

NOTICE
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2017 IL App (5th) 150173-U

NO. 5-15-0173

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jackson County.
)	
v.)	No. 14-CF-350
)	
EMMANUEL S. DOSUNMU,)	Honorable
)	William G. Schwartz,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Moore and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing the defendant to 10 years' imprisonment where probation would deprecate the seriousness of the offense and the court properly considered the factors in aggravation and mitigation.

¶ 2 In October 2014, the State charged the defendant, Emmanuel S. Dosunmu, with continuing financial crimes enterprise, a Class 1 felony (720 ILCS 5/17-10.6(h)(1), (j)(3) (West 2012)). Thereafter, the defendant entered an open plea of guilty, and the trial court sentenced him to 10 years' imprisonment. On appeal, the defendant does not challenge his conviction but attacks his sentence as excessive. For the reasons that follow, we affirm the order of the circuit court of Jackson County.

¶ 3 In late July 2014, Brandon Weisenberger, a detective with the Carbondale police department, began a large-scale investigation after receiving several reports of fraudulent transactions occurring at various financial institutions in the area; mainly, individuals completing fraudulent cash advance transactions with credit cards. The reports indicated that bank employees had noted a discrepancy between the names embossed on the credit cards and the information encoded on the cards. Surveillance footage revealed the defendant was one of the individuals.

¶ 4 After sharing this information with other law enforcement agencies in the region, Detective Weisenberger learned that these same individuals were using stolen credit card information to manufacture credit cards to obtain thousands of dollars worth of cash advances and had conducted these fraudulent transactions in Marion, De Soto, Riverdale, and Champaign. He also discovered from the St. Louis gaming authorities that this same group had operated a credit card ring in casinos in St. Louis and Cape Girardeau. He further learned that, in July 2014, the University of Illinois police department had searched the defendant's vehicle and found a large number of reloadable credit cards, which are commonly used for credit card fraud.

¶ 5 In August 2014, the Carbondale police department received information that the defendant was on board an Amtrak train headed to Carbondale. Amtrak police had requested assistance because they believed that the defendant and his companions were in possession of cannabis. The defendant was detained at the station, and his backpack was seized. After a search warrant was executed on the backpack, the officers discovered a credit card embossing machine, a credit card reader, and a laptop computer that contained

software to encode credit cards. Detective Weisenberger also discovered evidence that the defendant had purchased stolen credit card account information from "black market European web sites." A search warrant was executed on the defendant's home and officers recovered additional evidence of credit card manufacturing, including blank Green-Dot style reloadable credit cards and W2 tax forms for approximately 22 individuals.

¶ 6 Following the investigation, the defendant was arrested and interviewed by Detective Weisenberger. The defendant gave a recorded confession. Thereafter, the State charged the defendant with one count of organizer of a continuing financial crimes enterprise (720 ILCS 5/17-10.6(i)(A)(i) (West 2012)), one count of continuing financial crimes enterprise (720 ILCS 5/17-10.6(h)(1) (West 2012)), one count of conspiracy to commit a financial crime (720 ILCS 5/17-10.6(g)(1) (West 2012)), two counts of identity theft (720 ILCS 5/16-30(a)(4) (West 2012)), and one count of altered or counterfeited credit or debit card (720 ILCS 5/17-41(a)(ii) (West 2012)). In November 2014, the defendant entered an open plea of guilty to continuing financial crimes enterprise.

¶ 7 On January 2, 2015, the trial court held a sentencing hearing. During the hearing, Detective Weisenberger testified that approximately 20 financial institutions were affected nationwide as well as individuals from approximately 13 different states. He estimated that the financial impact of the criminal activity was between \$7,000 and \$10,000 locally. He explained that the criminal activity spanned from March until August 2014. Based on his investigation, he believed that the defendant was a "ringleader of [the] entire crew." He testified that, during his investigation, he had

obtained tutorial videos on credit card manufacturing made by the defendant and also videos of the defendant and his companions with goods that they had purchased and "boasting their [wares] that they had obtained." There were also videos of them throwing around "dozens of hundred dollar bills."

¶ 8 Detective Weisenberger testified that he had several phone calls with the defendant during the course of the investigation. He explained that the defendant was "very evasive and never rude but always continued to deny and not accept responsibility" for his actions. When he interviewed the defendant at the jail, the defendant was very tearful and apologetic. Detective Weisenberger testified that the defendant attempted to downplay "how sophisticated he was at this and how informed he was," but that he ultimately was cooperative and gave a recorded confession.

¶ 9 A presentence investigation (PSI) report revealed that the defendant had been previously charged with the following offenses: twice for driving 21 to 25 miles per hour (mph) over the speed limit, for which he was fined; driving with a suspended license, for which he received 12 months' probation in addition to fines and costs; retail theft, for which he received 12 months' court supervision; another driving while license suspended, for which he received 4 months' conditional discharge; and possession of cannabis, for which he received 4 months' court supervision. He also had three pending charges in Union County, Illinois, for driving on a suspended license, operating an uninsured motor vehicle, and driving 15 to 20 mph above the speed limit. He also had pending charges for attempted theft and possession of criminal tools in Hamilton County, Ohio.

¶ 10 The PSI further revealed that the defendant was 21 years old at the time of sentencing. He had attended Southern Illinois University Carbondale from the fall 2011 semester until the spring 2013 semester. According to his transcript, he was placed on academic probation because he had failed all but one class in the fall 2012 semester and had also failed all of his classes for spring 2013. The PSI indicated that he was currently unemployed but had been employed at the Center for Literacy from June 2009 until August 2011. The employment verification form received from the Center for Literacy indicated that the defendant was a dependable worker and possessed superb leadership skills. The PSI revealed that he had admitted that drugs had caused problems in his life in that he made bad decisions when he smoked cannabis. He reported that he had last smoked cannabis approximately seven months earlier.

¶ 11 Following the testimony, the State presented the following arguments in aggravation. The State argued that Detective Weisenberger's testimony revealed the magnitude of the crime and impact that it had locally as well as in communities all over the country. The State acknowledged that the defendant did not have an extensive criminal history but noted that he had engaged in criminal activity for a long time and was on supervision for the theft-related offense when this crime started. The State also noted that the charges in Ohio related to the defendant's attempt to obtain close to \$1,400 in cash advances with fraudulent credit cards. With regard to deterrence, the State argued that the sentence should show the impacted communities and financial institutions that a crime of this magnitude is being taken seriously in light of the rise of cybercrime and that such a crime was not being ignored due to the amount of work involved. The State noted

that this crime "didn't have borders" and that "[n]o jurisdiction was safe from the reach of [the] defendants." The State argued that probation would seriously deprecate the magnitude, scope, and impact of the crime. The State noted that the defendant was a key player in the criminal activity; he was involved in every jurisdiction; and he had the equipment to commit the offenses. Thus, the State recommended 12 years' imprisonment with a 2-year period of mandatory supervised release.

¶ 12 In mitigation, defense counsel argued that the defendant's conduct neither caused nor threatened serious physical harm to any individual. Defense counsel noted that this was the defendant's first felony conviction. Counsel further noted that the defendant had accepted responsibility for his actions after his arrest and had entered a plea of guilty. Defense counsel requested that the defendant receive probation or, if probation was not appropriate, either boot camp or the minimum period of incarceration.

¶ 13 In announcing the defendant's sentence, the trial court noted that the defendant had stolen the W2 tax forms from his father, who had access to this personal information based on his supervisory capacity over numerous tax preparation outlets, and this compromised every client that was involved in his father's business personally as well as his father's business as a whole. The court further noted that this was an organized criminal conspiracy where the parties knew exactly what they were doing and were also teaching others how to commit the crime. The court made the following observations about the offense and the defendant:

"This is hardened crime, *** and it affects everybody. It affects every one of us even though our identities weren't taken by virtue of the fact that prices in the

stores go up, our individual information is compromised, could be compromised. Every time we make a purchase with a credit card it's more difficult because of people like [the defendant]. And the real shame of it is, it looks like he's a bright guy. He figured this out. There's information on the presentence investigation of how bright he is, although he hasn't applied himself in school worth a squat. If he had applied himself at school and he had used what he's here in court doing in a positive sense, I think he could have made something of himself."

The trial court thereafter sentenced the defendant to 10 years' imprisonment, indicating that it gave him "credit" for admitting to the crime once he was caught.

¶ 14 On January 27, 2015, the defendant filed a motion to reconsider his sentence, arguing that the sentence was excessive in light of the mitigating factors. He contended that the trial court did not give proper consideration to the following factors in mitigation: his minimal criminal history; the lack of physical harm; the fact that he was unlikely to commit another offense based on his character and attitude; and the fact that he was particularly likely to comply with the terms of probation. He noted that he did not have a history of felony criminal convictions. He further noted that he had pled guilty and took responsibility for his actions and that he had a history of maintaining employment and pursuing his education.

¶ 15 That same day, the defendant filed a motion to withdraw guilty plea and vacate judgment. A hearing on the motion to reconsider was held on April 13, 2015. At the hearing, the trial court acknowledged that the defendant had taken responsibility for his actions but concluded that it had been shown that the defendant was likely to commit

another crime because he completed this offense while on probation for the theft-related offense. As for harm, the court stated as follows:

"No. 6 [of the defendant's motion] alleges that he did not contemplate that his criminal conduct would cause or threaten serious physical harm to another. That is just inherently incorrect. Again, as I heard during the sentencing hearing and as has been presented today by [the State], there was a calculated, intentional plan led by, concocted by and furthered by [the defendant] to steal the identities, the credit histories of other people. And if he doesn't think that causes harm to individuals, then he's in his proper place because not only did he plan to do that, he went so far as to buy lists from European people who are in the process of buying stolen credit cards so that he could not only use those numbers, but to make his own credit cards so they would look perfectly legitimate to others. To say that conduct didn't cause any serious harm is just unbelievable.

To further show what harm it caused, we caught him red-handed in the act with some of his compatriots and had testimony in this court from officers from the state of Missouri as to how, as the State pointed out, this did not happen locally but across the state lines and across this nation. You may have started small but you got bad and big real fast."

The court also stated as follows:

"You are bright. You are so bright you were able to develop this plan and this strategy. But worse than that is you recruited others, not only in your little group here that was out using these falsified credit cards to defraud individuals, but you

made a video to show other people how to do this, to encourage others to engage in this criminal conduct."

The court thereafter denied the defendant's motion to reconsider. The defendant appeals.

¶ 16 On appeal, the defendant argues that his sentence was excessive. Sentences imposed within the statutory guidelines will not be disturbed on review absent an abuse of discretion. *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 40. A sentence will be deemed an abuse of discretion if it is manifestly disproportionate to the nature of the offense. *People v. Lake*, 2015 IL App (3d) 140031, ¶ 24. A trial court's sentencing decision is entitled to great deference because the court is in a superior position to assess the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Id.* ¶ 23. A reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *People v. Fern*, 189 Ill. 2d 48, 53 (1999).

¶ 17 In determining the appropriate sentence, the trial court should consider, among other things, any presentence reports, evidence offered by the parties in aggravation and mitigation, arguments made by the parties, and the defendant's statement in allocution. 730 ILCS 5/5-4-1(a) (West 2014). "A reasoned sentence must be based on the particular circumstances of each case." *People v. Daly*, 2014 IL App (4th) 140624, ¶ 26.

¶ 18 The defendant entered a plea of guilty to continuing financial crimes enterprise, a Class 1 felony, with a sentencing range of 4 to 15 years' imprisonment. 730 ILCS 5/5-4.5-30(a) (West 2014). He was eligible for probation. 730 ILCS 5/5-4.5-30(d) (West 2014). Although he recognizes that his 10-year sentence was within the permissible

sentencing range authorized by statute, citing *People v. Daly*, 2014 IL App (4th) 140624, he argues that the trial court abused its discretion in denying him probation. Section 5-6-1(a) of the Unified Code of Corrections (730 ILCS 5/5-6-1(a) (West 2014)) requires a sentence of probation unless the court concludes, after considering the nature and circumstances of the offense, and the history, character, and condition of the offender, that a prison sentence is necessary for the protection of the public or that probation would deprecate the seriousness of the offender's conduct.

¶ 19 Although the trial court did not make a specific finding that a prison sentence was necessary for the protection of the public or that probation would deprecate the seriousness of the offender's conduct, the record indicates that the court substantially complied with the statutory requirements of section 5-6-1(a) in that it reviewed and considered all of the factors in aggravation and mitigation presented at the sentencing hearing. See *People v. McPherson*, 136 Ill. App. 3d 313, 315 (1985) (section 5-6-1(a) is satisfied where the record shows substantial compliance with the statutory requirements, and substantial compliance may be found where the record reveals that the court reviewed and considered all of the relevant factors presented at the sentencing hearing).

¶ 20 The *Daly*, 2014 IL App (4th) 140624, case relied on by the defendant is distinguishable from the present case. There, the appellate court concluded that the trial court abused its discretion in sentencing the defendant to 3½ years' imprisonment for reckless homicide, finding that the trial court never considered probation as a sentencing option. *Id.* ¶¶ 32, 40. The court found that a review of the record showed little to indicate that the trial court considered the nature and circumstances of the offense; the

history, character, and condition of the offender; or the defendant's rehabilitative potential when fashioning the sentence. *Id.* ¶ 30. Rather, the appellate court noted that the trial court had considered the nature and circumstances of an offense to which the defendant did not plead guilty, *i.e.*, aggravated DUI. *Id.* ¶¶ 30-31.

¶ 21 The court also found an overwhelming amount of evidence in mitigation. Specifically, the court noted the testimony at sentencing revealed that defendant was a 24-year-old nurse who lacked reckless tendencies, had never previously been convicted of a criminal offense and had only two prior minor traffic violations, had a 20-month old son, and had both family and community support. *Id.* ¶ 33. The court also noted that there was no indication that the accident was the direct result of alcohol use and that the record did not demonstrate that the defendant had a problem with alcohol. *Id.* Moreover, the court found deterrence to be of little significance where the offense involved unintentional conduct. *Id.* ¶ 32. Accordingly, the court concluded that there was little need to incarcerate the defendant to protect the public and, thus, reduced the defendant's sentence to probation. *Id.* ¶¶ 33, 40.

¶ 22 Unlike *Daly*, the record in the present case indicates that the court considered the nature and circumstances of the offense; the history, character, and condition of the defendant; and the defendant's rehabilitative potential in determining the appropriate sentence. Pointing to the trial court's comments at the hearing on the motion to reconsider, the defendant argues that the trial court failed to consider the lack of serious physical harm as a mitigating factor where only financial harm had occurred. We reject this contention. At the hearing, the defendant argued that the court erred in considering

physical harm. The State conceded that there was no physical harm, noting that it had not argued this factor applied. However, the State did emphasize the serious financial harm that resulted from the criminal activity and the seriousness of the offense.

¶ 23 There is a presumption that the trial court considered all relevant mitigating and aggravating factors in determining a sentence, and that presumption will not be overcome without explicit evidence from the record that the court did not consider mitigating factors. *Halerewicz*, 2013 IL App (4th) 120388, ¶ 43. Such a showing was not made in this case. Although the trial court mentioned physical harm in reference to the defendant's argument, its comments focused on the serious financial harm suffered by the affected communities and financial institutions, the magnitude of the offense, and the premeditated nature of the criminal activity that occurred over a period of months. The court found that this was a calculated, intentional plan led by, concocted by, and furthered by the defendant to commit fraud. Considering the impact the offense had on the affected communities and victims, the court concluded that the harm suffered as a result of the defendant's criminal activity was serious. The defendant was a leader of an organized criminal enterprise that affected approximately 20 financial institutions nationwide and individuals from approximately 13 different states. The loss from the local financial institutions was estimated at \$7,000 to \$10,000. The court noted that the defendant had purchased stolen credit card information and had also stolen information from his father's business, which compromised his father's clients as well as his father's business. The court also considered the fact that the defendant had participated in videos that taught others how to commit the crime and encouraged others to engage in the

criminal conduct. Thus, the record indicates that although the court recognized that the particular harm suffered by the victims of the defendant's criminal activity was not physical, it concluded that the defendant's conduct caused large-scale financial harm.

¶ 24 Furthermore, we also reject the defendant's contention that the trial court did not adequately consider his lack of criminal history and rehabilitative potential. Where evidence in mitigation is presented, it is presumed that the trial court considered it absent some contrary evidence. *People v. Labosette*, 236 Ill. App. 3d 846, 862 (1992). Here, the court noted that the defendant had committed the present offense while on probation for a theft-related offense. The defendant also had numerous traffic violations, a charge for possession of cannabis, and pending charges of a similar nature in Ohio. The court considered the defendant's educational history, finding that the defendant had not "applied himself in school worth a squat." The defendant's PSI indicated that he had been employed for approximately two years but had maintained no employment since August 2011. Accordingly, based on the evidence presented at the sentencing hearing, we conclude that the trial court did not abuse its discretion in finding that probation would deprecate the seriousness of the offense. In addition, for the reasons set forth above, we also find that the trial court did not abuse its discretion in sentencing the defendant to 10 years' imprisonment.

¶ 25 For the foregoing reasons, the judgment of the circuit court of Jackson County is affirmed.

¶ 26 Affirmed.