

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).

2014 IL App (4th) 130791-U

NO. 4-13-0791

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 2, 2014
Carla Bender
4th District Appellate
Court, IL

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Champaign County |
| SARAH PIPER, |) | No. 12DT499 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | John R. Kennedy, |
| |) | Judge Presiding. |

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to conditional discharge.

¶ 2 Defendant, Sarah Piper, pleaded guilty to driving under the influence (DUI) (625 ILCS 5/11-501(a)(2) (West 2012)). The trial court sentenced defendant to 18 months' conditional discharge. Defendant appeals, arguing the trial court's sentence was excessive because she was not sentenced to court supervision. The State argues the court's sentence was not an abuse of discretion. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 10, 2012, defendant was ticketed for DUI following her involvement in a motor vehicle accident. While defendant admitted drinking, she denied

involvement in the accident. Defendant refused to submit to chemical alcohol tests, but field sobriety tests demonstrated signs she was impaired.

¶ 5 An alcohol and drug evaluation identified one substance-dependent criteria applied to defendant and classified defendant as a "significant risk." The evaluation found defendant continued substance use "despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance." The report found defendant had no prior history of substance-abuse issues.

¶ 6 Defendant pleaded guilty to DUI. At the sentencing hearing, defendant presented her resume, demonstrating her educational and work experiences, and a certificate, demonstrating she had successfully completed and been discharged from substance-abuse treatment. The trial court sentenced defendant to 18 months' conditional discharge.

¶ 7 Defendant filed a motion to reconsider sentence. Defendant argued the sentence imposed was excessive because the trial court "failed to consider or give proper weight to mitigating evidence developed at sentencing" and "afforded too great a weight to aggravation evidence and arguments." The trial court denied defendant's motion to reconsider.

¶ 8 Defendant appealed. The record on appeal does not include a transcript of the sentencing hearing or the hearing on defendant's motion to reconsider. Defendant did not file a motion to supplement the record. Instead, she included the transcripts of both hearings in the "supplemental appendix" section of her reply brief.

¶ 9 **II. ANALYSIS**

¶ 10 **A. Transcripts Included in Defendant's Reply Brief**

¶ 11 Defendant states, by including the transcripts of the sentencing hearing and the hearing on the motion to reconsider as appendices to her reply brief, she cured the omission of

the transcripts. Under Illinois Supreme Court Rule 329 (eff. Jan. 1, 2006), parties may "supplement the record with documents that were before the trial court but were not contained within the record on appeal." *Knight's Prairie Hunting Club, Inc. v. Holmes*, 263 Ill. App. 3d 455, 458, 636 N.E.2d 29, 31 (1994). "Attachments to briefs that are not a part of the record cannot be used to supplement the record." *Id.* Defendant's appendices are not part of the record.

¶ 12 Information not properly before the court will not be considered on review. We will not consider the trial court transcripts. In the absence of a complete record, we presume the trial court's order followed the law and had a sufficient factual basis, resolving any doubts arising from the record's incompleteness against the defendant, as the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984).

¶ 13 B. Merits of Defendant's Argument

¶ 14 Defendant argues the trial court's sentence was excessive because the trial court did not award court supervision. The State argues the trial court acted within its broad discretion to determine a proper sentence. On review, we will not alter the trial court's sentencing decision absent an abuse of discretion. *People v. Price*, 247 Ill. App. 3d 787, 790, 617 N.E.2d 909, 911 (1993). The record demonstrates the trial court did not abuse its discretion in this case.

¶ 15 Under section 5-6-1(c) of the Unified Code of Corrections (Unified Code), the trial court "may" sentence a defendant to supervision "if the court is of the opinion that:

- (1) the offender is not likely to commit further crimes;
- (2) the defendant and the public would be best served if the defendant were not to receive a criminal record; and

(3) in the best interests of justice an order of supervision is more appropriate than a sentence otherwise permitted under this [Unified] Code." 730 ILCS 5/5-6-1(c) (West 2012).

¶ 16 "Supervision is not a right of any defendant, but a sentencing alternative to be employed in the discretion of the court." *Price*, 247 Ill. App. 3d at 790, 617 N.E.2d at 911. In other words, "section 5-6-1(c) provides that a defendant meeting all of its guidelines *may* be sentenced to supervision, but *need not be* so sentenced." (Emphases in original.) *People v. Hall*, 251 Ill. App. 3d 935, 941, 623 N.E.2d 751, 755 (1993) (reaffirming *Price*).

¶ 17 In *Hall*, we rejected the "unspoken premise underlying defendant's argument" that he was entitled to court supervision because he met the statutory guidelines to be eligible for court supervision. *Id.* at 940, 623 N.E.2d at 754. We concluded the defendant was entitled to have the trial court consider his request for supervision, and the trial court considered defendant's request by "exercis[ing] its discretion in light of its assessment of defendant and the appropriate statutory criteria." *Id.* at 939, 623 N.E.2d at 754. In *Price*, we held the trial court did not err by "sparingly grant[ing] court supervision when a defendant has a very high blood-alcohol level, even where the defendant seems to have otherwise been an exemplary citizen." *Price*, 247 Ill. App. 3d at 790, 617 N.E.2d at 911.

¶ 18 Defendant argues the State failed to present evidence demonstrating supervision was inappropriate so as to justify a sentence of conditional release. This argument is similar to the arguments we rejected in *Price* and *Hall*, as it is logically premised on the idea a defendant has a right to supervision absent some showing justifying conditional release. The State is not required to make any certain showing demonstrating supervision was inappropriate because the decision to sentence a defendant to supervision lies within the discretion of the trial court.

