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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-2901
)	
STEPHEN GORRA,)	Honorable
)	Jane H. Mitton,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

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

¶ 2 Defendant, Stephen Gorra, pleaded guilty to retail theft, and the trial court sentenced him to five years' imprisonment. Defendant appeals, arguing that the sentence is excessive in light of his work history, participation in treatment, strong family ties, and the fact that his non-violent background resulted from his struggles with addiction. We disagree that the sentence reflects an abuse of discretion and affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 21, 2009, police arrested defendant for exiting a Kohl's department store in Wheaton with various items for which he had not paid. The State charged defendant with two counts of retail theft.

¶ 5 At his arraignment, defendant applied for drug court and, on March 4, 2010, defendant pleaded guilty to one count of retail theft of items in excess of \$150. As part of the plea, the State *nolle prossed* the second count of retail theft and agreed to a sentence of 24 months' probation upon defendant's successful completion of treatment through drug court.

¶ 6 On December 22, 2011, approximately nine months later, defendant expressed a desire to leave drug court and to be sentenced. Nevertheless, the case was continued. On February 2, 2012, defendant's counsel represented that an unspecified offer had been made, but defendant was unwilling to accept it. Counsel further represented that defendant did not want to challenge termination from drug court. The trial judge ordered a pre-sentence investigation.

¶ 7 On March 8, 2012, defendant told the court that he wanted the "original offer" of three years. The trial judge questioned whether that was the offer, and the assistant State's Attorney replied, "no." The judge then questioned whether defendant understood what was going on and told him to speak with his counsel. Defendant again questioned why he could not be sentenced to prison immediately, expressed frustration about his medications, and stated that he wanted "the bare minimum, what was offered three years ago." The transcript for this hearing terminates without any explanation of an offer that was allegedly made three years prior. Further, this alleged offer is not mentioned elsewhere in the record.

¶ 8 On March 15, 2012, defendant waived his right to a termination hearing, and he was unsuccessfully terminated from drug court. At the sentencing hearing on March 22, 2012, the State asked that the court impose a five-year sentence. It noted as evidence in aggravation that

defendant had been sentenced to prison on seven prior occasions and that his prior criminal history included the following cases: (1) unlawful possession of drug paraphernalia (95400675601, Cook County); (2) theft (97 CM 2060, Cook County); (3) theft (97401441701 Cook County); (4) unlawful possession of drug paraphernalia (97401441601, Cook County); (5) unlawful possession of drug paraphernalia (97401553901 Cook County); (6) theft (97 C 221012301, Cook County); (7) unlawful possession of drug paraphernalia and unlawful possession of cannabis (984002401, Cook County); (8) retail theft (98 C 44042801, Cook County); (9) driving while license suspended (Y7685140, Cook County); (10) driving while license suspended (Y8249125, Cook County); (11) retail theft (99 C 44128701, Cook County); (12) retail theft (00C44028701, Cook County); (13) retail theft (00CR0889301, Cook County); (14) retail theft (00 C 44076501, Cook County); (15) retail theft (02 C 440253301, Cook County); (16) criminal trespass to land (03 OV 8984, Du Page County); (17) unlawful possession of controlled substance (two counts) (04 CR 2931801-01, 02, Cook County); (18) unlawful possession of cannabis (05 CM 5295, Du Page County); (19) possession of burglary tools (05 CF 2417, Kane County); (20) driving while license suspended (07 TR 180131, Du Page County); (21) unlawful possession of drug paraphernalia (08400633901, Cook County); (22) unlawful possession of controlled substance (08 CF 2155, Du Page County); (23) unlawful possession of controlled substance (two counts), unlawful possession of drug paraphernalia, and theft (08 CF 2194-01, 02, 03, 04, Du Page County); and (24) retail theft (08 CM 4635, Du Page County). The State noted that the longest sentence defendant had previously served was 2½ years and argued that that sentence had apparently not made an impact. The State further argued that defendant had received several opportunities to address his addiction, but had failed. The State finally noted that defendant had acted deceptively when, for example, he had attempted to use someone

else's urine to pass one of his drug tests.

¶ 9 In mitigation, defense counsel argued that defendant had learned from the treatment programs, wished to move forward with a sober life, and that his mental health problems had exacerbated his living situation at a halfway house. Defendant explained on his own behalf that the halfway house living conditions had caused numerous problems, and he noted that he paid rent, helped his parents, and was working.

¶ 10 The trial judge acknowledged defendant's "ups and downs" in the treatment program. She told defendant, "we all clapped for you when you were a year sober," and that she was sorry that the treatment program did not "work out." She reminded defendant that he was extended-term eligible and that extended-term sentencing meant that she could sentence him to 5 to 10 years of imprisonment, with one year of mandatory supervised release to follow. However, "in acknowledgement of what you have accomplished and what you have learned and the efforts you have put in, even though they didn't get you through to the end of the program, I think they mitigate your sentence and I'm not going to impose extended[-]term sentencing." Nevertheless, the judge explained that she could not ignore defendant's history and sentenced him to five years' imprisonment.

¶ 11 Defendant moved to reconsider the sentence. Defendant noted that, on the initial charge, he had not resisted arrest and had acted under the influence of drugs. Further, defendant noted that he did not pick up any new charges while in treatment and drug court and that five years was longer than any previous sentence he had received. Defendant also told the judge that he was honest. The court agreed, but noted that defendant had also demonstrated dishonesty. The court denied the motion to reconsider. Defendant appeals.

¶ 12

II. ANALYSIS

¶ 13 Defendant argues on appeal that his sentence is excessive. Specifically, he argues that, because he suffers from drug and alcohol addiction and his crime was non-violent, the five-year sentence fails to adequately reflect his rehabilitative potential, mitigating factors, or the directive to restore offenders to useful citizenship. Defendant notes that he has acknowledged his struggles with chemical dependence and participated in treatment, and he asserts that his lack of success in treatment should not have weighed against him. In addition, defendant reiterates that his crime was non-violent and, as the items were recovered, “no harm occurred.” Finally, defendant notes that he consistently seeks and/or maintains employment and that he keeps close ties to his family. As five years was the maximum sentence for this felony, defendant argues that the court simply did not adequately account for his rehabilitative potential and other mitigating factors. We disagree.

¶ 14 We may not alter a sentence unless the trial court abused its discretion, *i.e.*, where the sentence is “ ‘greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.’ ” *People v. Alexander*, 239 Ill. 2d 205, 212 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2000)). A trial court’s sentencing decision is entitled to great deference, and we may not substitute our judgment for the trial court’s merely because we might have weighed the sentencing factors differently. *Id.* Where the sentence is one within the statutory limits, we may not disturb it absent an abuse of discretion. *People v. Coleman*, 166 Ill. 2d 247, 258 (1995). The existence of mitigating factors does not mandate imposition of the minimum sentence (*People v. Garibay*, 366 Ill. App. 3d 1103, 1109 (2006)), or preclude imposition of the maximum sentence (*People v. Phippen*, 324 Ill. App. 3d 649, 652 (2001)). There is a presumption that the trial court considered all relevant factors in determining

a sentence, and that presumption will not be overcome without explicit evidence from the record. *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998). In formulating a sentence, a trial court may consider in aggravation criminal history, likelihood of recidivism, and deterrence. See *e.g.*, *People v. Rader*, 272 Ill. App. 3d 796, 807-08 (1995). We may not re-weigh the factors considered by the trial court. *Pippen*, 324 Ill. App. 3d at 653.

¶ 15 Here, defendant essentially asks that we re-weigh the sentencing factors. He points to nothing in the record reflecting that the court considered improper factors. Indeed, although he comments in passing that his failure to succeed in drug court should not have been held against him, this suggestion is directly rebutted by the record, which reflects that the court did *not* hold it against him. Instead, the court found defendant's drug court efforts *mitigating* and, on that basis, declined to impose extended-term sentencing. Accordingly, defendant's five-year sentence, while the maximum on the underlying crime, is the minimum he would have received had the court not found that his efforts in drug court weighed against extended-term sentencing.

¶ 16 Further, defendant complains that the five-year sentence on a "minor" retail theft is excessive, again noting his struggles with addiction, that his prior convictions were minor, non-violent, and related to his addiction, and the fact that there was "zero harm to anyone" in this theft. Again, the trial court explicitly considered in mitigation defendant's addiction and his efforts to battle it. Defendant's argument that there was no harm in this "minor" theft ignores the time and other resources expended by the store, the police, the State, and the courts in addressing this crime. Finally, defendant's argument that the maximum sentence is excessive for this one theft ignores that this theft is not divorced from the rest of defendant's extensive criminal history. The court's consideration of defendant's criminal history in fashioning this sentence was entirely proper. 730 ILCS 5/5-5-3.2(a)(3) (West 2012). We find no error with the court's decision that,

while mitigating factors weighed against extended-term sentencing, aggravating factors weighed in favor of a five-year sentence.

¶ 17

III. CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 19 Affirmed.