FIRST DIVISION
August 29, 2016

No. 1-14-1611

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 2092
	)	
LAWRENCE FLOWERS,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justice Harris concurred in the judgment.
Justice Mikva concurred in part and dissented in part.

O R D E R

¶ 1 *Held*: The trial court did not abuse its discretion when it sentenced defendant, because of his criminal background, to a Class X sentence of 18 years in prison. Defendant's fines and fees order must be corrected to vacate an improperly assessed fee and to reflect the offset of certain fines by defendant's presentence custody credit.

¶ 2 Following a jury trial, defendant Lawrence Flowers was found guilty of the offense of armed habitual criminal and unlawful use of a weapon by a felon. He was sentenced, based upon his criminal background, to a Class X sentence of 18 years in prison for the offense of armed

habitual criminal. On appeal, defendant contends that his 18-year sentence is excessive because he only possessed a firearm for a few "moments" and his criminal background is "exclusively non-violent." He also contests the imposition of certain fines and fees. We affirm, and correct the fines and fees order.

¶ 3 At trial, Officer John Lipka testified that on January 8, 2013, he was conducting surveillance in an unmarked car when he saw a brown Infiniti with an African-American woman sitting inside. A blue van was also parked on the street. He watched as a vehicle pulled up in front of the van. An African-American man, later identified as Kenneth Shannon, exited the vehicle and stood in front of the van. Another man, later identified as Eddie Hubert, walked up to the van and opened a door. Shannon and Hubert had a "brief" conversation. Lipka then saw an African-American woman, later identified as Leslie Howard, walk to the rear of the Infiniti and open the trunk. Defendant walked up to the Infiniti and stood next to it. Howard closed the trunk and handed defendant a "pink cloth handbag."

¶ 4 Defendant placed the strap of the handbag over his shoulder, walked across the street, and spoke to Shannon. Defendant opened the bag and looked inside. Shannon also looked inside. Lipka then saw Shannon hand defendant money. At this point, Lipka radioed other officers because "there might be an illegal gun sale" happening. Officers responded and an unmarked police car came down the street. Defendant then stepped back toward an open door of the van, threw the pink bag inside and closed the door. Shannon also moved a few steps away from the van. After officers detained defendant, Shannon and Howard, Lipka "broke" surveillance, went to a police station and returned 10 minutes later in another vehicle.

¶ 5 At this point, Officer Nowak showed Lipka a pink bag containing a semi-automatic pistol and a magazine. Lipka identified this pink bag as the same one that Howard removed from the truck and handed to defendant. Later, at a police station, a custodial search of defendant was performed and $210 was recovered.

¶ 6 Officer Matthew Nowak testified that after receiving a description of several people at a certain location from Lipka, he drove to that location. When he arrived, he saw defendant on the sidewalk. Howard and Shannon were also present. Defendant was about five feet away from the van and walking "further away." Nowak exited his car and asked all three to approach for a field interview. Defendant, Howard and Shannon came to Nowak's car and were "detained pending further investigation." Nowak then relocated to the van and looked inside. He saw a pink handbag on the floorboard between the front seats. The doors to the van were locked, so Nowak asked Hubert for permission to enter the vehicle. After Hubert gave consent, Nowak recovered the pink handbag. When he opened the handbag, he saw a handgun and a magazine.

¶ 7 The State entered into evidence certified copies of defendant's convictions for the Class 1 felony of possession of a controlled substance with intent to deliver within 1,000 feet of a park in case number 00 CR 19715, and for the Class 2 felony of delivery of a controlled substance in case number 06 CR 14410.

¶ 8 Ultimately, the jury found defendant guilty of the offense of armed habitual criminal and unlawful use of a weapon by a felon.

¶ 9 At sentencing, the State argued the defendant had a "long" criminal history which started when he was a juvenile and dated back to 2000. Defendant also belonged to a gang. The State noted that in the presentence investigation report (PSI), defendant stated that he enjoyed making

money and made up to $10,000 a week selling drugs. The State requested a sentence of 24 years in prison based upon defendant's "history of disobeying the law." In mitigation, the defense argued that defendant, who was born in 1993, had a "constant relationship" with his mother and was close to his siblings and six children. He had also previously worked as a welder. The defense requested a six-year prison term.

¶ 10 In sentencing defendant, the trial court stated that it had considered the evidence at trial, the gravity of the offense, the PSI, and the financial impact of incarcerating defendant. The court also considered "all evidence, information and testimony in aggravation and mitigation, any substance abuse issues and treatment, the potential for rehabilitation, the possibility of sentencing alternatives and all hearsay presented and deemed relevant and reliable." The court then merged defendant's conviction for unlawful use of a weapon by a felon into the offense of armed habitual criminal and sentenced defendant to a Class X sentence of 18 years in prison.

¶ 11 On appeal, defendant first contends that his 18-year sentence for the offense of armed habitual criminal is excessive in light of the facts that he only possessed a firearm "for a few moments" and that his criminal background is "exclusively non-violent."

¶ 12 A sentence within statutory limits is reviewed on an abuse of discretion standard, so that this court may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. So long as the trial court does not consider improper aggravating factors or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable range. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 56.

¶ 13 When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, *inter alia*, a defendant's age, criminal history, character, education, and environment, as well as the nature and circumstances of the crime and the defendant's actions in the commission of that crime. *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010). The court does not need to expressly outline its reasoning when crafting a sentence, and we presume that the court considered all mitigating factors absent some affirmative indication to the contrary other than the sentence itself. *Jones*, 2014 IL App (1st) 120927, ¶ 55. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Id*.

¶ 14 In the case at bar, defendant does not dispute that he was subject, because of his criminal background, to a Class X sentence of between 6 and 30 years in prison (see 730 ILCS 5/5-4.5-25(a) (West 2012)).

¶ 15 The record reveals that at sentencing, the parties presented evidence in aggravation and mitigation including defendant's criminal history, his admission that he previously sold drugs for a living and his relationships with his mother, siblings and children. In sentencing defendant to a Class X sentence of 18 years in prison, the trial court stated that it considered, *inter alia*, the evidence at trial, the gravity of the offense, the PSI, defendant's potential for rehabilitation, and the possibility of sentencing alternatives. Based on our review of the record, this court cannot say that a prison term of 18 years was an abuse of discretion when defendant's sentence is in the middle of the applicable sentencing range. See *Snyder*, 2011 IL 111382, ¶ 36.

¶ 16 Defendant, on the other hand, contends that his sentence is excessive in light of the nature of the instant crime. Defendant argues that he only briefly possessed someone else's gun. He also argues that he is "not a violent or dangerous criminal."

¶ 17 It is presumed that the court properly considered the mitigating factors presented and it is the defendant's burden to show otherwise. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). Here, defendant cannot meet that burden, as the trial court specifically stated at sentencing that it considered "all evidence, information and testimony in aggravation and mitigation," the PSI, and defendant's potential for rehabilitation. We reject defendant's conclusion that the trial court abused its discretion merely by giving the evidence presented in mitigation a different weight than defendant would prefer; the trial court was not required to impose a minimum sentence merely because mitigation evidence exists (*Jones*, 2014 IL App (1st) 120927, ¶ 55). Ultimately, the trial court did not abuse its discretion when it considered the evidence in mitigation and aggravation (*id.* ¶ 56), and sentenced defendant to an 18-year prison term (*Snyder*, 2011 IL 111382, ¶ 36).

¶ 18 Defendant next contends that his fines and fees order must be corrected. Although defendant has forfeited review of this claim because he did not challenge the fines and fees order in a postsentencing motion (see, *e.g.*, *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), on appeal a reviewing court may modify the fines and fees order without remanding the case back to the circuit court. See Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008). We review the imposition of fines and fees *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 19 Defendant first contends, and the State concedes, that the trial court improperly imposed a $5 electronic citation fee (705 ILCS 105/27.3e (West 2012)), against him. The $5 electronic citation fees only applies to defendants "in any traffic, misdemeanor, municipal ordinance, or conservation case" (see 705 ILCS 105/27.3e (West 2012)), and defendant was not convicted of one of the triggering offenses. We therefore vacate the $5 electronic citation fee.

¶ 20 Defendant next contends, and the State agrees, that pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2012)), he is entitled to a $2,430 credit based on 486 days of presentence custody.

¶ 21 The parties agree that defendant was assessed certain fines that may be offset by the presentence custody credit: the $50 Court Systems Fee (55 ILCS 5/5-1101(c) (West 2012)); the $10 Mental Health Court fine (55 ILCS 5/5-1101(d-5) (West 2012)); the $5 Youth Diversion/Peer Court fine (55 ILCS 5/5-1101(e) (West 2012)); the $5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2012)); the $30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2012)); and the $15 State Police Operations Fee (705 ILCS 105/27.3a (1.5) (West 2012)).

¶ 22 Therefore, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order that the $50 Court Systems Fee, the $10 Mental Health Court fine, the $5 Youth Diversion/Peer Court fine, the $5 Drug Court fine, the $30 Children's Advocacy Center fine, and the $15 State Police Operations Fee be offset by defendant's presentence custody credit.

¶ 23 The parties, however, dispute whether the $190 felony complaint filing assessment (705 ILCS 105/27.2a(w)(1)(A) (West 2012)); the $15 clerk automation assessment (705 ILCS 105/27.3a(1) (West 2012)); the $15 clerk document storage assessment (705 ILCS 105/27.3c (West 2012)); the $25 court services sheriff assessment (55 ILCS 5/5-1103 (West 2012)); the $2

State's Attorney records automation assessment (55 ILCS 5/4-2002.1(c) (West 2012)); and the $2 Public Defender records automation assessment (55 ILCS 5/3-4012 (West 2012)), are also fines. Defendant asserts their purpose is not to compensate the State for the costs of prosecuting a particular defendant, but rather intended to recoup expenses to the clerk and court system as a whole. The State contends that these assessments are all fees. We agree with the State.

¶ 24 In *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), this court held that the felony complaint filing assessment, the clerk automation assessment, the clerk document storage assessment and the court services sheriff assessment are all fees. The court reasoned that the four assessments are compensatory in nature and a collateral consequence of a defendant's conviction. *Id*.

¶ 25 Defendant acknowledges the holding of *Tolliver*, but argues that *Tolliver* predates *People v. Graves*, 235 Ill. 2d 244 (2009), and, therefore, *Tolliver*'s analysis is incorrect. However, cases since *Graves* have recognized that the assessments at issue are fees. See *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 62-68 (recognizing felony complaint filing assessment, clerk automation assessment, clerk document storage assessment and court services sheriff assessment as fees); *People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 28-38 (recognizing felony complaint filing assessment, clerk automation assessment, clerk document storage assessment and court services sheriff assessment as fees); *People v. Adair*, 406 Ill. App. 3d 133, 144 (2010) (recognizing court services sheriff assessment as a fee). We therefore decline to depart from the holding of *Tolliver*. Accordingly, defendant is not entitled to presentence custody credit toward the felony complaint filing assessment, the clerk automation assessment, the clerk document storage assessment or the court services sheriff assessment.

¶ 26 This court has also previously held that the $2 Public Defender records automation fee and the $2 State's Attorney records automation fee are fees to which a defendant cannot apply his presentence custody credit. See *People v. Bowen*, 2015 IL App (1st) 132046 ¶ 65 ("because the statutory language of both the Public Defender and State's Attorney Records Automation fees is identical except for the name of the organization, we find no reason to distinguish between the two statutes, and conclude both charges constitute fees"); *People v. Green,* 2016 IL App (1st) 134011, ¶ 46 (relying on *Bowen*); *People v. Rogers,* 2014 IL App (4th) 121088, ¶ 30 (the State's Attorney charge is a fee because it is meant to reimburse the State's Attorney for expenses related to automated record keeping); *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17 (relying on *Bowen* and *Rogers*). We follow *Rogers* and *Bowen* and likewise find that the Public Defender records automation fee and the State's Attorney records automation fee are fees to which defendant cannot apply his presentence custody credit.

¶ 27 Accordingly, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct defendant's fines and fees order to reflect the vacation of the $5 electronic citation fee, and that the $50 Court Systems Fee, the $10 Mental Health Court fine, the $5 Youth Diversion/Peer Court fine, the $5 Drug Court fine, the $30 Children's Advocacy Center fine, and the $15 State Police Operations Fee are offset by defendant's presentence custody credit, for a new total due of $354. We affirm the judgment of the circuit court of Cook County in all other aspects.

¶ 28 Affirmed; fines and fees order corrected.

¶ 29 JUSTICE MIKVA, concurring in part and dissenting in part.

¶ 30 I respectfully dissent as to the court's judgment that the trial court did not abuse its discretion when it sentenced Mr. Flowers. I concur in and join the court's order correcting the fines and fees order.

¶ 31 Although the trial court is vested with wide discretion in sentencing, such discretion is not without limitation. Illinois Supreme Court Rule 615(b)(4) (eff. Jan. 1, 1967) grants us, as the reviewing court, the power to reduce the sentence imposed by the trial court. I believe that this power should be used to reduce the sentence in this case.

¶ 32 There can be no dispute that 18 years in prison for the momentary illegal possession of a handgun is a long sentence. Other offenses based on the illegal possession of a firearm carry significantly more lenient maximum sentences. An individual charged simply with the offense of unlawful use of a weapon (720 ILCS 5/24-1(a)(4) (West 2012)) stands to be convicted not of a felony, but of a Class A misdemeanor, which carries a maximum sentence of less than one year. 730 ILCS 5/5-4.5-55 (West 2012). For an individual charged with aggravated unlawful use of a weapon, the maximum sentence for a first-time offender is three years' imprisonment. 720 ILCS 5/24-1.6 (West 2012); 730 ILCS 5/5-4.5-45 (West 2012). Mr. Flowers was also charged with unlawful use or possession of a weapon by a felon, a Class 2 felony carrying a maximum term of 14 years. 720 ILCS 5/24-1.1(e) (West 2012). Each of these potential maximum sentences for gun possession is significantly less than the sentence Mr. Flowers received.

¶ 33 Of course, Mr. Flowers was not convicted simply of unlawful gun possession. Because of two prior qualifying drug convictions, Mr. Flowers was convicted of the offense of being an armed habitual criminal, a Class X felony, carrying with it a sentence of 6 to 30 years' imprisonment. 720 ILCS 5/24-1.7 (West 2012); 730 ILCS 5/5-4.5-25 (West 2012).

¶ 34 However, when one examines the level of conduct underlying the elements of Mr. Flowers' conviction for being an armed habitual criminal, this sentence is disproportionate. Mr. Flowers points to the fact that he only momentarily possessed the firearm, that his qualifying prior convictions were relatively minor compared to other potential predicate offenses such as murder, aggravated kidnapping, and aggravated battery, and that there are no violent crimes in his criminal history.

¶ 35 In upholding the constitutionality of the armed habitual criminal statute, this court recognized that the state interest that is served by that statute is to punish criminals who commit "the specific kinds of felonies peculiarly related to the use of firearms." *People v. Davis*, 408 Ill. App. 3d 747, 750 (2011). The predicate felonies that Mr. Flowers committed were not related to firearms and, as he points out, he had no violent crimes or gun crimes in his background.

¶ 36 Our constitution mandates "that penalties be determined according to the seriousness of the offense." *People v. Stacey*, 193 Ill. 2d 203, 211 (2000) (citing Ill. Const. 1970, art. I, § 11). As the supreme court recognized in *Stacey*, "a sentence within statutory limits will be deemed excessive and the result of an abuse of discretion by the trial court where the sentence 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. There was no argument in *Stacey* that the trial judge had considered improper factors. *Id.* at 210-11. Rather, the court focused on the conduct at issue in the current offense and reduced the 25-year sentence imposed to six years. *Id.* at 210-12.

¶ 37 This case is similar to *Stacey* in some ways. In that case the defendant had "momentarily" grabbed the breasts of two young girls, which was the basis for his current charge of aggravated criminal sexual abuse. *Id.* at 210. In this case Mr. Flowers momentarily possessed a gun. In

Stacey, as in this case, the defendant's significant prior criminal history elevated his criminal conduct to a Class X offense. However, in *Stacey*, which was a prosecution for sex abuse, most of the defendant's history involved other sex abuse crimes. In this case, in contrast, none of Mr. Flowers' previous convictions involved guns or violence. Most significantly, "the level of seriousness" of the offense, which is what the Supreme Court focused on in *Stacey*, did not, in my view, warrant the sentence imposed by the trial court. See *Stacey*, 193 Ill. 2d at 211.

¶ 38 The majority points out that the 18-year sentence was "in the middle" of the applicable Class X sentencing range that was available to the judge for Mr. Flowers' conviction of being an armed habitual criminal. While the presentence report revealed some mitigating factors, it also reflected Mr. Flowers' lengthy (albeit nonviolent) criminal history and his admissions that he previously sold drugs for a living and that he had been "born into" a gang but had no rank within the gang structure. He had also held jobs for several years, had good relationships with his mother and children, and belonged to a church. This combination of factors may well justify a "mid-range" sentence. However, where, as here, the legislature and the prosecutor have already elevated the sentence for Mr. Flowers' gun possession into the Class X range, it may be less than complete to describe 18 years as a "mid-range sentence."

¶ 39 The legislature has chosen to enact numerous recidivist statutes and prosecutors use them regularly. Sentencing judges still have the discretion and the responsibility to look to the crime and the defendant's criminal background (to the extent that background is not already incorporated into the crime itself as a predicate offense (*People v. Ferguson*, 132 Ill. 2d 86, 96 (1989))) and to sentence proportionately, within the sentencing range that the prosecutors and the legislature have dictated.

¶ 40 I understand the need to defer to the discretion properly accorded to the judge who had the difficult and thankless job of imposing an appropriate sentence. As the majority points out, citing *People v. Jones*, 2014 IL App (1st) 120927, ¶ 56, as long as the trial court does not consider improper aggravating factors or ignore important mitigating factors, that court has wide latitude in sentencing a defendant within the applicable range.

¶ 41 I also understand that sentencing judges do not need to set forth every reason for their decision or specify the weight given to the factors they considered in sentencing. See, *e.g.*, *People v. Burgess*, 2015 IL App (1st) 130657, ¶ 227. However, nothing precludes them from providing explanations. No such explanation was provided here, either at sentencing or in response to the defense motion to reconsider the sentence, other than to say that the judge considered the "factors," the background, and the PSI, and had "far more details" than he had when he had offered Mr. Flowers a significantly lower sentence at the settlement conference. Therefore, I am left with the facts regarding the crime itself as well as the other facts in the presentence report. I find nothing there that provides a foundation for the 18-year sentence imposed and I would exercise the power that we have as appellate justices under Supreme Court Rule 615(b)(4) to reduce this sentence.