2011 IL App (1st) 102286-U

SIXTH DIVISION
November 18, 2011

No. 1-10-2286

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05 CR 23188
	)	
BRUCE SNIPE,	)	Honorable
	)	Thomas V. Gainer,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GARCIA delivered the judgment of the court.
Justices Cahill and Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held*: Where the trial court considered all mitigating and aggravating factors upon re-sentencing, it did not abuse its discretion in sentencing defendant to 15 years in prison for a Class 1 offense; where defendant's conviction of the Class 1 felony was the most serious charge, extended term sentences are not permitted for defendant's Class 3 felony convictions.

¶ 2 This case comes before us following a remand for re-sentencing. Defendant Bruce Snipe contends the trial court abused its discretion in imposing a 15-year prison term for a Class 1 offense, a sentence of one year less than the sentence vacated by this court. He also argues that the trial court lacked authority to impose extended-term sentences on his Class 3 convictions. We affirm the sentence of 15 years, but reduce the Class 3 sentences to five years, the maximum permitted for an non-extended Class 3 sentence.

¶ 3 Following a bench trial, defendant was convicted of one count of vehicular invasion and burglary, and two counts of robbery and aggravated battery. The evidence at trial established that on August 16, 2005, defendant was involved in a traffic accident with Rasha Madbouly at the intersection of California Avenue and Washington Boulevard. Rasha's sister, Hanan Madbouly, and her niece, Jasmine, were also in the car at the time.

¶ 4 Rasha and Hanan testified substantially to the same events. After the traffic accident, Rasha pulled up behind defendant's car and got out to survey the damage. She told defendant his car was not damaged so no accident report was required. Rasha turned to reenter her vehicle. Defendant reacted by pulling her by the throat out of her car. Defendant broke Rasha's cell phone ear piece and Rasha's cell phone, which Hanan had taken outside the car in an attempt to call the police. The sisters testified that during the altercation, defendant smacked Hanan on the side of the face, pushed Rasha against the car, grabbed Hanan by the hair and banged her head against the hood of the car, and punched both Rasha and Hanan in the mouth. While the altercation was going on, defendant's passenger, David Cunningham, drove defendant's car away. A crowd also gathered to watch, chanting defendant's name. Finally,

defendant took the sisters' purses and walked away.

¶ 5 Rasha and Hanan were treated at the hospital. Rasha received 14 stitches to her lower lip. She had bruises on her face, chest, and back. Hanan received six stitches to her top lip.

¶ 6 David Cunningham, defendant's passenger, testified that Rasha got out of her car after the accident and immediately started cursing at defendant. Cunningham saw little else, as he left soon thereafter. Two witnesses from the crowd that gathered testified that Rasha pushed defendant. The witnesses confirmed that defendant pushed Rasha and broke her cell phone.

¶ 7 The trial court found defendant guilty of one count of vehicular invasion and burglary, and two counts of robbery and aggravated battery.

¶ 8 At the original sentencing hearing on March 8, 2007, in aggravation, the State relied on the trial testimony and defendant's prior convictions, which made him Class X mandatory. Defendant was convicted of delivery of a controlled substance and possession of a controlled substance with intent to deliver in 1998, and he was convicted of aggravated discharge of a firearm in 2000.

¶ 9 In mitigation, defendant presented five letters from friends and family explaining his stable family and community ties. Defendant also apologized to the victims but maintained his innocence regarding the theft of one purse.

¶ 10 The trial court sentenced defendant as a Class X offender to 16 years in prison each for the unlawful vehicular invasion, robbery, and burglary convictions, and to 10-year extended-term sentences for the aggravated battery convictions.

¶ 11 Defendant timely appealed his sentence contending that trial court improperly considered racial issues in sentencing him. This court agreed:

> "The trial court explicitly presumed that Snipe was motivated to attack the Madbouly sisters because of their race ***. These presumptions are not supported by the record. *** We conclude that the trial court's consideration of race was improper, and that Snipe's sentences must be vacated." *People v. Snipe*, No. 1-07-0838, at 7 (2009) (unpublished order pursuant to Supreme Court Rule 23).

We vacated defendant's sentences and remanded for re-sentencing. *Snipe*, No. 1-07-0838, at 8. We vacated as well defendant's conviction and sentence for burglary pursuant to the one-act, one-crime rule. *Id*.

¶ 12 A new sentencing hearing was held on June 10, 2010, in front of a different judge who ordered a new Presentencing Investigation report (PSI). In the new PSI, defendant reported that he had taken community college classes while incarcerated. The defendant also reported having an alcohol abuse problem. There was no report of alcohol abuse in the PSI ordered at the first sentencing hearing.

¶ 13 The State called Detective Patrick O'Donovan as a witness in aggravation to testify to the facts surrounding defendant's 2000 aggravated discharge of a firearm conviction. He testified that on March 17, 2000, defendant was the passenger in a friend's vehicle, and after a near accident with another vehicle, he fired multiple shots at the other car. Defendant received a

six-year prison term for that conviction. The State also presented victim impact statements to the court.

¶ 14 Defendant's grandmother, Roberta Snipe, testified in mitigation that it would be a hardship on the family if he was imprisoned because his children needed his presence and his financial support. Defendant also presented several additional letters from family, friends, and community members, detailing the hardship suffered by his family while he was in prison. He submitted grade reports from a prison education program. Finally, defendant apologized to the victims once again.

¶ 15 In its findings, the trial court observed that the original judge "considered an improper factor in determining what sentence to impose. The [Appellate] Court, however, did not suggest in any way, shape or form that the sentence imposed was an excessive sentence." The trial court stated it "considered the [PSI] and all the evidence offered in mitigation. I have likewise considered what I know about the case and the victim impact statements that were offered." The court was unconvinced that the hardship on defendant's family based on the defendant's incarceration was a mitigating factor that by itself warranted a lesser sentence. The court noted that defendant had caused serious physical harm to the victims without strong provocation. The court discussed defendant's "serious criminal history." The court acknowledged it was "impressed by the rehabilitative potential of this Defendant" and by defendant having twice taken responsibility for his actions.

¶ 16 The trial court sentenced defendant to 15 years each for the vehicular invasion and robbery convictions, and to 8-year extended-term sentences for the two aggravated battery

convictions, all sentences to run concurrent. Defendant challenges each of those sentences.

¶ 17 A trial court has broad discretion in sentencing and a sentence will only be reversed upon a showing of an abuse of that discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). It falls within the court's discretion to determine the weight for each aggravating and mitigating factor. *People v. Tijerina*, 381 Ill. App. 3d 1024, 1039 (2008). A reviewing court cannot substitute its judgment for that of the trial court simply because it would have balanced the factors differently. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). If mitigating evidence has been presented to the trial court, it is presumed that the court considered it, absent some indication to the contrary, other than the severity of the sentence itself. *People v. Willis*, 409 Ill. App. 3d 804, 815 (2011). A sentence that is within the statutory range is an abuse of discretion only if it is manifestly disproportionate to the nature of the offense or if it is at great variance with the spirit and purpose of the law. *People v. McGee*, 398 Ill. App. 3d 789, 795 (2010).

¶ 18 The sentencing range for a mandatory Class X offender is 6 to 30 years. 730 ILCS 5/5-8-1(a)(3) (West 2004). Of course, a sentence vacated on direct review may not be increased on re-sentencing unless the increase is based on the conduct of defendant that occurred after the original sentence was imposed. 730 ILCS 5/5-5-4(a) (West 2004); *People v. Moore*, 177 Ill. 2d 421, 433 (1997).

¶ 19 We find the trial court did not err in imposing a 15-year prison term on each of the more serious offenses on remand. The record shows that at the new hearing the trial court heard arguments from both sides, and expressly considered the PSI and the factors in aggravation and mitigation. The court discussed the letters offered by defendant, as well as the

victim impact statements. The court considered all the factors before it and sentenced defendant within the appropriate range. In the exercise of its discretion, the trial court properly focused on defendant's criminal history and the violent nature of his crimes. We find no basis to upset the sentence.

¶ 20 Defendant insists that the trial court failed to adequately consider his mitigating factors and his potential for rehabilitation. The record is to the contrary. The court specifically stated that it had considered the factors in mitigation and the court went on to state it was impressed by defendant's rehabilitative potential and his twice acceptance of responsibility for the injuries caused to the sisters. Defendant correctly acknowledges that a court of review will only vacate and remand a sentence that was based on improper factors. Such a contention must be supported by the record, demonstrating substantial weight was given to an improper factor leading to a harsher sentence. *People v. Heider*, 231 Ill. 2d 1, 21-22 (2008). However, that a sentence was vacated due to consideration of an improper factor is not a mandate to impose a lesser sentence. *People v. Raya*, 267 Ill. App. 3d 705, 709 (1994). The record clearly shows the trial court considered all the factors, sentenced defendant within the appropriate range and, in fact, imposed a lesser sentence by one year than he received originally. Under these circumstances, the 15-year sentence clearly fell within the range available to the trial court.

¶ 21 Next, defendant asserts, and the State correctly agrees, that extended-term sentences for defendant's Class 3 aggravated battery convictions were not permitted where defendant was convicted and sentenced on the more serious Class 1 offense. Unlawful vehicular invasion is a Class 1 felony (720 ILCS 5/12-11.1 (West 2004)), while aggravated battery is a

Class 3 felony (720 ILCS 5/12-4(b)(8) (West 2004)). A trial court may only impose an extended-term sentence on the most serious offense a defendant is convicted of committing. 730 ILCS 5/5-8-2(a) (West 2004); *People v. Sterling*, 357 Ill. App. 3d 235, 255 (2005).

¶ 22 Under the authority of Supreme Court Rule 615(b)(4) (eff. Aug. 8, 1987), we reduce each of defendant's sentences on the aggravated battery convictions to five years. All sentences to run concurrent as originally ordered. See *People v. Jones*, 168 Ill. 2d 367, 378 (1995).

¶ 23 The judgement of the trial court is affirmed as modified.

¶ 24 Affirmed as modified.