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2012 IL App (3d) 120176-U

Order filed December 10, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF) Appeal from the Circuit Court
ILLINOIS,) of the 10th Judicial Circuit,
) Peoria County, Illinois,
Plaintiff-Appellee,)
) Appeal No. 3-12-0176
v.) Circuit No. 09-CF-1324
)
ANTHONY L. MOORE,) Honorable
) Timothy M. Lucas,
Defendant-Appellant.) Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's 16-year sentence for aggravated battery with a firearm was not an abuse of discretion.
- ¶ 2 After entering a partially negotiated plea of guilty, defendant, Anthony L. Moore, was convicted of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)) and sentenced to 16 years' imprisonment. Defendant appeals, arguing that his sentence was excessive in light of his youth, background, rehabilitative potential, and limited involvement in the offense. We affirm.

¶ 3

FACTS

¶ 4 On December 8, 2009, defendant, along with two codefendants, Tonia Harris and Charles Murray, were charged with armed robbery (720 ILCS 5/18-2(a)(2) (West 2008)), aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)), and attempted armed robbery (720 ILCS 5/8-4(a), 18-2(a)(2) (West 2008)). On January 20, 2011, defendant entered into a partially negotiated plea of guilty to aggravated battery with a firearm in exchange for dismissal of the remaining charges.

¶ 5 The factual basis underlying defendant's guilty plea indicated that on November 28, 2009, defendant went to Murray and Harris's house. While there, Harris and Murray called the victim, Ricardo Morris, over to the house to deliver marijuana so they could rob him. Kayla Vargas drove Morris to Harris's house. When Morris entered the house, two black males with partially covered faces and handguns, later identified as defendant and Murray, approached Vargas's car. One male pointed his handgun at her and demanded her cellular telephone, which she handed over. Both males then walked toward the garage.

¶ 6 Thereafter, Morris exited the house from the back door, which led into the garage. Morris was approached by the two males. One male pointed a gun at Morris and demanded his money. Morris and the man got into a fight, and when Morris tried to run away he was shot by one of the males. The two males then fled the scene. Following this factual basis by the State, defendant admitted to accomplice liability in the commission of the offense, but denied personally shooting Morris.

¶ 7 The trial court accepted defendant's guilty plea, and a presentence investigation report (PSI) was ordered. The PSI showed that defendant had juvenile adjudications for resisting a

peace officer, possession of a stolen firearm, and residential burglary. Defendant received three years' probation for these offenses. The current offense was committed while defendant was on probation. The PSI also showed that defendant was 17 years old at the time of the offense. Defendant was a junior in high school, and his transcripts showed a marked improvement in his grades compared to his first two years. The PSI also included 11 letters of support from defendant's friends and family.

¶ 8 At the sentencing hearing, defendant presented the testimony of Vanessa Nelson in mitigation. Nelson, a witness to the offense, testified that on the day of the incident, she saw both defendant and Murray fighting with Morris. She then saw Murray shoot Morris twice. Nelson also heard defendant tell Murray "[c]ome on" in order to get Murray to stop shooting.

¶ 9 Defendant also called Mary Moore, defendant's grandmother and caretaker for most of his life. Mary testified that defendant was a "good kid" and not violent, but he did not think before he acted. On the day of the incident, Mary told defendant not to go to Harris's house, but he did not listen to her. After the incident, defendant expressed remorse for what he had done and explained that he did not want to be involved in the incident but felt pressured to participate.

¶ 10 Following the State's recommendation for a 21-year sentence, defendant made a statement in allocution, apologizing for his participation in the incident.

¶ 11 After hearing all the evidence and reviewing the PSI, the trial court sentenced defendant to 16 years' imprisonment. In making its determination, the court took into account that defendant was not the shooter. However, the court noted that the robbery was planned by all three parties, and defendant's participation included carrying a weapon and wearing a mask. The court also noted defendant's history of delinquency and determined that a sentence at the low end

of the range would diminish the seriousness of the offense.

¶ 12 Defendant's motion to withdraw his guilty plea and reconsider sentence was denied.

Defendant appeals.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant argues that the trial court abused its discretion by imposing a sentence of 16 years' imprisonment. Specifically, defendant contends that his sentence was excessive because the trial court did not adequately consider his youth, background, rehabilitative potential, and lack of involvement in the deadly nature of the instant offense.

¶ 15 The Illinois Constitution mandates that all penalties be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11. However, the determination and imposition of a sentence involves considerable judicial discretion, and we will not reverse a trial court's sentence unless we find that the court abused its discretion. *People v. Alexander*, 239 Ill. 2d 205 (2010). A trial court is in a far better position than an appellate court to fashion an appropriate sentence, based upon firsthand consideration of factors such as defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Streit*, 142 Ill. 2d 13 (1991). Therefore, we will not substitute our judgment for that of the trial court just because we may have balanced the sentencing factors differently. *Id.*

¶ 16 Here, defendant's 16-year sentence falls in the midrange for aggravated battery with a firearm, which has a sentencing range of 6 to 30 years' imprisonment. See 730 ILCS 5/5-4.5-25 (West 2008). A sentence that falls within the statutory range is not an abuse of discretion 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. Stacey*, 193 Ill. 2d 203 (2000).

¶ 17 In this case, we find that the trial court did not abuse its discretion in sentencing defendant within the statutory range. The record demonstrates that the court made its determination after considering the appropriate sentencing factors. Defendant argues that the trial court did not give proper weight to his youth, background, rehabilitative potential, and lack of involvement in the deadly nature of the instant offense. However, we cannot substitute our judgment for that of the trial court even if we might have weighed the mitigating evidence differently. See *Streit*, 142 Ill. 2d 13.

¶ 18 Moreover, all the factors that defendant raises on appeal were presented and considered by the court during sentencing. The court was also presented with evidence of defendant's delinquency, the seriousness of the offense, and defendant's participation in the offense. Thus, in light of these aggravating factors, we cannot say that the court abused its discretion when it weighed the factors and found a sentence of 16 years' imprisonment was appropriate. See *Alexander*, 239 Ill. 2d 205; *Stacey*, 193 Ill. 2d 203.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 21 Affirmed.