2018 IL App (1st) 162012-U

FIFTH DIVISION
Order filed: September 14, 2018

No. 1-16-2012

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 17938
	)	
QUENTIN MCNARR,	)	Honorable
	)	Vincent M Gaughan,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's 14-year sentence for home invasion is affirmed where the circuit court did not abuse its discretion. Fines and fees corrected.

¶ 2 Following a jury trial, the defendant, Quentin McNarr, was convicted of home invasion and sentenced to 14 years' imprisonment. On appeal, he contends that the circuit court abused its discretion by excessively sentencing him in light of mitigating factors. The defendant also contends, and the State concedes, that various errors in the order assessing fines and fees must be corrected. For the reasons that follow, we affirm the sentence of the circuit court and vacate, in

part, and modify, in part, the fines and fees order.

¶ 3 The defendant was charged by indictment with one count of home invasion pursuant to section 19–6(a)(2) of the Criminal Code of 2012 (720 ILCS 5/19–6(a)(2) (West 2014)) based on his conduct at his ex-girlfriend's, Chikira Campbell, apartment. At trial, Campbell testified that at approximately 10 p.m. on August 11, 2015, the defendant, whom she identified at trial, began knocking on her door. Campbell told him to leave and warned she would call the police, but he continued to knock and shout for two hours. Around midnight, the defendant got into the apartment building, kicked Campbell's apartment door off its hinges, and entered her apartment. Campbell dialed 911 and hid in her bedroom, but the defendant pursued her and kicked her bedroom door open. He knocked the phone out of her hand, held her down on the bed, and punched her with his fists in her eyes, head, and torso for four minutes. Campbell sustained a small scratch above her lip, a bruise on her right cheek, and knots to her head, but did not go to the hospital. Additionally, the Chicago police officer who responded to Campbell's 911 call testified that he observed the apartment door hanging off the hinges, damage to the wall, and "minor bruising" on Campbell's face. Another officer testified that Campbell identified the defendant following his arrest on August 12, 2015. On this testimony and several exhibits, including 911 audio, the jury found the defendant guilty of home invasion.

¶ 4 The presentencing investigation (PSI) report showed that the defendant had prior criminal convictions for possession of cannabis in 2007, resulting in 4 days' imprisonment, and for attempted armed robbery in 2008 (a Class 1 felony) resulting in 12 years' imprisonment. The defendant reported having a close and positive relationship with his mother and maternal siblings, but never having a relationship with his father. He described his upbringing as "rough," though not neglectful. The defendant is single and has two biological children, ages 11 years and

9 months at the time of the PSI. He was expelled from high school due to fighting, but received his GED while incarcerated. The defendant belonged to a street gang from 2000 to 2013. He drank two alcoholic drinks every other week and used marijuana every day since he was 13, and has never participated in treatment for substance abuse. At the time of the PSI, he was unemployed and unable to recall the names or dates of his past employment. Prior to incarceration, he satisfied his monthly child support payments and other financial obligations.

¶ 5 At the sentencing hearing, the State argued in aggravation that the home invasion was violent and occurred only a few years after the defendant was released from prison for another violent crime. In response, defense counsel argued that the defendant did not use a weapon and was a young man with a family, including his mother who attended all of the court dates and wrote a letter in his support. In her letter, which was published to the court, she stated that she felt her son was not a bad person, but that he simply had a bad temper and spent time with the wrong people. She noted that his family needs him and that he got a job to take care of them. Lastly, defense counsel argued that the defendant worked in the dorms while in jail and intended to provide for his two children upon release. The defendant declined to speak in allocution.

¶ 6 The court stated that it considered the PSI, the arguments in aggravation and mitigation, and statutory and non-statutory factors and sentenced the defendant to 14 years' imprisonment. The court gave the defendant 334 days credit for presentence incarceration and assessed fines and fees totaling $489. The defendant's motion to reconsider was denied and this appeal followed.

¶ 7 On appeal, the defendant first contends that his sentence was excessive and that the circuit court abused its discretion when it overlooked mitigating factors, such as his young age, criminal history, familial background, and rehabilitative potential. Specifically, he argues that

while his crime was serious, he did not use a weapon or cause serious injury, noting only minor bruising to Campbell's face that did not require a hospital visit. Additionally, he argues that he has strong rehabilitative potential as demonstrated by his efforts while incarcerated, such as receiving his GED and gaining experience as a dorm worker.

¶ 8 We review a trial court's sentencing decision for an abuse of discretion, as the trial court, having observed the defendant and the proceedings, is better suited to consider sentencing factors than the reviewing court, which relies on the "cold" record. *People v. Decatur*, 2015 IL App (1st) 130231, ¶ 12 (quoting *People v. Fern*, 189 Ill. 2d 48, 53 (1999)). A sentence within statutory limits will not be deemed an abuse of discretion unless it is at variance with the spirit and purposes of the law or manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). A sentence should reflect both "the seriousness of the offense" and "the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11; *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11. The seriousness of an offense, and not mitigating evidence, is the most important factor in sentencing. *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 123. A reviewing court " 'must not substitute its judgment for that of the trial court merely because it would have weighed [the mitigating and aggravating] factors differently.' " *People v. Alexander*, 239 Ill. 2d 205, 213 (2010) (quoting *Stacey*, 193 Ill. 2d at 210).

¶ 9 Home invasion is a Class X felony, which carries a sentencing range of 6 to 30 years' imprisonment. 720 ILCS 5/19–6(c) (West 2013); 730 ILCS 5/5–4.5–25(a) (West 2012). In this case, the defendant's sentence of 14 years' imprisonment is well within the sentencing range and, therefore, is presumed proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. To rebut this presumption, the defendant must make an affirmative showing to the contrary. *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. He has failed to make such a showing.

¶ 10 In fact, the record shows that the circuit court considered the appropriate sentencing factors, including the mitigating factors argued here, in determining the defendant's sentence. The circuit court looked at the PSI, which detailed the defendant's family relationships, heard defense counsels presentation regarding his educational and career efforts while serving his sentences, heard the published letter from his mother, and took into consideration the statutory provisions for aggravation and the statutory and non-statutory provisions for mitigation. The circuit court has no obligation to recite and assign a value to each factor (*Neasom*, 2017 IL App (1st) 143875, ¶ 48) and simply because the circuit court declined to sentence the defendant to the minimum term he sought, does not mean it abused its discretion. In essence, the defendant asks us to reweigh the sentencing factors and substitute our judgment for that of the circuit court, which we cannot do. *People v. Allen*, 2017 IL App (1st) 151540, ¶ 15. Given the physical violence to the victim's face, the violation to the sanctity of her home, the damage to her property, and the defendant's diminished rehabilitative potential as demonstrated by his committing a second violent crime soon after being released from prison for a previous violent crime, we cannot conclude the sentence imposed was an abuse of discretion. *Decatur*, 2015 IL App (1st) 130231, ¶ 12. It was not disproportionate to the offense committed or at variance with the spirit and purpose of the home invasion statute. *Stacey*, 193 Ill.2d at 210.

¶ 11 As for his remaining arguments, the defendant attempts to rely on evidence that was not before the trail court. First, the defendant offers that he could live with a girlfriend away from his former crime and drug ridden neighborhood, reducing his likelihood of committing future crime. Second, he argues that a long sentence does not necessarily result in better rehabilitation, relying on a study conducted by the National Research Council. We reject both arguments. Neither the arguments nor the supporting evidence, such as his girlfriend's address or the National Research

Council study, were before the circuit court. Consequently, we decline to consider any evidence on appeal that the circuit court did not have an opportunity to consider. *People v. Gacho*, 122 Ill. 2d 221, 254 (1988). Under these circumstances, we find that the circuit court did not abuse its discretion and we affirm the sentence imposed.

¶ 12 Lastly, the defendant seeks an adjustment of the fines and fees imposed by the circuit court. As an initial matter, we note and the State concedes that the defendant's failure to challenge his assessments in the circuit court does not forfeit his claim here and a reviewing court may modify a fines and fees order without remand. *People v. Mullen,* 2018 IL App (1st) 152306, ¶ 42; *Brown*, 2017 IL App (1st) 150146, ¶ 34.

¶ 13 Specifically, the defendant contends the circuit court erred by assessing a $5 electronic citation fee (705 ILCS 105/27.3(e) (West 2015)) and by failing to offset the $15 state police operations charge (705 ILCS 10527.3a(1.5) (West 2012)) with his $5-per day credit for time served in presentence custody as mandated under section 110–14(a) of the Code (725 ILCS 5/110–14(a) (West 2012)). The State has conceded these errors and we accept its confession of error (*People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46 (electronic citation charge) and *People v. Green*, 2016 IL App (1st) 150146, ¶ 34 (state police operations charge)). Further, and though the defendant did not raise these issues on appeal, the State concedes that the $10 mental health charge (55 ILCS 5/5-11-1(d-5) (West 2010)), the $5 youth diversion/peer court charge (55 ILCS 5/5-1101(e) (West 2010)), the $5 drug court charge (55 ILCS 5/5-1101(f) (West 2010)), the $30 children's advocacy center charge (55 ILCS 5/5-1101(f-5) (West 2010)), and the $50 court system fee (55 ILCS 5/5-110(c) (West 2010)) are subject to offset by the defendant's presentence credit. We accept its confession of error (*Graves*, 235 Ill. 2d at 251 (mental health and youth diversion/per court charges); *People v. Jackson*, 2016 IL App (1st) 141448, ¶ 35 (drug court and

children's advocacy charges); and *People v. Reed*, 2016 IL App (1st) 140498, ¶ 15 (court system charge)). Thus, the electronic citation fee is vacated and the six other charges are subject to a credit offset. Accordingly, the circuit court is directed to reduce the defendant's assessed fees by $120 to correct these errors.

¶ 14 Relying on *People v. Camacho*, 2016 IL App (1st) 140604, the defendant asserts that the $2 State's Attorney records automation fee (55 ILCS 5/4–2002.1(c) (West 2015)) and the $2 Public Defender records automation fee (55 ILCS 5/4–2002.1(c) (2015)) constitute fines subject to offset. We disagree and adhere to the weight of the authority that holds these charges are not fines subject to offset. See *Bowen*, 2015 IL App (1st) 132046 at ¶¶ 64-65; *Camacho*, 2016 IL App (1st) 140604, ¶ 52 ("every [other] published decision on this matter has determined that both the State's Attorney and public defender records automation assessments are fees"). Accordingly, neither the State's Attorney nor the Public Defender records automation charges may be offset by defendant's presentence incarceration credit.

¶ 15 Lastly, the defendant contends that the $190 felony complaint filed charge (705 ILCS 105/27.2a(w)(1)(A) (West 2012)) and the $25 document storage charge (705 ILCS 105/27.3c (West 2012)) are fines subject to a credit offset. We disagree. Both charges are fees rather than fines because they are compensatory and represent a collateral consequence of a defendant's conviction. *Brown*, 2017 IL App (1st) 150146, ¶ 39; *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81; *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006). Thus, neither charge is subject to offset by the defendant's presentence incarceration credit.

¶ 16 For the foregoing reasons, the judgment of the circuit court is affirmed and we order the circuit court to correct the order assessing fines, fees, and costs.

¶ 17 Affirmed; fines, fees, and costs order corrected.