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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-488
)	
JOHN V. NANIA,)	Honorable
)	John R. Truitt,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

Held: (1) Defense counsel was not ineffective under *Cronic*: counsel moved to suppress evidence, but once those motions were denied, counsel had no reasonable option but to hold the State to its burden of proof; (2) the trial court did not abuse its discretion in sentencing defendant to a total of 72 years' imprisonment, as the sentence was justified by the seriousness of the offenses and the other aggravating factors. We affirmed the trial court's judgment.

¶ 1 Following a jury trial, defendant, John V. Nania, was convicted of three counts of criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2008)), and he was sentenced to an aggregate term of 45 years' imprisonment. In a separate trial that is not the subject of this appeal, defendant was also convicted of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West

2008)) and two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(I) (West 2008)); he was sentenced to an aggregate term of 27 years for these offenses. The trial court ordered that defendant's 45-year and 27-year terms would run consecutively, resulting in an aggregate term of 72 years' imprisonment. It is this aggregate term that defendant challenges as excessive. On appeal, defendant contends that (1) his trial counsel was ineffective; and (2) his sentence is excessive. We disagree. Thus, we affirm.

¶ 2 The facts relevant to resolving this appeal are as follows. Before defendant's trial began, defense counsel moved to suppress the videotapes and photographs seized from defendant's home. The trial court denied the motion. Counsel also moved to suppress the statement defendant gave the police. Although the confession was not suppressed, some portions of defendant's statement were redacted.

¶ 3 At defendant's trial, defense counsel gave an opening statement in which she asked the jurors to put aside their emotions, biases, prejudices, and anything they had heard about the case. Counsel asked the jurors to listen to all the evidence and apply the law the judge gives them before they begin deliberations.

¶ 4 Evidence presented at trial revealed that defendant sexually abused and assaulted S.M., his stepdaughter, for 11 years. During that time, he took hundreds of pictures of her in various stages of undress and videotaped or photographed various sex acts he would engage in with her. As S.M. got older, defendant would give her his permission to go see a friend or buy something she wanted if she first allowed defendant to take lewd pictures of her. As the abuse continued, S.M. attempted suicide, because she believed that she could no longer endure the abuse that was occurring three to four times per week. S.M. attempted suicide on another occasion when she got into an argument with her brother. S.M.'s mother was so upset with S.M. over the altercation that she asked S.M. to

stay with a friend. S.M. testified that she attempted suicide then because she did not want defendant to be the only person she had left in her life.

¶ 5 During the time that defendant was abusing S.M., he also abused and assaulted A.M., who would help babysit defendant's two biological daughters. The abuse started soon after defendant began consoling A.M., whose parents were going through a divorce. As with S.M., defendant would take pictures of A.M. in various stages of undress and engage in sex acts with her. On some occasions, defendant would give A.M. money, because A.M.'s mother would take A.M.'s babysitting money to cover household expenses.

¶ 6 Officer Christine Haske spoke with defendant after his arrest. After she ascertained that defendant was not under the influence of any illegal drugs or alcohol, advised defendant of his rights, and determined that defendant understood his rights, defendant waived his rights and admitted to Haske that he had sexually abused both S.M. and A.M. for several years. Defendant's confession confirmed many aspects of both S.M.'s and A.M.'s testimony.

¶ 7 Defense counsel did not cross-examine S.M., A.M., or any of the police officers who were involved in investigating the crimes, seizing evidence from defendant's home, or taking defendant's confession. Moreover, counsel did not object very much during the State's witnesses' testimony, although she did object when the State would ask leading questions or questions calling for legal conclusions, when the State sought to admit the photographs and videos defendant took, and when the State sought to introduce the statement defendant gave to the police. Counsel argued that the photographs, the videos, and the statement were unduly prejudicial, in that testimony concerning the contents of that evidence was already before the jury. Counsel also moved for a directed verdict at the close of the State's case and at the close of all the evidence.

¶ 8 In closing argument, defense counsel asked the jury to look at the evidence presented in light of the law on which the judge would instruct them. Counsel theorized that, in doing so, the jury would see that the State failed to meet its burden.

¶ 9 The jury found defendant guilty, and defendant filed two *pro se* motions, arguing that his counsel was ineffective. Counsel responded to the motions, defendant did not offer a reply, and the trial court denied the motions. Counsel also filed a posttrial motion, claiming that defendant was not proved guilty beyond a reasonable doubt, that the trial court erred in refusing to give various jury instructions, that the court erred when it overruled various objections defense counsel had made, and that the court erred in admitting evidence over defendant's objections. The trial court denied the motion and defendant was sentenced. Both counsel and defendant *pro se* filed motions asking the trial court to reconsider defendant's sentence. In counsel's motion, she asked the trial court to reduce defendant's sentence given his history and character, limited criminal history, and rehabilitative potential. The trial court denied the motions, and this timely appeal followed.

¶ 10 On appeal, defendant contends that his counsel was ineffective and that his sentence is excessive. We address each of these arguments in turn.

¶ 11 First, we consider whether defense counsel was ineffective. Generally, to succeed on a claim of ineffective assistance of counsel, a defendant must show both (1) that counsel's performance was objectively unreasonable; and (2) that it is reasonably probable that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984); *People v. Evans*, 369 Ill. App. 3d 366, 383 (2006). However, under *United States v. Cronin*, 466 U.S. 648, 659 (1984), prejudice need not be shown when the record reveals that defense counsel failed to subject the State's case to any "meaningful adversarial testing." That is not to say, however, that defense counsel is under an obligation to do the impossible or act

unethically in representing the defendant. *Id.* at 657 n. 19. Rather, “[i]f there is no *bona fide* defense to the charge, counsel cannot create one and may disserve the interests of [the defendant] by attempting a useless charade.” *Id.*

¶ 12 Defendant asserts that his counsel provided ineffective assistance under *Cronic*. Specifically, he argues that counsel was ineffective for offering generic opening and closing statements, failing to cross-examine any of the State’s witnesses, presenting no evidence for the defense, and filing generic posttrial and postsentencing motions. We see nothing here that remotely suggests that counsel ignored any *bona fide* defense or otherwise failed to subject the State’s case to meaningful adversarial testing.

¶ 13 To say that the evidence against defendant was insurmountable is an understatement. Given that evidence, defendant’s best hope was that the State’s case would somehow implode. Thus, counsel’s brief opening and closing statements, reminding the jurors that they had to carefully listen to the evidence, hold the State to its burden, and follow the law given to them, were appropriate. A stronger or more detailed opening or closing, by overreaching, would have risked drawing attention to the strength of the State’s case.

¶ 14 Moreover, we fail to see on what counsel could have cross-examined the witnesses. On appeal, defendant claims that counsel should have attacked the credibility of both S.M. and A.M. by highlighting the facts that S.M. had attempted suicide and that A.M.’s home life was unstable. We disagree. The evidence revealed that S.M. attempted suicide *because of* defendant’s abuse and her fear that defendant, who assaulted her multiple times every week, would be the only one left in her life. Concerning A.M., the evidence showed that defendant consoled A.M. when she was going through difficulties at home as a way to gain her trust. Given these circumstances, highlighting the

facts that S.M. had attempted to take her life and that A.M.'s home life was unstable could have, quite possibly, made S.M. and A.M. even more sympathetic witnesses.

¶ 15 As to the officers' testimony concerning the investigation, nothing indicated that any of the evidence they gathered was improperly obtained. On appeal, defendant argues that counsel should have called to the jury's attention the fact that defendant's statement was taken right after his release from the hospital following a suicide attempt. However, given that Haske stated that defendant was not under the influence of drugs or alcohol and understood his rights and voluntarily waived them, counsel very possibly could have decided that, because defendant gave his statement after the hospital determined that he was no longer a threat to himself, the hospital stay would not have impacted the weight to be given to defendant's confession in the slightest.

¶ 16 Although it is true that counsel did not offer any evidence in defendant's case-in-chief, we do not know what evidence could have been presented to help defendant's case. At trial, defendant claimed that counsel should have moved to submit photographs that would have called into question the age of his victims. Counsel opted not to, as those photographs were pornographic. Given the fact that other evidence confirmed the age of the victims, we fail to see how submitting more pornographic photographs defendant had taken would constitute effective assistance.

¶ 17 As with the opening and closing statements, defense counsel's posttrial motion sought to hold the State to its burden by suggesting that defendant was not proved guilty beyond a reasonable doubt. Given the circumstances of this case, we fail to see how counsel was ineffective.

¶ 18 Defendant argues that *People v. Bonslater*, 261 Ill. App. 3d 432 (1994), and *People v. Dodson*, 331 Ill. App. 3d 187 (2002) mandate that counsel was ineffective here. We disagree. In *Bonslater*, the court found that the defendant was denied the effective assistance of counsel when his attorney misunderstood the law regarding the identification of the defendant in court and the

inferences that could be drawn from the evidence that would support a finding of guilt of unlawful delivery of a controlled substance with the intent to deliver. *Bonslater*, 261 Ill. App. 3d at 441-42. Moreover, defense counsel was ineffective because he failed to cross-examine the State's only witness. *Id.* at 438. Given that the crime occurred at night and that the State did not present any evidence regarding what the lighting conditions were like in the area, the court determined that "[the officer's] testimony was not so clear and convincing that it would have been fruitless for defense counsel to challenge it." *Id.* at 440.

¶ 19 In *Dodson*, the defendant was convicted of armed robbery, following a stipulated bench trial. *Dodson*, 331 Ill. App. 3d at 188. The evidence revealed that a man who was of the same race and had the same frame as the defendant was seen in broad daylight robbing the clerk of a liquor store. *Id.* at 189. A witness saw this man run into a hotel a short distance away. *Id.* When the police arrived, they went into the hotel, found out where the man was staying, and located the defendant in that room. *Id.* Further investigation uncovered evidence that linked the defendant to the crime. *Id.* Prior to trial, defense counsel filed no motions seeking to limit or exclude the State's evidence. *Id.* at 191. Likewise, counsel filed no posttrial motions preserving any issues for appellate review. *Id.* Given that and the fact that counsel proceeded with a stipulated bench trial as a means of currying favor from the judge at sentencing, which defense counsel had no legitimate reason to expect, the reviewing court determined that the defendant was denied the effective assistance of counsel. *Id.* at 188, 191, 196.

¶ 20 Here, in contrast to *Bonslater*, nothing indicates that counsel misunderstood the law or that the State's witnesses' testimony were subject to *meaningful* attack. Moreover, in contrast to *Dodson*, defense counsel moved to suppress the photographs, videos, and statements before trial began, and, during trial, she objected to admitting that evidence or publishing it to the jury. Counsel

here, in contrast to *Dodson*, also filed posttrial motions, which reiterated those objections and raised other points as well. Given the damaging exhibits, counsel's only real course of action, in contrast to *Bonslater* and *Dodson*, was to argue that the State must be held to its burden.

¶ 21 We next consider whether defendant's 72-year aggregate sentence is excessive. Defendant's sole argument is that the sentence is irrational because he would be age 103 instead of 75 or 80 at the time of his release, resulting in greater cost to the State with no greater deterrent effect.

¶ 22 "[T]he trial court is in the best position to fashion a sentence that strikes an appropriate balance between the goals of protecting society and rehabilitating the defendant." *People v. Risley*, 359 Ill. App. 3d 918, 920 (2005). Thus, we may not disturb a sentence within the applicable range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). A sentence is an abuse of discretion only if it is at great variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Id.* at 210. We may not substitute our judgment for that of the trial court merely because we might weigh the pertinent factors differently. *Id.* at 209.

¶ 23 In determining an appropriate sentence, relevant considerations include the nature of the crime, the protection of the public, deterrence, and punishment, as well as the defendant's rehabilitative prospects. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). The weight to be attributed to each factor in aggravation and mitigation depends upon the particular circumstances of the case. *Id.* "The seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors." *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002).

¶ 24 Here, defendant does not dispute that each term of his sentence is within the applicable statutory range. Moreover, defendant does not dispute any of the trial court's factual findings in

imposing the sentence. Instead, he argues that the sentence is irrational because adding years that would result in his release at age 103 would not increase the deterrent effect of the sentence or do anything toward restoring him to useful citizenship. He also argues that the length of the sentence is unduly expensive to the State. But, in making these arguments, defendant entirely ignores the aggravating evidence presented, including evidence showing escalating severity, defendant's use of manipulation, and the grave seriousness of the crimes, which were continuously committed over a period of several years. Based on the aggravating evidence, particularly the seriousness of the crimes, the trial court's sentence was not an abuse of discretion.

¶ 25 For these reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 26 Affirmed.