

No. 1-14-2192

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 4681
	)	
TOMMIE TAYLOR,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE REYES delivered the judgment of the court.  
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Nine-year sentence for aggravated driving under the influence of alcohol resulting in the death of a person affirmed where the sentence was within the statutory sentencing range and the trial court properly considered relevant aggravating and mitigating factors.

¶ 2 Following entry of a non-negotiated plea, defendant Tommie Taylor was convicted of aggravated driving under the influence of alcohol with a blood alcohol concentration (BAC) of more than .08 resulting in the death of a person, a Class 2 felony (625 ILCS 5/11-501(a)(1),

(d)(1)(F) (West 2008)) and sentenced to nine years in the Illinois Department of Corrections, and two years mandatory supervised release. On appeal, defendant contends that his sentence is excessive because the trial court abused its discretion by failing to properly consider mitigating factors. For the following reasons, we affirm.

¶ 3 On May 29, 2012, defendant entered a non-negotiated guilty plea to one count of aggravated driving under the influence of alcohol with a BAC of .08 or more resulting in the death of a person. The State's factual basis for the plea demonstrated that on May 11, 2009 defendant was driving 74 miles per hour on the Dan Ryan Expressway with a BAC of .147. While attempting to change lanes, defendant struck Justin Hopkins' vehicle, which was traveling at 76 miles per hour. As a result, Hopkins' vehicle hit a wall, and Hopkins died as a result of injuries sustained in the accident. At the time of the accident, Hopkins' BAC was .036.

¶ 4 The court accepted defendant's plea and referenced his presentence investigation report (PSI). The PSI reflected defendant's education, work history, and criminal background and revealed that defendant had seven prior convictions, including a 2002 drinking alcohol on public way conviction and a 2006 reckless driving conviction. According to the PSI, defendant was conditionally discharged for the 2006 reckless driving conviction and was subsequently arrested for violating the conditional discharge. Further, the PSI provided that defendant's license was suspended at the time of the accident.

¶ 5 In aggravation, the State entered three victim impact statements from the victim's brother and two cousins, as well as an oral statement from the victim's mother. The State argued that defendant exhibited low rehabilitative potential considering his criminal and traffic history, and emphasized defendant's decision to drive intoxicated with a suspended license.

¶ 6 Defendant's girlfriend's mother, Mildred Smith, testified as a mitigation witness. Smith testified that defendant has a good relationship with his children and takes care of his 97-year-old grandmother. Defense counsel requested that the court sentence defendant to the minimum. Counsel stated that defendant expressed remorse for the accident, maintained consistent employment, and argued long-term incarceration would result in excessive hardship for his children and grandmother. Counsel pointed out that the victim was drinking prior to the accident and was not wearing a seatbelt, which factored into the car accident. In allocution, defendant expressed remorse and apologized to the victim's family.

¶ 7 The court sentenced defendant to nine years' imprisonment. In imposing that sentence, the court clarified that it had considered the PSI and applicable statutory factors in mitigation. See 730 ILCS 5/5-5-3.1(a). The court alluded to defendant's BAC and the danger he posed by driving at that "level of impairment." The court further noted defendant's prior criminal history and his "serious prior driving background," and thus considering his history, defendant was likely to drive while intoxicated again. While the court found the PSI listed positive social and employment histories, the court ultimately concluded that defendant did not exhibit rehabilitative potential and the sentence was necessary for deterrence.

¶ 8 Defendant moved the court to reconsider his sentence. Following argument, the trial court denied defendant's motion to reconsider, and defendant appealed.

¶ 9 Due to a deficient Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016) certificate, this court remanded the case to the trial court for (1) filing a proper Rule 604(d) certificate, (2) the opportunity to file a motion to withdraw the guilty plea, or alternatively, reconsider sentence, and (3) a new motion hearing. *People v. Taylor*, No. 1-12-2372 (2013) (dispositional order). On

remand, defense counsel submitted a Rule 604(d) certificate and filed a motion to vacate the plea, or alternatively, to reconsider sentence and request new hearing. Following arguments, the trial court denied defendant's motion, noting that the court conducted a "full-blown sentencing, aggravation and mitigation hearing." Further, the court reiterated that it considered various factors in mitigation, which prompted the court to sentence defendant in the middle of the statutory sentencing range, rather than a sentence closer to the 14-year maximum. This appeal followed.

¶ 10 On appeal, defendant contends that his sentence should be reduced to a term closer to the statutory minimum of three years. Defendant argues that the sentence was excessive in light of his employment history, remorse, insubstantial criminal background, and the victim's role in the accident. He claims the court did not properly consider mitigating factors, including his rehabilitative potential and the excessive hardship his incarceration would have on his two children and his 97-year-old grandmother.

¶ 11 We accord great deference to a trial court's sentence and will not reverse it absent an abuse of discretion. *People v. Butler*, 2013 IL App (1st) 120923, ¶ 30 (citing *People v. Stacey*, 193 Ill. 2d 203, 209-210 (2000)). In determining an appropriate sentence, the trial court considers such factors as "a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment." *People v. Hernandez*, 319 Ill. App. 3d 520, 529 (2001). Absent some affirmative indication to the contrary, other than the sentence itself, we presume the trial court considered all mitigating evidence before it. *People v. Jones*, 2014 IL App (1st) 120927, ¶55. Because the trial court, having observed the proceedings, is in the best position to weigh the relevant sentencing

factors, (*People v. Arze*, 2016 IL App (1st) 131959, ¶121) we do not "substitute [our] judgment for that of the trial court simply because [we] would have balanced the appropriate sentencing factors differently." *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19 (citing *People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010)).

¶ 12 Defendant pleaded guilty to a Class 2 felony of aggravated driving under the influence with a BAC of more than .08 resulting in the death of a person. 625 ILCS 5/11-501(a)(1), (d)(1)(F) (West 2008). Unless the court found that "extraordinary circumstances" warranted probation, the court was required to sentence defendant to "a term of imprisonment of not less than 3 years and not more than 14 years." 625 ILCS 5/11-501(d)(2)(G)(i) (West 2008). A sentence within the statutory range will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense committed. *Alexander*, 239 Ill. 2d at 212.

¶ 13 In this case, defendant was sentenced to nine years' imprisonment, well within the statutory range. See 625 ILCS 5/11-501(d)(2)(G)(i) (West 2008). Although defendant claims the trial court gave "little to no weight" to mitigating factors at sentencing, nothing in the record supports this contention or demonstrates that the sentence is manifestly disproportionate to his offense. Rather, the record reflects that the trial court carefully considered all mitigating factors, including defendant's rehabilitative potential, his statement in allocution, and the mitigation witness's statement regarding defendant's relationship with his children and grandmother. Moreover, the record further reflects that the court repeatedly referenced the PSI and found "some positive things" in defendant's background, despite ultimately concluding that defendant's criminal and traffic histories indicated he would likely reoffend. See *People v. Babiarz*, 271 Ill.

App. 3d 153, 164 (1995) ("Where the sentencing court examines a presentence report, it is presumed that the court considered the defendant's potential for rehabilitation.")

¶ 14 Further, although defendant claims that his prior convictions were insubstantial, it was not improper for the trial court to express concern over defendant's 2006 reckless driving conviction and that defendant continued to drive while his license was suspended. See e.g., 730 ILCS 5/5-5-3.2(a)(3) (West 2008) (listing as an aggravating factor, "The defendant has a history of prior delinquency or criminal activity"); see also *People v. Coleman*, 201 Ill.App.3d 803, 809 (1990) (recognizing that "[r]ehabilitative potential may be evidenced by a defendant's criminal record.") Additionally, we are not persuaded by defendant's contention that his sentence should be reduced because the victim was also speeding and had been drinking, but we note that the trial court was aware of the facts surrounding the crash when it determined defendant's sentence. See *Stacey*, 193 Ill. 2d at 209 ("[T]he trial court's sentencing decision is entitled to great deference."); see also *Jones*, 2014 IL App (1st) 120927, ¶55 (noting this court presumes the trial court considered all mitigating factors on the record). In light of the circumstances, we conclude that the trial court did not abuse its discretion when it sentenced defendant to nine years' imprisonment for aggravated driving under the influence of alcohol resulting in the death of a person.

¶ 15 For the foregoing reasons, we affirm the judgment of the Circuit Court of Cook County.

¶ 16 Affirmed.