2016 IL App (3d) 140880-U

Order filed December 19, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0880 Circuit No. 14-CF-295
RONALD J. RODRIGUEZ,	)	Honorable Edward A. Burmila, Jr., Judge, Presiding.
Defendant-Appellant.	)	

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to a term of 3½ years' imprisonment.

¶ 2 Defendant, Ronald J. Rodriguez, appeals arguing that the trial court abused its discretion when it sentenced defendant to a term of 3½ years' imprisonment. We affirm.

¶ 3 FACTS

¶ 4 A jury found defendant guilty of unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2012)). The conviction is based on defendant's sale of 0.2 grams of heroin to an undercover police officer for $40.

¶ 5 Prior to sentencing, a Treatment Alternatives for Safe Communities (TASC) findings report was filed, which noted that defendant was an acceptable candidate for TASC probation services as an alternative to a sentence of imprisonment.

¶ 6 At the sentencing hearing, the parties argued the aggravating and mitigating factors for the trial court to consider in determining defendant's sentence. The State argued that defendant had an extensive criminal history, with two prior felony convictions (2003 and 2010) for possession of a controlled substance. At the time defendant committed the instant offense, he was on probation for the 2010 felony. In addition, the State noted that defendant had several prior misdemeanor convictions, including: driving while under the influence, theft, and possession of a hypodermic syringe. Based on these facts, the State argued defendant should receive a sentence of imprisonment, rather than probation.

¶ 7 In mitigation, defendant argued that his prior convictions stemmed from his addiction to drugs, and that he should receive treatment in an inpatient program. Defendant contended that he was a proper candidate for TASC probation and should be given an opportunity to rehabilitate himself through probation rather than a term of imprisonment. Alternatively, defendant requested a sentence of probation with jail time, which should be stayed and that defendant be ordered to undergo treatment to address his drug addiction. Defendant also made a statement in allocution during which he told the court he had not had an opportunity to participate in an extensive drug treatment program. Defendant told the court he believed he would benefit from such a program.

¶ 8 Prior to imposing defendant's sentence, the trial court stated that it had the opportunity to review the presentence investigation report that had been filed, the arguments of the parties, and defendant's request for a sentence of TASC probation. The trial court then noted that "[g]iven the fact that the defendant has multiple felony convictions, the nature of this particular conviction, I think that a sentence outside of the Department of Corrections would deprecate the seriousness of the offense[.]" The trial court sentenced defendant to 3½ years' imprisonment.

¶ 9 Subsequently, defendant filed a motion to reconsider his sentence. The trial court denied the motion and noted: "I think it is implicit in the ruling that I made that the defendant is not a good candidate because of his history and that his imprisonment is required because of that." The trial court then stated, "I find that the defendant's imprisonment in this case is necessary to protect the public," and denied defendant's motion.

¶ 10 ANALYSIS

¶ 11 Defendant's sole argument on appeal is that his sentence is excessive. We review a trial court's sentencing decision for an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). The trial court has the opportunity to weigh all aggravating and mitigating factors. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). A court of review may not alter the sentence merely because it would have weighed these factors differently. *Alexander*, 239 Ill. 2d at 212. Therefore, a sentence within the statutory sentencing range constitutes an abuse of discretion only if "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.

¶ 12 The sentence in the instant case (3½ years) is within the relevant statutory range of three to seven years' imprisonment. 730 ILCS 5/5-4.5-35(a) (West 2012). In fact, defendant's sentence is only six months more than the minimum sentence available. Thus, the only question before us

on appeal is whether "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.

¶ 13 Upon review, there is nothing in the record to suggest that defendant's sentence is greatly at variance with the law or manifestly disproportionate. Instead, the record reveals the court, in noting defendant's "multiple felony convictions," expressly rejected defendant's argument that he has a "minimal criminal history." The court also, in fashioning defendant's sentence, expressly referenced the "nature of this particular conviction." Finally, the court clarified, on rehearing, that "defendant is not a good candidate [for TASC probation] because of his history" and held that "defendant's imprisonment in this case is necessary to protect the public." These conclusions are all supported by the fact that defendant had two prior felony drug convictions and was on probation at the time he committed the instant offense. Under these circumstances, we hold that the court did not abuse its discretion when it sentenced defendant to 3½ years of imprisonment.

¶ 14 In coming to this conclusion, we acknowledge defendant's belief that his 3½ year sentence is "manifestly disproportionate" in light of the fact that he only sold $40 worth of heroin. He also calls our attention to his "potential for rehabilitation," the fact that he was deemed a candidate for TASC probation, and finally, his belief that his imprisonment "results in unreasonable strain on valuable taxpayer dollars." The above arguments, however, are little more than a request for this court to reweigh the factors considered by the trial court at sentencing. This we will not do. See *Alexander*, 239 Ill. 2d at 212. Moreover, the fact that the trial court did not expressly reference every applicable aggravating and mitigating factor is irrelevant. The trial court is not required to recite and assign value to each fact presented at a sentencing hearing. *People v. Merritte*, 242 Ill. App. 3d 485, 495 (1993). When mitigating evidence is before the

court, it is presumed the court considered it, absent explicit evidence to the contrary. *People v. Flores*, 404 Ill. App. 3d 155, 159 (2010).

¶ 15 CONCLUSION

¶ 16 The judgment of the trial court of Will County is affirmed.

¶ 17 Affirmed.