

No. 1-14-2137

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 12 CR 10231
)	
DEONDRE HILL,)	Honorable
)	Clayton J. Crane,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* The judgment of the circuit court was affirmed where the defendant's sentence was not excessive.
- ¶ 2 Following a bench trial, the defendant, Deondre Hill, was convicted of aggravated battery with a firearm and sentenced to 12 years' imprisonment with a 3-year mandatory supervised release (MSR) term. On appeal, the defendant argues that his 12-year sentence was excessive, and that this court should reduce it or remand for resentencing. For the following reasons, we affirm.

¶ 3 Based upon a shooting incident which resulted in the injury of Javon Trotter, the defendant was charged by information with aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2012)), attempt first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012)), aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)), and aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1) (West 2012)).

¶ 4 The evidence at a May 2014 bench trial established that, on May 4, 2012, the defendant fired six shots at his neighborhood acquaintance, Trotter, because Trotter refused to give the defendant a car ride. The circuit court found the defendant guilty of aggravated battery with a firearm, aggravated discharge of a firearm, and aggravated unlawful use of a weapon; he was acquitted of the attempt first degree murder charge.

¶ 5 At a June 2014 sentencing hearing, the circuit court heard evidence in aggravation and mitigation. For evidence in aggravation, the State emphasized the atrociousness of the defendant's offense, pointing out that he "knowingly and intentionally" shot at Trotter six times when they were only a few feet away from each other, merely because Trotter refused to give him a car ride. According to the State, it was "by the grace of luck" that only one of the bullets hit Trotter on his right leg. As a result of the shooting, Trotter suffered immense pain and was left with a permanent scar. The State also pointed out that, by shooting at close range on a public street in a residential neighborhood, the defendant's actions "threatened all of the public." Furthermore, at the time of offense, the defendant was on probation for a juvenile robbery conviction. Based upon the seriousness of the defendant's offense, the State requested a 21-year prison term, noting that the specified sentence range for a Class X felony is 6 to 30 years.

¶ 6 The defense raised various mitigating factors, including the defendant's age and academic achievements. At the time of the offense, the defendant was 18 years old. During his senior year of

high school, he took advanced placement courses and graduated 19th in his class. The defendant also completed a work-study program at Walgreen's and volunteered at a food pantry. Based upon his grades and extracurricular activities, he was accepted to numerous colleges. Additionally, the defendant had family support and was living with his parents and two younger siblings at the time of the offense. The defense also pointed out that there was no indication that the public was exposed to any threat by the defendant's actions since the street was empty at the time of the shooting. According to the defense, the incident was an "aberration" from the defendant's otherwise good record. Based upon these facts, the defendant requested the minimum sentence of six years.

¶ 7 The defendant made a brief statement in allocution, apologizing to the victim and the victim's family. He also expressed his wish to reunite with his family and "finish the right path [that he] started" as soon as possible.

¶ 8 The presentence investigation report (PSI) revealed that the defendant was an above average student with no disciplinary issues at school. He played on the volleyball team for four years, and the football and basketball teams for one year. He also served as a mentor for fellow students. The PSI further showed that the defendant had a good relationship with his parents and siblings, who were reportedly "disappointed" in him because of his actions. Additionally, the defendant was not affiliated with a gang and did not have a history of mental health issues. According to the PSI, he experimented with alcohol once and never tried drugs.

¶ 9 At the close of arguments, the circuit court stated that it heard and considered all of the evidence in aggravation and mitigation, including the PSI, and the defendant's statement in allocution. Specifically, the court considered:

"the pre-sentence investigation that was done in this case, various exhibits that you presented with reference to your education; present education, future education and the community service. I've taken into consideration the presentation made by the State, the presentation made by your attorney and your allocution in this case."

While the circuit court noted that the defendant was a "bright young man," it found that his offense was "extreme." Accordingly, the court sentenced the defendant to 12 years' imprisonment with a 3-year MSR term based upon his most serious conviction, aggravated battery with a firearm. His other convictions—aggravated discharge of a firearm and aggravated unlawful use of a weapon—merged into his conviction for aggravated battery with a firearm. The defendant filed a motion to reconsider his sentence which the court denied. This appeal followed.

¶ 10 On appeal, the defendant's sole assignment of error is that his 12-year sentence is excessive because the circuit court failed to properly consider the various mitigating factors, including his age, academic achievements, and family support. Specifically, he argues that, because of his age at the time of the offense, his brain was not fully developed and, thus, he had an "underdeveloped sense of responsibility." In support of this argument, the defendant cites developmental psychobiology studies from the University of Pittsburgh and the University of California Los Angeles. He also contends that his good educational standing and family support indicate his strong rehabilitative potential, and that the court should have placed more weight on these factors. Accordingly, the defendant asks this court to reduce his sentence to the minimum of six years or "something closer to the minimum sentence."

¶ 11 The State counters that the circuit court properly considered all of the relevant evidence, including the defendant's age and his rehabilitative potential. It also contends that the defendant's argument that he had an underdeveloped sense of responsibility lacks merit because, according to

another study from Cornell University, an underdeveloped prefrontal cortex is not the only reason that adolescents engage in immature, high-risk behavior.

¶ 12 We initially observe that reviewing courts give significant deference and weight to circuit courts' sentencing decisions. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). While the circuit court observes a defendant during his trial and other proceedings, a reviewing court considers the relevant mitigating and aggravating factors from a "cold" record. *Id.* at 213. Thus, generally, the circuit court is in a better position to make a sentencing judgment since it has the opportunity to take into account "the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, age and criminal history." *People v. Lang*, 366 Ill. App. 3d 588, 589 (2006). For these reasons, the circuit court has "broad discretionary powers" in imposing a sentence, and its sentencing decisions will not be disturbed on review unless the court abused its discretion. *Alexander*, 239 Ill. 2d at 212. Abuse of discretion exists where a sentence is " 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' [Citation]." *Id.*

¶ 13 The Illinois Constitution mandates that "penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. In other words, courts are required to balance the retributive and rehabilitative purposes of punishments. *People v. Evans*, 373 Ill. App. 3d 948, 967 (2007). A defendant's potential for rehabilitation is not accorded more weight than the severity of his crime. *Alexander*, 239 Ill. 2d at 214. Rather, it is widely acknowledged that the rehabilitative potential is only one factor for the circuit court to take into account in imposing a sentence and this factor should be weighed against any other aggravating factors, "including the seriousness of the crime." *Evans*, 373 Ill. App. 3d at 968; see also *People v. Holman*, 2014 IL App (3d) 120905, ¶ 73;

People v. Knox, 2014 IL App (1st) 120349, ¶ 46. The seriousness of the offense is the most important factor a court should consider when imposing a sentence. *Evans*, 373 Ill. App. 3d at 968; *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55. Unless the defendant affirmatively shows that the circuit court failed to review the relevant mitigating factors, a reviewing court will not substitute its judgment for that of the circuit court only because it "would have weighed [the sentencing] factors differently." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000).

¶ 14 After reviewing the record in this case, we find that the defendant did not affirmatively establish that the circuit court failed to consider the relevant mitigating factors. Rather, it is clear that the court properly considered the mitigating factors, such as the defendant's age and potential for rehabilitation, but it chose to place more weight upon the severity of the defendant's crime. This is evinced by the court's statement, "I find you to be a very bright young man *** if you preserve the track that you were on when you were in school you'll do okay, but the action is extreme, extreme." It was within the court's discretion to weigh the seriousness of the crime more heavily than the other factors. *Evans*, 373 Ill. App. 3d at 968.

¶ 15 Additionally, we find that the defendant's 12-year sentence was not disproportionate to the gravity of his offense. The sentence is well within the statutory range of 6 to 30 years' imprisonment, and, in fact, it falls in the lesser part of the sentence range. 730 ILCS 5/5-4.5-25(a) (West 2012); see *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38 (explaining that, absent an abuse of discretion, a circuit court's sentence within the mandated guidelines is presumed to be proper). The defendant openly fired six shots within a few feet of Trotter—he did not stop firing until he completely emptied the revolver. He did this in front of a house, on a public street in a residential area. Accordingly, we conclude that the defendant's 12-year prison sentence for aggravated battery with a firearm was not excessive.

¶ 16 The defendant next contends that, at the time of the incident, he had an "underdeveloped sense of responsibility" and lacked maturity. In support of this contention, he relies on developmental psychobiology studies. These studies, however, were not presented to the circuit court as mitigation evidence, and, thus, this argument is forfeited. See *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 121 (2004) (" [Issues] not raised in the trial court are deemed waived and may not be raised for the first time on appeal." [Citation].").

¶ 17 Finally, in his reply brief, the defendant argues, for the first time, that he was subjected to an improper double enhancement because the State considered certain factors in imposing a proper sentence and used those same factors again for evidence in aggravation. However, we decline to consider the defendant's argument, raised for the first time in his reply brief, that the State's reliance on the underlying facts of this case as evidence in aggravation amounts to double enhancement. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived and shall not be raised in the reply brief.").

¶ 18 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.