Third District Court of Appeal

State of Florida

Opinion filed June 24, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1918
Lower Tribunal No. 17-7017

Ernest Ceus,
Appellant,

vs.

The State of Florida,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Mark Blumstein, Judge.

Carlos J. Martinez, Public Defender, and Susan S. Lerner, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Asad Ali, Assistant Attorney General, for appellee.

Before LOGUE, MILLER, and GORDO, JJ.

MILLER, J.

Following an open plea of guilty to the trial court, appellant, Ernest Ceus, was convicted of armed carjacking in violation of section 812.133(2)(a), Florida Statutes, and section 775.087, Florida Statutes, and sentenced to a term of thirteen years in state prison with a ten-year minimum mandatory.[1] On appeal, Ceus challenges his sentence, contending the lower tribunal erred in failing to consider "the option of avoiding the mandatory minimum sentence for use of a firearm, section 775.087(2)(a), Florida Statutes, by sentencing [him] as a youthful offender." Holmes v. State, 638 So. 2d 986, 987 (Fla. 1st DCA 1994). Discerning no error, we affirm.

In mid-2017, Ceus was charged by information in the instant case. Shortly thereafter, he entered an unconditional plea of guilty and waived entitlement to a presentence investigation report. See Fla. R. Crim. P. 3.710(a); Chandler v. State, 366 So. 2d 64, 71 (Fla. 3d DCA 1978). Given the fact that he was eighteen years of age at the time of the offense, and further relying upon his personal history, Ceus sought the imposition of youthful offender sanctions.

The court duly convened a protracted sentencing hearing. Ceus adduced expert mitigation testimony, demonstrating he was diagnosed with attention deficit hyperactivity disorder in early childhood and subsequently abandoned by his

[1] Ceus was additionally charged with resisting an officer without violence in violation of section 843.02, Florida Statutes.

mother. His psychiatric disorder was left untreated and his father was largely absent. Consequently, he remained primarily in the care of distant relatives. Eventually, at the age of seventeen, having attained a mere eighth-grade education, he abandoned his schooling.

Conversely, the State stressed Ceus's extensive contacts within the juvenile justice system and failure to comply with past supervisory terms, as evidenced by a recurring pattern of disregard for the law. The prosecutor argued that these factors, combined with the grave circumstances of the underlying offense, supported a sentence within the relevant guidelines, accompanied by the applicable minimum mandatory for use of a firearm.

At the conclusion of the hearing, the lower tribunal expressed the difficulty inherent in crafting a sentence in view of the conflicting evidence. Declining to impose youthful offender sanctions, the court instead elected to sentence Ceus to thirteen years in state prison, with a ten-year minimum mandatory, followed by a substantial term of probation. The instant appeal ensued.

"[A]n open guilty plea . . . provide[s] the trial court with absolute discretion to determine [a defendant's] appropriate sentence." Wagner v. State, 177 So. 3d 695, 697 (Fla. 5th DCA 2015); see Erts v. State, 791 So. 2d 529, 531 (Fla. 4th DCA 2001) (An "'open plea to the court' . . . [provides] the trial judge [with] complete discretion to sentence [a defendant] to any sentence computed under the [Criminal

Punishment] Code."); see also Cottengim v. State, 44 So. 3d 209, 210 (Fla. 5th DCA 2010) ("Sentencing is a decision that is within the trial court's discretion."). Having reviewed the relevant transcripts in this case, we conclude the lower tribunal considered the dueling options presented by the parties, and, exercising discretion, rejected the defense's proposal. See Jackson v. State, 191 So. 3d 423, 428 (Fla. 2016) ("[E]ligibility for youthful offender sentencing is not a fundamental right; instead, eligibility is at the discretion of the trial court."); Pressley v. State, 73 So. 3d 834, 837 (Fla. 1st DCA 2011) ("Application of the Youthful Offender Act to any particular defendant is within the discretion of the trial judge because the trial judge 'is in the best position to determine whether sentencing under the act is the most desirable treatment for that defendant.' . . . The trial court may, after reviewing the criteria, decline to sentence a statutorily qualified person as a youthful offender.") (citations omitted); McKinney v. State, 27 So. 3d 160, 162 (Fla. 1st DCA 2010) ("[T]he court's decision not to sentence Appellant as a youthful offender was properly based upon a consideration of Appellant's circumstances and the serious nature of his crimes.").

Here, the weighty remarks delivered by the trial judge following the presentation of evidence evinced reflective consideration of the relevant factors and knowledge of the available sentencing alternatives. Accordingly, as the court was not required to discuss its basis for concluding that youthful offender sanctions were

unwarranted in a more developed manner, we affirm. See State v. Boltz, 542 N.W. 2d 9, 11 (Iowa Ct. App. 1995) ("[T]he failure to acknowledge a particular sentencing circumstance does not necessarily mean it was not considered.").

Affirmed.