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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-1759
)	
RAY A. MOORE,)	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: (1) The trial court did not abuse its discretion in sentencing defendant to 40 years' imprisonment (on a 20-to-60 range) for first-degree murder, as, despite the mitigating evidence, the sentence was justified by the seriousness of the offense and the other aggravating factors; (2) because defendant and a codefendant were sentenced for different sets of offenses, they were not similarly situated, and, thus, defendant could not assert that his sentence for first-degree murder was grossly disparate to the codefendant's sentence for that offense.

¶ 1 Defendant, Ray A. Moore, was convicted of, among other things, first-degree murder (720 ILCS 5/9-1(a)(1) (West 2008)), and he was sentenced to 40 years' imprisonment for that offense. He moved to reconsider his 40-year sentence, arguing that it was excessive in light of various

mitigating factors. The trial court denied the motion, and this timely appeal followed. On appeal, defendant (1) renews his claim that his 40-year sentence for first-degree murder is excessive and (2) contends that his 40-year sentence is grossly disparate to the 32-year sentence that a codefendant received. We affirm.

¶ 2 First, in considering whether defendant's sentence is excessive, we note that 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 (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 we may not substitute our judgment for that of the trial court merely because we might weigh the pertinent factors differently. *Stacey*, 193 Ill. 2d at 209.

¶ 3 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). A sentencing judge is presumed to have considered all relevant factors, unless the record affirmatively shows otherwise. *People v. Hernandez*, 319 Ill. App. 3d 520, 529 (2001). The weight to be attributed to each factor in aggravation and mitigation depends upon the particular circumstances of the case. *Kolzow*, 301 Ill. App. 3d at 8. As a result, the existence of mitigating factors neither requires the minimum sentence (*People v. Adamcyk*, 259 Ill. App. 3d 670, 680 (1994)) nor precludes the maximum (*People v. Flores*, 404 Ill. App. 3d 155, 158 (2010)).

¶ 4 Here, as noted, defendant was convicted of first-degree murder. A defendant convicted of first-degree murder faces a sentence between 20 and 60 years. 730 ILCS 5/5-8-1(a)(1)(a) (West 2008). Defendant's 40-year sentence falls at the midpoint of this range. Nevertheless, defendant argues that his sentence is excessive because the trial court failed to accord proper weight to the fact that he did not actually kill the victim, as well as his youth, social background, lack of gang membership, lack of criminal history, expression of remorse, admission to committing the crime, and surrender to the police. We find that none of these factors, when considered individually or collectively, warrants the conclusion that the trial court abused its discretion in imposing a 40-year sentence for first-degree murder.

¶ 5 In contrast to defendant's assertion, the record reveals that the trial court considered all of these factors but found them either aggravating or outweighed by other aggravating factors. Specifically, before imposing the sentence, the trial court mentioned that it considered the presentence investigation report (PSI). Although the court did not specify what mitigating factors contained in the PSI that it considered, the court was not required to do so, and we must presume that the court considered all of the mitigating evidence the PSI contained. See *People v. Torres*, 146 Ill. App. 3d 250, 256 (1986) (“[W]here evidence is offered in mitigation, the sentencing judge will be presumed to have considered it unless there is some statement in the record aside from the sentence imposed that would tend to indicate otherwise.”). The PSI revealed that defendant has a close relationship with his grandparents, living with them and his mother and having worked part-time at his grandfather's trucking company. The area where defendant lives is heavily populated with members of the Conservative Vice Lord street gang and is the site of frequent drug sales. Despite this, defendant has no criminal record and contended in the PSI that he is not a gang member.

¶ 6 In imposing a sentence, the court noted that defendant was 17 years old when the murder occurred. However, the court found that, at 17, defendant was “old enough, clearly, to not engage in this type of behavior.” Likewise, the court noted that, in defendant’s very brief statement to the court, wherein he never apologized for his actions, defendant classified the murder as a “mistake.” The court found differently, observing that the robbery that led to the murder was the result of a “deliberate, voluntary choice made by the defendant[.]” Additionally, although defendant surrendered to the police and admitted to his involvement in the crime, defendant did so 48 days after the murder and only after he was positively identified as one of the offenders.

¶ 7 Added to this, the court noted that defendant began drinking alcohol at age 16, smoking marijuana at age 11, taking Ecstasy at age 17, and selling cocaine when he was around 15. At times, defendant smoked marijuana daily and would sell cocaine in order to get the money he needed to buy marijuana. The court observed that defendant had acted violently in the past, getting into fights when he was in junior high. Because of these fights, defendant was forced to attend anger-management classes.

¶ 8 Moreover, the court considered the circumstances of the murder for which defendant was held responsible. Specifically, the court recounted that the murder of Jim Keniski resulted from a plan to rob Jim and his wife, Keena. Although neither defendant nor any of his accomplices was armed and no one had any idea about how the robbery would be executed, all of the men, including defendant, voluntarily agreed to commit the robbery. During that robbery, Jim was viciously beaten and died as a result of the injuries he sustained. Further, even though defendant did not partake in the beating itself, he knew what his accomplices were doing when the beating began and was not surprised by the violence his accomplices used. Specifically, after Jim was pushed down a flight of

stairs, Keena, who was in a room close to the stairs, heard a thud followed by Jim's moans. At that point, Keena asked defendant what was happening. Defendant informed Keena that his accomplices were starting to "tweak"¹ and then demanded that Keena surrender her credit cards and any money she had. While making these demands, defendant blocked Keena from exiting the room and going to Jim's aid.

¶ 9 Given that "[t]he seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors," we cannot conclude that the trial court abused its discretion when it imposed a 40-year sentence for first-degree murder, especially in light of the other aggravating factors presented. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002); see also *People v. Gutierrez*, 402 Ill. App. 3d 866, 901-02 (2010) (seriousness of offense, and not the defendant's atrocious upbringing, was more important in fashioning a sentence); *People v. Shields*, 298 Ill. App. 3d 943, 951 (1998) ("Although age may be a relevant mitigating factor, it must be considered in combination with other mitigating and aggravating factors, including the nature and circumstance of the crime."); *People v. Marsan*, 238 Ill. App. 3d 470, 473 (1992) ("A defendant's

¹Citing the online urban dictionary (<http://www.urbandictionary.com>), defendant suggests that the term "tweak" means to be under the influence of methamphetamine. Thus, defendant claims that the trial court erred when it inferred from the usage of this term at trial that defendant knew his accomplices were harming Jim. Although that website does indicate that the term "tweak" means to be under the influence of methamphetamine, that website also defines the term "tweak" as meaning to harm someone. Given that, and, more importantly, the context in which that term was used at trial, we cannot conclude that the trial court erred when it inferred that defendant knew his accomplices were beating Jim.

lack of prior criminal record is not necessarily the most persuasive consideration at sentencing [citation], and in fact, the seriousness of the crime has been called the most important factor to be considered in imposing the sentence.”); *People v. Bell*, 209 Ill. App. 3d 438, 446-47 (1991) (reviewing court not persuaded to reduce the defendant’s sentence even given the defendant’s youth, lack of significant criminal history, and the fact that he did not have a weapon with him and attempted to dissuade his accomplices from shooting the victims); *People v. Brajcki*, 150 Ill. App. 3d 506, 515 (1986) (“Though the court must consider the defendant’s rehabilitative potential in sentencing him, such consideration need not outweigh the seriousness of the offense.”).

¶ 10 Second, we consider whether defendant’s 40-year sentence is grossly disparate to the 32-year sentence imposed on one of his codefendants. Defendant argues that he should receive less than 40 years’ imprisonment for first-degree murder, because codefendant Semaj Walker, who pushed Jim down the stairs and beat him, received only a 32-year sentence for first-degree murder.

¶ 11 Before determining whether defendant’s 40-year sentence is grossly disparate to the 32-year sentence that Walker received, we must first decide whether defendant and Walker are similarly situated, because, if they are not similarly situated, defendant’s claim must fail. *People v. Eubanks*, 283 Ill. App. 3d 12, 25 (1996). Considering whether defendant and Walker are similarly situated begins by examining the offenses for which both men were sentenced.

¶ 12 Defendant was sentenced to 40 years’ imprisonment for first-degree murder in addition to 7 years for home invasion (720 ILCS 5/12-11(a)(2) (West 2008)) and 3 years for robbery (720 ILCS 5/18-1(a) (West 2008)).²

²Defendant was convicted of first-degree murder (knowing or intentional first-degree murder and felony-murder predicated on home invasion, residential burglary, or robbery), one count of home

¶ 13 Walker was convicted of two counts of first-degree murder. Both counts were premised on Walker committing the murder while committing another forcible felony. Specifically, Walker was convicted of killing Jim while committing a robbery and a residential burglary (720 ILCS 5/9-1(a)(3) (West 2008)). In addition, Walker was convicted of home invasion, residential burglary, and two counts of robbery. However, he was sentenced only on one count of felony first-degree murder.

¶ 14 At first glance, it may appear that defendant and Walker are similarly situated. A closer examination reveals that they are not, as defendant and Walker were not sentenced for the same offenses. Specifically, the parties in Walker's case agreed that he could be sentenced only on the felony-murder conviction predicated on robbery, as Walker could not be convicted of both counts of felony-murder and his other convictions had to be vacated because they were of lesser included offenses of each other and/or felony-murder. See *Cardona*, 158 Ill. 2d at 411 (“Where but one person has been murdered, there can be but one conviction of murder; when multiple convictions are obtained for offenses arising out of a single act, sentence is imposed on the most serious offense.”); see *People v. Smith*, 183 Ill. 2d 425, 431-32 (1998) (when a defendant is convicted of (1) felony-murder based on armed robbery and (2) the armed robbery on which the felony-murder is

invasion, one count of residential burglary, and two counts of robbery. The felony-murder count was vacated, as it was less serious than knowing or intentional murder. *People v. Cardona*, 158 Ill. 2d 403, 411-12 (1994). Likewise, the residential burglary conviction was vacated. *People v. Chanthaloth*, 318 Ill. App. 3d 806, 813-14 (2001). Although neither of the robbery counts was vacated, as they charged defendant with taking different things from different victims, the court ordered that the 3-year terms imposed on those counts would run concurrently, resulting in defendant receiving an aggregate sentence of 50 years' imprisonment.

based, the armed robbery is a lesser included offense, and, thus, the conviction and sentence imposed for armed robbery must be vacated). In contrast, because defendant was convicted of knowing or intentional first-degree murder, he was properly convicted of and sentenced for first-degree murder in addition to home invasion and robbery. See *People v. Smith*, 233 Ill. 2d 1, 17-18 (2009). Because Walker was sentenced for one count of felony first-degree murder while defendant was sentenced to one count of knowing or intentional first-degree murder *in addition* to robbery and home invasion, Walker and defendant are not similarly situated.

¶ 15 Illustrative of this point is *People v. Stroup*, 397 Ill. App. 3d 271 (2010). There, the defendant argued that his concurrent 25-year sentences for armed robbery and home invasion were grossly disparate to his codefendant's concurrent 15-year sentences for those same offenses. *Id.* at 271. We determined that we could not consider whether the defendant received disparate sentences when compared to his codefendant, as the codefendant was sentenced for additional crimes. *Id.* at 274-75.

¶ 16 Here, because, like in *Stroup*, defendant was sentenced for different crimes than Walker, defendant and Walker are not similarly situated. Thus, we cannot consider whether defendant's 40-year sentence for first-degree murder is grossly disparate to the 32-year sentence that Walker received.

¶ 17 For these reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 18 Affirmed.