

THIRD DIVISION  
August 3, 2011

2011 IL App (1st) 100054-U  
No. 1-10-0054

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 02 CR 3413
	)	
INDIA WILLIAMS,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE STEELE delivered the judgment of the court.  
Presiding Justice Quinn and Justice Murphy concurred in the judgment.

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**ORDER**

*Held:* Where the trial court properly considered factors in mitigation and sentenced defendant to a term within the statutory sentencing range, her sentence was not excessive; the circuit court's judgment was affirmed.

¶ 1 Following a bench trial, defendant India Williams was convicted of first degree murder, armed robbery, and residential burglary. Defendant was sentenced to consecutive terms of 35, 10, and 5 years' imprisonment, respectively. On appeal,

defendant contends that her sentence was excessive where she was a victim of severe abuse and neglect, consumed with addiction, and started her rehabilitation. We affirm.

¶ 2 The evidence at trial revealed that during the early morning hours of January 1, 2002, defendant, Kim Thompson, and codefendants Devin Reed and Anthony Williams, who were tried separately and are not parties to this appeal, drove to Timothy Kollar's home at approximately 4235 West 25th Street in Chicago. Kollar let the group inside, where they all smoked cocaine. On multiple occasions, Kollar gave defendant money to buy more drugs, but defendant only spent half of the money she received to buy the drugs and kept the rest. When the drugs ran out the last time, Kollar gave defendant money and told her to buy more. Defendant and Reed left to purchase more drugs and they agreed to rob Kollar when they returned.

¶ 3 After defendant and Reed returned with more drugs, everyone smoked more cocaine. Thompson then left the house, defendant stole \$100 from Kollar's dresser, and Kollar asked Reed and Williams to go downstairs, which they did. Defendant began performing oral sex on Kollar. During the act, Kollar told defendant to stop and walked to the dresser to fill his crack pipe. Defendant reached for her pipe, and Kollar grabbed her wrist. Defendant hit Kollar in the jaw and screamed for Reed. Reed and Anthony entered the bedroom and Reed hit Kollar in the

back of the head with a lamp. As per Reed's instructions, defendant looked for money and bound Kollar's feet. Kollar kicked defendant in the leg during the struggle. Defendant picked up the lamp and hit Kollar in the legs. Anthony placed a box cutter against Kollar's throat, while telling Kollar to give him money. Reed then repeatedly struck Kollar in the head with an aluminum baseball bat. Reed gave the bat to Anthony, who also repeatedly hit Kollar in the head with it. After defendant saw Anthony striking Kollar, she declared that she did not want to be a part of the incident any more.

¶ 4 Reed told defendant to take a metal box off of Kollar's dresser, drive the van, and meet him on 16th Street and Kilbourn Avenue. When defendant opened the door to go outside, she saw Thompson and they left in the van. After waiting at the designated intersection, defendant left and saw Reed and Anthony in the vicinity of 16th Street and Kostner Avenue. They told defendant to follow them in the van, but when Reed and Anthony turned onto the expressway, she went back to 16th Street. Later that night, she saw Reed and Anthony in the same area. Anthony reached into the van, took the keys, and stated that he did not know if Kollar was dead or alive. Anthony also told defendant that he had cut Kollar with the box cutter. On January 5, Thompson contacted police and informed them that she was a witness to Kollar's murder. Police subsequently arrested

defendant, Reed, and Anthony.

¶ 5 After the court found defendant guilty of murder, armed robbery, and residential burglary, a sentencing hearing was held. In aggravation, the State introduced evidence of defendant's adjudication for attempted robbery and prior misdemeanor convictions for attempted obstruction of justice and possession of drug paraphernalia, as well as criminal trespass to a motor vehicle. The State finally offered a victim impact statement from Shannon Enriquez, Kollar's surviving family member.

¶ 6 In mitigation, defendant called Doctor Robert Smith, who testified that he was a licensed clinical psychologist and that defendant met the diagnostic criteria for cocaine and heroin dependence. Smith found that defendant had post-traumatic stress disorder due to trauma that occurred while she was growing up. Smith testified to many details of defendant's early life, including that she: had no contact with her father for the first 14 years of her life; lived with her mother, who was a prostitute and drug addict; lived without heat, water, or electricity; was a "pseudo mother" for her siblings; and hardly attended school. The Department of Children and Family Services (DCFS) became involved in defendant's life and found that she was a child who missed out on "early developmental steps of attachment and separation individuation" and that she was sexually abused by one of her mother's boyfriends.

¶ 7 DCFS moved defendant to her father's house, where defendant became sexually involved with her father culminating in a pregnancy that was aborted. Defendant was removed from her father's home and placed in juvenile detention for three months. She was then moved to the Norman Sleezer Home. Defendant, who was 15 years old, underwent a psychological evaluation at the Sleezer Home, which found that she was so damaged by her early experiences that she failed to develop socially and was vulnerable to exploitation by others. When defendant was 17 years old, she was placed with her uncle, who lived in Atlanta. When defendant's uncle engaged in corporal punishment, defendant ran away and returned to Chicago. Defendant found her mother and began using and selling drugs with her.

¶ 8 According to Doctor Smith, defendant's involvement with the victim of this offense and the codefendants resulted from her addiction and history of trauma. Smith thought that within a structured environment, defendant would do well, because she would be provided with predictability, structure, and routine. Smith testified that defendant had already shown signs of improvement. As defendant matures, Smith expected that she would get significantly better. Smith admitted that the information he obtained about the sexual and physical abuse defendant endured was self-reported.

¶ 9 Bobbie Perry, a pastor, testified in mitigation that

she knew defendant's mother, Gwen Williams, because she used to come to the church for a free breakfast. Over the course of time, Gwen changed her life and became a minister at the church, helping other people addicted to drugs. Gwen brought defendant to the church a few times and the ministers would pray for her. Perry visited defendant a few times in jail and defendant expressed to Perry that she wanted to do better. Perry asked the court to have mercy on defendant. Mattie Phillips, a pastor at the same church as Perry, testified similarly to Perry.

¶ 10 Robin Abrams testified in mitigation that she used to care for defendant when she was young. She knew that defendant was never given a chance to be a child given her living situation. Abrams asked the court to have mercy on defendant.

¶ 11 Gwendolyn Williams, defendant's mother, testified that she was addicted to drugs from 1979 until 2000. Gwendolyn admitted that taking care of her addiction came before caring for defendant, and that she blamed herself for defendant's behavior. Gwendolyn asked the court to give defendant a second chance, because it was her fault that defendant found herself in this predicament.

¶ 12 The defense next presented several letters to the court, including letters written by family friends offering support to defendant and a letter from the superintendent from the Cook County Department of Corrections explaining that

defendant was a very positive and cooperative participant in a program called "Beyond the Walls."

¶ 13 After arguments by both parties, defendant addressed the court. She stated that although she agreed to the robbery, she did not expect the events to unfold the way they did and her actions were motivated by her drug addiction. Defendant reiterated that she did not intend for Kollar to die, is a stronger person since her incarceration, and requested that the court give her a second chance.

¶ 14 In sentencing defendant, the trial court referenced factors in aggravation and mitigation. In aggravation, the court found that the facts of the crime were the most aggravating factor, and, absent mitigating factors, would justify a maximum sentence. In mitigation, the court stated that defendant's upbringing was "atrocious," and that addiction played a large role in the murder. The court found that the mitigating factors made a maximum sentence inappropriate, but the court would not reduce her sentence to anywhere near the minimum. The court then sentenced defendant to an aggregate term of 50 years' imprisonment.

¶ 15 Defendant filed a motion to reconsider her sentence, alleging that the sentence was excessive in view of her background and the nature of her participation in the offense. She also alleged that the trial court improperly considered in

aggravation matters that are implicit in the offense, the sentence was improperly disparate compared to the sentences imposed upon her codefendants, the sentence improperly penalized defendant for exercising her right to trial, and the consecutive sentences imposed by the court for the Class X and Class 1 offenses were improper. At the hearing on defendant's motion to reconsider, her counsel argued that the sentences were disparate and excessive based on her participation in the crime compared to that of the other offenders. The trial court subsequently denied the motion to reconsider.

¶ 16 On appeal, defendant contends that her sentence was excessive because the court failed to act on factors in mitigation, particularly her background and rehabilitative potential. She specifically requests that her 50-year cumulative sentence be reduced to a total of 30 years, representing the combined minimums for first degree murder, armed robbery, and residential burglary.

¶ 17 Initially, we note that the State contends that defendant forfeited this issue for review because she only argued in her motion to reconsider that her sentence was "disparate" based upon the participation of the codefendants, but not excessive based on the court's failure to consider mitigating factors. To preserve a sentencing issue for appellate review, a defendant must raise the issue with the trial court in a written

postsentencing motion. *People v. Reed*, 177 Ill. 2d 389, 393 (1997). Although defendant in this case did not specifically argue that her sentence was excessive because the court failed to take into consideration mitigating factors, she did maintain that her sentence was excessive. We thus disagree with the State that defendant has forfeited review of this issue.

¶ 18 Turning to the merits of this case, we note that first degree murder carries a sentencing range from 20 to 60 years' imprisonment. 730 ILCS 5/5-8-1(a)(1)(a) (West 2002). Armed robbery is a Class X felony that carries a sentencing range from 6 to 30 years' imprisonment. 720 ILCS 5/18-2(b) (West 2002); 730 ILCS 5/5-8-1(a)(3) (West 2002). Residential burglary is a Class 1 felony that carries a sentencing range from 4 to 15 years' imprisonment. 720 ILCS 5/19-3(b) (West 2002); 730 ILCS 5/5-8-1(a)(4) (West 2002). Accordingly, the possible aggregate terms ranged from a minimum of 30 years to a maximum of 105 years.

¶ 19 A trial court has broad discretion to determine an appropriate sentence, and a reviewing court may reverse only where the trial court has abused that discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). The reviewing court should not substitute its judgment for that of the trial court simply because it would have balanced the appropriate sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010). A sentence within the statutory range does not

constitute an abuse of discretion unless it varies greatly from the purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Henderson*, 354 Ill. App. 3d 8, 19 (2004). Where mitigating evidence is presented to the trial court, it is presumed, absent some indication to the contrary, other than the sentence itself, that the court considered it. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004).

¶ 20 The trial court clearly stated that it had considered appropriate factors in mitigation and aggravation. At defendant's sentencing hearing, the court stated:

"[i]n aggravation, I think the most serious aggravating factor here are the facts of the crime. This is an extraordinarily vicious crime, \*\*\* which absent anything else would fully justify you getting a maximum sentence, quite frankly. I consider in aggravation that you have a prior criminal record. Although, I think your lawyer is correct in characterizing it as relatively minor.

\*\*\*

In mitigation I find that the defendant was subjected to an upbringing as a child which can only be described as atrocious; a

breeding ground for mayhem, murder, and just about any other kind of destructive behavior you could possibly imagine. No one should have to be subjected to that. In mitigation the defendant's addiction played a role in this, maybe even a central role one might say. In mitigation defendant has made a relatively good adjustment, it would appear, to institutional life. That is somewhat corroborative actually of the doctor's testimony regarding his prediction of how you would do if you were in a confined institutional setting, a controlled setting. \*\*\* I think there is enough mitigation here so that it would not be appropriate \*\*\* to sentence you to the maximum for which you could be sentenced."

¶ 21 From these statements, it is clear that the trial court thoughtfully weighed the appropriate mitigating and aggravating factors and sentenced defendant to a term within the permissible sentencing range. The record makes clear that defendant's actions during the crimes in question were particularly egregious. The trial court even stated, on multiple occasions during sentencing, that the crimes committed were "severe." It

was obvious from the court's comments that defendant's conduct during the offenses weighed heavily in his sentencing decision. During sentencing, the trial court also discussed the mitigating factors in this case, including defendant's "atrocious" upbringing, her drug addiction, and her lack of a significant criminal history. The record establishes that the court balanced the aggravating and mitigating factors present in this case. We cannot find that the trial court abused its discretion in imposing an aggregate term of 50 years' imprisonment, which is 55 years less than the 105-year maximum.

¶ 22 Nevertheless, defendant maintains that although the trial court may have considered factors in mitigation, it failed to act on those factors as defendant was sentenced to 50 years' imprisonment where the minimum aggregate sentence was 30 years. However, the record clearly shows that the court did in fact act on the mitigating factors. The court specifically stated at sentencing that if it were not for the mitigating factors, a maximum aggregate sentence (105 years) would be appropriate.

¶ 23 We also note that *People v. Calhoun*, 404 Ill. App. 3d 362 (2010), which defendant relies on, is distinguishable from the case at bar. In *Calhoun*, the trial court sentenced the defendant to the maximum term of 60 years' imprisonment for murder. This court found that the comments of the trial court in imposing the maximum sentence reflected a failure by the court to

consider mitigating factors, specifically that the defendant was provoked. *Calhoun*, 404 Ill. App. 3d at 387-89. We thus remanded the cause for a new sentencing hearing with instructions to give due reflection and implementation of the relevant mitigating factors. *Calhoun*, 404 Ill. App. 3d at 390. Here, by contrast, defendant was not sentenced to the maximum. More importantly, the record shows that the trial court considered the mitigating factors and used them to reduce defendant's sentence.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 25 Affirmed.