2017 IL App (4th) 141072-U

NOS. 4-14-1072, 4-14-1113, cons.

FILED
February 8, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
DARRELL HOLLOWAY,	)	No. 13CF790
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith, Jr.,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to a six-year prison term.

¶ 2 At a February 2014 bench trial, the trial court found defendant, Darrell Holloway, guilty of burglary (720 ILCS 5/19-1(a) (West 2012)). In June 2014, the court sentenced defendant to six years in the Illinois Department of Corrections (DOC). Defendant appeals, arguing the court abused its discretion in imposing an excessive sentence and requesting this court reduce his sentence or remand for resentencing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2013, defendant was charged with burglary (720 ILCS 5/19-1(a) (West 2012)) for "without authority, knowingly enter[ing] a building of Circle K, located at 2760 N. Oakland, in Decatur, Macon County, Illinois, with the intent to commit therein a theft."

Defendant was released on bond on October 30, 2013.

¶ 5 At the February 2014 bench trial, Courtney Maples testified on June 25, 2013, she was working at the Circle K in Decatur, Illinois, when, at approximately 1:20 a.m., defendant entered the store and walked around as if he was going to purchase something. As Maples was about to go through the security door to get behind the counter, she heard the distinct click of bottles hitting each other from the alcohol rack. She looked back, saw defendant bent down in front of the counter, and noticed a bottle of Absolut vodka missing. Maples assumed defendant was going to purchase it along with items he was getting off the shelving just under the front counter, but as defendant stood up and put items on the counter, he did not include the bottle. Maples saw defendant was adjusting his pants and could see a large object in his pants. Maples asked defendant if he had the bottle and warned him, if he did not purchase the vodka or return it, she was going to call the police. Defendant "used some explicit language" and left the store without paying for anything. He headed south on a bicycle. Maples called the police. Maples testified the incident was captured on the store's surveillance equipment. A video of the occurrence was shown to the trial court as Maples described what was occurring on the recording.

¶ 6 Maples did not realize until the day of trial defendant had also taken a bottle of root beer. She indicated the cost of the vodka was $28.99, with a retail value of "roughly over $30." She thought the retail value of the root beer was about $1.80 or $1.81.

¶ 7 Decatur police department patrol officer Larry Brooks testified he responded to the call regarding the theft at Circle K. Within three or four minutes, he observed a person matching the description of the suspect on a bicycle and called out to him. The individual took off and Brooks followed him for about eight city blocks. Eventually, the man crashed his bicycle

and there was a short foot pursuit. The man rolled under a cargo van and refused to come out. While Brooks was waiting for back-up, he observed defendant taking the bottle of Absolut vodka out of his pants. When a back-up officer arrived, he and Brooks pulled the man out from under the van. Brooks also found a bottle of A & W root beer under the van, which was still cold to the touch. Brooks identified defendant as the man who had been in Circle K and took the vodka. Defendant was placed under arrest and searched. He had no money on his person and no other means of making a purchase.

¶ 8 Defendant testified he could not remember the morning of June 25, 2013. He stated he takes "[p]sych med's" and he had not taken them that night. The last thing he remembered was waking up at a friend's house and not much after he woke up. He said he was at the friend's house "all day." When asked if he remembered going into Circle K with the intent to steal some liquor, defendant responded, "That wasn't even me. I don't remember that." He stated he "[did not] know where that bike even come [*sic*] from." Defendant testified he remembered being in jail but not why he was there.

¶ 9 Defense counsel questioned whether defendant "had the prerequisite mental intent to commit a crime when he walked into the store." He asked the trial court to consider the lesser-included offense of retail theft. The court responded there was no question in the court's mind defendant entered Circle K with the intent to commit a theft, making him equally guilty of the offense of burglary. Thereafter, the court found defendant guilty of burglary.

¶ 10 At the June 4, 2014, sentencing hearing, information about defendant's prior out-of-state criminal history was unclear and unable to be verified. Consequently, the parties agreed defendant would not be eligible for extended-term or Class X sentencing. Therefore, he was sentenced as a Class 2 felony offender.

¶ 11 Defendant testified he was 54 years old and had lived in Colorado, Missouri, and Illinois. He admitted he had a criminal history. He admitted being drug-addicted and having used heroin and crack cocaine. Defendant stated he had been molested when he was young and for years and years had blocked the molestation from his memory. He had been diagnosed with post-traumatic stress disorder. (The presentence investigation report (PSI) reflected defendant had also been diagnosed with anxiety, depression, and bipolar disorder.) Defendant also had other medical issues. Defendant apologized to the court, his family, and "everyone." He stated, "I don't hurt, I always hurt myself more than I hurt anybody else. I'm not a dangerous person. I help anybody I can." Defendant acknowledged he "keep[s] going to the penitentiary" but stated no one helps him with what he needs, *i.e.*, mental-health and drug counseling. In his statement in allocution, defendant again apologized to the court. He asked the court for help rather than locking him up.

¶ 12 The State noted defendant's "great deal of criminal activity." In fact, 11 days after he was released from DOC on parole, defendant committed the instant offense. Just a few days after he was originally scheduled to be sentenced on the instant offense, defendant committed the exact same offense at another Circle K in Decatur, Illinois. The State acknowledged defendant's problems but argued he was visiting them on others and doing so very quickly. The State asked for a sentence of five years' imprisonment. Defense counsel argued defendant only stole a $30 bottle of vodka, which he characterized as a retail theft rather than a burglary. Counsel further argued defendant was not a violent person, having only a couple of batteries from 1989. All other crimes were property offenses. Counsel argued for a "minimum" sentence.

¶ 13 The trial court stated it had considered the arguments of counsel and the PSI. The court indicated it did not see this case as being a simple act of stealing a bottle of vodka. Rather,

defendant was going into stores with an intent and a purpose. The court noted the PSI reflected 16 prior felony convictions, which, in addition to possession offenses, included two robberies, aggravated robbery, stealing, and aggravated battery. Defendant also had two misdemeanor battery and one misdemeanor domestic battery convictions. The court noted defendant had no job and had not worked for years. The court further stated as follows:

> "I agree there are mental[-]health issues. There's most certainly a severe substance issue and to be frank, and I don't often times say this, I kind of look at this as being a hopeless situation. [Defendant], you get back, you get out of jail for some unlawful restraint on June the 14th of 2013 and by June the 25th 2013, 11 days later, you're back stealing vodka. No doubt to either medicate yourself or try to somehow to support your crack habit. And then before we get to sentencing in this case, you've committed a new case where essentially you're doing the same thing and to be frank, I don't know what else to do in this circumstance, [defendant], other than to lock you up, recommend some treatment and hopefully you'll follow through on your word and get your treatment and when you come out the next time, you will not continue to commit crimes."

The court stated it had considered the facts of this case, the factors in aggravation and mitigation, and the PSI. The court found a sentence of probation would deprecate the seriousness of the defendant's conduct and a sentence to DOC was necessary to protect the public. The court sentenced defendant to six years in DOC followed by two years of mandatory supervised release.

Defendant was given credit for time served. Further, the court recommended defendant for mental-health and drug treatment while in DOC.

¶ 14 On August 25, 2014, defendant filed a *pro se* motion to reduce his sentence. On September 12, 2014, the trial court dismissed the motion as untimely. On October 3, 2014, defendant filed a letter explaining, on June 23, 2014, he had mailed the motion to reduce his sentence from DOC. The court viewed the letter as a motion to reconsider the ruling on the motion to reduce the sentence. On December 5, 2014, based on the agreement of counsel, the trial court agreed to hear defendant's motion to reconsider.

¶ 15 On December 23, 2014, the trial court held a hearing on defendant's motion to reduce his sentence. The parties and the court incorrectly recalled defendant was eligible for extended-term sentencing. (Although defendant appeared to have 16 prior felony convictions and 7 misdemeanor convictions, counsel and the court had agreed to treat him as ineligible for an extended term because of some questions about his out-of-state convictions.) Before denying the motion to reconsider, the court found as follows:

> "I don't recall being overly excited about the offense conduct, but I do recall that [defendant's] record was just so bad with repeated trouble of one sort or the other that it had to be somewhere up higher towards the top level of the sentencing range. So I believe six years is appropriate especially due to the fact that [defendant] is extended[-]term eligible."

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant argues the six-year sentence is excessive and should be

reduced "to more accurately reflect the conduct being punished—an act of taking a bottle of vodka and a root beer from a convenience store." Defendant argues the trial court (1) discounted significant mitigating factors when it "condemned [defendant] to six years in prison for shoplifting a bottle of alcohol and a soda"; (2) failed to properly weigh the role defendant's extreme drug addiction and struggle with mental-health issues played in the commission of the offense; (3) did not recognize defendant's crime was nonviolent and posed no threat to public safety; and (4) did not consider defendant's expressed remorse, sincere desire to improve himself, and his plea for mental-health treatment.

¶ 19 "A sentence imposed by the trial court is presumed to be proper" (*People v. Butler*, 2013 IL App (1st) 120923, ¶ 31, 994 N.E.2d 89), and "[w]here a sentence falls within statutory guidelines, it will not be disturbed on review absent an abuse of discretion" (*People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 40, 2 N.E.3d 333). Burglary is a Class 2 felony with a sentencing range from three to seven years' imprisonment. 720 ILCS 5/19-1(b) (West 2012); 730 ILCS 5/5-4.5-35(a) (West 2012). Here, defendant was sentenced to six years in DOC.

¶ 20 Further, we "must afford great deference to the trial court's judgment regarding sentencing because that court, having observed the defendant and the proceedings, is in a far better position to consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits than a reviewing court, which must rely on a 'cold' record." *Halerewicz*, 2013 IL App (4th) 120388, ¶ 41, 2 N.E.3d 333 (quoting *People v. Little*, 2011 IL App (4th) 090787, ¶ 24, 957 N.E.2d 102). A sentence within statutory limits "will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *Id.* "The spirit and purpose of the law are promoted when a sentence reflects the seriousness of the offense and gives adequate

consideration to the rehabilitative potential of the defendant." (Internal quotation marks omitted.) *Butler*, 2013 IL App (1st) 120923, ¶ 31, 994 N.E.2d 89. "Thus, '[i]n considering the propriety of a sentence, the reviewing court must proceed with great caution and must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently' [citation], and it may not reduce a defendant's sentence unless the sentence constitutes an abuse of the trial court's discretion [citation]." *People v. Romero*, 387 Ill. App. 3d 954, 978, 901 N.E.2d 399, 420 (2008) (quoting *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999)).

¶ 21 Here, defendant argues the trial court should have given greater weight to the fact defendant only "shoplifted" a $30 bottle of vodka and a bottle of soda. While he does not develop this as an argument for reversing his conviction, defendant maintains he should have been convicted of the less-serious crime of retail theft as a basis for reducing his sentence. At the bench trial, the court rejected the retail-theft argument, finding there was no question defendant entered Circle K with the intent to commit a theft, making him guilty of the offense of burglary. See *People v. Bradford*, 2016 IL 118674, ¶ 23, 50 N.E.3d 1112 ("evidence that a defendant enters a place of business in order to commit a theft is sufficient to satisfy the 'without authority' element of burglary by entering").

¶ 22 The offense of burglary requires proof a defendant entered a building or business without authority and with intent to commit a felony or theft (720 ILCS 5/19-1(a) (West 2012)). "[A]uthority to enter a business building, or other building open to the public, extends only to those who enter with a purpose consistent with the reason the building is open." *People v. Weaver*, 41 Ill. 2d 434, 439, 243 N.E.2d 245, 248 (1968). "Circumstantial evidence alone is sufficient to sustain a conviction where it satisfies proof beyond a reasonable doubt of the

elements of the crime charged." *People v. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002). Here, defendant entered Circle K without authority because his entry was not for a purpose consistent with the reason Circle K was open to the public. Further, he had the requisite intent to commit therein a theft because he had no means on his person to pay for anything when he stuffed the bottle of vodka and bottle of soda down his pants. Therefore, he was correctly found guilty of burglary and was subject to Class 2 felony sentencing.

¶ 23 Defendant also argues the trial court failed to give enough weight to mitigating factors such as his substance-abuse and mental-health issues, the nonviolent nature of the offense, and his expressed remorse. We disagree.

¶ 24 When mitigating factors are presented, the trial court is presumed to have considered them absent an explicit indication in the record to the contrary. *Halerewicz*, 2013 IL App (4th) 120388, ¶ 42, 2 N.E.3d 333. Further, a trial court need not articulate the process by which it determined the appropriateness of a given sentence or set forth every reason or the weight it gave each factor considered in determining a defendant's sentence. Nor does the existence of mitigating factors require the trial court to reduce a sentence from the maximum allowed. *Id*. "Before this court will interfere with the sentence imposed, it must be manifest from the record that the sentence is excessive and not justified under any reasonable view which might be taken of the record." *People v. Smith*, 214 Ill. App. 3d 327, 338, 574 N.E.2d 784, 791-92 (1991).

¶ 25 Based on our review of the record, we conclude the trial court did not abuse its discretion in sentencing defendant to six years in DOC. The record shows the court was aware of, and acknowledged at the sentencing hearing, defendant's history of abuse, his mental-health issues, his alcohol and drug dependence, his expressed remorse, and the fact the burglary

consisted of defendant stealing a bottle of vodka and a bottle of soda from a convenience store. But the court was also aware of defendant's significant criminal history, the fact he had committed the instant offense just 11 days after being released on parole, and the fact he had committed the exact same offense at another Circle K prior to being sentenced in this case. With those facts before it, the court saw this "as being a hopeless situation." The court stated it did not know what else to do under the circumstances. The court expressed the hope defendant would follow through on his word and get into treatment while in DOC, so when he was released the next time he would not continue to commit crimes. Keeping in mind the great deference afforded to the trial court, we find the court did not abuse its discretion in sentencing defendant to six years in prison.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 28 Affirmed.