2017 IL App (1st) 143581-U
Order filed: June 16, 2017

SIXTH DIVISION

No. 1-14-3581

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 1985
	)	
LARRY WALLACE,	)	Honorable
	)	Kevin Michael Sheehan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction and sentence for possession of a controlled substance with intent to deliver over his contention that his eight-year sentence was excessive because it was disproportionate to the nature of the offense and the trial court failed to consider his rehabilitative potential.

¶ 2 Following a bench trial, defendant Larry Wallace was convicted of possession of a controlled substance with intent to deliver in violation of 720 ILCS 570/401(c)(10) (West 2012), and sentenced as a Class X offender to eight years' imprisonment. On appeal, defendant contends that his sentence is excessive and that the trial court failed to consider his rehabilitative potential. We affirm.

¶ 3 Defendant was charged by information with one count of possession of 10 grams or more, but less than 30 grams of phencyclidine (PCP) with the intent to deliver on January 1, 2014.

¶ 4 The evidence presented at defendant's bench trial established the following. On January 1, 2014, Chicago police officer Pratscher, and his partners, Officers Theodore and Rosen, were part of a tactical team investigating the sale of narcotics. At about 1:50 p.m., Officer Pratscher was dispatched to 1336 S. Springfield Avenue (Springfield Avenue address). At that location, defendant was with a person who was whistling and saying "we've got that L." Officer Pratscher understood "L" to be street slang for cannabis or PCP. An unknown male approached and conversed with defendant and gave defendant money; defendant disappeared into a gangway. When defendant reappeared, he gave an item to the man. Officer Pratscher radioed his partners that he had lost sight of defendant when defendant entered the gangway. Officer Theodore set up surveillance in the rear of the Springfield Avenue address.

¶ 5 Subsequently, Office Pratscher observed a second and then a third unknown male approach defendant. During the transactions, the men would engage defendant in conversation and money was exchanged, defendant would disappear into the gangway and, when defendant would reappear, he would give each man an item. After the third transaction, a fourth man approached defendant. Officer Pratscher radioed his partners requesting that they detain defendant when defendant walked back down the gangway.

¶ 6 Chicago police officer Theodore testified that he went to the rear of the Springfield Avenue address after receiving a radio call from Officer Pratscher. He twice saw defendant walk toward a blue garbage can, retrieve a small item from it, and then return to the front of the Springfield Avenue address through a gangway. After receiving a radio transmission, the next

time defendant walked down the gangway, Officer Theodore detained him. Officer Rosen then arrived at the scene.

¶ 7 Chicago police officer Rosen testified that he and Officer Theodore found a plastic bag inside the blue garbage can which contained 19 small tin-foil packets which smelled like PCP. Officer Rosen inventoried the 19 tin-foil packets which were sent to the Illinois State Police Crime Laboratory (lab) for analysis. The officers also searched defendant and recovered $58.

¶ 8 The parties stipulated that, if called to testify, a forensic chemist with the lab would testify that the items inventoried by Officer Rosen tested positive for 10.9 grams of PCP.

¶ 9 Based on this evidence, the court found defendant guilty of possession with intent to deliver. The court ordered a presentence investigation report (PSI). After denying defendant's motion for a new trial, the court held a sentencing hearing.

¶ 10 The State argued in aggravation that defendant had two prior felonies: a 2008 Class X armed robbery with a firearm for which he served eight years' imprisonment; and a 2007 Class 2 robbery for which he served 18 months' imprisonment. The State recommended "IDOC time."

¶ 11 Defense counsel argued in mitigation that defendant, prior to his arrest, had been working as a laborer assembling mattresses, and that defendant was a father and had an ongoing relationship with the mother of his children. In asking for the minimum sentence, defense counsel referenced the PSI report and pointed out that defendant acknowledged having a drug problem; had gone through "detox" while in custody and was now "clean;" and would like "to obtain the tools to continue that once he [was] released." Defendant declined his right of allocution.

¶ 12 The court sentenced defendant to eight years' imprisonment. In doing so, the court noted that, based on his criminal background, defendant was subject to mandatory Class X sentencing

of 6 to 30 years' imprisonment. Further, the court stated that it had considered: the evidence presented at trial; defendant's PSI report; the statutory factors in aggravation and mitigation; and the sentencing recommendations and presentations of the State and defense counsel. The court also stated that no "negative inference" was placed on defendant for declining to speak in allocution. Defendant's motion to reconsider sentence was subsequently denied.

¶ 13 On appeal, defendant contends that his sentence is excessive because it is disproportionate to the nature of the offense and that the trial court failed to consider his rehabilitative potential.

¶ 14 We review the trial court's sentencing decision for an abuse of discretion. *People v. Snyder*, 2011 IL 111382, ¶ 36. Under this standard, we may alter the sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id*. The court's broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). In imposing a sentence, the trial court is responsible for balancing the relevant sentencing factors, including the nature of the offense and the defendant's rehabilitative potential. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55. In imposing sentence, the court does not need to expressly outline its reasoning, and we presume, absent an affirmative indication to the contrary other than the sentence itself, that the court considered all mitigating factors before it. *People v. Abrams*, 2015 IL App (1st) 133746, ¶¶ 32-33.

¶ 15 In this case, due his criminal history, defendant was subject to a mandatory Class X sentence of 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2012); 730 ILCS 5/5-4.5-95(b) (West 2012). Defendant does not dispute that his eight-year sentence is within that applicable statutory sentencing range and is, therefore, presumed proper. See *People v. Knox*,

2014 IL App (1st) 120349, ¶ 46. Rather, defendant argues that his sentence is excessive where the evidence showed that he possessed only a "small quantity" of PCP, but did not reflect the "specific quantity," or "specific controlled substance" which was actually delivered. Further, defendant was not armed, no children were present during the commission of his offense, and he was not a gang member. Defendant also maintains that the trial court did not consider his rehabilitative potential based on his asserted objective to address his addiction issues.

¶ 16 Contrary to defendant's argument, the record shows that the trial court considered the nature of the offense in imposing sentence, as well as defendant's rehabilitative potential. In sentencing defendant to two years above the statutorily required minimum, the court stated it considered: the evidence presented at trial; defendant's PSI report; and the factors in aggravation and mitigation.

¶ 17 In mitigation, the court was informed by defense counsel of defendant's struggles with substance abuse, his efforts to stay "clean," and that he wished "to obtain the tools to continue that once he [was] released." However, the court noted that defendant was a two-time convicted felon who had served two prison terms. See *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009) (criminal history alone may warrant a sentence substantially over the minimum).

¶ 18 Defendant is, essentially, asking us to reweigh the sentencing factors and substitute our judgment for that of the trial court. Even if we were to weigh these factors differently, we cannot say that the trial court abused its discretion in sentencing defendant to eight years' imprisonment, a term two years above the statutorily required minimum. See *Alexander*, 239 Ill. 2d at 212-14.

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.