

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. 12-CM-2104
)	
RAVEN REGULUS,)	Honorable
)	Bruce R. Kelsey,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial did not err in considering defendant's failure to admit guilt at sentencing. Therefore, we affirmed.

¶ 2 Following a jury trial, defendant, Raven Regulus, was convicted of criminal trespass to vehicles (720 ILCS 5/21-2 (West 2012)). Defendant appeals, contending that the trial court improperly considered her failure to admit guilt as a factor in aggravation at her sentencing hearing. Defendant requests that this court vacate her jail sentence, modify her sentence of probation to court supervision, and vacate her underlying conviction. Alternatively, defendant asks this court to remand for a new sentencing hearing. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On May 29, 2012, defendant was charged by complaint with battery (720 ILCS 5/12-3(a)(2) (West 2012)), criminal trespass to vehicles (720 ILCS 5/21-2 (West 2012)), theft (720 ILCS 5/16-1(a)(4) (West 2012)), and resisting a police officer (720 ILCS 5/31-1(a) (West 2012)).

¶ 5 Defendant's case proceeded to trial on May 11, 2015. The State first called Christine Battaglia, and she testified as follows. On May 10, 2012, Battaglia arrived to work at the Village of Carol Stream city hall, which shares a parking lot with the Village of Carol Stream Police Department. She saw defendant walking around the lot and looking at parked vehicles. As Battaglia was pulling into her parking spot, defendant walked towards her car. When Battaglia stepped out of her car, defendant told her to "give me your keys," and she tried to wrestle the keys out of Battaglia's hand when she would not hand them over.

¶ 6 During the confrontation, defendant allegedly struck Battaglia on the arm in an attempt to grab the keys. When she failed to acquire the keys, defendant entered Battaglia's vehicle and sat in the driver's side seat without permission. Defendant then started rummaging through Battaglia's things and put on her jacket, which was sitting on the passenger's seat. Battaglia walked to the passenger-side door, and defendant asked her if she could use the car to "pick up some furniture or something." Defendant offered her money but never said she was in danger.

¶ 7 Battaglia then walked toward a bystander in another vehicle and asked the person to call for help. Defendant exited Battaglia's vehicle and followed her to the bystander's vehicle. Defendant then attempted to get into the bystander's vehicle, but the driver quickly drove away.

¶ 8 At this point, Battaglia saw a woman she knew, and she asked her to call for help. Thereafter, police arrived on the scene. The parking lot was monitored by video surveillance,

and Battaglia reviewed the video from May 10, 2012, that was played for the jury. The State rested.

¶ 9 Defendant testified as follows. On May 10, 2012, she went to 7-Eleven to buy cigarettes. She had left her house that morning without shoes on because she was “panicky.” Defendant became anxious and overwhelmed when she saw some men that she knew at the 7-Eleven. Thereafter, she ran across the street to the police department in search of her brother. Defendant believed that her brother was in jail, and she asked an officer for help in finding him so that she could use his car. However, defendant was mistaken, and her brother was not at the police department.

¶ 10 After learning that her brother was not there, defendant went outside and began looking for him in parked cars. Defendant became scared that an unidentified woman was attempting to kill her while she was walking around the parking lot. Battaglia pulled into the lot as defendant was reaching the height of her nervousness about the unidentified woman. Battaglia approached her and asked her if everything was okay. Defendant told her that a woman was going to kill her. According to defendant, after she told Battaglia about the unidentified woman, Battaglia told her to come over to her car. Defendant did not try to take Battaglia’s keys, and the two sat down in Battaglia’s car to continue conversing. Defendant claims that Battaglia then got out of the car to go talk to the unidentified woman.

¶ 11 On May 13, 2015, the jury found defendant guilty of criminal trespass to vehicle (720 ILCS 5/21-2 (West 2012)), a class A misdemeanor, and acquitted her on the other three counts. A sentencing hearing was held the same day. No evidence was presented at the hearing, and the parties stipulated to defendant’s lack of a criminal history. Defense counsel argued that court supervision was an appropriate sentence and noted the following in support of that argument:

defendant had encountered difficulty in finding employment with the charges pending; she had a master's degree and was working towards getting a second master's degree; she had previously worked for Lutheran Child and Family Services; she had designed an outpatient treatment facility that she hoped to open soon; she had developed a psychology theory that she was going to make her life's work; she had a great family support system; she had received treatment and counseling for her mental health issues; and she was in good mental health on the day of sentencing. When asked if she wished to make a statement before the court, defendant said: "I think he said most of it. I'm pretty much going ahead with my career plans. This record is going to interfere with it greatly. So I hope to be able to expunge this."

¶ 12 The State recommended 18 months' probation, counseling, 14 days in the Sheriff's Work Alternative Program (SWAP), no contact with Battaglia, and no entry to the parking lot where the incident occurred.

¶ 13 The court sentenced defendant to 8 days in the Du Page County jail, 18 months' probation, counseling, a fine of \$100 plus costs, and the requested no-contact and no-entry orders.

¶ 14 After the trial court announced the sentence, defense counsel asked, "[a]nd just so I'm clear, your Honor, even with no criminal background, she's still receiving probation and jail?"

The court responded:

"Yes. I think she needs mental help. I think that clearly from the report that I saw, she has a mental illness that she needs to respond to and she's not.

If the Probation Department feels that she does not need any further evaluation or further treatment, if they tell me that she's okay with that, I'm okay with that. But I think she needs to be evaluated. I think she's rejected the idea that she has a mental illness,

even though her own doctor suggests that she does.

So I think she needs to be evaluated to find out what's going on. She's denied that she's got a mental illness. I want to find out if she does or doesn't."

Defense counsel then asked, "[w]ell how is jail going to help her?"

The court again responded:

"Because I think she has not acknowledged guilt in this case. And I've taken into consideration all the facts. There is some mitigation and aggravation that's required by the statute and there's been no acknowledgement of guilt. And I think that's a factor in whether or not I should give her anything other than what I did. And I factored that into the situation."

¶ 15 The trial court did not admonish defendant pursuant to Illinois Supreme Court Rule 605(a) (eff. Oct. 1, 2001), which instructs defendants of the necessary steps in appealing a sentence. On June 2, 2015, defendant timely filed a notice of appeal. At the time of this disposition, defendant has served the entirety of her sentence.

¶ 16 **II. ANALYSIS**

¶ 17 On appeal, defendant argues that the trial court improperly relied on her failure to admit guilt as an aggravating factor at sentencing, and that but for the improper consideration at sentencing, she would have been sentenced to court supervision, which does not result in a conviction. Accordingly, she argues that her conviction should be vacated. She further argues that her failure to file any post-trial or post-sentencing motion does not preclude her appeal because the trial court failed to admonish her pursuant to Rule 605(a). The State responds that defendant's appeal is moot given that she has already served her sentence, and regardless, the trial court did not improperly consider defendant's failure to admit guilt in sentencing defendant

to probation and jail.

¶ 18 First, we agree with defendant that she has not forfeited the issues on appeal even though she did not file a post-trial motion, because the trial court failed to properly admonish the defendant pursuant to Rule 605(a). Rule 605(a) provides:

“(1) In all cases in which the defendant is found guilty and sentenced to imprisonment, probation or conditional discharge *** the trial court shall, at the time of imposing sentence or modifying the conditions of the sentence, advise the defendant of the right to appeal, of the right to request the clerk to prepare and file a notice of appeal, and of the right, if indigent, to be furnished, without cost to the defendant, with a transcript of the proceedings at the trial or hearing.” Ill. S. Ct. R. 605(a) (eff. Oct. 1, 2001).

In addition, the trial court shall advise a defendant of the right to have counsel appointed on appeal following conviction of a Class A misdemeanor (Ill. S. Ct. R. 605(a)(2) (eff. Oct. 1, 2001)), and at the time of sentencing, the trial court shall advise a defendant that she must file a motion in the trial court within 30 days, raising sentencing issues or claims of error, in order to preserve a challenge on appeal (Ill. S. Ct. R. 605(a)(3) (eff. Oct. 1, 2001)).

¶ 19 In *People v. Dowding*, 388 Ill. App. 3d 936, 942 (2009), this court considered the State’s argument that the defendant forfeited his ability to raise sentencing issues on appeal because he had not filed a motion to reconsider his sentence within 30 days of the date on which sentence was imposed. We rejected the State’s forfeiture argument, explaining that because the defendant was not fully admonished of Rule 605(a), “we will address the merits of defendant’s sentencing argument, and in any case, we note that forfeiture limits the parties’ ability to raise an argument, not this court’s right to entertain an argument.” (Internal quotation marks omitted.) *Id.* Likewise here, defendant has not forfeited her challenge to sentencing issues on appeal because the trial

court did not admonish her pursuant to Illinois Supreme Court Rule 605(a) at any point during the proceedings.

¶ 20 Next, we consider whether defendant's appeal is moot. The State argues that defendant's appeal is moot because she is making an argument as to an error in sentencing, not an argument as to the conviction that would save her appeal from being moot. The State contends that because defendant has completed her sentence, this court cannot grant her effectual relief.

¶ 21 Defendant argues that her appeal is not moot because she is ultimately challenging her conviction. She acknowledges that ordinarily, the completion of her sentence would render a challenge to that sentence moot, but she argues that her conviction was entered in error based on the court's consideration of an improper sentencing factor. In particular, she argues that absent the court's consideration of her failure to admit guilt, she should have been sentenced to supervision, which does not result in a conviction. In support, defendant relies on *People v. Saleh*, 2013 IL App (1st) 121195, ¶ 10, which reasoned that the nullification of a conviction is unrelated to sentencing issues, and the validity of a conviction is not rendered moot simply because the defendant has served her full sentence.

¶ 22 We agree that defendant's appeal is not moot because she is seeking to vacate her conviction. An appeal is moot where it presents no actual controversy or where the issues involved no longer exist because intervening events have rendered it impossible to grant effectual relief. *People v. McCoy*, 2014 IL App (2d) 130632, ¶ 11. In general, "where the only relief sought is to vacate a sentence, the issue becomes moot when the sentence has been served." *People v. McNett*, 338 Ill. App. 3d 257, 260 (2003). Nevertheless, a case is not moot if the defendant may be subject to collateral legal consequences after serving the sentence. *Id.* The collateral consequences exception to mootness allows appellate review even though a court order

or incarceration has ceased, where the order could plague a defendant in future proceedings or affect other aspects of the defendant's life. See *McCoy*, 2014 IL App (2d) 130632, ¶ 13; *In re Alfred H.H.*, 233 Ill. 2d 345, 361 (2009). Importantly, completion of a defendant's sentence does not render moot a challenge to the underlying conviction, as nullification of a conviction may hold important consequences for the defendant. *In re Christopher K.*, 217 Ill. 2d 348, 359 (2005).

¶ 23 In *Saleh*, the appellate court addressed whether the defendant's appeal was moot where the defendant sought to challenge an order stipulating to his violation of supervision, which resulted in his conviction. *Saleh*, 2013 IL App (1st) 121195, ¶¶ 10-12. The defendant had entered a guilty plea on a misdemeanor driving under the influence (DUI) charge in April 2009, and the trial court sentenced him to one year of supervision. *Id.* ¶ 12. In January 2011, the defendant stipulated to a violation of his supervision order, and the court entered a judgment of conviction on the DUI offense and sentenced him to 364 days' imprisonment. *Id.* On appeal, the defendant argued that the court order revoking supervision was entered in error because the court did not provide him proper admonishments before he stipulated to the revocation of supervision. *Id.* ¶ 9.

¶ 24 The appellate court rejected the State's argument that the appeal was moot. *Id.* ¶ 11. It explained that the defendant was not convicted until the court's January 2011 order when he stipulated to a supervision violation, and the court failed to properly admonish him prior to his stipulation. *Id.* ¶ 12. Therefore, the defendant's appeal was a challenge to his conviction, based on the trial court's failure to properly admonish him prior to revocation of supervision. *Id.* ¶ 12. Even though the defendant had completed his sentence, the nullification of the conviction was "another matter entirely," as a conviction could trigger severe legal, social, employment, and

financial repercussions. *Id.* ¶ 10.

¶ 25 In this case, defendant challenges her conviction on the basis that it resulted from an error in sentencing. The same detrimental collateral consequences—legal, social, employment, financial—exist for her as they did for the defendant in *Saleh*. If her argument prevails, we can provide relief by reversing her conviction or remanding for a new sentencing hearing that will not necessarily result in a conviction. Under these circumstances, we may consider her appeal.

¶ 26 Turning to the merits of defendant’s argument, we consider whether it was improper for the trial court to consider defendant’s failure to admit guilt as an aggravating factor in sentencing her to probation and jail time. A trial court has wide latitude in sentencing a defendant to any term within the statutory range prescribed for an offense, as long as it does not consider incompetent evidence and improper aggravating factors, and as long as it does not ignore pertinent mitigating factors. *People v. Hernandez*, 204 Ill. App. 3d 732, 740 (1990). A trial court is granted great deference in imposing a sentence, and a reviewing court will not alter a trial court’s sentence absent an abuse of discretion. *People v. Walker*, 2012 IL App (1st) 083655, ¶ 30. A trial court abuses its discretion only when its judgment is manifestly unjust or palpably erroneous. *People v. Black*, 223 Ill. App. 3d 630, 633 (1992).

¶ 27 Unless the record affirmatively shows otherwise, a reviewing court will presume that the trial court considered only appropriate factors in sentencing (*People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002)), and “a reviewing court may not substitute its judgment for that of a sentencing court merely because it would have weighed the factors differently” (internal quotation marks omitted) (*People v. Smith*, 321 Ill. App. 3d 523, 537-38 (2001)). However, a “sentence based on improper factors will not be affirmed unless the reviewing court can determine from the record that the weight placed on the improperly considered aggravating

factor was so insignificant that it did not lead to a greater sentence.” *People v. Heider*, 231 Ill. 2d 1, 21 (2008). Whether a trial court relied on an improper factor in imposing a sentence is a question of law that we review *de novo*. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8.

¶ 28 Defendant argues that the only factor the trial court cited in aggravation was her failure to admit guilt. She argues that the court focused on this one erroneous factor and ignored factors in mitigation, including defendant’s lack of criminal history, the fact that her conduct did not threaten or cause harm to another, and her mental health at the time of the offense.

¶ 29 We disagree and hold that the trial court did not err by considering defendant’s failure to admit guilt. A court may consider a defendant’s lack of penitent spirit in determining the appropriate sentence because it may have a bearing on the defendant’s potential for rehabilitation. *People v. Speed*, 129 Ill. App. 3d 348, 349 (1984); see *People v. Ward*, 113 Ill. 2d 516, 530 (1986) (explaining that a defendant’s potential for rehabilitation may be conveyed through a lack of remorse). While neither a defendant’s “continued protestation of innocence” nor her “lack of remorse” following a determination of guilt may be automatically or arbitrarily applied as factors in aggravation, these factors may be viewed in the light of all the other facts of the case with respect to defendant’s prospect for rehabilitation and restoration to society. *Ward*, 113 Ill. 2d at 529.

¶ 30 Thus, “[t]he defendant’s attitude as it reflects his rehabilitative potential is the standard by which courts of review determine whether sentencing was improperly influenced by a failure to admit guilt following a conviction.” *People v. Coleman*, 135 Ill. App. 3d 186, 188 (1985). If the sentencing court indicated that an admission of guilt would reduce the defendant’s sentence, then consideration of the defendant’s lack of remorse would be improper. *Id.* On the other hand, if “the record shows that the court did no more than address the factor of remorsefulness as it

bore upon defendant's rehabilitation, then the court's reference to a defendant's persistent claim of innocence will not amount to reversible error." (Internal quotation marks omitted.) *Speed*, 129 Ill. App. 3d at 350.

¶ 31 First, it is clear that the trial court was evaluating defendant's prospects for rehabilitation when it considered defendant's failure to admit guilt in sentencing her. When asked why defendant was receiving jail and probation, the trial court was concerned with defendant's mental health and rehabilitative potential, stating:

"I think she needs mental help. I think that clearly from the report that I saw, she has a mental illness that she needs to respond to and she's not.

If the Probation Department feels that she does not need any further evaluation or further treatment, if they tell me that she's okay with that, I'm okay with that. But I think she needs to be evaluated. I think she's rejected the idea that she has a mental illness, even though her own doctor suggests that she does.

So I think she needs to be evaluated to find out what's going on. She's denied that she's got a mental illness. I want to find out if she does or doesn't."

¶ 32 Furthermore, the trial court only considered her failure to admit guilt as one factor of many. When asked how jail would help defendant, the court responded that she had not acknowledged guilt; there was some mitigation and aggravation under the statute; it took into consideration all the facts; and her lack of acknowledgement of guilt was "*a factor* in whether or not [the court] should give her anything other than what I did. And [it] factored that into the situation." (Emphasis added.) While the trial court did consider defendant's failure to admit guilt, it did so as one factor as it bore upon defendant's potential for rehabilitation, and courts may properly consider a "lack of penitent spirit" in determining an appropriate sentence. See

Speed, 129 Ill. App. 3d at 349-350.

¶ 33 The record also demonstrates that the court did not ignore factors in mitigation. We note that a trial court is not required to expressly detail the exact process by which it determined the penalty or articulate its consideration of mitigating factors. *Quintana*, 332 Ill. App. 3d at 109. Nevertheless, the record shows that the trial court considered defendant's mental health and lack of a criminal background. At the sentencing hearing, the court asked whether defendant had a criminal history and whether she was currently receiving therapy or counseling. At sentencing, the court stated that it thought "she needs mental help" and "from the report [it] saw, she has a mental illness that she needs to respond to and she's not." Defense counsel asked if defendant was receiving probation and jail time despite no criminal background, and the court responded yes. When defense counsel said he never heard of anyone receiving this sentence with no criminal background, the court "respectfully disagree[d]." Further, the court took into consideration "all the facts," and noted there was "some mitigation and aggravation" per the statute. The court believed that defendant needed to address her mental health and acknowledge wrongdoing. These were proper considerations related to her potential for rehabilitation. See *People v. Darheim*, 242 Ill. App. 3d 80, 94-95 (2003). Moreover, we afford great deference to the trial court's sentence, which fell within the statutory sentencing range applicable to criminal trespass to vehicle (see 720 ILCS 21-2(b) (West 2012) ("criminal trespass to vehicles is a Class A misdemeanor"); 730 ILCS 5/5-4.5-55 (West 2012) (sentence for class A misdemeanor may not exceed one year's imprisonment, two years' probation, and \$2,500 in fines)). Based on the record and the trial court's comments, the court did not abuse its discretion in sentencing defendant to 8 days in jail plus 18 months' probation.

¶ 34 Therefore, because the trial court did not err in sentencing defendant to jail and probation instead of supervision, we affirm defendant's conviction for criminal trespass to vehicle.

¶ 35 III. CONCLUSION

¶ 36 The trial court did not improperly consider defendant's failure to admit guilt in sentencing defendant to jail and probation. We therefore affirm the judgment of the Du Page County circuit court.

¶ 37 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 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 38 Affirmed.