

NOTICE
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2012 IL App (4th) 100943-U

Filed 3/2/12

NO. 4-10-0943

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Coles County
JUSTIN T. THOMASON,)	No. 08CF421
Defendant-Appellant.)	
)	Honorable
)	Teresa K. Righter,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Turner and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not abuse its discretion by sentencing defendant to 16 years in prison for attempt (first degree murder).

¶ 2 In November 2009, defendant, Justin T. Thomason, was convicted of attempt (first degree murder) following a bench trial. In January 2010, the trial court sentenced defendant to 16 years in prison, plus three years' mandatory supervised release (MSR). In November 2010, the court denied defendant's motion to reconsider sentence.

¶ 3 Defendant appeals, arguing his 16-year sentence is excessive in light of his mental health and addiction problems. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In October 2008, defendant was charged by information with two counts of attempt (first degree murder), a Class X felony punishable by between 6 and 30 years in prison.

720 ILCS 5/8-4(a), 9-1(a)(1), (2) (West 2008); 730 ILCS 5/5-4.5-25(a) (West 2008). Both charges stemmed from one incident that occurred between defendant and his girlfriend, Amber Kemp.

¶ 6 A. Trial

¶ 7 Kemp testified at defendant's November 2009 bench trial that she and defendant had been dating for approximately four months when Kemp decided to break off their relationship. Defendant had become emotionally abusive and controlling during their relationship, called her repeatedly on her cell phone and work phone, came to her place of work on many occasions, changed her voice mail password and refused to change it back unless Kemp agreed to give him her phone records every month, and accessed her e-mail and social networking accounts.

¶ 8 At the end of September 2009, defendant's conduct escalated. Defendant got upset with Kemp because she went to bed when he wanted her to stay up. After she was in bed, defendant came in the room and flipped up the mattress that she was lying on, causing her to land in the laundry basket. She tried to call the police on her cell phone but defendant broke her phone in half. Defendant locked the deadbolts on the front and back doors and told Kemp if she left or told anyone what happened, he would kill her. Defendant then held her down on the bed, blew cigarette smoke at her and flicked ashes in her hair and lit cigarettes at her face. Shortly thereafter, they heard sirens and defendant started "freaking out." Defendant retrieved a knife from the kitchen and told Kemp that since "they" were surrounding the house, "he might as well go ahead and [kill her] because they are going to bust in the windows any time."

¶ 9 The next day, Kemp decided she could no longer be in a relationship with

defendant and attempted to break it off, but defendant just smirked when she told him their relationship was over. Defendant continued to call her on her cell phone and work phone, restricting his phone number so she could not see who was calling. On the occasions that Kemp did speak to defendant over the phone, she told him the relationship was over.

¶ 10 On October 16, 2010, defendant called Kemp's phone numerous times, until she finally answered. During this call, Kemp told defendant, "I am done. Do not call my phone anymore. If this continues *** I will change my number; I will do whatever it takes because I am done. I don't want to talk to you anymore." In response, defendant called the cops on Kemp and reported her for harassing him.

¶ 11 On October 17, 2010, defendant sent Kemp a couple of text messages in the early morning hours asking to talk to her. When she arrived at work, defendant started calling her work phone. Kemp spoke to defendant once and told him not to call anymore because she was at work. Defendant continued to ask her what they were going to do about their relationship and Kemp told him she did not want anything to do with him. Kemp stated defendant called her at least 20 times that morning. Additionally, defendant's mother, Cindy Thomason, called Kemp to tell her defendant believed she was having an affair and urged her to speak with him. Kemp did speak with defendant, but she declined his lunch invitation. Defendant asked Kemp if she would call him later and she said she might.

¶ 12 At approximately 12:30 p.m., Kemp was returning to her office from lunch when defendant called her cell phone. Kemp did not answer so defendant called her work number, which she did answer. Defendant asked Kemp where she went to lunch and she responded "Walmart," to which defendant replied he had also been at Walmart to replace the mirror he

broke when he threw it at her. Defendant then asked Kemp when her assistant would be going to lunch and she replied "shortly."

¶ 13 Shortly thereafter, Kemp's assistant left for lunch. While Kemp was assisting a customer, defendant entered the office. Defendant filled up a water bottle, placed it on a chair by the door, and walked out of the office. Defendant returned to the office just as Kemp's customer was leaving. He sat in the chair in front of Kemp's desk and said, "Looks like I dressed up for you today, doesn't it." Defendant then asked her what they were going to do about their relationship. Kemp responded that she did not want to discuss their relationship now because she was at work and she asked him to leave. Defendant then asked Kemp if she was recording their conversation. Kemp said she was not, and defendant told her, "You are going to want to," and then accused her of cheating on him. Kemp again asked defendant to leave and he began walking towards the front door, but then he asked her if she was pregnant with his baby. Kemp responded she was not and defendant started walking back toward her and around the cubicles that surround the desks in the office. Kemp asked defendant what he was doing, and defendant replied, "I am going to regret this for the rest of my life."

¶ 14 Kemp testified that she could see something in defendant's hand, but she was not sure what it was. However, when defendant got closer to her, he opened the blade of a knife he was carrying in his right hand. Kemp said it was a burgundy knife with a three-inch blade, similar to a Swiss Army knife defendant had kept in his fishing tackle box. Defendant told Kemp, "I am going to kill you."

¶ 15 Defendant grabbed Kemp by her hair and tried to stab her in the stomach with the knife while she was sitting at her desk. Next, defendant dragged her to the floor and tried to stab

her in the stomach again, but Kemp prevented this by holding the hand in which defendant held the knife with both of her own. Defendant then held the knife to her throat and choked her with his left hand. Somehow, Kemp was able to knock the knife away from defendant, at which point defendant stood up and said, "Oh, my God, you are bleeding."

¶ 16 Kemp started to go toward the back door to escape, but she remembered it was deadbolted. She did not feel she would have time to get out through the back door, so she started toward the front door. By this time, defendant had recovered the knife and stopped her as she walked by the water cooler, asking, "Do you think I am just going to let you walk out of here with blood all over you?" Defendant also stated, "If I am going to prison, I am going for a good reason." Defendant grabbed her by the throat, slammed her against the wall, and tried to stab her in the stomach again, but somehow he dropped the knife. At this point, defendant put both hands on her throat and lifted her off the ground by her neck. They both ended up on the floor with defendant on top of Kemp, both of his hands still around her throat, and his knee in her neck.

¶ 17 Christina Wilson, who was working next door to Kemp's office, testified that she thought she heard someone scream and asked her coworker, Steven Parsley, if he had heard anything, but he said he had not. However, shortly thereafter, both Wilson and Parsley did hear a scream and went next door to see if everything was all right. When Wilson opened the door, she saw feet sticking out from behind a desk. Wilson walked closer to see if Kemp was okay and realized a "man" was on top of her. Wilson stated Kemp was struggling and screaming, "he is trying to kill me." Wilson and Parsley returned next door and Parsley called 9-1-1. Parsley's testimony echoed Wilson's.

¶ 18 Kemp testified that defendant was distracted enough when Wilson and Parsley

entered the office that she was able to break free from him. She made it to the front door, at which point defendant picked up the knife again and jerked her back by her hair. She got loose again, but stated defendant then grabbed her shirt. Her sleeve ripped and she made it out the door, but defendant put his fingers in her mouth and pulled her back. Kemp testified she bit him and he released her. Defendant knocked her down on the sidewalk. Realizing defendant had once again lost the knife, Kemp kicked him and ran away. From a few stores down, Kemp saw defendant pick his knife up, put it in his pocket, walk to his car, put on his seatbelt, and drive away. Wilson and Parsley testified that they had seen a "man" drag Kemp out of the office as she struggled. When Kemp got free and ran, the "man" got into his car and drove away.

¶ 19 Shortly after, police and an ambulance arrived. Defendant called Kemp's phone. Kemp recognized his ring tone because his number was the only one with that particular ring tone. One of the officers on the scene answered her phone, but defendant hung up. The officers tried calling defendant back from their phones, but he did not answer.

¶ 20 Kemp did not ride in the ambulance, but immediately after it left, she went to the hospital to obtain medical treatment. Kemp had a severe cut on the tip of her finger, cuts on her hands, rug burns on the tops of her feet, bruising to her eye, and cuts on her nose and neck.

¶ 21 After observing a car matching the description provided by the Charleston police department, two Charleston police officers initiated a traffic stop of the vehicle. Deputy Chief Adam Weinstock, one of the two officers who stopped the vehicle, testified that a man (later identified as defendant) got out of his car holding a brown bag in his hand. Defendant appeared "extremely calm" with a "blank stare" and did not engage in any dialogue with Weinstock. Defendant did not acknowledge any commands Weinstock gave him. Weinstock handcuffed

defendant and searched the car. Blood was visible on the center console and there was a beer in the brown bag. No knife was found. After being handcuffed, defendant told Weinstock he was "just having a bad day."

¶ 22 Several days after the incident, defendant's mother, Cindy Thomason, gave a recorded statement to Detective Stuart Myers. The following portion of that statement was read by Myers at defendant's trial:

"Justin called and he said 'Mom, I love you and I am sorry.'
And I said, 'Oh my God, Justin. What have you done?' He said, 'I went to Amber's work and I hurt her.' And I said, 'What did you do?' And he said, 'I cut her.' And I said, 'Why?' And he said, 'She has been lying to me.' And I said, 'My God, Justin, what were you thinking?' And he said, 'I don't know.' And I said, 'Where are you?' And he said, 'I am in my car leaving town.' He said, 'I am about— I think he said, I am about 13 miles north of Charleston.'
And I said, 'Justin turn around and go turn yourself in.' "

Myers recounted Thomason further stated as follows:

" 'The police are going to find you and it would be better to turn yourself in.' And he said, 'Mom, I can't. I think I killed her.' "

¶ 23 At trial, Cindy Thomason was unable to recall this conversation with her son, or that she gave a recorded statement, although she did recall someone coming to her house to speak with her.

¶ 24 The parties stipulated that defendant's fingerprints were on a pair of sunglasses

and a water bottle left in Kemp's office, and bloodstains found on Kemp's sweater and swabs taken from the water bottle and sunglasses contained defendant's deoxyribonucleic acid (DNA).

¶ 25 Based on the evidence presented, the trial court found that the State had proved, beyond a reasonable doubt, that defendant had committed attempt (first degree murder). The court found that defendant had a plan—waiting until Kemp's assistant was gone, waiting for the customer to leave, making sure no one was out front of the office, and bringing the knife he normally did not carry with him—and committed a substantial step to accomplishing first degree murder by opening the knife, "jabbing" at Kemp with the knife, and stating, "I am going to kill you."

¶ 26 B. Sentencing

¶ 27 At defendant's January 2010 sentencing hearing, the trial court reviewed defendant's presentence investigation report (PSI), and took judicial notice of defendant's three previous order-of-protection cases (one of which stemmed from this incident), one misdemeanor conviction for battery, one misdemeanor conviction for domestic battery, and one felony conviction for domestic battery. The report also revealed that defendant had a long history of alcohol abuse and a 2008 conviction for driving under the influence of alcohol, and he had been in and out of alcohol- and substance-abuse treatment programs several times. At the time of this offense, defendant was taking Xanax, Klonopin, and Seroquel. According to the report, when the probation officer asked defendant about his thoughts on the crime he committed, defendant responded, "I thought I could beat this. Everyone thought I could beat this. Haven't you told someone before that you were going to kill them?" The probation officer concluded that defendant does not respect the safety of others, specifically those he is in a relationship with, and

that defendant failed to show any remorse throughout the interview process.

¶ 28 The trial court also considered the victim-impact statement provided by Kemp and a report from Life Links that gave a professional opinion on the impact defendant's conduct had on Kemp's life. The court also considered several letters written by defendant's family and the testimony of defendant's brother, Todd. Defendant gave a statement in allocution, in which he apologized for his actions but told the court this type of behavior is not typical of him when he is sober. Defendant stated he was on a new prescription medicine and abusing alcohol at the time of the offense.

¶ 29 The State recommended a 22-year prison sentence, reiterating that defendant had been physically abusive to girlfriends in the past, evidenced by the orders of protection and convictions for battery and domestic battery. Additionally, the State pointed out defendant had already been given several opportunities to participate in community services such as alcohol- and substance-abuse treatment through the court. The State posited that defendant had a history of recurrent behavior, patterns, and attitudes that showed a lack of rehabilitative potential. Defense counsel asked for 10 to 12 years in prison, arguing that such a term would be an appropriate sentence for the crime, while at the same time allowing defendant to benefit from counseling and other services available in prison.

¶ 30 The trial court sentenced defendant to 16 years in prison. In addition to the aforementioned factors considered by the court, the court stated it considered in aggravation that defendant's conduct caused or threatened serious harm and that defendant had a recurrent and escalating history of violence with women he was in a relationship with. In mitigation, the court acknowledged that defendant has a daughter and the impact a long period of incarceration would

have on his daughter and his parents, who were dealing with the recent death of their daughter (defendant's sister) and raising her two children.

¶ 31 Defendant filed a motion to reconsider sentence, arguing that sufficient weight was not given to defendant's rehabilitative potential. At the May 2010 hearing on this motion, at defense counsel's request and over the State's objection, the court continued the hearing to give defendant an opportunity to establish some type of history of involvement in programs offered in prison. In November 2010, the trial court denied defendant's motion, holding that it had considered defendant's rehabilitative potential at the sentencing hearing.

¶ 32 II. ANALYSIS

¶ 33 Defendant argues his 16-year prison sentence is excessive considering the "extreme mental and emotional stress" he was under at the time of the offense. We disagree.

¶ 34 A. Standard of Review

¶ 35 A trial court has broad discretionary powers in determining an appropriate sentence for a defendant because the trial court is better able to assess the credibility of witnesses and to weigh evidence presented during the sentencing hearing. *People v. Jones*, 168 Ill. 2d 367, 373, 659 N.E.2d 1306, 1308 (1995) (citing *People v. Younger*, 112 Ill. 2d 422, 427, 494 N.E.2d 145, 147 (1986)). Where the sentence imposed by the trial court falls within the statutory range permissible for the offense, a reviewing court will disturb the sentence only if the trial court abused its discretion. *Jones*, 168 Ill. 2d at 373-74, 659 N.E.2d at 1308. An abuse of discretion exists where the sentence imposed 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, 723 N.E.2d 207, 210 (1999).

¶ 36

B. The Trial Court Did Not Abuse Its Discretion

¶ 37

Defendant argues that his long history of alcohol abuse coupled with his prescription drug use should have been considered a mitigating factor at sentencing. Defendant analogizes his case to *People v. Leger*, 149 Ill. 2d 355, 412, 597 N.E.2d 586, 612 (1992), to support his claim. In *Leger*, the defendant was sentenced to death after being convicted of first degree murder, attempt (first degree murder), home invasion, armed violence, and aggravated battery. *Id.* at 363, 597 N.E.2d at 586. The Illinois Supreme Court vacated his death sentence, finding it excessive, and imposed a term of natural life imprisonment in its place. *Id.* at 364, 597 N.E.2d at 587. The court found that the defendant's sentence was excessive due, in part, to the multiple prescription medications the defendant was taking, the effects of which were enhanced when taken together with alcohol. *Id.* at 412, 597 N.E.2d at 612. In *Leger*, evidence was presented that the defendant was taking 10 different prescription medications at the time of the offense. *Id.* Experts for both sides testified that the medications had an enhancing effect when taken together, and that their effect would be even greater if taken with alcohol. *Id.* Both experts also testified that the medications the defendant was taking could affect a person's reasoning ability. *Id.* at 412, 597 N.E.2d at 612. Additionally, the *Leger* court noted defendant's long history of alcohol abuse, good work record, and the fact that the defendant had expressed remorse in making its determination. *Id.* at 412, 597 N.E.2d at 612.

¶ 38

Here, relying on *Leger*, defendant points out that he was also convicted of attempt (first degree murder) and, at the time of his offense, was taking prescription medications to treat anxiety, depression, high blood pressure, and panic attacks. According to the PSI, defendant was taking Xanax (Alprazolam), Klonopin (Clonazepam), and Seroquel (Quetiapine). Defendant

also argues he was employed at the time of the offense and demonstrated genuine remorse at sentencing, both of which were factors the supreme court considered in *Leger*.

¶ 39 We are not persuaded by defendant's comparison to *Leger*. First, we note that cross-case comparative sentencing is not a valid basis for challenging a sentence, as "such an analysis does not comport with our sentencing scheme's goal of individualized sentencing and would unduly interfere with the sentencing discretion vested in our trial courts." *Fern*, 189 Ill. 2d at 55, 723 N.E.2d at 210; see also *People v. Terneus*, 239 Ill. App. 3d 669, 675-78, 607 N.E. 2d 568, 572-74 (1992) (rejecting the "comb-the-books" approach to sentencing challenges).

¶ 40 Additionally, *Leger* is distinguishable from the present case in many ways. First, as the State points out, the defendant in *Leger* was sentenced to death, the most severe sentence available for his crime. Here, defendant was sentenced to 16 years' imprisonment for a crime that carries a maximum nonextended prison term of 30 years. The supreme court vacated the death sentence in *Leger* in exchange for a term of natural life in prison, the second most severe sentence available for the defendant's offenses. In this case, defendant's sentence is already in the middle of the range of sentences available for his crime.

¶ 41 Second, in *Leger*, medical experts for both the State and the defense testified about the medications the defendant was taking, the enhancing effect of those medications when taken together, and the further enhancement of those medications when taken with alcohol. On appeal, defendant points out that one possible side effect of Alprazolam, although uncommon, is unusual changes in mood or behavior, which can be further amplified if consumed with alcohol. AHFS Consumer Medication Information, *U.S. National Library of Medicine*, <http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0000807/> (last visited Feb. 16, 2012).

Defendant admitted he consumed alcohol with his prescription medications on the day of the offense. Additionally, defendant notes that the sudden discontinuation of Alprazolam may cause irritability or aggressive behavior. *Id.* However, as the PSI reflects, defendant had not suddenly discontinued his use of Alprazolam, but instead was being "weaned off" of this medication by his nurse practitioner. Defendant also asserts that unusual side effects of Clonazepam may include new or worsening irritability, acting on dangerous impulses, mania, and aggressive, angry, or violent behavior. AHFS Consumer Medication Information, *U.S. National Library of Medicine*, <http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0000635/> (last visited Feb. 16, 2012).

¶ 42 Unlike *Leger*, no expert testimony was presented during defendant's trial or sentencing regarding the medication he was taking, the likely side effects of the medications, or the likelihood that he was suffering those side effects. The trial court did consider several letters written by defendant's family, which included the following statements: (1) "He sure needs to understand that mixing prescription medications and alcohol never works. *** He needs to realize that mixing this and drinking any alcohol is defiantly [*sic*] going to change your behavior"; (2) "I am firmly, unequivocally convinced that had [defendant] been clean and sober such an unspeakable event would not have occurred. *** I do believe that the fact that he was mixing anti[-]anxiety, anti-depressants and liquor was the reasoning behind his extremely impaired judgment"; and (3) "It [is] a tragedy that the combination of prescription drugs and alcohol culminated in his attack on Amber." The court also considered a letter from Life Links, which summarized defendant's history of substance-abuse and mental health issues as recalled by the outpatient therapist who treated him approximately 10 and 5 years before sentencing.

¶ 43 Defendant also asserts that he, like *Leger*, demonstrated genuine remorse at

sentencing. In his statement in allocution, defendant stated, "I absolutely regret my actions and the effects of my actions on Ms. Kemp, [her daughter, and her family]." On the other hand, according to the PSI, defendant "showed no remorse for any of the lives that his past behavior has impacted, including that of the victims of his current/past offense(s)." While defendant may have demonstrated remorse at sentencing, whether that remorse was genuine, and what weight to give such remorse, was a determination to be made by the trial court. See *Fern*, 189 Ill. 2d at 55, 723 N.E.2d at 210 (trial courts must fashion "a sentence based upon the particular circumstances of the individual").

¶ 44 The 16-year sentence imposed for the Class X felony where defendant was facing up to 30 years in prison reflects the seriousness of the offense, and the trial court properly considered all mitigating and aggravating factors. As defendant's sentence falls within the statutory range permissible for the offense and upholds the spirit and purpose of the law, the trial court did not abuse its discretion and we will not disturb the sentence.

¶ 45 III. CONCLUSION

¶ 46 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 47 Affirmed.