

NOTICE
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2014 IL App (5th) 120050-U

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).

NOS. 5-12-0050 & 5-13-0172

(consolidated)

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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|--------------------------------------|---|--------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Williamson County. |
| |) | |
| v. |) | No. 10-CF-490 |
| |) | |
| BECKY J. STODGHILL, |) | Honorable |
| |) | Phillip G. Palmer, |
| Defendant-Appellant. |) | Judge, presiding. |

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|--------------------------------------|---|---------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Franklin County. |
| |) | |
| v. |) | No. 10-CF-443 |
| |) | |
| REBECCA JO STODGHILL, |) | Honorable |
| |) | Thomas J. Tedeschi, |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant is entitled to credit against her sentences for time spent in simultaneous custody on all charges even though the trial court, erroneously believing that she was not entitled to credit, reduced her

sentence so that she would be released on all concurrent sentences at the same time. Trial courts did not abuse their discretion in sentencing the defendant or fail to consider relevant factors in mitigation.

¶ 2 The defendant, Rebecca Jo Stodghill, pled guilty to multiple charges of armed robbery in contemporaneous proceedings in two different counties. She was sentenced to 20 years on one charge in Williamson County. She was subsequently sentenced to concurrent sentences of 20 years on two charges in Franklin County, to be served concurrently with the sentence she was already serving for the Williamson County charge. The mittimus in the Williamson County proceedings reflects credit for time served prior to sentencing; the Franklin County mittimus, however, does not include sentence credit. The defendant filed motions to reconsider both sentencing orders. The Williamson County court denied the motion. In the Franklin County case, both the court and counsel erroneously believed that the defendant was not entitled to sentence credit because she was never physically in custody in the Franklin County jail. The court found that her 20-year sentences were appropriate, but reduced her sentences to 18 years so that her release dates on all of the charges would be the same. The defendant appeals, arguing that (1) she is entitled to credit against the Franklin County sentences for time spent in custody prior to sentencing and (2) both courts abused their discretion and imposed excessive sentences. We affirm the defendant's sentences, but amend the Franklin County mittimus to reflect credit for time served.

¶ 3 On November 30, 2010, the defendant was arrested and taken into custody in Williamson County on three counts of armed robbery and one count of attempt (armed robbery). All four charges stemmed from robberies and attempted robbery of hotels

during the course of one week in November 2010. While in custody, the defendant confessed to committing two additional armed robberies of businesses in Franklin County. On December 1, 2010, a warrant was issued for her arrest in Franklin County on two charges of armed robbery. The Williamson County court denied bail, and the defendant remained in custody in Williamson County while all charges in both counties remained pending.

¶ 4 On September 9, 2011, the defendant pled guilty to one charge of armed robbery in the Williamson County proceedings. In exchange for her plea, the State's Attorney dismissed the three additional charges. On October 28, 2011, the court sentenced her to 20 years in prison. The defendant filed a motion to reconsider sentence, which the court denied.

¶ 5 The defendant's first court appearance in the Franklin County proceedings took place on December 13, 2011. She pled guilty to both charges on May 13, 2012. On October 12, 2012, the court sentenced her to concurrent sentences of 20 years, to be served concurrently with the sentence she was already serving in the Williamson County case.

¶ 6 On November 8, 2012, the defendant filed a motion to reconsider her Franklin County sentences. She argued that the sentences were excessive and that the court overlooked statutory factors in mitigation. At a December 12, 2012, hearing on the motion, defense counsel stood on the arguments in his written motion and raised the additional issue of the lack of sentence credit on the mittimus. Counsel apparently believed that the defendant was not entitled to explicit credit on the mittimus because she

was never incarcerated in the Franklin County jail. He argued that, as a result, the 20-year sentences imposed in the Franklin County case would extend the defendant's actual release date by two years after the Williamson County sentence was complete. Counsel noted that the court's previously stated intention was for the Franklin County sentences to run concurrently with the Williamson County sentences. He therefore asked the court to consider this factor along with "the other aspects" of the defendant's motion to reconsider sentence.

¶ 7 The court likewise erroneously believed that the defendant was not entitled to sentence credit for time spent in custody in Williamson County. In a March 12, 2013, docket entry, the court stated as follows:

"After the Franklin County charges were filed on December 1, 2010, a warrant of arrest was issued. However, [the defendant] was in Williamson County custody at the time. She was not in custody on Franklin County charges at any time prior to the sentence imposed on October 12, 2012. This court imposed a 20-year sentence for both counts, to run concurrent with the Williamson County sentence. This effectively added two years to the release date of the Defendant's sentences. A sentence of 20 years *** is a lengthy sentence and this court believes [this] to be appropriate ***. The Court intended for the sentences to run concurrent with Williamson County. The Court did not intend to extend the time spent in custody an additional two years. Therefore, the Court grants defendant's Motion to Reconsider Sentence and sentences the defendant to 18 years *** concurrent both counts and concurrent with Williamson County."

¶ 8 The defendant filed timely appeals from both judgments. This court granted the defendant's motion to consolidate the two appeals on July 26, 2013.

¶ 9 The defendant first argues that she is entitled to credit against her Franklin County sentences for the time she spent in custody on those charges prior to sentencing. We agree.

¶ 10 The parties agree that the defendant was in simultaneous custody on the charges in both counties from December 1, 2010, when a warrant was issued for her arrest in Franklin County, until she was sentenced in the Franklin County case on October 12, 2012. They further agree that this is a period of 680 days. The State acknowledges that the defendant is entitled to credit against both sentences for time spent in simultaneous custody on both charges. See *People v. Robinson*, 172 Ill. 2d 452, 462-63 (1996); *People v. Inman*, 2014 IL App (5th) 120097, ¶ 26; *People v. Spencer*, 347 Ill. App. 3d 483, 490 (2004). However, the State contends that the defendant in effect received the sentence credit to which she is entitled when the Franklin County court reduced her sentence to 18 years. The State explains that the two-year reduction shortened the time the defendant would spend in prison on the Franklin County charges by 730 days, which is more than the 680 days for which she is entitled to credit. We are not persuaded.

¶ 11 The Illinois Unified Code of Corrections determines the manner in which prison sentences are to be calculated. The relevant provision mandates that a prisoner receive credit against each sentence "for the number of days spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2010). Here, the sentences imposed were 18 years. By its express terms, the statute requires that

the defendant be given credit against those sentences for the 680 days she spent in simultaneous custody on all charges. The State cites no authority for the proposition that this statute should not apply as written, and we are aware of none. We hold that the defendant is entitled to sentence credit for 680 days and amend the mittimus accordingly.

¶ 12 The defendant next argues that both sentencing courts abused their discretion by imposing excessive sentences and failing to consider factors in mitigation. We disagree.

¶ 13 Sentencing a criminal defendant is a matter that involves considerable discretion. *People v. O'Neal*, 125 Ill. 2d 291, 297-98 (1988). If a sentence falls within the prescribed statutory range, we will not disturb the trial court's determination absent an abuse of its considerable discretion. *People v. Madura*, 257 Ill. App. 3d 735, 740 (1994). As the defendant correctly notes, however, even a sentence within the prescribed range may be found to be an abuse of discretion if it "is at odds with the purpose and spirit of the law." *People v. Evans*, 143 Ill. App. 3d 236, 242 (1986). To this end, the sentencing court must consider both the seriousness of the offense and the defendant's potential for rehabilitation in order to "balance the retributive and rehabilitative purposes of the punishment." *People v. Cooper*, 283 Ill. App. 3d 86, 95 (1996).

¶ 14 In making this determination, the court must consider the nature and circumstances of the offense as well as the defendant's moral character, demeanor, mentality, habits, and social environment. *People v. Saldivar*, 113 Ill. 2d 256, 268 (1986). The court must also consider any relevant evidence in mitigation. See *People v. Tye*, 323 Ill. App. 3d 872, 890 (2001); *People v. Thurmond*, 317 Ill. App. 3d 1133, 1143 (2000); see also 730 ILCS 5/5-5-3.1(a) (West 2010) (mandating that specified factors in

mitigation "*shall* be accorded weight" (emphasis added)). However, there is no requirement that the court recite every factor it considers or specify how much weight it is giving each factor. *People v. Meeks*, 81 Ill. 2d 524, 534 (1980); *Tye*, 323 Ill. App. 3d at 890.

¶ 15 Evidence before both sentencing courts showed that the defendant admitted to committing seven robberies or attempted robberies in three counties over the course of a single week in November 2010. She cooperated with police when apprehended.

¶ 16 Both courts considered evidence that the defendant had a stable employment history and no criminal record until she developed addictions to prescription pain medication and cocaine when she was in her early 30s. She began taking pain medication when she suffered an on-the-job injury. She began taking cocaine when introduced to it by a man she was dating around that same time. The evidence showed that the defendant made several attempts at treatment for her addictions, but relapsed each time.

¶ 17 The defendant's addictions were fueled, in large part, by mental health problems and physical injuries. She reported suffering from depression and eating disorders and having low self-esteem. She suffered pain as a result of injuries sustained in a vehicle accident in April 2007, a failed suicide attempt in March 2007, and a workplace injury in 1998. The defendant also reported relapsing into drug use when her closest friend suffered a stroke during surgery for a brain tumor. She explained that she resumed her use of cocaine in order to numb the emotional pain.

¶ 18 In addition, the evidence showed that all of the crimes committed by the defendant were attempts on her part to obtain prescription pain medication or money to buy

cocaine. Finally, both courts considered written statements in allocution by the defendant. In those statements, the defendant apologized for her crimes and stated that she was "appalled" by her own actions.

¶ 19 The defendant argues that the sentences imposed by both courts are excessive in light of this evidence. She argues that both courts failed to adequately consider as mitigating factors (1) the defendant's guilty plea; (2) her expressions of remorse; (3) the fact that no physical harm came to her victims; and (4) her consistent work history and strong family ties, both of which indicate that she has rehabilitative potential.

¶ 20 All of the factors cited by the defendant are important factors in mitigation that sentencing courts should consider. See *People v. Ward*, 113 Ill. 2d 516, 526 (1986) (guilty plea is a factor weighing in favor of leniency); *Thurmond*, 317 Ill. App. 3d at 1143 (expression of remorse is an important factor); *People v. Juarez*, 278 Ill. App. 3d 286, 295 (1996) (lack of injury or physical harm to the victims as well as steady employment history and close family ties are factors in mitigation); *People v. Bergman*, 121 Ill. App. 3d 100, 105-06 (1984) (guilty plea is a factor in mitigation); 730 ILCS 5/5-5-3.1(a)(1) (West 2010) (fact that defendant's conduct neither caused nor threatened harm is a factor in mitigation). However, we believe the record belies the defendant's claim that the courts failed to consider these factors.

¶ 21 In the Williamson County proceedings, the court stated, "if you look at the aggravating factors and mitigating factors, there are some of each in my opinion." The court first discussed several mitigating factors. The court specifically found that the defendant did not contemplate that anyone would be harmed by her conduct. See 730

ILCS 5/5-5-3.1(a)(2) (West 2010). The court further found that the defendant "wrote one of the best statements in allocution" the court had ever read, and that the court believed that the defendant was sincere and remorseful. See *Thurmond*, 317 Ill. App. 3d at 1143. The court noted that the defendant's conduct did not cause any serious harm to anybody, but pointed out that her conduct threatened serious harm to herself or others. See 730 ILCS 5/5-5-3.1(a)(1) (West 2010). The court also discussed the defendant's potential for rehabilitation, noting that she had the strong support of her family, but also noting that her previous attempts to curb her addictions had failed.

¶ 22 The court then found that several factors in aggravation were present. The court found that a lengthy sentence was necessary to deter others from committing the same offense (see 730 ILCS 5/5-5-3.2(a)(7) (West 2010)); the defendant had a significant criminal history (see 730 ILCS 5/5-5-3.2(a)(3) (West 2010)); and she committed very serious crimes which could have caused serious harm, even death (see 730 ILCS 5/5-5-3.2(a)(1) (West 2010)). The court also emphasized the fact that the defendant had committed six additional robberies and attempted robberies during a seven-day period, which the court characterized as a "crime spree." The court expressly found that the need for deterrence and the fact that the defendant committed so many robberies in a short time were the most significant factors.

¶ 23 The Williamson County court thus discussed nearly all of the factors mentioned by the defendant in her argument. Although the court did not expressly address the fact that the defendant pled guilty, as we have previously explained, the court is not obliged to recite every relevant factor. We find no abuse of discretion.

¶ 24 In Franklin County, the court noted that no physical harm came to either of the defendant's robbery victims and that the defendant used a pellet gun to commit the robberies, "not a sawed-off shotgun." The court also noted, however, that the defendant used the threat of force and both victims would likely remember the robberies for the rest of their lives. The court further noted that the defendant had been a law-abiding citizen for most of her life, but pointed out that she had a criminal history that included three Class A misdemeanors and a Class 3 felony in a five-year period. The court acknowledged that the defendant's criminal history was a direct result of her addictions. Finally, the court recognized that the defendant admitted her guilt.

¶ 25 The court expressly found that two factors in aggravation were present. Specifically, the court found that the defendant had a significant criminal history (see 730 ILCS 5/5-5-3.2(a)(3) (West 2010)) involving an escalation in seriousness. The court further found that a lengthy sentence was necessary to deter others from committing the same crime (see 730 ILCS 5/5-5-3.2(a)(7) (West 2010)).

¶ 26 We note that, although the defendant does not point this out in her brief, the State's Attorney asked the court to clarify that it did, in fact, consider factors in mitigation. The court replied: "No factors in mitigation. Thank you." In spite of this statement, as we have just discussed, the court addressed each of the factors the defendant complains it failed to consider. In addition, the court imposed a sentence in the center of the statutory range of 6 to 30 years. See 720 ILCS 5/18-2(a)(1), (b) (West 2010) (providing that armed robbery is a Class X felony); 730 ILCS 5/5-4.5-25(a) (West 2010) (prescribing a sentencing range of 6 to 30 years for a Class X felony). In assessing whether a trial court

abused its discretion, this court must consider the record as a whole rather than focusing on an isolated remark. *Ward*, 113 Ill. 2d at 526-27. Viewing the court's rationale as a whole and the sentence it imposed, we find that the court did consider the relevant factors in mitigation. We conclude that both courts imposed sentences within their discretion.

¶ 27 For the foregoing reasons, we affirm the defendant's sentences and amend the Franklin County mittimus to reflect credit against her sentences for the 680 days she spent in custody prior to sentencing.

¶ 28 Affirmed as amended.