SIXTH DIVISION
February 10, 2017

No. 1-15-0104

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 9112
	)	
RONNIE TERRELL,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: We affirmed defendant's 10-year sentence for delivery of a controlled substance finding that no abuse of discretion was committed by the trial court. Pursuant to the agreement of the parties, we vacated various fines and fees imposed on defendant.

¶ 2 A jury convicted defendant, Ronnie Terrell, of delivery of a controlled substance and the trial court sentenced him to 10 years' imprisonment and imposed $1,839 in fines and fees. On appeal, defendant contends: (1) the trial court abused its discretion in sentencing him to 10 years' imprisonment; and (2) several of his fines and fees should be vacated because they are inapplicable to the crime of which he was convicted. We affirm defendant's 10-year sentence and vacate the complained-of fines and fees.

¶ 3 At trial, Officer James Grubisic testified that, on May 2, 2014, he was working as part of a team performing a controlled drug buy. A controlled drug buy involves a group of police officers who each have a particular role: the undercover officer actually completes the buy; the surveillance officer "watch[es] the back" of the undercover officer; and at least two enforcement officers arrest the suspect once the purchase is completed.

¶ 4 Officer Grubisic was working as an undercover officer in the controlled drug buy and was dressed in plain clothes and driving a "covert vehicle;" a minivan. At about 6:30 p.m., Officer Grubisic drove to 111th Street and Michigan Avenue, where he saw defendant sitting on a bicycle on the south side of 111th Street. Officer Grubisic yelled for defendant to come over to him. Defendant rode his bicycle over and asked the officer what he wanted. Officer Grubisic told defendant he was looking for some "D," which is a street term for heroin.

¶ 5 Defendant told the officer that he could obtain heroin for a fee. Defendant then placed his bicycle in the minivan, entered into the front passenger seat, and directed the officer to drive to 107th Street and Indiana Avenue. Officer Grubisic drove to 10751 South Indiana Avenue and gave defendant $20 in prerecorded funds. Defendant walked north, and then west into a gangway out of the officer's view. Defendant returned later and said he needed more time.

¶ 6 Defendant again walked into the gangway, out of the officer's view. A few minutes later, defendant returned and handed Officer Grubisic a clear, Ziplock bag containing suspect heroin. Officer Grubisic gave defendant another $10 in prerecorded funds, and then defendant retrieved his bicycle and began walking north on Indiana Avenue.

¶ 7 Officer Grubisic drove away, radioed that a narcotics transaction had occurred, gave a description of defendant and, about 15 or 20 minutes later, received a radio communication that defendant had been detained in an alley on 107th Street and Prairie Avenue. Officer Grubisic

proceeded with one of the surveillance officers to the alley and saw defendant standing by a vehicle. Officer Grubisic identified defendant and subsequently inventoried the suspect heroin.

¶ 8 Officer Emerico Gonzalez testified he was one of the surveillance officers involved in the controlled drug buy. Officer Gonzalez drove a covert vehicle, a black SUV, to 111th Street and Michigan Avenue and parked about 100 feet away from Officer Grubisic. Officer Gonzalez saw defendant on a bicycle, approaching Officer Grubisic's minivan and having a conversation with the officer through the driver side window of the minivan. Defendant then moved to the passenger side window and talked further with Officer Grubisic. Defendant subsequently placed his bicycle inside the minivan and entered the front passenger seat. The minivan then drove away.

¶ 9 Officer Gonzalez followed the minivan and observed that it had stopped at 10751 South Indiana Avenue. Officer Gonzalez parked about 100 feet away at 10804 South Indiana Avenue. Officer Gonzalez saw defendant exit the minivan, walk north on Indiana Avenue, and then west into a gangway out of view. Defendant then returned to the minivan and entered the front passenger seat. A short time later, defendant exited and, again, walked into the gangway. Defendant, later, returned to the minivan and reentered the front passenger seat. Shortly thereafter, defendant exited the minivan again, retrieved his bicycle, and walked his bicycle toward the gangway.

¶ 10 After defendant left, the minivan drove away, and Officer Grubisic radioed that a narcotics transaction had occurred. Officer Gonzalez remained at his location for another 20 minutes, until he heard over the radio that the enforcement officers had attempted to stop defendant at the 107th block of South Prairie Avenue. Officer Gonzalez drove to that location and observed defendant climbing over a fence at 10715 South Prairie Avenue, in an attempt to

flee from Officer Iglesias. Officer Gonzalez then exited his vehicle, grabbed defendant, and "did an emergency take down."

¶ 11 Officer Carlos Iglesias testified that he was an enforcement officer in the controlled drug buy working with his partner, Officer Corona, in the area of 107th Street and Indiana Avenue. Officer Iglesias received a radio communication of a positive narcotics transaction, and proceeded to the area of the transaction at 10738 South Indiana Avenue. Officer Iglesias observed defendant, on a bicycle, about to exit a yard. The officers told defendant to stop, at which point defendant turned his bicycle around and fled eastbound. Defendant, eventually, turned north on Indiana Avenue.

¶ 12 Officer Iglesias chased defendant on foot, following him north on Indiana Avenue and east to an ally on 107th Street. Defendant then proceeded south on Prairie Avenue, where Officer Iglesias lost sight of him. Officer Iglesias then observed that the gate was open in a yard at a residence on 10715 Prairie Avenue and that defendant's bicycle was in the gangway. Officer Iglesias entered the yard and saw defendant attempting to hop over a rear fence. Officer Iglesias yelled for defendant to get down, but defendant went over the fence. Officer Iglesias lost sight of defendant but, later, heard from Officer Gonzalez that he had been detained. Defendant was subsequently identified by Officer Grubisic as the person who had sold him the narcotics.

¶ 13 Officer Iglesias and Officer Corona drove defendant to the police station in their unmarked vehicle. Along the way, while still in the vehicle, defendant stated: "I ran because I sold dope to an undercover."

¶ 14 Neemah Powell, an Illinois State Police forensic scientist, testified that the bag of suspect heroin which defendant had sold to Officer Grubisic weighed 0.272 grams and tested positive for heroin.

¶ 15 The State rested and defendant chose not to testify. The jury returned a verdict finding defendant guilty of delivery of a controlled substance.

¶ 16 During the sentencing hearing, the trial court examined the presentence investigation report (PSI), which indicated that defendant had eight prior felony convictions, including a Class 2 burglary, and a Class 1 manufacture/delivery of 1 to 15 grams of cocaine, which were the qualifying convictions requiring a mandatory Class X sentence in the instant case. See 730 ILCS 5/5-4.5-95(b) (West 2012) ("When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now *** classified in Illinois as a Class 2 or greater Class felony and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender."). The trial court was, thus, required to sentence defendant to between 6 and 30 years in prison. 730 ILCS 5/5-4.5-25(a) (West 2012).

¶ 17 During aggravation, the State argued:

> "Your Honor, as to the defendant's background, it's quite lengthy. He has been in and out of the system for quite some time. Based on his background, he is Class X by background. He has a Class 1 in '98, manufacture and delivery is listed on the presentence investigation, as well as a burglary in 1995, as well as an older burglary in 1988. Those charges would make him Class X by background because this is a Class 2 offense, so we would ask for a sentencing within that 6 to 30 range."

¶ 18 In mitigation, defense counsel argued:

> "Judge, I know that the court has had the opportunity to take a look at the presentence investigation report *** and I know paid attention when hearing the facts that came out at trial. Judge, this is a non-violent crime. While [defendant] does have things in his background that places him in the category of having to be sentenced as a Class X offender, we believe that an appropriate sentence, based on what the court heard, based on what the court has read from the investigation report, that the minimum six years Illinois Department of Corrections would be appropriate, and we're asking for that."

¶ 19 The trial court stated:

> "I looked at the factors in statutory aggravation, the statutory mitigation, the non-statutory mitigation factors, and the [PSI], reviewed the evidence of the trial. And it's my finding that a fair sentence would be 10 years in the Illinois Department of Corrections, 3 years mandatory supervised release."

¶ 20 Defendant appeals his 10-year sentence, contending it was excessive where the delivery of the controlled substance was induced by undercover officers, involved a small amount of heroin, and did not involve any violence or threat of violence.

¶ 21 "A trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference. That is because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age than the reviewing court, which must rely on the cold record on appeal. Where the sentence chosen by the trial court is within the statutory range permissible for the pertinent criminal offense for

which the defendant has been tried and charged, a reviewing court may only disturb the sentence if the trial court abused its discretion in the sentence it imposed. An abuse of discretion will only be found where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. Where mitigating evidence is presented to the trial court, it is presumed, absent some indication other than the sentence itself to the contrary, that the court considered it. When determining the propriety of a particular sentence, we cannot substitute our judgment for that of the trial court simply because we would weigh the sentencing factors differently." (Internal citations and quotation marks omitted). *People v. Cole*, 2016 IL App (1st) 141664, ¶ 55.

¶ 22 Defendant here was subject to a Class X sentence of between 6 and 30 years' imprisonment because his conviction of delivery of a controlled substance was a Class 2 felony and he had an extensive criminal history including four convictions for Class 2 or higher offenses. See 730 ILCS 5/5-4.5-95(b) (West 2012); 730 ILCS 5/5-4.5-25(a) (West 2012). At the sentencing hearing, the State argued in aggravation that given defendant's extensive criminal history, he should be sentenced somewhere within the Class X sentencing range; the State did not make a recommendation for a specific term of imprisonment. Defendant argued in mitigation that the drug offense here was non-violent, and asked for the minimum six-year sentence. The trial court then stated for the record that it had considered all aggravating and mitigating factors and the PSI and had determined that a 10-year sentence was fair. Defendant's 10-year sentence for delivery of a controlled substance is presumed proper, as it was within the Class X sentencing range of 6 to 30 years' imprisonment. *People v. Ramos*, 353 Ill. App. 3d 133, 137 (2004). Further, we do not find the sentence greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. Defendant had a

lengthy criminal history, including eight previous felony convictions spanning over two decades, and a "defendant's criminal history alone" may "warrant sentences substantially above the minimum." *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009). Yet the trial court here sentenced defendant to only four years above the minimum sentence and 20 years below the maximum sentence. We find no abuse of discretion where the record indicates that the trial court heard and considered the relevant aggravating and mitigating factors and the PSI and entered a sentence on the low-end of the applicable sentencing range.

¶ 23 Defendant argues that his sentence should be vacated because the trial court failed to sufficiently articulate its reasons for the imposition of the 10-year sentence in accordance with section 5-4.5-50(c) of the Unified Code of Corrections, which states:

> "The sentencing judge in each felony conviction *shall* set forth his or her reasons for imposing the particular sentence entered in the case, as provided in Section 5-4-1 (730 ILCS 5/5-4-1). Those reasons may include any mitigating or aggravating factors specified in this Code, or the lack of any such factors, as well as any other mitigating or aggravating factors that the judge sets forth on the record that are consistent with the purposes and principles of sentencing set out in this Code." (Emphasis added.) 730 ILCS 5/5-4.5-50(c) (West 2012).

¶ 24 However, in construing an earlier version of the same statute with the same legislative requirement that the trial court "shall" set forth its reasons for imposing the particular sentence, our supreme court held that a mandatory requirement that the trial court state its reasons for the sentence would amount to the legislature unconstitutionally invading the "inherent power of the judiciary." *People v. Davis*, 93 Ill. 2d 155, 162 (1982). Accordingly, the supreme court held the term "shall" in this context to be permissive rather than mandatory. *Id.* After *Davis*, reviewing

courts have held that sentencing courts may impose sentences without reciting each factor in aggravation and mitigation. See *e.g.*, *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 16.

¶ 25 Defendant argues that *Davis* and its progeny are wrongly decided. However, we are bound by the decisions of the Illinois Supreme Court. *People v. Jenk*, 2016 IL App (1st) 143177, ¶ 26. Accordingly, pursuant to *Davis*, we hold that the trial court here was not required to set forth for the record each factor in aggravation and mitigation in its determination that a 10-year sentence was appropriate. As discussed, the record here amply supports the imposition of the 10-year sentence and we find no abuse of discretion.

¶ 26 Next, defendant argues, and the State agrees, that the trial court erred in imposing a $100 Methamphetamine Law Enforcement Fund fine, a $25 Methamphetamine Drug Traffic Prevention Fund Fine, a $5 electronic citation fee, and a $5 court systems fee. Accordingly, we vacate these four fines and fees, and direct the clerk of the circuit court to modify the fines and fees order accordingly.

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court and direct the clerk of the circuit court to modify the fines and fees order pursuant to Illinois Supreme Court Rule 615(b)(1) (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999)).

¶ 28 Affirmed as modified.