

2011 IL. App (2d) 091346-U
No. 2—09—1346
Order filed July 13, 2011

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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 Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07—CF—633
)	
STEPHEN D. SILVEY,)	Honorable
)	Peter J. Dockery,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

Held: Trial court did not abuse its discretion in sentencing defendant to 57-years imprisonment given the seriousness of offense and defendant's lack of remorse.

¶ 1 Defendant, Stephen D. Silvey, appeals his sentences for predatory criminal sexual assault of a child under the age of 13 (720 ILCS 5/12—14.1(a)(1) (West 2004)), aggravated criminal sexual abuse of a child at least age 13 and under 17 (720 ILCS 5/12—16(d) (West 2006)), intimidation (720 ILCS 5/12—6(a)(1) (West 2006)), and possession of child pornography (720 ILCS 5/11—20.1(a)(1)(vi), (a)(6)(West 2006)). We affirm.

¶ 2

I. BACKGROUND

¶ 3 Silvey was initially indicted on nine counts, he pleaded guilty to four counts, and the remaining counts were dismissed. There was no agreement as to the sentence.

¶ 4 The factual basis for the plea showed that the victim, Christina C., was born on October 30, 1991. Silvey was born on October 3, 1961. Christina first met Silvey when she was a young child living in Oklahoma with her parents and her brother. Silvey developed a friendship with the family and, when they moved to Illinois, he continued the relationship. Silvey often stayed at the family residence on weekends and assisted them in a delivery business. Between 1999 and 2001, Silvey vaginally penetrated Christina in her home and, between October 30, 2005, and February 28, 2007, Silvey and Christina engaged in a sexual relationship at Silvey's apartment in Illinois. During the relationship, Silvey also showed Christina computer images of children engaged in sexual intercourse with adult men. In 2007, Christina disclosed the relationship to her parents, who reported it to the police.

¶ 5 Pursuant to a court order, an officer monitored telephone conversations between Christina and Silvey, during which Silvey told Christina that he would stop having sex with her when he was ready to do so on his own terms. When Christina told Silvey that she wanted to terminate the relationship, he told her that, if that happened, he had a bullet for her mother someday. During a search of Silvey's home, a computer hard drive was found to contain an image of a nude child restrained and bound in a sexual context.

¶ 6 On September 11, 2009, a sentencing hearing was held, and a large amount of aggravating evidence was presented, none of which Silvey discusses in his brief. That evidence showed that, while Silvey stayed in Christina's home, he sexually penetrated her multiple times per week. Her

parents eventually told Silvey that he was no longer welcome there after they became concerned that he was unusually attached to their children. Silvey then rented an apartment nearby and continued to engage in sexual activity with Christina. During that time, Silvey told Christina that she would be sent back to her native Korea if anyone found out about them, he threatened Christina's mother and brother, and he verbally abused Christina.

¶ 7 Thousands of pornographic images of children were found in Silvey's home. Some images included toddlers engaged in sexual acts with men and others showed bound children being sexually assaulted and humiliated by adults.

¶ 8 There was evidence that, while Silvey was sexually abusing Christina, he was also engaged in sexual activity with a young girl in Texas. At the time of sentencing, he was under indictment in Texas for sexual assault of a child. There was evidence that Silvey took pictures of Christina, when she was age 9 or 10 and while she was nude, and that he placed them on his computer. When Christina was 11, Silvey showed her pictures of the girl in Texas. That girl appeared to Christina to be approximately two years' younger than she.

¶ 9 Silvey gave a very lengthy and somewhat rambling statement in allocution, during which he said that he did not possess a moral understanding of things like sexual abuse and that he was taught as a child that sex was a need much like the need to breathe or drink water. Essentially, he argued repeatedly that he had not been taught as a child or through his culture that his actions were wrong. Silvey also blamed Christina's parents for the abuse, stating that he felt forced into a custodial relationship with the children because their parents were raising them poorly. He said that the sexual relationship followed out of those circumstances.

¶ 10 Silvey said that, up until the day of his arrest, he did not consider his sexual behavior as sexual abuse or rape. He also blamed some of his actions on depression, various other mental problems, and the departure of his previous girlfriend. Silvey said that, after he was arrested, he began to search religious morals and was able to repair his moral base and see where he went wrong. He then apologized to Christina.

¶ 11 After Silvey's statement in allocution, the trial court discussed the evidence at length and found numerous factors in aggravation. The court discounted Silvey's contentions about mental health issues, finding they were discredited by other materials in the record. The court found that Silvey's view of himself and his relationship with Christina was self-justifying and incredible. The court further found that Silvey was not really remorseful and that his apology was self-centered and artificial. The court said that its sentence was based on the need for deterrence and to protect the public from further criminal acts by Silvey. The court then sentenced Silvey to an extended term of 50 years' incarceration for predatory criminal sexual assault of a child, to be served at 85% of the term, and 7 years for aggravated criminal sexual abuse, to be served consecutively. The court gave concurrent five year sentences for intimidation and possession of child pornography.

¶ 12 Silvey moved to withdraw his guilty plea and to reconsider the sentence. Those motions were denied, and Silvey appeals.

¶ 13 II. ANALYSIS

¶ 14 Silvey contends that his sentence is excessive. His sole argument is that the sentence is irrational because he would be age 91 "instead of say 75 or 80" at the time of his release, resulting in greater cost to the State with no greater deterrent effect.

¶ 15 “[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.

¶ 16 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).

¶ 17 Here, there is no dispute that each term of the sentences was within the applicable statutory range. Silvey was eligible for an extended term of 30 to 60 years for predatory criminal sexual assault of a child under the age of 13. 720 ILCS 5/12—14.1(b)(1) (West 2004); 730 ILCS 5/5—5—3.2 (West 2004); 730 ILCS 5/5—8—2(a)(2) (West 2004). For aggravated criminal sexual abuse of a child at least age 13 and under 17 he was subject to 3 to 7 years. 720 ILCS 5/12—16(g) (West 2006); 730 ILCS 5/5—8—1(a)(5) (West 2006). He was eligible for 2 to 10 years for

intimidation (720 ILCS 5/12—6(b) (West 2006)) and 2 to 5 years for possession of child pornography (720 ILCS 5/11—20.1(c) (West 2006); 730 ILCS 5/5—8—1(a)(6) (West 2006)).

¶ 18 Silvey does not dispute any of the trial court's factual findings. Instead, he argues that the sentence is irrational because adding years that would result in release after age 75 or 80 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, Silvey entirely ignores the large amount of aggravating evidence presented, including evidence showing the grave seriousness of the crimes and that Silvey was not actually remorseful. Indeed, the evidence tended to show that, despite his statements to the contrary, Silvey did not actually view his actions as wrong and he was at a high risk of reoffending. He also did not present any evidence to show that his age at the time of release would have any meaningful effect on those characteristics. Based on the large amount of aggravating evidence, particularly the seriousness of the crimes, the trial court's sentence was not an abuse of discretion.

¶ 19

III. CONCLUSION

¶ 20 The trial court's sentencing determination was not an abuse of discretion. Accordingly, the judgment of the circuit court of Du Page County is affirmed.

¶ 21 Affirmed.