2019 IL App (1st) 170114-U

No. 1-17-0114

Order filed June 28, 2019

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 16514
	)	
ENOS TAPLIN,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion when it imposed a nine-year sentence for robbery that was not disproportionate to the nature of the offense.

¶ 2 Following a jury trial, defendant was found guilty of robbery and sentenced to nine years' imprisonment. On appeal, defendant contends that his sentence was excessive because it was disproportionate to the nature of the offense and lacked a rehabilitative purpose. We affirm.

¶ 3 Defendant was charged by information of one count of robbery (720 ILCS 5/18-1(a) (West Supp. 2015)) and one count of unlawful restraint (720 ILCS 5/10-3(a) (West 2014)), arising from an incident in Chicago on September 13, 2015.

¶ 4 In October 2015, the trial court appointed the public defender to represent defendant. In November 2015, at counsel's request, the court ordered defendant to undergo a behavioral clinical examination (BCX). In a December 2015 report, the examining psychologist noted that defendant had a history of mental illness and drug use. Defendant reported that he was on parole at the time of his arrest, smoked $380 worth of cocaine the previous night and used cocaine again in the morning, and needed money to purchase more drugs. The psychologist concluded that defendant was legally sane at the time of the alleged offense, capable of understanding the *Miranda* warnings, and fit for trial. In November 2016, defendant requested to proceed *pro se* which, following extensive admonishments, the trial court allowed.

¶ 5 At trial, Lexus Henderson testified that she was working the register at the McDonald's on 114th Street and Halsted Street on September 13, 2015. At 2:30 p.m., she noticed defendant, whom she identified in court, standing to the side of people who were in line to order food. Henderson took a customer's order, and as she opened the register, defendant reached over the counter, "trying to get the bank of money away from [her]." They struggled for control of the bank of money for 45 seconds to 1 minute, and defendant's elbow made contact with Henderson's arm, causing her to stumble backwards and fall on the floor with the bank of money in her hand. Defendant ran from the restaurant and the police were called. When officers arrived, Henderson provided defendant's description. Five to ten minutes later, the police returned with

defendant and Henderson identified him as the offender. The State published a surveillance video from inside the restaurant, which according to Henderson, depicted the events she described.[1]

¶ 6 Sherelle Murray, another McDonald's employee, testified that she was working at the fry station and heard Henderson scream. As Murray turned around, she saw defendant push Henderson with his elbow and grab for the bank of money. The bank fell to the ground and defendant ran from the restaurant with cash in his hand. On cross-examination, Murray agreed that she did not observe Henderson with bruises or other physical injury.

¶ 7 Chicago police detective William Donelly testified that he read defendant the *Miranda* rights at the police station. Defendant stated that he "waited for the cash drawer to open," then "crawled over the counter and began reaching for the cash drawer." According to the defendant, the clerk "was fighting him for control of the cash drawer," "he may have pushed her" and all he was able to take was $20.

¶ 8 Following arguments, the jury found defendant guilty of robbery. The trial court denied defendant's motion for a new trial, and ordered a presentence investigation report (PSI). The court also ordered a new BCX. The examining psychologist determined that defendant was fit for sentencing, and he appeared *pro se* at the hearing.

¶ 9 In the PSI, which reflected that defendant was 35 years old on the date of the interview, defendant stated that he was raised by both parents in a stable home and had a close relationship with them and his younger siblings. He had a normal childhood, without abuse or neglect. At the time of his arrest, he was living with his parents in Country Club Hills, Illinois. Defendant graduated from high school, earning A's and B's. He worked at his father's roofing business

[1] A disc containing the footage is included in the record on appeal. The footage does not depict Henderson falling, but the parties do not dispute the defendant made physical contact with her.

since 1999, earning approximately $700 per week as a roofer and also receiving $149 per month in food stamps. During periods of unemployment, defendant was either supported by his family or incarcerated.

¶ 10 Defendant related that he was diagnosed with schizophrenia and anxiety in 2001, and had been taking anti-depressant and anti-psychotic medication since then. Defendant reported his medications are effective and that he feels well while taking them. He used marijuana from age 18 to 25, but denied using alcohol or other drugs. However, he attended inpatient substance abuse treatment for periods of two to three months in 2002, 2003, and 2004.

¶ 11 The PSI stated defendant had multiple prior convictions, including two convictions for robbery in 2013, for which he received concurrent terms of five years' imprisonment. In 2011, defendant was convicted of retail theft and escape from electronic monitoring, for which he received concurrent two-year sentences. In 2011 and 2010, defendant had four other convictions for retail theft, for which he received sentences of 3 days, 10 days, and 16 days in jail, and two years' probation that was terminated unsatisfactorily. Defendant was convicted of aggravated battery causing great bodily harm in 2007 and sentenced to three years' imprisonment. In 2006, he was convicted of robbery and sentenced to two years' probation that was terminated unsatisfactorily.

¶ 12 In aggravation, the State reviewed defendant's criminal background, and noted that he was required to be sentenced as a Class X offender. The State did not recommend a sentence.

¶ 13 In mitigation, defendant requested the minimum six-year sentence. He argued that if he received a sentence longer than six years, he would not be able to find a job after his release. Further, defendant stated that his younger siblings, including his autistic brother, needed him,

and his father required his help with their family's small roofing business. Finally, defendant maintained that the offense had not been violent, no one had been hurt, and that he was not a violent offender.

¶ 14 The trial court sentenced defendant to nine years' imprisonment. In so holding, the court stated that it considered the statutory and non-statutory factors in aggravation and mitigation, and defendant's PSI. The court stated that, while defendant did not hurt anyone during the present offense, he "laid in wait until the cash register was open" and made contact with Henderson when he grabbed the money. The court also reviewed defendant's criminal history, including previous robberies, and stated that "it doesn't appear that probation or a penitentiary sentence deter[red] his criminal behavior." The court explained that robbery is a "violent crime," and even though defendant's conduct "could be more violent," it "doesn't necessarily minimize the criminal behavior, which I hope that he would be growing out of, instead of committing the same type of crimes." The court concluded that though defendant did not deserve the maximum 30-year sentence, previous sentences had not deterred his criminal conduct.

¶ 15 On appeal, defendant maintains that his nine-year sentence is disproportionate to the nature of the offense, as no one was hurt and only $20 was stolen. Additionally, defendant argues that his criminal history was already taken into account by his Class X sentencing eligibility, and his sentence does not serve a rehabilitative purpose as longer sentences for drug abusers have little deterrent or rehabilitative effect.

¶ 16 When sentencing a defendant, "the trial court has broad discretionary powers." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Substantial deference is given to the trial court 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. A trial court must balance "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. However, a defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense. *People v. Reed*, 2018 IL App (1st) 160609, ¶ 62.

¶ 17 When a sentence falls within statutory guidelines, it is presumed proper (*People v. Knox*, 2014 IL App (1st) 120349, ¶ 46), and will be disturbed "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.' " *People v. Alexander*, 239 Ill. 2d 205, 212 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2000)). When considering a sentence's propriety, "the reviewing court *** must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently." *People v. Fern*, 189 Ill. 2d 48, 53 (1999).

¶ 18 Robbery is a Class 2 offense (720 ILCS 5/18-1(a) (West Supp. 2015)) with a sentencing range of three to seven years (730 ILCS 5/5-4.5-35(a) (West 2014)). Here, defendant's criminal history made him eligible to be sentenced as a Class X offender with a range of 6 to 30 years. 730 ILCS 5/5-4.5-25(a) (West 2014). Because defendant's nine-year sentence falls within these statutory guidelines, we must presume it is proper. *Knox*, 2014 IL App (1st) 120349, ¶ 46.

¶ 19 Testimony at trial, as well as defendant's own statement to Donelly, demonstrated that he entered the McDonald's intending to take money from the cash register. He waited until

Henderson opened the register, then reached over the counter and elbowed her as he struggled with her for control of the cash drawer. Defendant grabbed $20 and let go of the drawer, causing Henderson to stumble backwards. Defendant had been convicted of 10 offenses, including robbery and retail theft, and as the court observed, neither "probation nor a penitentiary sentence deterred [defendant's] criminal behavior." The court also noted that, although defendant did not hurt Henderson and did not deserve the maximum 30-year sentence, he still committed "a violent crime."

¶ 20 Notwithstanding, defendant maintains that the nine-year sentence was disproportionate to the offense's minimal nature, as no one was harmed and only a trivial amount of money was taken. The trial court was aware of both factors, however, and is presumed to have taken that mitigating information into account. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19. In its discretion, the trial court balanced that information against other relevant considerations, such as the defendant committing the present offense while he was on parole and his extensive criminal history. 730 ILCS 5/5-5-3.2(a)(3), (12) (West Supp. 2015) (noting that defendant's history of criminal activity can be considered, as can defendant having been convicted of a felony committed while he was serving a period of probation or conditional discharge). Moreover, defendant was not deterred by previous, more lenient sentences. *People v. Hill*, 408 Ill. App. 3d 23, 29-30 (2011) (nonviolence and addiction did not mandate reduced sentence where defendant had 13 prior drug-related convictions). Though defendant would have this court weigh what he describes as the "minimal" seriousness of his offense as the most important sentencing factor, when viewed in the context of the defendant's criminal history, the trial court was not obligated to do so.

¶ 21 Defendant next contends that his criminal history was already taken into account by his Class X sentencing eligibility and should not have factored into the length of the sentence imposed. The trial court can, however, consider a defendant's criminal background in aggravation in fashioning a sentence even when an offender is eligible for Class X sentencing. *People v. Thomas*, 171 Ill. 2d 207, 227-28 (1996) ("while the fact of a defendant's prior convictions determines his eligibility for a Class X sentence, it is the *nature and circumstances* of these prior convictions which, along with other factors in aggravation and mitigation, determine the exact length of that sentence" (emphasis in original)). Furthermore, sentences substantially above the minimum may be warranted by criminal history alone. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 13 (citing *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009)). Here, defendant is a recidivist criminal, who has multiple convictions for retail theft, robbery, and an aggravated battery causing great bodily harm. He has been sentenced to prison terms, probationary periods, electronic monitoring, and limited days in jail, and yet has repeatedly committed felonies which threaten public safety and security. The trial court did not abuse its discretion in taking these matters into account in its sentencing.

¶ 22 Finally, defendant asserts that his sentence does not have a rehabilitative aim because his drug use and mental illness caused him to commit the robbery, and a longer term of imprisonment is unlikely to deter his criminal behavior. Defendant relied on various studies and articles to support this contention, which were not before the trial court and therefore, cannot be considered by this court for the first time on appeal. *People v. Mehlberg*, 249 Ill. App. 3d 499, 531-32 (1993). However, from defendant's PSI and BCX reports, the trial court was apprised of his history with drug use and mental illness. *People v. Coleman*, 183 Ill. 2d 366, 404, 406 (1998)

(noting information about a defendant's mental or psychological impairment, including but not limited to a history of substance abuse, is not inherently mitigating, but may demonstrate possible future dangerousness). The trial court also was aware that defendant lived with his family, earned income from the family business, received food stamps, and had previously undergone drug treatment. Notwithstanding, defendant repeatedly committed thefts and robberies after receiving more lenient sentences such as probation and electronic monitoring. See *People v. Ramos*, 353 Ill. App. 3d 133, 138 (2004) (where a defendant's rehabilitative potential can be gleaned in part from his criminal history, "repeated commission" of theft-related offenses "suggests that he has almost no likelihood of ever rehabilitating himself"). The trial court was not required to give greater weight to the defendant's rehabilitative potential than to the seriousness of the offense. *People v. Gomez*, 2011 IL App (1st) 092185, ¶ 87. Further, given defendant's history of recidivism, the court could also find that the need to protect the public outweighed the mitigating factors and the goal of rehabilitation. *People v. Hindson*, 301 Ill. App. 3d 466, 475 (1998).

¶ 23 Considering the above circumstances together, in light of the trial court's broad discretionary powers in imposing a sentence, we find that the trial court did not abuse its discretion in fashioning defendant's sentence. *Stacey*, 193 Ill. 2d at 209; *Snyder*, 2011 IL 111382, ¶ 36. Therefore the judgment of the trial court is affirmed.

¶ 24 Affirmed.