FIFTH DIVISION
July 22, 2016

No. 1-14-1015

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).

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. 13 CR 21340
	)	
JEJUAN COLLINS,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Burke concurred in the judgment.

O R D E R

¶ 1 Held: Defendant's sentences for unlawful use of a weapon by a felon and reckless discharge of a firearm affirmed over claim that the sentences were excessive in light of mitigating factors.

¶ 2 Following a bench trial, defendant Jejuan Collins was found guilty of unlawful use of a weapon by a felon (UUWF), four counts of aggravated unlawful use of a weapon, and reckless

discharge of a firearm. The trial court merged the aggravated unlawful use of a weapon and UUWF counts and sentenced defendant to five years' imprisonment on his UUWF conviction. The trial court imposed a concurrent three-year sentence for defendant's reckless discharge of a firearm. On appeal, defendant does not challenge his convictions, but contends that both of his sentences are excessive in light of certain mitigating factors.

¶ 3 The evidence at trial established that at about 11:00 p.m., on October 26, 2013, Chicago public school teacher, Tenesha Ford (Ford) was driving west on 69th Street. She observed three individuals on the south side of the street, also heading west. Defendant was among them wearing a light colored hoodie. As Ford stopped at a stop sign on the corner of 69th and Bell Street, defendant turned around and she saw his whole face. Defendant then fired a handgun toward Ford. She did not see a van or anyone else nearby and thought he was shooting at her.

¶ 4 After defendant fired the weapon, the three companions left together and turned into a vacant lot. Ford drove away, called 911, and was still on the phone when she noticed police vehicles heading toward the scene of the shooting. She followed them to the 6800 block of south Bell Street where Ford noticed defendant, wearing the same clothes, "on the trunk of a police car." She identified defendant as the shooter to police, and noticed his two companions from earlier in the evening sitting on a nearby porch.

¶ 5 Chicago police sergeant, Thomas Ryan testified that he patrolled an area near the shooting in response to a call of shots fired by an African American male wearing a light tan or white hoodie. He observed defendant, who matched the description, sitting on a porch with two women at 6820 South Bell Street. He separated defendant from the women, and conducted a

protective pat down of defendant on the hood of his squad car, but did not recover a handgun. Chicago police sergeant, Michael Poppish arrived on the scene during the pat down. Ford drove up and spoke with Sergeant Poppish, who then motioned Sergeant Ryan toward the women on the porch. As Sergeant Ryan approached the porch, one of the women placed a purse on the bottom step and then walked up. He opened the purse and found a .380 handgun loaded with seven live rounds inside. Sergeant Ryan stated on cross-examination that there was evidence that a paintball gun had been discharged nearby.

¶ 6 Sergeant Poppish testified that defendant waived his *Miranda* rights, and admitted that he purchased the gun from a "crack head" for protection after being shot two months earlier. Defendant stated that he was on the corner of 69th and Bell Street with his sister and Kadisha Brown on October 26, 2013, when he saw someone fire at him from inside a van. He admitted to firing the handgun, stating that he fired at the van as it "flew away" heading east on 69th Street. Defendant thought he was responding to real gunfire, but it turned out to be a paintball gun. He and the two women then ran through a nearby lot, and defendant handed the weapon to Brown. Sergeant Poppish testified that after taking defendant's statement he processed defendant who was 19 years old at the time.

¶ 7 The State introduced a certification from the Illinois State Police indicating that on October 26, 2013, defendant did not possess a valid Firearm Owners Identification Card. The parties then stipulated that defendant had a prior Class 2 felony conviction for delivery of a controlled substance under case number 13 CR 737. Defendant rested without presenting evidence. The trial court found that Ford was a very committed citizen and that the State met its

burden of proving defendant guilty on all six counts beyond a reasonable doubt. Defendant filed a motion for a new trial which the trial court subsequently denied.

¶ 8 A presentence investigation report (PSI) was compiled and presented to the trial court. At sentencing, the State argued that defendant's sentences should exceed the statutory minimums in light of facts in the PSI and defendant's background. The State recommended a total sentence of seven years. In mitigation, defense counsel argued that the minimum sentences were appropriate in light of the mitigating factors. Specifically, defendant was employed at the time of arrest. He worked at a charter school as an assistant basketball couch and as a maintenance man. He was also enrolled in GED classes at the time of arrest. Finally, defendant's crime did not result in any injuries and defendant did not have a terrible background. In allocution, defendant apologized for his actions and apologized for wasting the trial court's time.

¶ 9 At the sentencing hearing, the trial court indicated that a PSI was compiled in this case, and expressly stated that "[t]here [were] some mitigating factors about [defendant]." In announcing the sentence, the trial court emphasized that defendant knew he was on probation when he ran around with a handgun. That, "something happened" and he "used terrible judgment" that landed him "in a worse situation than before." The trial court merged the aggravated unlawful use of a weapon and UUWF counts and sentenced defendant to five years' imprisonment on his UUWF conviction and a concurrent three-year sentence for reckless discharge of a firearm. Defendant filed an immediate motion to reconsider the sentences which the trial court denied.

¶ 10 In this case, the sentencing range for defendant's UUWF conviction, a class two felony, is 3 to14 years. 720 ILCS 5/24-1.1(e) (West Supp. 2013). Reckless discharge of a firearm is a Class 4 felony which carries a sentencing range of one to three years. 720 ILCS 5/24-1.5(c) (West Supp. 2013); 730 ILCS 5/5-4.5-45(a) (West. Supp. 2013). On appeal, defendant solely contends that the trial court abused its discretion when it imposed a five-year sentence for UUWF and a concurrent three-year term for his reckless discharge of a firearm.

¶ 11 We will not disturb the sentence imposed by the trial court absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). The trial court is in a superior position to weigh factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Consequently, we must not reweigh the factors considered by the trial court. *Id*. When the sentence falls within the prescribed statutory limits, it will not be disturbed unless it is greatly at variance with the purpose and spirit of the law or is manifestly disproportionate to the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010).

¶ 12 Here, we find that defendant's sentences were not excessive and that the trial court did not abuse its discretion when it imposed the concurrent five and three-year terms. At sentencing, the trial court found that defendant knew he was on probation, but that he nevertheless ran around with a handgun and "used terrible judgment". The relevant mitigating evidence was presented to the trial court in the PSI and the trial court specifically found that "[t]here are some mitigating factors about [defendant]." At the sentencing hearing, defendant highlighted the rehabilitative nature of his employment and enrollment in GED classes. The trial court was also

informed of defendant's age and the basis for his claim that he was provoked through testimony at trial. Where, as here, mitigating factors were presented to the trial court, we presume that the court considered them in determining the sentence. *People v. Burton*, 184 Ill. 2d 1, 34 (1998). Because the trial court was aware of the mitigating evidence we cannot conclude that the trial court abused its discretion where both terms were within the prescribed limits. *Alexander*, 239 Ill. 2d at 212.

¶ 13 Defendant maintains that the trial court failed to give appropriate weight to the evidence that his crime was provoked, caused no injuries, was his first violent offense, and that defendant demonstrated rehabilitative potential in that he was 19 years old, seasonally employed, and enrolled in GED classes. Defendant's argument amounts to a request that we substitute our judgment for that of the trial court, re-balance the factors, and independently conclude his sentences were excessive, which is not our role in this setting. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). Furthermore, defendant cannot rebut the presumption that the trial court considered the mitigating evidence without some indication, other than the sentences themselves, to the contrary. *People v. Canet*, 218 Ill. App. 3d 855, 864 (1991). In this case, defendant has made no such showing and we cannot substitute our judgment for that of the trial court in order to reweigh the factors in mitigation and aggravation. *Stacey*, 193 Ill. 2d at 209.

¶ 14 Defendant, nevertheless, contends that his rehabilitative potential was entitled to greater weight in light of his age. Although the sentence imposed by the trial court must strike a proper balance between the protection of society and the rehabilitation of defendant, the trial court is not required to give defendant's rehabilitative potential more weight than the seriousness of the

offense. *People v. Anderson*, 325 Ill. App. 3d 624, 637 (2001). Furthermore, the mere presence of some mitigating factors does not necessarily warrant a minimum sentence. *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010). The trial court need not detail precisely for the record the process by which it determines a sentence. *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007). The trial court was aware of his age when sentencing defendant. Accordingly, his sentences do not rebut the presumption that the trial court considered the mitigating evidence in imposing the sentences. *Canet*, 218 Ill. App. 3d at 864.

¶ 15 Based on the record before us, we cannot conclude that the sentences were excessive, manifestly disproportionate to the nature of the offense, or that they were greatly at variance with the spirit of the law. *Fern*, 189 Ill. 2d at 56.

¶ 16 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 17 Affirmed.