2017 IL App (1st) 150244-U

FOURTH DIVISION
February 9, 2017

No. 1-15-0244

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. 13 CR 22856
	)	
MARCUS MOORE,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's nine-year sentence as a Class X offender for aggravated battery of a corrections officer affirmed over his contention that it was excessive.

¶ 2 Following a bench trial, defendant Marcus Moore was convicted of aggravated battery of a corrections officer (720 ILCS 5/12-3.05(d)(4)(i) (West 2012)) and sentenced as a Class X offender to nine years' imprisonment, to be served consecutively to a nine-year sentence for

aggravated battery of a merchant in case number 13 C5 50022. On appeal, defendant contends that his sentence was excessive where the nature of the offense was not overly serious and his childhood was troubled. We affirm.

¶ 3 Defendant was charged with two counts of aggravated battery of a corrections officer.

¶ 4 At trial, Cook County corrections officer Michael Kozel testified that, at 9:30 p.m. on October 15, 2013, after 12 inmates in Division 9 of the Cook County jail had completed their recreational time, he returned 11 of them to their jail cells. However, Kozel was unable to return defendant to his cell. As defendant was in front of his cell, he yelled at Kozel that "he wasn't going to lock up," insisting that he needed to take a shower. Kozel approached defendant's cell to open the door but defendant "got in [his] face." As they were face to face, defendant told Kozel that "he was going to whip [his] ass." After Kozel took a step backward, defendant punched him on his left cheek. Kozel pushed defendant against a wall, brought him down to the ground and handcuffed him. Another officer subsequently came to Kozel's assistance. As a result of the punch, Kozel had pain, was treated by a nurse and suffered visible swelling. Two other Cook County corrections officers who were nearby during the incident, including the one who assisted Kozel, testified to a similar narrative of events.

¶ 5 Defendant testified that Kozel became "irritated" with him after he repeatedly asked if he could take a shower. Kozel told defendant that he was a "little b***" and pushed him. In response, defendant fell to his knees and refused to fight back, fearing he could be charged with an aggravated battery. He stated he never punched Kozel.

¶ 6 In rebuttal, the State introduced certified copies of conviction showing that defendant had been convicted of aggravated battery of a peace officer in case numbers 08 CR 06209 and 07 CR 21498.

¶ 7 The trial court found defendant guilty of both counts of aggravated battery of a corrections officer.

¶ 8 The case proceeded to sentencing. Defendant's presentence investigative report (PSI) revealed that he was 23 years old when he committed the instant offense. As a young child, defendant lived with his mother. But when he was 6 years old, he had to be taken out of her home by the Illinois Department of Children and Family Services due to "a possible neglect charge" against her. He then lived with an aunt before being placed in foster homes, where he lived until he was 11 years old. In foster care, he often ran away, trying to return to his mother's house, but he was taken back to foster care or brought to a mental health institution for evaluation. When he was 17 years old, he was able to live with his mother again where he has remained since. Defendant attended Hope High School in Chicago for two days, but left because of a "lack of interest." He eventually completed two years of high school, but did so while in a juvenile detention center.

¶ 9 At the time defendant committed the instant offense, he was serving pretrial detention on a charge of aggravated battery of a merchant in case number 13 C5 50022. In 2014, he was convicted and sentenced to nine years' imprisonment for that offense. Defendant had also been convicted of aggravated battery of a peace officer in two cases in 2010 and armed robbery with a firearm in 2008.

¶ 10 At the sentencing hearing, the State argued that defendant punched a corrections officer unprovoked, which resulted in visible swelling to the officer's face. It noted that defendant had "an extensive background" of violent felonies, including two prior aggravated batteries to a peace officer, armed robbery with a firearm and his most recent aggravated battery of a merchant. The State observed that, based on defendant's criminal background, he had to be sentenced as a Class X offender and his sentence would have to be served consecutively to his nine-year sentence for aggravated battery of a merchant. The State requested an "extensive sentence."

¶ 11 In mitigation, defense counsel observed that defendant's conduct in the instant case resulted from an "altercation" after his unsuccessful request to take a shower. Counsel explained that defendant's aggravated battery of a merchant was based on him pushing away a security guard who was not wearing a uniform, which resulted in the guard's glasses falling off and "a scratch." Counsel also noted that defendant had only completed two years of high school and had two children. Counsel requested the minimum sentence.

¶ 12 The trial court merged defendant's convictions and sentenced him to nine years' imprisonment, stating only that it was "going to sentence [him] to [nine] years in the Illinois Department of Corrections." Defendant's mittimus reflects that his nine-year sentence was to be served consecutively to his sentence for aggravated battery of a merchant. Defendant unsuccessfully moved the court to reconsider and reduce his sentence. This appeal followed.

¶ 13 Defendant contends that his nine-year sentence for aggravated battery of a corrections officer was excessive because of the nature of the offense and his troubled upbringing.

Specifically, he argues his offense "was far more stupid than dangerous" and "one of the least serious examples" of aggravated battery of a corrections officer that "is possible to imagine." Additionally, defendant asserts that his troubled childhood "offered him little preparation to successfully join society." He points out that he left his mother's home as a six-year-old due to possible neglect, rotated between various foster homes, spent time in mental health institutions and only completed two years of high school, which he did while in juvenile detention.

¶ 14 Normally, aggravated battery of a corrections officer is a Class 2 felony (720 ILCS 5/12-3.05(d)(4)(i), (h) (West 2012)), subjecting the defendant to a sentence of between 3 and 7 years' imprisonment. 730 ILCS 5/5-4.5-35(a) (West 2012). However, due to defendant's criminal background, he was required to be sentenced as a Class X offender (730 ILCS 5/5-4.5-95(b) (West 2012)), subjecting him to a sentence of between 6 and 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2012).

¶ 15 The Illinois Constitution requires trial courts to impose sentences according to the seriousness of the offense and with the objective of restoring the defendant to useful citizenship, *i.e.*, to consider a defendant's rehabilitative potential. Ill. Const. 1970, art. I, § 11; *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. However, the most important factor in determining a sentence is the seriousness of the offense. *People v. Kelley*, 2015 IL App (1st) 132782, ¶ 94. In determining the proper sentence, trial courts are given broad discretionary powers (*People v. Alexander*, 239 Ill. 2d 205, 212 (2010)), and a sentence will not be reversed absent an abuse of that discretion. *People v. Geiger*, 2012 IL 113181, ¶ 27. Reviewing courts give such deference to the trial court because it had "the opportunity to weigh such factors as the defendant's credibility,

demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000).

¶ 16 Reviewing courts begin with the presumption that the trial court properly considered the defendant's rehabilitative potential and all relevant mitigating evidence unless the defendant can affirmatively show the contrary. *People v. Johnson*, 2016 IL App (4th) 150004, ¶ 87; *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38; *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). When a sentence falls within the statutory range, it is presumed to be proper (*Knox*, 2014 IL App (1st) 120349, ¶ 46), and may only be "deemed excessive and the result of an abuse of discretion" where it is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210.

¶ 17 In the present case, defendant's nine-year sentence for aggravated battery of a corrections officer is presumed proper, as it was within the statutory range for the offense. *Knox*, 2014 IL App (1st) 120349, ¶ 46. 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's aggravated battery of a corrections officer is a serious offense despite the minimal bodily harm done to Officer Kozel, as any altercation within a jail environment has the potential to evolve into a more dangerous situation. See *Kelley*, 2015 IL App (1st) 132782, ¶ 94 (the most important factor in determining a sentence is the seriousness of the offense). Additionally, defendant has a violent criminal background, consisting of three prior aggravated batteries, two of peace officers and one of a merchant, and an armed robbery with a firearm, therefore warranting a sentence above the minimum required. See *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009) (finding a defendant's criminal history "alone" would warrant a sentence "substantially above

the minimum"). His pattern of violent crime further casts doubt on his rehabilitative potential. Under these circumstances, defendant's nine-year sentence, only three years above the minimum, was appropriate.

¶ 18 Moreover, although the trial court did not mention defendant's difficult childhood, the facts concerning his upbringing were contained within the PSI and therefore before the court. See 730 ILCS 5/5-3-1 (West 2012) ("A defendant shall not be sentenced for a felony before a written presentence report of investigation is presented to and considered by the court."). There being no evidence that the court failed to consider this mitigating evidence, we must presume the court considered it in fashioning his sentence (see *People v. Burton*, 184 Ill. 2d 1, 34 (1998)), and we will not reweigh sentencing evidence the court has considered. *People v. Jones*, 2015 IL App (1st) 142597, ¶ 40. Accordingly, defendant's nine-year sentence for aggravated battery of a corrections officer was not excessive.

¶ 19 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 20 Affirmed.