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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07—CF—1135
	)	
ANTHONY P. JACKSON,	)	Honorable
	)	Kathryn E. Creswell,
Defendant-Appellant.	)	Judge, Presiding.

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

**ORDER**

*Held:* The trial court did not abuse its discretion in sentencing defendant to 18 years' imprisonment (on a 6-to-30 range) for predatory criminal sexual assault of a child: the court's complained-of reference to sex offenders' high rate of recidivism was made only in passing and did not affect the sentence, which instead was based on the seriousness of the offense and defendant's extensive criminal history and which was significantly less than the maximum and less than what the State sought.

Defendant, Anthony P. Jackson, appeals his sentence of 18 years' incarceration for his conviction of predatory criminal sexual assault of a child, a Class X felony (720 ILCS 5/12—14.1(a)(1), (b)(1) (West 2006)). He contends that the trial court erred by referring to a high rate of recidivism in aggravation during sentencing. We affirm.

## I. BACKGROUND

On July 15, 2008, Jackson pleaded guilty to one count of predatory criminal sexual assault of a child. There was no agreement as to the sentence. The factual basis for the plea included that, in April 2007, Jackson, who was over the age of 17, was caring for R.W., who was then 8 years of age. Jackson took R.W. to the basement of her home, rubbed his penis on her vagina, and ejaculated. He then used a towel to clean R.W. and placed her underwear in the washer. DNA recovered was consistent with Jackson's. The court ordered a psychological evaluation before sentencing.

At the sentencing hearing, the court received impact statements from R.W. and her parents. R.W. reported that she worried about what would happen to her and that she had nightmares. Dr. Lesely Kane evaluated Jackson. Kane reported that Jackson had brain damage that resulted in learning deficits and personal problems, but there were no indications of severe mental illness, delusions, or reality impairment. Jackson also had substance abuse issues.

The presentence investigation report showed that Jackson had previous convictions of criminal damage to property, assault and battery, malicious mischief, shoplifting, larceny, criminal trespass, trespass, welfare fraud, two counts of domestic battery, two counts of burglary, and two counts of driving under the influence. Jackson gave a statement in allocution, expressed remorse, and asked the court to recommend mental health treatment.

Citing *People v. Huddleston*, 212 Ill. 2d 107 (2004), the State asked the court to consider the effect of the offense on the victim and requested a sentence of 22 years' incarceration. Jackson's counsel argued that the severity of the offense and the effect on a young victim were why the offense was a Class X felony. He also argued that Jackson had committed no previous sex offenses and observed that Jackson had asked to receive mental health treatment.

The trial court stated that it considered the factors in aggravation and mitigation, counsel's arguments, Jackson's statement in allocution, and the effect of the offense on the victim. The court noted Jackson's mental health problems and found the psychological report to be primarily mitigating, but the court also stated that it had to look at the big picture, which was that Jackson had been committing crimes for a long time. The court discussed Jackson's criminal history in detail. The court then acknowledged that the penalty range reflected the seriousness of the offense, but also stated that the specific facts of the case were especially aggravating. The court observed that the law applied to victims under the age of 13 but that R.W. was only 8 years of age. The court also noted that the offense occurred in her own home. Citing *Huddleston*, the court briefly noted that sex offenders have a high rate of recidivism and that children are especially vulnerable to the effects of sexual assault. The court stated that *Huddleston* allowed consideration of the impact of the crime on the child. The court then found that a long sentence was necessary to protect society and to deter others, even though Jackson had expressed remorse and pleaded guilty.

The court sentenced Jackson to 18 years' incarceration and ordered that he pay mandatory fines and fees. Jackson moved to reconsider, arguing that the court erred by applying *Huddleston* when it imposed the sentence. The court denied the motion, stating that the aggravating factors, including Jackson's prior felony convictions, outweighed the mitigating factors, and noting that the 18-year term was less than the State requested. Jackson appeals.

## II. ANALYSIS

Jackson contends that the trial court abused its discretion in sentencing him when, citing to *Huddleston*, it relied on the recidivism rate of sex offenders. He argues that not all sex offenders are a danger to society and that it was not shown that he was personally likely to reoffend. The State

argues that consideration of the effect on the victim was appropriate, that the trial court properly considered the seriousness of the offense, and that the court referred to the rate of recidivism only in passing.

Predatory criminal sexual assault of a child is a Class X felony punishable by 6 to 30 years' incarceration. 720 ILCS 5/12—14.1(b)(1) (West 2006); 730 ILCS 5/5—8—1(a)(3) (West 2006). “[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.

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). In considering the seriousness of the offense, the psychological harm done to the child victim may properly be considered as an aggravating factor. *People v. Garcia-Cordova*, 392 Ill. App. 3d 468, 492 (2009).

In *Huddleston*, our supreme court considered whether a mandatory life sentence for predatory criminal sexual assault of two or more children (720 ILCS 5/12—14.1(b)(1.2) (West 2002)) violated the proportionate penalties provision of the Illinois Constitution. In determining that it did not, the court extensively considered the high rate of recidivism of sex offenders and the harm suffered by victims of such crimes. *Huddleston*, 212 Ill. 2d at 132-40.

Jackson does not contend that a court could never consider the rate of recidivism, but he argues that the court here improperly considered that rate as it applied to him, because there was nothing showing that he was likely to reoffend. However, the court mentioned the recidivism rate only in passing. “ ‘An isolated remark made in passing, even though improper, does not necessarily require that defendant be resentenced.’ ” *People v. Reed*, 376 Ill. App. 3d 121, 128 (2007) (quoting *People v. Fort*, 229 Ill. App. 3d 336, 340 (1992)). To obtain a reversal, the defendant “must show that the trial court relied on the improper fact when imposing sentence.” *Id.*

Here, Jackson has not shown that the rate of recidivism affected his sentence. Instead the record shows that the court was primarily concerned with the seriousness of the offense and the effect that it had on the victim—both appropriate factors for consideration. The court noted that R.W. was particularly young, that the crime was committed in her own home, and that she suffered nightmares as a result of the crime. The court also considered at length Jackson’s extensive criminal history and appropriately balanced that with mitigating factors, such as Jackson’s mental health issues and expression of remorse. It then mentioned recidivism only in passing. The court sentenced Jackson to significantly less than the maximum possible sentence and less than that requested by the State. That decision was not an abuse of discretion.

### III. CONCLUSION

The trial court did not abuse its discretion when it imposed an 18-year sentence. Accordingly, the judgment of the circuit court of Du Page County is affirmed.

Affirmed.