FIRST DIVISION
August 8, 2016

No. 1-14-0306

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. 12 CR 13324
	)	
VINCENT REESE,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Mikva concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction and sentence affirmed over contentions that his trial counsel was ineffective for failing to investigate prior to trial the physical layout of the area where his alleged narcotics transaction occurred and his sentence was disproportionate to the seriousness of the offense.

¶ 2 Following a bench trial, defendant Vincent Reese was convicted of delivery of a controlled substance (720 ILCS 570/401(d) (West 2012)) and sentenced to nine years' imprisonment. On appeal, defendant contends that: (1) his trial counsel was ineffective where

she failed to investigate prior to trial the physical layout of the area where the alleged narcotics transaction occurred, which she could have used to impeach the State's witnesses and render their testimony unbelievable, and (2) the trial court abused its discretion in sentencing him to nine years' imprisonment where the sentence did not reflect the seriousness of the offense and the court failed to consider his rehabilitative potential in sentencing. We affirm.

¶ 3 The State charged defendant with three offenses: delivery of a controlled substance within 1,000 feet of a church (Count 1), delivery of a controlled substance within 1,000 feet of a school (Count 2) and delivery of a controlled substance (Count 3).

¶ 4 At trial, the evidence established that at approximately 12:40 p.m. on July 6, 2012, Chicago Police Officer Myles was undercover and working with a team of five to six officers attempting to make controlled narcotics purchases.[1] Myles drove an unmarked vehicle to 139 North Lockwood Avenue in Chicago where he observed a group of men standing on the porch in front of a residence. He later clarified the men were actually standing on the sidewalk. Myles asked one of the men for two "blows," which he knew was a street term for heroin. The man directed Myles to drive around to the east alley of North Lockwood. Myles alerted his team members, drove to the alley and stopped his vehicle "at approximately 135 North Lockwood."

¶ 5 After two minutes, defendant appeared on a bicycle behind Myles' vehicle and waved his hand at Myles to come toward him. Myles drove his vehicle in reverse and stopped at "approximately 139 North Lockwood" where defendant was standing. Defendant asked Myles "how many do you want," and Myles told him "two." Myles gave defendant $20 of prerecorded police funds. Defendant walked over to a "brown wooden fence" about six-feet tall at 139 North

[1] Officer Myles did not state his first name.

Lockwood, reached over the top of the fence and handed the money to an unknown individual. In return, defendant received small items. He walked the items to Myles' vehicle and handed them to Myles. The items were two clear plastic bags containing a white powder, which Myles suspected was heroin. Defendant got on his bicycle and rode southbound through the alley in front of Myles.

¶ 6 Myles radioed his team members, notifying them of defendant's direction of travel and that he was on a light-colored bicycle. He also relayed a description, describing defendant as wearing a white t-shirt with the word "Dickies" written on the back, and blue and white pajama pants. Myles then left the immediate area and parked his vehicle. Forty minutes later, he received a radio call and drove to an area near 17 North Lockwood. There, he observed defendant detained by other officers in the alley near a police vehicle and identified him as the individual from whom he had purchased the suspect heroin. Myles later inventoried the two items he received from defendant as evidence. Myles stated that, "to the best of [his] knowledge," this was the only controlled narcotics purchase he performed that day.

¶ 7 Officer Wojciech Lacz was one of the surveillance officers working with Myles. He testified that he followed Myles into the alley on North Lockwood in his own unmarked vehicle, stopping two car lengths behind Myles' vehicle. Lacz could not recall if there were any vehicles in front of him or behind him in the alley, but there were none between his and Myles' vehicle. A minute or two later, defendant rode his bicycle past Lacz's vehicle and stopped "at approximately 139 North Lockwood" near a wooden fence. Defendant looked in Myles' direction and waved at him. Myles drove his vehicle in reverse a few feet and stopped next to defendant. Lacz observed Myles and defendant have a brief conversation, and Myles hand defendant money. Defendant walked to the wooden fence, placed his hands over the fence and exchanged the money for a

small item from an unknown person. Defendant walked back to Myles, handed him the item and rode his bicycle southbound through the alley.

¶ 8 Lacz radioed other officers, describing defendant as riding a light-colored mountain bicycle and wearing a white t-shirt with the word "Dickies" written on the back, blue and white pajama pants, and white gym shoes. Myles drove his vehicle out of the alley and Lacz followed him. Lacz attempted to locate defendant but could not. Approximately 40 minutes later, following a radio call, Lacz drove to an alley near 17 North Lockwood and observed defendant detained by other officers near a police vehicle. Defendant was wearing the same clothing as when Lacz "saw him do the sale." Lacz, who testified to being white, acknowledged that, based on "his personal observations," white people were in the minority in the neighborhood where he had been conducting surveillance. But, he maintained the neighborhood was diverse.

¶ 9 At the conclusion of the State's case, the parties stipulated that the items Myles inventoried weighed 0.5 grams and tested positive for heroin.

¶ 10 Defense counsel moved for a directed finding on all three counts, arguing that no narcotics or prerecorded funds were recovered from defendant. Additionally, counsel asserted that Lacz's testimony of conducting surveillance in the alley directly behind Myles' vehicle in his own vehicle was unbelievable. She asserted it "strains credibility to think that he [a white officer in a predominantly black neighborhood] would just be sitting there in the alley and not be noticeable *** [and] not draw any attention."

¶ 11 The court granted the motion with respect to Counts 1 and 2 based on delivery of a controlled substance within 1,000 feet of a church and school, but denied the motion on Count 3 for delivery of a controlled substance.

¶ 12 Defendant did not testify but presented three witnesses: Michael Rogers, Eugene Davis and Nancy Mays. All three witnesses stated they were in defendant's backyard with a group of seven to eight people, including defendant, at 17 North Lockwood on July 6, 2012.

¶ 13 Rogers acknowledged three previous felony convictions and stated he had known defendant for 20 years. Defendant was washing cars in the backyard when Rogers arrived between 10:30 and 11 a.m. At some point, defendant went to the basement of his residence. While defendant was inside, the police arrived and began to inquire about a sexual assault that occurred nearby. When defendant came back outside, the police stopped asking questions and arrested him. He had been inside for two minutes. Rogers never saw defendant sell any narcotics, ride a bicycle or leave the backyard that day, and he could not recall the clothing defendant was wearing.

¶ 14 Davis acknowledged two previous felony convictions and stated he had known defendant for 15 years. He arrived at defendant's house around noon while defendant was in the backyard washing cars. While Davis was in the backyard, the police appeared and inquired about a sexual assault that occurred nearby. One of the officers looked around the backyard and eventually in the basement. There, the officer observed defendant and detained him. Davis never saw defendant sell any narcotics, ride a bicycle or leave the backyard that day. Davis could not recall the clothing defendant was wearing, except for gym shoes, and acknowledged he did not know where defendant was prior to his arrival.

¶ 15 Mays, who arrived in defendant's backyard around 9:30 a.m., had known defendant for eight years. She stated defendant spent the morning washing cars. Later in the day, when defendant was coming out from his basement, the police arrived and detained him. Mays never

saw defendant sell any narcotics, ride a bicycle or leave the backyard that day, and she could not recall the clothing defendant was wearing.

¶ 16 In rebuttal, Officer Gerald Lee testified he was an enforcement officer working with Myles and Lacz on July 6, 2012. There were "multiple transactions" occurring at the time. After receiving a radio transmission from another officer, Lee went to 17 North Lockwood and observed defendant in the backyard along with several other men. Lee detained defendant, who was wearing a white shirt that had the word "Dickies" written on it, and blue and white pajama pants. Lee also observed a light-colored mountain bicycle in the backyard. Lee acknowledged he did not recover any narcotics or prerecorded police funds from defendant.

¶ 17 The court found defendant guilty of delivery of a controlled substance. It observed that Myles and Lacz testified in a manner that was "remarkably consistent and unimpeached." The court noted that all three officers testified to defendant's distinct clothing of a white shirt with the word "Dickies," and the blue and white pajama bottoms, and all three described the bicycle as light colored. It also found the defense witnesses "incredible," noting that none of them could remember defendant's clothing from the day in question.

¶ 18 Defense counsel filed a motion for new trial, arguing that Myles and Lacz were "not forthcoming," "contradicted themselves and each other" and their testimony was "unbelievable." Counsel subsequently requested, and was granted, additional time to supplement her motion because she "was informed of information" that, if she could corroborate it, she wanted to add to the motion.

¶ 19 Counsel filed a supplemental motion for new trial, wherein she stated she received information that the property at 139 North Lockwood "differed from the description" to which the officers testified at trial. Counsel then personally viewed the properties located at 139 and

141 North Lockwood. As a result, she sent an investigator to take photographs of both properties, which were taken approximately three months after defendant's trial, and attached to the motion. Exhibits A and B showed the front of 141 and 139 North Lockwood, respectively, both single-family residences. Exhibit C showed a wrought iron fence separating 139 and 141 North Lockwood from each other and the street. Exhibit D was a close-up of a window and front door at 139 North Lockwood showing wind chimes, a wreath on the front door, an ADT security sign, and signs containing the proverbs "Bless this Home with Love" and "A Word Aptly Spoken is Like Apples of Gold in Settings of Silver." Exhibit E was a close-up of the front door of 141 North Lockwood. Exhibit F showed "No Trespassing" and "Dog on Premises" signs on 139 North Lockwood's wrought iron fence. Counsel requested that the court "reopen the proofs" and/or grant a new trial.

¶ 20 At the hearing on the motion, counsel made an offer of proof as to what the testimony of her investigator would be. She asserted that the photographs of the houses demonstrated the residences were "well-maintained buildings *** that people have taken time in investing into" and argued the photographs contradicted the State's theory that the houses were "drug houses." Counsel posited the owners of these properties "would not be drug dealers or selling out of their homes, but would be people who would call the police on drug dealers." Counsel further highlighted the back of the houses, noting that 139 North Lockwood's wrought iron fence extended all the way around the house and, contrary to Officers Myles' and Lacz's testimony, no wooden privacy fence was present. Instead, she observed that 141 North Lockwood had a wooden privacy fence. Counsel additionally argued Myles' and Lacz's testimony was unbelievable as Myles gave vague, "cagey" and "wishy-washy" responses to questions and Lacz was "equivocal" and could not recall key facts from the day in question.

¶ 21 In response, the State rested on its arguments made at trial.

¶ 22 The court agreed that the houses at 139 and 141 North Lockwood were "well-maintained houses," but did not recall any testimony or argument that the houses were "drug houses." The court further found the drug house argument irrelevant. The court observed that Officer Myles initially stated the men in front of 139 North Lockwood were on the porch and later clarified they were on the sidewalk, and that 40 minutes elapsed between Myles buying the narcotics from defendant and defendant's arrest a short distance away. Despite this, however, the court found that Myles' description of defendant's clothing matched the description of the individual arrested, something "too coincidental" to ignore. The court reiterated that it found the officers' testimony credible and the defense witnesses' testimony "incredible." It observed that defense counsel "engaged in some speculative argument," which was "splitting *** hairs with respect to their testimony." While the officers' testimony was not "perfect," the court did not find any "substantive impeachment." It subsequently denied the motion for a new trial, but did not address counsel's request to "reopen the proofs."

¶ 23 The case proceeded to sentencing. Defendant's presentence investigation report (PSI) revealed he was 46 years old on the date he committed the instant offense and had eight prior felony convictions over the preceding 25 years, including two robbery convictions and multiple narcotics offenses. Defendant graduated from Walt Disney Magnet Elementary School, Austin High School and took courses for three years at Washburn Trade School. He had worked sporadically for a construction company until he began rehabilitating houses. The PSI indicated defendant consumed hard liquor daily and had a heroin addiction, but defendant had not received treatment for these issues.

¶ 24 At the sentencing hearing, the State corrected the PSI by adding additional prior convictions and noted that defendant was subject to mandatory class X sentencing based on his criminal background. It argued in aggravation that his background "speaks for itself."

¶ 25 In mitigation, defense counsel argued that defendant lived with his parents who depended on him for help. In particular, counsel noted defendant's father required "significant" daily assistance for various health issues, including a recent stroke and blindness. Counsel also observed that, despite defendant's lengthy criminal history, he had always been cordial with her and came from a loving family. Counsel added that defendant had graduated high school, completed trade school, had periods of employment prior to the instant case and possessed skills giving him "the ability to be employed."

¶ 26 Defendant's son, Corry Mason, spoke on his behalf and reiterated defendant's significant role in helping his parents. Defendant spoke, acknowledging "very poor decisions" in his life and substance abuse issues and asking for the court's leniency.

¶ 27 Prior to sentencing, the court acknowledged the sentencing range was between 6 and 30 years' imprisonment. The court observed that defendant's lengthy criminal history established he was "a career criminal." The court stated that defendant had had opportunities in life that "many people don't have," noting he had attended a magnet school, and had a loving family and many people in the community who cared about him. It "sympathize[d]" with defendant's addiction problems and inability to hold a steady job, but asserted "at some point everybody has to take responsibility for their own issues." The court told defendant "[i]t's on you to change that. It was on you to change that [10] years ago and 20 years ago. And it's on you to change that today." Because defendant had previous terms of incarceration of five, six and eight years, the court subsequently sentenced him to nine years' imprisonment. The court noted the sentence was "very

lenient." Defense counsel filed a motion to reconsider, which the court denied. This appeal followed.

¶ 28 Defendant first contends that his trial counsel was ineffective because, prior to trial, she failed to investigate the physical layout of the area where the alleged narcotics transaction occurred, the evidence included in the supplemental motion for new trial. He asserts that, had counsel known this information before trial, she would have had the necessary impeachment evidence to completely undermine the testimony of the police officers.

¶ 29 Initially, we note that to the extent defendant relies on evidence outside the trial record, such as Google Maps and City of Chicago maps, we do not consider this evidence and related arguments. *People v. Kirklin*, 2015 IL App (1st) 131420, ¶ 130 ("[M]atters not supported by the trial record are not appropriately raised on direct appeal."). As this court has previously observed, when claims of ineffective assistance of counsel rely on matters outside the record, they are better suited for a collateral proceeding. See *id.* ¶ 127 (citing cases); *People v. Parker*, 344 Ill. App. 3d 728, 737 (2003) (" 'Where the disposition of a defendant's ineffective assistance of counsel claim requires consideration of matters beyond the record on direct appeal, it is more appropriate that the defendant's contentions be addressed in a proceeding for postconviction relief.' ") (quoting *People v. Burns*, 304 Ill. App. 3d 1, 11 (1999)). We will address defendant's claim, however, as it relates to the evidence in the trial record.

¶ 30 We review claims of ineffective assistance of counsel pursuant to the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Domagala*, 2013 IL 113688, ¶ 36. To succeed on such a claim, defendant must demonstrate that (1) his counsel's performance was deficient and (2) the deficiency prejudiced him. *Id.* To prove a deficient performance, defendant must demonstrate "that counsel's performance was objectively unreasonable under prevailing

professional norms." *Id.* Counsel has a professional duty to conduct reasonable investigations. *Id.* ¶ 38. To prove prejudice, defendant must demonstrate that there is a reasonable probability that, but for his counsel's alleged errors, the result of his trial would have been different. *Id.* ¶ 36. Both prongs of the *Strickland* test must be met, otherwise the claim fails. *Kirklin*, 2015 IL App (1st) 131420, ¶ 109. Consequently, if we find defendant was not prejudiced by counsel's alleged errors, we need not address counsel's performance. *Id.*

¶ 31 In this case, even if counsel had investigated the physical layout of the area where the alleged narcotics transaction occurred before trial, the result of defendant's trial would not have changed. Counsel's posttrial investigation revealed two notable aspects about the area where the alleged transaction took place: (1) the houses at 139 and 141 North Lockwood were well-maintained, single-family homes and (2) in the alley behind the houses, there was a wooden privacy fence at 141 North Lockwood, not 139 North Lockwood, which instead had a wrought iron fence. Had counsel uncovered this information before trial and used it while cross-examining Officers Myles and Lacz, the attempted impeachment would not have changed the trial court's credibility determinations, as demonstrated by its comments in denying defendant's motion for new trial.

¶ 32 The court observed, and our review of the record similarly reveals, that there was no testimony or argument at trial that the houses were "drug houses." It therefore found this line of argument by counsel irrelevant. Additionally, the court found that, while the officers did not testify perfectly, their testimony as a whole was credible and they had not been substantively impeached. The court had the opportunity to review and consider, albeit in the context of a motion for new trial, the very evidence defendant now argues would have changed the result of his trial. In denying the motion for new trial and explaining its reasoning, the court rejected the

relevance of this evidence, any impeachment of the officers resulting from the evidence and the impact this evidence would have had on its guilty finding.

¶ 33 Furthermore, as the court noted both in finding defendant guilty and denying his motion for new trial, the critical evidence in identifying the man arrested at 17 North Lockwood as the individual who sold Myles the narcotics was his distinctive clothing. None of the evidence of the physical layout of the area where the alleged transaction occurred affects this evidence. The fact that the officers were mistaken regarding the address of the house with the wooden fence does not change their identification of defendant as the man who delivered the narcotics. In light of the foregoing, even if counsel had investigated the physical layout of the area where the alleged narcotics transaction took place before defendant's trial, there is no reasonable probability that the result of his trial would have been different. Given the lack of prejudice from counsel's alleged failure to investigate prior to trial, defendant's claim of ineffective assistance of counsel fails. See *Kirklin*, 2015 IL App (1st) 131420, ¶ 109.

¶ 34 Defendant's second contention is that his nine-year sentence for delivery of a controlled substance is "wholly disproportionate" to the offense and demonstrates the court failed to adequately consider his "abject existence" and rehabilitative potential. Although defendant acknowledges the trial court's recognition of his long-standing substance abuse problems, he argues the court "essentially dismissed rehabilitation" as a factor involved in its sentence. Defendant posits that his delivery of "a minuscule quantity of a controlled substance" deserves the utmost leniency and thus, a minimum sentence.

¶ 35 Due to defendant's criminal background, he was subject to class X sentencing. 730 ILCS 5/5-4.5-95(b) (West 2012). Therefore, although defendant's conviction for delivery of a

controlled substance was a Class 2 felony (720 ILCS 570/401(d) (West 2012)), he was subject to a sentence of between 6 and 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2012).

¶ 36 The Illinois Constitution requires trial courts to impose sentences according to the seriousness of the offense and with the objective of restoring the defendant to useful citizenship, *i.e.*, to consider a defendant's rehabilitative potential. Ill. Const. 1970, art. I, § 11; *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. However, the most important factor in determining a sentence is the seriousness of the offense. *People v. Kelley*, 2015 IL App (1st) 132782, ¶ 94. In determining the proper sentence, trial courts are given broad discretionary powers (*People v. Alexander*, 239 Ill. 2d 205, 212 (2010)), and a sentence will not be reversed absent an abuse of that discretion. *People v. Geiger*, 2012 IL 113181, ¶ 27. Reviewing courts give such deference to the trial court because it had "the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Other factors include "the need to protect the public and provide for deterrence and retribution." *People v. Mimes*, 2014 IL App (1st) 082747-B, ¶ 41.

¶ 37 Reviewing courts begin with the presumption that the trial court properly considered the defendant's rehabilitative potential and all relevant mitigating evidence, including the statutory mitigating factors, unless the defendant can affirmatively show the contrary. *People v. Cole*, 2016 IL App (1st) 141664, ¶ 55; *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38; *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). Although the trial court's consideration of statutory mitigating factors is required, it does not have to expressly indicate its consideration of, and assign weight to, each factor. *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 43. When a sentence falls within the statutory range, it is presumed to be proper (*Knox*, 2014 IL App (1st) 120349, ¶ 46), and may only be "deemed excessive and the result of an abuse of discretion"

where it is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210.

¶ 38 In the instant case, the trial court did not abuse its discretion in sentencing defendant. His nine-year sentence for delivery of a controlled substance is presumed proper, as it was within the statutory range for the offense. *Knox*, 2014 IL App (1st) 120349, ¶ 46. Further, we do not find the sentence manifestly disproportionate to the nature of the offense. As the court stated, defendant's lengthy criminal history made him a "career criminal." A "defendant's criminal history alone" may "warrant sentences substantially above the minimum." *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009). Yet the court sentenced defendant to only 3 years above the minimum and 21 years below the maximum sentence. Moreover, the court acknowledged defendant's substance abuse issues, but also noted that he had failed to take responsibility for them. See *People v. Hill*, 408 Ill. App. 3d 23, 30 (2011) (a defendant's substance abuse issues did not warrant a reduction in sentence); *Evangelista*, 393 Ill. App. 3d at 399 (no reduction in sentence warranted where a defendant failed to avail himself of prior opportunities for treatment of his substance abuse issues in conjunction with his prior convictions).

¶ 39 Additionally, while defendant did deliver only a small amount of a controlled substance, the seriousness of the offense was only one factor, albeit the most important one, in determining the proper sentence. It is clear defendant's several prior, more lenient sentences ranging from 18 months to 8 years' imprisonment had not deterred him from criminal acts, and thus, a sentence above the minimum was necessary. See *People v. Kelley*, 2013 IL App (4th) 110874, ¶¶ 45-47 (trial court did not abuse its discretion in sentencing defendant to 24 years' imprisonment for possession of a controlled substance with intent to deliver where he "had a lengthy criminal

history that included eight prior offenses related to illegal substances" and had been incarcerated five previous times).

¶ 40 Although defendant argues his sentence demonstrates the trial court "abdicated its duty to impose a sentence that included as an objective the restoration of [defendant] to useful citizenship," this argument is unavailing. Defendant fails to point to any evidence affirmatively demonstrating the court failed to consider his rehabilitative potential in imposing its sentence. See *Brazziel*, 406 Ill. App. 3d at 434 (presumption exists that the trial court properly considered the defendant's rehabilitative potential unless he can affirmatively show the contrary). In fact, the opposite is true, the court did consider defendant's rehabilitative potential. The court expressly found defendant was a career criminal who had not changed his behavior despite multiple previous incarcerations and ample opportunities in life that many people did not have. Defendant's rehabilitative potential was minimal. See *People v. Coleman*, 201 Ill. App. 3d 803, 809 (1990) (finding a "defendant's criminal history showed a lack of rehabilitative potential.") The trial court's nine-year sentence reflects a careful consideration for seriousness of the offense and the restoration of defendant to useful citizenship. See Ill. Const. 1970, art. I, § 11. Consequently, the trial court did not abuse its discretion in sentencing defendant.

¶ 41 For the foregoing reasons, we affirm the order of the circuit court of Cook County.

¶ 42 Affirmed.