2019 IL App (1st) 163040-U

No. 1-16-3040

Modified Order filed on June 11, 2019.

Second Division



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 16 CR 1406 |
| | ) | |
| BRADFORD JEFFERSON, | ) | The Honorable |
| | ) | Thaddeus L. Wilson, |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

**ORDER**

¶ 1 *Held*: Defendant's 14-year sentence for possession of a stolen motor vehicle is affirmed over his claim that it was excessive. Remanded as to fines and fees order.

¶ 2 Following a bench trial, defendant Bradford Jefferson was convicted of possession of a stolen motor vehicle and sentenced to 14 years' imprisonment. On appeal, defendant argues that his sentence is excessive because it is not proportionate to the seriousness of the offense, and the trial court failed to consider mitigating factors, including his troubled past, mental health, and

non-violent criminal history. Defendant further maintains that certain assessments should be vacated or offset by presentencing credit. We affirm defendant's sentence, and remand as to the fines and fees order.

¶ 3 Defendant was charged by information with one count of possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2016)). Defendant does not dispute the sufficiency of the trial evidence, so we recite only those facts relevant to our disposition of the issues on appeal.

¶ 4 Timothy Minor testified that, on January 12, 2016, he was delivering supplies in an Edward Don and Company truck. After completing his last delivery at approximately 10:45 a.m., Minor parked the truck on the south corner of Van Buren Street and Federal Street in Chicago, and walked to a restaurant across the street. Minor left the truck running, with the keys inside the vehicle, because "[i]t was extremely cold that day, well below zero." He did not give anyone permission to enter the truck. When Minor exited the restaurant, six minutes after entering, he noticed that the delivery truck had been moved "slightly forward," one of the doors had been opened, and the lower front bumper and fender had been damaged. Minor was informed by a nearby driver that an individual tried to "take off" with the truck.

¶ 5 Kevin Sullivan testified that on January 12, 2016, at approximately 10:45 a.m., he was cleaning the windows of a business on Van Buren when he was approached by defendant. Sullivan had known defendant for more than 20 years, but saw him for the first time in several years earlier that morning. Defendant told him, "Hey man, I'm about to take this truck." Defendant subsequently crossed the street and jumped into a truck, but the "tail spinned" and he crashed into another vehicle. Following the crash, defendant jumped out of the truck and ran away.

¶ 6 Chicago police sergeant Xavier Delgado testified that he spoke with Sullivan at the scene, and afterwards, located defendant. Chicago police officer Raeanda Edwards testified that defendant was given the *Miranda* warnings at the police station and told officers that, "I did it. It was stupid." Defendant also stated that he was homeless, lived at the Pacific Garden Mission, and was "trying to get out of the cold" on the day of the incident.

¶ 7 Following closing arguments, the trial court found defendant guilty of possession of a stolen motor vehicle. Defendant's motion to set aside the finding of guilty, or in the alternative, motion for new trial was denied.

¶ 8 The case proceeded to a sentencing hearing, where the trial court received defendant's presentence investigation (PSI) report. The PSI report revealed that defendant had been convicted of possession of a stolen motor vehicle, with one year's probation (1981); automobile theft, with two years' imprisonment (1981); possession of a stolen motor vehicle and theft, with four years' imprisonment (1984); unlawful use of a weapon, with two years' imprisonment (1992); and criminal trespass, with two days served in jail (1994). Furthermore, defendant was convicted of burglary, with five years and six months' imprisonment (1996); aggravated vehicular hijacking, with five years and six months' imprisonment (1996); possession of a stolen motor vehicle, with seven years' imprisonment (1998); possession of a stolen motor vehicle, with six years' imprisonment (2002); and possession of a stolen motor vehicle, with nine years' imprisonment (2008).

¶ 9 The PSI report further noted that defendant was 51 years old, dropped out of high school, and had previously been involved with the Black Gangster Disciples gang. He worked as a forklift driver for four months in 2015, but was unemployed prior to incarceration, used alcohol

to cope with his "problems," and was homeless. Defendant reported that, at age five or six, he had been molested by a neighbor and was later diagnosed with being "suicidal and depressed." Following a suicide attempt, he was placed at the Elgin Mental Health Institute. At the time of the presentence interview, he was taking "psychotropic medication." Defendant reported that he had experimented with marijuana, cocaine, heroin, and PCP, and had received treatment for substance abuse on three prior occasions.

¶ 10 In aggravation, the State reviewed defendant's criminal history in detail, arguing that "this [conviction] will be PSMV No. 7," and recommended that defendant be sentenced to a term no less than 15 years.

¶ 11 In mitigation, the defense argued that defendant suffered from mental health issues stemming from the childhood molestation, was depressed, and had attempted suicide on two occasions. Defendant's sister wrote a letter, which stated that defendant needed therapy to help address the "pain" that caused his cycles of self-destructive behavior. The defense argued that "a ton of years in prison isn't going to fix what's going on here," and requested that the trial court impose the minimum sentence.

¶ 12 The trial court noted defendant's criminal history, and stated, "Wow, wow. I must say this is some rap sheet. This is actually incredible. I see this background. I guess it shouldn't be shocking. Apparently this is the defendant's MO." In imposing sentence, the trial court stated that it had considered the evidence at trial, the "gravity" of the offense, the PSI report, the financial impact of incarceration, and the factors in mitigation and aggravation. Additionally, the trial court stated that it considered "any substance abuse issues and treatment, the potential for

rehabilitation, the possibility of sentencing alternatives, and all hearsay presented and deemed relevant and reliable." The trial court sentenced defendant to 14 years' imprisonment.

¶ 13 Defendant filed a motion to reconsider sentence, which was denied. The trial court explained that, in light of defendant's background, "even if the Court were to credit significantly issues that the defendant outlined in mitigation, this is uncalled for, this has got to stop."

¶ 14 On appeal, defendant contends that the trial court abused its discretion in sentencing him in view of the nature of the offense and because it failed to consider mitigating factors, including his troubled past, mental health, and non-violent criminal history. The State, in response, maintains that defendant's sentence is appropriate because the trial court properly weighed the factors in aggravation and mitigation.

¶ 15 The Illinois Constitution requires that sentences reflect the seriousness of the offense and the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11. A trial court's sentencing decision is entitled to great deference, and it will not be disturbed on appeal unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). A sentence will generally not be found to be an abuse of discretion if it is within the permissible statutory sentencing range for the offense, unless "it is 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). The sentence imposed is entitled to great deference and weight because a trial court is in a better position to consider the defendant's credibility, character, demeanor, mentality, age, social environment, and habits. *Stacey*, 193 Ill. 2d at 209. Because it is the trial court's responsibility to weigh the competing factors, we cannot substitute our judgment for that

of the trial court simply because we might balance the factors differently. *People v. Streit*, 142 Ill. 2d 13, 19 (1991).

¶ 16 The sentencing range for possession of a stolen motor vehicle, a Class 2 felony (625 ILCS 5/4-103(b) (West 2016)), is between three and seven years (730 ILCS 5/5-4.5-35(a) (West 2016)). Here, defendant was sentenced as a Class X offender, and was eligible to receive a sentence between 6 and 30 years. 730 ILCS 5/5-4.5-25(a) (West 2016). The trial court sentenced defendant to 14 years' imprisonment, which is 16 years below the maximum sentence and 8 years above the minimum, well within the sentencing range. Therefore, defendant's 14-year sentence is "presumed to be proper." *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46.

¶ 17 The testimony at trial showed that defendant informed an acquaintance that he intended to "take" a truck that had been parked and left running on the side of the street. Despite lacking permission, defendant entered the truck, moved it, and crashed into another vehicle before running away. The PSI report, which the trial court reviewed at sentencing, stated that defendant had been convicted of numerous offenses, including criminal trespass, unlawful use of a weapon, burglary, possession of a stolen motor vehicle, automobile theft, and aggravated vehicular hijacking. The PSI report also showed that defendant was molested by a neighbor as a young boy, dropped out of high school, and had previously been involved in a gang. As an adult, defendant suffered from depression, suicidal tendencies, experimented with illegal drugs, and used alcohol to cope with his problems. The report noted that defendant had undergone substance abuse treatment on three separate occasions and had been taking "psychotropic medication." Furthermore, at the sentencing hearing, defense counsel argued that defendant needed therapy given his fragile mental state.

¶ 18 Prior to sentencing, the trial court stated that it considered the gravity of the offense, the evidence at trial, the aggravating and mitigating factors, and defendant's criminal history, which the State highlighted at the hearing. The court also stated that it considered defendant's substance abuse issues and treatment, the potential for rehabilitation, and sentencing alternatives. Hence, the record reveals that the trial court contemplated the mitigating factors, along with defendant's extensive criminal history and the seriousness of the present offense, which is the most important factor to consider at sentencing. *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007). Although defendant argues that he suffers from mental health issues stemming from the childhood molestation, defendant's mental or psychological impairments are not inherently mitigating. See *People v. Brunner*, 2012 IL App (4th) 100708, ¶ 64 (noting that "an abusive childhood, mental-health problems, and substance-abuse issues are not set forth in the list of mitigating factors in section 5-5-3.1(a)" of the Unified Code of Corrections). To the extent that defendant characterizes his criminal history as "non-violent," this conclusion is refuted by his convictions for unlawful use of a weapon and aggravated vehicular hijacking.

¶ 19 Defendant further contends that his sentence is disproportionate to the seriousness of the offense because his possession of the truck was brief, he did not steal it, and no one was harmed. In support of his position, defendant relies on *People v. Busse*, 2016 IL App (1st) 142941, where the defendant was sentenced to 12 years' imprisonment as a Class X offender for stealing $44 from a school vending machine. *Id.* at ¶¶ 1-2. On appeal, this court reduced the defendant's sentence to 6 years' imprisonment because, given the defendant's criminal history and number of years previously spent in prison, another 12-year term would be "ineffectual." *Id.* at ¶¶ 32, 38. This court also stated that the defendant's sentence was "grossly disproportionate" to the

seriousness of the offense because no one was harmed, the defendant was unarmed, the vending machines were not damaged, and a 12-year prison sentence would cost taxpayers approximately a quarter of a million dollars. *Id.* at ¶¶ 29, 37.

¶ 20 Although defendant relies on *Busse*, we note that, "[i]f a sentence is appropriate given the particular facts of that case, it may not be attacked on the ground that a lesser sentence was imposed in a similar, but unrelated, case." *Fern*, 189 Ill. 2d at 62. Hence, "a claim that a sentence is excessive must be based on the particular facts and circumstances of that case." *Id.* Here, defendant told an acquaintance that he was going to "take this truck." Despite having served multiple years in prison for theft and possession of a stolen motor vehicle, defendant entered an unoccupied vehicle without permission, drove it in a manner that, according to the acquaintance, caused the tail to spin, and crashed into another vehicle. Unlike *Busse*, where the vending machine sustained no damage, defendant damaged the truck and fled the scene. Therefore, we find *Busse* factually distinguishable and defendant's argument unavailing in light of the factors the trial court considered when sentencing defendant. See *People v. Lawson*, 2018 IL App (4th) 170105, ¶ 33 (in determining an appropriate sentence, a defendant's history, character, rehabilitative potential, the seriousness of the offense, the need to protect society, and the need for deterrence and punishment must be weighed). As such, his claim of sentencing error is meritless.

¶ 21 Defendant next contends that his presentence incarceration credit must be applied against certain fines, which included a $10 Mental Health Court charge (55 ILCS 5/5-1101(d-5) (West 2016)); $50 Court System charge (55 ILCS 5/5-1101(c) (West 2016)); $5 Drug Court charge (55 ILCS 5/5-1101(f) (West 2016)); $5 Youth Diversion/Peer Court charge (55 ILCS 5/5-1101(e)

(West 2016)); $30 Children's Advocacy Center charge (55 ILCS 5/5-1101(f-5) (West 2016)); and a $15 State Police Operations charge (705 ILCS 105/27.3a(1.5) (West 2014)). Defendant further maintains that the trial court erred in imposing a $5 Electronic Citation charge (705 ILCS 105/27.3e (West 2016)).[1]

¶ 22 On February 26, 2019, while this appeal was pending, our supreme court adopted Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting certain sentencing errors in, as relevant here, the "imposition or calculation of fines, fees, and assessments or costs" and "application of *per diem* credit against fines." Ill. S. Ct. R. 472(a)(1), (2) (eff. Mar. 1, 2019). It provides that, in criminal cases, "the circuit court retains jurisdiction to correct" the enumerated errors "at any time following judgment ***, including during the pendency of an appeal." Ill. S. Ct. R. 472(a) (eff. Mar. 1, 2019). Additionally, "[n]o appeal may be taken" on the ground of any of the sentencing errors enumerated in the rule unless that alleged error "has first been raised in the circuit court." Ill. S. Ct. R. 472(c) (eff. May 17, 2019).

¶ 23 On May 17, 2019, our supreme court amended Rule 472 to add subsection (e), which states:

> "In all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

Therefore, pursuant to Rule 472, we remand to the circuit court to allow defendant to file a

[1]Defendant also argues that he is entitled to presenting credit against a $190 Felony Complaint (Filed), (Clerk) charge, $25 Automation charge, $2 Public Defender Records charge, $2 State's Attorney's Records charge, and a $25 Document Storage charge. However, in light of *People v. Clark*, 2018 IL 122495, defendant withdrew this argument in his reply brief.

motion raising the alleged errors regarding the application of presentence incarceration credit against certain fines, and his claim that the $5 Electronic Citation charge should be vacated. Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

¶ 24 Accordingly, the fines and fees issue is remanded pursuant to Rule 472(e). The trial court is affirmed in all other respects.

¶ 25 Affirmed; remanded as to fines and fees.