

No. 2—10—0616
Order filed March 23, 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 Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07—CF—3496
)	
MOLLY K. PHILLIPS, f/k/a)	
Molly K. Jensen,)	Honorable
)	John T. Phillips,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in denying defendant probation for attempted predatory criminal sexual assault of a child; although a psychologist found that defendant was afraid of and coerced by her boyfriend, the evidence entitled the court to find that those factors did not amount to provocation warranting probation; although the court explicitly or presumably considered all the mitigating evidence, the court reasonably found that probation would deprecate the great seriousness of the offense.

Defendant, Molly K. Phillips, f/k/a Molly K. Jensen, pleaded guilty to one count of attempted predatory criminal sexual assault of a child (720 ILCS 5/8—4(a), 12—14.1(a)(1) (West 2008)). In

exchange for her plea, the State dropped numerous charges pending against her.¹ However, no agreement as to a sentence was made. Following a hearing, defendant was sentenced to 5 years' imprisonment, and her sentence was lowered to 4½ years' imprisonment following a hearing on her motion to reconsider the sentence. Defendant timely appeals, claiming that her 4½ sentence is excessive. We affirm.

Evidence presented at the sentencing hearing revealed that defendant had a horrific childhood. Her mother, who had an untreated bipolar disorder, was physically, verbally, and sexually abusive. Defendant left home at a young age and found herself involved in a series of abusive relationships. In one such relationship, her second marriage, defendant had a son, Gillie. When that marriage ended, defendant began seeing a man named Joseph Summers. Summers was very considerate, caring, and compassionate in the beginning of his relationship with defendant, but that soon changed.

After Summers forced defendant to engage in numerous sadomasochistic sexual activities, Summers asked defendant to involve Gillie, who was between four and five years old at that time. Initially, Summers beat Gillie and had Gillie watch defendant and Summers having sex. The degree of abuse escalated when, during one encounter Summers had with defendant and Gillie, Summers

¹Defendant was charged with five counts of predatory criminal sexual assault of a child (720 ILCS 5/12—14.1(a)(1) (West 2006)) and one count of aggravated criminal sexual abuse (720 ILCS 5/12—16(b) (West 2006)). Pursuant to an agreement with the State, the first count of the indictment was amended to attempted predatory criminal sexual assault of a child and defendant pleaded guilty to that count.

filmed defendant placing Gillie's hand in her vagina.² On two other occasions, defendant had oral sex with Gillie. Summers masturbated while watching the first incident and engaged in anal sex with defendant during the second. Defendant reported that she continued to see Summers because he would promise to stop engaging in such behavior. When Summers went back on his promise, defendant would comply with Summers' demands, because he would threaten to kill her and Gillie. Often, Summers would use the videotape of defendant and Gillie to either punish defendant or manipulate her.

In 2002, after several months of defendant's and Gillie's involvement with Summers, defendant reported the abuse to the authorities and relinquished custody of Gillie to Gillie's father. Defendant continued to support Gillie even though she had no contact with him. Defendant also sought counseling at that time and eventually married a respectable man from a supportive family. Defendant and her third husband had a son in 2008.

Several years after the abuse ended, charges were brought against defendant, who had no criminal history, and Summers. During the proceedings in Summers' case, defendant truthfully testified at length about the abuse that Gillie endured during those months that defendant dated Summers.

At issue in this appeal is whether defendant's 4½-year sentence is excessive. Our constitution requires that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, §11. As long as the trial court " 'does not consider incompetent evidence, improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a

²These acts formed the basis of the charge to which defendant pleaded guilty.

defendant to any term within the statutory range prescribed for the offense.’” *People v. Bosley*, 233 Ill. App. 3d 132, 139 (1992), quoting *People v. Hernandez*, 204 Ill. App. 3d 732, 740 (1990). A reviewing court will not disturb a sentence that is within the applicable sentencing range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209 (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.

“It is the province of the trial court to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case” (*People v. Latona*, 184 Ill. 2d 260, 272 (1998)), and the reviewing court may not substitute its judgment for that of the trial court merely because it might weigh the pertinent factors differently. *Stacey*, 193 Ill. 2d at 209. Although the trial court must consider the defendant’s rehabilitative potential, it is not required to give greater weight to rehabilitation than to the seriousness of the offense, as rehabilitation does not necessarily outweigh other factors warranting a severe sentence. *People v. Baker*, 241 Ill. App. 3d 495, 499 (1993). Indeed, the most important factor is the seriousness of the offense. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002).

The offense to which defendant pleaded guilty, *i.e.*, attempted predatory criminal sexual assault of a child, is a Class 1 felony. 720 ILCS 5/8—4(c)(2), 12—14.1(b)(1) (West 2008). A defendant convicted of a Class 1 felony faces either a term of probation of no longer than 4 years (730 ILCS 5/5—6—2(b)(1) (West 2008)) or a prison term between 4 and 15 years (730 ILCS 5/5—8—1(a)(4) (West 2008)). Defendant’s 4½-year sentence was nearly the minimum prison term.

Nevertheless, defendant contends that she should have received a term of probation, but that the trial court (1) substituted “its personal opinion for the conclusions of a licensed psychologist”

and (2) failed to “properly consider the totality of the circumstances.” We address each contention in turn.

First, defendant contends that the trial court substituted its opinion for that of a licensed psychologist. In advancing this claim, defendant notes that Dr. Robert Meyer, who administered a sex offender evaluation, concluded that defendant committed the horrific acts against her son out of fear and coercion. The trial court found that, although defendant was fearful, defendant was not acting under “such a strong provocation or such coercion that [she was] kept from preventing [the abuse] in any way.” Because of the court’s conclusion, defendant argues that “[t]he trial court disregarded Dr. Meyer’s training, education and experience, and drew [its] own, unsubstantiated conclusions with respect to the offense.” We disagree.

A court may minimize a sentence when “[t]he defendant acted under a strong provocation.” 730 ILCS 5/5—5—3.1(a)(3) (West 2008). As the State observes, although Summers may have threatened defendant at times during their relationship, the general fear created by those threats did not mean that, for sentencing purposes, defendant was provoked into abusing Gillie. See *People v. Nitz*, 242 Ill. App. 3d 209, 214-15, 217, 228 (1993) (suggestion that wife was entitled to a reduced sentence because she was provoked to help her husband commit murder was unfounded, even though the evidence established that, before the murder occurred, the husband had threatened and abused the wife and the wife had an order of protection against the husband).

Further, undercutting defendant’s argument that she was provoked into abusing Gillie is the fact that she alone stopped the abuse. Specifically, the evidence revealed that defendant continued to bring Gillie with her to see Summers because Summers had promised that he would not act in a sexually deviant way. Once Gillie and defendant were with Summers, Summers would use threats

to get defendant to comply with Summers' demands. However, after Gillie was abused for a third time, defendant told Summers that the abuse had to stop. After that point, Gillie was not abused by either defendant or Summers. In light of this evidence, the trial court was entitled to find that the fear and coercion noted by Dr. Meyer did not constitute provocation warranting probation.

With regard to defendant's second claim, we conclude that the trial court did consider the totality of the circumstances before sentencing defendant. In imposing the sentence, the trial court delineated all of the evidence it considered. That is, in addition to considering the testimony presented at trial, the court stated that it considered the presentence investigation report, the reports prepared by the mental health professionals, and the letters submitted by defendant's family, Gillie, and Gillie's father. From that, the court weighed all the mitigating and aggravating evidence presented and commented on a few of those factors. For instance, with regard to the mitigating evidence, the court noted, among other things, that defendant's childhood was "extremely difficult," that defendant reported the offense to the authorities, and that defendant was remorseful. The fact that the court did not recite every single mitigating factor applicable in this case is inconsequential, as we presume that the court considered the mitigating evidence that defendant claims the court overlooked. See *People v. Dominguez*, 255 Ill. App. 3d 995, 1004 (1994) (where mitigating evidence was presented to the trial court during the sentencing hearing, reviewing court presumes that the trial court considered it, absent some indication, other than the sentence itself, to the contrary).

However, weighed against all the mitigating evidence were the facts and circumstances of the offense. As the trial court described it, the abuse that Gillie suffered was "disgusting[]," "cruel," "morally reprehensible," and "almost unthinkable," especially in light of the fact that defendant, as

Gillie’s mother, abandoned her role as the “only line of defense” that Gillie had to fight the abuse. Because of the serious nature of the offense, we cannot conclude that the trial court abused its discretion when it imposed a 4½-year prison sentence. See *People v. Moreira*, 378 Ill. App. 3d 120, 130-32 (2007) (this court affirmed the defendant’s concurrent sentences given the seriousness of the offenses, even though there was evidence that the defendant had a supportive family, he expressed great remorse, and he had steady employment).

Citing *People v. Bolyard*, 61 Ill. 2d 583 (1975), defendant claims that the trial court refused to even consider giving her probation, because the court was of the opinion that no defendant convicted of a sex crime should receive probation. In *Bolyard*, the defendant was convicted of indecent liberties with a child. *Id.* at 585. At sentencing, the trial court described an informal policy that prohibited judges from giving probation to defendants that had been convicted of sex crimes. *Id.* Although that policy had been relaxed by the time the defendant was sentenced, the court noted that it still subscribed to that policy. *Id.* Thus, based solely on that policy, the court denied the defendant’s request for probation and sentenced the defendant to 6 to 18 years’ imprisonment. *Id.* On appeal, the defendant argued that the trial court abused its discretion when it refused to give the defendant a term of probation. *Id.* at 586. Our supreme court agreed, noting that the record affirmatively revealed that the trial court denied the defendant probation based solely on the fact that the defendant fell within the category of offenders that the trial court disfavored. *Id.* at 587.

Bolyard is not controlling here. In *Bolyard*, the trial court made clear that it would not give probation to any defendant convicted of a sex crime. Here, nothing in the record suggests that the trial court had a similar policy. Rather, what the record does establish is that the trial court refused to give defendant probation because the circumstances surrounding the offense of which defendant

was convicted were quite grave. Thus, the court reasonably found that a term of probation would deprecate the seriousness of the offense. See 730 ILCS 5/5—6—1(a)(2) (West 2008) (court may not impose a term of probation if “probation *** would deprecate the seriousness of the offender’s conduct”).

Based on the foregoing, we affirm the judgment of the circuit court of Lake County.

Affirmed.