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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County, Criminal Division.
Plaintiff-Appellee,	)	
	)	No. 15 CR 3335
v.	)	
	)	Honorable Thomas J. Byrne,
RAYNARD SHORTER,	)	Judge presiding.
	)	
Defendant-Appellant.	)	

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

**ORDER**

¶ 1 *Held:* Defendant's sentence was not excessive where the trial court considered all factors in aggravation and mitigation, was aware of the proper sentencing range, and reviewed defendant's criminal history.

¶ 2 Following a bench trial, defendant Raynard Shorter was found guilty of possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2014)). The court sentenced him, because of his criminal background, to a Class X sentence of nine years' imprisonment. On appeal, defendant contends that his sentence is excessive. We affirm.

¶ 3 Defendant was arrested and charged with, *inter alia*, armed habitual criminal, armed violence, unlawful possession of a weapon by a felon, and possession of controlled substance

with intent to deliver between 1 and 15 grams of heroin. The trial court found him guilty of possession of heroin with intent to deliver and not guilty of all other charges. It sentenced defendant to nine years' imprisonment.

¶ 4 Defendant does not challenge the sufficiency of the evidence to sustain his conviction, so we need not discuss in detail the evidence presented at trial. The evidence showed Chicago police officers executing a search warrant on January, 23, 2015, discovered defendant lying on the ground in a bedroom. When Officer Rotkvich entered the room, he saw defendant putting his hands in his pockets. The officers detained defendant and recovered "suspect narcotics" and money from his person. Officer Carter recovered an orange pill bottle that contained 16 Ziploc bags of a white powdery substance, which the parties stipulated was 2 grams of heroin. Officers also recovered from the bedroom a handheld scale, a bottle of Dorman, which is commonly used to mix heroin, and a grinder, which is commonly used to break down bulk narcotics into a powder. In a closet three feet from defendant, officers recovered a box containing a 9-millimeter gun with 10 live rounds. The court found defendant guilty of possession of a controlled substance with intent to deliver but not guilty of all firearm charges, finding the State did not prove he possessed the firearm.

¶ 5 At sentencing, the presentence investigation report (PSI) reported defendant was born in 1968, his mother had provided a "good stable" household for him, he lived with his mother, she supported him financially, and he was close to all his family members. Defendant had four children. He had graduated high school, earned a few college credits, and had been employed as a factory worker on and off from 2008 through 2015. Defendant is in fair physical condition and good psychological condition but conceded he had a powdered heroin usage problem. He began

using heroin when he was 18 and his usage quickly escalated into a \$100 daily routine. Defendant had completed an inpatient treatment in 1988 but resumed his usage shortly after release. He would welcome any additional treatment the court could provide.

¶ 6 Defendant had previously been convicted of and served sentences for: robbery (1990 – 3 years Illinois Department of Corrections (IDOC)); possession of a controlled substance (1995 - probation; 2006 – 2 years IDOC; 2010 – 3 years IDOC); violation of probation (1997 – 3 years IDOC); manufacture/delivery of 1 to 15 grams of cocaine (2002 – 4 years IDOC); solicitation of unlawful business (2008 – 2 days Cook County Corrections); driving on a revoked/suspended license (2009); and retail theft (2009 – 30 days in jail).

¶ 7 The State argued that defendant was Class X mandatory by background due to his five prior felony convictions. It requested a “substantial penitentiary sentence” based on defendant’s criminal history and the serious harm to others that the heroin defendant intended to deliver might cause. The State also argued that, although defendant had had gainful employment and a good relationship with his family, he chose to continue to engage in a life of crime. The State pointed out defendant did not intend to use the heroin himself because of the packaging material and amount of cash recovered on him.

¶ 8 Defense counsel argued in mitigation that, besides defendant’s robbery conviction 25 years earlier, nothing in his criminal background indicated he was a violent person. Counsel told the court that, except for the retail theft conviction, all of defendant’s convictions were narcotics related and could be interpreted as related to his 20 to 30 years drug addiction. Counsel pointed out that, despite the addiction, defendant had been able to hold a job and that he had a supportive mother, who was in court every day. Counsel argued that the small amount of heroin indicated

defendant's was not a large scale operation. No harm to the public had yet occurred and the heroin could have been for personal use. As defendant's last conviction was in 2010 and defendant had been crime free until the instant conviction, defense counsel asked for "something near the minimum."

¶ 9 The trial court acknowledged defendant was subject to a mandatory Class X sentence and sentenced him to nine years' imprisonment. It stated that it had considered "the facts and circumstances of [defendant's] case, the statutory factors in both aggravation and mitigation that [it] must consider," the PSI and the arguments of both attorneys. The court found it would be justified in sentencing defendant towards the upper end of the 30-year sentencing range because of defendant's criminal history, but was persuaded it would not be "the right thing to do in this case." It told defendant, "in light of your addiction and \*\*\* where you're at in life, you should be able to get beyond this." The court sentenced defendant to nine years in the IDOC with three years of mandatory supervised release. It denied defendant's motion to reconsider the sentence. Defendant appealed.

¶ 10 On appeal, defendant contends that the trial court abused its discretion when it sentenced him to nine years in prison when the crime did not involve violence, he had no recent violent conviction, and he was struggling with substance abuse. Defendant also contends the nine-year sentence was excessive given his "advanced age" of 48.

¶ 11 The trial court has broad discretion in imposing an appropriate sentence, and a sentence falling within the statutory range will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). An abuse of discretion exists where a sentence is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the

nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, *inter alia*, defendant's age, criminal history, character, education, and environment, as well as the nature and circumstances of the crime and the defendant's actions in the commission of that crime. *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010). The trial court is not required to explain the value it assigned to each factor in mitigation and aggravation; rather, it is presumed the trial court properly considered the mitigating factors presented and it is the defendant's burden to show otherwise. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). We find the trial court did not abuse its discretion in imposing a nine-year sentence.

¶ 12 Possession of a controlled substance with intent to deliver is a Class 1 felony. 720 ILCS 570/401 (c)(1) (West 2014). The sentence for a Class 1 felony ranges from 4 to 15 years' imprisonment. 730 ILCS 5/5-4.5-30 (West 2014). However, because defendant had prior felony convictions, he was sentenced as a Class X offender, subject to a statutory sentencing range of 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-95(b) (West 2014); 730 ILCS 5/5-4.5-25(a) (West 2014). The nine-year sentence falls within this statutory range and we therefore presume it is proper. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 12.

¶ 13 Nevertheless, defendant argues the court's nine-year sentence is excessive because it is not proportionate to the seriousness of the offense, unwarranted considering defendant's criminal background, and does not properly reflecting his rehabilitative potential. Defendant, however, makes no affirmative showing that the court failed to consider factors in mitigation.

¶ 14 The record shows that the trial court considered the statutorily mandated factors where it specifically stated it considered the facts and circumstances of the case, the statutory factors in aggravation and mitigation, the PSI, and the arguments from attorneys on both sides. The trial court specifically addressed defendant's age, addiction, criminal history, and rehabilitative potential, noting defendant had been in the penitentiary "over and over again" and telling him he was "too old to keep doing this" and, "in light of your addiction and in fact where you're at in life, you should be able to get beyond this." Further, defense counsel argued the majority of those factors in mitigation and the details thereof were reported in the PSI. See *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004) (where mitigating evidence is presented to the trial court, it is presumed that the court considered it).

¶ 15 Although defendant argues his addiction is a mitigating factor, it may also be considered in aggravation. *People v. Mertz*, 218 Ill. 2d 1, 83 (2005) ("a history of substance abuse is a double-edged sword at the aggravation/mitigation phase of a penalty hearing"). Further, defendant's criminal history alone warrants a sentence above the minimum where he had nine prior convictions, including five felonies for which he served sentences ranging from probation, which he violated, to four years' imprisonment. See *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009); *People v. Hill*, 400 Ill. App. 3d 23, 29-30 (2011) (nonviolence and addiction did not mandate a reduced sentence where the defendant had 13 prior convictions). In sum, where the evidence shows the trial court considered the mitigating factors and defendant makes no affirmative showing to the contrary, the trial court did not abuse its discretion in sentencing defendant to a nine-year term of imprisonment.

¶ 16 For the foregoing reasons, we affirm the decision of the trial court.

Nos. 1-16-0899 and 1-16-1543 (Consolidated)

¶ 17 Affirmed.