2019 IL App (1st) 153043-UB

SIXTH DIVISION
JUNE 28, 2019

No. 1-15-3043

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 10823
	)	
JEFFREY RILEY,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant did not receive an excessive sentence where the trial court considered all factors in aggravation and mitigation, was aware of the proper sentencing range, and reviewed defendant's criminal history. We remand for the circuit court to consider the defendant's claims regarding fines and fees.

¶ 2 Following a bench trial, defendant Jeffrey Riley was found guilty of delivery of a controlled substance (720 ILCS 570/401(d) (West 2012)). The court sentenced him, because of his criminal background, to a Class X sentence of nine years in prison and assessed $1,549 in

fines and fees. On appeal, the defendant contends that his sentence is excessive and challenges the fines and fees order. For the forgoing reasons, we affirm the judgment of the circuit court of Cook County, and we remand for the circuit court to consider the defendant's claims regarding fines and fees.

¶ 3 The defendant does not challenge the sufficiency of the evidence to sustain his conviction, so we need not discuss in detail the evidence presented at trial. Chicago police officer Ethan Ceja testified that, on May 28, 2014, he was working as an undercover narcotics officer. He approached the defendant on the street and requested "sawbuck blows," which is street terminology for $10 bags of heroin. The defendant told Ceja to follow him to a vacant lot. The defendant told Ceja "give me the money," and took Ceja's $20 in marked funds. The defendant returned five minutes later with two Ziploc bags which contained a white powder that Ceja suspected was heroin. After the defendant's arrest, the powder tested positive for heroin.

¶ 4 The defendant testified that, on the day of the incident, a police officer approached him and asked if he "know about some blows." The defendant directed him down the street. The defendant stated that the officer later asked the defendant to obtain the drugs for him. The defendant testified that he did not obtain the drugs for the officer.

¶ 5 The trial court found the defendant guilty of delivery of a controlled substance, denied the defendant's amended motion for a new trial, and proceeded with sentencing.

¶ 6 The pre-sentence investigation report ("PSI") indicated that the defendant was born in 1959, had a close relationship with his now-deceased parents and his siblings, and had no history of physical, mental, or sexual abuse. Three of his four siblings had a history of substance abuse, as did the defendant, who had a $20-per-day heroin habit prior to his incarceration. He had never received treatment for his addiction. The defendant could no longer hold a regular job due to a

stroke he suffered in 2010. As a result of the stroke, he had "memory loss, trouble talking, a struggle to use his arms and other normal symptoms of stroke victims."

¶ 7 The defendant had previously been convicted of: possession of a controlled substance (1999 - two days in Cook County Jail); domestic battery (1998 - two years conditional discharge); three separate theft offenses (1996 - ten days in Cook County Jail; 1994 - two days in Cook County Jail; 1983 – six months probation); two disorderly conduct offenses (1994 – ten days in Cook County Jail; 1992 – three months supervision); burglary (1988 - four years in Illinois Department of Corrections); armed robbery (1985 - six years in Illinois Department of Corrections); and criminal damage to property (1984 – probation terminated unsatisfactory).

¶ 8 During sentencing, the State argued that the defendant was Class X by background due to his 1988 Class 2 burglary and 1985 Class X armed robbery convictions, for which he was sentenced to four years and six years in prison, respectively. Because the defendant received the minimum sentences for both convictions, the State asked for substantial prison time on the instant conviction. In mitigation, defense counsel emphasized that the defendant was 56 years old, his last felony was 28 years earlier, he suffered a stroke in 2010, his entire family suffered from substance abuse, and he had maintained a job in "packing" for seven years. Counsel also argued that the defendant's charged conduct did not threaten physical harm and was unlikely to recur and that an extensive term would endanger the defendant's health. Defense counsel requested the minimum six-year sentence.

¶ 9 The trial court acknowledged that the defendant was subject to a mandatory Class X sentence and sentenced him to nine years in the Illinois Department of Corrections, plus three years of mandatory supervised release. It stated it had considered the evidence at trial, the gravity of the offense, the PSI, the financial impact of incarceration, and all evidence in aggravation and

mitigation. The trial court then assessed $1,549 in fines and fees. The defendant's motion to reconsider the sentence was denied, and he filed his notice of appeal.

¶ 10 In December 2017, this court issued a Rule 23 order in which we determined (1) that the trial court did not abuse its discretion in imposing a nine-year prison sentence, and (2) that we lacked jurisdiction to decide the defendant's separate arguments challenging the calculation or imposition of certain fines and fees, because those arguments were raised for the first time on appeal. 2017 IL App (1st) 153043-U (December 29, 2017). In January 2018, the defendant filed a petition for leave to appeal in our supreme court.

¶ 11 While the defendant's petition for leave to appeal was pending, Illinois Supreme Court Rule 472 was amended to provide that, in criminal cases "pending on appeal as of March 1, 2019 *** in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." Ill. S. Ct. R. 472(e) (eff. Mar. 1, 2019).

¶ 12 On May 22, 2019, our supreme court issued a supervisory order directing us to vacate the portion of our December 29, 2017 Rule 23 order which addressed the defendant's challenges to the trial court's fines and fees order. We have now reconsidered our Rule 23 order in accordance with the supreme court's mandate.

¶ 13 On appeal, the defendant contends that his nine-year sentence is excessive and disproportionate to the charged conduct: delivering $20 worth of heroin. The defendant emphasizes that he has not been convicted of a felony for over 25 years, he suffered a stroke in 2010, and suffered from heroin addiction. The defendant contends the sentence is excessive for a non-violent offense, and he notes that he is only subject to such a sentence due to two previous felony convictions from 1984 and 1987. He further argues that reducing his sentence will

alleviate the burden on taxpayers for the cost of his incarceration. The defendant asserts that the trial court's nine-year sentence should be reduced to the minimum six-year term.

¶ 14 The trial court has broad discretion in imposing an appropriate sentence, and a sentence falling within the statutory range will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). An abuse of discretion exists where a sentence is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, *inter alia*, the defendant's age, criminal history, character, education, and environment, as well as the nature and circumstances of the crime and the defendant's actions in the commission of that crime. *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010). The trial court is not required to explain the value it assigned to each factor in mitigation and aggravation; rather, it is presumed the trial court properly considered the mitigating factors presented and it is the defendant's burden to show otherwise. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010).

¶ 15 We find that the trial court did not abuse its discretion in imposing a nine-year sentence. Delivery of a controlled substance is a Class 2 felony. 720 ILCS 570/401(d) (West 2014). However, because the defendant had prior felony convictions, he was properly sentenced as a Class X offender, subject to a statutory sentencing range of 6 to 30 years' imprisonment. 730 ILCS 5/5-5-3 (c)(8) (West 2014); 730 ILCS 5/5-4.5-95(b) (West 2014). The nine-year sentence falls within this statutory range and we therefore presume it is proper. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 12.

¶ 16 The defendant argues that the court's nine-year sentence for the nonviolent offense of delivering $20 worth of heroin was excessive and constitutes an abuse of discretion in light of the nature of the crime, the defendant's felony background, and his medical conditions. The defendant, however, makes no affirmative showing that the court failed to consider factors in mitigation.

¶ 17 The record shows that the trial court considered all of the statutory factors in aggravation and mitigation, the information contained in the PSI, the financial impact of incarceration, the defendant's history with substance abuse, and his potential for rehabilitation. The trial court specifically stated that it considered these factors. Further, defense counsel argued those factors in mitigation and these factors were listed in the PSI. We presume that the sentencing court considered such mitigating evidence. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004). Despite any mitigating factors, the defendant's criminal history alone could warrant a sentence above the minimum where he had 10 prior convictions. *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009); *People v. Hill*, 400 Ill. App. 3d 23, 29-30 (2011) (nonviolence and addiction did not mandate a reduced sentence where the defendant had 13 prior convictions). While we may have imposed a lesser sentence had we been charged with sentencing the defendant, we cannot say that the trial court abused its discretion in sentencing the defendant to nine years in prison. We note that the sentence imposed is at the low end of the 6- to 30-year sentencing range.

¶ 18 The defendant also challenges the trial court's fines and fees order. He asserts that the trial court improperly calculated his fines and fees and they should have totaled $1,449, rather than $1,549. He also contends that the court improperly assessed the $5 Electronic Citation Fee (705 ILCS 105/27.3e (West 2014)), and that he should receive pre-sentence custody credit for certain fees which he believes are fines, specifically, the $50 Court System Fee (55 ILCS 5/5-

1101(c)(1) (West 2014)) and the $15 State Police Operations fee (705 ILCS 105/27.3(a)(1.5) (West 2014)).

¶ 19 The defendant concedes that he did not raise these challenges in the trial court. However, as his petition for leave to appeal was pending as of March 1, 2019, he is permitted to file a motion on remand in the trial court to challenge the fines and fees order. See Ill. S. Ct. R. 472(e) (eff. Mar. 1, 2019) ("the circuit court retains jurisdiction to correct *** sentencing errors," including errors in the imposition or calculation of fines and fees, the application of *per diem* credit against fines, and the calculation of presentence custody credit, "at any time following judgment, *** including during the pendency of an appeal, on the court's own motion, or on motion of any party").

¶ 20 Accordingly, we remand this cause to the trial court, for the limited purpose of permitting the defendant to raise contentions of sentencing errors pursuant to amended Rule 472, including any claims of error regarding the trial court's calculation or imposition of fines and fees.

¶ 21 For the reasons stated above, we affirm the judgment of the circuit court of Cook County, and we remand for the circuit court to consider the defendant's claims regarding fines and fees.

¶ 22 Affirmed and remanded with directions.