2018 IL App (1st) 160650-U

No. 1-16-0650

Order filed November 13, 2018

Second 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. 15 CR 2262
	)	
GREGORY RAYFORD,	)	Honorable
	)	Thomas Joseph Hennelly,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for two counts of possession of a controlled substance with intent to deliver and one count of possession of a controlled substance are affirmed over his contentions that (i) the State failed to prove him guilty beyond a reasonable doubt because it did not show that he constructively possessed the narcotics and (ii) his sentence of 11 years' imprisonment is excessive. Defendant's mittimus and the order assessing fines, fees and costs modified to reflect correct number of days defendant spent in pretrial custody and the *per diem* credit to which he is entitled.

¶ 2 Following a bench trial, defendant Gregory Rayford was found guilty of one count of possession of a controlled substance with intent to deliver (cocaine), one count of possession of a controlled substance with intent to deliver (heroin), and one count of possession of cannabis. He was sentenced, respectively, to concurrent terms of 11 and 4 years' imprisonment on the cocaine and heroin charges, and 30 days in the Cook County jail with time considered served on the cannabis charge. On appeal, Rayford contends that: (1) the evidence presented was insufficient to sustain his conviction because the State failed to prove beyond a reasonable doubt that he constructively possessed the narcotics recovered during the execution of a search warrant; (2) his 11-year sentence was excessive; and (3) his mittimus and order assessing fines, fees, and costs should be corrected to accurately reflect the number of days he spent in presentence custody. We affirm Rayford's convictions and sentence and correct his mittimus and fines, fees and costs order to properly reflect the number of days he spent in pretrial custody.

¶ 3 The charges against Rayford were based on his knowing possession with intent to deliver: 100 grams or more but less than 400 grams of cocaine (720 ILCS 570/401 (a)(2)(B) (West 2014)); one gram or more but less than 15 grams of heroin (720 ILCS 570/401 (c)(1) (West 2014)); and more than 10 grams but not more than 30 grams of cannabis (720 ILCS 550/5 (c)(West 2014)). Rayford waived his right to a jury trial and the case proceeded to a bench trial.

¶ 4 On January 15, 2015, at approximately 9:21 p.m., members of the Chicago police department executed a search warrant for a single family residence located on the 5600 block of South Emerald Avenue. Officer Sergio Martinez and approximately nine other police officers made a forced entry into the home. Once inside, the officers discovered the home had three bedrooms, a living room, dining room and kitchen on the first floor. There was also a basement

with a large open area and another bedroom. Present inside when the police entered the residence were an adult male and an adult female who were in the living room, Rayford's grandmother, who was in the front bedroom, and Rayford, who police discovered alone in a rear bedroom. While conducting a search, Martinez found a black plastic bag hanging on a hanger inside a closet in the rear bedroom where Rayford was detained. Inside the black plastic bag, there was (i) a clear plastic bag that was knotted and contained suspect cocaine; (ii) another clear plastic sandwich bag that contained numerous Ziploc bags of suspect heroin; and (iii) a plastic bag containing suspect cannabis. Martinez also found men's clothing in the closet but could not recall if he saw any women's clothing hanging in the closet. When Martinez placed him under arrest and while they were both in the rear bedroom, Rayford stated "I'm going to be honest with you everything in my room is mine." Martinez also found $398 dollars inside the closet.

¶ 5 Chicago police officer James Echols was a member of the unit that executed the search warrant. Echols was the "recovery officer" and, during his search, he recovered three pieces of mail from a kitchen table that were addressed to Rayford: a bill for magazine subscriptions dated January 3, 2015, an undated letter from the Secretary of State regarding an upcoming election on February 24, 2015, and a bill from Comcast dated February 5, 2014. "Grinders" were recovered from the pantry, but no scales, additional baggies, or weapons were recovered.

¶ 6 The substances recovered tested positive, respectively, for cocaine, heroin, and cannabis.

¶ 7 Rayford elected not to testify and did not present any evidence.

¶ 8 In finding Rayford guilty, the court noted that it was undisputed that narcotics were recovered at the South Emerald address, but "what is at issue" is whether the narcotics belonged to Rayford and if he possessed the narcotics with intent to deliver. In concluding that the State

proved beyond a reasonable doubt that Rayford possessed the narcotics, the court noted the narcotics were recovered in the same bedroom where Rayford was arrested and he accepted responsibility for the narcotics at the time of the search warrant's execution. With respect to Rayford's possession of the cocaine (count 1), the court found that he intended to deliver it based on the amount of cocaine recovered (104.9 grams), and the fact that there was a grinder and $398 in cash recovered. As to Rayford's possession of the heroin (count 2), the court also found that he intended to deliver it given the amount (3.3 grams), its individual packaging, and the fact that it was comingled with the cocaine in the same bag. Finally, as to Rayford's possession of the cannabis (count 3), the court concluded that the State failed to meet its burden of proof that he possessed the cannabis (24.1 grams) with the intent to deliver, and found him guilty of the lesser-included offense of possession of cannabis. Rayford's motion for new trial was denied.

¶ 9 In the presentence investigation report (PSI report), Rayford admitted that he lived with his grandmother at the South Emerald address. He further indicated that he did not currently, nor had he ever used narcotics.

¶ 10 At sentencing, the State argued that given the amount of narcotics recovered, the court should impose a substantial sentence. In mitigation, defense counsel argued that Rayford had close ties with his family, emphasized his job history, and asked that he be sentenced to the minimum term of 9 years.

¶ 11 In imposing sentence, the court stated that it considered "the evidence presented at trial, the [PSI report] with corrections, the evidence offered in aggravation and mitigation, statutory factors in aggravation and mitigation, the financial impact of incarceration, the arguments of the attorneys" and Rayford's potential for rehabilitation. The court also noted that it found Rayford's

conduct "particularly egregious" where the evidence showed that he was engaging in criminal activity from his grandmother's house. The court further pointed out that Rayford, despite indicating in the PSI that he wished his neighborhood was "safer," was himself a danger to the community due to his drug activity. Finally, the court mentioned that Rayford did not have a substance abuse problem, which indicated to the court that '[t]he only reason he has those drugs is so that he could profit by their sale." The court sentenced Rayford to 11 years' imprisonment on count 1, a concurrent term of 4 years' imprisonment on count 2 and 30 days in the Cook County jail with the time considered served for Count 3.

¶ 12 On appeal, Rayford first challenges the sufficiency of the evidence to sustain his conviction.

¶ 13 The standard of review on a challenge to the sufficiency of the evidence is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler,* 226 Ill. 2d 92, 114 (2007). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito,* 235 Ill. 2d 213, 224 (2009). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring,* 324 Ill.App.3d 458, 460 (2001); *People v. Campbell,* 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson,* 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz,* 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not our function to retry the defendant. *People v. Beauchamp,* 241 Ill. 2d 1, 8 (2011); *People v. Collins,* 106 Ill. 2d 237, 261 (1985). A reviewing court will

reverse a criminal conviction only when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp,* 241 Ill. 2d at 8; *People v. Collins,* 214 Ill. 2d 206, 217 (2005).

¶ 14 Rayford was found guilty of possession of a controlled substance with intent to deliver. In order to sustain Rayford's conviction, the State was required to prove beyond a reasonable doubt that (i) he had knowledge of the presence of narcotics, (ii) the narcotics were in his immediate possession or control, and (iii) he intended to deliver the narcotics. 720 ILCS 570/401 (West 2014); *People v. Robinson,* 167 Ill. 2d 397, 407 (1995). To sustain a conviction for possession of cannabis the State had to prove beyond a reasonable doubt that Rayford knowingly possessed the cannabis found by the police. (720 ILCS 550/4(c) (West 2014)); *People v. Evans,* 2015 IL App (1st) 130991 ¶ 26.

¶ 15 Rayford does not dispute the intent to deliver element of the offense. Rather, he argues that the State failed to prove he possessed the narcotics recovered during the execution of the search warrant. Specifically, he argues that the State failed to establish that he constructively possessed the narcotics because it did not show that he had dominion and control over the bedroom where the narcotics were recovered.

¶ 16 Possession is a question of fact to be resolved by the trier of fact. *People v. Carodine,* 374 Ill. App. 3d 16, 25 (2007). Possession may be actual or constructive. *People v. Hannah,* 2013 IL App (1st) 111660, ¶ 28. Here, Rayford did not physically possess the narcotics recovered when the officers executed the search warrant so the State proceeded on the theory that he constructively possessed them. In order to prove beyond a reasonable doubt that Rayford was in constructive possession of the contraband, the State was required to show that he had knowledge

of the presence of the contraband and exercised immediate and exclusive control over the area where the narcotics were found. *People v. Nesbit,* 398 Ill. App. 3d 200, 2011 (2010).

¶ 17 Knowledge may be shown by evidence of a defendant's acts, declarations, or conduct from which it can be inferred that he knew the contraband was in the place where it was found. *People v. Sams,* 2013 IL App (1st) 121431, ¶ 10. Evidence of constructive possession is often circumstantial. *People v. McLaurin,* 331 Ill. App. 3d 498, 502 (2002). In determining whether constructive possession has been shown, the trier of fact "is entitled to rely on an inference of knowledge and possession sufficient to sustain a conviction 'absent other factors that might create a reasonable doubt as to the defendant's guilt.' " *People v. Alicea,* 2013 IL App (1st) 112602, ¶ 24 (quoting *People v. McCarter,* 339 Ill. App. 3d 876, 879 (2003)).

¶ 18 After reviewing the evidence in the light most favorable to the State, we conclude the evidence was sufficient to support the trial court's determination that Rayford constructively possessed the recovered narcotics. The officers found Rayford in the rear bedroom. Inside the closet of that bedroom, the officers found men's clothing and recovered the black plastic bag containing narcotics. See *People v. McCarter,* 339 Ill. App. 3d 876, 879 (2003) (control over the area where the contraband was found gives rise to an inference that defendant possessed the contraband). In addition, the officers recovered several pieces of mail directed to Rayford at the South Emerald address where Rayford later admitted he lived. See *People v. Cunningham,* 309 Ill. App. 3d 824, 828 (1999) (habitation in a premises where narcotics are discovered has been found relevant to establishing control over them). Moreover, upon his arrest, Rayford told the officers that "I'm going to be honest with you everything in my room is mine." See *Sams,* 2013 IL App (1st) 121431, ¶ 10 (the defendant's knowledge of the presence of contraband may be

inferred from his declarations). We find unpersuasive Rayford's argument that by referring to "my room," he was possibly referring to a room in the residence other than the bedroom where he was arrested and in which the narcotics were located. This evidence presented at trial supports the court's conclusion that Rayford was in constructive possession of the narcotics recovered and was, thus, sufficient to sustain his convictions. *McCarter,* 339 Ill. App. 3d at 879; *People v. Bui,* 381 Ill. App. 3d 397, 420-21 (2008).

¶ 19 In his challenge to the sufficiency of the State's proof, Rayford is asking us to reweigh the evidence in his favor and substitute our judgment for that of the trial judge. This we cannot do. The court found Officers Martinez and Echols credible and resolved the complained of inconsistencies in the evidence in favor of the State. The trial court was not required to disregard inferences that flowed from the evidence or search out all possible explanations consistent with Rayford's innocence. *People v. Alvarez,* 2012 IL App (1st) 092119, ¶ 51. This is not a case in which the evidence was so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Beauchamp,* 241 Ill. 2d at 8.

¶ 20 Rayford next contends that his 11-year sentence is excessive. Specifically, he argues that the sentence is disproportionate to the non-violent nature of the offense and that the court considered improper aggravation and failed to properly account for the factors in mitigation *i.e.* his background, family ties, minimal contact with the criminal justice system, and his rehabilitative potential, including his desire to earn his GED.

¶ 21 Rayford concedes he failed to file a motion to reconsider his sentence and, thus, has forfeited this issue on appeal. See *People v. Hillier,* 237 Ill. 2d 539, 544 (2010) (the failure to object during a sentencing hearing and to file a motion to reconsider sentence results in the

waiver of a claim of sentencing error). He requests that we review his claim under the plain error doctrine.

¶ 22 Sentencing errors raised for the first time on appeal are reviewable under plain error. *People v. Ahlers*, 402 Ill. App. 3d 726, 734 (2010). Defendant bears the burden to demonstrate that the evidence at his sentencing hearing was closely balanced or that the alleged errors deprived him of a fair sentencing hearing. *Ahlers*, 402 Ill. App. 3d at 734. Absent any error, there can be no plain error. *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010). Here, because we find no error, there is no plain error. See *People v. Walker*, 232 Ill. 2d 113, 124 (2009) (plain error rule does not apply if a clear and obvious error did not occur.)

¶ 23 A trial court's sentencing decisions are entitled to great deference and a reviewing court will reverse a sentence only when it has been demonstrated that the trial court abused its discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). The court is vested with broad discretion in imposing a sentence because it 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). 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. This court will not reweigh relevant sentencing factors and substitute its judgment for that of the trial court merely because it might have weighed these factors differently. *People* v. *Busse*, 2016 IL App (1st) 142941, ¶ 20. Moreover, a sentence falling 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. Brown*, 2015 IL App (1st) 130048, ¶ 42 (quoting *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 24 Rayford's 11-year sentence was not an abuse of the trial court's discretion. Rayford's conviction for possession of a controlled substance with intent to deliver 100 grams or more but less than 400 grams of cocaine carried a sentencing range of 9 to 40 years' imprisonment. (720 ILCS 570/401 (2)(B) (West 2014)). Rayford's 11-year sentence—only two years over the minimum—is presumed proper. *Sauseda,* 2016 IL App (1st) 140134, ¶ 19. "To rebut this presumption, defendant must make an affirmative showing that the sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. Rayford has failed to make such a showing.

¶ 25 Rayford argues that his sentence (i) is disproportionate to the non-violent nature of his offenses, (ii) reflects the trial court's consideration of an improper factor in mitigation—the unsupported inference that he was selling drugs from his grandmother's house, and (iii) failed to take into account his non-violent background, his involvement with his family, his work history, and his rehabilitative potential. He requests that we reduce his sentence to the minimum of nine years.

¶ 26 We initially note that Rayford's 11-year sentence is not disproportionate to the nature of his offense. It is well-settled that the trial court is not required to explain the value it assigned to each factor in mitigation and aggravation. *People v. Brazziel,* 406 Ill. App. 3d 412, 434 (2010). The sentencing court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *People v. Harmon,* 2015 IL App (1st) 122345, ¶ 123.

¶ 27 Here, the record shows that in imposing sentence, the trial court properly considered all relevant factors in aggravation and mitigation. In announcing sentence, the court expressly stated that it considered the evidence presented at trial, the factors in mitigation, Rayford's PSI report, the arguments of the attorneys, the cost of incarceration, and Rayford's potential for rehabilitation. The court ultimately determined that the seriousness of the offense outweighed the mitigating factors and warranted an 11-year sentence. The court specifically pointed out that Rayford's conduct made him a danger to the community, that he did not have a substance abuse problem, and that the only reason he possessed the drugs was to profit from their sale. The court was also entitled to view with skepticism Rayford's professed intent to earn his GED and pursue college courses in light of the fact that he dropped out of school in the 11th grade and had not pursued any education for more than a decade during which time he accumulated four criminal convictions. In light of this record, Rayford cannot show that the court failed to consider the mitigating factors in question and abused its discretion in imposing sentence.

¶ 28 We decline Rayford's invitation to focus on a single statement made by the trial court *i.e.* the reference that he was selling drugs from his grandmother's house, in order to find his sentence improper. See *People v. Myles*, 257 Ill. App. 3d 872, 887 (1994) ("a reviewing court must not focus on a few words or statements made by the trial court. The determination of whether or not a sentence was improper must be made by considering the record as a whole."). Whether or not Rayford actually engaged in narcotics sales from his grandmother's home, he certainly exposed his grandmother—who was in the early stages of dementia—to the risks of his conduct in keeping large quantities of narcotics in her home that he intended to sell.

Accordingly, the trial court's statement provides no basis upon which to overturn Rayford's sentence.

¶ 29 Next, Rayford contends that his mittimus should be corrected to properly reflect the number of days that he spent in custody prior to sentencing. 730 ILCS 5/5-4.5-100(b) (West 2015). Rayford was credited for 360 days, but argues that the correct calculation should be 390 days. He acknowledges that he did not raise this issue in his posttrial motions and asks that we review this issue *de novo*. The State concedes that Rayford did not raise the issue in his posttrial motions, but nevertheless agrees he should be credited for 390 days in custody. See *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."). We agree and accordingly order correction of the mittimus to reflect that Rayford spent 390 days in presentence custody.

¶ 30 Lastly, Rayford contends and the State concedes that his fines, fees, and costs order should be corrected to properly reflect the time he spent in custody and the *per diem* credit to which he is entitled. Rayford is not contesting the imposition of the fines and fees levied against him, but argues that he should receive the proper *per diem* credit. See *People v. Caballero,* 228 Ill. 2d 79 (2009) holding that a claim for monetary credit is statutory and may be considered as an "application of the defendant made under the statute and may be raised at any time and at any stage of the court proceedings". *Caballero,* at 88.

¶ 31 Under section 110-14(a) of the Code of Criminal Procedure, Rayford is entitled to credit of $5 for each day he spent in presentence custody. 725 ILCS 5/110-14(a) (West 2015). Because Rayford should be credited for 390 days spent in presentence custody, we agree that he is entitled to a total of $1,950 of presentence credit.

¶ 32 In sum, we affirm Rayford's convictions and sentence. We order the circuit court to correct Rayford's mittimus to reflect that he spent 390 days in presentence custody and to modify the fines, fees and costs order to reflect that he is entitled to a total of $1,950 in presentence custody credit.

¶ 33 Affirmed; mittimus corrected; fines, fees, and costs order modified.