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Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 140840-U

NO. 4-14-0840

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
DAKOTA W. BUCHER,	)	No. 13CF138
Defendant-Appellant.	)	
	)	Honorable
	)	Charles M. Feeney, III,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court (1) affirmed the 20-year sentence for home invasion, (2) vacated the fines and remanded for a hearing on defendant's ability to pay $20,000 in fines, (3) reduced the sentence for mob action to the nonextended term of 3 years, and (4) reduced the VCVA fines to $100 for each felony conviction.

¶ 2 Following a jury trial, defendant, Dakota W. Bucher, was found guilty of home invasion and mob action and was sentenced to concurrent prison terms of 20 years and 5 years, respectively. On appeal, defendant argues (1) the trial court abused its discretion when it sentenced him to 20 years for home invasion, (2) the court erred when it imposed $20,000 in fines without determining his ability to pay, (3) the 5-year extended-term sentence for mob action should be reduced to the maximum nonextended term of 3 years, and (4) the case should be remanded for the trial court to impose the proper violent crime victims assistance (VCVA) fund fines. The State argues the 20-year sentence was not an abuse of discretion and concedes

the remaining arguments.

¶ 3 I. BACKGROUND

¶ 4 In November 2013, defendant was indicted on three counts of home invasion (720 ILCS 5/19-6(a)(1), (2), (3) (West 2012)) (counts I, II, III), aggravated battery (720 ILCS 5/12-3.05(f)(1) (West 2012)) (count IV), and mob action (720 ILCS 5/25-1(a)(1) (West 2012)) (count V).

¶ 5 Testimony at the May 2014 jury trial revealed the following. On October 20, 2013, Cody Bernius and Kyle Knock went to the Crestview Motel in Washington, Illinois, and robbed Michael Christerson of his wallet, a loaded .357-caliber revolver, and synthetic cannabis. Bernius was wielding a shotgun, and Knock had a .45-caliber handgun. After the robbery, Bernius and Knock went to Knock's apartment. Knock gave the revolver to Bernius, who stashed it and the shotgun under the couch where he slept that night. Knock got up the next morning and went to work. Bernius was asleep on the couch.

¶ 6 Around 10:30 a.m., defendant, Christerson, Michael Parchman, Larry Edwards, and Jacob Edwards (Larry Edwards' son) drove in defendant's vehicle to Knock's apartment building. According to Jacob, defendant stated they were going to Knock's apartment because defendant had been robbed and they "were going to get a gun back." From what defendant said in the car, Jacob understood the synthetic drugs taken the night before actually belonged to defendant.

¶ 7 Defendant, Larry, and Parchman exited the vehicle and walked over to Knock's apartment while Christerson backed into a parking space. Christerson went into the apartment as Parchman came out. Jacob stayed with the vehicle. Christerson exited the apartment with a bag of bullets and put the bag under a truck parked in the lot. Christerson told Jacob to get inside

because Larry was "going to beat this dude up pretty bad." Jacob saw Larry hitting Bernius with a pipe Parchman had brought along. According to Jacob, defendant had a loaded revolver and hit Bernius with it a couple of times. Before defendant exited the apartment through a bedroom window, he unloaded the revolver and put it under some clothes. Jacob never saw Bernius in possession of a weapon.

¶ 8 Mark Drugen, who lived in the apartment directly above Knock's, heard "vigorous" knocking at Knock's door. Three men were in the stairwell near Knock's apartment. Drugen also saw a car back into a parking space near the apartment, and the occupants were looking in the direction of Knock's apartment. Drugen called the police because he thought something suspicious was happening. Shortly thereafter, he heard the door to Knock's apartment open and saw the men in the stairwell motion to the occupants of the vehicle. They ran toward the building. Drugen heard a struggle from the apartment below. He called the police a second time.

¶ 9 According to Bernius, he heard a loud pounding on the apartment door and he opened it. Defendant was standing outside the door. He tackled Bernius and yelled for "Mikey" and Larry to join him. Bernius wrestled with defendant and Larry. He was hit in the stomach, chest, head, and face. Bernius was hit in the head with a hard object, not a fist. He did not know which attacker was hitting him with the object, but he saw Larry with a short, black pipe in his hand. Defendant had a gun, which Bernius knew was a .357-caliber revolver he had sold to defendant. Bernius stopped resisting and was dragged to the couch and told to keep his head down. If he raised his head, he was hit with the pipe. The attackers kept yelling at him, asking him "where the shit was at," meaning the synthetic marijuana he had taken from Christerson. Bernius denied possessing or reaching for the .45-caliber handgun during the encounter. He

stated the shotgun was under a pile of clothes in the bedroom and the handgun was in a travel bag under his clothes.

¶ 10 According to defendant, the plan was to go to Knock's apartment and peacefully retrieve the wallet and $200 Christerson said had been stolen from him the night before. Defendant knew Knock and Bernius. He thought they would talk to him because he was not at the motel the night before. Defendant acknowledged he knew the situation could be dangerous given Bernius's and Knock's actions the night before. Defendant stated he had no violent intentions when he went to the apartment. He claimed he was not armed and there was no pipe in the car.

¶ 11 According to defendant, Christerson drove defendant's car to the apartment building because defendant was not allowed to drive. Defendant, Larry, and Parchman walked toward the apartment. Parchman knocked on the apartment door several times, but no one answered. Defendant tried again and Bernius answered the door. Defendant asked if they could talk. Bernius invited defendant into the apartment. They went into the living room and Bernius sat on the couch. While they were talking, Larry entered the apartment. According to defendant, Bernius got scared and reached into the couch and pulled out the .357-caliber revolver and pointed it at defendant and Larry. As Christerson and Jacob entered the room, Bernius turned toward the door. Larry hit Bernius in the face with his fist. Defendant, Larry, and Bernius struggled. Defendant grabbed the gun from Bernius and immediately emptied the chamber so no one would get shot. Then they conversed about getting back Christerson's wallet and money.

¶ 12 Defendant heard the police arrive and left through the back window. He threw the gun on the floor in the hallway. Defendant denied being armed when he entered the apartment or seeing a pipe at any time during the incident. He claimed any action he took

against Bernius was in self-defense.

¶ 13 The police stopped defendant at the back of the apartment building. He had no weapons on him, denied knowing anything about a gun, and stated "he was not the one that had one." A live .357-caliber round was found in defendant's left front pocket. He claimed the bullet must have fallen into his pocket when he unloaded the revolver inside the apartment.

¶ 14 The police found Bernius inside the apartment with blood on his face, a couple of good-sized knots on his forehead, blood on his shirt, and a cut on his bottom lip on the inside of his mouth. A search of the apartment revealed an unloaded .357-caliber revolver on top of a pile of clothes in the bedroom, a shotgun partially buried under the same clothes, and a black pipe on the kitchen counter. Defendant's fingerprints were found on the revolver. No fingerprints were found on the pipe. The police also found a Baggie containing bullets in the parking lot.

¶ 15 Defendant was found guilty of home invasion with intentional injury and mob action. He was found not guilty of aggravated battery and the other two counts of home invasion.

¶ 16 At the August 2014 sentencing hearing, the State called Washington police detective Steven Smith. He testified he investigated the armed robbery at the Crestview Motel. He interviewed Knock, who admitted his involvement in the armed robbery. Knock claimed the armed robbery had shut down a major "spice" ring in the area. He identified "spice" as an alternative to marijuana. Knock identified defendant, Christerson, and Larry as part of the ring. Knock learned about the drug ring from Natalie Jenkins, the mother of his baby.

¶ 17 Smith interviewed Jenkins, who denied participating in the armed robbery. She had been getting "spice" from defendant. She indicated, after the robbery at the Crestview Motel, defendant, Larry, and defendant's girlfriend searched her apartment because they thought

she had taken part in the armed robbery. According to Jenkins, defendant told her they were "going to go get a gun and they were going to get their spice back."

¶ 18 When the police executed a search warrant at Knock's apartment, they found Christerson's wallet and military identification, as well as empty packs of Gods of Aroma spice in the trash can. Smith was aware a Gods of Aroma spice operation in Iowa had been shut down about a month previously. Smith had no information directly linking the local drug ring to the drug operation in Iowa.

¶ 19 Defendant called Stan DesCarpentrie, who testified he knew defendant from church and socially, and he had employed defendant at Ace Hardware. DesCarpentrie found defendant to be dependable, likeable, and a good worker. DesCarpentrie also led a weekly religious-study group at the jail. He noticed definite changes in defendant, *i.e.*, an awareness of opportunities, an awareness of the bad choices he had made, and the fact he had come into "real touch with who he is and what his goals are." Although defendant had previous troubles with the law, DesCarpentrie felt this time defendant had become goal-oriented and ready to contribute to society.

¶ 20 The presentence investigation report (PSI) revealed defendant's prior delinquency and criminal activity. Defendant was born on November 12, 1992. In August 2007, at age 14, he committed the offense of carrying a concealed weapon. In December 2008, at age 16, he committed the offense of possession of cannabis. In July 2009, at age 16, he was convicted of burglary, for which he was sentenced to probation, violated probation, and was committed to the Department of Juvenile Justice. On June 9, 2011, at age 18, defendant committed the offense of criminal damage to government property. On June 17, 2011, he committed the offense of escape of a felon from a penal institution. On June 24, 2011, he committed the offense of burglary. In

July 2012, at age 19, defendant committed the offense of possession of drug paraphernalia. In October 2012, he committed the offenses of possession of synthetic drugs and drug paraphernalia. In October 2013, at age 20, he committed the two felonies which are the subject of this appeal. Defendant was still under the restrictions of his parole when the instant offenses were committed. He was wearing a tracking device and was on home confinement from 7 p.m. to 7 a.m.

¶ 21 Attached to the PSI was a written statement by defendant, in which he stated, "I believe I need about 8 years at 50% for my rehabilitation in commiting [*sic*] these crimes. I'm tired of disappointing the people around me and I believe 4 years in [the Illinois Department of Corrections (DOC)] should help me. I want to get out and be a better man for my daughter and have a stronger desire to walk with the Lord. I humbly ask you grant this sentence."

¶ 22 Prior to announcing its sentence, the trial court stated it had considered defendant's written statement, the PSI, the recommendations and arguments of counsel, the evidence presented at sentencing, and the financial expense of incarceration. In mitigation, the court found defendant's conduct did not cause serious harm to another. Factors in aggravation included (1) defendant's conduct threatened serious physical harm to another, (2) defendant's history of criminal activity and delinquency, and (3) the need to deter others. The court stated further:

> "The court—I listened very carefully to the evidence[,] not just today[,] but certainly at the trial. One does not go to an armed robber's home to get a wallet back. Just—and, in fact, let me get back to the testimony at trial, was we wanted to get the owner of the wallet—we wanted to get his I.D. back. That's a ridiculous

suggestion, in my opinion. It's beyond belief. Anybody crazy enough to rob somebody else with a gun is crazy enough to use that gun to defend their own home. And this is probably not the right words to call it a gang situation or—but I think mob action probably is—maybe thug action would be a better name for this whole situation in that this was a group of victims that decided they were going to get retaliation for the fact that some other thug or thugs had the temerity to stand up to them and take their drugs and perhaps other things. And so they were not going to be disrespected. They wanted their drugs back. And so, by golly, they approached a very dangerous situation, the home of an armed robber, for the purpose of getting their drugs back.

It is—so that is how I see the case. And that frames the case a little bit for me, to be honest with you. Because that requires stronger action. Society has a right to be free of this. People have a right to know that their communities are safe from this type of conduct, from the poison being spewed around the streets. I'm not going to sentence you for dealing drugs. That's not what you're in front of me for. But it's part of this case in the sense of these are illegal, terrible actions that you and your coconspirators took to retaliate against your illegal actions, against your illegal business.

***

The defendant was subject to corrective action that the State of Illinois[,] through its legal auspices[,] had reached out to the defendant and tried to modify his conduct with the law, that being in this case parole and the terms of that parole to try to modify his behavior. What effect did that have? The defendant was leading a bunch of drug dealers and involved in drug dealing, at least, and in this case was going to retaliate against the armed robber of his drug operation and committing Class X felonies. So the prior corrective action we can easily say was useless. It had zero effect on the defendant.

* * *

And also looking at the criminal history of the defendant, when someone includes his juvenile conviction which was, you know, nearly five years—approximately five years before—or less than five years, actually, before, this is his fifth and sixth felony. And [defense counsel] is correct in saying that, you know, that's a worse record than most people his age. That's a worse record of most people of any age. Five or six felonies is ridiculous. Again, and I hate to beat that word up but, I mean, at what point do we say this is enough, that this lawlessness, this plague upon society needs to end? I mean, how much effort needs to be expended on one person to try to tell them you need to obey the law? And it's one thing to be out speeding or some petty offense, it's—felonies are

> not just a little bit over the line, the line you can't even see in the rearview mirror you're so far over it when you commit a felony. And you found your way to not only commit six felonies but to be convicted of—be convicted of doing six felonies which is, you know, different situation.
>
> Court notes in looking at the various felonies that, for instance, the criminal damage to property and the burglary were five days apart. He was sentenced for the burglaries and the escape from a penal institution and for the criminal damage to government-supported property, and within nine months he committed the paraphernalia charge and the synthetic drugs and—the synthetic drugs and the paraphernalia charges in Tazewell County. Again, demonstration that corrective conduct by the State has had little to no impact on the defendant."

Thereafter, the court sentenced defendant to 20 years in DOC for home invasion and a concurrent extended-term of 5 years in DOC for mob action, followed by 3 years of mandatory supervised release. The court further ordered defendant to pay $15,000 and $5,000 fines, respectively, as well as other "mandatory financial impositions," and it awarded him $1,505 in credit toward the fines for his pretrial incarceration.

¶ 23 In September 2014, defendant filed a motion to reconsider his sentence. In October 2014, the trial court denied the motion to reconsider.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, defendant argues (1) the trial court abused its discretion when it sentenced him to 20 years for home invasion, (2) the court erred when it imposed $20,000 in fines without determining his ability to pay, (3) the 5-year extended-term sentence for mob action should be reduced to the maximum nonextended term of 3 years, and (4) the case should be remanded for the trial court to impose the proper VCVA fines. The State argues the 20-year sentence was not an abuse of discretion and concedes the remaining arguments.

¶ 27 A. The 20-Year Sentence

¶ 28 The sentence for a defendant convicted of home invasion is 6 to 30 years in prison. 720 ILCS 5/19-6(c) (West 2012); 730 ILCS 5/5-4.5-25(a) (2012). The trial court imposed a 20-year prison sentence, which is well within the statutorily permissible range for the offense. "A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54, 723 N.E.2d 207, 210 (1999).

¶ 29 A reviewing court must afford great deference to the trial court's judgment regarding sentencing because the sentencing judge, having observed the defendant and the proceedings, is in a far better position to consider factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits. In contrast, the reviewing court must rely on a "cold" record. *People v. Romero*, 387 Ill. App. 3d 954, 978, 901 N.E.2d 399, 420 (2008). "Thus, '[i]n considering the propriety of a sentence, the reviewing court must proceed with great caution and must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently' [citation], and it may not reduce a defendant's sentence unless the sentence constitutes an abuse of the trial court's discretion [citation]." *Id.* (quoting *Fern*, 189 Ill. 2d at 53, 723 N.E.2d at 209).

¶ 30 First, defendant argues the trial court abused its discretion because it failed to adequately consider his youthful age and rehabilitative potential. The State argues defendant failed to preserve this issue in his written motion to reconsider his sentence and failed to show clear or obvious error in the record. However, during arguments on the motion to reconsider the sentence, defense counsel pointed out defendant was 21 years old and argued he was "not very mature"; he was "developing still emotionally, intellectually"; and he "maybe could not rationalize or think forward enough to realize, again appreciate, [the] severity of his behavior." Counsel further argued, "I think at 21 he has more rehabilitative potential than a person twice his age or significantly older."

¶ 31 In *People v. Reed*, 177 Ill. 2d 389, 393, 686 N.E.2d 584, 586 (1997), the supreme court held section 5-8-1(c) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-8-1(c) (West 1994)) "require[s] sentencing issues be raised in the trial court in order to preserve those issues for appellate review." Section 5-8-1(c) of the Unified Code is now codified under section 5-4.5-50(d) of the Unified Code (730 ILCS 5/5-4.5-50(d) (West 2014)) and states as follows: "A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed with the circuit court clerk within 30 days following the imposition of sentence." The *Reed* court explained the rationale behind the statute as follows:

> "Requiring a written post-sentencing motion will allow the trial court the opportunity to review a defendant's contention of sentencing error and save the delay and expense inherent in appeal if they are meritorious. Such a motion also focuses the attention of the trial court upon a defendant's alleged errors and gives the

appellate court the benefit of the trial court's reasoned judgment on those issues." *Reed*, 177 Ill. 2d at 394, 686 N.E.2d at 586.

¶ 32 Here, the trial court was apprised defendant was alleging the court failed to consider his age and potential for rehabilitation. Therefore, the court was afforded an opportunity to review those contentions of error.

¶ 33 When mitigating factors are presented, the trial court is presumed to have considered them absent an explicit indication in the record to the contrary. *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 43, 2 N.E.3d 333. Further, a trial court need not articulate the process by which it determined the appropriateness of a given sentence or to set forth every reason or the weight it gave each factor considered in determining a defendant's sentence. Nor does the existence of mitigating factors require the trial court to reduce a sentence from the maximum allowed. *Id.* ¶¶ 42-43.

¶ 34 In the case before us, the trial court was fully aware of the nonstatutory mitigating factor of defendant's young age. However, that mitigation was outweighed by the fact the two felony convictions which are the subject of this appeal were defendant's fifth and sixth felonies. As the court stated, "And [defense counsel] is correct in saying that, you know, that's worse than most people his age. That's a worse record of most people of any age. Five or six felonies is ridiculous." The court wondered, "at what point do we say this is enough, that this lawlessness, this plague upon society needs to end [and] how much effort needs to be expended on one person to try to tell them they need to obey the law?" The court noted the criminal damage to property and the burglary were committed only five days apart. Within nine months of being sentenced for escape from a penal institution and criminal damage to government-supported property, defendant was arrested for possession of synthetic drugs and drug paraphernalia. To the court,

this was a "demonstration that corrective conduct by the State has had little to no impact on the defendant."

¶ 35 We find no reason to believe the trial court failed to adequately consider defendant's age when fashioning its sentence.

¶ 36 Next, defendant argues the trial court improperly considered "the unfounded, hearsay allegation that [defendant] was a major drug dealer that was unrelated to this crime." The State argues defendant has forfeited this issue by failing to include it in his motion to reconsider. We have reviewed the motion and the arguments at the hearing on the motion and find defendant did not apprise the trial court of this particular contention of error. See *Reed*, 177 Ill. 2d at 394, 686 N.E.2d at 586. Further, defendant does not urge us to review this issue for plain error. Therefore, we find defendant has forfeited this issue for our review.

¶ 37 Next, defendant argues the trial court erred when it "wrongly concluded" and then improperly relied on the fact defendant took a gun to the apartment. Defendant cites the court's comments at the hearing on the motion to reduce his sentence where the court stated, "So I don't think it's clear that Mr. Bernius—that's a disputed fact that Mr. Bernius pulled the gun." This statement does not indicate the court thought *defendant* brought a gun to the apartment. In fact, nowhere in the record does the court state it believed defendant took a gun to the apartment.

¶ 38 The record does, however, show the court did not believe defendant's version of the facts, *i.e.*, he went to the apartment to peacefully talk Bernius into returning Christerson's wallet and identification after defendant's synthetic cannabis had been stolen from Christerson the night before. Rather, the court believed defendant was not going to let anyone get away with stealing his drugs or messing with his illegal drug business. In retaliation, defendant got together some of his friends, and they converged on Knock's apartment for the purpose of taking back

their drugs and anything else that may have been stolen. The court further felt defendant was the leader of the group, was more culpable, and deserved a harsher sentence than his codefendants. The evidence in this case supports the court's conclusion.

¶ 39 We find no evidence the trial court imposed a greater sentence on defendant because the court believed defendant was armed when he went to the apartment.

¶ 40 Last, defendant argues there was an improper disparity between his 20-year sentence and the 10-year sentence imposed on Larry Edwards, the older accomplice in the home invasion. As the State correctly notes, defendant failed to provide this court with a record of Edwards' plea proceedings. "It is the defendant's burden to produce a record from which a rational comparison of sentences can be made." *People v. Kline*, 92 Ill. 2d 490, 509, 442 N.E.2d 154, 163 (1982). Defendant must demonstrate that he and his codefendant were similarly situated with respect to background, prior criminal history, potential for rehabilitation, or involvement in the particular offense which would justify a consideration of the disparity. *People v. Cooper*, 239 Ill. App. 3d 336, 363, 606 N.E.2d 705, 724 (1992). Where a reviewing court is unaware of the factors which the trial court relied on in sentencing a codefendant, it cannot be determined whether the disparity in sentences is justified. *Id.* However, as stated below, even without a record of the circumstances around Edwards' sentence, the record here sufficiently demonstrates defendant and Edwards were not similarly situated.

¶ 41 In general, an arbitrary and unreasonable disparity between the sentences of codefendants who are similarly situated is impermissible. *People v. Caballero*, 179 Ill. 2d 205, 216, 688 N.E.2d 658, 663 (1997). However, by itself, a disparity in sentences does not establish a violation of fundamental fairness. *Id.* A difference in sentences may be justified by the relative character and history of the codefendants, the degree of culpability, rehabilitative

potential, or a more serious criminal record. *People v. Martinez*, 372 Ill. App. 3d 750, 760, 867 N.E.2d 24, 32 (2007). "A sentence imposed on a codefendant who pleaded guilty as part of a plea agreement does not provide a valid basis of comparison to a sentence entered after a trial. [Citation.] Further, dispositional concessions are properly granted to defendants who plead guilty when the interest of the public in the effective administration of criminal justice would thereby be served. [Citation.]" *Caballero*, 179 Ill. 2d at 217-18, 688 N.E.2d at 664.

¶ 42 At the hearing on the motion to reduce the sentence, defense counsel represented Edwards was "about twice the age" of defendant and was sentenced to 10 years "pursuant to a plea agreement." Counsel alleged Edwards had "a significant record." Counsel argued there was no evidence to suggest defendant knew Edwards was going to strike Bernius in the mouth. He also claimed, even though the black pipe was brought to the scene, it was not used, and there was no evidence of serious injury to Bernius. However, the record in this case refutes these representations. The evidence showed the pipe was used and it was used in the presence of defendant. Jacob Edwards testified Larry Edwards was hitting Bernius with the pipe. Defendant took no action to stop Larry Edwards. Bernius testified he was hit in the stomach, chest, head, and face with a hard object, not a fist. The police testified Bernius had blood on his face, a couple of good-sized knots on his forehead, blood on his shirt, and a cut on his bottom lip on the inside of his mouth. The trial court also found defendant was more culpable because he was the ringleader of the mob that converged on the apartment.

¶ 43 Moreover, defendant and Edwards had vastly different criminal backgrounds. At the hearing on the motion to reduce the sentence, the State noted Edwards pleaded guilty to "a similar offense of home invasion." The State represented Edwards had "a bit of a criminal record that was—at the time of the plea that was noted," which was a felony dating back to the 1990s.

Conversely, defendant's criminal history began at age 14, and by the time he was 20, he had committed his fifth and sixth felonies. The trial court also noted the other defendants had entered into plea agreements and "the analysis on whether to accept or reject a plea agreement is different than the analysis to impose a sentence [because] the court has less influence in that situation, obviously, than the significant influence the court has in rendering a sentence."

¶ 44 We find there is ample evidence to establish defendant and Edwards were not similarly situated. Therefore, defendant cannot demonstrate the sentencing disparity was unjustified.

¶ 45 Defendant also argues we should consider the sentences given to Knock (13 years) and Bernius (15 years), "the instigators of the chain of events that led to the home invasion." We decline to do so. "Arbitrary and unreasonable disparity between the sentences of similarly situated codefendants is impermissible." *Id.* at 216, 688 N.E.2d at 663. That rule applies only to codefendants involved in the same crime. *Fern*, 189 Ill. 2d at 58, 723 N.E.2d at 212. Thus, the "propriety of the sentence imposed in a particular case cannot properly be judged by the sentence imposed in another, unrelated case." *Id.* at 56, 73 N.E.2d at 211.

¶ 46 For the reasons stated, we find the trial court did not abuse its discretion when it sentenced defendant to 20 years in DOC for home invasion.

¶ 47 B. The $20,000 in Fines

¶ 48 Defendant argues the trial court erred when it imposed a total of $20,000 in fines without first determining his ability to pay them. See *People v. Maldonado*, 109 Ill. 2d 319, 324, 487 N.E.2d 610, 612 (1985) ("what is required here is that the record show that the court considered the financial resources and future ability of the offender to pay the fine"). Here, the court reasoned defendant must have made profits operating as a drug dealer prior to the offense,

and defendant owned a car on the day of the offense. The State concedes the record does not establish defendant's future ability to pay the fine. We accept the State's concession, vacate the fines, and remand for a hearing on defendant's ability to pay any fines.

¶ 49 C. The Mob Action Sentence

¶ 50 Defendant argues the trial court erred when it sentenced him to an extended term of 5 years for the Class 4 felony of mob action (730 ILCS 5/5-4.5-45(a) (West 2012)) after imposing a 20-year sentence for the Class X felony of home invasion (730 ILCS 5/5-4.5-25(a) (West 2012)). He maintains the sentence must be reduced to the maximum nonextended term of three years. See *People v. Bell*, 196 Ill. 2d 343, 350, 751 N.E.2d 1143, 1146-47 (2001) (a defendant may be sentenced to an extended-term sentence only on those offenses arising from a single course of conduct that are within the most serious class). The State concedes the issue. Therefore, we reduce the sentence on the mob-action conviction to the statutory maximum nonextended term of three years in DOC (720 ILCS 5/25-1(a)(1), (b) (West 2012); 730 ILCS 5/5-4.5-45(a) (West 2012)).

¶ 51 D. The VCVA Fines

¶ 52 Last defendant argues the trial court erred when it imposed VCVA fines in the amount of $1,500 for the home invasion conviction and $500 for the mob action conviction. Defendant maintains the fine should be reduced to $100 for each conviction because he committed the crimes in October 2013, and at that time, the VCVA assessment was set at $100 for any felony (725 ILCS 240/10(b)(1) (West 2012) (effective July 16, 2012)). The State concedes both VCVA fines should be reduced to $100 each. Therefore, we reduce the fines accordingly.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm the trial court's 20-year sentence on the home invasion conviction, reduce the sentence on the mob action conviction to 3 years, reduce the VCVA fines to $100 for each felony, vacate the $20,000 in fines, and remand with directions to determine defendant's ability to pay any fine.

¶ 55 Affirmed in part; cause remanded with directions.