

is provided here.

¶ 5 If the case went to trial, the State would call Rebecca Gibson, the victim's mother, to testify that on the date in question, she and her two children, Brynden and Isaiah, lived with the defendant. On that day, she left the children in the care of the defendant while she was working. She would testify that she received a call from the defendant at 1:30 p.m. that he had heard a thump and found Brynden, who was 23 months old, on the floor in the kitchen. The defendant gave Brynden a Tylenol and put him to bed. Rebecca would testify that the defendant called her later and said that Brynden was breathing funny and making a wheezing sound. When Rebecca arrived at the house, there was an ambulance present, which transported Brynden to Herrin Hospital. Brynden was then transferred to St. Louis Children's Hospital, where he died.

¶ 6 The State would call Melissa Gould to testify that she received a call from Rebecca asking her to go to the house and check on Brynden. When she arrived, Brynden was lying on the couch barely breathing, and the defendant kept repeating that he was sorry and that he was going to jail. Melissa would testify that the defendant left when the ambulance arrived and did not reappear until the ambulance was gone with Brynden.

¶ 7 The State would also put on evidence from the forensic pathologists who performed the autopsy on Brynden. They found that Brynden had suffered extensive injuries to the brain and that extensive bleeding and swelling was the cause of death. The pathologists would also testify that in their opinion the injuries could not have been received from a fall as described by the defendant, and they felt that the injuries were caused by a dramatic acute head injury as a result of an intentional shaking or hitting of the head.

¶ 8 The State would also call a doctor with extensive emergency room experience to testify that in her opinion the injuries were not consistent with a fall from a chair as described by the defendant.

¶ 9 The defense would call a forensic pathologist to testify that it was possible for Brynden to have received the injuries from the short fall as described by the defendant. The State would then call a doctor in physics to rebut the testimony of the defense counsel's forensic pathologist.

¶ 10 There would also be testimony from employees of St. Louis Children's Hospital that the defendant gave them conflicting stories regarding the condition in which he found Brynden.

¶ 11 The defense counsel stipulated that the factual basis accurately described the evidence that would be put forth if the case went to trial. The court found the factual basis to be sufficient, accepted the defendant's guilty plea, and set the sentencing hearing.

¶ 12 At the sentencing hearing, the court heard from both the defendant's mother and the mother of his daughter. The court was also presented with 15 letters written by friends and family on behalf of the defendant. Rebecca also read her victim-impact statement to the court. The defendant also made a statement in allocution in which he apologized to Rebecca and admitted that he should have been watching Brynden more closely.

¶ 13 The court then heard arguments from both sides. The court held that the sentencing range was from probation to a maximum of 14 years of imprisonment as set out by the law, including the possible extended-term sentence. The court explained that the legislature had increased the possible sentencing range when great bodily harm or death involves a child under the age of 12, as it did in this situation.

¶ 14 The court further explained that the aggravating factors were the defendant's criminal history, even as slight as it may be, and the deterrence effect. The court held that there were no mitigating factors at all. The court then sentenced the defendant to 10 years in prison with 2 years of mandatory supervised release. The court also ordered the defendant to pay \$1,631.85 in restitution to the Rebecca, the victim's mother.

¶ 15 The defendant then filed a motion to reduce sentence. The court denied the motion, and the defendant filed this timely appeal.

¶ 16 ANALYSIS

¶ 17 On appeal, the defendant argues that the circuit court abused its discretion during sentencing when it failed to consider the defendant's remorse, apology, and other personal characteristics. In response, the State argues that the sentence is not excessive and that the circuit court carefully examined all the relevant factors during sentencing. It contends that no abuse of discretion occurred.

¶ 18 The circuit court is vested with wide discretion in sentencing a defendant, and its decision is entitled to great deference and will not be disturbed absent an abuse of discretion. *People v. La Pointe*, 88 Ill. 2d 482, 492 (1981). In an earlier case, the supreme court explained the reasoning for this higher standard as follows:

"We have frequently stated that the trial judge is normally in a better position to determine the punishment to be imposed than the courts of review. [Citations.] A reasoned judgment as to the proper sentence to be imposed must be based upon the particular circumstances of each individual case. [Citation.] Such a judgment depends upon many factors, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citation.] The trial judge, in the course of the trial and the sentencing hearing, has an opportunity to

consider these factors 'which is superior to that afforded by the cold record in this court.' " *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977) (quoting *People v. Morgan*, 59 Ill. 2d 276, 282 (1974)).

Therefore, while Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999) grants a reviewing court the power to reduce a sentence imposed by the circuit court, "[a] sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 19 Here, the record reflects that the circuit court carefully reviewed all the evidence. The court considered the defendant's criminal history and the deterrence effect to be the aggravating factors in the case. The court noted that while the defendant's criminal history was not extensive, the defendant still had a history of some delinquencies and criminal activity. Moreover, the court felt that, in this situation, a deterrence effect was needed as well.

¶ 20 The court also noted that there was no mitigating factors. It then explained this as follows: "Mitigating factors are those factors which would cause me to give you probation or a lenient sentence. And I don't find that any of those really exist in this particular case, based on the totality of everything I see and observe here."

¶ 21 The defendant argues that mitigating factors were present and should have been reflected in his sentence. However, the record reveals that the court reached its decision after reviewing and observing what the defendant felt were mitigating factors. The court did not feel that those existed. The court stated that it had read the letters from the defendant's friends and family and heard the defendant's statement. However, the court explained that the defendant's utter indifference to obtain medical treatment for the 23-month-old child could not be viewed as a total accident.

¶ 22 In summary, we find that the court imposed a carefully deliberated sentence in this case. The court even noted that the case was one of the toughest cases that it had seen before it. However, the record reveals that it cautiously examined the evidence and explained that this was not a case that was appropriate for probation or a reduced sentence. Even if we, as a reviewing court, felt that we would have imposed a different sentence, it is not our function to do so now, and we will not substitute our judgment for that of the circuit court, which was in the position to observe the totality of the situation. See *Perruquet*, 68 Ill. 2d at 156. Therefore, we find that the circuit court did not abuse its discretion in sentencing the defendant to 10 years of imprisonment.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, we affirm the circuit court's judgment sentencing the defendant to 10 years of imprisonment.

¶ 25 Affirmed.