



to trial.

¶ 4 At the defendant's jury trial, the jury was instructed on, and found the defendant guilty of, second-degree murder based on the defendant's unreasonable belief in the need to defend himself with deadly force. The jury also found the defendant guilty of the other charges of aggravated battery with a firearm and armed violence.

¶ 5 On August 24, 2009, the defendant was sentenced to a term of imprisonment of 10 years on the second-degree murder conviction. This sentence was to be served concurrently with a 32-year prison sentence on the charge of armed violence against Collier and a consecutive sentence of 12 years' imprisonment on the charge of aggravated battery with a firearm against Samuels. The charge of aggravated battery with a firearm involving victim Collier was held to have merged into the charge of armed violence involving victim Collier, and no sentence was imposed thereon. Accordingly, the defendant was sentenced to serve 44 years in prison, with the 10-year term running concurrently with the consecutive 32-year and 12-year sentences.

¶ 6 The defendant appeals his sentences, arguing that the circuit court abused its discretion in imposing consecutive sentences on the armed violence and aggravated battery with a firearm charges, and arguing that, in any event, the length of each of the prison terms was excessive. For reasons that follow, we affirm.

¶ 7 The circumstances of the offenses are as follows. At 3 a.m. on the morning of the offenses, the defendant left a nightclub as a passenger in the front seat of a vehicle. He was intoxicated and high on marijuana. He was also carrying a loaded handgun. There had been several fights in the parking lot as the defendant was leaving, and gunshots had been fired.

¶ 8 A vehicle carrying the victims left the nightclub at the same time as did the

vehicle carrying the defendant. As the defendant's vehicle was passing the victims' vehicle, the defendant opened his door and fired multiple shots into the victims' vehicle. The driver, Brown, was shot in the head and killed instantly. Samuels and Collier were passengers in the back seat and were hit by bullets and injured.

¶ 9 The defendant testified that he had seen one of the occupants of the victims' vehicle holding a gun. None of the occupants of the vehicle carrying the victims heard or saw gunshots coming from inside their own vehicle.

¶ 10 The defendant testified that he did not intend to hurt anyone when he fired his gun. He intended only to distract the person holding a gun in the other vehicle so that they would not shoot at him. The defendant did not aim his gun, but fired randomly.

¶ 11 At the defendant's sentencing hearing, held August 24, 2009, the presentence investigation report was admitted. It indicated that the defendant was 27 years of age and in good health. He had dropped out of high school in the tenth grade but had obtained a GED certificate in 2004 while in jail on the instant charges. The defendant has two children, both age 5, whom he was supporting prior to his incarceration. While in jail on the instant charges, the defendant was involved in multiple violations of the Inmate Discipline Code. The defendant had no significant employment history and had not served in the military. The defendant did not have a lengthy criminal history. He had two charges of fare violation, one of which was dismissed and one to which he pled guilty. He had one conviction for consumption of liquor by a minor and one conviction for possession of liquor by a minor and resisting a peace officer. On May 14, 2002, the defendant pled guilty to felony aggravated fleeing/attempt to elude police and was placed on probation. He violated that probation, resulting in its extension. His probation was unsuccessfully terminated upon his conviction on the

instant charges.

¶ 12 A victim impact statement from the family of the murder victim, Carmel Brown, was read into evidence. This letter described the loss felt by the entire family and particularly by Carmel's two young daughters, ages 12 and 9 years at the time of the hearing. No evidence in aggravation or mitigation was offered by either party. The defendant made a statement in which he expressed his remorse for the harm he had caused. He stated that he was not the same person he had been on the night of the offenses. He stated that he was a better man, that he was not angry, and that he was not a threat to society. The defendant felt that he had learned his lesson.

¶ 13 The circuit court made a finding that the defendant had caused severe bodily injury and great bodily harm to Collier in committing armed violence. The court further found that consecutive sentencing was necessary to protect the public from further criminal conduct. The court sentenced the defendant to 10 years' imprisonment on the second-degree murder charge, to 12 years' imprisonment on the aggravated battery with a firearm charge, and to 32 years' imprisonment on the armed violence charge. The latter two sentences would run consecutively to each other.

¶ 14 It is well settled that the circuit court has broad discretionary powers in imposing a sentence and the circuit court's sentencing decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The circuit court is granted such deference because it is generally in a better position than the reviewing court to determine the appropriate sentence. *Stacey*, 193 Ill. 2d at 209. Consequently, the reviewing court must not substitute its judgment for that of the circuit court merely because it would have weighed these factors differently. *Stacey*, 193 Ill. 2d at 209.

¶ 15 Although the circuit court is vested with wide discretion in sentencing, that

discretion is not without limitation. *Stacey*, 193 Ill. 2d at 209. Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999) grants the reviewing court the power to reduce the sentence imposed by the circuit court, but only if the circuit court has abused its discretion in imposing that sentence. *Stacey*, 193 Ill. 2d at 209-10. A sentence within statutory limits will be deemed excessive and the result of an abuse of discretion where the sentence is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Stacey*, 193 Ill. 2d at 210.

¶ 16 On appeal, the defendant argues first that the circuit court abused its discretion in imposing consecutive sentences because where the offenses were committed in self-defense, albeit unreasonably, deterrence is not a legitimate factor or goal. The defendant points out that crimes which are not planned or premeditated, such as second-degree murder, are not likely to be deterred by the threat of punishment. See *People v. Eure*, 140 Ill. App. 3d 387, 393 (1986). The defendant argues that, where the circumstances of the incident caused the defendant to believe that self-defense was necessary, motivating him to use his weapon, the sentencing court should have considered those circumstances in imposing sentence. The defendant argues that because when he left home he did not intend to use the weapon he was carrying, that is, he did not intend to commit armed violence or aggravated battery with a firearm, consecutive sentencing was not required to protect the public from future criminal conduct and was not an effective deterrent. The defendant argues that the fact that the defendant fired his weapon under an unreasonable belief that self-defense was necessary should have been considered by the sentencing court as a factor in mitigation.

¶ 17 With respect to the imposition of consecutive sentences for armed violence and aggravated battery with a firearm, the defendant focuses his argument only on the

circuit court's finding, pursuant to section 5-8-4(b) of the Unified Code of Corrections (730 ILCS 5/5-8-4(b) (West 2010)), that consecutive sentences were required to protect the public from further criminal conduct by the defendant. Section 5-8-4(b) of the Unified Code of Corrections grants the sentencing court discretion to impose consecutive sentences when, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is of the opinion that consecutive sentences are required to protect the public from further criminal conduct by the defendant. 730 ILCS 5/5-8-4(b) (West 2010).

¶ 18 The defendant ignores the fact that, upon finding that the defendant had been convicted of a Class X felony (armed violence) and had inflicted severe bodily injury upon the victim, the circuit court was mandated to impose consecutive sentences upon the defendant. 730 ILCS 5/5-8-4(a)(i) (West 2010). The defendant has not challenged the circuit court's finding of severe bodily injury and thus has waived any such argument on appeal. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Accordingly, the circuit court could not have abused, and did not abuse, its discretion in ordering that the sentences for armed violence and aggravated battery with a firearm be served consecutively.

¶ 19 Secondly, the defendant argues that the circuit court abused its discretion in imposing more than the minimum sentences for all the offenses. The defendant argues that he is a young man, only 27 years of age, and sentences resulting in imprisonment of 44 years ensure that the defendant will never be restored to useful citizenship as required by article I, section 11, of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). The defendant did not have a serious or lengthy criminal history, he had been supporting his two children prior to his incarceration, and he was remorseful. The defendant argues that there was nothing to justify more than the

minimum sentences and the circuit court abused its discretion in imposing more than the minimum sentences. The defendant asks us to modify his sentences to concurrent minimum terms of imprisonment or to remand this cause for a new sentencing hearing.

¶ 20 As for the length of the sentences, we find no abuse of the circuit court's discretion. The sentences are all well within the statutory limits and, while not the minimum, are well below the maximum allowable. The defendant's conduct was quite serious and resulted in the death of one victim and serious bodily injuries to two other victims. The defendant was carrying a loaded firearm on his person while on probation for a different felony, indicating a lack of rehabilitative potential. The defendant also had a history of disciplinary violations while in jail on the instant charges. A defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offenses. *People v. Coleman*, 166 Ill. 2d 247, 261 (1995).

¶ 21 We cannot conclude that the sentences imposed are greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offenses. See *Stacey*, 193 Ill. 2d at 210. The circuit court did not abuse its discretion in sentencing the defendant to prison terms within the statutory limits.

¶ 22 For the foregoing reasons, the judgment of the circuit court of St. Clair County is hereby affirmed.

¶ 23 Affirmed.