

No. 1-10-1950

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. 09 CR 62096
)	
ANGEL GALLEGOS,)	Honorable
)	Frank G. Zelezinski,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Robert E. Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's concurrent prison terms of six years and five years are affirmed as not excessive. The mittimus is modified to reflect the correct credit and the trial court's stated intention that defendant be considered for drug and alcohol treatment.

¶ 2 Defendant Angel Gallegos appeals from an order of the circuit court of Cook County convicting him of robbery and aggravated battery pursuant to his open guilty plea and sentencing him to respective concurrent prison terms of six years and five years. Defendant contends that his sentences were excessive. He also seeks a modification of the mittimus to reflect the correct credit for time served awaiting trial and transfer to the Illinois Department of Corrections, as well

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as to reflect the trial court's stated intention that defendant be considered for drug and alcohol treatment. We affirm and order the mittimus to be corrected.

¶ 3 On August 7, 2010, defendant entered a guilty plea to robbery and aggravated battery causing great bodily harm arising from his attack on Brenda Wiseman. The factual basis for the plea established that at 4:30 p.m. on November 28, 2009, Wiseman was walking on a trail in the Cook County Forest Preserve located near 155th Street and Pulaski when defendant grabbed her from behind and dragged her to the ground, where he beat her in the face and head. Defendant continued to beat her even when Wiseman fought back. When two bicyclists approached, defendant took Wiseman's cell phone and fled. One of the bicyclists summoned help while the other one followed defendant and wrote down the license plate of the car in which he had fled. Wiseman was taken to the hospital where she was treated for injuries which included lacerations and bruises to her face. One-half hour after the attack, defendant turned himself in to the Midlothian Police Department, telling them that he was a bad person and needed to be taken off the streets. After being advised of his rights, defendant gave a written statement admitting to his attack on Wiseman. After accepting defendant's guilty plea, the court agreed to defense counsel's request that defendant be referred for alcohol evaluation and treatment.

¶ 4 At the ensuing sentencing hearing, Wiseman read a victim impact statement in which she elaborated on the nature of the attack and its consequences for her life. The attack left her bleeding profusely and she sustained head wounds and a jaw fracture. She received stitches and spent the night at a hospital. She felt pain when she chewed and had to eat soft food for a month. Wiseman stated that she was now hypersensitive to men around her and no longer felt free to walk in the forest preserve to take photographs. She also stated that although she had an acute sense of smell, she did not detect the odor of alcohol on defendant during the attack.

¶ 5 Defendant had been employed as a laborer for a landscape construction company. His supervisor, David Moser, testified that he had never seen defendant appear to be under the

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influence of alcohol in his work. Moser never received complaints about defendant and had never seen him act violently. Moser stated that despite defendant's conduct with Wiseman, which he considered to be an aberration, he would allow defendant to work at a family member's home.

¶ 6 Defendant's brother, Elias Gallegos, testified that defendant lived with Elias and Elias' wife and three young children. They worked together in landscape construction. Elias never knew defendant to drink at work, nor to his knowledge had defendant ever been fired for drug or alcohol problems. Elias had spoken to defendant's employers and they were prepared to accept him back at work. Elias admitted that he had seen defendant drinking at home on occasion and that defendant would drink a lot on special occasions, when friends came over. Elias had obtained letters of support for defendant from friends and neighbors, which were introduced into evidence at the sentencing hearing. However, they have not been included in the record on appeal.

¶ 7 Defendant's presentence investigation report established that defendant was 24 years old on the day he committed these offenses. He had no previous criminal history but did admit to having a drinking problem and to having used cocaine "occasionally" in the past two years. He asserted that he was "very drunk" at the time of the attack on Wiseman. In his statement in allocution defendant apologized to Wiseman and said that he was "very very drunk" at the time.

¶ 8 In sentencing defendant, the court noted that defendant had no prior criminal background and also noted the testimony that defendant was a family person. However the court found that Wiseman's victim impact statement was "drastic and compelling." It noted that Wiseman was an innocent person walking on a public path in the forest preserves when she was brutally beaten by defendant in an attack that ended only when two bystanders came along. The court found this aggravation to be compelling in that it showed that defendant stalked Wiseman and became a predator as a result. Based upon these conclusions the court sentenced defendant to concurrent

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terms of six years for robbery and five years for aggravated battery.

¶ 9 We are unpersuaded by defendant's contention that his sentences, although severe, were excessive. The seriousness of the crime is the most important sentencing factor. *People v. Cox*, 377 Ill. App. 3d 690, 709 (2007). It is a more important factor than defendant's lack of a criminal record. *People v. Blackwell*, 325 Ill. App. 3d 354, 361 (2001). Nor should we give rehabilitative potential more weight than the seriousness of the crime. *People v. Bigham*, 226 Ill. App. 3d 1041, 1049 (1992). The sentencing judge here stressed this element in reaching his sentencing decision, emphasizing the brutal nature of the attack and its effect on Wiseman's life.

¶ 10 As a reviewing court, we must proceed with great caution; it is not our function to substitute our judgment in sentencing for that of the trial court merely because we might have weighed mitigating or aggravating factors differently. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010); *People v. Sowewimo*, 276 Ill. App. 3d 330, 343 (1995). Although defendant stresses his lack of a criminal background, his remorse and his relatively stable family life, we are not persuaded that those factors are sufficient to permit us to override the trial court's sentencing decisions, which were within the sentencing guidelines. When, as is the case here, the trial court's sentences are within the permissible statutory range, we will not alter the sentences imposed, absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). The presence of mitigating factors does not require a minimum sentence or bar a maximum sentence. See *Alexander*, 239 Ill. 2d at 214. In the absence of evidence to the contrary, other than the sentences imposed, we will presume that the trial court fully took into account these mitigating factors as well as all others presented to the trial court. *People v. Thompson*, 222 Ill. 2d 1, 37 (2006). Accordingly, we affirm the sentences imposed by the trial court.

¶ 11 Defendant spent 157 days in custody awaiting trial, but his transfer to the Illinois Department of Corrections was then stayed for 17 additional days. Defendant therefore contends, and the State concedes, that he is entitled to 174 days of credit on his sentence for time spent in

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the Cook County jail. We order that the mittimus be corrected to reflect this amount of credit.

¶ 12 We have noted that the trial court stated that it would include in the mittimus the recommendation that defendant be considered for drug and alcohol treatment. That recommendation was omitted from the mittimus, apparently through oversight, as the State agrees that the mittimus should include that recommendation. Accordingly, we also order that the mittimus include the court's recommendation that defendant be considered for drug and alcohol treatment.

¶ 13 Defendant's convictions and sentences are affirmed, and his mittimus is ordered to be corrected as directed.

¶ 14 Affirmed; mittimus corrected.