

2017 IL App (2d) 150969-U
No. 2-15-0969
Order filed October 11, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of De Kalb County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08-CF-244
)	
MARK CHARIPAR,)	Honorable
)	William P. Brady,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in making defendant's current sentences consecutive to a prior sentence: given defendant's violent offenses and untreated alcohol abuse, the court properly found that defendant posed a continuing danger to the public, necessitating the consecutive sentences.

¶ 2 Defendant, Mark Charipar, appeals from the judgment of the circuit court of De Kalb County, asserting that the trial court abused its discretion in making his prison sentences consecutive to a prison sentence in Kane County. Because the record shows that consecutive sentences were necessary to protect the public from defendant's further criminal conduct, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant pled guilty to one count of aggravated battery for intentionally causing great bodily harm to a police officer (Officer Thomas Reilly of the City of De Kalb police department) (720 ILCS 5/12-3, 4(a) (West 2008)), two counts of aggravated battery for intentionally causing great bodily harm to a police officer (Sergeant Craig Woodruff of the City of De Kalb police department) (720 ILCS 5/12-3, 4(a) (West 2008)), and two counts of criminal trespass to a motor vehicle (720 ILCS 5/21-2 (West 2008)).

¶ 5 On December 28, 2008, the trial court sentenced defendant to 364 days in jail on the criminal-trespass convictions and concurrent terms of 48 months' probation on the aggravated-battery convictions. The court also ordered defendant to pay to the City of De Kalb approximately \$50,000 in restitution.

¶ 6 On June 22, 2009, the State filed a petition to revoke probation, alleging that defendant was refusing to leave the jail to attend counseling, work, and school. Because psychiatric counseling was required as a condition of probation, the trial court revoked defendant's probation.

¶ 7 After revoking defendant's probation, the trial court sentenced defendant to five years in prison on the aggravated-battery conviction involving Officer Reilly. The court imposed four years' probation on each of the aggravated-battery convictions involving Sergeant Woodruff. The court made the probation consecutive to the five-year prison sentence.

¶ 8 On January 20, 2011, defendant was released from prison. He then began to serve his consecutive sentence of probation. He thereafter completed 750 hours of community service.

¶ 9 On July 7, 2014, the State filed a petition to revoke probation, alleging that, on December 12, 2013, defendant had committed a home invasion in Kane County. According to the petition

to revoke, defendant had pled guilty in Kane County to one count of home invasion and had been sentenced to 10 years in prison. Defendant admitted to having violated his probation, and the trial court conducted a sentencing hearing.

¶ 10 The following facts were developed at the sentencing hearing. According to Sergeant Woodruff, in May 2008, he was dispatched to investigate a report of vehicle burglaries. After Sergeant Woodruff arrived, defendant, who was running from another officer, collided with Sergeant Woodruff, injuring Sergeant Woodruff's knee and shoulder. Defendant was arrested.

¶ 11 While defendant was being booked by Officer Reilly, Sergeant Woodruff, who was in a nearby room, heard a fight in the booking area. When he responded, he saw defendant bent over, punching Officer Reilly in the head. As defendant began choking Officer Reilly, Sergeant Woodruff attempted to pull defendant away. As he did, defendant lunged, dislocating and fracturing Sergeant Woodruff's shoulder.

¶ 12 The injuries to Sergeant Woodruff's shoulder required surgery. He thereafter missed approximately eight months of work. He continued to experience pain when it rained and he lacked the previous range of motion in his shoulder.

¶ 13 As a result of the booking incident, Officer Reilly suffered a concussion, a back strain, and some residual pain. According to Officer Reilly, defendant's actions contributed to his ongoing back problems.

¶ 14 According to Officer Jeff Sherwood of the Aurora police department, on December 12, 2013, he was dispatched to investigate a fight inside a residence. The resident told him that defendant had knocked on the patio door. When the resident answered, defendant told him that he was intoxicated and asked him for \$35 per week to watch the resident's house. The resident

told defendant that defendant was intoxicated and to go home. The resident then shut the patio door.

¶ 15 Defendant then smashed the glass of the patio door with a steel spatula and entered the residence, carrying the spatula and a knife. Defendant and the resident fought, damaging furniture and other items. The resident ran from his house with defendant chasing him. The resident went to the neighbors and asked them to call the police. During the fight, the resident's fiancée and a child locked themselves in a bedroom and called the police.

¶ 16 After the police arrived, defendant attempted to enter a locked squad car and then ran. After a brief foot chase, the police apprehended defendant. According to Officer Sherwood, after defendant was handcuffed he threatened to beat up the officers.

¶ 17 The State contended that the trial court should make the sentences on the two aggravated-battery convictions run consecutively to the 10-year prison sentence in Kane County. In arguing that any prison sentence should be concurrent, defendant's counsel stated that, because the evidence from this case was before the Kane County trial court when it sentenced defendant, it could be assumed that the Kane County court considered the facts of this case when it imposed the 10-year prison sentence. The trial court agreed that it was correct to assume that the Kane County court considered this case when it sentenced defendant.

¶ 18 In mitigation, defendant pointed out that he had paid nearly \$3,000 in restitution, had completed the SCRAM program¹ with no violations, had no reported problems while in prison, had completed the 750 community-service hours, and had no criminal history before the instant

¹ SCRAM is an acronym for "secure continuous remote alcohol monitor," which is a device that remotely monitors a subject's alcohol consumption. Erin Murphy, *Paradigms of Restraint*, 57 Duke L. Rev. 1321, 1334-35 (Mar. 2008).

case. Defendant conceded that he needed to get his alcohol abuse under control. Defendant asked for a prison sentence of between five and seven years, but contended that the prison sentence should not be consecutive.

¶ 19 The State agreed that the prison sentence should be between five and seven years. However, the State urged the trial court to make the prison sentence consecutive to the Kane County sentence.

¶ 20 In addressing mitigating factors, the trial court found that defendant's payment of only \$3,000 toward restitution was not mitigating. The court further found that defendant's lack of criminal history, completion of community service, and successful participation in the SCRAM program were mitigating. The court found no other mitigating factors applicable. The only factor that the court found aggravating was that defendant's conduct caused serious physical harm to Sergeant Woodruff. Thus, the court sentenced defendant to concurrent four-year prison terms on the aggravated-battery convictions.

¶ 21 When ruling on whether the sentences should be consecutive to the Kane County sentence, the trial court quoted from section 5-8-4(c) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-4(c) (West 2014)). The court stated that, when considering defendant's history and character, it was being asked to consider the "whole picture" and the "whole picture [was] not a pretty one."

¶ 22 The trial court noted that, when it resentenced defendant the first time, it considered defendant's history and character, found him to be a danger, and found that consecutive sentences of probation were necessary to protect the public from further criminal conduct by defendant. Accordingly, the court made the probation sentences consecutive to the prison sentence on the aggravated-battery conviction involving Officer Reilly, because it wanted

defendant to be “watched over.” The court reiterated that its reasons for making the probation sentences consecutive had not changed. The court added that defendant had continued to act violently. Thus, the court made the aggravated-battery prison sentences consecutive to the Kane County sentence.

¶ 23 Defendant moved to reconsider making the sentences consecutive to the Kane County sentence. In denying the motion to reconsider, the trial court explained that defendant’s having failed to comply with the conditions of his probation and his having been convicted of a violent offense in Kane County further justified making the sentences consecutive. The court added that the conviction of home invasion materially impacted how it looked at defendant’s history and character regarding the need to protect the public from further criminal conduct. Defendant then filed a timely appeal.

¶ 24

II. ANALYSIS

¶ 25 On appeal, defendant contends that the trial court abused its discretion in making his sentences consecutive to the Kane County sentence, as this is not one of the rare instances in which a consecutive sentence should be imposed.

¶ 26 Section 5-8-4(a) of the Code provides, in pertinent part, that, when a court imposes a prison sentence on a defendant who is already subject to a sentence of imprisonment, such sentence shall run concurrently “unless otherwise determined” by the court. 730 ILCS 5/5-8-4(a) (West 2014). Accordingly, a court may impose a consecutive sentence if, “having regard to the nature and circumstances of the offense and the history and character of the defendant, it is the opinion of the court that consecutive sentences are required to protect the public from further criminal conduct by the defendant.” 730 ILCS 5/5-8-4(c)(1) (West 2014). In imposing a

consecutive sentence pursuant to section 5-8-4(c)(1), a court must set forth on the record the basis for doing so. 730 ILCS 5/5-8-4(c)(1) (West 2014).

¶ 27 Because the trial court is in the best position to consider the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits, its imposition of a consecutive sentence will not be reversed on appeal absent an abuse of discretion. *People v. Buckner*, 2013 IL App (2d) 130083, ¶ 36. The record must show that the trial court concluded that consecutive terms were necessary to protect the public. *Buckner*, 2013 IL App (2d) 130083, ¶ 36. If the record does not support the trial court's determination that consecutive sentences are necessary to protect the public, an abuse of discretion has occurred. *Buckner*, 2013 IL App (2d) 130083, ¶ 36. However, the trial court need not recite the language of section 5-8-4(c)(1), provided that the record shows that it believed that consecutive sentences were necessary to protect the public. *Buckner*, 2013 IL App (2d) 130083, ¶ 37. Nonetheless, discretionary consecutive sentences should be imposed sparingly. *People v. O'Neal*, 125 Ill. 2d 291, 298 (1988).

¶ 28 In this case, although we recognize that discretionary consecutive sentences should be imposed sparingly, the record shows that the trial court did not abuse its discretion in doing so. In imposing the consecutive sentences, the court specifically referred to the language of section 5-8-4(c)(1). The court then noted that, although defendant did not have a significant criminal history before being charged in this case, his crimes against the two officers were violent and caused serious physical harm, particularly to Sergeant Woodruff. After being resentenced the first time, defendant committed another violent offense in Kane County. Further, the record established that defendant committed his violent crimes while intoxicated. Indeed, he conceded that he needed to get his alcohol abuse under control. Absent some showing that defendant had

his alcohol abuse under control, it was reasonable to conclude that he was likely to become intoxicated and engage in further violent conduct. The record supports the court's finding that defendant posed a continuing danger to the public. Thus, the court did not abuse its discretion in making the aggravated-battery sentences consecutive to the Kane County sentence.

¶ 29 We observe that the trial court in Kane County considered defendant's conduct in this case when imposing the 10-year prison sentence. The Kane County court could properly consider defendant's criminal history in aggravation when sentencing him. See 730 ILCS 5/5-5-3.2(a)(3) (West 2014). That consideration, however, is entirely distinct from whether consecutive sentences were necessary to protect the public from defendant's further criminal conduct. Thus, even if the Kane County court considered defendant's conduct in this case in aggravation, the court here remained free to consider whether consecutive sentences were appropriate under section 5-8-4(c)(1).

¶ 30

III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of De Kalb County. 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); *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 32 Affirmed.