2017 IL App (2d) 150756-U
No. 2-15-0756
Order filed August 9, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JACOB CECIL, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lee County. No. 06-CF-168 Honorable Jacquelyn D. Ackert, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion when it sentenced defendant to a 45-year extended-term sentence.

¶ 2 On June 14, 2006, defendant entered the Hometown Pantry in Dixon while wearing a mask and armed with a sawed-off shotgun. He demanded that the clerk, whom defendant described as a friend, give defendant money. The clerk gave defendant a little over $100, and defendant fled the scene in a car driven by his step-brother. Later, the police surrounded defendant's home after evacuating other citizens who lived in the area. Defendant eventually

surrendered. Although defendant initially denied involvement in the offense, he subsequently admitted his guilt and pleaded guilty to armed robbery (720 ILCS 5/18-2(a)(2) (West 2006)).

¶ 3 Evidence presented at defendant's sentencing hearing revealed that defendant had an extensive criminal history, which included an armed robbery that occurred several days before the Hometown Pantry robbery and convictions of burglary, armed robbery, the unlawful possession of cannabis, and the unlawful transportation of materials used to make methamphetamine. Further, defendant, who made and sold drugs, worked as an "enforcer" when people to whom drugs were sold did not pay their debts. Defendant liked to use a sawed-off shotgun in these encounters to intimidate people. At age 10, defendant's mother locked him out of their home. Defendant was placed in various foster homes and facilities for troubled children. He was physically and sexually abused, underwent treatment for several mental disorders, began using various drugs, and started consuming alcohol. In allocution, defendant expressed remorse, took responsibility for his actions, and advised the court that he had accepted God and is a different person today. The court sentenced defendant to 60 years' imprisonment, *i.e.*, 45 years plus a 15-year firearm add-on (see 720 ILCS 5/18-2(b) (West 2006)). Defendant's plea was withdrawn, and he again pleaded guilty to armed robbery. The court sentenced defendant to 45 years' imprisonment. Defendant moved the court to reconsider his sentence, the court denied that motion, defendant appealed, and this court remanded for compliance with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). *People v. Cecil*, No. 2-12-1312 (July 16, 2013) (minute order). On remand, amended motions to reconsider and a proper Rule 604(d) certificate were filed. The court denied the amended motions, and this timely appeal followed.

¶ 4 On appeal, defendant contends that his sentence is excessive. It is well established that the trial court is the proper forum to determine a sentence and that the trial court's sentencing

decision is entitled to great deference and weight. *People v. Latona*, 184 Ill. 2d 260, 272 (1998). A sentence within the statutory limits for the offense will not be disturbed absent an abuse of discretion (*People v. Coleman*, 166 Ill. 2d 247, 258 (1995)), which occurs when 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 (2000)). Accordingly, we will not reduce a sentence merely because we might weigh the pertinent factors differently. *Id.* at 209.

¶ 5 The weight to be attributed to each factor in aggravation and mitigation depends upon the circumstances of the case. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). In fashioning a sentence, the trial court is not required to recite and assign a value to each mitigating factor, and the existence of mitigating factors does not obligate the trial court to impose the minimum sentence. *People v. Adamcyk*, 259 Ill. App. 3d 670, 680 (1994). Rather, where mitigating evidence was before the court, we presume that the sentencing judge properly considered the evidence, absent some indication to the contrary other than the sentence itself. *People v. Allen*, 344 Ill. App. 3d 949, 959 (2003).

¶ 6 Here, defendant pleaded guilty to armed robbery, a Class X felony (720 ILCS 5/18-2(a)(1), (b) (West 2006)). Although defendant no longer faced a 15-year firearm add-on, as that provision was declared unconstitutional (see *People v. Hauschild*, 226 Ill. 2d 63, 86-87 (2007)), he was still eligible for an extended-term sentence based on his previous conviction of armed robbery (730 ILCS 5/5-5-3.2(b)(1) (West 2012)). Thus, defendant was subject to a sentence between 6 and 60 years. 730 ILCS 5/5-4.5-25(a) (West 2014). Defendant's 45-year sentence, though 12 years higher than the middle of this range, is 15 years below the maximum sentence.

¶ 7 Recognizing that his sentence is within the applicable range, defendant argues that his sentence should be reduced to 30 years, 3 years below the midpoint, given the mitigating

evidence. Specifically, defendant claims that the court, in imposing the sentence, did not give appropriate weight to his mental illnesses and history of abuse. Additionally, defendant contends that the court should have placed greater weight on the fact that he was only 27 when he committed the crime, no one was physically harmed during the robbery, a relatively small amount of money was taken, he surrendered to the police, he accepted responsibility for his crime, and he expressed remorse.

¶ 8 When the court resentenced defendant, it specifically stated that it had considered all of the evidence that was presented. This included not only the presentence investigation report, but also the transcript from the prior sentencing hearing and the reports from the doctors who evaluated defendant's mental fitness. The court also noted that it "consider[ed] all of the factors set forth in the statute in mitigation and in aggravation." One aggravating factor with which the court was "extremely concerned" was "the threat of this [d]efendant to the society." More specifically, in addition to the fact that defendant's acts during the Hometown Pantry robbery most certainly terrorized the customer and the store clerk, the court observed that defendant used to work as an "enforcer," collecting drug debts. The court also noted that defendant had an extensive criminal history and used drugs. Indeed, the evidence revealed that, when defendant committed the most recent armed robberies, he was high on cocaine. Although the court did not comment on any particular mitigating factors it considered, it "[was] not required to detail precisely for the record the exact process by which it determined the penalty, nor [was] it required to articulate consideration of mitigating factors." *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 51. Given the evidence presented, the court determined that "incarceration is the only option" and that "a long[-]term sentence is appropriate." We conclude that the trial court did not abuse its discretion in imposing a 45-year sentence. See *Stacey*, 193 Ill. 2d at 210. Defendant

essentially asks us to reweigh the mitigating factors. As noted, we may not do so. *Id.* at 209.

¶ 9 Citing the fact that his 45-year sentence is more than double the 21-year sentence he was offered earlier in the proceedings, defendant argues that his sentence is clearly excessive. However, the fact that the State offered a lower sentence does not establish that the court's higher sentence was unreasonable. In addition, we note that the cases on which defendant relies are distinguishable because he was not similarly situated to the defendants in those cases. *Cf. People v. Calva*, 256 Ill. App. 3d 865, 876 (1993) (defendant had no criminal prior history); *People v. Steffens*, 131 Ill. App. 3d 141, 152 (1985) (defendant was a teenager); *People v. O'Neal*, 125 Ill. 2d 291, 300 (1988) (defendant committed crimes to "free himself from [co-defendant's] oppressive deviate sexual practices"). Moreover, we note that our supreme court has expressly rejected such comparisons as a means of evaluating individual sentencing judgments. See *People v. Fern*, 189 Ill. 2d 48, 62 (1999).

¶ 10 For these reasons, the judgment of the circuit court of Lee 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 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 11 Affirmed.