

2017 IL App (2d) 150097-U
No. 2-15-0097
Order filed May 4, 2017

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
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 14-CF-1530
)	
JOSHUA A. LAVANTURE,)	Honorable
)	Blanche Hill Fawell,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to a 13-year term of imprisonment for attempted armed robbery where, although defendant was young and had a difficult childhood, he had an extensive criminal history.

¶ 2 Defendant, Joshua A. Lavanture, pleaded guilty to attempted armed robbery (720 ILCS 5/8-4(a), 18-2(a)(1) (West 2014)). The trial court sentenced him to 13 years' imprisonment. He appeals, contending that the sentence was an abuse of discretion. We affirm.

¶ 3 On October 29, 2014, defendant entered an open plea of guilty to attempted armed robbery. As a factual basis, Officer Mark Tennyson would testify that on September 2, 2014, he

responded to a call at a 7-11 in Addison. He spoke with a clerk who said that a man with a knife came in demanding money. Officer Shelton would identify defendant as one of two men he stopped 15 minutes later based on a matching description. A knife and a bandana were on the ground near defendant. The complainant identified defendant in a show-up.

¶ 4 The presentence report showed that, beginning at age 14, defendant had been adjudicated delinquent six times. His juvenile probation was unsatisfactorily terminated. He had three prior adult convictions. In 2009 he was convicted of burglary and sentenced to three years' imprisonment. Fourteen days after being placed on mandatory supervised release (MSR), he was arrested for retail theft. He was sentenced to Treatment Alternatives to Street Crime (TASC) probation, which was revoked, and he was sentenced to two years' imprisonment. Twenty-two days after being placed on MSR, he was again arrested for retail theft. He was again sentenced to TASC probation. His probation was revoked and he was sentenced to four years' imprisonment. Ten days after being placed on MSR, he was arrested for the present offense.

¶ 5 Defendant told the interviewer that he was homeless. He was “ ‘already AWOL from parole’ ” and one of his friends had a grandmother who lived in Florida and would allow both men to stay with her. Defendant wanted to get money to move to Florida. Defendant said that he did not think his actions affected the victim, because, “ ‘If I were in his shoes, I wouldn't lose any sleep and would feel good that I fought off a robber.’ ”

¶ 6 Defendant reported that his father, David, and a girlfriend physically abused him, but “ ‘it wasn't that bad’ ” and he was “ ‘a horrible child.’ ” The Department of Children and Family Services had been called numerous times “in regards to both David and [defendant's] behaviors.” Defendant's mother left the family when he was about two years old. When defendant was

living with his father, they would have to move every year because defendant and his friends ‘ ‘would destroy the house while partying.’ ’ ”

¶ 7 Defendant reported that he had been paroled to Public Action to Deliver Shelter (PADS) in Du Page County, which required him to move around to different shelters each day. This was difficult, so he would “ ‘rather sleep outside than in a shelter.’ ”

¶ 8 Defendant began drinking alcohol when he was 13. When not incarcerated, he drank every day. He also began smoking marijuana at 13, smoking the drug daily. He began using cocaine at age 20. Defendant received inpatient treatment in July and August 2007, but was discharged for noncompliance and lack of progress. Defendant stated that he was kicked out because of “anger issues.” In 2008, defendant began a program at the Scott Nolan Center in Des Plaines, but was discharged unsuccessfully for “ ‘acting out.’ ” He completed a treatment program at Gateway in Carbondale. After completing the program, he was transitioned to a halfway house. He stayed one month before leaving. Defendant received services from another program in 2009, but left against medical advice.

¶ 9 Defendant was sentenced to two years’ TASC probation in 2011. He was unsuccessfully discharged after he left treatment against staff advice. Defendant was again sentenced to TASC probation in 2012. He was discharged approximately six weeks later for noncompliance with the rules. He used alcohol and marijuana after his discharge.

¶ 10 Defendant did not believe he was a drug addict. He stated that he was “ ‘not like other people in treatment.’ ” He did not believe he needed substance-abuse treatment. Defendant was “ ‘tired of coming to jail,’ ” and he believed TASC would allow him to get back on his feet. He was certain that he would not use drugs again after his release.

¶ 11 At the hearing, the prosecutor read a victim impact statement from the store clerk. The clerk said that, following the attempted robbery, he was afraid to work at night and had to quit his job at the 7-11. Although he was the only source of income for his family, he was currently working only four to five hours per week.

¶ 12 In mitigation, defense counsel pointed out defendant's difficult childhood. He argued that defendant had mental-health and substance-abuse issues. He had been released from prison, did not "know where to go," and was homeless.

¶ 13 The court asked why defendant had no place to go when he had been paroled to a PADS shelter in Elk Grove. Counsel responded that "he initially he [sic] didn't know where to go, and within a few days of not making it there, he is already in violation."

¶ 14 Counsel continued that defendant was sleeping outside, was not getting much sleep, and was not eating regularly. He conceived of the crime so that he could get money to go to Florida so that he could have "some sort of sanity returned to his life." When met with resistance, defendant left the scene. The potentially violent nature of the offense was out of character for defendant, whose previous offenses had been thefts. The court interjected, "that's almost more of a concern to me because the trend is now going up."

¶ 15 In allocution, defendant expressed regret for his actions and the harm they caused. He expressed remorse for his statement in the PSI that the victim should feel good about thwarting a robbery. He agreed that he should have gone to the shelter after being paroled, but said that in his experience Du Page shelters required him to move every night, which was an expense he could not afford. The court protested that other people participated and that the shelter to which he was assigned was not a Du Page shelter.

¶ 16 Defendant stated that he felt backed into a corner and that he felt his only option for a stable life was to move to Florida. He had a plan to avoid the cycle of incarceration. He intended to start a drug program. He planned to take courses to obtain a forklift licence and welding and masonry certificates. He felt confident that he could effectuate the plan and he was ready to change because he had nothing to show for his life.

¶ 17 The court stated that defendant had had three previous prison sentences and had been unable to change. The court found that defendant did nothing “the whole time you’ve been sitting in jail which is 85 days,” indicating a lack of effort to change. The court sentenced defendant to 13 years’ imprisonment, although it found that he had “a good plan” and hoped he would follow it.

¶ 18 The court denied defendant’s motion to reconsider the sentence. Defendant timely appeals.

¶ 19 Defendant contends that the 13-year sentence was an abuse of discretion. He argues as follows. The crime was an impulsive act driven by his hunger and homelessness. No harm was done and nothing was taken, as he abandoned the effort at the first sign of resistance. The violent nature of the offense was an aberration for him, as all his previous offenses were property crimes only. His comments in allocution show that he is sincerely remorseful and sincerely motivated to change the cycle of incarceration. He has a plan to obtain drug treatment and also earn vocational certificates to allow him to obtain employment after being released from prison. Moreover, the 13-year sentence represents a large jump from his prior sentences of 3 to 4 years.

¶ 20 It is well settled that the trial court has broad discretion in sentencing a defendant and, consequently, its decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial court is granted such deference because it is generally in a better position than

the reviewing court to determine the appropriate sentence. The trial judge has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Streit*, 142 Ill. 2d 13, 19 (1991). Thus, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed those factors differently. A sentence within the statutory limits will be deemed excessive and an abuse of discretion only where it varies greatly from the law's spirit and purpose, or where it is manifestly disproportionate to the offense. *Stacey*, 193 Ill. 2d at 210.

¶ 21 Here, the 13-year sentence was not an abuse of discretion. Defendant was convicted of attempted armed robbery, a nonprobationable Class 1 felony with a 4 to 15-year sentencing range. 720 ILCS 5/8-4(a), 18-2(a)(1) (West 2014); 730 ILCS 5/5-5-3(c)(2)(F) (West 2014). Defendant, who was 22 years old at the time of sentencing, had extensive involvement with the juvenile court system. He was placed on juvenile probation, which was terminated unsatisfactorily. He had spent all but a few weeks of his adult life in prison. He had three prior adult convictions that resulted in prison time. Twice, he received TASC probation, but it was terminated after defendant failed to complete inpatient treatment.

¶ 22 After being sentenced to three years' imprisonment for burglary in 2009, he was released on MSR in April 2011 and 15 days later was arrested for retail theft. He was sentenced to TASC probation, but it was revoked and he was sentenced to two years' imprisonment. After being released on MSR in June 2012, he was arrested 22 days later for retail theft. He was again sentenced to TASC probation. That was again revoked and he was returned to prison. Less than a month after being released on MSR, he was arrested for the present offense. In light of defendant's inability to refrain from criminal conduct for even a few weeks at a time, and his unwillingness to complete prior attempts at drug treatment, the trial court could properly

conclude that his rehabilitative potential was negligible. Moreover, the court could reasonably doubt the sincerity of his desire to change.

¶ 23 Defendant argues that the trial court gave insufficient weight to mitigating factors such as his difficult childhood, possible history of mental illness, and drug abuse. These are factors that the trial court considered but they do not dictate a shorter sentence.

¶ 24 There is some evidence that defendant was at least partly responsible for his chaotic childhood. He conceded that he was a “horrible child” and that the family had to move every year because he and his friends would destroy the family’s current home while partying. In any event, it is well established that “[a] trial court has wide latitude in sentencing a defendant, so long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation.” *People v. Flores*, 404 Ill. App. 3d 155, 157-58 (2010) (quoting *People v. Roberts*, 388 Ill. App. 3d 245, 251 (2003)). The existence of mitigating factors does not mandate imposition of the minimum sentence or preclude imposition of the maximum sentence. *Id.* We may not reweigh factors considered by the trial court. *Id.* at 158. There is a presumption that a trial court considered all relevant factors in determining a sentence, and that presumption will not be overcome without explicit evidence from the record that the trial court did not consider mitigating factors. *Id.*

¶ 25 Defendant contends that his crime, rather than posing a danger to anyone, was a pathetic attempt to get money brought about by his desperation at being hungry and homeless. Once again, it appears that defendant’s predicament was largely of his own making. He failed to report to the shelter to which he was paroled, providing various explanations for his failure to do so. The trial court could reasonably conclude that he simply preferred to live on the streets or with friends in order to continue abusing drugs and alcohol rather than following the rules of a

shelter. As to the nonviolent nature of the crime, defendant entered a store brandishing a knife. The cashier felt compelled to resort to violence to fight off the attack. It is merely fortuitous that no one was injured during the incident.

¶ 26 Defendant argues that the use of a weapon was an aberration given that his previous offenses were property crimes. However, the trial court could reasonably conclude that the use of a weapon represented a dangerous escalation of defendant's criminal behavior, despite three prior prison sentences. The court could reasonably conclude that a lengthy prison sentence was necessary to deter defendant from a further escalation of his criminal behavior. See *People v. Davis*, 319 Ill. App. 3d 572, 578 (2001) (escalation of defendant's violent behavior warranted lengthy sentence).

¶ 27 The judgment of the circuit court of Du Page County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 28 Affirmed.