2016 IL App (4th) 160006-U

NO. 4-16-0006

FILED
November 22, 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.	)	McLean County
ANDREW JOSEPH WILLIAMS,	)	No. 14CF847
Defendant-Appellant.	)	
	)	Honorable
	)	Charles G. Reynard,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not consider improper evidence at defendant's resentencing hearing after his probation was revoked and did not err in sentencing defendant to four years in prison for aggravated domestic battery.

¶ 2 Defendant, Andrew Joseph Williams, appeals from the sentence imposed after a revocation of his probation. He claims (1) the trial court considered improper evidence at the resentencing hearing, and (2) the sentence was excessive. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In July 2014, the State charged defendant with one count of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2012)) (count I) and one count of domestic battery (a subsequent offense felony) (720 ILCS 5/12-3.2(a)(2) (West 2012)) (count II). In September 2014, defendant pleaded guilty to count I in exchange for the State's dismissal of count II. The

trial court sentenced defendant to 30 months' probation pursuant to the plea agreement and a stayed 45-day jail sentence pending compliance with probation.

¶ 5 Within 30 days, defendant filed a motion to withdraw his guilty plea, alleging he did not fully understand the plea or the consequences thereof. The trial court called defendant's motion for a hearing, but because defendant failed to appear personally, the court agreed to continue the hearing to a later date, January 22, 2015. However, before the continued hearing, on January 2, 2015, the State filed its first petition to revoke defendant's probation, alleging defendant violated the terms of his probation by (1) failing to report to the probation officer as directed during the months of October, November, and December 2014; and (2) consuming alcohol. Also, one day before the hearing, on January 21, 2015, the State filed its second petition to revoke, alleging defendant committed two criminal misdemeanor offenses on December 31, 2014.

¶ 6 The hearing was continued on January 22, 2015, and again on March 20, 2015. At the March hearing, defendant informed the trial court he was withdrawing his motion to withdraw his guilty plea. He acknowledged he had entered his plea voluntarily. The court rescheduled the hearing until May 8, 2015. At the next scheduled hearing, on May 8, 2015, defendant admitted the allegations in the second petition to revoke his probation, namely, that he committed the alleged misdemeanor. The court noted on April 6, 2015, defendant had pleaded guilty to the offense of unlawful possession of cannabis in McLean County case No. 15-CM-3. In exchange for defendant's admission, the State dismissed its first petition to revoke probation. The court scheduled the matter for resentencing on July 9, 2015.

¶ 7 On June 4, 2015, the State filed its third petition for revocation of probation, alleging defendant consumed alcohol in violation of the conditions of his probation as evidenced

by a Breathalyzer test administered on June 3, 2015, which registered a blood-alcohol content (BAC) of 0.066. Defendant was arrested for the probation violation.

¶ 8 On July 9, 2015, the trial court conducted the resentencing hearing. Nicole Tennison, defendant's probation officer, testified for the State. She said she had a difficult time meeting with defendant after he was sentenced to probation in September 2014. They met on October 8, 2014, and discussed the conditions of probation, including the requirement that he meet with her on a monthly basis. He failed to report at all and was arrested on December 31, 2014. He was admitted to inpatient treatment in mid-January 2015 and released at the end of February 2015. He met with Tennison the day after his release; however, she said his reporting had been sporadic since February 2015.

¶ 9 Tennison was the only witness who presented testimony at the hearing. Defendant asked for the admission of a letter from Collaborative Solutions indicating he had begun the process of a domestic-violence assessment. The trial court admitted the exhibit into evidence. After the parties rested, the trial court questioned the 180-day jail sentence defendant received at his original sentencing hearing. The court had granted defendant credit for 68 days served and stayed the remaining 40 days. The court hesitated in proceeding with resentencing, indicating it wanted to impose the remaining 40 days in jail and continue the hearing to see if defendant, in fact, carries through with the domestic-violence assessment. The State asked the court to proceed with the revocation of probation and resentencing, while defendant's counsel asked the court to continue the hearing in order to "give [defendant] a distinct opportunity to bring himself into compliance with the court order."

¶ 10 After considering the respective positions of the parties, the trial court noted the imposition of jail time would serve to preserve the "integrity of the original sentencing order,"

which the court described as "an important measure to undertake without regard to any guarantees that the court would make a finding that the defendant is in compliance with his probation. This is not an opportunity to bring the defendant into compliance with his probation." The court indicated the imposition of the outstanding jail sentence would allow the court to take "advantage of *** securing more information about [defendant's] amenability to an alternative[-]to[-]an[-]imprisonment disposition of this case."

¶ 11 The trial court stated: "The court is going to order the 40, the stayed sentence of 44 days to be, to be served. Defendant to report tomorrow at whatever an appropriate time is." Defendant was allowed to be released to attend documented appointments. "Again, the purpose is to provide the court an opportunity to secure more information. But there's the other pragmatic purpose of giving the opportunity, some more choices to be present and accounted for where he's ordered to be or otherwise at which point I'll get the message, [defendant], loud and clear. Let's see if I can get a new date." The court continued the resentencing hearing until September 4, 2015.

¶ 12 On August 14, 2015, the State filed its fourth petition for revocation of probation, alleging defendant used cannabis and alcohol on July 10, 2015, the day he appeared at the jail to serve his stayed sentence. He registered a BAC of 0.161.

¶ 13 On September 4, 2015, the trial court reconvened for resentencing. Defendant had injured his foot at work on August 3, 2015. Due to the injury, he asked for a continuance to allow him more time to participate in counseling, since he had been immobile. The court denied defendant's request.

¶ 14 The State called Tennison to testify. She explained that defendant reported to jail on July 10, 2015, as ordered, but he was under the influence of alcohol and cannabis at the time.

Tennison advised defendant to meet with her upon his release. He did not do so immediately, but waited a few weeks. He contacted Chestnut in order to register for substance-abuse treatment. The provider advised he was required to establish a payment plan to satisfy the cost from the earlier treatment before he could re-enroll. He attended AVERT for domestic-violence counseling.

¶ 15 Defendant testified on his own behalf. He said he was released from jail on August 1, 2015. He went to work as an independent contractor the next day. He broke his heel two days later on the job. He contacted Chestnut to restart substance-abuse counseling. They required him to establish a payment plan to satisfy an old debt before he could begin new services. He said he could not pay them while he was out of work. He said he has been keeping his mental-health counseling appointments at the Center for Human Services. He said he contacted AVERT about enrolling in domestic-violence counseling, but they would not allow him to enroll until he began outpatient treatment. Defendant said he would like to remain on probation or continue the sentencing hearing in order to demonstrate progress on counseling and treatment.

¶ 16 On cross-examination, defendant admitted he had completed residential treatment in February 2015, but he was unsuccessfully discharged for failing to attend the after-care program. He also testified he would be able to work again in approximately two to three weeks.

¶ 17 The parties presented the trial court with argument. The State requested a sentence of four years in prison. Defendant requested to remain on probation, or alternatively, to continue the sentencing hearing to allow the court an opportunity to "gauge the sincerity of [defendant's] expressions today and to gauge his progress in accomplishing the goals that he's

set for himself and that the court has ordered for him." Otherwise, defendant requested the minimum sentence of three years in prison.

¶ 18 The trial court found it "abundantly clear that this is not a minimum sentence imprisonment scenario." The court stated:

> "The court is mindful that the defendant is basically asking for another delay in judgment day. In a roundabout way we might be able to accommodate that, but I think the State's request is reasonable. Continuation of the existing probation is not practical, and imprisonment sentence to the Department of Corrections is entirely appropriate for more than the minimum, and accordingly, the court intends to sentence the defendant to four years' incarceration in the Illinois Department of Corrections. However, I am going to delay the entry of mittimus, the judgment order until another hearing. It won't be a sentencing hearing, though. It's simply going to be an entry of judgment of conviction and the sentence judgment in accordance with what I have found in contemplation of all of the factors in aggravation and factors in mitigation the statute has prescribed along with the non-statutory factors that the evidence disclosed to me today.
>
> I am going to order, though, in the interim before I enter the final judgment, I am going to suggest, and at this point it's not even a court order, I'm going to suggest that the defendant get extra serious, if he's been serious, if he wants me to believe that he's been serious. It obviously hasn't been enough. He's going to have to not have accidents, he's going to have to deal with his financial problems, he's going to have to get himself into the treatment program at Chestnut, he's going to have to get the scheduling with AVERT worked out so it

harmonizes with Chestnut. There's no playing agency versus agency and the scheduling game that allows for more denial of this problem to persist. It's going to get done, if the defendant chooses to do it. You will choose to succeed and you will succeed, and in that way I might be able to gauge your sincerity, but judging your past sincerity is almost immaterial at this point because I've pronounced sentence.

You're going to prison as of the next court date. You won't leave from the same door that you came in on the next court date unless I hear at that time a remarkable transformation that is reflected by you doing everything and then double what's necessary for you to take ownership for once of your problem. If that very unlikely circumstance [occurs] wherein I can honestly find that you're actively engaged of your own free and voluntary will, even though it's motivated maybe by fear of prison, that you're actually in multiple treatment settings including the Center for Human Services, I commend you for doing those things. But if you're actively involved in those things and your attorney is advised in sufficient time to maybe bring letters or witnesses in to [corroborate] your word, because today all I got was your word. *** Ms. Tennison basically agreed with some of the things that you said, and the facts were really mixed today. Mixed enough that I'm not ready to contemplate any more extensions of this sentencing hearing other than for the entry of the final order. But if you come in with evidence the next time and everybody is remarkably engaged with the notion that you've turned the corner somehow, I'll entertain a motion to reconsider entry of

that sentence order and consider some alternative which at this point is pretty hard to comprehend, your record of failing being what it is.

***

I am going to order you to submit to a drug test on a schedule that Ms. Tennison will administer as she sees fit. You're not under probation terms, but I will direct her to test you as she sees fit before the next hearing just for purposes of the ongoing pre-sentence investigation we'll call it. The lapse that you experienced back in July can't be repeated. If it is repeated, I want to be notified immediately because I'll go ahead and enter the order for imprisonment right then based upon that evidence, because that threshold ability to maintain abstinence knowing that you are literally standing on the threshold of the penitentiary, that incapacity will tell us all that it's way too late to do anything more until you get out of the penitentiary. Maybe you can get treatment in the penitentiary. If that's where you want to go for your treatment, make sure to test positive on something."

¶ 19 The trial court set a return date for November 13, 2015. The court further explained:

"The ideal picture that the court would truly like to see, because the court doesn't see much purpose in sending the defendant to prison other than to give the court system and the community a little bit of relief, what the court would truly like to see is that the required payment and enrollment in Chestnut, enrollment in AVERT, continued assistance from the Center for Human Services, absolutely successful abstinence for this relatively short period of time, in those

circumstances I might be able to keep my ears open long enough to hear some alternatives from you. But other than that, it looks like we're pretty close to being done one way or the other."

¶ 20 The State asked the court if it preferred to enter the order or have the order stayed. The court stated it would enter the order at the next hearing, allowing the State to possibly "think of some other creative conditions of imprisonment."

¶ 21 On November 13, 2015, the trial court reconvened a hearing for the purpose of a "final sentencing entry of a final sentence order." The court stated:

"The court previously indicated on the record that the defendant would be sentenced to four years in the department of corrections, but I set today's date for the entry of the sentence order and intended to allow time for the defendant's convalescence from an injury, and to permit him to voluntarily pay for his enrollment [at] Chestnut and to secure concurrent entry into the AVERT program, and to maintain his efforts at the Center for Human Services.

The probation was revoked. Though I did, as a presentence authorization, authorized Ms. Tennison to administer alcohol and drug testing as a part of updating the PSI information prior to the entry of the sentence judgment. I granted the defendant leave to seek a reconsideration of this sentence order, however unusual it is procedurally, based on his compliance with the conditions that I just summarized.

So at this point, is there a proposed sentence order?"

Defendant's counsel presented the court with documentation from the service providers demonstrating defendant had cooperated with the court's directives relating to counseling and treatment. The exhibits were admitted without objection.

¶ 22 The State called Tennison to testify. She scheduled defendant to meet with her every Monday morning between 8 and 8:30 a.m., which he did "[m]ost of the days." He missed September 14, 2015, because he reported he was hospitalized. He also missed September 28, 2015, due to a job opportunity, and October 5, 2015, due to a meeting at Chestnut. He was given Breathalyzer tests at random on the days he attended. As a result, she tested him twice: (1) September 4, 2015, immediately after the court hearing, when he tested positive for cannabis and alcohol; and (2) September 21, 2015, when he tested negative for drugs, but positive for alcohol. Despite these results, Tennison praised defendant, stating he had "done an amazing job, comparatively, to what we were working with before. He was having problems reporting. He's established that he can report and is willing to do so. He's engaged in all of the services that's been asked of him. So he's done a lot better than what he was doing, for sure."

¶ 23 Defendant testified on his own behalf. He said he went to the emergency room on September 14, 2015, for a reaction to a medication he had been taking. He was treated and released. On September 28, 2015, he had to repair a door on a home on an emergency basis, which led to getting another small job from the same individual. On October 5, 2015, defendant met with employees at Chestnut to register for services. He said he has been sober for 41 days and has been participating in his counseling and treatment. His aftercare would begin in December 2015.

¶ 24 After the presentation of evidence, the trial court indicated it was "going to kick this issue down the road" and "take the motion to reconsider under advisement one last time."

The court noted defendant's improvement but warned "perfection was not a stitch less than what [it] was expecting." The court indicated it was not satisfied with defendant's suitability for a sentence other than imprisonment.

¶ 25 On December 29, 2015, the trial court reconvened for the hearing. Tennison again testified she required defendant to meet with her every Monday morning for random drug screens and/or Breathalyzer tests. He had done so every Monday since the last hearing. The results of the tests indicated, of the four drugs screens, three "tested dilute" (indicating the excessive intake of other fluids), and one was negative. He was given two Breathalyzers, both negative. Tennison explained after two dilute samples, she collected two samples an hour apart from each other. On that day, the first sample tested negative, while the second unexplainably tested dilute.

¶ 26 Julie Knight, defendant's ex-girlfriend and the victim in this case, testified their relationship ended after three years in October 2015. During their relationship, defendant drank alcohol on a daily basis. He would visit with his probation officer on Monday, so he would drink Friday and Saturday so "she wouldn't know." Knight said the last time she saw defendant, the Friday after Thanksgiving 2015, he had a beer in his hand. The State introduced as an exhibit copies of text messages between defendant and Knight from September and October 2015. Defendant asked Knight to purchase and bring home beer for him, which she did. Knight testified, immediately after the November 2015 court date, defendant telephoned her, "basically laughing because he didn't go to prison." Knight said she was surprised defendant had not been sentenced to prison and testified as follows:

> "Because it's been—it's been almost two years and [defendant] has not suffered a consequence for his actions for what he's done. And I've been around

[defendant] for these two years for after what he's done, what he done to me, and he's not suffered anything; and he continues to drink and drug and laugh at the system and laugh at the probation officer and laugh at you and laugh at the judge and he will do what he had to do to get by to keep from going to jail and then he goes right back to drinking and continues to laugh, and he's never suffered a consequence for what he done to me."

¶ 27 Defendant presented evidence in the form of letters from his providers, indicating he had been participating in their services. He presented no further evidence.

¶ 28 At the close of the hearing, the trial court considered the evidence and arguments of counsel and stated as follows:

"The court has considered the various statutory factors in aggravation and mitigation and each of them. And the court has over a period of time tried to focus the hinge event that would cause the court to invoke a balance favoring the mitigation findings that are sought by the defendant by reference to his compliance with a recovery program. And in many respects, he has established a record that is fully more accountable to the court's order than in the past. But the court significantly doubts the defendant's actual compliance with the court's orders and believes it is more likely true that the compliance is a function of responding to the various controls that are placed on his life rather than him exercising control over his life.

Diluted screens are considered refusals. If he didn't understand that, I frankly have no evidence that he lacked an understanding of that. It is facially arguable. It's not unreasonable for counsel to argue that there is no proof he was

manipulating, just as it's I suppose logical to say that his life wasn't on a continuous loop video. But the fact of the matter is dilutes were presented to him as a forewarning of that which would be considered a refusal.

The court concludes that he essentially refused on January, excuse me, on November 23rd and on December 7th and on December 14th. If he didn't do so directly, he did it through a manipulative device of one kind or another, whether it's drinking coffee or drinking a glass of water or doing something to occasion that kind of test result which a resourceful alcoholic would be capable of contriving and apparently succeeding.

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So what we have are numerous dilutes and an explanation from an ex-girlfriend who might indeed have an axe to grind, but we also have documentary evidence of conversations in which the defendant is referring to securing a four-pack of beer, which would be an invitation to secure that which would be consumption of which would be a violation of the court's order.

* * *

For all of the reasons that have been suggested, as well as the past considerations of the statutory factors in aggravation and mitigation, the court believes that a sentence of four years in the Department of Corrections is appropriate."

The court entered a sentencing judgment, ordering defendant to serve a term of four years in prison for the Class 2 felony of aggravated domestic battery committed on July 24, 2014.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 Defendant poses the following two arguments on appeal: (1) whether the trial court erred by improperly considering additional evidence at the motion-to-reconsider hearing; and (2) whether the trial court erred by imposing an excessive sentence "without first making the required considerations." We affirm.

¶ 32 Before considering the merits of defendant's arguments on appeal, we entertain the State's position this court lacks subject-matter jurisdiction. The State contends defendant's sentence was imposed on September 4, 2015, with a delay in the entry of the sentencing judgment until December 29, 2015. As such, citing *People v. Allen*, 71 Ill. 2d 378, 381 (1978), the State argues defendant was required to file his appeal within 30 days of the trial court's pronouncement of the sentence on September 4, 2015. According to the State, the court's stay of the entry of the sentencing judgment did not toll the running of the 30-day appeal period. Because defendant did not file a postsentencing motion or an appeal within 30 days after September 4, 2015, the State claims his issues are forfeited and this court is without authority to excuse defendant's default. It is the State's position the appeal must be dismissed, leaving the question of whether to consider the merits of the appeal under the exercise of supervisory authority to our supreme court. See *People v. Lyles*, 217 Ill. 2d 210, 217 (2005).

¶ 33 As explained below, we conclude we have jurisdiction of this appeal. Defendant's notice of appeal was filed within 30 days of the final judgment in this case, and thus, we proceed to consider the merits.

¶ 34 A. Admission of Evidence

¶ 35 As the trial court admitted, these proceedings morphed into a procedural conundrum. The court's actions suggested one path, while its words suggested another. On

September 4, 2015, the court "intend[ed] to sentence the defendant to four years' incarceration," but "delayed the entry of mittimus" until another hearing, "[which] won't be a sentencing hearing though," but a hearing to enter the sentencing judgment. The court, "[i]n a roundabout way," was "able to accommodate" defendant's request "for another delay in judgment day." The court warned defendant he was going to prison after the next hearing unless there was a "remarkable transformation," at which time the court would "entertain a motion to reconsider that sentence order." The court suggested the sentencing judgment would be entered at the next hearing, but encouraged the State to possibly "think of some other creative conditions of imprisonment," suggesting the sentence could be altered.

¶ 36 Our interpretation of the transcript from the September 4, 2015, hearing indicates the trial court conducted defendant's resentencing hearing. At the conclusion of that hearing, the court continued the matter until November 13, 2015, and indicated, on the record, the sentence it would likely impose. The court stated it "*intend[ed]* to sentence the defendant to four years' incarceration," but was "going to delay the entry of mittimus." (Emphasis added.) In our opinion, the court did *not* impose a sentence on September 4, 2015, as it did *not* indicate a final sentencing determination. Instead, the court allowed defendant time to make a "remarkable transformation" before the next hearing. The court proposed, if defendant would "come in with evidence next time" suggesting he had "turned the corner somehow," the court would "entertain a motion to reconsider entry of that sentence order and consider some alternative" to the sentence it had already "pronounced."

¶ 37 It is apparent the trial court intended to warn defendant on September 4, 2015, it had already heard sufficient evidence, had already considered the various applicable sentencing factors, and was comfortable with sentencing defendant to four years in prison. Although the

court intended to allow defendant and the State to present further evidence in mitigation or aggravation at the November 13, 2015, hearing, the court's words resonated to the contrary, but only as a dire warning to defendant to "get extra serious." The court used the following language to issue its warning: (1) "before I enter the final judgment," (2) "because I've pronounced sentence," (3) "[y]ou're going to prison as of the next court date," (4) "motivated maybe by fear of prison," and (5) "I'm not ready to contemplate any more extensions of this sentencing hearing other than for the entry of the final order." The court intended to make clear the critical situation defendant faced. However, if the parties presented sufficient evidence demonstrating defendant's progress, it would "entertain a motion to reconsider *entry* of that sentence order." (Emphasis added.) In other words, the court could decide *against* sentencing defendant to four years, as it had previously indicated it would. The record, at that point, indicated the sentence had not yet been imposed.

¶ 38 Because the trial court had not officially pronounced or imposed a sentence, the court properly considered evidence at the next continued hearing on November 13, 2015. Despite the court's announcement it had "granted the defendant leave to seek a reconsideration of this sentence order," procedurally, this was *not* a hearing on a motion to reconsider. Defendant neither filed a motion to reconsider nor requested in open court the court *reconsider a sentence* previously imposed—probably because a sentence had not yet been imposed. Defendant's counsel asked the court to "reconsider *entry* of that order." (Emphasis added.) There is a distinction between asking the court to reconsider a sentence already imposed and asking the court to reconsider its stated intent to sentence defendant to prison.

¶ 39 Despite the wording and terms used by the parties and the trial court, it appears from the record that all parties basically understood the nature of the proceedings. The court

showed its hand on September 4, 2015, stating it intended to sentence defendant to prison. This statement was not an imposition of a sentence, but rather, a dire warning or an implicit threat to defendant to comply with his services. The court allowed defendant time to demonstrate his compliance before he would actually be sentenced to prison. If defendant was then unable to demonstrate progress or compliance, the court was ready, willing, and able to sentence defendant as indicated.

¶ 40 The purpose of the continued sentencing hearing on November 13, 2015, was to afford the parties the opportunity to present evidence, if any, of defendant's progress. If such evidence would have been presented, the court may have imposed an alternative sentence. Otherwise, the court would sentence defendant as indicated.

¶ 41 At the conclusion of the November 13, 2015, hearing, after considering evidence presented from both sides, the court advised it would again "kick this issue down the road" and "take the motion to reconsider under advisement one last time." In other words, it would again continue the resentencing hearing. A sentence had not yet been imposed.

¶ 42 The trial court issued the following warning: "And I'm just not satisfied that you're a good risk for another sentence other than the imprisonment sentence." However, the court encouraged defendant with the following: "But frankly, I'm looking at you today, you look and sound so much improved. I want to encourage you to keep this up; because if you can demonstrate that you are not a risk for re-offense in the community, I would dearly want to sentence you to something other than prison."

¶ 43 The resentencing hearing was again continued until December 29, 2015. At that hearing, the trial court properly considered further evidence, and not content with defendant's progress, sentenced defendant to four years in prison.

¶ 44 Defendant contends the trial court improperly considered evidence at the "hearings held on the defendant's motion to reconsider." As explained above, we conclude the court did *not* conduct a hearing on a motion to reconsider. Our conclusion is supported by the following: (1) defendant did not *file* a motion to reconsider, (2) any motion to reconsider would have been premature, as a sentence had not yet been imposed, and (3) the court was properly considering evidence in aggravation and mitigation for sentencing purposes. Rather, the court conducted continued resentencing hearings on September 4, 2105, November 13, 2015, and December 29, 2015. The court properly considered evidence at each hearing, and thereafter imposed sentence and entered its final sentencing judgment.

¶ 45 B. Excessive Sentence

¶ 46 Defendant next contends the four-year term of imprisonment was excessive and manifestly disproportionate to the nature of the offense. In particular, he claims the trial court failed to consider any factors in mitigation or explain how a prison sentence was an appropriate sentence under the circumstances of the case. The State asserts defendant has forfeited this claim of error because he failed to file a written motion to reconsider his sentence. See 730 ILCS 5/5-4.5-50(d) (West 2014). We fail to see how defendant could have filed a motion to reconsider his sentence when he assumed he was appealing from the court's denial of his motion to reconsider. Defendant asserted in his previous argument the court had already heard and considered his motion to reconsider his sentence. Given the procedural confusion in this case, we excuse any forfeiture on defendant's part and consider the merits of his sentencing challenge.

¶ 47 The Illinois Constitution provides that "[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 fashioning a sentence, the trial court must

balance the retributive and rehabilitative purposes of punishment and carefully consider all aggravating and mitigating factors, basing the sentence on the particular circumstances of each case. *People v. Daly*, 2014 IL App (4th) 140624, ¶ 26. "Because of the trial court's opportunity to assess a defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age, deference is afforded its sentencing judgment." *Daly*, 2014 IL App (4th) 140624, ¶ 26. We review a trial court's sentencing decision for an abuse of discretion. *Daly*, 2014 IL App (4th) 140624, ¶ 26.

¶ 48 The trial court imposed a sentence of four years in prison on defendant's conviction of the Class 2 felony of aggravated domestic battery (720 ILCS 5/12-3.3(b) (West 2014). The sentencing range for a Class 2 felony is between three and seven years in prison. 730 ILCS 5/4.5-35(a) (West 2014). Defendant's four-year sentence falls in the low range of that scale.

¶ 49 Additionally, the trial court afforded defendant *every* opportunity to avoid a prison sentence by stressing the importance of his cooperation and participation in the various services offered. The court continued the hearing several times with the hope defendant could demonstrate success in counseling and treatment to support mitigation. However, upon defendant's repeated failures, not only with the conditions of his probation, but also with the conditions attached to the court's continuances, the court ultimately found it appropriate to impose a sentence of imprisonment. We find the court's decision in this case was not an abuse of its discretion.

¶ 50 III. CONCLUSION

¶ 51 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.

¶ 52 Affirmed.