2016 IL App (4th) 140733-U

NO. 4-14-0733

FILED
September 1, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
MOHAMMAD MORRAR,	)	No. 11CF356
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not abuse its discretion in sentencing defendant to 26 years' imprisonment for burglary.

¶ 2 In April 2014, a jury found defendant, Mohammad Morrar, guilty of burglary. In May 2014, the trial court sentenced him to 26 years in prison. In August 2014, the court denied defendant's motion to reconsider his sentence.

¶ 3 On appeal, defendant argues his 26-year sentence is excessive. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2011, the State charged defendant by information with one count of burglary (720 ILCS 5/19-1(a) (West 2010)), alleging he knowingly and without authority entered a Chevrolet Trailblazer owned by Sean Dooley with the intent to commit a theft therein. Defendant pleaded not guilty.

¶ 6 In April 2014, defendant's jury trial commenced. Dooley testified that, in January 2011, he lived in an apartment complex with a parking garage underneath the building. At around 6 p.m. on January 15, 2011, Dooley was unloading his Trailblazer after returning home from winter break. After putting some items in his apartment, Dooley returned to his vehicle and observed someone in the driver's seat. He had not given anyone authority to be in the vehicle. Dooley walked over to the driver's door. He saw an older man going through his vehicle's center console, where Dooley kept some paperwork and a global positioning system (GPS). Dooley identified defendant as the older man he saw in his Trailblazer that evening. Dooley observed defendant throwing items about and his GPS was no longer in the console. Dooley asked defendant why he was in his car, and defendant responded, "This is my car." Dooley then yelled at defendant to get out of his car. Defendant "kind of shove[d]" Dooley as defendant exited the vehicle and "kind of brushed up against [Dooley's] face." Dooley believed defendant's actions were to create some space between them. Defendant then started walking away. Dooley followed defendant as he walked out of the parking garage and saw him get into a car. Dooley got the car's license plate information and called 9-1-1. Dooley's Trailblazer was not damaged during the incident. Defendant testified in his own defense and denied ever being in Dooley's vehicle. The jury found defendant guilty.

¶ 7 Defendant's presentence investigation report stated he was 58 years old and refused to be interviewed for the report. Defendant's criminal history included, in part, four burglaries, two residential burglaries, aggravated battery, and two misdemeanor batteries. Defendant's first burglary occurred in 1994. He had been sentenced to prison seven times, with the longest sentence being seven years.

¶ 8 In May 2014, the trial court conducted the sentencing hearing. The State did not

present any evidence in aggravation. Based on his prior convictions, defendant was subject to Class X sentencing (730 ILCS 5/5-4.5-95(b) (West 2010)). The State recommended a 25-year sentence. In mitigation, defendant presented the testimony of his son, Ismail Morrar. Ismail lived in California, along with the rest of defendant's family. Defendant was then incarcerated in Illinois but had received approval to be paroled to California. In California, defendant would live with Ismail or his sisters. The last time defendant had been incarcerated in Illinois, he had been required to stay in Illinois, where he had no one to provide him support. Ismail also testified defendant had been struggling with alcoholism for 20 years. At one point, defendant had voluntarily entered an inpatient treatment program and made strides in his life. Defendant did not speak on his own behalf. Defense counsel asked for the minimum term of six years in prison.

¶ 9 The trial court noted two statutory factors in aggravation were defendant's "extensive criminal history" and deterrence. The court recognized it was not a violent offense but noted it was a "rather brazen" one. It further noted defendant lied during his testimony. The court described defendant as an "unrepentant, brazen thief." The court sentenced him to 26 years in prison.

¶ 10 In June 2014, defendant filed a motion to reconsider his sentence, arguing his sentence was excessive. In August 2014, the court denied the motion. This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Defendant argues his 26-year sentence for burglary was excessive in light of the nature of the offense he committed and the existence of mitigating factors. We disagree.

¶ 13 The Illinois Constitution mandates "[a]ll 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 determining an appropriate sentence, 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, must be equally weighed.' " *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)). However, "the seriousness of an offense is considered the most important factor in determining a sentence." *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 53, 23 N.E.3d 430.

¶ 14 With excessive-sentence claims, this court has explained appellate review of a defendant's sentence as follows:

> "A trial court's sentencing determination must be based on the particular circumstances of each case, including factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Generally, the trial court is in a better position than a court of review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case. [Citation.] Thus, the trial court is the proper forum for the determination of a defendant's sentence, and the trial court's decisions in regard to sentencing are entitled to great deference and weight. [Citation.] Absent an abuse of discretion by the trial court, a sentence may not be altered upon review." (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341 (quoting *People v. Hensley*, 354 Ill.

App. 3d 224, 234, 819 N.E.2d 1274, 1284 (2004) (quoting *People v. Kennedy*, 336 Ill. App. 3d 425, 433, 782 N.E.2d 864, 871 (2002)).

An abuse of discretion will not be found unless the court's sentencing decision is "fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it." *People v. Ramos*, 353 Ill. App. 3d 133, 137, 817 N.E.2d 1110, 1115 (2004). Also, an abuse of discretion will be found "where the sentence is 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000)).

¶ 15 In the case *sub judice*, the jury found defendant guilty of the offense of burglary, a Class 2 felony (720 ILCS 5/19-1(b) (West 2010)). Based on his prior convictions, however, defendant was subject to sentencing as a Class X offender (730 ILCS 5/5-4.5-95(b) (West 2010)). A person convicted of a Class X felony is subject to a sentencing range of 6 to 30 years in prison. 730 ILCS 5/5-4.5-25(a) (West 2010)). As the trial court's 26-year sentence falls within the relevant sentencing range, we will not disturb the sentence absent an abuse of discretion.

¶ 16 In his brief, defendant argues the trial court failed to consider the mitigating evidence that weighed in his favor, including his alcoholism, his strong family ties and rehabilitative potential, and the minimal harm caused by the circumstances of the offense. However, "the existence of mitigating factors does not obligate the trial court to reduce a sentence from the maximum allowable." *People v. Williams*, 317 Ill. App. 3d 945, 955-56, 742 N.E.2d 774, 783 (2000). Moreover, a court is not obligated to place greater weight on mitigating

"factors than on the need to deter others from committing similar crimes." *People v. Malin*, 359 Ill. App. 3d 257, 265, 833 N.E.2d 440, 447 (2005).

¶ 17 We note again that courts have found " '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, must be equally weighed.' " *Hestand*, 362 Ill. App. 3d at 281, 838 N.E.2d at 326 (quoting *Hernandez*, 319 Ill. App. 3d at 529, 745 N.E.2d at 681); see also *People v. Hale*, 2012 IL App (4th) 100949, ¶ 34, 967 N.E.2d 476. Other courts have stated "the seriousness of an offense is considered the most important factor in determining a sentence." *Jackson*, 2014 IL App (1st) 123258, ¶ 53, 23 N.E.3d 430; see also *People v. Evans*, 373 Ill. App. 3d 948, 968, 869 N.E.2d 920, 938 (2007). Even if we were to focus our attention on the seriousness of the crime in this case, the other factors, *i.e.*, defendant's criminal history, his lack of rehabilitative potential, the need to deter others, and the need to protect society, carry much greater weight.

¶ 18 The evidence indicated defendant was subject to Class X sentencing because of his prior criminal history. Defendant's extensive criminal record dates back to 1983 with two driving-while-suspended convictions. In 1998, he was sentenced for driving under the influence of alcohol and battery. In 1994, he was sentenced to prison for five years for two separate burglaries. The presentence report indicates defendant was using an alias of Michael Malley at that time.

¶ 19 Defendant was released from prison in 1996, and in 1997, he committed the offense of retail theft. In 1998, he was convicted of another retail theft and criminal damage to property. In 1999, he was sentenced to seven years in prison for residential burglary. Defendant was also sentenced in 1999 for driving during a suspension/revocation, his third such offense. In

2004, he committed the offense of burglary and was later sentenced to four years in prison. In 2005, judgments on bond forfeiture were entered on the offenses of battery and possession of drug paraphernalia. In 2006, a judgment on bond forfeiture was entered on a disorderly conduct charge.

¶ 20 In 2005, defendant committed the offense of residential burglary and was sentenced to six years in prison in 2006. He was released to criminal immigration in 2008. In 2009, he committed the offense of aggravated battery and was sentenced to three years in prison. In 2011, he was sentenced to six years in prison for the offense of burglary.

¶ 21 While the evidence may have shown defendant's actions in this case were of a nonviolent nature, the totality of defendant's criminal history shows he has little respect for the law. We also note the trial court found defendant lied in his testimony. Further, he refused to cooperate with the probation department in the preparation of his presentence investigation report.

¶ 22 We reiterate the Illinois Constitution mandates penalties be determined "with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. Here, however, defendant's criminal history shows he has accrued two residential-burglary convictions, five burglary convictions, and an aggravated-battery conviction, for a total of eight felony convictions. He also has accrued 11 misdemeanor convictions. Thus, defendant's prior criminal history demonstrates he has little, if any, rehabilitative potential. The trial court relied on defendant's extensive criminal history and the need to deter others in sentencing him to 26 years in prison. The court's decision was not arbitrary, unreasonable, or fanciful or one where no reasonable person would take the court's view. Accordingly, we find no abuse of discretion.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 25 Affirmed.