

NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2021 IL App (4th) 190485-U
NO. 4-19-0485
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
March 4, 2021
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
KALEB C. McLAIN,) No. 17CF592
Defendant-Appellant.)
) Honorable
) Heidi N. Ladd,
) Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court’s resentencing of defendant imposed after the trial court revoked his probation.

¶ 2 In May 2017, the State charged defendant, Kaleb C. McLain, with four counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2016)), alleging that he had discharged a firearm in the direction of a parked vehicle in which four people were sitting, shattering the vehicle’s rear window. In September 2017, defendant entered a partially negotiated guilty plea to one count in exchange for the State’s agreement to dismiss the other three counts. The agreement further provided that the State would agree to recommend no more than seven years in prison.

¶ 3 In October 2017, the trial court conducted defendant’s sentencing hearing and sentenced him to 48 months of probation subject to various conditions.

¶ 4 In February 2019, the State filed a petition to revoke defendant’s probation. After defendant stipulated to that petition, the trial court in May 2019 conducted a resentencing hearing and sentenced defendant to nine years in prison.

¶ 5 Defendant appeals, arguing that the trial court abused its discretion because, in resentencing defendant, the court (1) failed to properly consider his mitigating evidence and (2) placed excessive weight on an offense that served as a basis for the revocation. We disagree and affirm.

¶ 6 I. BACKGROUND

¶ 7 A. Defendant’s Initial Sentencing

¶ 8 In October 2017, at defendant’s initial sentencing hearing, the trial court stated it had received and considered the presentence investigation report (PSI) the probation office prepared regarding defendant, along with its accompanying letters in mitigation. The court then heard mitigating evidence from defendant’s grandmother and defendant speaking in allocution. The State recommended a sentence of seven years in prison, and defense counsel asked the court to impose a sentence of probation.

¶ 9 The trial court then sentenced defendant to 48 months of probation subject to various conditions and ordered that he serve 150 days in jail with credit for 150 days served. In imposing that sentence, the trial court explained, in part, as follows:

“I will give you an extraordinary opportunity for probation, [defendant]. If you blow it, if you use cannabis, if you miss an appointment, if you don’t do what you need to do, then the State will be right there with a petition to revoke, and you will risk losing everything. I believe you present enough potential here that sending you to the Department of Corrections would simply undo everything that you have that

you can accomplish in your life. If I'm wrong about that then it will be on you and what you throw away in your life. So, I do believe that having regard to all of the circumstances here, this is not conduct that will be repeated. That's not a decision the Court makes lightly, and under these circumstances, this is very unusual. I will place [defendant] on 48 months of probation."

¶ 10 B. The Petition To Revoke Defendant's Probation

¶ 11 In February 2019, the State filed a petition to revoke probation, alleging that defendant violated the conditions of his probation by (1) failing to report to the probation office for the months of November and December 2018; (2) being convicted of aggravated assault with a deadly weapon in Vermilion County; (3) testing positive for cannabis in October 2018 and signing an admission of use form in which he admitted to eating cannabis-infused brownies and consuming alcohol in January 2019; and (4) failing to complete substance abuse treatment and failing to obtain updated required substance abuse evaluations.

¶ 12 In April 2019, defendant stipulated to the allegations contained in the petition to revoke his probation, and the matter was set for an open sentencing hearing. The trial court then ordered the preparation of another PSI in advance of the resentencing hearing.

¶ 13 In May 2019, the trial court conducted the resentencing hearing, considered the new PSI that had been prepared, and heard testimony in mitigation from defendant. The State recommended a nine-year prison sentence for defendant. Defense counsel, noting that defendant was only 22 years old and his only felony conviction was in this case, asked the trial court to reimpose a sentence of probation.

¶ 14 The trial court then sentenced defendant to nine years in prison, explaining in part the reasons for its doing so, as follows:

“I’ve considered the presentence report, the document tendered in mitigation, the testimony of the defendant, all relevant statutory factors, including, but not limited to, the nature and circumstances of the offense, the evidence and circumstances of the offense, the evidence and applicable factors in aggravation and mitigation, the character, history and rehabilitative potential of the defendant, his statement in allocution, and the arguments and recommendations of counsel.

[Defendant] pled guilty on September 5th of 2017, and the State had a cap of seven years. The matter proceeded to a sentencing on October 13th of 2017. *** [A]nd the court determined, given his age and the factors in mitigation, to give him a chance at 48 months of probation. [Defendant] did not use that. *** He has 11 traffic offenses, this offense, and the January 2019 aggravated assault involving a firearm from Vermilion County, and he received 12 months of conditional discharge, which he is still on. He has fathered one child. That is the child that was born to the mother who is the subject and the victim of the aggravated assault, and he indicates he’s trying for full custody.

* * *

His performance on probation could be characterized charitably as terrible.

* * *

I reject his testimony here, which appears to be the same litany of excuses and convoluted reasons for why he doesn’t follow through with what he should.

* * *

This was a very serious offense at the time. And this was an individual who shot at a car, and the court had noted in the original sentencing as well, it was

extremely dangerous behavior. *** [T]he court warned [defendant] that he should use the opportunity that he was being given wisely because it was so serious.

* * *

This court did take note of the fact [defendant] was very young. There was substantial evidence in mitigation, at least potential for rehabilitation, and it's always the court's preference to give someone that ability to build on it, particularly at a young age. However, [defendant] did not. What we now know is that he armed himself with another weapon, as the State has pointed out, he had absolutely no right to even hold in his hand. Not only did he possess it, but then he threatened the mother of his child with it ***. That highlights the risk to the public when [defendant] is angry and doesn't get what he wants. That also shines a light on the fact that [defendant] did not take seriously the opportunity he was given. This court warned you, [defendant], that this was an extraordinary opportunity and you should use it wisely[, but] you did not use it at all other than to commit another offense with the gun. That was not the goal of the court. I have an absolute commitment to protecting the public and that's a paramount consideration now given the fact that these are the choices that [defendant] chose to make after being convicted of such an egregious offense and given this opportunity, and deterrence is certainly an issue for the court and enforcement of its orders, but primarily to protect the public.

The State had asked for seven years at the time [of the initial sentencing hearing]. Given the fact that [defendant] has conducted himself the way he has, I believe the recommendation for nine years is appropriate. Having regard to the nature and circumstance of the offense, and to history, character and rehabilitative

potential of the defendant, at this time we've exhausted all of our opportunities and resources, and [defendant] has shown us that that was of no avail. A community based sentence would deprecate the seriousness of the defendant's conduct, be inconsistent with the ends of justice, and imprisonment is clearly necessary for the protection of the public.”

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant appeals, arguing that the trial court abused its discretion because, in resentencing defendant, the court (1) failed to properly consider his mitigating evidence and (2) placed excessive weight on an offense that served as a basis for the revocation. We disagree and affirm.

¶ 18 A. Standard of Review

¶ 19 In *People v. Jones*, 168 Ill. 2d 367, 373, 669 N.E.2d 1306, 1308 (1995), the Illinois Supreme Court wrote that “[i]t has long been established that the trial court has broad discretionary powers in choosing the appropriate sentence a defendant should receive. It has been emphasized that the trial court is in a superior position to assess the credibility of the witnesses and to weigh the evidence presented at the sentencing hearing.” The supreme court also added the following: “Where the sentence chosen by the trial court is within the statutory range permissible for the pertinent criminal offense for which the defendant has been tried and charged, a reviewing court has the power to disturb this sentence only if the trial court abused its discretion in the sentence it imposed.” *Id.* at 373-74.

¶ 20 B. Sentencing After Revocation of Probation

¶ 21 “Upon revocation of a defendant's probation, the trial court resentences the

defendant to a disposition that would have been appropriate for the original offense.” (Internal quotation marks omitted.) *People v. Pina*, 2019 IL App (4th) 170614, ¶ 30, 143 N.E.3d 794. Although the sentence imposed after revocation of probation may not constitute punishment for conduct that was the basis for revocation, the defendant’s conduct on probation is to be considered by the trial court in assessing the defendant’s rehabilitative potential. *People v. Turner*, 233 Ill. App. 3d 449, 456, 599 N.E.2d 104, 110 (1992). This court in *Turner* added the following: “[A] defendant whose conduct on probation reflects poorly on his rehabilitative potential may be given a sentence more severe than the one which the court initially imposed.” *Id.* at 456-57.

¶ 22 Defendants often argue on appeal, as defendant has in this case, that a trial court has improperly punished that defendant for conduct occurring while he was on probation when the court resentenced him after he violated a condition of probation. And, occasionally, an appellate court will find such a claim persuasive on the particular facts of the case. See *People v. Varghese*, 391 Ill. App. 3d 866, 876, 909 N.E.2d 939, 948 (2009). However, 36 years ago, this court provided guidance for how appellate courts should address such claims. In *People v. Young*, 138 Ill. App. 3d 130, 142, 485 N.E.2d 443, 450 (1985), this court wrote the following:

“We conclude, and now state explicitly as the approach upon review of such questions, 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.)

¶ 23 In *People v. Miller*, 2021 IL App (2d) 190093, ¶ 19, the Second District cited *Young* approvingly and rejected the defendant’s reliance in that case, as defendant here relies “primarily

on our holdings in [*Varghese*], and *People v. Vilces*, 186 Ill. App. 3d 983[, 542 N.E.2d 1269] (1989).” The Second District in *Miller* added the following: “We pointed out [in *Vilces*] that it was ‘[p]articularly telling’ where the trial court had found that a further sentence of probation would deprecate the seriousness of the offense.” *Id.* ¶ 24. We note that the Second District in *Vilces* also wrote the following: “[W]hen the court’s remarks are read in their entirety, it becomes clear that the court was sentencing defendant for the underlying burglary conviction and only looked at his subsequent conduct and the severity of those offenses to assess defendant’s rehabilitative potential.” *Vilces*, 186 Ill. App. 3d at 987. The Second District in *Miller* also rejected the defendant’s claim in that case that “because the trial court here did not specifically mention the original offense in imposing sentence, we cannot say that the resentence was for the original offense. We disagree. Defendant’s mechanical counting of ‘mentions’ is beside the point. What matters is that ‘the record *** clearly demonstrate[s] that the trial court considered [the] defendant’s original offense when fashioning his sentence.’ ” *Id.* ¶ 27 (quoting *Varghese*, 391 Ill. App. 3d at 877).

¶ 24 Citing *Young*, this court in *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 98, 129 N.E.3d 755, wrote the following:

“Subsequent conduct on probation can be considered by the trial court because ‘[c]onduct which leads to revocation of probation has been regarded as a “breach” of the court’s trust, or as otherwise causing the court to lose confidence in the defendant’s rehabilitative potential.’ [Citation.] In determining whether the trial court improperly imposed a sentence, the appellate court reviews the record as a whole, not isolated statements.”

¶ 25

C. This Case

¶ 26 Defendant argues that the trial court, in resentencing defendant following the revocation of his probation, (1) failed to properly consider his mitigating evidence and (2) placed excessive weight on an offense that served as the basis for the revocation. Above, we quoted at length from the trial court's remarks at the resentencing hearing because those remarks demonstrate defendant's arguments are clearly baseless. Indeed, we view the trial court's explanation for the sentence it imposed after revoking defendant's probation to be a model of both clarity and analysis.

¶ 27 Further, we reiterate that the analysis in *Young* remains the criteria with which to analyze a defendant's claim that the sentence imposed after revocation of probation was imposed as a penalty for conduct that was the basis for revocation. Defendant's claim in this case utterly fails to meet the criteria set forth in the *Young* analysis.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the trial court's judgment.

¶ 30 Affirmed.