

No. 1-10-0707

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. 07 CR 9053
)	
LEVESTER HILL,)	Honorable
)	John P. Kirby,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Presiding Justice Steele and Justice Neville concurred in the judgment.

ORDER

- ¶ 1 *Held:* No abuse of discretion in 16-year sentence imposed on second degree murder conviction; judgment affirmed and mittimus modified to reflect correct number of days of presentence credit.
- ¶ 2 Following a bench trial, defendant Levester Hill was found guilty of multiple counts of second degree murder and aggravated unlawful use of a weapon, then sentenced solely to 16 years' imprisonment on the murder conviction. On appeal, defendant contends that the trial court abused its discretion in sentencing him to this lengthy term of imprisonment given his age, lack of prior felony convictions, juvenile adjudications and adult arrests, and failure to give adequate

weight to the evidence that he acted only after strong provocation. He also contends that his mittimus should be amended to reflect the correct number of days he served in presentence custody.

¶ 3 The record shows that defendant was 17 years of age on May 21, 2005, when he fatally shot Chervaz McCarey, a neighborhood rival who had previously threatened, chased, and shot at him. He left Chicago shortly thereafter and was arrested upon his return in 2007 for soliciting the sale of cannabis. Evidence of prior acts of violence by McCarey was introduced in support of defendant's self-defense claim and acknowledged by the trial court. However, given defendant's testimony that he McCarey and his companion were unarmed, the trial court found that defendant's belief that he needed to shoot these individuals was unreasonable. Accordingly, the trial court found defendant guilty of second degree murder based on an unreasonable belief in self-defense.

¶ 4 At the sentencing hearing, the State presented evidence in aggravation, including testimony from a Chicago police officer that defendant fled when he initially tried to arrest him on March 27, 2007, for selling cannabis; the victim impact statements of the victim's mother, aunt, and cousin; and school disciplinary reports for fighting, threatening a school official, and possessing a weapon (pipe). In mitigation, the defense presented a letter from defendant's girlfriend asking the victim's family for forgiveness and argued that defendant acted in response to "a continued pattern of harassment and escalating violence," and that he did not intend to hurt anyone. In allocution, defendant apologized for his conduct and stated that what he did was wrong, but that he was protecting himself.

¶ 5 In pronouncing sentence, the trial court stated:

"This Court has heard the arguments of counsel, the
statements made by Mr. Hill, I've listened to the arguments both on

the State's points in aggravation and the defense arguments in mitigation.

This is a case where an individual fired a gun at another human being and killed him. Could this have been avoided? We all know it could have been. But I have to look at all of the factors both in aggravation and mitigation and considering the defendant's age and his prior criminal history, the delinquency aspect has been argued by both sides. For the Court to look into the future is a hard thing to do.

But in regards to the penalty here today based on what Mr. Hill did before and his potential for rehabilitation, I don't think the minimum is appropriate, nor do I believe the maximum is appropriate. At this time, Mr. Hill, I'm going to sentence you to the sentence of 16 years in the Illinois Department of Corrections and I'm going to give you credit for your days in custody from the date you were first arrested[.]"

Defendant filed a motion to reconsider that sentence, which the trial court denied.

¶ 6 In this appeal from that judgment, defendant does not dispute the sufficiency of the evidence to sustain his conviction, or that the 16-year sentence imposed thereon is within the range allowed by law. Rather, he contends that the trial court abused its sentencing discretion by not giving proper weight to the mitigation evidence. Defendant complains that "[w]hile the court mentioned age, criminal history, and the potential for rehabilitation, the court did not say whether it was considering these factors to be aggravating or mitigating." He adds that the trial court

failed to note that he had no prior convictions, juvenile adjudications, or adult arrests, or that he acted with some level of justification or strong provocation.

¶ 7 It is well established that the sentence imposed by the trial court is entitled to great deference, and where, as here, the sentence is within the statutory limits for the offense, we may not alter it in the absence of an abuse of discretion by the trial court. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). We also may not reweigh the sentencing factors considered by the trial court or substitute our judgment for that of the trial court simply because we would have weighed the factors differently. *People v. Hill*, 408 Ill. App. 3d 23, 30 (2011).

¶ 8 In his reply brief, defendant clarifies that the issue here is whether the trial court's statements that it "listened to" and had "to look at" all of that evidence and its citation to "what Mr. Hill did before and his potential for rehabilitation," constituted the necessary careful consideration of the relevant mitigating factors. In the next paragraph, he argues that "neither the general statements of the court nor any presumptions on review are dispositive," as it is the record as a whole that is reviewed for an abuse of discretion. We are unpersuaded that either perspective establishes that the 16-year sentence imposed by the trial court in this case is greatly at variance with the purpose and spirit of the law.

¶ 9 The statutory requirement (730 ILCS 5/5-4-1(c) (West 2004)) that the trial court set forth on the record its reasons for a particular sentence does not obligate the court to recite and assign value to each factor presented at a sentencing hearing; it is sufficient that the record reflect that the court reviewed the factors. *People v. McDonald*, 322 Ill. App. 3d 244, 251 (2001); accord *People v. Hill*, 408 Ill. App. 3d 23, 30 (2011). Here, the transcript of proceedings shows that the trial court considered the subject mitigating factors as they were argued by defense counsel (*People v. Kolakowski*, 319 Ill. App. 3d 200, 217 (2001)), and, we observe that mitigating factors do not automatically require the court to sentence defendant to a term less than the maximum

(*People v. Gutierrez*, 402 Ill. App. 3d 866, 900 (2010)). Although defendant cites various cases where prison sentences were reduced in light of age, lack of significant criminal background, and strong provocation, we observe that the supreme court has rejected the use of comparative sentencing from unrelated cases as grounds for claiming that the trial court abused its sentencing discretion. *Gutierrez*, 402 Ill. App. 3d at 901, citing *People v. Fern*, 189 Ill. 2d 48, 62 (1999).

¶ 10 The record here shows that the trial court considered the appropriate factors and we cannot say that it abused its discretion in sentencing defendant to 16 years' imprisonment (*People v. Luna*, 409 Ill. App. 3d 45, 53 (2011)) on his second degree murder conviction. We therefore affirm that sentence.

¶ 11 Lastly, defendant contends, and the State concedes, that he is entitled to an additional 8 days of credit for time served before sentencing, and that the mittimus should be amended to reflect the correct number of 1058 days. We agree, and therefore order, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), that the mittimus be corrected accordingly. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 12 Affirmed, mittimus modified.