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2019 IL App (3d) 170178-U

Order filed April 12, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-17-0178
)	Circuit No. 12-CF-1523
GLENN SCHNEIDEWIND,)	
Defendant-Appellant.)	Honorable Daniel Kennedy, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in sentencing defendant to seven years' imprisonment.

¶ 2 Defendant, Glenn Schneidewind, appeals his conviction and sentence. He contends that the circuit court abused its discretion in sentencing him to seven years' imprisonment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant entered a blind plea of guilty to a reduced charge of theft by deception (720 ILCS 5/16-1(a)(2)(A) (West 2010)). The State presented the factual basis, stating that defendant had been hired by Bill Jacobs Chevrolet to install equipment onto police vehicles. Defendant submitted false invoices on a random basis for work that he did not actually perform. The amount taken was determined to be approximately \$436,821.82.

¶ 5 At the plea hearing, the circuit court informed defendant that the sentencing range was three to seven years' imprisonment. The court accepted defendant's guilty plea. The court ordered a presentence investigation report (PSI) and continued the matter several times for sentencing.

¶ 6 The PSI showed that in 1999 defendant was convicted for the offense of theft by deception and sentenced to probation. Defendant's probation was revoked in 2004 and defendant was sentenced to two years' imprisonment. Cynthia Thrall, a representative of Bill Jacobs Chevrolet, was interviewed for the PSI. Thrall confirmed that the amount stolen by defendant was \$436,821.82. The dealership and defendant reached an agreement for defendant to pay restitution for half the amount of the money defendant stole. Defendant had not repaid any of the money.

¶ 7 At the sentencing hearing, the State detailed the facts surrounding defendant's prior conviction for theft by deception. While working for a liquor store, defendant stole money from the store in the amount of \$8600. Although he was originally put on probation for the offense, the probation was revoked when defendant failed to appear in court and repay the amount owed. The State argued that defendant should not be placed on probation, and that the court should sentence him to a term of imprisonment.

¶ 8 In response, defense counsel argued that defendant’s probation was revoked because he was “young” and could not afford to pay the amount due, so defendant decided not to appear in court. Counsel noted that defendant’s daughter had accrued medical bills and the family depended on defendant’s income. Counsel asked for the court to place defendant on probation.

¶ 9 Defendant also made a statement in allocution.

¶ 10 Following the parties arguments in mitigation and aggravation, the court orally stated that it would impose a three-year prison sentence. However, defense counsel asked the court if defendant could begin serving his sentence the following week. The court allowed the request, but decided that it would not impose the three-year sentence. Instead, it stated that it would vacate the sentence, take the matter under advisement, and continue the sentencing hearing. The court then stated, “[i]f [defendant] doesn’t show up on Wednesday, he’s going to look at 7 years. Okay?” Counsel stated, “[t]hat’s fine [Y]our Honor.”

¶ 11 At the next court date, defendant failed to appear. Defense counsel explained that defendant was absent because he had been in a car accident. The judge issued a warrant for defendant’s arrest.

¶ 12 Nearly one year after the above hearing, defendant appeared in court for sentencing. The parties agreed to have an updated PSI prepared. The updated PSI showed that defendant had failed to make any payments for the restitution he owed to Bill Jacobs Chevrolet. The State asked the court to impose a sentence it deemed appropriate. Defense counsel explained that defendant’s failure to appear at the original sentencing hearing was due to the fact that defendant had lost his home, and that his family was struggling financially.

¶ 13 Ultimately, the court sentenced defendant to seven years’ imprisonment. The court noted that defendant had failed to make any restitution payments to Bill Jacobs Chevrolet, even though

defendant had more than a year to make payments. The court also found that defendant had his probation revoked in the prior case for the same reason (failing to pay restitution).

¶ 14 Next, defendant filed a motion to reconsider his sentence. Defendant’s motion argued that the court abused its discretion in imposing a seven-year sentence when it originally stated that it would impose a three-year sentence. In other words, defendant argued that his failure to appear at his sentencing hearing should not have subjected him to a four-year increase in his sentence.

¶ 15 At the hearing on defendant’s motion, the court stated that it found no mitigating factors existed. The court also emphasized that defendant failed to make any payments toward restitution. The court denied defendant’s motion.

¶ 16 **II. ANALYSIS**

¶ 17 Defendant contends the circuit court abused its discretion in imposing a seven-year sentence. On review, we give “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. “[T]he reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently.” *People v. Stacey*, 193 Ill. 2d 203, 209 (2000).

¶ 18 Where a sentence is within the statutory limits, the sentence should not be disturbed on review absent an abuse of discretion. *People v. Vasquez*, 2012 IL App (2d) 101132, ¶ 68. “An abuse of discretion will be found where ‘the sentence is “greatly at variance with the spirit and purpose of the law[] or manifestly disproportionate to the nature of the offense.” ’ ” *Snyder*,

2011 IL 111382, ¶ 36 (quoting *People v. Alexander*, 239 Ill. 2d 205, 212 (2010), quoting *Stacey*, 193 Ill. 2d at 210).

¶ 19 Here, defendant pled guilty to the offense of theft by deception. The sentencing range for this conviction was between three and seven years' imprisonment. 730 ILCS 5/5-4.5-35(a) (West 2010). Defendant's seven-year sentence is within the applicable statutory range and, therefore, presumptively valid. See *People v. Busse*, 2016 IL App (1st) 142941, ¶ 27 (sentence within statutory range presumptively valid).

¶ 20 At the sentencing hearing, the court considered the PSI, defendant's statement in allocution, counsel's arguments, and the aggravating and mitigating factors. The aggravating factors included defendant's prior criminal history, which included a prior conviction for committing the same offense. The court also emphasized the amount stolen and the unlikelihood that defendant would repay the restitution he owed to Bill Jacobs Chevrolet. The court noted that defendant had made no restitution payments despite having more than a year to make such payments. Additionally, the court also emphasized defendant's failure to appear at his continued sentencing hearing, despite the court's warning that his failure to appear would result in an increased sentence. Given these aggravating factors, we cannot say that the sentence of seven years' imprisonment "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).

¶ 21 In reaching this conclusion, we reject defendant's argument that the court abused its discretion by imposing the maximum term of imprisonment because it originally indicated that it would impose a three-year sentence. According to defendant, it was an abuse of discretion to impose the greater sentence based solely on defendant's failure to appear at his continued

sentencing hearing. In essence, defendant argues that the court gave great weight to this aggravating factor. We construe defendant's argument as an invitation to reweigh the sentencing factors, which we are prohibited from doing. See *id.*

¶ 22 The court never imposed the three-year sentence and it was not bound to its original statement. In addition, the court may properly consider defendant's failure to appear at sentencing when determining the proper sentence. See *People v. Sole*, 357 Ill. App. 3d 988, 994 (2005). When the court allowed defendant's request to delay serving his sentence, the court specifically admonished defendant that he would receive a greater term of imprisonment if defendant failed to appear. Defendant did not appear. The court did not abuse its discretion in imposing the sentence it specifically told defendant that he would receive for failing to appear. Moreover, defendant's failure to appear at the continued sentencing hearing is not the only factor the court considered at sentencing. In addition to the factors discussed above (*supra* ¶ 20), the court gave significant weight to defendant's failure to pay restitution for his prior conviction, and defendant's failure to begin making restitution payments for over a year in the instant case. We find no abuse of discretion.

¶ 23 III. CONCLUSION

¶ 24 The judgment of the circuit court of Will County is affirmed.

¶ 25 Affirmed.