

No. 1-14-2024

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 7965
)	
ANTHONY WRIGHT,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to 10 years in prison for burglary where it considered all relevant factors in mitigation and defendant’s criminal background.
- ¶ 2 Following a bench trial, defendant Anthony Wright was convicted of burglary and sentenced to 10 years in prison and 3 years of mandatory supervised release (MSR). On appeal, defendant contends that his sentence was excessive in light of the nature of the offense, his history of mental illness and addiction, and the financial impact of his incarceration. We affirm.

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¶ 3 Defendant, along with two co-defendants, was charged by indictment with one count of burglary and one count of possession of burglary tools.

¶ 4 At trial, Michael Sutherland testified that he owned adjacent properties at 3345 and 3343 South Giles Avenue in Chicago, Illinois. Sutherland lived in the single-family home at 3345 South Giles and planned to sell the home at 3343 South Giles which was vacant. On March 22, 2013, at approximately 3:00 pm, Sutherland was at home in his kitchen when he saw four men entering the 3343 residence through the back door and exiting with radiators. He had not given anyone permission to enter the property or remove anything from it.

¶ 5 Sutherland went downstairs and watched the men through a window in the back door. He then returned upstairs and contacted the police. When the police arrived in the alley behind the 3343 residence, Sutherland saw the men leave through the front of the property. One man walked northbound while the other three walked southbound. Sutherland informed police that the three men walking southbound were the men he saw removing radiators from his property. The police detained the suspects, one of whom was identified as defendant. Sutherland viewed a photograph of radiators stacked against his neighbor's fence and identified them as the radiators removed from the 3343 residence.

¶ 6 Officer Terrance McKitterick recovered a wrench and an electric chainsaw from the scene, which Sutherland stated did not belong to him. The trial court found defendant guilty of burglary (720 ILCS 5/19-1 (West 2012)).

¶ 7 At sentencing, the presentence investigation report (PSI) set forth defendant's family history. Defendant reported that he: (1) was diagnosed with schizophrenia and bi-polar disorder in 1995; (2) received psychiatric treatment in 1997, 2002, and 2006 during previous

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incarcerations; and (3) used Trazadone medication on a daily basis. He also reported that he had a “heroin usage problem” starting when he was 19 years old. Defense counsel added that defendant was in the prison mental health unit at the time of sentencing.

¶ 8 The State argued in aggravation that defendant had 10 prior felony convictions, all class 2 or higher. The convictions were for robbery (1990), possession of a controlled substance (1993, 2001, 2002, 2009, and two in 2007), possession with intent to deliver (1993, 1997), and aggravated battery of a police officer (2005). Defendant had been sentenced to 18-month to 6-year terms on his convictions. The State requested a “substantial sentence within the Class X range” as defendant was Class X-eligible due to his previous convictions.

¶ 9 Defense counsel argued in mitigation that defendant was 48 years old, had three children, and a history of mental illness for which he was being treated, and that his last conviction was in 2009. Counsel requested the minimum sentence of six years in prison. The trial court told defendant that his “long history of convictions” provided that “incapacitation is necessary, so you can’t be committing crimes against the community in the future.” Based on defendant’s “significant criminal history,” the trial court sentenced him as a Class X offender to 10 years in prison.

¶ 10 On appeal, defendant contends that the 10-year sentence imposed by the trial court was excessive in light of the nature of the harm caused by his offense, his age and history of drug addiction and mental illness, and the financial impact to the state.

¶ 11 The trial court has broad discretion in sentencing and its sentencing decisions are entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). The trial court is granted such deference because it is generally in a better position than the reviewing court to

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determine the appropriate sentence. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial court has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Id.* Consequently, we must not substitute our judgment for that of the trial court merely because we would have weighed these factors differently. *Id.* A reviewing court may not alter a defendant's sentence unless the trial court abused its discretion. *Alexander*, 239 Ill. 2d at 212.

¶ 12 The parties agree that defendant was subject to enhanced sentencing under the Class X sentencing scheme due to his criminal history. For Class X offenders, sentencing guidelines mandate a term of imprisonment of not less than 6 years and not more than 30 years. 730 ILCS 5/5-4.5-25(a) (West 2012). The trial court sentenced defendant to 10 years in prison, well within the applicable statutory sentencing range. A sentence within the statutory range is presumed proper. *People v. Knox*, 2014 IL App (1st) 120349 ¶ 46.

¶ 13 Defendant contends, however, that the trial court did not meaningfully consider or properly weigh the following mitigating factors in sentencing: (1) no one was threatened or injured in the offense and the owner of the building was not deprived of his property; (2) defendant's age and history of mental illness and addiction; (3) the financial costs of the incarceration.

¶ 14 A sentencing court must give careful consideration to all mitigating and aggravating factors, "including, *inter alia*, the defendant's age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education, as well as the nature and circumstances of the crime and of defendant's conduct in the commission of it." *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). Although the trial court did not articulate a

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specific finding with regard to each potential mitigating factor, the trial court is not required to specify its reasons for a sentence on the record. *People v. Acevedo*, 275 Ill. App. 3d 420, 424-26 (1995). When mitigating evidence is before the trial court, it is presumed the court considered the evidence absent some contrary indication other than the sentence itself. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004). It is a defendant's burden to "make an affirmative showing that the sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38.

¶ 15 Defendant first argues that the 10-year sentence imposed by the trial court was excessive when considering the nature of the offense. "The seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors." *Quintana*, 332 Ill. App. 3d at 109. Defendant contends that he is entitled to be sentenced to the statutory minimum because the building appeared to be old and abandoned, no one was threatened or harmed during the commission of the offense, and Sutherland was not permanently deprived of any property. There is no merit to defendant's argument, as nothing in the record suggests the court did not consider the nature of the offense in sentencing. *People v. Dowding*, 388 Ill. App. 3d 936, 943 (2009) (it is defendant's burden to establish sentence was based on improper considerations).

¶ 16 Further, defendant's argument ignores the fact that the only reason Sutherland was not deprived of his radiators is because he contacted the police when he witnessed his property being taken. Defendant was stopped from permanently depriving Sutherland of his property only because the police intervened. The fact that no one was threatened or harmed during the commission of the burglary does not negate the fact that it was committed by a man with 10 prior

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felony convictions. Criminal history alone may warrant a sentence substantially above the minimum. *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009). The sentence was not excessive in light of the fact that it was defendant's 11th felony conviction. See *People v. Kelley*, 2013 IL App (4th) 110874, ¶ 47 (sentence affirmed where defendant had eight prior drug convictions and was sentenced to prison five times). Moreover, defendant was not deterred by previous, more lenient sentences. *People v. Hill*, 408 Ill App 3d 23, 29-30 (2011) (nonviolence and addiction did not warrant a reduced sentence where the defendant had 13 previous drug-related convictions).

¶ 17 Defendant next argues that the court failed to meaningfully consider or properly weigh his age, mental illness, and addiction. The PSI documented defendant's age, mental illness, and heroin addiction. In addition, defense counsel argued to the court that defendant should be sentenced to the minimum given his age and history of schizophrenia and bi-polar disorder. Defendant's age, mental illness, and addiction history were therefore before the court and, there being no evidence to the contrary, we presume the court considered this evidence. *People v. Burton*, 184 Ill. 2d 1, 34 (1998).

¶ 18 Further, the court explicitly considered defendant's age and found it to be an aggravating factor. Noting defendant was "middle-aged" and had a history of convictions, the trial court told defendant that it "would have hoped that you would have aged out of the criminal justice system by now." *People v. McNeal*, 175 Ill. 2d 335, 368 (1997) (mitigating factor may be considered in aggravation).

¶ 19 The trial court also explicitly considered defendant's history of mental illness, stating "I do take into consideration, obviously, that you do have some psychological issues," before

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concluding “I don’t believe that that mental disease or defect that you have, number one, gave rise to any defense, but more importantly, any type of explanation for your criminal activity.”

The court explicitly considered defendant’s age and mental illness and is presumed to have considered his history of heroin addiction, which was documented in the PSI that the court referred to multiple times during sentencing. Accordingly, defendant has not met his burden to show the court failed to consider the appropriate factors.

¶ 20 Finally, defendant argues that the trial court failed to consider the financial impact of his sentence on the State. However, the fact that a sentencing judge is presumed to have considered all relevant mitigating factors absent a contrary showing in the record has been held specifically to apply to considerations of the financial impact. *Acevedo*, 275 Ill. App. 3d at 426. Accordingly, as defendant presents no evidence to the contrary, we presume the trial court considered the financial impact of defendant’s sentence. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 22.

¶ 22 For these reasons, we affirm defendant’s conviction and sentence.

¶ 23 Affirmed.