

No. 1-16-0417

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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 10749
)	
STEVE HOLLAND,)	Honorable
)	Joseph Michael Claps,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Pierce and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm defendant's 20-year sentence for being an armed habitual criminal. We reject his arguments that the trial court subjected him to an improper double enhancement, failed to consider evidence in mitigation, and relied on an improper sentencing factor.

¶ 2 Following a bench trial, defendant Steve Holland was convicted on one count of being an armed habitual criminal (AHC) (720 ILCS 5/24-1.7(a) (West 2014)) and two counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2014)). He was sentenced to 20 years' imprisonment for the AHC count and two terms of 12 years' imprisonment for the

aggravated discharge counts, with all sentences to run concurrently. Mr. Holland appeals, arguing that his 20-year sentence for AHC is excessive because the trial court subjected him to an improper double enhancement, failed to consider relevant mitigating factors, and relied on an improper sentencing factor. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Mr. Holland was charged by indictment with four counts of attempted first degree murder, one count of being an AHC, two counts of aggravated discharge of a firearm in the direction of another person, one count of aggravated discharge of a firearm toward a vehicle he knew to be occupied, and one count of unlawful possession of a weapon by a felon, charges all stemming from a May 25, 2014, shooting. Mr. Holland waived his right to a jury trial and the case proceeded to a bench trial. Because Mr. Holland challenges only his sentence, we discuss the evidence at trial only to the extent it relates to the sentencing issues raised on appeal.

¶ 5 The evidence at trial was that, prior to the shooting that underlay Mr. Holland's conviction here, Mr. Holland's family had been engaged in a years-long feud with the family of Sergio Rodriguez. The feud started when Mr. Rodriguez allegedly threw cigarette butts into the yard belonging to Mr. Holland's family and later intensified when Mr. Holland's mother testified against Mr. Rodriguez at his criminal trial for attempted murder and aggravated battery with a firearm. That trial resulted in a hung jury, and Mr. Rodriguez's retrial was pending at the time of the shooting that led to this case. Mr. Holland's mother testified in this case that, on the night before the shooting, Mr. Rodriguez had attempted to intimidate her out of testifying in his retrial.

¶ 6 On May 25, 2014, Benjamin Figueroa left a cookout at his sister-in-law's home to return to his house and get a sweater for his daughter. He drove to his house in Mr. Rodriguez's car. As he and his wife were searching for the sweater, Mr. Figueroa heard someone yelling outside of

his house. When he opened the front door, Mr. Figueroa saw Mr. Holland standing outside, shouting, and pointing a firearm toward his house. Less than 30 seconds later, Mr. Holland got into his car and drove away.

¶ 7 When Mr. Figueroa returned to the cookout, Mr. Rodriguez told him that he needed to drive to the store and Mr. Figueroa decided to accompany him. On the way to the store, Mr. Figueroa told Mr. Rodriguez about his recent interaction with Mr. Holland, and Mr. Rodriguez decided to drive past Mr. Holland's house. Mr. Rodriguez drove down Mr. Holland's street at 5 to 10 miles per hour, and observed Mr. Holland walking out of his house. When Mr. Holland saw Mr. Rodriguez and Mr. Figueroa, he ran back into his house and returned with a gun. As Mr. Rodriguez drove away, Mr. Holland ran after the car and fired several shots. Neither the vehicle nor its occupants were hit by the gunfire. The State admitted into evidence certified copies of Mr. Holland's 2006 conviction for aggravated arson and his 2002 convictions for two counts of aggravated battery.

¶ 8 The trial court found Mr. Holland guilty on one count of being an AHC, three counts of aggravated discharge of a firearm, and one count of unlawful possession of a weapon by felon. The court found Mr. Holland not guilty of attempted murder, concluding that the evidence did not prove beyond a reasonable doubt that Mr. Holland intended to kill Mr. Rodriguez or Mr. Figueroa.

¶ 9 At sentencing, the State argued that Mr. Holland's criminal background, which consisted of the two aggravated battery convictions and the aggravated arson conviction introduced at trial, were crimes of violence. The State asked the court for a 20-year sentence for the AHC count and a 15-year sentence for each of the aggravated discharge counts. In mitigation, defense counsel argued that Mr. Holland's actions did not cause injury or damage. She also argued that Mr.

Holland's actions were a result of escalating tensions between two families, which suggested that he was unlikely to commit similar crimes upon his release from prison.

¶ 10 The trial court merged the count for aggravated discharge of a firearm into an occupied vehicle into the two counts of aggravated discharge of a firearm toward another person, and merged the unlawful possession of a weapon by felon count into the AHC count. The court then sentenced Mr. Holland to 20 years' imprisonment on the AHC count and two 12-year terms for the aggravated discharge counts, with all sentences to run concurrently. In doing so, the court announced:

"I've considered the pre-sentence investigation, factors in aggravation and mitigation, I've considered [Mr. Holland's] previous record. Although not lengthy he has a history of using violence as a way of acting and I've considered that any sentence less than what I give [Mr. Holland] would deprecate the seriousness of this offense. It's important to convince others that using firearms to solve one's issues is not acceptable in civilized life.

[Mr. Holland] does not get credit for the fact that he missed his target. What he did was put people in a residential area in risk, people who had nothing to do with his issues with these people that he was chasing. It's just insanity, total insanity. There's a reason why the legislature created this offense of armed habitual criminal, to punish those that would even though they've had these convictions that make this an armed habitual criminal. They shouldn't be anywhere near a firearm let alone using one."

The trial court denied Mr. Holland's motion to reconsider his sentence, and Mr. Holland filed a timely notice of appeal.

¶ 11

II. ANALYSIS

¶ 12 Generally, a trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference on review. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). This is because a trial court has a superior opportunity “to weigh such factors as the defendant’s credibility, demeanor, general moral character, mentality, social environment, habits, and age.” *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Although the trial court’s consideration of mitigating factors is required, it has no obligation to recite each factor and the weight it is given. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11. Absent some indication to the contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 13 Reviewing courts will not alter a defendant’s sentence absent an abuse of discretion. *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 50. We will not reweigh the aggravating and mitigating factors and substitute our judgment for that of the trial court merely because we would have weighed those factors differently. *People v. Busse*, 2016 IL App (1st) 142941, ¶ 20. A sentence that falls within the statutory range is presumed to be proper and “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.” *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 14 The offense of being an AHC is a Class X felony with a sentencing range of 6 to 30 years’ imprisonment. 720 ILCS 5/24-1.7(b) (West 2014); 730 ILCS 5/5-4.5-25(a) (West 2014). The 20-year sentence imposed by the trial court for Mr. Holland’s AHC conviction falls within the permissible statutory range. On appeal, Mr. Holland does not question this but argues that the sentence is excessive because (1) it is the product of an improper double enhancement, (2) the trial court did not consider the mitigating influence that the feud between the two families had on

the seriousness of the crime, and (3) the trial court's comments during sentencing demonstrate that it improperly sentenced him based on its belief that he was responsible for the offense of attempt murder, of which he was acquitted. We address each of these concerns in turn.

¶ 15 A. Double Enhancement

¶ 16 It is an impermissible double enhancement for the trial court to use criminal history as an element of an offense and also as a basis for imposing a harsher sentence than might otherwise have been imposed. *People v. Fulton*, 2016 IL App (1st) 141765, ¶ 9. However, our supreme court has cautioned that the rule should “not be rigidly applied,” where it would “ ‘restrict[] the function of a sentencing judge by forcing him to ignore factors relevant to the imposition of sentence.’ ” *People v. Thomas*, 171 Ill. 2d 207, 228-29 (1996) (quoting *People v. Saldivar*, 113 Ill. 2d 256, 268 (1986)). Whether a defendant has been subject to an improper double enhancement is a question of law we review *de novo*. *People v. Shanklin*, 2014 IL App (1st) 120084, ¶ 91.

¶ 17 Mr. Holland contends that his sentence was based on an improper double enhancement because the trial court's statement that “he has a history of using violence as a way of acting” demonstrates that the court increased his sentence based on his prior aggravated battery and aggravated arson convictions, which had already served as the predicate felonies for his AHC conviction.

¶ 18 We do not agree that the trial court subjected Mr. Holland to an impermissible double enhancement here. In constructing a sentence, a court must consider “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.” (Internal quotation marks

omitted.) *Knox*, 2014 IL App (1st) 120349, ¶ 46. In this case, the court considered that Mr. Holland not only possessed a gun, but fired it—not a necessary predicate for an AHC conviction. The court also considered that both of Mr. Holland’s prior felonies involved violence, again something that is not a necessary element for predicate felonies under the AHC statute. See 720 ILCS 5/24-1.7(a) (including predicate offenses of “intimidation,” “gunrunning,” and certain violations of the Illinois Controlled Substances Act). That Mr. Holland’s prior convictions were being used as the predicate felonies for his AHC conviction did not preclude the trial court from noting that Mr. Holland had a criminal history of resorting to violence.

¶ 19 The concern that a defendant may be subjected to an improper double enhancement is often present when the charged offense, like being an AHC, makes criminal history an element of the crime. But in *Thomas*, our supreme court cautioned that “the discretionary act of a sentencing court in fashioning a particular sentence *** within the available parameters, is a requisite part of every individualized sentencing determination.” *Thomas*, 171 Ill. 2d at 224-25. The court also noted that “the legislature did not intend to impede a sentencing court’s discretion in fashioning an appropriate sentence, within the Class X range, by precluding consideration of [a defendant’s] criminal history as an aggravating factor.” *Id.* at 227. As our supreme court explained, “while the fact of a defendant’s prior convictions determines his eligibility for a Class X sentence, it is the *nature and circumstances* of these prior convictions which, along with other factors in aggravation and mitigation, determine the exact length of that sentence.” (Emphasis in original.) *Id.* at 227-28. Here, the court’s statement that Mr. Holland “has a history of using violence as a way of acting” looked to the nature of his prior convictions, not the mere fact of those convictions. This was a requisite part of the trial court’s individualized sentencing determination. There was no improper double enhancement in this case.

¶ 20

B. Mitigating Factors

¶ 21 Mr. Holland also argues that his sentence is excessive because the trial court “virtually ignored” the mitigating nature of the “escalating tensions” between his family and Mr. Rodriguez’s family. He contends that the court made no mention of the familial conflict or any other mitigating factors. The conflict, he argues, is a mitigating factor because it shows that his actions were the product of “strong provocation” and had “some level of excuse.”

¶ 22 However, as noted above, a trial court has no obligation to recite each sentencing factor and the weight it is given. *Wilson*, 2016 IL App (1st) 141063, ¶ 11. Further, absent evidence to the contrary, we presume that the trial court considered all mitigating evidence. *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. Here, the trial court presided over the trial and heard witness testimony regarding the conflict between the families. In addition, during sentencing, defense counsel argued that the conflict was a mitigating circumstance because it demonstrated that Mr. Holland was unlikely to commit other crimes after his release from prison. Mr. Holland is asking us to reweigh the sentencing factors and substitute our judgment for that of the trial court. This we cannot do. See *Busse*, 2016 IL App (1st) 142941, ¶ 20 (a reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently). We do not agree that Mr. Holland’s sentence was improper on the basis that the trial court failed to consider a mitigating factor.

¶ 23

C. Acquittal on Attempted Murder

¶ 24 Finally, Mr. Holland contends that the trial court abused its discretion by basing his sentence on its belief that he was responsible for an offense for which he was acquitted. Specifically, Mr. Holland argues that the court’s statement that he “would not get credit for the fact that he missed his target” demonstrates that it sentenced him based on its belief that Mr.

Holland intended to shoot Mr. Rodriguez and Mr. Figueroa, even though it found Mr. Holland not guilty of attempted murder.

¶ 25 The question of whether a court relied on an improper factor at sentencing is reviewed *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 49. Mr. Holland bears the burden of establishing that his sentence was based on an improper sentencing factor. *Id.* A reviewing court should consider the record as a whole, rather than focusing on a few words or statements by the trial court. *Id.* (citing *People v. Ward*, 113 Ill. 2d 516, 526 (1986)). This court will not reverse a sentence unless it is clearly evident that the sentence was improperly imposed. *Bowen*, 2015 IL App (1st) 132046, ¶ 49.

¶ 26 The State argues, citing *People v. DeLeon*, 227 Ill 2d 322, 340 (2008), that a court can rely on charges for which a defendant was acquitted at sentencing. Mr. Holland argues that *DeLeon* is distinguishable because there was no reliable evidence of Mr. Holland's intent to murder anyone. We need not resolve this because Mr. Holland has not demonstrated that the trial court relied on the attempt murder charge in sentencing him.

¶ 27 The trial court's statement that Mr. Holland should not get credit for missing his target must be put in context. The State argued that Mr. Holland shot the gun eight separate times. The evidence was that this all occurred in the evening in the middle of a residential street. Defense counsel argued at sentencing that Mr. Holland's actions resulted in no injury or damage. Right after the trial court refused to give Mr. Holland credit for "missing his target," it noted: "What he did was put people in a residential area in risk, people who had nothing to do with his issues with these people that he was chasing." The trial court's refusal to consider Mr. Holland not hitting a target as "mitigation" is not inconsistent with its determination that the State had not carried its burden of proving an intent to kill Mr. Rodriguez or Mr. Figueroa, but a recognition of the risks

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to many lives in this kind of shooting. Mr. Holland's claim that his sentence was improperly based on a charge for which he was acquitted fails.

¶ 28

III. CONCLUSION

¶ 29 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.