

No. 1-09-1575

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 05 CR 16979
)	
CHRISTOPHER BAGGETT,)	Honorable
)	Marcus R. Salone,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.
Justices Joseph Gordon and McBride concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on defendant's first degree murder conviction affirmed over claims that the State's introduction of witnesses' prior inconsistent statements was cumulative and unduly bolstered their statements, and that his sentence was excessive.
- ¶ 2 Following a bench trial, defendant Christopher Baggett was found guilty of first degree murder in the shooting death of Dwayne Miller, and was sentenced to 75 years' imprisonment. On appeal, defendant contends that the State's introduction of prior inconsistent statements made by three key witnesses was improper because it was cumulative and unduly bolstered their statements. He also contends that the trial court abused its discretion in sentencing him to 75 years' imprisonment in light of certain mitigating evidence.

¶ 3 The record shows, in relevant part, that about 3 p.m. on April 21, 2005, defendant shot and killed Dwayne Miller as he sat in his car at the intersection of Cental Park Avenue and Roosevelt Road, in Chicago. At trial, the State called multiple witnesses who were present at the time of the shooting to establish the circumstances surrounding the incident, but, when they were on the witness stand, many of them contradicted their earlier handwritten statements and/or grand jury testimony. The State thus introduced their prior inconsistent statements pursuant to section 115-10.1 of the Code of Criminal Procedure (Code) (725 ILCS 5/115-10.1 (West 2008)).

Thereafter, the trial court found defendant guilty of six counts of first degree murder, noting, *inter alia*, that it had "given considerable consideration to the handwritten statements, as well as the Grand Jury testimony of those who have come in to recant, and in the handwritten statement and the Grand Jury testimony they have identified Mr. Baggett as the person who committed the first degree murder of our victim."

¶ 4 At the commencement of the sentencing hearing, the trial court ensured that the State and the defense had each received a copy of defendant's presentence investigation report (PSI), and provided both sides an opportunity to make corrections. In aggravation, the State called Chicago police officer James Foley who testified to a 2004 incident in which he observed defendant engage in multiple narcotics transactions just north of Central Park Avenue and Roosevelt Road, and which led to charges of possession of a controlled substance with intent to deliver (04 CR 29738). The State also called Monique Mitts, the victim's sister, who read her victim impact statement. The State then argued, *inter alia*, that defendant has two prior felony narcotics convictions, that he was on parole when he killed Dwayne Miller, and that his involvement in the "drug world" led to an argument with Miller after which "in a brazen fashion, he literally stepped into a crosswalk in the middle of broad daylight and shot through the front windshield of the car

that Dwayne Miller was trying to make a left-hand turn in." The State thus requested that defendant be given a "substantial sentence."

¶ 5 In mitigation, defense counsel argued, *inter alia*, that defendant had completed two years of high school, has no history of substance abuse, has no prior violent crime convictions, and has a work history. Counsel also noted that defendant has two young children.

¶ 6 The trial court noted that it had reviewed defendant's PSI which detailed his prior criminal history, and stated, *inter alia*, that it "did not want to believe that anybody could commit such a brazen and senseless act two blocks from home in the middle of the day in one of the busiest intersections in the city on the West Side and have any hope of eluding the authorities." The court found that on the day of the shooting, defendant "demonstrated psychosis that was so sick it makes me wonder why he should be permitted to walk among us." The court then sentenced defendant to 25 years' imprisonment "for the use of the handgun," and 50 years' imprisonment "given his potential for rehabilitation," for a total of 75 years' imprisonment.

¶ 7 In this appeal from that judgment, defendant first contends that the State's introduction of multiple prior inconsistent statements from three key witnesses improperly bolstered the credibility of those statements. Defendant acknowledges that he failed to raise this issue in a post-trial motion, as required (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), but claims that this issue should be reviewed for plain error under the closely balanced evidence prong.

¶ 8 We observe that the plain error rule is a narrow exception to the waiver rule (*People v. Hillier*, 237 Ill. 2d 539, 545 (2010)) which allows a reviewing court to consider unpreserved claims of error where defendant shows that the evidence is closely balanced, or the error is so serious that it affected the fairness of his trial and challenged the integrity of the judicial process (*People v. Naylor*, 229 Ill. 2d 584, 593 (2008)). Under both prongs, defendant bears the burden

of persuasion, and must first show that a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545.

¶ 9 In this case, defendant does not challenge the sufficiency of the evidence, or dispute that it was proper for the State to substantively introduce the content of four witnesses' handwritten statements under section 115-10.1 of the Code. Rather, he claims that the State violated the rule against prior consistent statements and presented cumulative evidence where it called an assistant State's attorney to read three of those witnesses' grand jury testimonies which repeated the content of their respective handwritten statements.

¶ 10 The State responds that defendant has not established clear error where he has failed to cite any case that directly supports his claim, and instead, analogizes to the rule against prior consistent statements claiming that the cases detrimental to his position are wrongly decided.

¶ 11 As the State correctly observes, this same issue has been decided adversely to defendant's position. In *People v. Johnson*, 385 Ill. App. 3d 585, 608 (2008), this court acknowledged that prior consistent statements are generally inadmissible, but noted that "consistency" is measured against trial testimony, *i.e.*, those statements which harmonize with trial testimony. This court also observed that the rule against consistent statements exists because they needlessly bolster a witness' trial testimony, whereas inconsistent statements obviously can do no such thing.

Johnson, 385 Ill. App. 3d at 608. We thus found no reason to apply the general rule against admission of prior consistent statements to prior inconsistent statements that were consistent with each other. *Johnson*, 385 Ill. App. 3d at 608. That ruling has been reaffirmed by subsequent decisions of this court (*People v. White*, 2011 IL App (1st) 092852, ¶¶ 49-54; *People v. Santiago*, 409 Ill. App. 3d 927, 932 (2011); *People v. Maldonado*, 398 Ill. App. 3d 401, 423 (2010)), and we find no reason to depart from those well-reasoned decisions, and likewise find no error in this case by the admission of multiple inconsistent statements.

¶ 12 We also reject defendant's claim that the trial court should have excluded the witnesses' prior inconsistent statements as cumulative evidence. Defendant acknowledges that he raised no objection to the State's introduction of these statements at trial, and he cites no authority for his claim that the trial court committed error by admitting those statements in the absence of such an objection. He has thus failed to establish a clear error warranting plain error review, and we, therefore, honor his procedural default. *Hillier*, 237 Ill. 2d at 545.

¶ 13 Defendant next contends that the trial court abused its discretion by imposing "what amounts to a natural life sentence" in light of certain mitigating evidence. The State responds that defendant's sentence should be affirmed because it fell within the statutory guidelines, the trial court considered the proper factors in aggravation and mitigation, and the trial court found that defendant demonstrated a "psychosis that was so sick it makes me wonder why he should be permitted to walk among us."

¶ 14 It is well-settled that a reviewing court will not disturb the sentence imposed by the trial court absent an abuse of discretion. *People v. Cabrera*, 116 Ill. 2d 474, 494 (1987). Where, as here, the sentence falls within the prescribed statutory limits, it will not be disturbed unless it is greatly at variance with the purpose and spirit of the law or is manifestly disproportionate to the offense. *Cabrera*, 116 Ill. 2d at 493-94. A sentence will not be found disproportionate where it is commensurate with the seriousness of the crime, and adequate consideration was given to any relevant mitigating circumstances, including the rehabilitative potential of defendant. *People v. Perez*, 108 Ill. 2d 70, 93 (1985).

¶ 15 Defendant maintains that the sentence imposed by the trial court failed to consider the "constitutionally required objective of rehabilitation or the pertinent mitigating factors" and should therefore be reduced. However, defendant's claim that the court failed to consider his rehabilitative potential is belied by the record, which shows that the court imposed the sentence it

did "given his potential for rehabilitation." This comment, in context, clearly reflects that the trial court found defendant's potential for rehabilitation to be slight or non-existent. *People v. Randle*, 147 Ill. App. 3d 621, 628 (1986).

¶ 16 The record also shows that the court read defendant's PSI, heard the mitigating evidence presented by defense counsel, and thus considered any potential mitigating evidence before imposing sentence. In requesting a reduction in sentence, defendant essentially requests this court to re-balance the appropriate factors and independently conclude that his sentence is excessive, which is not our function. *People v. Burke*, 164 Ill. App. 3d 889, 902 (1987), citing *People v. Cox*, 82 Ill. 2d 268, 280 (1980).

¶ 17 The offense of first degree murder is punishable by 20 to 60 years' imprisonment (730 ILCS 5/5-8-1(a)(1)(a) (West 2008)), and is subject to an enhancement of 25 years to natural life imprisonment where defendant personally discharged the firearm that caused the death (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2008)). The 50-year sentence and 25-year enhancement imposed by the trial court in this case clearly fell within the sentencing guidelines, and considering that the shooting took place at mid-day in the middle of a busy intersection, that sentence was not disproportionate to the offense committed or at variance with the spirit and purpose of the law. *Cabrera*, 116 Ill. 2d at 493-94. In addition, the record shows that the trial court considered the appropriate sentencing factors in fashioning defendant's sentence. Under these circumstances, we find no abuse of sentencing discretion to permit any modification by this court (*People v. Almo*, 108 Ill. 2d 54, 70 (1985)), and we therefore affirm the sentence imposed.

¶ 18 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.