery, one conviction of theft, one conviction of retail theft, one conviction of residential burglary, and one conviction of unlawful possession of a controlled substance. The State observed that the residential burglary of which defendant was presently convicted is a Class 1 offense, but that his prior history qualified him for Class X sentencing. The State pointed out that defendant had failed to obey the law every time he had been released from prison and continued to commit violent and nonviolent offenses. Based on his Class X background, the State recommended that the previously imposed sentence of 25 years' imprisonment was reasonable and should stand.

¶ 7 In allocution, defendant apologized to the family that was victimized in the crime, but maintained that he did not enter the dwelling. Defendant informed the court that he was sentenced to prison every time he committed a crime, and never received "a break" or some alternative to going to prison. He claimed that "[w]hen I went to prison, I came out in the same position that I went in, every time I went in. So I mean, nothing changed." He also stated that he had never received drug treatment, and believed he could be a different person with treatment. He requested that he be sentenced to a term of eight years, adding, "[I]f I was able to come out at a decent age and grab hold of my life and drug treatment, I think I could be a different person."

¶ 8 At the close of argument, the trial court indicated that it had read the appellate court opinion, and although it disagreed with some of the reasoning, the court acknowledged that it was bound by it. The court observed that this court had found the 25-year sentence excessive, and noted the lesser term of 16 years suggested by this court and originally requested by defense counsel. The court then considered defendant's numerous felony convictions, the time he spent in prison, and the opportunities he had to reform, then sentenced defendant to 21 years' imprisonment, with "mandated court treatment," plus three years MSR. Defendant requested another opportunity to address the court, but the court denied his request and advised him of his appellate rights. Defendant was granted 1099 days of presentencing credit, and on February 27, 2013, the court denied his motion to reconsider. Notice of appeal was timely filed on March 7, 2013.

¶ 9 The sole issue on appeal is whether the trial court abused its discretion in imposing a sentence of 21 years' imprisonment on remand. Defendant contends that the trial court did so by failing to mention any of the mitigating circumstances identified by this court and failing to explain why a 16-year sentence was insufficient.

¶ 10 It is undisputed that defendant qualified for mandatory Class X sentencing because of his prior felony convictions (730 ILCS 5/5-4.5-95(b) (West 2012)), and that his sentence of 21 years' imprisonment was within the statutory range provided for Class X offenders (730 ILCS 5-4.5-25(a) (West 2012)). Under well settled principles, a reviewing court may disturb a sentence within statutory limits only if the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000).

¶ 11 The Illinois Constitution provides that penalties are to 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; *People v. Perruquet*, 68 Ill. 2d 149, 154-55 (1977).

This constitutional mandate calls for balancing the retributive and rehabilitative purposes of punishment, and the process requires careful consideration of all factors in aggravation and mitigation. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). A reasoned sentence must be based on the particular circumstances of each case (*Perruquet*, 68 Ill. 2d at 154), and given the opportunity of the trial court to assess defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age, deference is afforded its sentencing judgment (*Stacey*, 193 Ill. 2d at 209).

¶ 12 Defendant contends that the trial court did not adequately consider rehabilitation as an objective of the sentence on remand, and focused instead on punishing him. The record of the resentencing hearing reveals that both the State and the defense fully presented their respective arguments in aggravation and mitigation, and defendant exercised his right of allocution, expressing his desire to rehabilitate himself. The same record shows that the trial court specifically considered defendant's potential for rehabilitation, stating:

"[Defendant] has had numerous, numerous opportunities. He is [*sic*] had enough numerous [*sic*] felony convictions. He has been in prison numerous times. And he says now, for some reason or other, he has gotten a calling to reform. But he has never had that calling before."

¶ 13 These comments indicate that the court weighed defendant's stated goal against his criminal record, and was of the opinion that defendant lacked a serious commitment toward rehabilitation. We observe that a defendant's rehabilitative potential is not entitled to any more weight than any other evidence adduced at sentencing (*People v. Evans*, 373 Ill. App. 3d 948, 968 (2007)), and here, it is apparent that the trial court found defendant's potential for

rehabilitation minimal and that it need not be reflected in the sentence actually imposed (*People v. Shumate*, 94 Ill. App. 3d 478, 485 (1981)).

¶ 14 Defendant objects, however, that the trial court failed to consider his drug addiction as it related to his criminal background. We disagree. The record shows that both parties addressed this issue in their arguments, defendant expressed a desire to participate in a treatment program, and, as noted above, the trial court expressed its skepticism about defendant's rehabilitation at this point in time. In any event, testimony about a defendant's history of drug abuse is not necessarily mitigating, and court may actually consider it as an aggravating factor. *People v. Montgomery*, 192 Ill. 2d 642, 674 (2000). Here, the trial court was cognizant of this factor, and ordered court-mandated treatment as part of his sentence. Although enrollment in a program is ultimately determined by the Illinois Department of Corrections, the court's options are limited where defendant is ineligible for treatment under a court-designated program in lieu of incarceration. 20 ILCS 301/40-5(7) (West 2012).

¶ 15 Defendant also contends that the trial court failed to explain on remand why a 21-year sentence, as opposed to a 16-year sentence was necessary. We observe, however, that consideration of the 16-year sentence recommended at the initial sentencing hearing was not specifically set forth in our mandate, nor was it mentioned or discussed at the resentencing hearing, where defense counsel requested an eight-year sentence. The record shows that on remand, the court was cognizant of the recommendations proposed by the parties, and ultimately decided to impose a 21-year sentence, four years lower than the original sentence. A court is not required to explain the exact thought process it used to arrive at the ultimate sentencing decision (*Quintana*, 322 Ill. App. 3d at 109), and is free to accept or reject the sentencing recommendations offered by the State or the defense (*People v. Parsons*, 284 Ill. App. 3d 1049,

1064 (1996)). Here, the court settled on a 21-year sentence, which is nine years less than the statutory maximum, and was imposed after taking the relevant aggravating and mitigating factors into consideration.

¶ 16 In sum, we find no abuse of discretion by the trial court in resentencing defendant to 21 years' imprisonment after considering the proper sentencing factors within the prescribed statutory framework. *People v. Cox*, 82 Ill. 2d 268, 280 (1980).

¶ 17 In doing so, we find no merit in defendant's contention that the trial court failed to consider the financial impact of his incarceration on the Department of Corrections. 730 ILCS 5/5-4-1(a)(3) (West 2008). It is well-established that a sentencing court is not required to specify on the record that it has considered the financial impact of a defendant's sentence. *People v. Acevedo*, 275 Ill. App. 3d 420, 426 (2d Dist. 1995). Defendant failed to point out any affirmative evidence in the record that the trial court failed to consider the financial impact of his incarceration before sentencing him, and since a copy of the financial impact statement is provided to every sentencing court each year, and the statement is a matter of public record, absent evidence to the contrary, we presume that the trial court considered it before sentencing defendant. *Acevedo*, 275 Ill. App. 3d at 426.

¶ 18 Defendant finally asserts, the State concedes, and we agree that his mittimus should be amended to reflect that he is entitled to an additional day of presentencing credit. Defendant was arrested on January 19, 2010, and resentenced on January 23, 2013, entitling him to credit for 1100 days. Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the court to modify his mittimus accordingly.

¶ 19 Affirmed, as modified.