2019 IL App (4th) 170161-U

NO. 4-17-0161

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 17, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
EMANUEL L. WILLIAMS,	)	No. 15CF414
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Holder White and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion by resentencing defendant to 76 months in prison for aggravated criminal sexual abuse.

¶ 2 In August 2015, defendant, Emanuel L. Williams, pleaded guilty to one count of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(a)(6) (West 2014)), a Class 2 felony. Pursuant to a negotiated plea agreement, the court sentenced him to 180 days in the county jail, 48 months' probation, and imposed various probation conditions. In November 2016, the State filed a petition to revoke defendant's probation on the grounds he failed to (1) consistently report to court services as directed and (2) attend court-ordered sex offender treatment. Defendant stipulated to the allegations in the State's petition at the December 2016 revocation hearing. At the January 2017 sentencing hearing, the court resentenced defendant to 76 months in prison. In February 2017, the court denied defendant's motion to reconsider sentence.

¶ 3 Defendant appeals, arguing the trial court abused its discretion in resentencing him to 76 months in prison because the sentence is (1) excessive and (2) improperly punishes him for his conduct while on probation. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In March and April of 2015, the State charged defendant by information with one count of unlawful restraint (720 ILCS 5/10-3 (West 2014)), a Class 4 felony (count I); one count of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)), a Class A misdemeanor (count II); one count of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2014)), a Class 1 felony (count III); and one count of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(3) (West 2014)), a Class X felony (count IV).

¶ 6 On August 14, 2015, the State filed an additional count, charging defendant with aggravated criminal sexual abuse (720 ILCS 5/11-1.60(a)(6) (West 2014)), a Class 2 felony (count V). On August 20, 2015, defendant and the State entered into a plea agreement. In exchange for defendant's plea of guilty to aggravated criminal sexual abuse, the State dismissed the remaining charges and defendant received a sentence of 180 days in the county jail and 48 months' probation. Defendant additionally agreed to pay various fines and fees, not to contact the victim, obtain an evaluation for sex offender treatment, complete any recommended treatment, and comply with the requirements of the Sex Offender Registration Act (SORA) (730 ILCS 150/1 to 150/12 (West 2014)).

¶ 7 The State presented the following factual basis for the plea:

> "Your Honor, the victim and the defendant were in a dating relationship. On March 24, 2015, the defendant and the victim were together at the defendant's apartment when he became angry. He began throwing things, refused to let the

victim out of the apartment. He started hitting her and threatening her life. He then demanded sex, and she complied because she was scared for her life and thought that he would calm down if she complied and then she could leave."

The trial court accepted defendant's plea as knowing and voluntary. The court sentenced defendant to 180 days in the Champaign County Correctional Center followed by 48 months' probation. The court additionally ordered defendant not to have contact with the victim, to obtain a sex offender evaluation, and to comply with the requirements of SORA.

¶ 8 In December 2016, the State filed an amended petition to revoke defendant's probation, alleging defendant failed to (1) report to Champaign County Court Services since June 2016 and (2) comply with recommended treatment and/or counseling as ordered. At a December 2016 hearing, defendant stipulated to the petition. In exchange for his admission, the State agreed it would dismiss a pending charge against defendant for telephone harassment.

¶ 9 In January 2017, the case proceeded to a resentencing hearing. Shannon Barrett, an officer with the Urbana Police Department, testified in December 2016, she investigated some harassing text messages received by Michelle Becker. Becker stated she was in a dating relationship with defendant and showed Officer Barrett a series of text messages she received from him. Officer Barrett observed the messages were of a threatening nature, including "you're dead, b***h," "f***king b***h, I'll crush your skull," and "your b***h a** will regret f***king with my s**t, b***h. You gone." Becker stated she believed defendant was outside her residence while sending the threatening messages, which concerned her because her 11-year-old daughter was at home sick from school while she was at work. Upon responding to Becker's call, the police located defendant at Becker's residence, and defendant admitted he sent the messages. He claimed the messages were a joke. On cross-examination, Officer Barrett stated she was not

aware Becker later filed an affidavit stating she knew the messages were a joke and called the police "in spite."

¶ 10 The State recommended a prison sentence, noting defendant's criminal history, a need to protect the public, and to deter defendant from future criminal activity. In mitigation, defense counsel argued defendant had admitted to violating his probation and had made some efforts to comply with his probation and reporting requirements. Counsel emphasized defendant's poor health and transportation issues. Finally, counsel argued defendant did not "have a history of beating women" and asked the court to give defendant another opportunity to comply with his probation. In his statement of allocution, defendant stated he failed to attend his court-ordered sex offender treatment because he could not afford the $400 per month for classes as he was unemployed. He emphasized his efforts to gain employment and desire to "put [his] life back together." Regarding the text messages leading to the telephone harassment charge, he stated they were a "bad joke" and there was "no real threat." Finally, he requested the court to resentence him to probation.

¶ 11 In sentencing defendant, the court stated,

> "Well I've considered the report prepared by Court Services. I've considered the comments of counsel as well as the comments of the Defendant. I've considered the testimony presented in aggravation. I've considered the letters and affidavit submitted in mitigation. I've considered the statutory factors in aggravation as well as the statutory factors in mitigation.
>
> There aren't any statutory mitigation factors that apply to this defendant to this type of an offense. There is some mitigation in this record.

He's 41 years of age. He has the health issues that have been set forth in both the pre-sentence report and in his comments. He pled guilty and admitted to failing to report to Court Services. These are all non-statutory mitigation factors. He has been able to in some instances obtain and maintain employment again since—up—up until 2011 and it's very likely that his employment history is affected by his health issues.

The two statutory factors in aggravation. He has the prior criminal history. This is his fifth criminal conviction. He has one juvenile adjudication, and he has a conviction in 1994 for assault. There's a conviction for possession of drug paraphernalia in '96. Again those are misdemeanors. He has an obstruction of justice conviction in '97, telephone harassment in '04 and then this case so he does have a criminal history. That's a statutory factor in aggravation.

* * *

The other factor is would a further sentence of probation or conditional discharge deprecate the seriousness of his conduct and be inconsistent with the ends of justice.

When I look to the history, character and condition of the Defendant again since 2011 he's—his employment history is sporadic but he has brought four children into this world, four different women, and he's $35,000 plus in arrearage so that doesn't look like he's supported any of his children. He has in his various probationary sentences, community-based sentences, failure to appear on numerous occasions.

> So [defendant] has his history, character and condition is one that would indicate a further sentence of probation or conditional discharge would deprecate the seriousness of his conduct, would be inconsistent with the ends of justice, wouldn't be the appropriate deterrent factor.
>
> As for the text messages in December, he meant them. He sits here and tells me it's a joke. The victim of that sends me an affidavit telling me it's a joke. You look at those text messages and you hear what was said, it wasn't a joke. [Defendant] was capable of sending threatening text messages in December notwithstanding his health issues. Again a sentence of probation or conditional discharge would deprecate the seriousness of his conduct, be inconsistent with the ends of justice, wouldn't be the appropriate deterrent factor."

Thereafter, the court resentenced defendant to 76 months in prison. In January 2017, defense counsel filed a motion to reconsider the sentence, which the trial court denied.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues the trial court abused its discretion in resentencing him to 76 months in prison because the sentence is (1) excessive and (2) punishes him for his conduct while on probation. We disagree and affirm.

¶ 15 A. Standard of Review

¶ 16 We note defendant forfeited these issues because he failed to make any contemporaneous objection to his sentence and failed to allege in his motion to reconsider the sentence the argument the court improperly punished him for his conduct while on probation

rather than for the underlying offense. See *People v. Reed*, 177 Ill. 2d 389, 390, 686 N.E.2d 584, 585 (1997). Defendant requests we review this issue for plain error.

¶ 17 In order to preserve a sentencing error for review on appeal, a defendant must (1) object to the error in the trial court and (2) raise the issue in a written motion to reconsider. *People v. Sharp*, 2015 IL App (1st) 130438, ¶ 132, 26 N.E.3d 460. Although the plain-error rule allows a defendant to circumvent the waiver doctrine if he can demonstrate his excessive sentence amounted to plain error (*People v. Smith,* 321 Ill. App. 3d 523, 534, 747 N.E.2d 1081, 1092 (2001)), we must first determine whether error occurred. *People v. Sims*, 192 Ill. 2d 592, 621, 736 N.E.2d 1048, 1064 (2000).

¶ 18 The trial court has great discretion in issuing a sentence within the proper statutory limits, as it is in the best position to weigh the evidence and assess the credibility of the witnesses. *People v. Haley*, 2011 IL App (1st) 093585, ¶ 63, 960 N.E.2d 670. The court's sentencing determination shall be based "on the particular circumstances of each case, considering such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Fern,* 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999). The reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *Id.* We review the trial court's sentencing determination for an abuse of discretion. *People v. O'Neal*, 125 Ill. 2d 291, 297-98, 531 N.E.2d 366, 369 (1988).

¶ 19 B. Excessive Sentence

¶ 20 Defendant first argues his sentence is excessive because the trial court failed to consider certain mitigating factors. "When a sentence of probation has been revoked, the trial court 'may impose any other sentence that was available *** at the time of the initial

sentencing." *People v. Somers*, 2012 IL App (4th) 110180, ¶ 21, 970 N.E.2d 606 (quoting 730 ILCS 5/5-6-4(e) (West 2008)). Furthermore, "[a] sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *Fern*, 189 Ill. 2d at 54. The trial court is presumed to have considered all relevant evidence in mitigation presented at sentencing. *Somers*, 2012 IL App (4th) 110180, ¶ 24.

¶ 21 Here, defendant does not dispute his sentence to 76 months in prison falls within the permissible statutory range, contending only the court failed to give adequate weight to the factors in mitigation. Defendant argues he was a "loving father," a "productive citizen," and he could not afford his sex offender treatment. He further argues his prior criminal history consisted only of misdemeanors and traffic offenses and there was "nothing in his background or in the record to justify a jump from probation to a prison sentence one year short of the maximum."

¶ 22 We find the record shows the trial court made its sentencing decision after considering the appropriate sentencing factors. The court stated it considered in mitigation defendant's health, his admission to the probation violations, and he has at times maintained steady employment. It also stated it considered Becker's affidavit and letters from defendant's family members. However, the court considered in aggravation this was defendant's fifth criminal conviction, and a sentence to prison was necessary to deter defendant given the violent nature of the offense. The court also noted defendant failed to support any of his four children, his employment history was sporadic, and he had failed to appear while serving community-based sentences. It is not our prerogative to reweigh these factors and decide the sentence is excessive. The record shows the trial court considered proper aggravating and mitigating factors

and imposed a term within the statutory range. Under these circumstances, we find no abuse of discretion and no plain error.

¶ 23 C. Conduct While on Probation

¶ 24 Defendant next argues the court abused its discretion in sentencing him to 76 months in prison because it improperly punished him for his conduct while on probation rather than the underlying offense. We disagree.

¶ 25 "[W]hen resentencing after a revocation of probation, trial courts are entitled to consider the defendant's conduct on probation." *People v. Rathbone*, 345 Ill. App. 3d 305, 312, 802 N.E.2d 333, 339 (2003). Therefore, the trial court's consideration of defendant's charge of telephone harassment in this case was appropriate and not an "improper factor" as suggested by defendant on appeal. Additionally, this court found in *Rathbone* the defendant's assertion his conduct on probation was an improper sentencing factor was more accurately characterized as a claim "the trial court gave a proper factor undue weight." *Id.* We held "[s]uch a claim addresses the trial court's exercise of its discretion, not the fairness of the proceedings or the integrity of the judicial process" and, therefore, "d[id] not warrant plain error review." *Id.* To the extent defendant in this case argues the court gave undue weight to his conduct on probation, we also find plain-error review unwarranted.

¶ 26 Finding no error, we need not consider whether the evidence was closely balanced or if defendant was denied a fair sentencing hearing. Accordingly, we affirm defendant's conviction and sentence.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. See 55 ILCS 5/4-2002(a) (West 2016).

¶ 29 Affirmed.