

NOTICE
Decision filed 10/09/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 120444-U

NO. 5-12-0444

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jackson County.
)	
v.)	No. 12-CF-21
)	
CARLTON HOWARD,)	Honorable
)	William G. Schwartz,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Spomer concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court did not abuse its discretion when it sentenced the defendant to 25 years in prison.
- ¶ 2 Following a jury trial, the defendant, Carlton Howard, was convicted of residential burglary and theft. He was sentenced to 25 years' imprisonment solely on the residential burglary conviction. Appealing from the denial of his motion to reconsider his sentence, the defendant argues that his 25-year sentence is excessive. He asks this court to either reduce his sentence to 10 years or remand the case for a resentencing to a term shorter than 25 years. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 On January 12, 2012, the State charged the defendant with one count of residential burglary (720 ILCS 5/19-3(a) (West 2012)) and one count of theft (720 ILCS 5/16-1(a)(1)(A) (West 2012)). Following a jury trial, the defendant was convicted on both counts. The evidence at trial showed the following. A witness, Scott Uzzle, saw two men walk to a house across from his home on the same street. One of the men remained on the sidewalk, while the other, who was wearing a blue hat, approached the door of the house, knocked, and jiggled the handle of the door. Uzzle saw the two men do this to other homes on the street and on an adjoining street. Eventually, Uzzle called 9-1-1 to report what he deemed to be suspicious behavior. He then followed the two men in his truck. Having followed the two men for a few minutes, Uzzle returned to his home. About 10 minutes later, Uzzle saw the two men walking quickly. The man with the blue hat held a pink bag under his arm.

¶ 5 Carbondale police department sergeant Mark Stearns was driving down University Avenue, northbound, in a marked police car when he saw two men walking east toward University Avenue. Both men were holding backpacks and looking through them. One man had a pink bag in his hand, which Sergeant Stearns thought was suspicious. He therefore turned his car around, but lost sight of the two men. In the meantime, over his police radio, he heard that a person had reported two men knocking on doors in the neighborhood, and that another officer had seen the two men running across some railroad tracks heading east.

¶ 6 Officer Vaughn responded to the area in an unmarked police car. He saw two men running east across North Illinois Avenue. Vaughn got out of his police car and started chasing the men on foot. One man was carrying a pink backpack. When he ordered the men to stop, the man carrying the pink backpack did so, dropping the pink backpack either immediately before or immediately after Officer Vaughn told him to stop. Vaughn then arrested the man and later identified him in court as the defendant.

¶ 7 The contents of the pink bag indicated that it belonged to Heidi Brown. Brown later identified the items within the bag as hers. The police went to Brown's home. The door had been kicked in and the home had been ransacked. There were muddy footprints on the front door. An evidence technician took a lift of a footprint on the front door, and officers took the defendant's boots into evidence. A forensic scientist testified that the boot and the lifted footprint were a match. Uzzle also identified the defendant's blue hat as the hat he saw on the man who was knocking on doors.

¶ 8 The jury found the defendant guilty of both theft and residential burglary. The defendant filed a motion for a new trial, which the circuit court denied. The case moved on to sentencing.

¶ 9 A presentence investigation report (PSI) revealed that the defendant had a lengthy criminal history including five felony convictions. Copies of those convictions were attached to the PSI. At the sentencing hearing, the court determined that theft was a lesser-included offense of residential burglary, and thus only sentenced the defendant on the residential burglary conviction. Because of the defendant's previous felony

convictions, the defendant was a Class X felon with a mandatory sentencing range between 6 and 30 years. 730 ILCS 5/5-4.5-95(b) (West 2012).

¶ 10 In mitigation, defense counsel argued that the defendant's conduct neither caused nor threatened serious physical harm to another (730 ILCS 5/5-5-3.1(a)(1) (West 2012)), and that the defendant did not contemplate that his conduct would cause or threaten serious physical harm to another (730 ILCS 5/5-5-3.1(a)(2) (West 2012)) because the defendant knocked on the doors of the house to make sure no one was home before he kicked in the door. Defense counsel further argued that the defendant had a lengthy criminal history extending back to when the defendant was a child, and that his criminal conduct was a cry for help following a troubled upbringing.

¶ 11 In aggravation, the State argued that kicking in a door and ransacking someone's home are violent acts (730 ILCS 5/5-5-3.2(a)(1) (West 2012)), the defendant had a history of prior delinquency or criminal activity (730 ILCS 5/5-5-3.2(a)(3) (West 2012)), a lengthy sentence would send a message to the community that burglary offenses are not tolerated (730 ILCS 5/5-5-3.2(a)(7) (West 2012)), and the defendant has had opportunities to rehabilitate himself but has not, thus the defendant has no rehabilitative potential.

¶ 12 After hearing factors in aggravation and mitigation from the parties, the State asked that the court sentence the defendant to 25 years in prison, and the defendant asked to be sentenced to 10 years in prison. The court sentenced the defendant to 25 years in prison.

¶ 13 The defendant then filed a motion to reduce his sentence and subsequently an amended motion to reduce his sentence, arguing that his sentence was excessive, that the court did not properly weigh the mitigating and aggravating factors present in his case, and that he was heavily medicated on Tramadol, a pain medication, during the proceedings and was unable to fully comprehend an offer to enter into a negotiated plea before trial.

¶ 14 The court held a hearing on the motion. At the hearing, counsel for the defendant argued that the court did not properly consider the defendant's youth and other mitigating factors when it imposed the sentence. Counsel also argued that the defendant was not able to comprehend the proceedings because he was on the medication Tramadol. The court denied the defendant's motion to reduce his sentence. This appeal followed.

¶ 15 In his appellate brief, the defendant argues that he had a troubled upbringing that led him to a life of crime. His mother was an alcoholic who verbally abused the defendant, and possibly drank alcohol while pregnant with him. At one point in his young life, the defendant told a probation officer that he wanted to kill himself. A summary of a physician's neurological evaluation of the defendant in the PSI showed that there was no neurological injury to the defendant from his mother's possible alcohol use while pregnant with him.

¶ 16 ANALYSIS

¶ 17 The circuit court has broad discretion in sentencing a defendant and its decision will not be disturbed absent an abuse of that discretion. *People v. La Pointe*, 88 Ill. 2d 482, 492 (1981). An abuse of discretion will be found only where the circuit court's

decision is arbitrary, fanciful, or unreasonable. *People v. Ursery*, 364 Ill. App. 3d 680, 686 (2006). The sentencing court is in the best position to determine an appropriate sentence. *People v. Wilson*, 143 Ill. 2d 236, 250-51 (1991). A sentencing court has a far better opportunity to observe the defendant and consider the relevant factors, whereas a reviewing court must rely on a "cold record." *People v. Fern*, 189 Ill. 2d 48, 53 (1999). In determining an appropriate sentence, a sentencing court must consider all relevant factors in aggravation and mitigation and "balance them against each other." *People v. Mays*, 230 Ill. App. 3d 748, 758 (1992). The seriousness of the offense is the most important factor the court must consider when determining an appropriate sentence. *People v. Watt*, 2013 IL App (2d) 120183, ¶ 50. When the circuit court has imposed a sentence within the statutory range, the circuit court has not abused its discretion unless the sentence is manifestly disproportionate to the nature of the offense or greatly at variance with the spirit and purpose of the law. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). Further, the court is not required to enumerate every factor it has considered when imposing a sentence. *People v. Houston*, 363 Ill. App. 3d 567, 577 (2006).

¶ 18 The defendant was sentenced to 25 years' imprisonment, and thus he was not sentenced to the maximum possible sentence of 30 years. Therefore, the court has not abused its discretion unless the sentence was manifestly disproportionate to the nature of the offense. In this case, the court heard factors in aggravation and mitigation. The defendant had a lengthy criminal history. This was his sixth felony conviction, and the bulk of his prior convictions were related to burglary or theft. He had only been out of prison for a matter of months before committing the current crime. While the defendant

had a troubled upbringing, that is not a *carte blanche* license to continuously break the law. The court was able to view the defendant, the trial, and the sentencing hearing and fashion a sentence that it deemed appropriate.

¶ 19 With respect to the Tramadol, there is no information contained within the record that indicates that the defendant was on Tramadol during the proceedings, nor any information indicating how Tramadol may affect a person's ability to make reasonable decisions. At sentencing, the defendant made a coherent, intelligent statement in allocution. The circuit court was in the best decision to determine whether the defendant was of sound mind during the proceedings. Without more information, we find that the defendant's contention that the medication affected his ability to accept a plea deal is without merit. Therefore, the circuit court did not abuse its discretion when it sentenced the defendant to 25 years in prison.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Jackson County is affirmed.

¶ 22 Affirmed.