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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-3522
	)	
JAMES M. WEBB,	)	Honorable
	)	John T. Phillips,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BOWMAN delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

**ORDER**

*Held:* The trial court did not abuse its discretion in sentencing defendant to 19½ years' imprisonment (on a 4-to-20 range) for second-degree murder: although there were mitigating factors, the sentence was justified by the factors in aggravation, particularly the seriousness of the offense and defendant's propensity for violence.

¶ 1 Defendant, James M. Webb, appeals from his sentence of 19½ years' imprisonment for imperfect-self-defense second-degree murder (720 ILCS 5/9-2(a)(2) (West 2008)), a sentence six months less than the maximum allowable (see 730 ILCS 5/5-8-1(a)(1.5) (West 2008) (mandating a sentence between 4 and 20 years for second-degree murder)). He contends that the court failed to take adequate account of his lack of a serious criminal record, his deep remorse, and the role of

his drug addictions in causing him to commit the offense, such that the sentence was an abuse of discretion. We do not agree; we deem that, because the sentence was commensurate with the seriousness of the offense, it cannot be deemed an abuse of discretion. We therefore affirm defendant's sentence.

¶ 2

## I. BACKGROUND

¶ 3 A grand jury indicted defendant on three counts of first-degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2008)). The three counts stated three different theories of defendant's culpability for the August 20, 2008, stabbing death of Cydric Jones.

¶ 4 The overall outline of events presented by the witnesses was, for the most part, consistent. The primary inconsistencies related to points relevant to defendant's state of mind. For two reasons, we give what is essentially defendant's version of events. First, the jury, which was instructed on first-degree murder, second-degree murder, and self-defense as a complete defense, must have at least partially credited the testimony favoring defendant to have convicted defendant of second-degree, not first-degree, murder. Second, our holding is that defendant's sentence was consistent with even an interpretation favorable to defendant; it does not rely on any less favorable interpretation by the court at sentencing.

¶ 5 The evidence showed that defendant spent the day leading up to the offense "partying" with acquaintances—drinking and using marijuana and crack cocaine. He made several purchases of crack from his usual dealer "De," spending more than \$100 that day. Sometime fairly late at night, defendant ran out of crack again, but discovered that De was not answering his phone.

¶ 6 Defendant had a seal-coating business. He had a truck in the business, but, because he had lost his driver's license, he needed someone to drive for him. He hired a friend, Tommy Walker, to work with him and do the driving. Defendant had paid for a cell phone, but had given it to

Tommy, who had no phone, so that he could reach Tommy when he needed him to drive. Tommy also was a crack user; his dealer was someone he knew as “Mo”; this was Jones. Defendant had been with Tommy perhaps five times when he made a purchase from Jones. On one occasion, Jones took a gun out of his waistband and asked the two if they knew anyone who would want to buy it. Tommy told defendant that he had gotten into debt to Jones, whom he thought was a gang member. Not long before the stabbing, Tommy left the area to avoid people, including Jones, to whom he owed money. When Tommy left, he returned the phone to defendant.

¶ 7 On the night of the incident, when defendant could not reach De after repeated calls, he started looking through the numbers on the phone to try to find another drug dealer. The only one he could find was Jones. He called, and Jones, assuming that defendant was Tommy, demanded the money he was owed. Defendant told Jones that he could make a payment—defendant then had \$20 in cash—and tried to set up a meeting at a convenience store. Jones rejected that location, but told defendant to head out in the direction that would take him to the store.

¶ 8 Defendant was afraid of Jones, so he decided to take Brian Sibiski, his cousin, with him to meet up with Jones. Brian did not know that defendant used crack, so defendant told Brian that Jones was someone to whom he owed \$20. Brian asked what defendant would do if the creditor attacked him, and defendant told Brian that he might have to stick him. Defendant took a steak knife with him in a pocket when he and Brian set out walking to meet Jones.

¶ 9 Defendant and Jones called back and forth several times to agree on a meeting place. Defendant also continued to call De’s number; defendant was worried and unhappy that Jones seemed to want to meet in an out-of-the-way place. Nevertheless, he was prepared to meet Jones if that was the only person he could find to sell him crack.

¶ 10 Defendant and Brian approached Jones on a street bordering a park. Jones was on a bicycle and a white car was nearby. The car's driver was Edward Phillips, another of Jones's customers. When Jones got close to defendant and Brian he asked, "[W]here the fuck is Tommy at?" Defendant saw Jones "mess[] with the bottom of his shirt." Defendant offered \$20 to buy crack, but Jones said "Tommy owes me a lot of money" and "I fronted him shit when you were with him." Defendant said that he did not have the money Tommy owed; he asked if he could just make a purchase and go home, but Jones said "[Y]ou think I'm some kind of bitch or something?" Jones then grabbed defendant's shirt and punched defendant in the side of the head, saying that he was going to "fuck [defendant] up." (Phillips's testimony was inconsistent with defendant's; he said that Jones did not strike defendant.) Defendant grabbed Jones's shirt and then stabbed him. The knife broke, leaving its blade in Jones's chest. Jones died after going to the door of a nearby house to ask for help.

¶ 11 Defendant and Brian left the scene by running through backyards. Defendant threw away a crack pipe and the knife handle in a backyard.

¶ 12 The pathologist who performed the autopsy on Jones testified that the knife, a serrated steak knife, had penetrated 4 to 4½ inches into Jones's chest. It had passed through the cartilage portion of a rib, through a lung, and penetrated a chamber of Jones's heart.

¶ 13 The presentencing investigation of defendant showed that he had a history of behavior problems going back to grade school. He had been placed in special education because of such problems and manifestations of attention deficit hyperactivity disorder. He had a history of battery convictions. In one incident, he had brandished a pipe at a person who he claimed owed him money for work. Someone grabbed the pipe from him, but he struck the person he had previously threatened. He further had a history of failing to satisfy terms of probation. He had nine infractions while in jail resulting in his being placed in administrative segregation. Fighting was involved in

several of these infractions. A psychological evaluation of defendant suggested that he believed that other people were violent and vengeful and that he often acted with what he viewed as preemptive violence. He had suffered from congenital deformity of his feet that made him very pigeon-toed as a child. He had multiple surgeries and may have had chronic pain problems.

¶ 14 At the sentencing hearing, defense witnesses who knew defendant away from the group with which he took drugs described him as relaxed and considerate. Defendant used his statement in elocution to apologize to the victim's family and to take responsibility for his act. The statement was striking in its lack of deflection of responsibility. The court took note of all statutory factors in aggravation and mitigation. It said that defendant had received repeated breaks and that defendant's substance abuse was controlled only because he was incarcerated. It said that it believed that defendant's remorse was heartfelt. It sentenced him to a term of 19½ years and denied a motion to reduce this sentence.

¶ 15

## II. ANALYSIS

¶ 16 “[T]he trial court is the proper forum to determine a sentence and the trial judge's decision in sentencing is entitled to great deference and weight.” *People v. Latona*, 184 Ill. 2d 260, 272 (1998). “It is the province of the trial court to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case.” *Latona*, 184 Ill. 2d at 272. A reviewing court should neither reweigh factors that the trial court considered (*People v. Pippen*, 324 Ill. App. 3d 649, 653 (2001)) nor disturb a sentence that is within the statutory limits for the offense unless the trial court abused its discretion (*People v. Coleman*, 166 Ill. 2d 247, 258 (1995)). A sentence is an abuse of discretion only if it “is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.” *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 17 The Illinois Constitution requires that “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, §11. The seriousness of the offense is the most important sentencing factor. *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007).

¶ 18 Defendant argues that, because he “[l]ack[s] [a s]erious [p]rior [r]ecord” and was truly remorseful, and because his “criminal problems arise from his drug addictions, mental health issues, difficult family upbringing, and physical challenges,” his sentence was unreasonably long.

¶ 19 We disagree. Second-degree murder as imperfect self-defense can be a crime of a momentary failure of judgment. This was not such a crime. The State argues that defendant set Jones up. That goes too far, suggesting that the jury erred when it rejected the first-degree murder charge. That said, defendant could fairly be described as having set *himself* up for the killing. He went to the meeting with Jones with the expectation that he might need to use violence, and he created conditions for the meeting that effectively guaranteed that Jones would be angry. He deliberately placed himself in a situation that made the killing likely. Moreover, defendant’s history of battery and assault, in combination with the force he used to kill Jones, suggests a notable capacity for directly-inflicted violence. Although there were mitigating factors, the trial court considered them; we detect no abuse of discretion in the near-maximum sentence.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm defendant’s sentence.

¶ 22 Affirmed.