2017 IL App (2d) 160658-U
No. 2-16-0658
Order filed November 7, 2017
Modified upon denial of rehearing December 27, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	Nos. 07-CF-1380 08-CF-2210
SANTHOSH THOMAS,	)	Honorable Robert G. Kleeman,
Defendant-Appellant.	)	Judge, Presiding.

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

ORDER

¶ 1 Held: (1) The trial court did not abuse its discretion in sentencing defendant, as the court did not consider improper aggravating factors or ignore pertinent mitigating factors; (2) defendant's conviction of violating his bail bond was not void, as the vacatur of the bond forfeiture did not divest the trial court of jurisdiction.

¶ 2 Defendant, Santhosh Thomas, stole just under $500,000 from the small Illinois business for which he worked. Defendant posted bail and subsequently pleaded guilty to theft of over $100,000 (720 ILCS 5/16-1(a)(1)(A), (b)(6) (West 2006)). Before he was sentenced, he fled to

Houston, Texas, where he attempted to start a multimillion-dollar business leasing oil rigs to Mexico. The people with whom he worked in preparing the business plan for this company knew defendant only by an alias and did not know anything about defendant's criminal background, including crimes he committed in England. A judgment was entered forfeiting defendant's bond, and over seven years later defendant was apprehended. He pleaded guilty to violating his bail bond (720 ILCS 5/32-10(a) (West 2008)), and he asked the court to vacate the bond forfeiture and the judgment forfeiting the bond so that that money could go to the small-business owners from whom he stole. The court sentenced defendant to consecutive prison terms of eight and three years, it vacated the bond forfeiture and the judgment forfeiting defendant's bond, and defendant moved the court to reconsider, arguing simply that "based upon the facts and circumstances of the case, the evidence and argument presented at [the] sentencing hearing, the statutory factors in mitigation, and the defendant's statement in allocution, the aforesaid sentence is unreasonable and excessive." The court denied the motion to reconsider, defendant appealed, and this court remanded the cause for counsel to comply with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). Counsel filed a virtually identical amended motion to reconsider, and the court denied the motion. This timely appeal followed. On appeal, defendant argues that, in sentencing him for theft, the court considered improper aggravating factors and ignored pertinent mitigating factors. He also argues that, because the court vacated the bond forfeiture and the judgment on the bond forfeiture, his conviction and sentence for violation of the bail bond are void. We affirm.

¶ 3 We first consider defendant's sentencing issues. 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)).

¶ 4 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 considered the evidence, absent some indication to the contrary other than the sentence itself. *People v. Allen*, 344 Ill. App. 3d 949, 959 (2003).

¶ 5 Here, defendant pleaded guilty to theft of over $100,000, a Class 1 felony (720 ILCS 5/16-1(a)(1)(A), (b)(6) (West 2006)). A person convicted of a Class 1 felony faces up to 4 years' probation or a prison sentence between 4 and 15 years (730 ILCS 5/5-4.5-30(a), (d) (West 2014)). Defendant's eight-year prison sentence is just under the midpoint of this range.

¶ 6 Defendant argues that his sentence should be reduced, as the court improperly considered that he (1) fled to Texas after pleading guilty to theft; (2) stole from the company multiple times, given that he was charged with committing a series of related acts; (3) caused harm; and (4) committed multiple crimes in England, when such offenses were part of a single course of conduct. Defendant also argues that the court failed to consider that he (1) pleaded guilty; (2) expressed remorse; (3) intended to fully compensate the victims; and (4) committed the crimes because of his gambling addiction. Putting aside the fact that defendant never raised

these issues in the trial court (see *People v. Hillier*, 237 Ill. 2d 539, 544 (2010)), we find that the record belies defendant's arguments.

¶ 7 When the court sentenced defendant, it made clear a number of times that it "[was not] entering an enhanced sentence on the theft as a result of the defendant's violation of bail bond." Rather, the court said, it considered that fact solely in "determin[ing] whether or not probation is an appropriate sentence." That was proper. See 730 ILCS 5/5-5-3.1(a)(10) (West 2014) (court may consider likelihood that defendant would comply with terms of probation in deciding whether to sentence defendant to probation); 730 ILCS 5/5-6-3(a)(2), (a)(4) (West 2014) (requirement of probation is that defendant appear or report in person as the court directs and not leave the state without court's consent). Likewise, although the court commented on the "vast and repeated and overwhelming nature of the offense" and noted that defendant "made unauthorized transfers time and time and time again totaling dozens of criminal acts," the court made those comments in the context of deciding whether to give defendant probation. 730 ILCS 5/5-6-1(a)(2) (West 2014) (factors to consider in determining whether to give defendant probation include whether probation would deprecate the seriousness of the offense). The court did comment on the fact that defendant caused harm, which arguably is inherent in the offense of theft. But the "general rule" that an element of the offense should not also be used as a sentencing factor is "not [to] be applied rigidly." *People v. Burge*, 254 Ill. App. 3d 85, 88 (1993). Indeed, "sound public policy dictates that a sentence be varied in accordance with the circumstances of the offense." *People v. Cain*, 221 Ill. App. 3d 574, 575 (1991). Here, it is clear that the court considered not the mere fact that defendant caused harm, but the *severity* of the harm defendant caused—to the business owners whom he befriended and to the loyal employees who lost their jobs despite the fact that they were in no way involved in defendant's scheme.

Such consideration was not improper. *Id.* The record also rebuts defendant's claim that the court viewed his criminal history as far more extensive than it was. Specifically, the court noted that "[t]he defendant may be right that these [offenses committed in England] were all one series of offenses," and thus "[the court] g[a]ve him the benefit of that doubt."

¶ 8 Finally, although the court did not comment on all of the mitigating evidence to which defendant cites, we observe that the court was not required to verbally address such factors before imposing a sentence. See *Allen*, 344 Ill. App. 3d at 959. Moreover, the court did comment, at the hearing on defendant's motion to reconsider, that it considered the fact that defendant pleaded guilty and took responsibility for his actions. Given all the evidence, we simply cannot conclude that the court abused its discretion when it sentenced defendant to eight years' imprisonment for theft.

¶ 9 Turning to defendant's contention that his conviction and sentence for violation of his bail bond are void, we observe that a judgment is void only if the court that entered it lacked jurisdiction. See generally *People v. Castleberry*, 2015 IL 116916. Accordingly, defendant asserts that the vacatur of the bond forfeiture removed the "jurisdictional premise" of his indictment for violation of his bail bond. However, no matter how the vacatur of the bond forfeiture affected the indictment, it did not divest the trial court of jurisdiction to convict defendant of violation of his bail bond, and the conviction and sentence are not void. See *People v. Sandoval-Carrillo*, 2016 IL App (2d) 140332, ¶ 20 (a trial court's jurisdiction stems from our constitution, not from a valid indictment).

¶ 10 In his petition for rehearing, defendant denies having made any jurisdictional argument that his conviction and sentence are actually void. Instead he asks us to vacate his conviction and sentence merely because, without a bond forfeiture, there can be no violation of the bond.

See *People v. Miranda*, 329 Ill. App. 3d 837, 843 (2002). To the extent that he is not attacking the judgment as void, his attack is procedurally foreclosed. He did not raise it in his Rule 604(d) motion, and thus it is forfeited. See Ill. S. Ct. R. 604(d) (eff. July 1, 2017). More to the point, after the trial court had already accepted his guilty plea—which it did while the forfeiture still stood—defendant asked the court to vacate the forfeiture so that the money could go to his victims. He did not ask the court to vacate his conviction entirely. The court proceeded to do precisely as he requested. He cannot be allowed now to assert that the court should have proceeded some other way. See *People v. Carter*, 208 Ill. 2d 309, 319 (2003). This preclusion exists to discourage this very kind of duplicitous conduct. See *People v. Harvey*, 211 Ill. 2d 368, 385 (2004).

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

¶ 12 Affirmed.