

2017 IL App (1st) 143257-U

No. 1-14-3257

Order filed April 25, 2017

Second Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 17606
)	
GREGORY PRATT,)	Honorable
)	Mary Margaret Brosnahan,
Defendant-Appellant.)	Judge, presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Pierce concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm defendant's sentence where the trial court did not abuse its discretion in sentencing defendant and adequately considered all factors in mitigation.
- ¶ 2 Following a jury trial, defendant Gregory Pratt was convicted of aggravated battery with a deadly weapon other than by discharge of a firearm (720 ILCS 5/12-3.05(f)(1) (West 2012)) and received an extended-term sentence of nine years' imprisonment. On appeal, Pratt argues his sentence is excessive given his remorse and rehabilitative potential. We affirm.

¶ 3 Pratt was charged by indictment with one count of attempted first degree murder and four counts of aggravated battery stemming from an incident occurring on August 4, 2013, in Chicago. The State proceeded at trial on the attempted first degree murder charge and two counts of aggravated battery: with a deadly weapon other than by discharge of a firearm and in a public way. We briefly summarize the underlying facts adduced at trial as Pratt does not challenge the sufficiency of the evidence supporting his conviction.

¶ 4 On August 4, 2013, Pierre Winding was with his friend, Justin Martin, at Justin's cousin Terry Martin's apartment for a family party. Pratt was also present. All in attendance were drinking. Winding and Justin began playing a card game against Terry and Pratt, with all four men "laughing" and "cracking jokes." Eventually, Winding and Justin began winning and Pratt became angry. An altercation between Pratt and Winding ensued and Pratt was asked to leave.

¶ 5 As Winding and Justin later left the party, they were approached by Pratt and another fight started. As Winding backed away from Pratt, he tripped on the curb and fell. Pratt jumped on top of Winding and stabbed him in the side and shoulder. Winding later required 13 stitches in his shoulder and 6 or 7 stitches in his side.

¶ 6 Pratt testified and described a different version of events, one in which Winding was the aggressor and Pratt acted in self defense. According to Pratt, when he saw Winding and Justin outside the party, Winding, who had become angry during the card game, approached him with a beer bottle in his hand. In the struggle, Pratt pulled out a knife he used for work and struck Winding in the side and, when Winding would not let him go, Pratt also struck Winding in the arm.

¶ 7 The jury found Pratt guilty of aggravated battery in a public way (720 ILCS 5/12-3.05(c) (West 2012)) and aggravated battery with a deadly weapon other than by discharge of a firearm (720 ILCS 5/12-3.05(f)(1) (West 2012)), but not guilty of attempted murder. The trial court denied Pratt's motion for a new trial. It merged the counts and proceeded to sentencing on the aggravated battery conviction.

¶ 8 In aggravation, the State highlighted the facts presented at trial, arguing that Pratt "progressively got more aggressive to the victim, essentially baiting [the] victim" and "waited and was lying the weeds" for Winding after Pratt was asked to leave the party. Arguing that the jury rejected Pratt's self-defense claim, the State contended Pratt attacked Winding and stabbed him twice in "an intentional act to hurt somebody."

¶ 9 The State highlighted Pratt's prior criminal history, which included a 1997 "assault with intent to do great bodily harm less than murder" conviction from Michigan for which he served 10 years' imprisonment on a sentence range of 10 to 20 years. Just over six months after he was discharged from parole in 2010, defendant was charged with Class 3 unlawful use of a weapon by a felon (UUWF). He was later convicted on the UUWF charge in 2011 and sentenced to two years' imprisonment in the Illinois Department of Corrections. One year after being discharged, Pratt was arrested for the present offense. In noting Pratt's criminal background as "an unbroken chain of criminal activity," the State asked for the maximum extended-term sentence of 10 years' imprisonment.

¶ 10 In mitigation, defense counsel argued that Pratt was not the aggressor during the altercation, and always had the knife on him because he used it for work. Counsel noted Pratt had a good childhood and good relationship with his family. Pratt graduated from high school

and was employed in construction at the time of his arrest. Counsel characterized the altercation as “unfortunate” and a result of “alcohol [being] involved on both sides.”

¶ 11 Counsel noted Pratt regretted what had happened and that it was an isolated incident without the possibility of recurrence. He told the court Pratt hoped to pursue work in construction and might possibly move out of state to be with his daughter. Arguing Pratt wanted to “just be a productive member of society,” counsel asked the court for leniency.

¶ 12 In allocution, Pratt told the court that he regretted what had happened and “wish[ed] he could take it back.” Pratt noted he was sorry but concluded, “I’m defending myself. But I know my background make it seem not.”

¶ 13 The trial court imposed an extended-term sentence of nine years’ imprisonment based on the serious nature of the offense and Pratt’s background. The court stated it reviewed its extensive notes of the trial and the presentence investigation report (PSI).

¶ 14 The court then discussed all the factors in mitigation. With respect to the second factor—whether defendant contemplated that his conduct would cause or threaten serious physical harm—the court noted Pratt was present at a house party with alcohol when tempers flared, which “is always a recipe for disaster.” It found, “bringing a knife to a situation that already has serious implications, one would think that [Pratt] would have considered the possibility that that decision in and of itself was not a good one.”

¶ 15 The trial court considered the seventh factor—Pratt’s prior criminal history—to be significant. It noted that, in 1997, Pratt was sentenced to 10 to 20 years in custody and served almost 10 full years. Pratt was discharged from parole and “about six and a half months later, there is a new case which is unlawful use of a weapon by a felon, a Class 3 felony.” The court

did not consider “remaining arrest free for six and a half months” a factor in mitigation especially because the new case involved a weapon.

¶ 16 With respect to whether Pratt’s criminal conduct was the result of circumstances unlikely to recur, the court found it “can’t say it’s unlikely to recur. The record indicates it would occur.” The court stated “[s]o [Pratt] got out on the Michigan case. Six and a half months went by. [Pratt] picked up [UUWF], did two years, got off parole, and almost a full year to the day, August 4th to August 29th, [Pratt] picked up the aggravated battery.”

¶ 17 With respect to the ninth factor, whether the character and attitude of the Pratt indicated he would be unlikely to commit another crime, the court found Pratt to be “sincere to the court that he truly regrets this ever occurred.” However, it did not think Pratt “has the tools or the wherewithal to control his behavior and conform his behavior to his desire not to be in this situation again.”

¶ 18 The court stated it had already addressed other factors in aggravation in the context of mitigation and the remaining factors did not apply. After weighing the factors in aggravation and mitigation, the court determined an extended-term sentence of nine years’ imprisonment was appropriate.

¶ 19 Pratt filed a written motion to reconsider sentence, which the trial court denied. Pratt filed a timely notice of appeal.

¶ 20 On appeal, Pratt argues the trial court abused its discretion in sentencing him where it failed to consider his remorse and rehabilitation potential. Pratt asks this court to “reduce his sentence to a term closer to the minimum.”

¶ 21 The trial court has broad discretion in imposing an appropriate sentence, and where that sentence falls within the range provided by statute, as it does here, it will not be altered absent an abuse of discretion. *People v. Gutierrez*, 402 Ill. App. 3d 866, 900 (2010). An abuse of discretion occurs 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. Stacey*, 193 Ill. 2d 203, 210 (citing *People v. Fern*, 189 Ill. 2d 48, 54 (1999)). Because of its personal observation of defendant and the proceedings, the trial court is in a superior position to determine an appropriate sentence. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). When reviewing the propriety of a sentence, “we cannot substitute our judgment for that of the trial court simply because we would weigh the sentencing factors differently.” *People v. Cole*, 2016 IL App (1st) 141664, ¶ 55.

¶ 22 We find the trial court did not abuse its discretion in imposing an extended-term sentence of nine years’ imprisonment. Aggravated battery with a deadly weapon other than by discharge of a firearm is a Class 3 felony punishable by 2 to 5 years’ imprisonment. 720 ILCS 5/12-3.05(h) (West 2012); 730 ILCS 5/5-4.5-40(a) (West 2012). However, the court may, as it did here, impose an extended-term sentence punishable by a prison term between 5 and 10 years. 730 ILCS 5/5-5-3.2(b)(1) (West 2012); 730 ILCS 5/5-8-2(a) (West 2012); 730 ILCS 5/5-4.5-40(a) (West 2012). Pratt had a 2010 conviction for Class 3 felony UUWF, which is within 10 years of his present Class 3 conviction, making him eligible to receive an extended-term sentence. See 730 ILCS 5/5-5-3.2(b)(1) (West 2012). Pratt’s extended-term sentence of nine years’ imprisonment for a Class 3 conviction is within the range provided by statute and we therefore presume it is proper. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 12; see 730 ILCS 5/5-4.5-40(a) (West 2012).

¶ 23 Pratt argues his extended-term prison sentence is excessive in light of the nature of the offense as Winding “was stitched up and sent home from the hospital that same night.” A sentence must reflect both the seriousness of the offense and the objective of restoring the offender to useful citizenship. *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. The seriousness of the offense, and not mitigating evidence, is the most important sentencing factor. *People v. Decatur*, 2015 IL App (1st) 130231, ¶ 12. Here, the evidence established that, following an argument, Pratt stabbed the unarmed Winding twice with a knife, requiring 13 stitches in his shoulder and 6 or 7 stitches in his side. Pratt’s conduct was clearly serious. See *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010) (“[t]he seriousness of the offense or the need to protect the public may outweigh mitigating factors and the goal of rehabilitation”). We find Pratt’s sentence was not manifestly disproportionate to the seriousness of the offense.

¶ 24 Pratt argues an extended-term sentence is inappropriate because of the evidence showing his substantial rehabilitative potential. He notes that his educational background, close ties with and financial support of his family, and desire to own his own construction company show that he has a strong rehabilitation potential. He contends that the trial court gave these factors little to no weight “by sentencing him to an extended-term sentence.” This argument is unconvincing. The trial court adequately considered these factors as they were reflected in the PSI and defense counsel argued them in mitigation. See *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. (the defendant “must make an affirmative showing the sentencing court did not consider the relevant factors”). It is presumed that, when mitigating evidence is presented to the trial court, the court considered it absent some indication to the contrary, other than the sentence itself. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19. Pratt can only point to the imposition of an extended-

term sentence as the basis for his belief the trial court did not consider his rehabilitative potential, which is insufficient to meet his burden to show that the trial court did not consider his mitigating evidence.

¶ 25 Pratt argues his criminal history is “not that substantial” because, despite being 47 years old, he only has three convictions, including the present offense. We disagree. As the trial court noted, after Pratt served 10 years in prison in Michigan, he was arrested for UUWF only six and a half months following the expiration of his parole. Then, only a year after he was released from prison on the UUWF conviction, Pratt was arrested in August 2013 for the present offense. The court properly considered the short timing between each of Pratt’s offenses when evaluating his criminal history. Further, as Pratt was previously sentenced to two years’ imprisonment for the Class 3 UUWF conviction, he was “not deterred by previous, more lenient sentences.” *Wilson*, 2016 IL App (1st) 141063, ¶ 13.

¶ 26 We further reject Pratt’s argument that “he is unlikely to ever again lose his temper to such an extent,” as the court affirmatively considered this factor and concluded it did not think Pratt “has the tools or the wherewithal to control his behavior and conform his behavior to his desire not to be in this situation again.” Moreover, given the timing of Pratt’s criminal history, the trial court could reasonably determine that Pratt’s character and attitudes do not show he is unlikely to commit another crime. See 730 ILCS 5/5-5-3.1(a)(9) (West 2012). By the same token, we reject Pratt's contention that the court gave "short shrift" to his "sincere remorse" regarding the incident. In fact, the record demonstrates the court's acknowledgement of Pratt's remorse and we will not accept the invitation to second-guess the weight the court afforded this factor. *Alexander*, 239 Ill. 2d at 212-13.

¶ 27 Pratt next argues the prosecution “grossly exaggerated the evidence when pushing for a lengthy prison sentence.” He points out the State argued Pratt was “lying in the weeds” and “arming himself with a knife.” However, there is no indication the court adopted the State’s characterization of the evidence in imposing sentence. Moreover, the sentencing judge presided over the trial and heard the facts of the case. Accordingly, Pratt has not shown the trial court based its sentence on improper considerations. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 49 (“[i]t is the defendant’s burden to affirmatively establish that the sentence was based on improper considerations”).

¶ 28 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.