2017 IL App (1st) 152002-U
No. 1-15-2002

THIRD DIVISION
September 27, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14 C3 30459
	)	
MARVIN GUERRERO,	)	
	)	The Honorable
Defendant-Appellant.	)	James N. Karahalios,
	)	Judge, presiding.

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's convictions are affirmed where the evidence was sufficient to prove him guilty beyond a reasonable doubt; the court did not indicate judicial bias by taking on a prosecutorial role, and relied on competent evidence to find defendant's intent to deliver; and defendant's sentence and fine are affirmed where the trial court considered all relevant factors and the sentence and fine were not excessive where they were within statutory guidelines.

¶ 2 Following a bench trial, in the circuit court of Cook County, defendant, Marvin Guerrero, was convicted of two counts of possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1), (c)(2) (West 2014)). He was sentenced to 24 years' imprisonment and fined

$25,000. On appeal, defendant argues that: (1) the evidence was insufficient to find him guilty of possession of a controlled substance with intent to deliver; (2) the trial court showed impermissible judicial bias by taking on a prosecutorial role and relying on evidence submitted for a limited purpose as substantive proof of intent to deliver, and such reliance was not harmless error; and (3) his sentence and fine were excessive. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by information with two counts of possession of a controlled substance with intent to deliver (between 1 to 15 grams of cocaine and between 1 to 15 grams of heroin). The following evidence was adduced at trial.

¶ 5 Mount Prospect police detective Alison Teevan testified that she had been involved in a narcotics investigation of the premises at 410 Perrie Drive, Apt. 302, in Elk Grove Village, Illinois for a number of days prior to the execution of a search warrant. On May 29, 2014, around 9:00 p.m. she was working with a team executing the search warrant. She conducted surveillance on the west side of the building, including the entrance to the building and bedroom windows on the third floor. She was approximately 25 to 30 feet from the building. One window was open with the blinds up, and although it was dark outside, the bedroom windows were lit from within. As the entry team knocked on the door and yelled "[p]olice. Search warrant," she saw defendant appear in the southwest bedroom window and throw "some sort of container" out of the window. Teevan had seen defendant multiple times before and nothing obstructed her view of his face. Teevan found the container that defendant had thrown on the ground, a couple of feet in front of her. It was a large prescription bottle containing 21 individually packaged baggies that contained suspect crack cocaine, 14 tinfoil packets that contained suspect heroin and 42 various prescription pills, including 35 pills of one type and seven pills of a different type, along with a

plastic bag containing a powdery substance. Based on her training and experience as a narcotics officer, the packaging of the items was consistent with the sale of narcotics.

¶ 6 Teevan entered the apartment. Defendant and his girlfriend, Bonnie Mercado, along with their infant son, were being detained in the southwest bedroom. Defendant was allowed to put clothes on over his underwear. He identified a pair of shorts as his. The police searched them finding a bag of cannabis and $690 inside the pockets, as well as defendant's state identification card. In the living room, Ian Denbroeder and Melissa LeBron were being detained. Also, defendant's sister Andra Guerrero, and 11 children were detained in another bedroom.

¶ 7 Defendant was placed into custody. Teevan spoke with defendant the following day and he told her that he had lived at the apartment for two weeks. He denied throwing the drugs out of the window and claimed that Denbroeder "had run all the way across the apartment into his bedroom, thrown it out the window, and run all the way back." A few hours later, Teevan had a conversation with defendant and he told her that he "obtained the crack cocaine from an African-American named Paris and he had obtained the heroin from a Mexican named Carlos," and "indicated he was only selling [drugs] to provide for his family."

¶ 8 On cross-examination, Teevan acknowledged that she had not memorialized defendant's statement and admitted that all of the drugs could have been for personal use, but the amounts in question would have been excessive.

¶ 9 The parties stipulated that Nancy McDonagh, a forensic scientist with the Illinois State Police Crime Lab, would testify that 17 of the 21 bags of suspect cocaine were tested and had a positive result of 5.4 grams of cocaine. The contents of the remaining bags weighed 1.3 grams. She would further testify that eight of the 14 tinfoil packets were tested and had a positive result of 1.1 grams of heroin. The contents of the remaining packets weighed 0.8 grams. The separate

bag of powder did not contain narcotics. Additionally, she analyzed 35 pills that resembled a schedule II pharmaceutical preparation containing hydromorphone, and the remaining seven pills resembled a schedule IV pharmaceutical containing Tramadol.

¶ 10 After the State rested, the trial court denied defendant's motion for a directed verdict. The defense presented Mercado, who testified that at 9:00 p. m. on May 29, 2014, she, defendant and their baby were sleeping, when Denbroeder ran into the bedroom, said the cops were outside, tossed something out of the window, and ran back to the living room. Mercado stated that the lights were off in the bedroom and the windows were open, but the blinds were down.

¶ 11 Defendant testified that around 9:00 p.m., he and Mercado were in bed when Denbroeder ran into the bedroom, said the police were outside, pulled the blinds back, tossed a "pill bottle with his stuff in it" out of the window, and ran out of the bedroom. Seconds later the police said "search warrant" and entered the apartment. The bedroom lights were off and the blinds were closed. He admitted that the police recovered cannabis, his identification card, and $690 from his shorts, even though he had been unemployed for a year. He acknowledged that the cannabis was his and explained that the money was Mercado's child support. Defendant also stated that he told Teevan that Denbroeder threw the drugs out of the window and that he did not sell drugs, although he admitted that he had previously been in prison for selling drugs. He also testified that he never told Teevan that he sold drugs to provide for his family.

¶ 12 After the defense rested, in rebuttal, the parties stipulated that defendant was previously convicted of a felony offense of manufacture and delivery of a controlled substance under case number 08 CF 2451 with a disposition date of October 8, 2008.

¶ 13 During defense counsel's closing argument, the trial court asked defense counsel to comment on evidence, which was a court order in a child support case between defendant's ex-

wife and defendant. The order required defendant to bring in proof that the child and the petitioner were living with him on the next court date. Defense counsel explained that "[t]here was an arrangement for [defendant] and Linda, who is his ex-wife, and the child to live together" but it "didn't work out, and that's why [defendant] moved in with [Mercado]." The court further questioned "[w]hat does it mean then, if she was really not living with him and the child was really not living with him, why did the court order, quote, '[defendant] to bring in proof that the child and the [p]etitioner live with him on the next court date?' I'm confused." Counsel replied "[i]'m confused also, Judge." The court then asked "[a]nything further for the defense?" and counsel stated "[n]o."

¶ 14 Following closing arguments, the trial court found defendant guilty of both counts of possession of a controlled substance with intent to deliver. The court found that defendant's and Mercado's testimony was not credible that they were "asleep at 9:00 at night" instead of helping the eleven children get ready for bed, or that the lights were off at that time of night. He further found it not credible that Denbroeder would pull the blinds back to "make sure that you're seen and then toss the drugs at the foot of the police officer," or that he would run to the other side of the apartment to get rid of the drugs when he was in the living room with sliding glass doors. The trial court found Teevan's testimony regarding her identification of defendant as credible, along with the testimony that the packaging was "consistent with the way that drugs of that nature are sold." The court also found it quite telling "that the officer testified that the defendant admitted that he was selling drugs to support his family. You've got eleven children there. You've got two adult children that are not there. * * * You've got a child support case in the works * * *. You've got a gentleman that hasn't worked in a year. He has $690 in cash in one pocket and drugs in the

other pocket of shorts which he admits are his. I believe that all of the evidence taken together satisfies me beyond a reasonable doubt that it was defendant's intention to sell those drugs."

¶ 15 The trial court denied defendant's written motion to reconsider the evidence or grant a new trial. The court found that there were several factors that were present in this case which prove beyond a reasonable doubt that defendant possessed the drugs with the intent to deliver and not for personal use, including the "number of packets of drugs and the way in which they were packaged, the fact that there were three different drugs recovered, heroin, crack cocaine and marijuana," and that defendant was "unemployed for a long time" but had $690 in cash in his pocket. The trial court reiterated its findings that "the officer's testimony was credible, was corroborated by circumstances," and deemed defendant and "his girlfriend's testimony to be incredible for many reasons."

¶ 16 The court proceeded to sentencing. At the hearing, defense counsel stated that defendant had done well on probation, had worked for an auto company, and had been doing maintenance at the apartment complex at the time of his arrest, had completed his GED and had participated in a treatment program for cannabis addiction. Defense counsel further maintained that defendant provided for his children and took care of them when Mercado was at work. Defendant apologized to the court and to his family.

¶ 17 The trial court determined defendant was subject to a mandatory Class X sentence based on two of his prior felony convictions. The court considered defendant's presentence investigation report (PSI) and the mitigating factors such as his prior employment, earning his GED, participation in drug treatment, and his family connections, as well as defendant's apology to the court. The court also considered the nature of the charges and defendant's prior criminal history, indicating that this was his fourth felony conviction and his third felony conviction for

dealing drugs. The court further found that defendant was a "career criminal and a career drug dealer." The court commented that "drugs are a scourge on this community" and "drugs destroy individuals, they destroy families and they destroy communities." The court sentenced defendant to 24 years' imprisonment in the Illinois Department of Corrections and imposed a $25,000 fine.

¶ 18 On July 2, 2015, the court denied defendant's motion to reconsider sentence because "this was the third time that [defendant's] been convicted of dealing drugs." The court further indicated that "the very moment that he finished parole in the last case, which I believe he got six or eight years for, within a matter of a few days he was arrested on these charges." Defendant filed a timely notice of appeal.

¶ 19 II. ANALYSIS

¶ 20 A. Sufficiency of the Evidence

¶ 21 Defendant contends that the evidence was insufficient to find him guilty of possession of a controlled substance with intent to deliver between 1 and 15 grams of cocaine and between 1 and 15 grams of heroin. Specifically, he argues that the small amount of drugs and the lack of drug paraphernalia indicate that the drugs were for his personal use. He also argues that the officer's testimony was not credible with regard to his admitting that he sold drugs to support his family. Alternatively, defendant argues that there are reasons other than guilt, for confessing to a crime. He maintains that because the State failed to prove his intent to deliver the drugs, we should reduce his conviction to simple possession and remand for resentencing.

¶ 22 When challenging the sufficiency of the evidence, the standard of review is whether after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. A reviewing court will not substitute its judgment for that of the trier of

fact on issues involving the weight of evidence or the credibility of witnesses. *People v. Siguenza–Brito*, 235 Ill. 2d 213, 224–25 (2009). In a bench trial, the trial judge, as trier of fact, has the responsibility to determine the credibility of witnesses, weigh the evidence and any inferences derived therefrom, and resolve any conflicts in the evidence. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). It is for the trier of fact to resolve any inconsistencies or contradictions in the testimony of the witnesses. *People v. Bull*, 185 Ill. 2d 179, 205 (1998). Where a conviction depends on eyewitness testimony, the reviewing court may find testimony insufficient "only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). A conviction will not be reversed unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *In re Q.P.*, 2015 IL 118569, ¶ 24.

¶ 23 To sustain the conviction of possession of a controlled substance with intent to deliver, the State had to prove: (1) defendant knew of the narcotics, (2) the narcotics were in defendant's immediate possession or control, and (3) defendant intended to deliver the narcotics. 720 ILCS 570/401 (West 2014); *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Defendant argues the State failed to prove the third element: that he intended to deliver the drugs.

¶ 24 "Because direct evidence of intent to deliver is rare, such intent must usually be proven by circumstantial evidence." *Robinson*, 167 Ill. 2d at 408. Our supreme court has noted several factors that may be considered in finding intent, including: whether the quantity of controlled substance in a defendant's possession is too large for personal use, the possession of weapons, the manner in which the substance is packaged, the possession of large amounts of cash, the high purity of the drug recovered, the possession of drug paraphernalia, and the possession of police scanners, beepers, or cellular telephones. *Id*. However, these factors are not exhaustive (*People v.*

Bush, 214 Ill. 2d 318, 327 (2005)) and there is no "hard and fast" rule to be applied given the different types of controlled substances and "the infinite number of factual scenarios." *Robinson*, 167 Ill. 2d at 414.

¶ 25 Defendant argues that the State failed to prove his intent to deliver because the grams of narcotics recovered were consistent with personal use. He maintains that an individual can possess more drugs than he could or should consume all at once, but those drugs are still for his own personal use. The quantity of a controlled substance alone can be sufficient to prove intent where the amount cannot be viewed solely for personal use. *Id*. at 410–11. But, "[a]s the quantity of controlled substance in the defendant's possession decreases, the need for additional circumstantial evidence of intent to deliver to support a conviction increases." *Id.* at 413. Defendant argues there is insufficient additional circumstantial evidence here. We disagree.

¶ 26 Viewing the evidence in the light most favorable to the State, the circumstantial evidence sufficiently shows defendant's intent to deliver cocaine and heroin. First, the court may consider the way in which a controlled substance was packaged and, in certain circumstances, the packaging alone may be sufficient to demonstrate intent to deliver. *Id*. at 414. Here, defendant was arrested after having been seen by a police officer disposing of a container with 21 small bags of cocaine and 14 tinfoil packets of heroin and 43 pills. Given the sheer number of individual bags and packets, it is entirely reasonable to infer that the narcotics were intended for delivery rather than for personal use. See *People v. Clark*, 406 Ill. App. 3d 622, 631 (noting that 24 individual packets of heroin found on the defendant was "an amount and packaging technique highly indicative of one's intent to deliver rather than to personally consume").

¶ 27 Teevan testified that cannabis and $690 was recovered from a pair of defendant's shorts. Our supreme court has directed that a large amount of cash is a specific factor indicative of intent

to deliver. *Robinson,* 167 Ill. 2d at 408. Although defendant argues the amount of money was for child support, given the totality of the circumstances, the trial court could have found these factors were circumstantial evidence of intent to deliver.

¶ 28 Defendant further contends that since there was a lack of drug paraphernalia the State failed to show intent to deliver. The absence of paraphernalia would go to the weight of the evidence, which is for the trier of fact, here the trial court, to determine. *Siguenza–Brito,* 235 Ill. 2d at 224. Further, the narcotics were already packaged into 21 bags and 14 tinfoil packets, there was, therefore, no need for defendant to possess bags or a scale. See *People v. White*, 221 Ill. 2d 1, 20 (2006) (finding that since the cocaine was already packaged for sale, there was no need for defendant to carry cutting agents or a scale), *abbrogated on other grounds, People v. Luedemann,* 221 Ill. 2d 530 (2006).

¶ 29 Defendant next argues that Teevan's testimony regarding his statement that "he was only selling drugs to provide for his family" was not credible, as she did not record the statement and defendant contradicted her. We note that the trial court specifically found that defendant's statement regarding the selling of drugs was corroborated by Officer Teevan's testimony and that her testimony was credible, while defendant and Mercado's testimony was incredible. See *Siguenza-Brito,* 235 Ill. 2d at 228, (the testimony of a single witness, if positive and credible is sufficient to convict, even though it is contradicted by the defendant).

¶ 30 Finally, in the alternative, defendant argues that if the court found Teevan's testimony to be credible, there are several reasons besides guilt that a person confesses, including to shield another. We find this argument without merit. Considering defendant's constant and consistent statements and testimony that it was Denbroeder who "tossed" the drugs from the bedroom

window, we find it incredible that defendant would now argue that he was trying to protect someone.

¶ 31 The sufficiency of the evidence to prove intent to deliver "must be determined on a case-by-case basis." *Robinson*, 167 Ill. 2d at 412–13. Here, where defendant was found to have been in possession of 21 small bags of cocaine and 14 tinfoil packets of heroin, cannabis he admitted was his, and $690 in cash after not being employed for a year, the evidence supports the court's finding that the State proved defendant's intent to deliver the narcotics beyond a reasonable doubt. Accordingly, we uphold defendant's convictions for possession of a controlled substance with intent to deliver (between 1 and 15 grams of cocaine and 1 and 15 grams of heroin).

¶ 32 B. Judicial Bias

¶ 33 Defendant contends that he was deprived of a fair trial because the trial judge indicated impermissible judicial bias by *sua sponte* taking on a prosecutorial role to bolster the State's case. Specifically, defendant contends that the judge improperly considered the contents of a court order in an unrelated case, introduced as proof of residency, as substantive evidence of defendant's intent to deliver the drugs. Defendant also argues that the court's reliance on the court order as evidence that defendant had to pay child support, as the basis for finding that defendant intended to sell the drugs, was not harmless error.

¶ 34 A fair trial is a fundamental right in all criminal prosecutions and a denial of that right is a denial of the procedural due process guaranteed under both the United States (U.S. Const, amend. XIV) and Illinois (Ill. Const. 1970, art. I, § 2) Constitutions. *People v. Taylor*, 357 Ill. App. 3d 642, 647 (2005). A defendant is fundamentally entitled "to an unbiased, open-minded trier of fact." *People v. Eckert*, 194 Ill. App. 3d 667, 673 (1990). As such, a judge should refrain from injecting commentary into proceedings reflecting a bias for or against either party. *People*

v. Sims, 192 Ill. 2d 592, 636 (2000). We view any claim of judicial bias in context of the entire record and evaluate the trial court's reactions in regards to the circumstances presented by the individual case before it. *People v. Urdiales*, 225 Ill. 2d 354, 426 (2007). We presume that a trial judge was impartial, and it is defendant's burden to prove otherwise. *People v. Faria*, 402 Ill. App. 3d 475, 482 (2010).

¶ 35 Defendant first argues that the trial court indicated impermissible judicial bias by *sua sponte* taking on a prosecutorial role and questioning defense counsel about a document the State had introduced for a limited purpose. Defendant contends that the judge improperly considered the contents of a court order in an unrelated case, introduced solely as proof of residency, as substantive evidence of defendant's intent to deliver the drugs. We note that it is well within a trial court's discretion "to question a witness 'to elicit the truth or to bring enlightenment on material issues which seem obscure.'" *People v. Smith*, 299 Ill. App. 3d 1056, 1062 (1998) (quoting *People v. Wesley*, 18 Ill. 2d 138, 154-55 (1959)). However, in doing so, the trial court must act in a fair and impartial manner. *Id*. The propriety of judicial examination is determined by the circumstances in each case and remains in the discretion of the trial court. *People v. Johnson*, 327 Ill. App. 3d 203, 205 (2001). A trial judge crosses "the line of judicial propriety" when he or she takes on the role of prosecutor. *Taylor*, 357 Ill. App. 3d at 648.

¶ 36 During defense counsel's closing argument, the trial court asked defense counsel to comment on evidence, which was a court order in a child support case between defendant's ex-wife and defendant. The order required defendant to bring in proof that the child and the petitioner were living with him on the next court date. Defense counsel explained that "[t]here was an arrangement for [defendant] and Linda, who is his ex-wife, and the child to live together" but it "didn't work out, and that's why [defendant] moved in with [Mercado]." The court further

questioned "[w]hat does it mean then, if she was really not living with him and the child was really not living with him, why did the court order, quote, '[defendant] to bring in proof that the child and the [p]etitioner live with him on the next court date?' I'm confused." Counsel replied "[i]'m confused also, Judge." The court then asked "[a]nything further for the defense?" and counsel stated "[n]o."

¶ 37 In context, it is clear that the questioning by the trial court was to clarify evidence of defendant's residency and was not tantamount to taking on a prosecutorial role and bolster the State's case as defendant claims. From this brief interchange, defendant infers that the court relied on the document as substantive evidence of defendant's intent to deliver the drugs. We disagree. The much more reasonable conclusion is that the trial court, cognizant of the need for an accurate and unambiguous trial record, merely sought to clarify the evidence for its limited purpose, as both the court and counsel were admittedly confused. The conduct of the court did not constitute an abuse of discretion.

¶ 38 Defendant relies on *Village of Kildeer v. Munyer*, 348 Ill. App. 3d 251, 261 (2008), for the proposition that a judge cannot create an appearance that it is working in tandem with the prosecution by assisting in the defendant's prosecution and which undermines the perceived fairness of the defendant's trial. In *Munyer*, the court stated that it would *sua sponte*, consider the testimony from two separate cases as other crimes evidence to show that the defendant intended to commit the crime in the case for which he was on trial. *Id.* at 252-53. The appellate court held that the trial court crossed the line into advocacy for the prosecution by considering evidence "without seeking the Village's input and allowing defense counsel to respond to the Village's argument." *Id.* at 261. However, unlike *Munyer*, the trial court in the case at bar did not

introduce evidence, but rather attempted to clarify evidence that defense counsel also found confusing, by asking counsel to comment on the court order.

¶ 39 From our view of the record in the instant case, absent the minimal questioning by the trial court, the State presented more than sufficient evidence of defendant's guilt. Moreover, the court did not elicit information that went beyond the evidence previously provided, either directly or circumstantially. Thus, unlike *Munyer*, the trial court here did not take on a prosecutorial role. Accordingly, we find no judicial bias.

¶ 40 Defendant also argues that the court's reliance on the court order as evidence that defendant had to pay child support, as the basis for finding that defendant intended to sell the drugs, was not harmless error. Defendant points to the court's commenting that defendant had several children and that "[y]ou've got a child support case in the works * * *," as proof of its reliance on the court order.

¶ 41 Even if the trial court improperly relied on the court order it would be harmless. When inquiring into whether an error is harmless beyond a reasonable doubt, the court should ask whether the harm complained of contributed to defendant's conviction. *People v. Goins*, 2013 IL App (1st) 113201, ¶ 72; *Chapman v. California*, 386 U.S. 18, 23–24 (1967).

¶ 42 We observe that the court stated that "I find that the officer's testimony as to the manner in which or the method in which they were packaged according to or consistent with the way drugs of that nature are sold. Moreover, there were 21 packets in plastic bags and 14 packets in tinfoil packets. I believe that that, coupled with the officer's testimony that the quantity 5.4 grams of cocaine and 1.1 grams of heroin and that was all that was actually analyzed; there were more materials that [*sic*] that, but that was all that the lab tested and that the officer testified in her experience that is too great an amount for personal consumption by one individual. More

importantly and quite telling is the fact that the officer testified that the defendant admitted that he was selling drugs in order to support his family. You've got eleven children there. You've got two adult children not there. * * *. You've got a child support case in the works * * *. You've got a gentleman that hasn't worked for a year. He has $690 in cash in one pocket and drugs in the other pocket of shorts which he admits are his. I believe that all of the evidence taken together satisfies me that it was defendant's intention to sell those drugs." Here, the court relied on competent evidence to find defendant's intent to sell the drugs. We cannot say that the trial court's alleged reliance on the court order contributed to defendant's convictions. Hence, any error was harmless beyond a reasonable doubt. *Johnson*, 327 Ill. App. 3d at 209 (merely referring to incompetent evidence is not sufficient to warrant reversal). In sum, we find no judicial bias or error by the conduct of the court.

¶ 43 C. Sentence and Fine

¶ 44 Defendant contends that his sentence and fine were excessive in light of the nature of the offenses, his background and his potential for rehabilitation. Finally, defendant argues that the trial court impermissibly employed a personal policy of imposing particularly harsh sentences on drug offenders.

¶ 45 We review the trial court's sentencing decision under the abuse of discretion standard, so that 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. *People v. Snyder*, 2011 IL 111382, ¶ 36. 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). The trial court is responsible for balancing the mitigating and aggravating factors before imposing sentence. *People v. Shaw*, 351 Ill. App. 2d 1087, 1095 (2004). In imposing a sentence,

the trial court balances the relevant factors including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Snyde*r, 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 an affirmative indication to the contrary other than the sentence itself. *People v. Abrams*, 2015 IL App (1st) 133746, ¶¶ 32–33.

¶ 46 Defendant's 24-year sentence within the statutory range is presumed proper. *Knox*, 2014 IL App (1st) 120349, ¶ 46. Further, defendant was a 3-time convicted felon with a history of drug offenses, including one within 1,000 feet of a school. Criminal history alone may warrant a sentence substantially over the minimum. *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009). Moreover, previous efforts at rehabilitation failed, as demonstrated when defendant was not deterred by previous, more lenient sentences. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 13.

¶ 47 Defendant nonetheless argues that his sentence was excessive in light of the nature of the offenses, his background, and his rehabilitative potential, demonstrated by his prior employment, familial ties and educational ambitions. This mitigating evidence was set forth in the PSI and argued by defense counsel. When, as here, mitigating evidence is before the trial court, it is presumed the court considered the evidence absent some contrary indication other than the sentence itself. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004). Defendant has not made the requisite affirmative showing that the sentencing court did not consider the relevant factors. See *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. In fact, the record shows the trial court clearly

considered defendant's rehabilitative potential, the nature of the offenses and defendant's background in imposing sentence.

¶ 48 The court expressly considered defendant's family background, his struggle with addiction, his educational accomplishments, and his expressed remorse. It also expressly considered the nature of the offenses, reciting the facts of the case. The court noted that "[t]his is your fourth felony conviction and your third felony conviction for dealing drugs. I find that you are a career criminal and a career drug dealer." The court also noted that "the very moment that he finished parole in the last case, which I believe he got six or eight years for, within a matter of a few days he was arrested on these charges." It is apparent that the court assigned more weight to defendant's criminal history and prior unsuccessful incarcerations than to his rehabilitative potential.

¶ 49 Defendant also argues that the court's comments that "[d]rugs are a scourage [*sic*] on this country, they a scourage [*sic*] on this community. Drugs destroy individuals, they destroy – illicit drugs destroy individuals, they destroy families, they destroy communities," demonstrate that the court focused on the problem generally, and employed a personal policy of imposing harsh sentences on drug offenders, instead of discussing the details of his particular offenses. We disagree. Although, the court did comment generally, it also specifically found that there were 11 children on the premises at the time of defendant's offenses. The court also noted that "[o]ne of your convictions as your attorney has stated was possession of drugs near a school for which you received six years in the penitentiary." Further, as noted above, the court assigned more weight to defendant's prior history of multiple felony convictions, than to his rehabilitative potential, taking into account the nature of the offenses and his background. Moreover, in denying defendant's motion to reconsider the sentence, the court stated that "I was put out by the charges

and also his background." We find no reason to disturb that determination on review. Here, the trial court exercised proper discretion by thoroughly considering all of the factors in aggravation and mitigation as well as the PSI before determining defendant's sentence. Thus, the court focused on defendant's offenses, considering all relevant factors and did not rely on a personal policy of imposing harsh sentences on drug offenders. Accordingly, we cannot conclude that the court abused its discretion in sentencing defendant to 24 years' imprisonment, which is within the applicable sentencing range.

¶ 50 Finally, defendant contends that his $25,000 fine is excessive in light of the small amount of drugs involved. We observe that the fine is well within the statutory allowance of $250,000 for each drug offense. 720 ILCS 570/401(c) (West 2014). It is also well within the statutory allowance for all felony offenses, as a defendant "may be sentenced to pay a fine not to exceed, for each offense, $25,000, or the amount specified in the offense, whichever is greater." 730 ILCS 5/5-4.5-50(b) (West 2014). Thus, we cannot conclude that the court abused its discretion in imposing a $25,000 fine, which is within the applicable statutory ranges.

¶ 51 III. CONCLUSION

¶ 52 For the foregoing reasons, we find that the State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt, the trial court did not indicate judicial bias by taking on a prosecutorial role and relied on competent evidence to find intent to deliver the drugs, and the trial court did not abuse its discretion where it considered all relevant factors and the sentence and fine were not excessive where they were within statutory guidelines. Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 53 Affirmed.