2017 IL App (1st) 150910-U

SIXTH DIVISION
JUNE 16, 2017

1-15-0910

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. 14 CR 15796
	)	
CHARLES RICE,	)	Honorable
	)	Arthur F. Hill, Jr.,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The court did not commit reversible error by not making express findings in sentencing. Eight years' imprisonment is not excessive for a mandatory Class X offender convicted of delivery of a controlled substance.

¶ 2 Following a 2015 bench trial, defendant Charles Rice was convicted of delivery of a controlled substance and sentenced as a mandatory Class X offender to eight years' imprisonment. Defendant appeals, contending that his sentence was (1) unsupported by trial court findings, and (2) excessive in light of his rehabilitative potential. For the reasons stated below, we affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was charged with delivery of a controlled substance for allegedly delivering 1 gram or more, but less than 15 grams, of heroin on or about August 13, 2014. The evidence at trial was that defendant sold an undercover police officer two small bags – the contents of which later tested to be 1.01 grams of heroin – for $20. The court found him guilty as charged.

¶ 5 The presentencing investigation report (PSI) reflects that defendant was convicted of possession of a controlled substance in 2006, delivery of a controlled substance in 2007, and delivery of a controlled substance in 2011, receiving two years' probation for each conviction. Probation was terminated unsatisfactorily in the 2006 and 2007 cases. In the 2011 case, he violated probation and received three years' imprisonment. Defendant was born in August 1989 and told the PSI preparer that he was raised by his parents, and was not abused or neglected during his childhood, but was raised in an area rife with gangs and drugs. Defendant claimed a good relationship with both parents and with his siblings. He attended, but did not complete, high school; while he reported good grades and no disciplinary issues, he received special education for learning and behavioral disorders. He received no further education while incarcerated, but stated his intent to get his GED. He reported previous employment with his father and in fast-food restaurants. He has one son from an ongoing relationship. He reported no physical health issues but frequent mental health treatment including hospitalization and psychotropic medication. He admitted to abusing or having a problem with alcohol and marijuana. He denied any gang membership or affiliation.

¶ 6 At sentencing, the State argued that defendant was a mandatory Class X offender. The State noted, and defense counsel agreed, that defendant's 2006 conviction was a Class 4 felony, his 2007 conviction was a Class 1 felony, and his 2011 conviction was a Class 2 felony. The

State argued that defendant's repeated offenses and violation of probation indicated "that he's not going to abide by the law," and thus sought a sentence of 10 years or more.

¶ 7 Defense counsel argued that defendant still had rehabilitative potential, noting his mental health issues. Counsel also stated that he spoke with defendant's girlfriend and expressed hope that the relationship would improve defendant. Counsel suggested a sentence of "boot camp" with eight years' imprisonment "if he messed up."

¶ 8 Defendant addressed the court, maintaining that he did not commit the offense but was "falsely accused" by the police.

¶ 9 The court stated that it considered the PSI, defendant's allocution, and the arguments, and then sentenced defendant to eight years' imprisonment.

¶ 10 Defendant filed a post-sentencing motion alleging that his sentence was excessive. Following arguments, the court denied the motion. Defendant then filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 On appeal, defendant contends that his sentence was (1) unsupported by trial court findings, and (2) excessive in light of his rehabilitative potential.

¶ 13 Delivery of 1 gram or more, but less than 15 grams, of heroin is a Class 1 felony usually punishable by 4 to 15 years' imprisonment. 720 ILCS 570/401(c)(1); 730 ILCS 5/5-4.5-30(a) (West 2014). When a defendant over 21 years old is convicted of a Class 1 or 2 felony, having two prior and separate felony convictions of Class 2 or greater, he must be sentenced as a Class X offender with a range of 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a), 5-4.5-95(b) (West 2014). A sentence within statutory limits is reviewed for abuse of discretion, so that we may alter a sentence only when it varies greatly from the spirit and purpose of the law or is

manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. So long as the trial court does not consider incompetent evidence or improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable range. *People v. Wilson*, 2016 IL App (1st) 141063, ¶¶ 10-14; *People v. Jones*, 2014 IL App (1st) 120927, ¶ 56. This broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *Wilson*, ¶ 11, citing *People v. Alexander*, 239 Ill. 2d 205, 213 (2010).

¶ 14 In imposing a sentence, the trial court must balance the relevant factors, including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *Jones*, 2014 IL App (1st) 120927, ¶ 55, citing *Alexander*, 239 Ill. 2d at 213. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Snyder*, 2011 IL 111382, ¶ 36. The court does not need to expressly outline its reasoning for sentencing, and we presume that the court considered all mitigating factors on the record absent some affirmative indication to the contrary other than the sentence itself. *Wilson*, 2016 IL App (1st) 141063, ¶ 11; *Jones*, 2014 IL App (1st) 120927, ¶ 55. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Alexander*, 239 Ill. 2d at 214; *Wilson*, 2016 IL App (1st) 141063, ¶ 11; *Jones*, 2014 IL App (1st) 120927, ¶ 55.

¶ 15 The Code of Corrections provides that the "sentencing judge in each felony conviction shall set forth his or her reasons for imposing the particular sentence entered in the case." 730

ILCS 5/5-4.5-50(c) (West 2014). However, our supreme court has held that this provision[1] is permissive rather than mandatory, despite the "shall" therein, because a mandatory requirement that the trial court state its reasons for its sentence would be an invasion by the legislature of the judiciary's inherent power to pronounce sentence. *People v. Davis*, 93 Ill. 2d 155, 162 (1982). In other words, *Davis* itself precludes finding reversible error in a court's failure to make sentencing findings under section 5-4.5-50(c). Since *Davis*, this court has held that the trial court may impose sentence without stating its reasoning or reciting how the factors in aggravation and mitigation applied in a particular case. See, e.g., *People v. Bryant*, 2016 IL App (1st) 140421, ¶¶ 25-35 (Hyman, J. specially concurring)(exhorting trial court to make sentencing findings while acknowledging, based on *Davis* and various appellate cases, that a lack of such findings is not reversible error). "This law controls [this] case." *Id.*, ¶ 30 (Hyman, J. specially concurring).

¶ 16 Here, defendant does not challenge that he falls under the mandatory Class X offender provision, but contends that "any sentence above that [six-year] minimum was gratuitous and does not account for [defendant's] rehabilitative potential." We note, however, that the sentencing range for defendant's offense absent Class X offender status would be 4 to 15 years. It was well within the court's discretion to impose defendant's eight-year prison sentence under either Class X or Class 1 sentencing in light of (1) his criminal record indicating that the trial court's leniency in his three prior felony cases had clearly not borne fruit, and (2) his failure to show remorse at sentencing, both tending to show that his rehabilitative potential was limited.

¶ 17 Defendant contends that the court erred in not making express sentencing findings, but this fails on two grounds. Firstly, as stated above, the absence of express sentencing findings

[1] To be more precise, an earlier and substantively identical version of this provision, Ill. Rev. Stat. 1979, ch. 38, par. 1005-8-1(b).

does not constitute reversible error. Secondly, the court stated before passing sentence that it considered the PSI, defendant's allocution, and the parties' arguments. The presumption that the trial court gave due consideration to all mitigating factors in the record, including those defendant now relies on to challenge his sentence, thus has an express basis in the record here. In sum, we find no reason to conclude that the trial court abused its broad discretion in sentencing defendant to eight years' imprisonment, only two years above the minimum applicable sentence and two years below the State's request at sentencing.

¶ 18 CONCLUSION

¶ 19 Accordingly, the judgment of the circuit court is affirmed.

¶ 20 Affirmed.