2018 IL App (2d) 170353-U
No. 2-17-0353
Order filed March 5, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellee,	)	No. 14-CF-364
v.	)	
SHANE LAMB,	)	Honorable Sharon L. Prather,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Hudson and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to 20 years' imprisonment (on a 6-to-40 range) for aggravated possession of a stolen firearm, as the court considered the mitigating evidence but properly balanced it against the seriousness of the offense and defendant's substantial criminal history.

¶ 2 Defendant, Shane Lamb, pleaded guilty to aggravated possession of a stolen firearm (720 ILCS 5/24-3.9(a)(3) (West 2014)), a Class X felony with a sentencing range of 6 to 40 years' imprisonment (720 ILCS 5/24-3.9(c)(3) (West 2014)). After an evidentiary hearing, the trial court sentenced him to 20 years' imprisonment and denied his motion to reconsider the sentence. Defendant appeals, contending that his sentence is excessive. We affirm.

¶ 3 At the guilty-plea hearing, the State provided the following factual basis for the plea. Early in April 2014, John Farenzena went on vacation. When he returned to his condominium in McHenry, he discovered that someone had broken in and stolen his safe. Two eyewitnesses would testify that they saw defendant carry the safe out of the residence. Farenzena was a friend of defendant and had previously shown him some firearms that he kept in the safe. The safe had also contained silver and various memorabilia, which defendant had pawned in Wisconsin.

¶ 4 A pretrial bond report, filed April 25, 2015, stated as follows. Defendant was born June 27, 1984. His parents never married; they had two sons together, and each had another son Defendant was the youngest. According to defendant, his parents separated when he was about five. He lived with his mother, Suzanne Lamb, until he was about nine, when his father obtained custody and moved to McHenry. Defendant's brother Brian committed suicide in 2002 while in college. Defendant had been in a conjugal relationship since 2013. In 2013, he fathered a child who died after approximately 45 days. Defendant had completed eighth grade.

¶ 5 The report summarized defendant's juvenile and adult record. In 1999, he was adjudicated delinquent, based on armed robbery, and was committed to the juvenile division of the Department of Corrections (DOC). During this time, he received his general equivalency degree (GED). In November 2004, defendant was convicted of two counts of aggravated battery and sentenced to 42 months in the DOC. In May 2006, he was convicted of aggravated battery to a peace officer and sentenced to five years in the DOC. In March 2009, he was charged with unlawful possession of a controlled substance; in February 2010, he was sentenced to six years in the DOC. In November 2012, defendant was charged with two counts of battery; in September 2013, he was convicted and given a year of conditional discharge.

¶ 6 On March 19, 2015, the trial court held a sentencing hearing. The State called Farenzena, who testified as follows. He had known defendant approximately 18 years. Defendant had been his "lifelong friend" before the burglary. Defendant had been to his residence many times. Farenzena had shown defendant some of the guns and other items that he stored in the safe. Defendant knew that many of the items had special value to Farenzena.

¶ 7 Farenzena testified that his condominium was burglarized while he was on vacation from April 9 to 12, 2014. Twelve guns were taken. Also stolen were approximately 10,000 rounds of ammunition, 200 ounces of silver, a diamond ring, and the safe itself. Since the burglary, Farenzena had been taking prescription medicine for anxiety and did not want to watch the local news, for fear that whenever a shooting was reported it would turn out that one of the stolen guns was involved. Some of the other items had been recovered from a pawn shop in Wisconsin.

¶ 8 Defendant called his father, Daniel Sinkovitz, who testified as follows. He lived in Lake Bluff with Suzanne, who was not in court that day and had not come to court with him. Sinkovitz and Suzanne had never married. He was 58 years old and was receiving disability payments. Defendant's brother Brian committed suicide in his early 20s; one remaining brother was presently employed and the other was in the DOC and had a drug problem.

¶ 9 Sinkovitz testified that defendant first lived with Suzanne in Chicago, but when he was about 9 or 10 he was placed into Sinkovitz's custody and they moved to McHenry. Defendant attended school there. Sinkovitz was able to provide for his basic needs.

¶ 10 Sinkovitz testified that in 1999 defendant helped a friend, Bobby Sterling, rob a bakery store worker at gunpoint. Defendant knew that Sterling had a gun, but defendant was not armed and did not enter the store. In escaping, Sterling shot the victim, a 60-year-old woman, in the hip. Defendant was adjudicated delinquent and committed to the DOC youth facility in St.

Charles. Sinkovitz visited him weekly and found the facility infested with vermin. At one point, on a Friday evening, a fellow inmate knocked out defendant's front teeth, but defendant got no medical help until Monday. While in the facility, he earned his GED. He was released after about 3½ years. He then had a son, but the child died at about 41 days old. In this period, defendant changed from a "good kid" to a "hardened person." He drank heavily and Sinkovitz had heard that he used drugs. Recently, defendant had been diagnosed with bipolar syndrome and anxiety disorder and was taking prescription medicine.

¶ 11 The parties entered the following stipulation. The robbery victim told police that Sterling pointed a gun at her while defendant stood inside by the front door. The victim told the youths to leave the store. Defendant left but held the door closed so that she could not follow him. She guided Sterling out and tried to lock the door, but he shot through the glass, injuring her in the hip. Defendant said nothing during the incident. In a statement to the police, he said that he had advised Sterling to choose the store as a target and that, after he realized that the victim had been shot, he ran away.

¶ 12 The court heard arguments. The prosecutor stressed that defendant had had a normal upbringing and had received help from both parents. However, he had been incarcerated in the DOC several times before and could not manage to stay out for long. Moreover, he had mistreated a long-time friend. Nine of the guns that he had stolen were still on the street, and the other three had reportedly been used in the commission of crimes. Describing defendant as a career criminal, the prosecutor requested that the court sentence him to the 40-year maximum.

¶ 13 Defendant argued that his upbringing had been difficult; his mother and father had never been there for him at the same time, one brother had committed suicide, and another brother was in the penitentiary. His mother was not in court for the sentencing hearing or most of the other

hearings. At the youth facility, defendant had endured abuse and hardship and came out a different person. As a result, his use of alcohol and drugs increased steadily. In the juvenile proceedings, Sterling had received a lighter disposition (from a different judge) even though he had been the shooter. Further, defendant's losses of his brother and his infant son were extenuating. Finally, a long prison term would cause hardship to defendant's father, who was neither young nor healthy. Defendant requested a sentence of 12 years' imprisonment.

¶ 14 In allocution, defendant asserted that, in the youth facility, he had experienced severe mental and physical abuse from guards and other inmates; as a result, he had to fight to survive and came out hardened. He had found adjustment difficult, especially after Brian committed suicide. His drug use increased. He brought it under control but, after his infant son died, he returned to substance abuse. He said that he was determined to turn his life around and had been taking Alcoholics Anonymous classes and college courses while incarcerated.

¶ 15 The trial judge stated as follows. Defendant "may have had a difficult childhood" and "may have been dealt a bad situation" when as a teenager he was sent to the juvenile facility in St. Charles. He had had "situations that were painful *** to deal with as a young boy and growing up." Nonetheless, defendant not only made mistakes in life, he "continue[d] to make them repeatedly over and over and over." This would be his "fourth trip" to the DOC and, unless he changed seriously, he would spend the rest of his life there. Defendant had brought a heavy prison sentence on himself. "What [he] did to a good friend, a friend from [his] childhood," was "unforgivable." The judge found in aggravation that defendant had a substantial criminal history. Therefore, he would serve 20 years in the DOC and pay $15,000 in restitution.

¶ 16 Defendant moved to reconsider the sentence, arguing in part that Farenzena's claim of psychological hardship resulting from the burglary was implausible. Defendant's motion

attached e-mails from Farenzena, reflecting his interest in white supremacism and other indicia of his allegedly unsavory personality. After hearing arguments, the trial court denied the motion. The judge explained that she had considered Farenzena's testimony but "did not give that a whole lot of weight." The "primary factor[s]" in her decision had been defendant's "extensive and past [*sic*] criminal history" and "the serious nature of the crime" that he had committed.

¶ 17 Defendant appealed. The cause was summarily remanded for compliance with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). *People v. Lamb*, No. 2-15-0337 (2015) (minute order). On remand, the court again declined to reconsider the sentence. Defendant appealed, and this court again remanded for compliance with Rule 604(d). *People v. Lamb*, No. 2-15-1091 (2016) (minute order). Defendant filed a postjudgment motion incorporating his original motion. The court denied it. We allowed defendant to file a late notice of appeal.

¶ 18 On appeal, defendant argues that the trial court abused its discretion in sentencing him to 20 years for aggravated possession of a stolen firearm. Defendant contends that the trial court gave insufficient weight to several allegedly mitigating factors that bore on his rehabilitative potential. For the reasons that follow, we disagree.

¶ 19 We shall not disturb a sentence that is within the statutory limits unless the trial court abused its discretion. *People v. Coleman*, 166 Ill. 2d 247, 258 (1995). We may not reweigh the factors in aggravation and mitigation. *Id*. at 261-62. To be deemed excessive, the sentence must be 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). Moreover, we presume that the court considered all of the pertinent evidence in mitigation, and the presumption cannot be overcome without affirmative evidence of the court's failure to do so. *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010).

¶ 20 Here, defendant's sentence of 20 years was well within the statutory range and, indeed, closer to the minimum (6 years) than the maximum (40 years) and much closer to defendant's request (12 years) than the State's (the 40-year maximum). Nonetheless, defendant contends that the trial court placed excessive weight on his criminal record and insufficient weight on his background and rehabilitative potential. Defendant's argument is unconvincing.

¶ 21 To begin with, defendant cites as mitigating two factors that the court could have discounted or considered marginal at most. The first is "[t]he disparity in sentencing with [*sic*] the defendant and the actual shooter in the juvenile incident." Assuming such an unfair disparity in the 1999 case, we simply fail to see how this fact is pertinent to defendant's sentence as an adult in a wholly separate case 15 years later. The court was fully informed of the circumstances of the 1999 case and defendant does not contend otherwise.

¶ 22 The second questionable factor is Farenzena's allegedly unsavory character, as shown by the e-mails attached to defendant's postsentencing motion. Defendant argues that Farenzena's character flaws undermined his credibility at sentencing. Leaving aside the fact that defendant waited until the motion to reconsider to present this evidence, and thus gave Farenzena no opportunity to object or address it, the evidence in no way undermines the judge's statement that defendant took advantage of Farenzena's friendship and trust to harm him. That was a legitimate consideration. Insofar as the e-mail evidence undercut Farenzena's testimony about the impact of the offense on him, we note that the judge gave that part of his testimony little weight anyway.

¶ 23 The remaining factors that defendant cites—the difficult circumstances of his confinement as a juvenile, the suicide of his brother, the death of his infant son, and his alcohol and substance abuse problems—were legitimate considerations that were placed before the trial court. However, there is nothing to rebut the presumption that the trial court considered and

carefully weighed these factors. The court's explanation of the sentence reinforces this presumption. More important, so does the sentence itself. The State requested that defendant receive the statutory maximum of 40 years. The court imposed only 20 years.

¶ 24 Considering the factors in aggravation, we cannot say that the sentence was manifestly disproportionate to the circumstances, including most prominently the seriousness of the offense and defendant's substantial record. Defendant was 30 years old at the time of sentencing and, as the trial court noted, had already had three trips to the DOC. The State's characterization of him as a career criminal was perhaps debatable, but not without a foundation. The trial court reasonably concluded that defendant's rehabilitative potential was not outstanding and that a mild sentence was not appropriate. In essence, defendant requests that reweigh the factors in aggravation and mitigation. That is not our prerogative.

¶ 25 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 26 Affirmed.