2018 IL App (4th) 160278-U

NO. 4-16-0278

FILED
July 10, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
MITCHELL SIMMONS,	)	No. 14CF66
Defendant-Appellant.	)	
	)	Honorable
	)	Charles M. Feeney III,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not abuse its discretion in sentencing defendant to 14 years of imprisonment.

¶ 2 In August 2015, defendant, Mitchell Simmons, was charged with home invasion and aggravated discharge of a firearm. Defendant waived his right to a jury trial and pleaded guilty to home invasion. The trial court sentenced him to 14 years of imprisonment, followed by 3 years of mandatory supervised release.

¶ 3 On appeal, defendant argues the trial court abused its discretion by giving him an excessive sentence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2014, around 4:25 a.m., defendant broke down the back door of a resident's apartment, which shattered all the glass from the door, and told the resident he was there to serve a warrant on defendant's mother, who lived in the unit next door. At the time

defendant entered the residence, he was holding an open rifle case and had a holstered firearm on his right hip and a machete knife hanging on his left hip. He was also wearing a tactical vest containing several 9-millimeter magazines of ammunition and a bandolier of shotgun shells diagonally across his chest. Inside the rifle case was a shotgun and a mask. Though defendant threatened the resident with the use of force, he did not touch the resident. The resident, along with others, called the police. When the police arrived, they saw defendant coming around the corner of the apartment building wearing the attire described above, making comments such as "we're all on the same team." No evidence suggested defendant was a police officer, had authority to serve a warrant, or actually had a warrant in his possession.

¶ 6 As a result of the incident, defendant was indicted by a grand jury for six counts of home invasion, one count of criminal damage to property, and one count of aggravated discharge of a firearm. He pleaded guilty to one count of home invasion (720 ILCS 5/19-6(a)(1) (West 2012)), admitting he, while armed with a machete, entered the dwelling of a resident without authority and remained in the dwelling until he had reason to know a resident was present in the dwelling and threatened the imminent use of force upon the resident within the dwelling place. The trial court sentenced defendant to 14 years of imprisonment, followed by 3 years of mandatory supervised release. This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 Defendant argues the trial court's sentence was excessive considering his mitigating factors, namely the lack of a criminal history, his history of substance abuse, and his positive work history, which showed his rehabilitative potential. We disagree.

¶ 9 "A trial court's determination regarding the length of a defendant's sentence will not be disturbed unless the trial court abused its discretion or relied on improper factors when

imposing a sentence." *People v. Smith*, 318 Ill. App. 3d 64, 74, 740 N.E.2d 1210, 1218 (2000). "There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and the court is presumed to have considered any evidence in mitigation which is before it." *People v. Donath*, 357 Ill. App. 3d 57, 72, 827 N.E.2d 1001, 1014 (2005). "[A] sentence within statutory limits will be deemed excessive and the result of an abuse of discretion by the trial court where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000). "A reviewing court gives great deference to the trial court's judgment regarding sentencing because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the 'cold' record." *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999). "Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently ***." (Internal quotation marks omitted.) *People v. Alexander*, 239 Ill. 2d 205, 213, 940 N.E.2d 1062, 1066 (2010).

¶ 10 In this case, defendant pleaded guilty to a Class X felony. The prison term for a Class X felony ranges from 6 years to 30 years. 730 ILCS 5/5-4.5-25(a) (West 2012). Defendant's sentence of 14 years of imprisonment fell within the statutory range of sentences. "A sentence within the statutory guidelines is presumed proper." *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 12, 65 N.E.3d 419. Nothing in the record defeats this presumption. The trial court considered as mitigating factors defendant's lack of criminal history, the fact he did not cause physical harm to another, the fact defendant was under the influence during the commission of the crime, and his productive work history, including his current job in the medical field, which showed his trustworthiness and dependability. The court also considered "protecting society and

doing justice" by trying to "create and instill [in defendant] a need in the future to be a law-abiding citizen." In light of the serious nature of the offense, the court gave weight to the mitigating circumstances by stating, the sentence "recognize[ed] completely that you have led a substantially law-abiding life and have been a decent human being and a good member of society who had addiction issues." In this instance, the court imposed a sentence of less than half of the maximum range. See 730 ILCS 5/5-4.5-25(a) (West 2012). "The existence of mitigating factors does not require the trial court to reduce a sentence from the maximum allowed." *People v. Pippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001). We cannot say the sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210. Thus, defendant's sentence is not excessive and the court did not abuse its discretion.

¶ 11 III. CONCLUSION

¶ 12 For the reasons stated, we affirm. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 13 Affirmed.