2019 IL App (1st) 163005-U
Order filed: February 15, 2019

FIRST DISTRICT
Fifth Division

No. 1-16-3005

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 16 CR 2721
	)	
TYRONE WILLIAMS,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed defendant's seven-year sentence for delivery of a controlled substance where the trial court imposed a sentence one year above the minimum and did not misapprehend the facts of the case or inadequately weigh the mitigating factors. We directed the clerk of the circuit court to correct the fines and fees order.

¶ 2 Following a bench trial, defendant-appellant, Tyrone Williams, was convicted of delivery of a controlled substance and sentenced to seven years' imprisonment. On appeal, defendant argues that his sentence is excessive because the trial court: (1) failed to consider mitigating evidence; (2) failed to remember the facts of the case; and (3) stated that seven years' imprisonment was "more than enough." Defendant also argues that he was wrongfully charged $1,000 for a controlled substance assessment, a $15 state police operations assessment that

should have been offset by presentence credit, and a $5 electronic citation fee that does not apply to felonies. We direct the clerk of the circuit court to correct the fines and fees order, we vacate the $5 electronic citation fee, and we affirm the judgment of the trial court in all other respects.

¶ 3 Defendant was charged by indictment with one count of delivery of less than one gram of a substance containing heroin within 1,000 feet of a school (720 ILCS 570/401(d) (West Supp. 2015); 720 ILCS 570/407(b)(2) (West 2016)), and one count of delivery of less than one gram of a substance containing heroin (720 ILCS 570/401(d) (West Supp. 2015)), arising from an incident which occurred on January 24, 2016.

¶ 4 At trial, Chicago police officer, Chris Ivy, testified that, on January 24, 2016, he was working undercover in the vicinity of the 5900 block of South Damen Avenue in Chicago with a team of other officers to make narcotics purchases. At approximately 7:50 p.m., Officer Ivy parked his vehicle in that vicinity, exited his vehicle, approached defendant, and asked where he could find some "defense," a street term for heroin. Defendant responded that they could find heroin on South 71st Street and Sangamon Street. While proceeding to that location in Officer Ivy's vehicle, defendant rolled down his window to engage in conversation with an unknown woman on the 7300 block of South Halsted Street. The woman entered Officer Ivy's vehicle and they all proceeded to the Sangamon Street location. Officer Ivy parked at the end of the block of 71st Street and South Sangamon Avenue, about "one or two blocks" from a school. He gave defendant $20 in prerecorded funds and told him to "get two." Defendant and the woman exited the vehicle and the two walked north on Sangamon Street, east through a vacant lot, and north down an alley out of Officer Ivy's view. When they returned, the defendant handed Officer Ivy two Ziplock bags containing suspect heroin. An enforcement officer then curbed Officer Ivy's

vehicle and arrested defendant. The State entered a stipulation between the parties that an Illinois State Police forensic chemist would have testified that the contents of one of the bags weighed 0.3 grams and contained heroin. Based on this evidence, the trial court acquitted defendant of delivery of a controlled substance within 1,000 feet of a school, but found him guilty of delivery of a controlled substance. The trial court denied defendant's motion for new trial, and the cause proceeded to a sentencing hearing.

¶ 5 The presentence investigation report (PSI), as corrected by the parties at the hearing, showed defendant's convictions for burglary in 1980 and 1981, theft in 1980 and 1983, unlawful use of a weapon in 1989 and 2003, residential burglary in 1994, possession of a controlled substance in 1997 and 2003, and drinking alcohol on the public way in 1999.

¶ 6 The PSI revealed that defendant disclosed that he had been diagnosed with mental health, learning, and behavior disorders, and that he had received mental health treatment while in jail for the current offense. Defendant also stated that he was under the influence of drugs and alcohol when he was arrested, and that he bought drugs for Officer Ivy because he "thought he was getting 'high for free.' " Defendant additionally stated that he consumed alcohol daily, and that his "drug of choice was cocaine." While defendant claimed at bond hearing in March 2016 that he rehabilitated houses with his brother, the PSI notes that he reported "no employment history," and "no future employment plans."

¶ 7 The State argued that defendant had "not one, not two but six felony convictions," and "now a seventh with a conviction in this case," that defendant had "been given opportunities," and that he "had probation in his history and failed at that." The State also argued that, based on his criminal history, defendant was subject to a mandatory Class X sentencing and should

receive a sentence of at least 10 years' imprisonment.

¶ 8 Defendant's trial counsel responded that defendant was 56 years old at sentencing, he was not a violent offender, and that he had a learning disability and behavioral issues his entire life. Trial counsel also noted that, according to the PSI, defendant had mental health and substance abuse issues, had been high when he was arrested, had admitted to thinking that he could get high for free by assisting Officer Ivy in purchasing drugs, and that he had received mental health treatment in jail. In light of these factors, trial counsel requested the minimum sentence of six years' imprisonment. In allocution, defendant stated that he "would like some mental help," and that he was not proud of his previous charges from "years ago." As for the current offense, defendant stated that the police "pushed me a long way up *** the ladder."

¶ 9 After summarizing the material evidence from the trial in detail, the trial court sentenced defendant to seven years' imprisonment. In doing so, the court reasoned that a "stiff sentence" was not warranted because "[t]he sequence of events set forth in Officer Curtis Joy's (phonetic) testimony leads me to believe that the Defendant normally doesn't stand on the street selling drugs and he just *** decided to help Officer Joy out in Officer Joy's attempt to locate some drugs." The court then stated that a seven-year sentence "is more than enough," and recommended that defendant receive mental health treatment in prison. The court also ruled that defendant was entitled to a credit of 270 days for time served and that, upon release, defendant was to pay $1,529 in court fees and fines. The trial court denied defendant's motion to reconsider sentence, ruling that a sentence one year above the minimum was "reasonable certainly in light of the [d]efendant's background." Defendant appealed.

¶ 10 On appeal, defendant argues that his sentence should be reduced to the six-year minimum

because the trial court: (1) failed to consider mitigating evidence; (2) failed to remember the facts of the case; and (3) stated that seven years' imprisonment was "more than enough." The State responds that defendant has not met his burden in demonstrating that the trial court failed to consider any relevant mitigating factors.

¶ 11 When sentencing a defendant, a trial court must consider 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*, 2012 IL App (1st) 101038, ¶ 61. "It is well settled that the trial court has broad discretionary powers in imposing a sentence *** and the trial court's sentencing decision is entitled to great deference ***." (Citations omitted.) *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). "A reviewing court gives substantial deference to the trial court's sentencing decision because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age." *People v. Snyder*, 2011 IL 111382, ¶ 36 (citing *People v. Alexander*, 239 Ill.2d 205, 212-13, (2010).

¶ 12 When a sentence falls within statutory guidelines, it is presumed proper (*People v. Knox*, 2014 IL App (1st) 120349, ¶ 46), and a reviewing court may disturb the sentence "only if the trial court abused its discretion in the sentence it imposed." *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). A sentence is deemed an abuse of discretion where it is " 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *Alexander*, 239 Ill. 2d at 212 (quoting *Stacey*, 193 Ill. 2d at 210).

¶ 13 When considering the propriety of a sentence, a reviewing court must not substitute its judgment for that of the trial court simply because the factors would have been weighed

differently. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). The trial court is presumed to have " 'properly considered all mitigating factors and rehabilitative potential before it; and the burden is on the defendant to affirmatively show the contrary.' " *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010) (quoting *People v. Garcia*, 406 Ill. App. 3d 768, 781 (1998)). "[T]he presence of mitigating factors neither requires a minimum sentence nor precludes a maximum sentence." *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55.

¶ 14 Defendant was convicted of delivery of less than one gram of a substance containing heroin, a Class 2 felony. 720 ILCS 570/401(d) (West Supp. 2015)). Having already received two Class 2 or higher felony convictions, defendant was sentenced as a Class X offender (730 ILCS 5/5-4.5-95(b) (West 2016)), with a sentencing range between 6 and 30 years (730 ILCS 5/5-4.5-25(a) (West 2016)). Because defendant's seven-year sentence was within the statutory range for Class X offenders, we must presume that it was proper. *Knox*, 2014 IL App (1st) 120349, ¶ 46.

¶ 15 At the sentencing hearing, the trial court had access to a PSI detailing defendant's criminal history since 1980, including 10 convictions for burglary, theft, unlawful use of a weapon, residential burglary, possession of a controlled substance, and drinking alcohol on the public way. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 13 (upholding the sentence imposed by the trial court where it considered "defendant's extensive criminal history" as an aggravating factor). Both the PSI, and defense counsel described defendant's learning disability, as well as his mental health and behavioral issues. Although, on appeal, defendant claims the trial court failed to consider his mental health issues, the trial court was clearly aware of them when it recommended that defendant receive mental health treatment while in prison. The trial court was not required to give the mitigating factors before it greater weight than the aggravating factors.

People v. Lima, 328 Ill. App. 3d 84, 100-01 (2002).

¶ 16 Defendant also argues that, given his drug addiction and substance abuse issues, a longer sentence would have little value for his rehabilitation. As defense counsel noted at the hearing and the PSI reflected, defendant had substance abuse issues, was high when arrested, and thought he would get high for free by helping Officer Ivy. Yet, drug addiction is not necessarily a mitigating factor, and the court was not required to give a lower sentence based on this factor. "This court has recognized that a history of substance abuse is a double-edged sword at the aggravation/mitigation phase of a penalty hearing." *People v. Mertz*, 218 Ill. 2d 1, 83 (2005). Simply because the defendant views his substance abuse history as mitigating does not require the sentencer to do so." *Id.* Although defendant now claims, based on his statement at a bond hearing, that he has a history of employment with his brother, he reported "no employment history" and "no future employment plans" in his PSI, and did not raise this factor at the sentencing hearing. In any case, nothing in the record shows the trial court failed to consider defendant's rehabilitative potential, and "[a] sentencing court is not required to award a defendant's rehabilitative potential 'greater weight than the seriousness of the offense.' " *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 17 (quoting *Alexander*, 239 Ill. 2d at 214).

¶ 17 We are also not persuaded that the trial court abused its discretion simply because it stated that a seven-year sentence was "more than enough." *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010) (A reviewing court "should not focus on a few words or statements made by the trial court, but must consider the record as a whole."). Here, the trial court's statement, that seven years was "more than enough," was not a concession that its sentence was excessive, but was made in light of the State's request for a sentence of at least 10 years. As noted, we must

presume the trial court " 'properly considered all mitigating factors and rehabilitative potential before it' " when imposing its sentence, and defendant has not met his burden in showing the contrary. *Brazziel*, 406 Ill. App. 3d at 434 (quoting *Garcia*, 406 Ill. App. 3d at 781). Rather, defendant asks this court to weigh the mitigating factors again, which we cannot do on review. *Fern*, 189 Ill. 2d at 53. Accordingly, we find the trial court did not abuse its discretion in imposing a seven-year sentence.

¶ 18 Defendant additionally claims the trial court failed to recall the facts of his case when imposing a sentence, based on the trial court's purported misstatement of Officer Ivy's name. Defendant raises this issue for the first time on appeal, and it is therefore forfeited. *People v. Stephens*, 2017 IL App (1st) 151631, ¶ 43 ("To preserve a sentencing claim for appeal, a defendant must make a contemporaneous objection at the sentencing hearing and raise the issue in a postsentencing motion."). Defendant argues, however, that we may still review that issue under the plain-error doctrine. *Id.* For the plain-error doctrine to apply in the sentencing context, a defendant must first show that a clear or obvious error occurred. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The defendant must then show that the evidence at the sentencing hearing was closely balanced, or that the error was so obvious, that it denied him a fair sentencing hearing. *Id.*

¶ 19 While defendant claims the trial court mistakenly referred to Officer Ivy as "Curtis Joy," the transcript expressly states that "Curtis Joy" is only a phonetic transcription of the trial court's words. It is not clear what was actually said when the trial court referred to Officer Ivy, and defendant has not conclusively shown that the trial court misstated the officer's name. Moreover, the trial court accurately summarized the material facts of the case before imposing a sentence,

and defendant does not allege the trial court misstated any of them. Accordingly, defendant has not shown that the trial court made a clear or obvious error in failing to remember any facts of the case, and his request for plain-error review of this issue is without merit.

¶ 20 Defendant next argues that the trial court failed to offset a $1,000 controlled substance assessment (720 ILCS 570/411.2(a)(1) (West 2016)), and a $15 State Police operations assessment (705 ILCS 105/27.3a(1.5) (West 2014)), for time served in presentence custody under section 110-14(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-14(a) (West 2016)). Additionally, defendant contends the trial court erroneously charged him a $5 electronic citation fee (705 ILCS 105/27.3e (West 2016)), which does not apply to felonies**.**

¶ 21 Defendant did not challenge his fines and fees in his postsentencing motion and, therefore, he has forfeited the issue. *People v. Smith*, 2018 IL App (1st) 151402, ¶ 4. Although the State notes the forfeiture, it concedes that the charged amounts challenged by defendant may still be corrected. The State has, therefore, waived any forfeiture argument. See *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46.

¶ 22 We review *de novo* the propriety of a trial court's imposition of fines and fees. *Bryant*, 2016 IL App (1st) 140421, ¶ 22. A defendant is entitled to a $5 per day credit toward the assessments levied against him for each day he is incarcerated prior to sentencing. 725 ILCS 5/110-14(a) (West 2016). The credit applies only to assessments imposed pursuant to a conviction and not to any other court costs or fees. *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). "A 'fine' is a part of the punishment for a conviction, whereas a 'fee' *** seeks to recoup expenses incurred by the state [to compensate] the state for some expenditure incurred in prosecuting the defendant." *People v. Jones*, 223 Ill. 2d 569, 582 (2006). Here, defendant

accumulated 270 days of presentence custody credit and, therefore, is entitled to up to $1,350 of credit toward his eligible assessments.

¶ 23 This court has held that the $1,000 controlled substance assessment and $15 State Police operations assessment are fines subject to an offset under section 110-14(a). *People v. Brown*, 388 Ill. App. 3d 104, 115 (2009) (finding that the $1,000 controlled substance assessment is a fine subject to an offset under section 110-14(a)); *People v. Christian*, 2019 IL App (1st) 153155, ¶ 25 (finding the $15 State Police operations assessment is a fine subject to an offset under section 110-14(a)). The $5 electronic citation fee also does not apply to felonies and is, therefore, inapplicable to defendant's conviction for delivery of a controlled substance. *Smith*, 2018 IL App (1st) 151402, ¶ 12. As such, the $5 electronic citation fee must be vacated.

¶ 24 For the foregoing reasons, we affirm defendant's seven-year sentence for delivery of a controlled substance; we vacate the $5 electronic citation fee; and we find that the $1,000 controlled substance assessment and $15 State Police operations assessment are offset by a presentence credit. We direct the clerk of the circuit court to modify the fines, fees, and costs order accordingly. *People v. Avery*, 2012 IL App (1st) 110298, ¶ 51 (noting that remand is unnecessary for correcting fines and fees).

¶ 25 Affirmed in part and vacated in part; fines and fees order corrected.