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No. 3-09-0727

Order filed March 1, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	No. 05-CF-54
	)	
DANIEL JUDGE,	)	Honorable
	)	Carla Alessio-Policandriotes,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Lytton and Schmidt concurred in the judgment.

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**ORDER**

*Held:* Upon remand from this court, the trial court did not abuse its discretion in sentencing defendant to consecutive sentences of 39 years imprisonment for first degree murder and 10 years imprisonment for armed violence. We affirm defendant's sentence.

In 2006, the trial court originally sentenced defendant to 41 years imprisonment for first degree murder and 13 years imprisonment for armed violence to run consecutively. This court vacated defendant's sentence and remanded the cause for a new sentencing hearing. On remand, another judge sentenced defendant to 39 years imprisonment for first degree murder and 10 years

imprisonment for armed violence to run consecutively. Defendant now claims the trial court abused its discretion when sentencing defendant. We affirm.

#### FACTS

Defendant's jury trial began on January 9, 2006. The evidence presented at trial was summarized in our first ruling in *People v. Judge*, No. 3-06-0448 (January 3, 2008) (unpublished order under Supreme Court Rule 23). Following a multiple day trial, a jury found defendant guilty of first degree murder and armed violence on January 20, 2006.

On March 27, 2006, the Will County adult probation department filed a presentence investigation report with the court. According to the report, defendant was born on March 2, 1985, and was 21 years of age at the time the probation department prepared the presentence investigation report, and defendant had a history of juvenile delinquency. Defendant received one year of reporting court supervision for the offense of unlawful possession of cannabis on June 13, 2001. During the term of court supervision, defendant was arrested for the offenses of hate crime and arson, and as a result, the juvenile court terminated defendant's court supervision unsuccessfully.

On October 3, 2002, the juvenile court adjudicated defendant delinquent for the offenses of arson, hate crime and criminal damage to property. The juvenile court placed defendant on formal probation until age 21. On February 23, 2006, the juvenile court terminated defendant's juvenile probation unsatisfactorily due to defendant being arrested in the present case. The report indicated that defendant did not have any other convictions as an adult.

According to the report, defendant described his childhood as "normal." He admitted that he belonged to a white supremacy gang beginning at the age of 13 but stopped his membership

after being placed on juvenile probation when he was 16 years of age. Although acknowledging prior drug use, defendant denied continued use of any drug, stating that he had not used any drugs for more than four years. Defendant denied any alcohol related problems.

Attached to the report was a letter from Will County adult probation department which contained a victim impact statement from Amelia McCormick, fiancée to victim Joseph Karpen, and a victim impact statement from Tammera Sigwerth, mother of the victim Joseph Karpen.

On April 11, 2006, the trial court sentenced defendant to 41 years imprisonment for the offense of first degree murder and 13 years imprisonment for the offense of armed violence to run consecutively. In defendant's first appeal, this court affirmed defendant's convictions, but vacated defendant's sentence and remanded the cause to the trial court for a new sentencing hearing before a different trial judge. *People v. Judge*, slip op. at p. 31 (Ill. App. Jan. 3, 2008).

Following remand, the cause was re-assigned to Judge Richard Schoenstedt on March 20, 2008. On March 26, 2008, defendant filed a motion for substitution of judge. On May 21, 2008, the chief judge of Will County assigned defendants' case to Judge Policandriotes.

On May 18, 2009, Judge Policandriotes conducted a sentencing hearing. The prosecutor presented a supplemental victim impact statement from Joseph Karpen's mother to the court. The State also offered certified juvenile court records pertaining to defendant as exhibits

The parties advised the court that instead of presenting the testimony of Dan Procarione, who testified at the original sentencing hearing, the parties provided the court with a transcript of his testimony for the court's consideration. According to the transcript, Procarione, a member of the Will County Sheriff's Department, testified that on March 24, 2001, he was dispatched to 212 Barr Elms Avenue in Joliet, Illinois. At that location, he found a subject named Pedro Zermmno

on the kitchen floor. He described Zermmno as unresponsive and bleeding from the left side of the head due to several lacerations.

Based upon his investigation, he learned that defendant was involved in a fight with Zermmno and that defendant made racial slurs against Zermmno. Procarione spoke with defendant about the incident. Defendant acknowledged being in a fight with Zermmno. When asked why he was involved in the fight, defendant said, “something to the effect what do you think, and then he [defendant] pointed to swastika drawing on his right pant leg.” Defendant told Procarione that “he didn’t like their kind.” Procarione said that Zermmno was Hispanic. Procarione also testified that defendant claimed Zermmno struck him first in the head with a bottle and that defendant did have a cut to his head.

Defense counsel submitted to the court an exhibit consisting of a neuropsychological evaluation of defendant completed by Michael M. Gelbort, Ph.D. Defense counsel also submitted pictures of defendant and his family and a photo album which the court reviewed. Defense counsel called Patricia Kohlhagen, defendant’s maternal grandmother, Jimmy Jo Judge, defendant’s mother, and Sean Powers, a friend of defendant as witnesses.

The court then heard sentencing alternatives from the attorneys. The prosecutor and defense counsel agreed that the sentencing range for first degree murder was 20 to 60 years imprisonment and that the sentencing range for armed violence was 6 to 30 years imprisonment. Further, the parties agreed that defendant must serve those sentences consecutively.

The prosecutor asked the court to impose the same sentence previously imposed by Judge Livas. Defense counsel argued that this case involved “anger, stupidity, alcohol,” but that this was not a hate crime. Defense counsel asked the court to consider the difficulties defendant had

as a child, the information contained in Dr. Gelbort's report, and the statutory factors in mitigation and aggravation. Defense counsel argued that defendant had not been disciplined while in the Department of Corrections and further argued that the statutory factors in mitigation outweighed the statutory factors in aggravation.

Following arguments from counsel, defendant provided an unsworn statement to the court. Defendant stated that he accepted full responsibility for his actions. Defendant said that he would not insult the court by asking for forgiveness but wanted the court to know that every day, he regretted what happened. Defendant said that he argued self defense at trial and at the time, honestly believed that he was justified in his actions. Defendant told the court that he did not go to the party with the intention of hurting anyone. While in prison, defendant said that he had tried to better himself and that he had not received any disciplinary actions.

The trial court took the matter under advisement in order to review the trial transcript and exhibits. The court set the cause for further hearing on August 19, 2009. On August 19, 2009, the parties appeared before the court for ruling on sentencing. The court stated that it had reviewed the transcripts, all supplemental documents, testimony at the sentencing hearing, and the contents of the presentence investigation report. The court also stated that it considered the nature of the offense, the victim impact statements and defendant's statement.

The court advised that it "considered the factors in aggravation and mitigation that were presented by State and defense, pursuant to statute, consideration of all factors, otherwise reviewed, and given the appropriate weight to each." The court then stated that it imposed a sentence of 39 years imprisonment on the offense of first degree murder and 10 years imprisonment on the offense of armed violence to run consecutive to one another.

On September 2, 2009, the trial court conducted a hearing on defendant's motion to reconsider sentence. Following arguments, the court stated that she "noted that Mr. Judge [defendant] is not the same person now as he was at the time of the offense." However, the court went on to say that it could not "change the nature of what he [defendant] was at the time of the offense and what his criminal history was before that. He [defendant] wrote that script."

The court stated that it considered the testimony at sentencing, the photographs, as well as the transcripts, presentence investigation report, victim impact statements, defendant's statement and the statutory provisions. The court stated that it gave sufficient weight to each of these factors. The court said that its prior decision stood and that it denied defendant's motion to reconsider.

On September 3, 2009, defendant filed a notice of appeal.

#### ANALYSIS

On appeal, defendant claims that the trial court's sentence of 39 years imprisonment for the offense of first degree murder was excessive and an abuse of discretion because defendant did not commit the offense with premeditation; defendant was youthful; and defendant demonstrated significant rehabilitative potential at the time of his sentencing hearing. Defendant asks this court to reduce defendant's sentence for first degree murder to a term which "reasonably balances both the rehabilitative potential of the defendant and the circumstances surrounding that offense." The State responds that the trial court did not abuse its discretion in sentencing defendant.

A trial court's sentencing decision is entitled to great deference. *People v. Streit*, 142 Ill. 2d 13, 18 (1991). A sentence which falls within the statutory range does not constitute an abuse

of discretion unless the sentence is manifestly disproportionate to the nature of the offense.

*People v. Jackson*, 375 Ill. App. 3d 796, 800 (2007).

In sentencing a defendant, a trial judge is required to consider statutory factors in aggravation and mitigation. 730 ILCS 5/5-5-3.2 (West 2004); 730 ILCS 5/5-5-3.1 (West 2004).

Included within those mitigating factors are a defendant's rehabilitative potential and youth.

However, a trial court is not required to give more weight to these factors than the seriousness of the offense or other factors in aggravation. See *People v. Lima*, 328 Ill. App. 3d 84, 100 (2002);

*People v. Johnson*, 223 Ill. App. 3d 169, 172 (1991). The seriousness of the crime is the most important factor to be considered by a trial judge when determining an appropriate sentence.

*People v. Tye*, 323 Ill. App. 3d 872, 890 (2001).

In this case, Judge Policandriotes sentenced defendant for the offense of first degree murder which carried a mandatory prison sentence of not less than 20 years and no more than 60 years. 720 ILCS 5/9-1(a)(2) (West 2004); 730 ILCS 5/5-4.5-20(a) (West 2004). The trial court sentenced defendant to a 39-year term of imprisonment, well within the prescribed statutory range. Before imposing sentence, the trial court stated that she reviewed the transcripts of trial testimony and considered the testimony of the witnesses at sentencing and defendant's statement to the court. Further, the trial court stated that it considered the contents of the presentence investigation report and other exhibits, along with the relevant statutory factors in aggravation and mitigation.

Defendant cites to numerous cases for the proposition that because defendant was a youthful offender with much rehabilitative potential, he should have received a lesser or minimal sentence. However, the cases cited by defendant are not controlling for two reasons. First, the

excessiveness of a sentence will not be determined based upon sentences imposed in separate and unrelated cases. *People v. Fern*, 189 Ill. 2d 48, 55-56 (1999). Second, the offenders in the cases cited by defendant were not only youthful but had little or no criminal history, unlike this defendant.

Although, defendant was only 19 years old at the time of these offenses, defendant had been consistently involved with the criminal justice system since 16 years of age. Defendant's juvenile record established that defendant not only had a history of delinquency but that defendant had a history of committing serious and violent crimes against both people and property.

A trial court is presumed to have considered all mitigating factors absent some indication to the contrary, other than the length of the sentence imposed. Further, the trial court is not required to "recite and assign value to each factor in mitigation upon which it is relying." *People v. Madura*, 257 Ill. App. 3d 735, 740-41 (1994). There is nothing in the record that supports defendant's contention that the trial judge did not consider defendant's youthfulness or rehabilitative potential. Moreover, on remand, this trial judge sentenced defendant to a lesser term than defendant originally received.

After carefully reviewing this record, we conclude that the trial court did not abuse its discretion in sentencing defendant in this case.

#### CONCLUSION

The judgment and sentencing order of the circuit court of Will County is affirmed.

Affirmed.