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2024 IL App (3d) 230095-U

Order filed February 2, 2024

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-23-0095
CHASE J. HUBERT,)	Circuit No. 17-CF-206
Defendant-Appellant.)	Honorable Kathy S. Bradshaw-Elliott, Judge, Presiding.

JUSTICE DAVENPORT delivered the judgment of the court.
Justices Hettel and Peterson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court did not abuse its discretion in sentencing defendant.
- ¶ 2 Defendant, Chase J. Hubert, appeals from his eight-year sentence for aggravated discharge of a firearm, arguing the circuit court abused its discretion in sentencing him where it did not consider mitigating evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 15, 2020, defendant entered an open plea to aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2), (b) (West 2020)), and the State dismissed a pending charge for attempted first degree murder. The factual basis provided that defendant fired a gun at a utility worker, Candace Boswell, who tried to intervene in a domestic dispute between defendant and his girlfriend, Marissa Hart. Upon defense counsel’s request, the court ordered an “intensive probation” evaluation for defendant.

¶ 5 Defendant’s presentence investigation report (PSI) indicated he was 21 years old and in a relationship with Hart at the time of the incident. At the time of sentencing, defendant and Hart were married and had a child together. Defendant dropped out of high school during his sophomore year and later received his general educational diploma (GED). In 2012, defendant completed a mental health evaluation following a domestic battery to his father. The evaluation identified defendant’s alcohol and drug abuse and diagnosed defendant with oppositional defiant disorder, cannabis abuse, and a mood disorder. The evaluation also noted defendant attended a behavioral school and argued with teachers, though defendant denied having issues at school. Family members reported several instances where defendant’s violent outbursts resulted in police intervention. Defendant completed substance abuse treatment in 2015, tested negative on drug tests during pretrial services, and stated he had been sober since 2017. Before April 2017, defendant smoked cannabis every day, drank alcohol on the weekends, used cocaine once a week, and occasionally consumed Xanax for recreational purposes. He received juvenile convictions for domestic battery and retail theft in 2012, a domestic battery conviction in 2013, and an adult conviction for domestic battery in 2014. Defendant was unsatisfactorily discharged from probation for each conviction. Additionally, defendant pled guilty on June 16, 2017, to unlawful possession of a controlled substance and served one year of imprisonment. The probation department

determined defendant met “the minimum acceptance criteria” required to participate in the intensive probation program.

¶ 6 On June 28, 2021, the court held a sentencing hearing. At the outset, the court addressed defendant’s two new charges for manufacturing and delivering fentanyl and cannabis. The court noted defendant’s PSI had already been completed and did not include defendant’s most recent offenses.

¶ 7 The State presented the victim impact statement from Boswell. Following the incident, Boswell lost her job, car, and home. Boswell also described dealing with “flashbacks, intrusive thoughts, nightmares, and intense distress.” This trauma affected her “ability to function in society and in the workplace.” The State argued defendant’s convictions for violent offenses in 2012, 2013, and 2014 made him a poor candidate for probation, where in each of the three prior probation sentences, the court discharged him unsatisfactorily. Moreover, defendant had shown he could not obey rules and follow the law, as evidenced by his most recent charges. The State asked the court to impose 12 years’ imprisonment.

¶ 8 Defense counsel presented character witness statements from defendant’s family, which indicated defendant was making positive improvements in his life, was remorseful, and defendant’s child would suffer without him. In allocution, defendant stated he was remorseful and “sorry for what happened” to “all the victims.” Defendant explained he “was just going through a lot of tragic times.” Counsel argued defendant performed well while on pretrial services for two years with a “very strict” probation officer. Counsel asked the court to impose a four-year term of intense probation.

¶ 9 In its ruling, the court explicitly considered defendant’s PSI. In doing so, the court noted defendant came from a “very good home,” “did well in school,” and “had a lot of friends.” The

court acknowledged defendant's history of drug use, stating defendant "was an addict. I don't know if he's still an addict. [Defendant's] been in jail a short period of time after committing the new offenses. I don't doubt that he was an addict." While the court agreed with counsel that defendant's PSI was better than many others, it found the nature of the case showed defendant was "a danger to society." The court attributed defendant's issues to his addiction, "bipolar" disorder, and "angry outbursts." The court did not "see *** a good chance at rehabilitation in this case," due to several failed attempts at probation, which resulted in defendant's unsuccessful discharge and a prison sentence. The court sentenced defendant to eight years' imprisonment.

¶ 10 Defendant filed a motion to "reduce sentence," which was denied. In doing so, the court indicated in sentencing defendant, it "looked at his complete record which included a prior record[,] defendant's adult domestic battery conviction, and prior probation revocations, and concluded defendant did not have "any good chance *** of rehabilitation." The court also noted defendant's history of addiction, "angry outbursts," and mental illness. Based on the foregoing reasons, the court explained defendant "was a danger to society." Defendant appeals.

¶ 11

II. ANALYSIS

¶ 12 On appeal, defendant argues the court abused its discretion in sentencing him where it failed to take into account the mitigating evidence presented and defendant's rehabilitative potential. The Illinois Constitution requires that "[a]ll penalties shall 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. The circuit court has wide latitude in sentencing a defendant to any term prescribed by statute, "[a]s long as the court does not consider incompetent evidence, improper aggravating factors, or ignore pertinent mitigating factors." *People v. Hernandez*, 204 Ill. App. 3d 732, 740 (1990). Relevant sentencing considerations include the

nature of the crime, the public's protection, deterrence, punishment, and the defendant's rehabilitative potential. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). The court

“is not required to detail precisely for the record the exact process by which [it] determined the penalty nor is [it] required to articulate [its] consideration of mitigating factors nor is [the court] required to make an express finding that defendant lacked rehabilitative potential. [Citation.] The seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors such as the lack of a prior record, and the statute does not mandate that the absence of aggravating factors requires the minimum sentence be imposed.” *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002).

¶ 13 A court shall consider in mitigation: (1) defendant's lack of prior delinquency and criminal conduct or that he has led a law-abiding life for a substantial period of time before the commission of the present crime; (2) whether defendant's criminal conduct was the result of circumstances unlikely to recur; (3) whether defendant is particularly likely to comply with the terms of a period of probation; and (4) if defendant was the parent of an infant whose well-being would be negatively affected by his absence. 730 ILCS 5/5-5-3.1(a)(7), (8), (10), (18) (West 2022). It is up to the circuit court “to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case.” *People v. Latona*, 184 Ill. 2d 260, 272 (1998). The court cannot ignore a pertinent mitigating factor (*People v. Burnette*, 325 Ill. App. 3d 792, 808-09 (2001)), although the weight given to each factor depends on the facts and circumstances of each case. *People v. Gross*, 265 Ill. App. 3d 74, 80 (1994). When mitigating evidence is before the circuit court, it is assumed that the court considered it, unless the record indicates otherwise. *People v. Burton*, 184 Ill. 2d 1, 34 (1998). It is not our duty on appeal to reweigh the factors involved in the circuit court's sentencing

decision. *People v. Coleman*, 166 Ill. 2d 247, 261-62 (1995). We review the circuit court's sentencing determination for an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). We will find an abuse of discretion only where the court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the court. *People v. Hall*, 195 Ill. 2d 1, 20 (2000). We will not disturb a sentence within the applicable sentencing range unless the circuit court abused its discretion. *Stacey*, 193 Ill. 2d at 209-10.

¶ 14 At the outset, we note the statutory sentencing range for a Class 1 felony aggravated discharge of a firearm is 4 to 15 years' imprisonment. See 730 ILCS 5/5-4.5-30(a) (West 2022). Defendant's eight-year prison sentence is well within the statutory range. Therefore, the sentence is presumptively valid, and defendant bears the burden to rebut this presumption. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 12.

¶ 15 Here, the record shows the court considered all the evidence before it, including the mitigating evidence presented by defendant. During the sentencing hearing, the court expressly considered defendant's PSI, which included mitigating evidence of defendant's two years of sobriety, familial support, becoming a father, defendant's relatively young age at the time of the offense, history of mental illness, behavioral issues, addiction to drugs and alcohol, completion of his GED, and satisfactory participation in pretrial services. Counsel also admitted statements from family members, which described defendant as a caring individual and father dealing with difficult life events. By acknowledging the aggravating evidence of defendant's prior convictions in 2012, 2013, 2014, 2017, and 2022, unsuccessful terminations from probation, and history of delinquency, as well as pending charges and recent time in jail, the court, in no way, indicated it disregarded the mitigating evidence presented of defendant's sobriety, rehabilitative potential, role as a parent, and familial relationships. Though defendant completed substance abuse treatment in

2015 and tested negative for illegal substances in drug tests during the pendency of this case, the court did not feel defendant had led a law-abiding life free of delinquency in light of defendant's possession of a controlled substance conviction in 2017, conviction for possession of cannabis at the same time of the instant offense, and pending possessing with intent to deliver fentanyl and cannabis charges prior to sentencing in 2022. See *cf.* 730 ILCS 5/5-5-3.1(a)(7), (8) (West 2020). Additionally, the court fairly called into question defendant's continued sobriety in light of the new drug offenses.

¶ 16 Therefore, the record shows the court considered and weighed the evidence presented when reaching its decision. The court determined defendant's mitigating evidence did not significantly depreciate the seriousness of the offense or warrant the imposition of a lesser sentence. The court considered the proper factors when it relied on the PSI, highlighted the seriousness of the present offense, and found defendant lacked rehabilitative potential and, thus, did not abuse its discretion. See *Quintana*, 332 Ill. App. 3d at 109. Though defendant may believe the mitigating factors should have applied or been given more weight, the court was not required to agree. Viewed in totality, we cannot say defendant's sentence was "greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 17 III. CONCLUSION

¶ 18 The judgment of the circuit court of Kankakee County is affirmed.

¶ 19 Affirmed.