

2010 IL App (2d) 100256-U  
No. 2-10-0256  
Order filed October 13, 2011

**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).

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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 Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07-CF-147
	)	
ORLANDO VILLA,	)	Honorable
	)	Joseph R. Waldeck,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices Bowman and Zenoff concurred in the judgment.

**ORDER**

*Held:* (1) The trial court did not abuse its discretion in sentencing defendant to an aggregate 60 years' imprisonment for 5 convictions of predatory criminal sexual assault of a child, as although defendant would not be released until age 74 the sentence was justified by the seriousness of the offense and the other aggravating factors; (2) defendant was entitled to day-for-day good-conduct credit and to credit for time spent in presentencing custody.

¶ 1 Defendant, Orlando Villa, appeals from the trial court's order resentencing him to an aggregate term of 60 years' incarceration for five convictions of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006)). He contends that his aggregate sentence is

excessive, that he is entitled to credit for presentence time spent in custody, and that he is entitled to day-for-day good-conduct credit, which was ordered by the trial court but is not being properly applied by the Department of Corrections. The State concedes the credit issues. We affirm the sentence and modify the mittimus to clearly state that Villa is entitled to the credits.

¶ 2

## I. BACKGROUND

¶ 3 On January 12, 2007, Villa was arrested and charged with five counts of predatory criminal sexual assault of a child in connection with incidents where he sexually penetrated A.R., who was in grade school at the time. Villa remained in custody and, in August 2007, a jury trial was held.

¶ 4 Evidence at trial showed that, from the time that A.R. was in first grade and until she was 9 or 10 years old, Villa and his wife, Mary, babysat her after school. A.R. testified that, when she was alone with Villa, he would take her into his sons' room and perform oral sex on her. She stated that Villa would also show her his hard penis and attempt to get her to perform oral sex on him. She also said that Villa showed her Playboy magazines and told her that he wanted her to do things depicted in the magazines when she was older. The incidents occurred more times than A.R. could remember because they happened so often. The Villas were neighbors of A.R., and A.R. was fond of Mary, played with their children, and spent a lot of time with their family until they moved away around 1998.

¶ 5 When A.R. was nine years old, she saw a physician because she had developed bumps in her vaginal area and experienced burning in the area during urination. The physician suspected that the problem was a sexually transmitted human papillomavirus (HPV) infection, but did not diagnose it with complete certainty. When asked if anyone had touched her or had been sexual with her, A.R. responded "no" because she was scared. A follow-up visit 18 months later did not show any signs of HPV.

¶ 6 In 2003, A.R. began having behavior problems, and she would bang her head against the wall and try to suffocate herself with a pillow. She also drew a picture depicting a child hanging. Her mother took her to a counselor, and A.R. revealed the abuse. She said that she did not report it earlier because she felt dirty, and because Villa told her not to tell and gave her money to stay quiet. Villa also threatened to harm A.R.'s mother and grandmother if she told anyone. After various delays, Villa was arrested and charged.

¶ 7 Villa denied the allegations, presented evidence to counter A.R.'s allegations that he spent time alone with her, and focused on various inconsistencies in the evidence against him. The jury found him guilty on all counts.

¶ 8 At sentencing, the State provided evidence in aggravation that Villa once licked another girl's ear when she was five years old and that he kissed the same girl and placed his tongue in her mouth. The girl's older sister testified that Villa stared at her, making her uncomfortable, and that he touched her private parts over her clothes. The State also presented evidence of emotional and behavioral problems that A.R. suffered as a result of the abuse, along with a victim impact statement from A.R. Villa's criminal history consisted of convictions of traffic offenses, resisting a peace officer, soliciting a prostitute, reckless driving, and reckless conduct. In mitigation, Villa provided the court with a letter from Mary, stating that she had cancer and pleading for Villa to be there to help with his family. Villa's sex offender evaluation scored him within the low range for recidivism.

¶ 9 The trial court found that, based on the seriousness of the offenses and Villa's continuous conduct over a number of years, a minimum sentence was not appropriate. Believing that consecutive sentences were mandatory, the court sentenced Villa to five consecutive 12-year terms of incarceration. The court stated that 50% of the sentence would be served. Determining that the

consecutive sentences were not actually mandatory, we vacated and remanded for resentencing. *People v. Villa*, No. 2-07-1309 (2007) (unpublished order under Supreme Court Rule 23).

¶ 10 On remand, the parties stood on their previous arguments and evidence. The court noted that Villa was found guilty of five separate and distinct acts and determined that consecutive sentences were necessary for the protection of the public. Thus, the court again imposed consecutive 12-year terms of incarceration. The court found, and the parties stipulated, that, based on the dates of the offenses, Villa would receive day-for-day good-conduct credit. The court did not check the box on the mittimus that would allow the sentence to be served at 85% and it ordered that Villa was to be given good-conduct credit as administered by the Department of Corrections. The court also ordered credit for time served. However, the parties agree that the Department of Corrections is applying the sentencing credit at 85% of the sentence and has not given Villa credit for presentence time spent in custody. That matter is also reflected on the Department of Corrections' website. Villa's motion to reconsider was denied, and he appeals.

¶ 11 II. ANALYSIS

¶ 12 A. Excessive Sentence

¶ 13 Villa contends that his aggregate 60-year sentence was excessive. He argues that he will be 74 years of age when his sentence is completed, which he claims is well beyond a term necessary to protect the public.

¶ 14 “[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.

¶ 15 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).

¶ 16 Here, there is no dispute that each sentence was within the applicable statutory range. Villa was subject to 6 to 30 years on each conviction. 720 ILCS 5/12-14.1(b)(1) (West 2006); 730 ILCS 5/5-8-1(a)(3) (West 2006). Villa does not dispute any of the trial court's factual findings and concedes that more than the minimum term for each offense may have been warranted. He argues, however, that the aggregate sentence is irrational because it would result in release at age 74. But, in making this argument, Villa entirely ignores the aggravating evidence presented, including evidence showing the grave seriousness of the crimes, which were continuously committed over a period of several years, and that he acted inappropriately toward other girls. Based on the aggravating evidence, particularly the seriousness of the crimes, the trial court's sentence was not an abuse of discretion.

¶ 17 B. Credit

¶ 18 Villa next argues that he is entitled to credit for presentence time spent in custody and that he is entitled to day-for-day credit against his sentence. The State agrees.

¶ 19 A defendant is entitled to credit against his prison term for each day or part of a day spent in jail prior to the imposition of sentence. 730 ILCS 5/5-8-7(b) (West 2006). “Because sentence credit for time served is mandatory, a claim of error in the calculation of that credit cannot be waived.” *People v. Whitmore*, 313 Ill. App. 3d 117, 121 (2000). The appellate court may give credit when any appeal is properly before it, even if the defendant did not seek the credit below. See *People v. Caballero*, 228 Ill. 2d 79, 83-84 (2008).

¶ 20 Generally, prisoners are entitled to day-for-day good-conduct credit against their sentences. 730 ILCS 5/3-6-3(a)(2.1) (West 2006). Currently, under truth-in-sentencing provisions, a person convicted of predatory criminal sexual assault of a child would be excepted from the day-for-day credit provision and would receive no more than 4.5 days of credit for each month of his or her sentence. 730 ILCS 5/3-6-3(a)(2)(ii) (West 2006). That provision took effect on June 19, 1998. See Pub. Act § 90-592, §5, eff. June 19, 1998; *People v. Gooden*, 189 Ill. 2d 209, 223 (2000). This court may take judicial notice of information that the Department of Corrections has provided on its website. *People v. Young*, 355 Ill. App. 3d 317, 321 n.1 (2005).

¶ 21 Here, the trial court found, and the parties stipulated, that, based on the dates of the offenses, the truth-in-sentencing provisions did not apply. Thus, the court specifically ordered that Villa receive day-for-day credit. The parties also agree that Villa is entitled to credit for presentence time spent in custody as of January 12, 2007. However, the Department of Corrections has been incorrectly applying the credits.

Accordingly we modify the mittimus to make clear that Villa is entitled to credit for time spent in presentence custody and to day-for-day good conduct credit.

¶ 22

### III. CONCLUSION

¶ 23 The judgement of the circuit court of Lake County is affirmed as modified to reflect that Villa is entitled to day-for-day good-conduct credit and credit for time spent in presentence custody.

¶ 24 Affirmed as modified.