2019 IL App (2d) 170596-U
No. 2-17-0596
Order filed September 30, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SHAQUILLE L. COLEMAN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Carroll County. No. 15-CF-2 Honorable John F. Joyce, Judge, Presiding.

PRESIDING JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to four years' imprisonment for possession of stolen property: the court properly considered the revocation of defendant's probation only as an indication of his rehabilitative potential and did not otherwise err in balancing the pertinent factors.

¶ 2 Defendant, Shaquille L. Coleman, appeals from his sentence of four years' imprisonment for possession of stolen property with a value in excess of $500 (720 ILCS 5/16-1(a)(4) (West 2014)). Defendant initially received a sentence of probation, but, after he admitted violating probation, the court imposed the four-year sentence. On appeal, defendant asserts that the court improperly punished him for the conduct that resulted in the revocation of his probation and that

the court otherwise failed to properly balance the sentencing factors. We do not agree. We thus affirm defendant's sentence.

¶ 3 I. BACKGROUND

¶ 4 The State filed an information charging defendant with a single count of residential burglary (intent to commit theft) (720 ILCS 5/19-3 (West 2014)). At the preliminary hearing, the State presented evidence suggesting that defendant had lived downstairs from an apartment occupied by Dayna Lloyd, had been in her apartment and had admired a PlayStation 4 video game console, and knew where Lloyd hid a key to the apartment. Lloyd reported that the video game console, five video games, and a laptop computer had been taken from the apartment, but that no forced entry had occurred. When Savannah police visited the house of defendant's mother and stepfather, his stepfather gave them a duffel bag containing some of the stolen items, including the computer. The police obtained a surveillance video from a pawnshop that showed defendant negotiating to pawn a PlayStation 4 video game console and returning a day later to tell an employee that he got more money at a Game Stop. The police recovered the video game console, and a recording showing defendant, from a Game Stop in Clinton, Iowa.

¶ 5 Defendant agreed to plead guilty to one count of possession of stolen property with a value in excess of $500 (720 ILCS 5/16-1(a)(4) (West 2014)). The factual basis for the plea was a condensed version of the evidence presented at the preliminary hearing. The State noted that, although defendant had no prior felony convictions, he had been convicted of six misdemeanors. In four instances where courts had given him supervision or probation, he failed to comply with the terms. Defendant had a history of drug use that started when he was seven. On November 16, 2015, the court sentenced defendant to five years' Treatment Alternatives to Street Crimes (TASC) probation.

¶ 6 On January 27, 2017, the State filed a petition to revoke defendant's probation, alleging six violations of the terms:

> (1) He was convicted of misdemeanor possession of a concealed weapon in Colorado; the petition cited sections 18-12-105(1)(a) and (1)(b) of Colorado's Criminal Code, implying that defendant was carrying a knife, a firearm, or both. Colo. Rev. Stat. Ann. § 18-12-105(1)(a), (1)(b) (West 2016).
>
> (2) He failed to complete his ordered substance-abuse treatment.
>
> (3) He failed to get permission to leave the state.
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> (4) He failed to notify the probation department of a change of address.
>
> (5) He failed to notify the department of the Colorado charges.
>
> (6) He failed to report in person to the probation department.

According to the presentencing report, defendant was arrested on September 3, 2016, for the Colorado weapons violation, entered a plea of guilty, and served 90 days in jail.

¶ 7 On April 28, 2017, defendant admitted to the first four alleged violations. At the sentencing hearing, the court noted that defendant had complied with few if any of the terms of TASC probation. Without much further analysis, it sentenced defendant to four years' imprisonment.

¶ 8 Defendant moved for reconsideration of his sentence. He asserted that the sentence failed to properly account for the following: (1) the trauma defendant suffered when his infant son died not long before the original offense, (2) defendant's lack of prior felony convictions, (3) the offense's nonviolent character and that it "neither caused nor threatened serious physical harm to another," and (4) defendant's addiction and his attempts to overcome that addiction.

¶ 9 At the hearing on the motion, defendant argued that he knew that a sentence of imprisonment was appropriate, but that the sentence had to be for possession of stolen property, not for the Colorado misdemeanor. The court denied the motion:

> "Okay. I thought long and hard before I entered that sentence ***, specifically going over the PSI, et cetera. The problem that bothered me about the situation was that it seemed to be escalating. We had multiple times that he had misdemeanors. He did not do well when given chances and then to be in Colorado in Possession of a Weapon or whatever he pled guilty to. I was led by the PSI to believe it was a gun, it just seemed like he was escalating and that he was completely out of control.
>
> He talks a good game when he comes up here on the stand and when he is having the hearing in aggravation and mitigation he sounds very sincere and he, you know, I believed him a number of times. That sooner or later grows old."

Defendant filed a timely notice of appeal.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant first asserts that, because this conviction was his first for a felony and "the offense involved no violence or threat of force," his sentence, one year below the statutory maximum, was excessive. Specifically, defendant argues that he "presumably used a hidden key to enter the apartment of his upstairs neighbor," that "[t]here was no property damage," that "the items were promptly recovered," and that he "never used or threatened force against anyone during this incident." He also argues that the court failed to consider mitigating factors: defendant's relative youth; his drug addiction; the death of his six-month-old son; his scholastic success despite growing up without a father in "a 'tough neighborhood' on the south side of Chicago"; his employment history; and his acceptance of responsibility for the offense.

Second, he asserts that the court improperly "focused on the conduct which led to the probation revocation, specifically [his] misdemeanor offense in Colorado."

¶ 12 The State responds that the sentence was consistent both with defendant's prior criminal history and with his conduct while on probation. It argues that the court discussed the circumstances of the offense and defendant's prior record at the first sentencing hearing. However, by the second sentencing hearing, the court disbelieved defendant's claims of his willingness to change. In particular, it asks us to consider the court's comments in declining to reduce defendant's sentence, specifically, its mention of defendant's " 'talk[ing] a good game.' " Finally, the State argues that defendant's actions while on probation justified the sentence:

> "Notably, the court gave defendant every opportunity to avoid going to prison, placing him on TASC Probation in the hopes that he would redeem himself. Unfortunately, defendant's criminal conduct continued to escalate, he left Illinois while on TASC and committed a weapon offense in Colorado, leaving the court no other recourse but to sentence him to an appropriate prison term."

¶ 13 Replying, defendant contends that the State's final argument is inconsistent with Illinois case law. He cites our decision in *People v. Varghese*, 391 Ill. App. 3d 866, 876 (2009), for the proposition that the court " 'may never punish a defendant for the conduct that gave rise to the probation violation.' " He argues that the court's comments at the first sentencing hearing that recognized mitigating circumstances "are irrelevant because the question in this appeal is not whether the initial sentence was excessive."

¶ 14 We hold that the sentence was proper. Defendant's argument has two portions. In part, he argues that the court failed to properly balance sentencing factors, such as his relative youth and his rehabilitative potential. He also argues that the court improperly considered his conduct

while on probation, to the exclusion of addressing the seriousness of the offense. We address the second argument first, as consideration of an improper factor is potentially dispositive.

¶ 15 We conclude that the court's consideration of defendant's conduct during probation was permissible. As we now explain, we hold that the court properly considered defendant's behavior as an indication of his rehabilitative potential and that it did not impermissibly punish him for the probation violation.

¶ 16 When a court resentences a defendant after finding that he or she violated the terms of probation, the sentence should be one that is appropriate for the original offense; it cannot punish him or her for the conduct that was the basis for the revocation. *E.g.*, *People v. Pina*, 2019 IL App (4th) 170614, ¶ 30. However, the sentence the court imposes after revoking probation may " 'differ from the sentence which [it] could have *** imposed' " had it not granted probation. *Pina*, 2019 IL App (4th) 170614, ¶ 30 (quoting *People v. Turner*, 233 Ill. App. 3d 449, 456 (1992)). When the court resentences a defendant after it revokes probation, it may consider the defendant's behavior while on probation as an indicator of his or her rehabilitative potential. *Pina*, 2019 IL App (4th) 170614, ¶ 31. We endorsed the Fourth District's approach in *People v. Young*, 138 Ill. App. 3d 130, 142 (1985), concluding that " 'a sentence within the statutory range for the original offense will not be set aside on review *unless* the reviewing court is strongly persuaded that the sentence imposed after revocation of probation was *in fact* imposed as a penalty for the conduct which was the basis of revocation, and *not* for the original offense.' " (Emphases in original.) *People v. Vilces*, 186 Ill. App. 3d 983, 986 (1989) (quoting *Young*, 138 Ill. App. 3d at 142).

¶ 17 The record does not suggest that defendant's sentence was a punishment for his conduct on probation. The court, over the State's strongly voiced objection, initially sentenced defendant

to TASC probation. Such a disposition presupposes the court's concluding that the defendant is likely to be rehabilitated through treatment for substance abuse. See 20 ILCS 301/40-10 (West 2014) (setting conditions for TASC-type probation). By the second sentencing hearing, the court discounted defendant's declarations of willingness to reform:

> "He talks a good game when he comes up here on the stand and when he is having the hearing in aggravation and mitigation he sounds very sincere and he, you know, I believed him a number of times. That sooner or later grows old."

This disillusionment was reasonable based on the record. The court sentenced defendant to five years' TASC probation; defendant moved away after less than a year without notifying the probation department and without having completed any of the required treatment. The court could reasonably conclude that defendant's unwillingness to so much as start to comply with the terms of his probation made his rehabilitative potential low. Further, the court's conclusion that defendant's behavior was "escalating" was reasonable. Defendant's convictions before the instant one were, except for an Iowa conviction of unlawful use of a credit card, all of misdemeanor drug offenses or traffic offenses. The instant conviction was an escalation in that defendant walked into a private residence to take property. The conviction that triggered the probation revocation, a concealed-weapons offense, was another turn toward offenses with a high risk of violence.

¶ 18 Because the court did not improperly punish defendant for his probation violation as such, we must address defendant's claim that the court otherwise abused its discretion in giving a sentence one year less than the maximum (see 730 ILCS 5/5-4.5-40(a) (West 2014)). Defendant argues specifically that the court gave insufficient weight to the lack of violence or threat of

force associated with the offense and to the relevant mitigating factors. We hold that no abuse occurred.

¶ 19 We disagree with defendant's characterization of the offense as "relatively minor." Defendant was convicted of a class 3 felony. While defendant's plea of guilty was to a nonviolent offense, the trial court must "consider the evidence, if any, received upon the trial" or upon a plea of guilty. 730 ILCS 5/5-4-1(a)(1) (West 2014) (sentencing hearing). Defendant concedes that the evidence showed that he "presumably used a hidden key to enter the apartment of his upstairs neighbor, Dayna Lloyd." The trial court was required to consider this evidence while imposing defendant's sentence.

¶ 20 The remaining part of defendant's argument is essentially a claim that the court misweighed the sentencing factors. But we cannot reweigh the factors in aggravation and mitigation. See *People v. Busse*, 2016 IL App (1st) 142941, ¶ 20. Our review of sentences that fall within the statutory range requires us to uphold such sentences unless they constitute an abuse of the trial court's discretion. See *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). As a general matter, we may not reduce a sentence that is within the statutory range "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. Horta*, 2016 IL App (2d) 140714, ¶ 40), with the "seriousness of the offense [being] the most important sentencing factor" (*People v. Watt*, 2013 IL App (2d) 120183, ¶ 50). We see no such abuse of discretion here. To be sure, a sentence can constitute an abuse of discretion if the trial court ignored relevant mitigating factors or considered improper factors in aggravation. *People v. Roberts*, 338 Ill. App. 3d 245, 251 (2003). We have already considered and dismissed the claim that the court considered an improper factor in aggravation. We further hold that the record does not show that the court ignored a relevant mitigating factor.

" '[I]f mitigating evidence is presented at the sentencing hearing, [a reviewing] court presumes that the trial court took that evidence into consideration, absent some contrary evidence.' " *Pina*, 2019 IL App (4th) 170614, ¶ 19 (quoting *People v. Shaw*, 351 Ill. App. 3d 1087, 1093 (2004)). Here, the offense was, as we discussed, serious for its kind. Defendant's record might have suggested some rehabilitative potential, but as the court suggested when it said that defendant "talk[ed] a good game," defendant showed no willingness to work toward his rehabilitation; the court thus could reasonably deem that defendant had little rehabilitative potential. As the record fails to show any abuse of discretion, we affirm defendant's sentence.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we affirm defendant's sentence.

¶ 23 Affirmed.