

2017 IL App (1st) 151754-U
No. 1-15-1754
Order filed September 28, 2017

Fourth 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 13822
)	
ANTIONE HOPKINS,)	Honorable
)	Arthur F. Hill, Jr.,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm defendant's nine-year prison sentence over his arguments regarding the nature of his offense and nonviolent criminal background where the trial court did not abuse its discretion in sentencing him.

¶ 2 Following a jury trial, defendant Antione Hopkins was convicted of two counts of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)) and sentenced to two concurrent terms of nine years' imprisonment. On appeal, he argues his sentence is excessive in light of the nature of the crime and his nonviolent criminal background. We affirm.

¶ 3 Defendant was charged by information with two counts of armed habitual criminal, two counts of unlawful use or possession of a weapon by a felon, and 12 counts of aggravated unlawful use of a weapon stemming from acts occurring on June 27, 2013. The State proceeded to trial on two counts of armed habitual criminal (Counts 1 and 2) and two counts of unlawful use or possession of a weapon by a felon (Counts 3 and 4). We briefly state the facts presented at trial as defendant does not challenge the sufficiency of the evidence supporting his conviction.

¶ 4 Chicago police officer Marty Chatys testified that he was on patrol with his partner, Officer Wasielewski, when he encountered a pickup truck driving without headlights on. After pulling the truck over, he approached the driver's side and noticed a passenger in the back seat lean down with his hands between his legs. The passenger, later identified as defendant, then kicked something under the seat with his right foot. Chatys ordered defendant out of the truck and performed a protective pat-down. Wasielewski then ordered the remaining rear passengers to exit the truck from the opposite side as defendant. Chatys had Wasielewski search the area where Chatys had observed defendant kicking something. Wasielewski recovered two loaded revolvers from that area.

¶ 5 Chicago police officer Carl Wasielewski testified consistently with Chatys as to the events on June 27, 2013. After Chatys ordered defendant to exit the truck, Wasielewski asked the three other passengers in the rear seat to also exit. Chatys told Wasielewski, "he was hiding something down there" and pointed towards the driver's side rear bench near the door closest to Chatys. Wasielewski recovered two loaded revolvers from that area. He placed defendant into the back of the squad car and read him his *Miranda* rights. Defendant stated that the driver of the

truck, defendant's father, had nothing to do with the guns and that the guns belonged to defendant.

¶ 6 The parties stipulated that defendant had two prior qualifying offenses to satisfy the element concerning the charges of armed habitual criminal and unlawful use of a weapon by a felon.

¶ 7 The jury found defendant guilty of two counts of armed habitual criminal and two counts of unlawful use of a weapon by a felon. The trial court denied defendant's written posttrial motion for a new trial and proceeded to sentencing.

¶ 8 In aggravation, the State highlighted defendant's criminal background, which, according to the presentence investigation report (PSI), included two Class 2 convictions in 1992 for burglary and possession of a controlled substance with intent to deliver, for which he received probation and four years' imprisonment, respectively. Defendant also had 1992 and 1996 possession of a controlled substance convictions for which he received prison terms of three and one years, respectively. He had a 1994 conviction for unlawful use of a weapon by a felon for which he received 30 months' imprisonment. Defendant had 1995 and 2004 manufacturing/delivery of a controlled substance convictions for which he received prison terms of 13 and 2 years' imprisonment, respectively. Finally, he had 2005 trespass conviction and a 2008 theft conviction for which he received two days in jail and one year of probation, respectively. Probation was later terminated satisfactorily.

¶ 9 The State argued that defendant's actions put "other people in danger" and "endangered the lives of many different people," including the fellow passengers in the truck. It asked for a

substantial sentence in the Illinois Department of Corrections, specifically requesting a sentence of at least 15 years' imprisonment.

¶ 10 In mitigation, defense counsel first argued that, prior to the current case, it had been six years since defendant was last arrested. Counsel acknowledged defendant's criminal past, but noted he is "on a different path" and trying to make "the best of his life and to be a productive citizen." Counsel informed the court that defendant had support from family members, who had frequently been present in court throughout the pendency of the case. She noted that defendant is 40 years old and had health issues, including hypertension and some mental illness. Defendant further had two children and was in a committed relationship. Counsel asserted that defendant had substance abuse issues "which also can be highlighted by his criminal background." Counsel asked for the minimum sentence because defendant had "been turning his life around" and had family members who support him.

¶ 11 In allocution, defendant stated, *inter alia*, that he was only present in the truck in order to "bring food back" to "the house." He stated that he tried to work in order to support his children. Defendant concluded by stating he was "helping [his] kids, loving them, raising them, protecting them."

¶ 12 The court sentenced to defendant to nine years' imprisonment on Count 1, after merging Count 4 into Count 1, and a concurrent term of nine years' imprisonment on Count 2, after merging Count 3 into Count 2. It stated, "[t]his case involves two separate weapons, and a jury came back with guilty on both weapons as it relates to [defendant]." The court further noted it had considered the PSI, heard arguments of counsel, heard defendant's statement in allocution,

and considered the factors in aggravation and mitigation. The court denied defendant's written motion to reconsider sentence. Defendant filed a timely notice of appeal.

¶ 13 On appeal, defendant argues the trial court imposed an excessive sentence where it failed to adequately consider the nature of the crime and his nonviolent criminal background.

¶ 14 The trial court has broad discretion in imposing an appropriate sentence, and where, as here, that sentence falls within the range provided by statute, it will not be modified 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)). The trial court is in the superior position to determine an appropriate sentence because of its personal observation of the defendant and the proceedings. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). It is presumed that, when mitigating evidence is presented to the 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. When reviewing the sentence imposed, a reviewing court cannot substitute its judgment for that of the trial court simply because it would weigh the sentencing factors differently. *Fern*, 189 Ill. 2d at 53.

¶ 15 We find the trial court did not abuse its discretion in imposing a nine-year prison sentence. The offense of armed habitual criminal is a Class X felony, punishable by 6 to 30 years' imprisonment. 720 ILCS 5/24-1.7(b) (West 2012); 730 ILCS 5/5-4.5-25(a) (West 2012). The nine-year sentence falls within this statutory range and we therefore presume it is proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 47.

¶ 16 Defendant first argues the nature of his conviction does not support a nine-year prison sentence. Specifically, he contends that the officers never saw him physically hold the guns, brandish them, shoot them, or use them in any way to threaten or harass the officers or the passengers in the truck. A trial court's sentence must reflect both the seriousness of the offense and the objective of restoring the defendant to useful citizenship. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11. The seriousness of the offense, and not mitigating evidence, is the most important sentencing factor. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55. Here, the trial court was aware of the facts of the case, namely that after defendant made secretive movements, two loaded guns were found under where he was seated. Defendant further admitted that the guns belonged to him. Given the danger to the passengers and officers that these two loaded and unattended guns posed, we conclude the trial court adequately considered the seriousness of the offense.

¶ 17 Defendant next argues that the sentence imposed does not reflect an adequate consideration of his "moderate criminal background," which is "entirely non-violent." We disagree. A defendant's criminal history alone may warrant a sentence substantially above the minimum. *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009). Defendant had seven prior felony convictions, including a previous unlawful use of a weapon by a felon conviction for which he received 30 months' imprisonment. He also had five prior drug-related felony convictions and received prison terms of 13, 4, 3, 2, and 1 years. Defendant's nine-year prison term is not excessive in light of his eight felony convictions. Further, given defendant's lengthy criminal history, we reject his argument that the six-year period between defendant's last arrest and the arrest for the current offense shows he is "capable of living a law-abiding life." See

Wilson, 2016 IL App (1st) 141063, ¶ 13 (noting defendant was “not deterred by previous, more lenient sentences”).

¶ 18 Defendant asserts that he was in a long-term relationship with the same woman, had various jobs and was trying to work, all while raising and loving his children. He argues that depriving this woman and his children of his presence provides no benefit to society. However, the trial court heard about defendant’s children from both defendant in allocution and his attorney. Further, the trial court stated that it considered all factors in mitigation, which includes whether defendant’s imprisonment would entail an excessive hardship on defendant’s dependents. See 730 ILCS 5/5-5-3.1(a)(11) (West 2012); see *People v. Hambrick*, 2012 IL App (3d) 110113, ¶ 23 (“[w]e note *** that any prison sentence entails hardship to the defendant and the defendant’s family”). The trial court therefore did not abuse its discretion in sentencing defendant to nine years’ imprisonment, only 3 years above the minimum and 21 years below the maximum. See *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010) (“[t]he mere fact that a reviewing court might have weighed the factors differently than the trial court does not justify an altered sentence”).

¶ 19 Defendant also contends that reducing his nine-year prison sentence would save taxpayers tens of thousands of dollars and would further lessen the strain on Illinois’ overcrowded prisons. The trial court is required to consider the financial impact of defendant’s incarceration on the State based on the financial impact statement filed by the Department of Corrections with the clerk of the court. 730 ILCS 5/5-4-1(a)(3) (West 2012). However, the court has no obligation to recite and assign a value to every factor that it considers and, absent contrary

evidence, we presume the trial court considered the financial impact prior to sentencing defendant. *Sauseda*, 2016 IL App (1st) 140134, ¶ 22.

¶ 20 Finally, defendant cites *People v. Busse*, 2016 IL App (1st) 142941, where the court reduced the defendant's 12-year sentence as a Class X offender to the minimum of 6 years' imprisonment. To the extent defendant is making a comparative sentencing argument, we decline his request, "as our supreme court has rejected an approach that compares sentences between defendants in unrelated cases." *People v. Brown*, 2017 IL App (1st) 142877, ¶ 62; accord *Fern*, 189 Ill. 2d at 56. In any event, the concerns raised by the court in *Busse* are not present here.

¶ 21 In *Busse*, the court found the defendant's 12-year sentence was excessive for stealing \$44 from a school vending machine. *Busse*, 2016 IL App (1st) 142941, ¶¶ 15, 29-30. Acknowledging his criminal background, the court found that "the legislature created Class X sentencing to protect the public from murders and rapists, not penny-ante pilferage" and that given the previous number of years the defendant had spent in prison, another 12-year term to make an impression on him would be "ineffectual." *Id.* ¶¶ 31-32. It further noted the defendant's crime was "motivated by poverty rather than malice" and that the defendant was not armed and did not use a weapon of any sort. *Id.* ¶¶ 34, 29. The court concluded that the defendant's 12-year sentence would cost taxpayers almost a quarter million dollars. *Id.* ¶ 37.

¶ 22 Here, defendant's possession of two loaded guns in the presence of fellow passengers and other officers is not "penny-ante pilferage" that is "motivated by poverty rather than malice." It certainly differs from the situation in *Busse* where, here, defendant actually was armed with a weapon. Indeed, the armed habitual criminal offense was created by the legislature "to help protect the public from the threat of violence that arises when repeat offenders possess firearms."

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People v. Davis, 408 Ill. App. 3d 747, 750 (2011). Moreover, as discussed, the trial court is presumed to have taken into account the financial impact of defendant's incarceration before imposing sentence. *Sauseda*, 2016 IL App (1st) 140134, ¶ 22. Accordingly, *Busse* does not change our determination that the trial court did not abuse its discretion in sentencing defendant.

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

¶ 24 Affirmed.