2018 IL App (1st) 153463-U

No. 1-15-3463

Order filed June 15, 2018

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 19637
	)	
WILLIAM LIGGINS,	)	Honorable
	)	Angela M. Petrone,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's 11-year sentence for burglary was not excessive. Order assessing fines, fees, and costs is modified.

¶ 2 Following a bench trial, defendant was found guilty of burglary (720 ILCS 5/19-1(A) (West 2014)) and sentenced to 11 years' imprisonment. On appeal, defendant contends that his sentence is excessive, and that the order assessing fines, fees, and costs should be modified. We affirm, and modify the order assessing fines, fees, and costs.

¶ 3 Defendant was arrested around 1:40 p.m. on October 28, 2014, near the intersection of Aberdeen Street and Jackson Boulevard, after telling patrolling officers that broken glass on his shirt was from a nearby vehicle with a shattered window. Defendant was subsequently charged with one count of burglary, alleging that defendant "knowingly and without authority entered a motor vehicle, to wit: a 2003 Ford Escape, the property of Kelly Richey, with the intent to commit therein a theft."

¶ 4 The following evidence was adduced at trial. On October 28, 2014, at approximately noon, Steven Rosner was at a meeting in "the loop." Before going to the meeting, Rosner drove a 2003 Ford Escape, registered in his wife's name, and "parked in a little lot in the alley at 215 Aberdeen." There, his business partner picked him up and drove him to the meeting. Rosner left a gym bag and work portfolios in the back seat. Inside the portfolios were business cards with Rosner's name and contact information, along with pens and notebooks. Rosner recalled there being no broken windows when he parked his vehicle. Rosner did not give anybody permission to enter his vehicle and remove the items he left in the back seat. Rosner also did not give anybody permission to damage his vehicle.

¶ 5 At approximately 1:40 p.m., Officer Dana Shelton was on patrol with Officer Tabb in a squad car near the intersection of Aberdeen Street and Jackson Boulevard. As the officers drove on Aberdeen, they were "flagged down by a citizen" just north of Jackson. After having a conversation with the citizen, they immediately "turned down the north alley of Jackson," where Shelton saw defendant. As the officers approached defendant, Shelton saw defendant standing next to a dumpster and kicking items underneath it. The officers retrieved the items that defendant was kicking—which Shelton described as a "portfolio case." Inside the portfolio were

business cards with Steve Rosner's name on them. Shelton noticed defendant was approximately 10 feet away from a 2003 Ford Escape with its "driver's side rear window broken out," and defendant had broken glass on his sweatshirt. The officers asked defendant "did the broken glass come from the victim's car with the shattered window," and defendant "said probably." The officers placed defendant into custody. A custodial search of defendant uncovered a screw driver. The screw driver and broken glass on defendant's sweatshirt were both recovered and inventoried. Rosner then drove to the police station, and testified that, while there, "I received the portfolios and I think a gym bag."

¶ 6 The court found defendant guilty of burglary, and ordered a presentence investigation (PSI). The court denied defendant's motion for a new trial, and the case proceeded to sentencing.

¶ 7 In mitigation, defense counsel argued that defendant had a "rough upbringing," did not know his father, and had "little education going into early adulthood where he was able to obtain his high school equivalent only upon being incarcerated." Defense counsel also argued that his client's "criminal history is riddled with the type of cases that we might see from somebody that abused drugs and alcohol," and that defendant has only one "violent" conviction, which was a 1990 robbery. Defense counsel further argued that he does not "believe" defendant is a "threat to society," and that he believes defendant has "always been a non-violent person." In addition, defense counsel argued that "[w]hat we have here is a conviction for the type of crime, Judge, going through somebody's vehicle that you suspect to see from somebody that abuses narcotics and drugs." Counsel informed the court that defendant started drinking at a very young age and had been using crack cocaine since he was 24 years old. Counsel also pointed out that defendant

was addicted to crack cocaine, and committed the burglary "to perhaps feed the drug—the drug addiction."

¶ 8 In aggravation, the State argued that defendant had a "stable upbringing," and that his mother lived with him up until the offense in this case. The State noted that defendant had a good relationship with his sister, and that he earned his GED. The State also pointed out that defendant "had some vocational training in automobile and also healthcare," and argued that defendant "chose not to use any of those skills." The State recounted defendant's criminal history, and noted that in 1994 "he had two burglaries back to back. In 2003 another burglary, 2003 another burglary, 2010 another burglary. He was actually on parole for burglary when he committed this burglary before you." The State finally argued that "when the defendant did work and spend his money appropriately he was able to support himself but chose instead to use the little resources that he had for alcohol and drugs." The State requested defendant be sentenced in the "upper range" of the statutorily required 6 to 30 years' imprisonment.

¶ 9 In announcing defendant's 11-year sentence, the trial court recited the facts of this case, and noted that defendant had an "average" childhood, where he was raised primarily by his mother, and that none of his family members were incarcerated. The trial court also noted defendant's education and work background, including his GED, his certificates in automotive repair and health he earned in the Job Corp, and his employment for a year-and-a-half. The court also mentioned defendant's history of substance abuse, including that defendant had stopped drinking before his arrest, and that he began using crack cocaine at age 24 and was spending $30 to $40 a day on cocaine. In describing defendant's criminal record, the court stated that "there's no violence in that nobody was shot and nobody was stabbed," and also mentioned convictions

from 1990 for possession of cocaine, violating bail bond, and robbery. The court highlighted six previous sentences defendant received for burglary, and concluded:

> "I believe that the presentence investigation does show that defendant is mandatory to be sentenced as a Class X offender. The sentence is necessary to deter others. The highest sentence defendant ever got for a burglary was nine years. He's been given sentences of nine years, eight years, seven years, six years, four years, three years. I believe the proper sentence is 11 years in the Illinois Department of Corrections, followed by three years mandatory supervised release and fines, fees, and costs."

¶ 10 The court credited defendant with "365 days time served," and denied his motion to reconsider sentence. In denying defendant's motion, the court stated that the sentence is "three years more than the last sentence. It's less than half of what the defendant could [have received], and by the presentence investigation, this is the defendant's 7th burglary conviction." The court assessed fines, fees, and costs in the amount of $474.

¶ 11 On appeal, defendant first contends that his sentence is excessive in light of the nature of his offense, his nonviolent criminal background, his drug addiction, and the financial impact his imprisonment will have upon the State.

¶ 12 The Illinois Constitution requires a trial court "to impose a sentence that achieves a balance between the seriousness of the offense and the defendant's rehabilitative potential." *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46 (citing Ill. Const. 1970, art. I, § 11; *People v. Lee*, 379 Ill. App. 3d 533, 539 (2008)). To find the proper balance, the trial court must consider a number of aggravating and mitigating factors including: " 'the nature and circumstances of the

crime, the defendant's conduct in the commission of the crime, and the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education.' " *Id.* (quoting *People v. Maldonado*, 240 Ill. App. 3d 470, 485-86 (1992)). The seriousness of the offense or the need to protect the public may outweigh mitigating factors and the goal of rehabilitation. *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010).

¶ 13 A reviewing court "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." (internal quotation marks omitted.) *People v. Halerwicz*, 2013 IL App (4th) 120388, ¶ 41 (quoting *People v. Little*, 2011 IL App (4th) 090787, ¶ 24). A reviewing court will not reweigh sentencing factors and may not substitute its judgment for the trial court merely because it would have weighed them differently. *Knox*, 2014 IL App (1st) 120349, ¶ 46. "It is presumed a trial court considered all relevant mitigating and aggravating factors in fashioning a sentence, and that presumption will not be overcome absent explicit evidence from the record that the trial court failed to consider mitigating factors." *Halerwicz*, 2013 IL App (4th) 120388, ¶ 43. A sentence "within statutory limits for the offense will not be disturbed unless the trial court has abused its discretion." *People v. Flores*, 404 Ill. App. 3d 155, 157 (2010). An abuse of discretion occurs "if the trial court imposes a sentence that 'is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *Id.* (quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2010)).

¶ 14 Here, we find that the trial court did not abuse its discretion in sentencing defendant to 11 years' imprisonment. Defendant was convicted of burglary. The sentencing range for burglary, a Class 2 felony, is three to seven years' imprisonment. 720 ILCS 5/19-1(b) (West 2014); 730 ILCS 5/5-4.5-35 (West 2014). However, because of his criminal background, defendant was subject to mandatory Class X sentencing of 6 to 30 years' imprisonment. See 730 ILCS 5/5-4.5-95(b) (West 2014); 730 ILCS 5/5-4.5-25(a) (West 2014). As defendant's sentence of 11 years' falls within statutory guidelines, we presume it is proper.

¶ 15 Defendant does not dispute that his sentence fell within the permissible sentencing range. Rather, he argues that his sentence is excessive in light of the nature of the offense, his nonviolent criminal background, his drug addiction, and the financial impact his imprisonment will have upon the State. However, as noted above, it is presumed that a trial court considered all relevant mitigating factors in fashioning a sentence. *Halerwicz,* 2013 IL App (4th) 120388, ¶ 43. That presumption "will not be overcome absent explicit evidence from the record that the trial court failed to consider mitigating factors." *Id.* at ¶ 43. Defendant has failed to make such a showing.

¶ 16 The record shows that the trial court considered the mitigating factors relied on by defendant in this court. The court heard defense counsel's arguments that defendant "is an alcoholic. He is addicted to crack cocaine," and that "What we have here is a conviction for the type of crime[…] that you suspect to see from somebody that abuses narcotics and drugs." The court also heard defense counsel's argument that he believes defendant is nonviolent. Moreover, the court stated that defendant had a nonviolent background "in that nobody was shot and

nobody was stabbed." The court reviewed defendant's PSI report and noted that defendant "beg[a]n using this crack cocaine at age 24 and was spending $30 to $40 a day on cocaine."

¶ 17 Given this record, defendant essentially asks us to reweigh the sentencing factors and substitute our judgment for that of the trial court. This we cannot do. See *Knox*, 2014 IL App (1st) 120349, ¶ 46. As the trial court is presumed to have considered all evidence in mitigation, and the record shows that it did, we find that it did not abuse its discretion in sentencing defendant to 11 years' imprisonment.

¶ 18 Defendant also attacks his sentence by comparing it to the sentences imposed in *People v. Busse*, 2016 IL App (1st) 142941 and *People v. Center*, 198 Ill. App. 3d 1025 (1990). However, "a claim that a sentence is excessive must be based on the particular facts and circumstances of that case. If a sentence is appropriate given the particular facts of that case, it may not be attacked on the ground that a lesser sentence was imposed in a similar, but unrelated, case." *People v. Fern*, 189 Ill. 2d 48, 62 (1999). Accordingly, we will not compare defendant's sentence to the sentences in *Busse* and *Fern*.

¶ 19 Defendant next contends that the trial court erroneously calculated the sum of the fines and fees assessed against him. Defendant also contends that the trial court improperly assessed a $5 "Electronic Citation Fee" (705 ILCS 105/27.3e (West 2014)) and a $5 "Court System" charge (55 ILCS 5/5-1101(a) (West 2014)). In addition, defendant contends that two of the fees that the trial court imposed are actually fines, and are therefore subject to *per diem* credit, pursuant to 725 ILCS 5/110-14(a) (West 2014), for time he served in custody prior to his sentencing: (1) a $50 "Court System" charge (55 ILCS 5/5-1101(c) (West 2014)); and (2) a $15 "State Police

Operations Fee" (705 ILCS 105/27.3a-1.5) (West 2014)). The propriety of a fines and fees order is subject to *de novo* review. *People v. Brown*, 2017 IL App (1st) 150146, ¶34.

¶ 20 We initially note that defendant has forfeited these claims. "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). Here, defendant neither made a contemporaneous objection, nor did he file a postsentencing motion challenging the fines and fees assessed against him. However, "the rules of waiver and forfeiture are also applicable to the State." *People v. Reed*, 2016 IL App (1st) 140498, ¶ 13. "By failing to timely argue that a defendant has forfeited an issue, the State waives the issue of forfeiture." *Id.* As the State has not argued that defendant forfeited his fee arguments, we address the merits of defendant's claims.

¶ 21 Both the State and defendant are in agreement that the trial court miscalculated the total amount due in the original order assessing fines, fees, and costs. The original order calculated the amount due as $474, but assessed fines and fees totaling $464. Accordingly, both parties are correct that the total amount due in the fines, fees, and costs order was miscalculated, and that it should reflect a total amount due of $464 instead of $474.

¶ 22 Both parties also agree defendant was improperly assessed the $5 "Electronic Citation Fee." Such a charge "shall be paid by the defendant in any traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision." 705 ILCS 105/27.3e (West 2014). As this case is not a traffic, misdemeanor, municipal ordinance, or conservation case, defendant was improperly assessed the $5 Electronic Citation Fee.

¶ 23 Both parties further agree that defendant was improperly assessed a $5 "Court System" charge. Such an assessment is "to be paid by the defendant on a judgment of guilty or a grant of supervision for violation of the Illinois Vehicle Code other than 11-501 or violations of similar provisions contained in county or municipal ordinances committed in the county." 55 ILCs 5/5-1101(a) (West 2014). Here, defendant violated neither the Illinois Vehicle Code nor a municipal ordinance. Therefore, defendant was improperly assessed the $5 "Court System" charge.

¶ 24 Defendant finally argues that the $50 "Court System" charge and the $15 "State Police Operations Fee" are both fines. A defendant is entitled to a credit of $5 against his or her fines, but not fees, for each day spent in presentence custody. *Reed*, 2016 IL App (1st) 140498, ¶ 14 (citing 725 ILCS 5/110-14(a) (West 2012)). A fee is a charge that " 'seeks to recoup expenses incurred by the state,' " whereas a fine is punitive in nature and serves as " 'a pecuniary punishment imposed as a part of a sentence on a person convicted of a criminal offense.' " *People v. Graves*, 235 Ill. 2d 244, 250 (2009) (quoting *People v. Jones*, 223 Ill. 2d 569, 581 (2006). When determining whether a charge enumerated in a statute is a fee or a fine, the legislature's label is strong evidence, but it cannot overcome the actual attributes of the charge at issue. *Id.* The central characteristic that separates a fee from a fine is "whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant." *Id.* A charge is a fee " 'if and only if it is intended to reimburse the state for some cost incurred in defendant's prosecution.' " *Id.* (quoting *Jones*, 223 Ill. 2d at 600). Other factors to consider are whether the charge is imposed after conviction and to whom the payment is made. *Id.* at 251.

¶ 25 The State concedes, and we agree, that the $15 "State Police Operation Fee" amounts to a fine. Courts have previously observed that "the money collected pursuant to this provision is put

in a fund that is used by the Illinois Department of Police to finance 'any lawful purpose' and is not used to reimburse the state for any expenses incurred in prosecuting defendant." *Brown*, 2017 IL App (1st) 150146, ¶ 34 (citing *People v. Maxey*, 2016 IL App (1st) 130698, ¶¶ 140-41; *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31). Therefore, this charge is a fine. *Id.*

¶ 26 The State argues that the $50 "Court System" charge, imposed under section 5-1101 of the Counties Code, is in fact a fee. However, this court has held such an assessment is a fine. *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22; *Brown*, 2017 IL App (1st) 150146, ¶ 37; *Reed*, 2016 IL App (1st) 140498, ¶ 15. In doing so, we have found "the Court System fee is essentially punitive, particularly because its amount varies depending on the degree of a defendant's offense." *Reed*, 2016 IL App (1st) 140498, ¶ 15 (citing *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21). In light of our previous decisions, the $50 "Court System" charge is a fine.

¶ 27 In sum we affirm defendant's sentence of 11 years' imprisonment, and order the clerk of the circuit court to correct the fines, fees and costs order to remove the $5 "Electronic Monitoring Fee" and the $5 "Court System" charge, thereby bringing defendant's total fines, fees, and costs owed to $454. We further award defendant $65 in precustody credit against the $15 "State Police Operations Fee" and the $50 "Court System" charge, thereby bringing the total amount defendant owes in fines offset by precustody credit to $115. See Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999).

¶ 28 Affirmed; fines, fees, and costs order modified.