

No. 1-09-1963

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. 07 CR 12172
)	
KIEANTE JENKINS,)	Honorable
)	Dennis J. Porter,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Salone concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in sentencing defendant to 20 years' imprisonment for aggravated battery with a firearm and attempted armed robbery. The court's failure to hold a hearing regarding whether the minor defendant should be sentenced in criminal court on the attempted armed robbery charge did not render his sentence void because the charge arose out of the same incident as the aggravated battery charge. The decision of the trial court was affirmed.

Following a jury trial, defendant Kieantae (also Kieante) Jenkins, a minor, was found guilty of attempted armed robbery and aggravated battery with a firearm. He was sentenced to 20 years' imprisonment. Defendant contends the trial court abused its discretion in sentencing him because the court failed to consider mitigating factors reflecting his rehabilitative potential and, in aggravation, relied on facts inherent to the offense. Defendant also contends that his sentence

for attempted armed robbery is void because the court failed to conduct a hearing under section 5-130(1)(c)(ii) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-130 (West 2008)) to determine whether he should be sentenced in the criminal court as an adult on that charge. We affirm.

Defendant, age 16, was arrested, then charged with the above-stated offenses after he shot the victim, Erin Lacy.

Two years later, he was tried as an adult in criminal court pursuant to section 5-130(1)(a) of the Act (705 ILCS 405/5-130(1)(a) (West 2008)). Under section 5-130(1)(a), when a defendant is at least 15 years old and commits aggravated battery with a firearm by personally discharging the firearm, jurisdiction to prosecute the offense lies in the criminal, rather than juvenile, court.

At trial, Lacy testified that he saw defendant and another young man standing in front of Green Foods store when he entered and exited it. As Lacy walked home, he heard footsteps behind him and saw the young men following him. Defendant yelled at Lacy, but Lacy continued walking. Defendant then approached Lacy and asked him what he had "in [his] pockets." Lacy looked at defendant but ignored him. Defendant stated, "you think I'm playing with you," at which time Lacy saw defendant pull out a gun. Lacy responded, "you're just going to have to shoot me," then turned around and continued walking. Defendant shot Lacy in the shoulder and once in each leg.

Shortly thereafter, police detained defendant, and Lacy identified him as the perpetrator of the crime. Lacy was treated for the gunshot wounds at the hospital. Doctors did not remove two of the bullets.

The testimony of the responding officers corroborated that of Lacy. The written statement and grand jury testimony of Lamar Nance, identified at the scene with defendant, also

corroborated Lacy's version of the events. Nance, however, recanted at trial and denied being with defendant on the day of the shooting.

Defendant did not present any evidence. The jury found defendant guilty as charged. Defendant filed a motion for judgment of acquittal notwithstanding the verdict and motion for a new trial, both of which were denied.

The State filed a motion for defendant to be sentenced as an adult on the attempted armed robbery charge. Subsequent to the State's motion, the parties agreed to a sentencing date.

At the sentencing hearing, the State presented Lacy's victim impact statement. Lacy stated that he was permanently disfigured as a result of the gunshot wounds and the bullets left lodged in his body. The remaining bullets required yearly hospital visits and x-rays to ensure they did not move. He stated that he was psychologically traumatized by the incident.

The State argued that the nature of the offense, where defendant shot Lacy three times as Lacy walked away, was particularly egregious. The State further argued that defendant deserved a sentence commensurate with the seriousness of the offense.

Three witnesses, including defendant's cousin, aunt, and mother, testified on his behalf. According to their combined testimony, defendant was helpful, intelligent, ambitious, and an active member of their family; he simply had gone astray. They testified that with the help of family and church, defendant could be rehabilitated. Defendant's aunt noted that he had mentioned college before and was then participating in the jail's GED program.

Defense counsel argued in mitigation that defendant had no prior convictions or adjudications, the victim's injuries did not result in death, and defendant had the potential for rehabilitation. As evidence, defense counsel presented defendant's grade transcript and certificates for academic progress in his pre-high-school diploma program. Defense counsel added that defendant's young age also was a mitigating factor.

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Defendant then made a statement on his own behalf. He stated that he was a changed person and not a menace to society. He stated that although he understood someone had to be held responsible for the crime, he did not have a history of violence and asked for a lenient sentence. Defendant requested a second chance and expressed his "deepest and sincere apologies to the victim and his family for having to endure in this process."

The court noted that it had considered the nature and circumstances of the offense, character and background of the defendant, arguments of counsel, testimony of the witnesses, and statement of defendant. Based on that, the court found the circumstances of the crime particularly aggravating, in that the victim "did nothing more than that [which] he was lawfully entitled to do," and that was to go to the store "without being accosted at gunpoint by an individual *** bent on taking his property." The court noted that Lacy, on walking away from defendant, was "rewarded by being shot in the back," and further, that there was no "warning shot fired." The court observed that the shots did not result in death, and this was "only a matter of luck, good fortune, [and] of a higher power deciding it was not the victim's time to die." The court concluded that this "very serious crime *** was committed without mercy, without a hint of respect for human life and it's totally unnecessary."

The court again noted the facts of the crime were "very aggravating," and stated, if not for defendant's tender age, the court would sentence defendant to the maximum term. The court observed that, based on defendant's presentence investigation report, it appeared he had "some opportunities" to change his life, but did not take advantage of them. The court stated it did not believe defendant was remorseful and that defendant, in fact, was a menace to society. The court repeated that it considered "the facts of the crime" to be "most aggravating."

The court considered in mitigation defendant's young age, that young people make mistakes, and that defendant had family willing to help him. The court further noted that

defendant had adapted well to his present circumstances in that he was using time in custody to further his education.

Based on the foregoing, the court sentenced defendant to 20 years' imprisonment for aggravated battery with a firearm and 6 years' imprisonment for attempted armed robbery, to run consecutively. Defendant filed a motion to reconsider his sentence. In response, the court ordered the sentences to run concurrently.

Defendant now challenges that sentencing determination on appeal. A trial court has broad discretionary powers in imposing a sentence, and we ascribe great deference to its sentencing decisions. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). This is because a trial judge, having observed the defendant and proceedings, has a far better opportunity to consider the relevant factors than a reviewing court, which must rely upon a "cold record." *Alexander*, 239 Ill. 2d at 212-13. A reviewing court therefore must not substitute its judgment for that of the trial court merely because it would have weighed factors differently. *Alexander*, 239 Ill. 2d at 213. Consistent with these principles, we will overturn a defendant's sentence only upon finding an abuse of discretion by the trial court, i.e. where the sentence is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212.

Although defendant was age 16, and thus a minor, at the time he committed the offenses, he was required to be sentenced in criminal court as an adult pursuant to 5-130(1)(a), (c)(i), of the Act. See *People v. King*, No. 109581, slip op. at 5, 10 (Jan. 21, 2011). Aggravated battery with a firearm is a Class X felony with a sentence between 6 and 30 years. 720 ILCS 5/12-4.2 (West 2008); 730 ILCS 5/5-8-1 (West 2008). Attempted armed robbery is a Class 1 felony with a sentence between 4 and 15 years. 720 ILCS 5/8-4(c)(2), 18-2 (West 2008); 730 ILCS 5/5-8-1 (West 2008). Defendant's sentence of 20 years thus falls within the permissive statutory range

and is presumptively correct. See *People v. Gutierrez*, 402 Ill. App. 3d 866, 900 (2010); *People v. Tye*, 323 Ill. App. 3d 872, 890 (2001).

Defendant, nevertheless, contends that the trial court, when sentencing him, failed to consider in mitigation his age, education, lack of criminal history, and family background. He argues these factors reflect his rehabilitative potential and therefore contends the trial court failed to impose a sentence "with the objective of restoring [defendant] to useful citizenship[.]" as mandated by the constitution. See Ill. Const. 1970, art. I, §11.

Defendant's claims are belied by the record. The court expressly stated it had considered the nature and circumstances of the offense, character and background of defendant, arguments of counsel, testimony of the witnesses, and statement of defendant. The court considered the factors in mitigation, including defendant's youth, family support system, and strides towards education while in custody. While the court did not assign specific value to each of these factors reflecting defendant's rehabilitative potential, it was not required to do so. See *People v. Brazziel*, No. 1-08-1455, slip op. at 45 (Nov. 22, 2010).

As the State notes, a sentencing court must consider the defendant's rehabilitative potential, but need not give that factor greater weight than the seriousness of the offense or than other aggravating factors. *Alexander*, 239 Ill. 2d at 214; *Tye*, 323 Ill. App. 3d at 890. Indeed, the most important sentencing factor is the seriousness of the offense. *People v. Flores*, 404 Ill. App. 3d 155, 159 (2010); *Tye*, 323 Ill. App. 3d at 890.

Clearly, in this case, the court found the cold-blooded nature of defendant's actions weighed more than any mitigating factor. See *Gutierrez*, 402 Ill. App. 3d at 902. The court stated that defendant, while unprovoked and without issuing a warning shot, had shot Lacy in the back as Lacy walked away. This, the court said, was "violence beyond that which was required" to accomplish his goal of robbing the victim. The court acknowledged defendant's after-the-fact

statement of remorse, but apparently did not believe it was sincere. Finally, the court specifically noted that, but for defendant's young age, he would have received the maximum sentence. Given the evidence and our deferential standard of review, we cannot say the trial court's finding that the seriousness of defendant's offense outweighed his rehabilitative potential, was improper. See *Alexander*, 239 Ill. 2d at 213-14; *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010); *Flores*, 404 Ill. App. 3d at 159-60. We therefore decline defendant's invitation to reweigh the sentencing factors. See *Alexander*, 239 Ill. 2d at 214; *Sims*, 403 Ill. App. 3d at 24. Defendant's 20-year sentence was not an abuse of discretion.

In reaching this determination, we reject defendant's reliance on *People v. Williams*, 196 Ill. App. 3d 851 (1990), and other similar cases. In *Williams*, the defendants were convicted of murder and armed robbery. This court held that the trial court abused its discretion in sentencing the defendants because it failed to consider their young age (both were minors), lack of substantial criminal histories, and rehabilitative potential. Accordingly, this court reduced the sentence of the defendant accountable for his co-offender's acts, from 30 to 20 concurrent-year terms, and the murder sentence of the co-offender, from 40 to 30 years.

Here, the record shows the trial court considered the mitigating factors at issue in light of defendant's offense. Moreover, we observe that the supreme court has expressly rejected the practice of comparing a sentence to sentences imposed in unrelated cases. *People v. Fern*, 189 Ill. 2d 48, 55 (1999); *Tye*, 323 Ill. App. 3d at 890. We further note that certain conduct simply may warrant a harsher penalty than other conduct, even though both are punishable under the same statute. *People v. Hunter*, 101 Ill. App. 3d 692, 695 (1981). Given these principles, defendant's attempt at comparative sentencing fails.

We also reject defendant's contention that the court, in aggravation, relied on the fact that defendant shot Lacy. Defendant argues that fact was inherent in the offense and thus claims his

sentence was "doubly enhanced." As the discussion above makes clear, the court found the cold-blooded nature of the offense aggravating, not the actual shooting of the victim. The court specifically stated that it found the "*circumstances* under which this crime was committed" (emphasis added) aggravating. That was entirely proper. See *Hunter*, 101 Ill. App. 3d at 695.

Defendant next contends that his sentence for attempted armed robbery is void. Defendant acknowledges that under section 5-130(1)(a) of the Act, exclusive jurisdiction for his offense of aggravated battery with a firearm lay in the criminal court, not the juvenile court. See 705 ILCS 405/5-130(1)(a) (West 2008). However, he argues that because attempted armed robbery is not an automatic-transfer offense, a hearing should have been held under section 5-130(1)(c)(ii) of the Act to determine whether an adult sentence was appropriate on that charge. Because there was no such hearing, he contends his sentence on that charge is void.

The supreme court in *King* recently held that where " 'other charges arising out of the same incident' are alleged in an indictment, together with charges 'specified in' section 5-130(1)(a), the entire prosecution takes place in criminal court." *King*, slip op. at 5, quoting 705 ILCS 405/5-130(1)(b)(ii) (West 2000)). Accordingly, the court held that the plain language of the statute mandates adult sentencing for automatic-transfer offenses and those offenses arising out of the same incident. *King*, slip op. at 10, quoting 730 ILCS 405/5-130(1)(c)(i) (West 2008).

In this case, the charge of attempted armed robbery arose out of the same incident as the charge of aggravated battery with a firearm. Therefore, jurisdiction over both offenses lay in the criminal court. Under *King*, a hearing was not required to sentence defendant on the attempted armed robbery charge. Defendant's attempted armed robbery sentence is not void.

Based on the foregoing, we affirm the order of the circuit court of Cook County.

Affirmed.