2017 IL App (4th) 150087-U

NO. 4-15-0087

FILED
May 9, 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.	)	Champaign County
MAURICE J. CONLEY,	)	No. 13CF287
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Except for the omission of a *per diem* credit of $15, there is no abuse of discretion in the sentence.

(2) Insomuch as defendant claims his defense counsel rendered ineffective assistance in the resentencing hearing by omitting some evidence in mitigation, the record on appeal is insufficient to adjudicate that claim.

¶ 2 Defendant, Maurice J. Conley, is serving a term of five years' imprisonment for aggravated battery (720 ILCS 5/12-3.05(c) (West 2012)). He appeals his sentence. Except for the omission of a *per diem* credit of $15, we find no abuse of discretion in the sentence. Insomuch as defendant claims his defense counsel rendered ineffective assistance in the resentencing hearing by omitting some evidence in mitigation, the record is insufficient to adjudicate that claim. Therefore, we modify the sentencing judgment so as to allow a credit of $15 against the court finance fee in the amount of $50, and we affirm the trial court's judgment as modified.

¶ 3 I. BACKGROUND

¶ 4 A. The Charges

¶ 5 The two counts of the information were based on the same incident.

¶ 6 In count I, the State accused defendant of aggravated battery (720 ILCS 5/12-3.05(d)(4)(i) (West 2012)), a Class 2 felony (720 ILCS 5/12-3.05(h) (West 2012)), in that on February 16, 2013, he "grabbed Brian Rogers by the collar of his coat and pushed him," knowing him to be a peace officer who was executing his authorized duties.

¶ 7 In count II, the State accused defendant of aggravated battery (720 ILCS 5/12-3.05(c) (West 2012)), a Class 3 felony (720 ILCS 5/12-3.05(h) (West 2012)), in that on February 16, 2013, while Rogers was on a public way, defendant "grabbed [him] near his collar and tried to knock him over." (Count II erroneously cited "720 Illinois Compiled Statutes 5/12-4(b)(8)" as the statute defining the offense. Actually, section 12-4 (720 ILCS 5/12-4 (West 2010)) had been renumbered as section 12-3.05. Pub. Act 96-1551, art. I, § 5 (eff. July 1, 2011). Therefore, the citation should have been to section 12-3.05(c) of the Criminal Code of 2012 (720 ILCS 5/12-3.05(c) (West 2012)).)

¶ 8 B. The Preliminary Hearing

¶ 9 In March 2013, the trial court held a preliminary hearing, in which the State called Patrick Funkhouser, an investigator with the Champaign police department. He testified that at 3:20 a.m. on February 16, 2013, patrol officers were dispatched to a residential address in Champaign in response to a report that shots had been fired. When they arrived at the address, defendant came out of the residence. He had a bottle in his hand, from which he was taking drinks, and he was stumbling around and yelling "in a belligerent, upset manner." One of the patrol officers, Brian Rogers, who was in uniform, approached defendant and told him to move

away from the house, away from the zone of danger, because the gunfire reportedly had been in or near the house. When defendant ignored that order, Rogers took hold of him. In response, defendant grabbed the collar of Rogers's jacket and shoved him. This prompted Rogers and the other police officers to take defendant into custody for aggravated battery.

¶ 10 Eventually, the police officers entered the house. People inside denied there had been a shooting. They admitted, however, there had been a fight.

¶ 11 C. The Negotiated Guilty Plea

¶ 12 In April 2013, defendant entered a negotiated plea of guilty to count II of the information. In return, he received 24 months of conditional discharge, with the standard conditions; the dismissal of count I; and the State's agreement not to seek a revocation of probation in another case, People v. Conley, Champaign County case No. 11-CF-1087, in which he had been convicted of resisting a peace officer.

¶ 13 After defendant pleaded guilty to count II, the trial court proceeded immediately to sentencing (defendant had waived a presentence investigation report). The court sentenced him to conditional discharge for 24 months. One of the conditions was as follows: "He will get an evaluation for alcohol and/or drug abuse and refrain from ingesting any controlled substances, cannabis[,] or alcohol and submit to random testing." Another condition was that he refrain from violating any criminal statute.

¶ 14 D. The Petition To Revoke Conditional Discharge

¶ 15 On September 2, 2014, the State filed a petition to revoke conditional discharge on the alleged grounds that on August 30, 2014, defendant committed the offenses of obstructing justice (720 ILCS 5/31-4(a) (West 2014)) and resisting a peace officer (720 ILCS 5/31-1(a) (West 2014)).

¶ 16 Defendant was to be arraigned that same day, on September 2, 2014, but the bailiff informed the trial court, on the record, that defendant had showed up "highly, extremely intoxicated" and the bailiff had told him to leave.

¶ 17 Later, in a hearing on November 12, 2014, defendant admitted paragraph 3(B) of the petition, the paragraph alleging he had resisted a peace officer. Specifically, defendant admitted the following allegation: he "knowingly resisted the performance by Officer Cortez Gardner of an authorized act within his official capacity, namely: the lawful detention of the defendant, knowing Officer Cortez Gardner to be a peace officer engaged in the execution of his official duties, in that the defendant refused to lie down on the ground after being ordered to do so."

¶ 18 This admission was pursuant to an agreement. The agreement was that, in return for the admission of paragraph 3(B), defendant "[would] not be subject to [an] extended term, provided he cooperate[d] with probation and commit[ted] no new offenses, and show[ed] up as scheduled" (to quote the prosecutor). The nonextended range of imprisonment for the original, underlying offense, aggravated battery (720 ILCS 5/12-3.05(c) (West 2012)), was not less than two years and not more than five years (see 720 ILCS 5/12-3.05(h) (West 2012); 730 ILCS 5/5-4.5-40(a) (West 2012)).

¶ 19 Before accepting the negotiated admission, the trial court asked the prosecutor for a factual basis. The prosecutor stated:

> "Judge, the evidence would reflect as to paragraph 3(B) that Officer Corez Gardner of the Urbana Police Department was investigating a violation of the Illinois Vehicle Code on August 30th of this year at approximately 12:10 in the morning in the 1600 block of Hunter in Urbana. He smelled cannabis. This

> defendant was a rear[-]seat passenger and swallowed some unknown object, refused to open his mouth. He was directed to get out at gunpoint, and he refused to get on the ground."

Defense counsel agreed the State had witnesses who, if called, would testify substantially to that effect.

¶ 20 After accepting defendant's admission of paragraph 3(B), the trial court revoked the conditional discharge and scheduled a resentencing hearing for January 8, 2015.

¶ 21 E. The Presentence Investigation Report (January 2015)

¶ 22 1. *Marital and Family Information*

¶ 23 Defendant, age 39, has never been married, and he has never fathered any children. He has two brothers and a sister, all of whom live in Chicago. He describes his relationship with them as " 'distant.' "

¶ 24 2. *Education and Employment*

¶ 25 Defendant earned a general equivalency diploma (GED) in 1997, and he has taken some college classes. He has never been employed. For the past 12 or 13 years, he has been receiving Social Security disability benefits because of physical impairments. He plans to participate in a workforce transition program through the Division of Rehabilitative Services.

¶ 26 3. *Health*

¶ 27 According to defendant, he is in " 'poor' " physical condition, having been "born with [c]erebral [p]alsy and [s]ciatica." These conditions "result in pain and mobility issues." He "also suffers from asthma and uses an inhaler."

¶ 28 4. *Alcohol*

¶ 29 Defendant reported that he first drank alcohol at the age of 19 and that, in college, he drank about half a pint of hard liquor each day. After college, he shared a fifth of hard liquor with friends about three or four days a week. But that was all in the past, according to him. He told the probation officer he stopped drinking altogether about 30 months ago.

¶ 30 On December 23, 2014, however, less than two weeks before the presentence investigation report was filed, an *ex parte* judgment was entered against defendant for "Pedestrian/Influence Drug/Alcohol."

¶ 31 5. *Personal Efforts at Rehabilitation*

¶ 32 Defendant told the probation officer that, about 2 1/2 years ago before the interview, he participated in Treatment Alternatives for Safe Communities (TASC). He also said that, on his own initiative, he had sought treatment through churches and had attended Alcoholics Anonymous meetings.

¶ 33 6. *Drugs*

¶ 34 Defendant told the probation officer that he first started smoking cannabis at the age of 13 and that until the age of 16, he smoked about two joints each week. He "contends he has not smoked cannabis since he was about [19] years old," that is, since about 1994 (he was born on November 17, 1975).

¶ 35 According to his criminal history, however, defendant was convicted of possession of cannabis in 1999 and 2008.

¶ 36 7. *Previous Convictions*

¶ 37 It appears that, from July 1995 to March 2012, defendant accumulated one conviction of battery, three convictions of unlawful possession of a controlled substance or cannabis, five convictions of criminal trespass to land, six convictions of obstructing justice or

resisting a peace officer, one conviction of misdemeanor reckless driving, two convictions of driving under the influence, one conviction of burglary, one conviction of domestic battery, one conviction of intimidation, and one conviction of aggravated assault of a peace officer. (In addition, there were some petty traffic offenses.) Five of those convictions were felonies. It also appears that, five times during this period, probation or conditional discharge was revoked or declared to be unsuccessful.

¶ 38 F. Letters to the Judge

¶ 39 1. *From Defendant*

¶ 40 Before the sentencing hearing, defendant wrote Judge Thomas J. Difanis a letter. In the letter, he apologized for his conduct. He explained that the various hardships he had suffered, including cerebral palsy, a scarcity of job opportunities, and inconsistent housing, had caused him to overindulge in alcohol and drugs. He had taken steps to better himself, though, such as by completing the TASC program and meeting with Dorie Payton of the Division of Rehabilitative Services to determine how best to transition into the workplace. He was thinking of enrolling in short-term classes, such as automobile collision repair or mass communications, to prepare himself for a career. He added that his uncle, James Wallace, Sr., had recently offered him both a job and housing—opportunities he had never received before. Defendant expressed concern that incarceration would set him back due to his aging and deteriorating physical condition.

¶ 41 2. *From Wallace*

¶ 42 Wallace also wrote Judge Difanis a letter, confirming he would indeed offer defendant a job and a place in which to live. He suggested that defendant, who "did nothing

wrong other than having a checkered past," was "a very bright young man" who, "given the opportunity," "[could] and [would] be a contributing citizen."

¶ 43 3. *From Parkland College*

¶ 44 On November 12, 2014, Evelyn Brown, an academic specialist at Parkland College, wrote that, the day before, she met with defendant regarding his prospects for admission to the college. She referred him to the counseling and advising department and to the financial aid department.

¶ 45 4. *From the Division of Rehabilitative Services*

¶ 46 On November 26, 2014, Dorie Peyton, a vocational rehabilitation counselor at the Division of Rehabilitative Services, wrote that defendant had applied for assistance in preparing for and obtaining employment. She continued: "He will most likely be found eligible for our services based on his disability (cerebral palsy) and the associated limitations. [He] has expressed an interest in job training, specifically the auto collision repair program at Parkland College in Champaign. After his eligibility for our program is determined, I plan to continue exploring training options with him to increase the probability that he will be able to work."

¶ 47 5. *From TASC*

¶ 48 On December 8, 2014, Kai J. M. Kulmala, a case manager of TASC, wrote that defendant was assessed on December 5, 2014, and that he was "ineligible for TASC and for Drug Court Probation due to no reported substance use since [November 18, 2012]." He also "appear[ed] to be a high violence risk with numerous adult violence conviction[s] reported on his record."

¶ 49 G. The Resentencing Hearing (January 2015)

¶ 50 In the resentencing hearing, after the attorneys made their arguments, defendant made a statement in allocution. He told the trial court he was ashamed of the things he had done and that he was ashamed of being in criminal court yet again, at his age. He pointed out that he had successfully completed TASC, and he promised that if the court gave him another chance, the court would not regret doing so.

¶ 51 After hearing the arguments and the statement in allocution, the trial court stated it had considered the factors in aggravation and mitigation. As for mitigation, the court stated:

> "There aren't any statutory mitigating factors that apply to this defendant. He does have the diagnosis of, according to court services, cerebral palsy and sciatica[,] and he receives disability payments. To the extent that that is a mitigating factor, the court will consider that. The only other mitigation in this record, quite frankly, is he pled guilty and he admitted to the violation of his probation. And Ms. Propps [(defense counsel)] has said he hasn't brought any children into the world that he's not prepared to support. He has gotten his GED."

¶ 52 The statutory factors in aggravation were, according to the trial court, defendant's many previous convictions (this was his 21st criminal conviction) and the need to deter him and others. Repeated sentences of probation and conditional discharge had proved ineffectual in deterring him. He had a problem with alcohol, and when he was "under the influence," he was "a violent and uncontrollable individual." "A further sentence of probation would deprecate the seriousness of his conduct, be inconsistent with the ends of justice, [and] definitely wouldn't be an appropriate deterrent factor for other individuals." Therefore, the court sentenced defendant to imprisonment for five years.

¶ 53 H. The Motion To Reduce the Sentence

¶ 54 On January 16, 2015, defendant filed a motion to reduce the sentence. The motion gave the following reasons for the proposed reduction:

> "7. The sentence imposed is not in keeping with [defendant's] family situation, past history of criminality, mental history, economic status, education, occupational or personal habits.
>
> (a) The Defendant obtained his GED in 1997 and indicates that he has completed some college level courses.
>
> (b) The Defendant has engaged in services via the Division of Rehabilitation Services recently in an attempt to obtain employment.
>
> (c) The Defendant suffers from physical health issues including cerebral palsy and sciatica.
>
> 8. The Court gave inadequate consideration to Defendant's potential for rehabilitation and lack of violent history as mitigating factors.
>
> (a) The majority of Defendant's criminal history consists of traffic, drug and property offenses.
>
> (b) The Defendant has engaged in services via the Division of Rehabilitative Services recently in an attempt to obtain employment."

¶ 55 I. The Hearing on the Motion To Reduce the Sentence

¶ 56 On February 4, 2015, the trial court held a hearing on defendant's motion to reduce the sentence. Defense counsel elected to stand on her motion. The court denied the motion.

¶ 57 This appeal followed.

¶ 58 II. ANALYSIS

¶ 59 A. Serious Physical Harm, Caused or Threatened

¶ 60 The trial court found there were no statutory mitigating factors. Defendant contends that this finding is incorrect because his criminal conduct, *i.e.*, grabbing hold of the collar of Rogers's jacket and attempting to push him over, did not cause or threaten serious physical harm to Rogers and, at the time, defendant did not contemplate that such conduct would cause or threaten serious physical harm to Rogers. Sections 5-5-3.1(a)(1) and (a)(2) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-5-3.1(a)(1), (a)(2) (West 2014)) provide as follows:

> "(a) The following grounds shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment:
>
> (1) The defendant's criminal conduct neither caused nor threatened serious physical harm to another.
>
> (2) The defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm to another."

¶ 61 In the resentencing hearing, defense counsel never objected to the trial court's explicit finding that there were no statutory mitigating factors. "It is well settled that, to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required." *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Thus, if the court actually did err by finding, in the resentencing hearing, that there were no statutory mitigating factors, it would appear, from *Hillier*, that defense counsel would have had to object to that error "contemporaneous[ly]," in the resentencing hearing. *Id.* Also, if the contemporaneous objection did not change the court's mind, defense counsel would have had to follow up with a postsentencing motion that reiterated the objection. *Id.*; 730 ILCS 5/5-4.5-50(d)

(West 2014) ("A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed with the circuit court clerk within 30 days following the imposition of sentence."). Defense counsel did neither of those things. In neither the resentencing hearing nor the postsentencing motion did she argue the mitigating factors in sections 5-5-3.1(a)(1) and (a)(2) of the Unified Code (730 ILCS 5/5-5-3.1(a)(1), (a)(2) (West 2014)). Consequently, those mitigating factors are forfeited. See *Hillier*, 237 Ill. 2d at 544. Defendant claims that by causing this forfeiture, defense counsel rendered ineffective assistance.

¶ 62 A defendant alleging ineffective assistance must prove two propositions: (1) "counsel's representation fell below an objective standard of reasonableness" (*Strickland v. Washington*, 466 U.S. 668, 688 (1984)); and (2) there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" (*id.* at 694). Because both propositions are essential, we may proceed directly to the second proposition without considering the first. See *id.* at 697 ("[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies.").

¶ 63 Defendant suffered no prejudice from the forfeiture, because even if, in the resentencing hearing and in the postsentencing motion, defense counsel had raised the mitigating factors in sections 5-5-3.1(a)(1) and (a)(2) of the Unified Code, the trial court surely would have found a lack of evidence to support them. The court had before it only the bare fact that defendant had "grabbed Rogers near his collar and tried to knock him over," to quote count II, the count to which defendant had pleaded guilty. From that bare fact, it was impossible to tell, one way or the other, whether Rogers was put in danger of serious bodily harm. Depending on the amount of force defendant used in pushing Rogers, he *might* have put Rogers in danger of

serious bodily harm, and he *might* have contemplated doing so. Sometimes, but not always, people push others with the aim of causing them serious bodily harm. The court could not have just assumed the absence of such a danger, any more than the court could have just assumed the existence of aggravating factors. The burden was on defendant to come forward with any necessary evidence in support of mitigation. See *People v. Dennis*, 47 Ill. 2d 120, 134 (1970); *People v. Whittington*, 46 Ill. 2d 405, 408 (1970). If, despite defendant's attempt to "knock [Rogers] over," the push actually was mild and nondangerous, defendant had to come forward with evidence to that effect. No such evidence was presented in the resentencing hearing.

¶ 64 If defendant means to blame defense counsel for failing to present such evidence, his claim "depend[s] on proof of matters which could not have been included in the record precisely because of the allegedly deficient representation." *People v. Erickson*, 161 Ill. 2d 82, 88 (1994). We do not know if defense counsel interviewed Rogers and, if so, what Rogers told her about the physical confrontation. We do not know what defendant told defense counsel. Whenever consideration of matters outside the record is required to adjudicate a claim of ineffective assistance of counsel, the claim is "more appropriately addressed in proceedings on a petition for [postconviction] relief," in which "a complete record can be made and the attorney-client privilege no longer applies." *People v. Kunze*, 193 Ill. App. 3d 708, 725-26 (1990).

¶ 65 B. Endangerment of Defendant's Medical Condition

¶ 66 Defendant also accuses his defense counsel of ineffective assistance in that she forfeited the statutory mitigating factor that "[t]he imprisonment of the defendant would endanger his *** medical condition[s]" of cerebral palsy and sciatica. 730 ILCS 5/5-5-3.1(a)(12) (West 2014). It is true that, in her postsentencing motion, defense counsel pointed out that defendant "suffer[ed] from physical health issues[,] including cerebral palsy and sciatica." In the

resentencing hearing, however, she said nothing about his health problems. "It is well settled that, to preserve a claim of sentencing error, *both* a contemporaneous objection and a written postsentencing motion raising the issue are required." (Emphasis added.) *Hillier*, 237 Ill. 2d at 544. It would seem, then, that, sometime in the resentencing hearing, after the trial court found no statutory mitigating factors, defense counsel would have had to raise the objection that the finding was incorrect because, actually (or allegedly), "[t]he imprisonment of the defendant would endanger his *** medical condition[s]" of cerebral palsy and sciatica. 730 ILCS 5/5-5-3.1(a)(12) (West 2014). Defense counsel did not so object in the resentencing hearing; therefore, that mitigating factor is forfeited. See *id.*

¶ 67 The objection, however, would have been unmeritorious, and defense counsel had no duty to make an objection that "would rightfully have been overruled." *People v. Nieves*, 193 Ill. 2d 513, 527 (2000). The objection would have been unmeritorious because, again, it would have been unsupported by any evidence adduced in the resentencing hearing. To justifiably take this mitigating factor into account, the trial court would have had to receive evidence that imprisonment would in fact endanger defendant's medical conditions. See *Dennis*, 47 Ill. 2d at 134; *Whittington*, 46 Ill. 2d at 408. No such evidence was presented in the resentencing hearing. The court had only defendant's vague assertion that imprisonment would "set [him] further back in life[,] especially due to [his] aging and [his] physical condition deteriorating," as he wrote in his letter of January 2, 2015, to the court. That assertion was not evidence.

¶ 68 Granted, in a *pro se* motion to reconsider the sentence, which defendant filed on January 15, 2015, he represented to the trial court that he had "recently received helpful opportunities to keep [him] positive[,] such as *** advanced medical treatment programs to further improve [his] physical conditions," programs that were "not available in prison."

Defendant complains that the court "dismissed his motion to reconsider [the] sentence without commenting on this argument." Actually, the court was right to dismiss the *pro se* postsentencing motion, considering that defendant still was represented by defense counsel, who filed her own postsentencing motion a day later. When a defendant is represented by counsel, he or she generally lacks authority to file *pro se* motions, and the court should decline to consider them. *People v. Handy*, 278 Ill. App. 3d 829, 836 (1996). Besides, the germane question was not whether imprisonment would deprive defendant of access to advanced medical programs that might improve his medical conditions; rather, the question was whether imprisonment would "endanger his *** medical condition[s]." 730 ILCS 5/5-5-3.1(a)(12) (West 2014).

¶ 69 If defendant means to blame defense counsel for failing to present evidence that imprisonment would endanger his medical conditions, his claim "depend[s] on proof of matters which could not have been included in the record precisely because of the allegedly deficient representation." *Erickson*, 161 Ill. 2d 82, 88 (1994). As we said, whenever consideration of matters outside the record is required to adjudicate a claim of ineffective assistance of counsel, the claim is "more appropriately addressed in proceedings on a petition for [postconviction] relief," in which "a complete record can be made and the attorney-client privilege no longer applies." *Kunze*, 193 Ill. App. 3d at 725-26.

¶ 70 C. The Severity of the Sentence

¶ 71 For essentially four reasons, defendant contends that the trial court abused its discretion by sentencing him to imprisonment for five years. See *People v. Alexander*, 239 Ill. 2d 205, 212 (2010).

¶ 72 First, he argues his offense was not serious. "[T]he seriousness of the crime committed is considered the most important factor in fashioning an appropriate sentence."

People v. Weatherspoon, 394 Ill. App. 3d 839, 862 (2009). Actually, battering a police officer is a serious offense. That the police officer was lucky enough to emerge unharmed from the incident does not make the offense trivial.

¶ 73 Second, defendant has "struggled with alcohol use." Alcoholism, however, can be an aggravating factor if it appears to be an intractable condition and results in the repeated commission of crime. *People v. Ballard*, 206 Ill. 2d 151, 190 (2002); *People v. Johnson*, 285 Ill. App. 3d 802, 813 (1996). Defendant admits that "many of his convictions could be traced to his alcoholism."

¶ 74 Third, defendant apologized and pleaded guilty. A guilty plea and an expression of remorse (if it is genuine) can be mitigating factors. *People v. Pippen*, 324 Ill. App. 3d 649, 653 (2001). Nevertheless, the existence of mitigating factors does not mandate the imposition of the minimum sentence (*People v. Garibay*, 366 Ill. App. 3d 1103, 1109 (2006)) or preclude imposition of the maximum sentence (*Pippen*, 324 Ill. App. 3d at 652). It is the trial court's responsibility to balance the relevant factors against one another and to come up with a fitting sentence. *People v. Latona*, 184 Ill. 2d 260, 272 (1998). We should not reweigh the factors. *Pippen*, 324 Ill. App. 3d at 653.

¶ 75 Fourth, defendant points out that he "had been taking large strides to improve his life and health." As the trial court put it, however: "He's got religion, so to speak, at this point because he's looking at a period of incarceration in the [D]epartment of [C]orrections." In other words, the court could justifiably question the sincerity of defendant's eleventh-hour "strides" at self-reformation: they could have been merely efforts to make himself look better in the sentencing hearing.

¶ 76 In sum, we are unconvinced that the sentence of five years' imprisonment represents an abuse of discretion. See *Alexander*, 239 Ill. 2d at 212. It would be an exaggeration to characterize this sentence as "clearly illogical, arbitrary, unreasonable, contrary to law, or not the product of conscientious judgment," considering defendant's lengthy criminal history and his repeated flouting of community-based sentences. *People v. Breeden*, 2016 IL App (4th) 121049-B, ¶ 46.

¶ 77 D. *Per Deim* Credit

¶ 78 The trial court did not allow defendant any *per diem* credit. See 725 ILCS 5/110-14 (West 2012). Defendant and the State agree that, for the three days that defendant served prior to sentencing, he is entitled to $15 of credit against the court finance fee of $50, which actually is a fine (*People v. Smith*, 2014 IL App (4th) 121118, ¶ 54). See *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 31. We modify the sentencing judgment so as to allow defendant this credit of $15. See Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967); *People v. McCreary*, 393 Ill. App. 3d 402, 409 (2009).

¶ 79 III. CONCLUSION

¶ 80 We modify the sentencing judgment so as to allow defendant a credit of $15 against the court finance fee of $50. We affirm the trial court's judgment as modified, and we award the State $50 in costs against defendant.

¶ 81 Affirmed as modified.