

after a night of barhopping. Dudman subsequently entered and exited the unlocked residence before knocking a fan out of a window and calling the defendant outside. When the defendant proceeded outside, Dudman "came around the corner and took a swing at [him]." In response, the defendant punched Dudman and then repeatedly kicked him in the head while he was on the ground. As a result, Dudman died of "blunt cranial, cerebral[,] and cervical trauma."

The defendant was later charged with one count of aggravated battery (720 ILCS 5/12-4(a) (West 2006)), two counts of first-degree murder (720 ILCS 5/9-1(a) (West 2006)), two counts of second-degree murder (720 ILCS 5/9-2(a) (West 2006)), and one count of involuntary manslaughter (720 ILCS 5/9-3(a) (West 2006)), a probationable Class 3 felony with a nonextended sentencing range of two to five years' imprisonment (730 ILCS 5/5-5-3(c)(2), 5-8-1(a)(6) (West 2006)). In October 2007, the defendant entered an open plea of guilty to the charge of involuntary manslaughter, and in exchange, the State dismissed the remaining counts against him. When entering his plea, the defendant was advised that because he was extended-term eligible (730 ILCS 5/5-5-3.2(b)(1) (West 2006)), a 5- to 10-year term of imprisonment was a possibility (730 ILCS 5/5-8-2(a)(5) (West 2006)).

In January 2008, the defendant's cause proceeded to a sentencing hearing, where both parties presented evidence and arguments in support of their respective positions. Citing the defendant's extensive criminal history and the seriousness of the offense, the State asked the trial court to impose the maximum available sentence of 10 years' imprisonment. In response, emphasizing that the defendant had expressed remorse for his "excessive reaction" to the "provocation" and "mayhem" at his home on the night in question, defense counsel argued that if the court decided against a term of probation, then the minimum two-year sentence of imprisonment should be imposed. Defense counsel further noted that the defendant had children and was helping Pape raise hers. In allocution, the defendant also

referenced his familial "responsibilities and obligations."

When imposing the sentence, the trial court stated that a sentence of probation would "deprecate the seriousness of the [defendant]'s conduct and would be inconsistent with the ends of justice." The trial court determined that the defendant's criminal history made him extended-term eligible and that an extended term was "appropriate" and "necessary for the protection of the public." The court then discussed the various statutory factors in aggravation and mitigation that it deemed present and relevant. See 730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2006). When discussing the defendant's "substantial" criminal history, the court noted that he had "several prior battery convictions" and an apparent propensity for "violent behavior." Referring to the defendant as a "danger to society," the court further noted that his criminal conduct in the present case occurred while he was on felony probation in Missouri. While in jail on the instant charges, the defendant had also been the subject of multiple disciplinary actions, which the court suggested was "very indicative of*** what we might expect from him in the future." The trial court ultimately ordered the defendant to serve a nine-year term of imprisonment, and the defendant brought the present appeal following the court's denial of his amended motion to reconsider the sentence.

DISCUSSION

As previously stated, the defendant maintains that by failing to consider "three primary factors" in mitigation, the trial court abused its discretion when imposing sentence. Specifically, the defendant alleges that the trial court failed to consider his expressed remorse, the hardship that a nine-year sentence would have on his dependents, and the fact that his crime was provoked by the victim. The State counters that the defendant's argument is belied by the record, and we agree.

"The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference." *People v. Alexander*, 239 Ill. 2d 205,

212 (2010). In determining an appropriate sentence, a sentencing court must consider all the relevant factors in aggravation and mitigation and "balance them against each other." *People v. Mays*, 230 Ill. App. 3d 748, 758 (1992). "In determining an appropriate sentence, the defendant's history, character, [and] rehabilitative potential, the seriousness of the offense, the need to protect society[,] and the need for deterrence and punishment must be equally weighed." *People v. Jones*, 295 Ill. App. 3d 444, 455 (1998). "A trial judge is not required to enumerate each factor he considered in arriving at the sentence," and "[w]hen mitigating evidence is before a judge, it is presumed he considered it, absent an indication other than the sentence imposed to the contrary." *People v. Case*, 246 Ill. App. 3d 566, 578 (1993). "[T]he trial court is in the best position to fashion an appropriate sentence," and a reviewing court will not disturb a sentence falling within the allowable sentencing range absent an abuse of discretion. *People v. Murphy*, 322 Ill. App. 3d 271, 287 (2001). "An abuse of discretion will be found only where the circuit court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the circuit court's view." *People v. Ursery*, 364 Ill. App. 3d 680, 686 (2006).

Here, the record affirmatively shows that contrary to the defendant's assertions on appeal, the trial court considered, as mitigating factors, the defendant's expressed remorse, the hardship that a sentence of imprisonment would have on his dependents, and the fact that his crime was provoked. When imposing the sentence, the trial court specifically noted that the defendant was remorseful and had accepted responsibility for what he had done. At the same time, however, the court also commented that the disciplinary problems the defendant had exhibited while in jail indicated that he was not "going to change his ways." The trial court further stated, "Obviously, the [sentence] will have an impact on [his] family and children, and that's a given in these types of cases." When addressing defense counsel's arguments regarding the victim's provocation, the trial court specifically cited two statutory

factors in mitigation, *i. e.*, "[t]he defendant acted under a strong provocation" (730 ILCS 5/5-5-3.1(a)(3) (West 2006)) and "[t]here were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense" (730 ILCS 5/5-5-3.1(a)(4) (West 2006)). Recognizing that the defendant was defending himself outside his own home, the trial court determined that both factors were present, but "only to a point." Referencing the evidence of the victim's injuries, the court observed that the victim had been "horribly beaten" and that the incident had "clearly [gone] beyond a fight, which [the victim] lost." The court also noted that the defendant "chose to go [outside] where the confrontation occurred."

The defendant's argument on appeal is belied by the record. The trial court considered the mitigating factors that the defendant claims it did not, and to the extent that the defendant suggests the trial court should have given those factors greater weight than it did, "[a] court of review will not reverse a trial court's sentencing decision simply because it might have balanced the appropriate factors differently." *People v. Kyles*, 303 Ill. App. 3d 338, 355 (1998). Moreover, we cannot otherwise conclude that the trial court abused its discretion in imposing the sentence in the present case. The defendant, whose criminal record includes numerous battery convictions, was 41 and on felony probation when he kicked his victim to death. Noting the defendant's demonstrated propensity for violence, the trial court deemed him a "danger to society" and concluded that a nine-year term of imprisonment was needed to protect the public. The trial court was in the best position to make these determinations (*People v. Lampley*, 405 Ill. App. 3d 1, 11 (2010)), and we will not disturb its reasoned judgment.

CONCLUSION

For the foregoing reasons, the defendant's sentence is hereby affirmed.

Affirmed.