

NOTICE
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2012 IL App (4th) 110308-U

Filed 7/10/12

NO. 4-11-0308

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
CRAIG L. JOHNSON,)	No. 10CF441
Defendant-Appellant.)	
)	Honorable
)	Scott B. Diamond,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, rejecting defendant's argument that the trial court erred by considering certain improper aggravating factors at sentencing.
- ¶ 2 In August 2010, defendant, Craig L. Johnson, entered a negotiated guilty plea to reckless homicide (720 ILCS 5/9-3(a) (West 2010)), aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(3) (West 2010)), and aggravated driving under the influence (aggravated DUI) (625 ILCS 5/11-501(d)(1)(C) (West 2010)). The State's factual basis revealed that while eluding police, defendant, who had a blood alcohol content (BAC) of 0.099, drove his vehicle into the victims' bedroom, killing David Hughes and severely injuring David's wife, Shirley, as the couple slept.
- ¶ 3 Following an October 2010 sentencing hearing, the trial court sentenced defendant to seven years in prison for reckless homicide, three years in prison for aggravated fleeing or

attempting to elude a peace officer, and three years in prison for aggravated DUI, ordering those sentences to be served concurrently.

¶ 4 Defendant appeals, arguing that the trial court erred by improperly considering certain factors in aggravation at sentencing. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The State's Charges and Defendant's Guilty Plea

¶ 7 In March 2010, the State charged defendant with reckless homicide (720 ILCS 5/9-3(a) (West 2010)), four counts of aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(1), (a)(2), (a)(3), (a)(4)) (West 2010)), and two counts of aggravated DUI (625 ILCS 5/11-501(d)(1)(C), (d)(1)(F) (West 2010)). In August 2010, defendant entered a negotiated guilty plea to reckless homicide (720 ILCS 5/9-3(a) (West 2010)), one count of aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(3) (West 2010)), and one count of aggravated DUI (625 ILCS 5/11-501(d)(1)(C) (West 2010)), in exchange for the State's promise to drop the additional counts and recommend a sentence of 14 years in prison.

¶ 8 B. The State's Factual Basis

¶ 9 The State's factual basis revealed that at 12:23 a.m. on March 14, 2010, Officer Mike Foster observed defendant's vehicle traveling without a functioning rear registration plate light. Foster activated his emergency lights and began following defendant's vehicle. Defendant's vehicle sped away. After a brief chase, Foster saw that defendant's vehicle had crashed into the Hughes' home. David was killed and Shirley suffered severe injuries when defendant's vehicle landed on them as they slept.

¶ 10 Defendant, who was 20 years old at the time, admitted that he had been drinking and that he had tried to escape from police because he was under age. Defendant's BAC was 0.099. An accident reconstructionist estimated defendant's speed at nearly 70 miles per hour when his vehicle left the curb and entered the Hughes' home.

¶ 11 C. Defendant's Sentencing Hearing

¶ 12 At defendant's October 2010 sentencing hearing, the parties presented the following evidence in aggravation and mitigation.

¶ 13 Foster testified to the facts articulated by the State in its factual basis, adding that when he arrived at the scene, he found Shirley pinned under defendant's vehicle. Shirley was asking for David. Defendant emerged from the hole that he had made in the bedroom and immediately admitted—without being questioned—that he had been driving, he had been drinking, and that no one else was in the car.

¶ 14 Fireman Robert Staudenmaier testified that he attempted to rescue Shirley, who was pinned in bed, defendant's vehicle on her legs. Shirley kept asking for David, who had been in bed with her. Staudenmaier later found David under the blankets, but he did not have a pulse. After approximately three hours, defendant's vehicle was lifted off Shirley's legs.

¶ 15 Christopher Steinger, an accident reconstructionist, testified that he reviewed the police reports and visited the scene of the accident. Steinger concluded that defendant failed to negotiate a curve, went into the grass, and began braking. At the time defendant began braking, his vehicle was traveling between 64 and 78 miles per hour. Defendant's vehicle went airborne when it hit a curb, and was traveling between 56 and 72 miles per hour when it hit the house.

¶ 16 Shirley's daughter and David's stepdaughter, Teresa Allenbaugh, testified that she

had been visiting Shirley and David with her three children on the night of the crash. Allenbaugh explained that Shirley had undergone multiple surgeries and refused to return home because of the crash. Allenbaugh added that Shirley had since sold the home and rotated living with her four daughters.

¶ 17 Shirley testified that she had lived in the home for approximately 40 years. She was hospitalized for nearly two months because she (1) suffered (a) broken leg bones and (b) a fractured ankle, (2) required a skin graft, and (3) had a toe amputated. Following her hospital stay, she was transferred to a nursing facility for a couple more months. From there, Shirley moved in with one of her daughters. Shirley explained that she was uncertain whether she would ever walk normally again.

¶ 18 Two of Shirley's other daughters each read a victim impact statement, describing the impact that the incident had inflicted upon their family. One sister fractured her leg in a fall while she was packing Shirley's things to move, and another sister had to quit her job so that she could be at the hospital with Shirley.

¶ 19 In mitigation, defendant's employer, Gene Colcord, testified that defendant had worked for him for more than two years and had been a good employee. Colcord explained that defendant was great with computers, which was very helpful to Colcord. Colcord opined that the current case notwithstanding, defendant could be law abiding.

¶ 20 Greg Mattingly, the Macon County Public Defender, testified that he was a longtime and close friend of defendant's family, explaining that defendant came from an excellent family with values and discipline. Mattingly opined that defendant would be a strong candidate to succeed in completing a term of probation if the court were to impose such a

sentence.

¶ 21 Sharon Brown, the senior counselor at the Macon County jail, testified that defendant was on suicide watch because defendant felt that he would rather die than to live with what he had done. She explained that defendant had expressed remorse and showed concern for the victims and their family.

¶ 22 Bruce Johnson, defendant's father, testified that defendant was intelligent and interested in political science and history. Johnson explained that defendant had been in his second year of college. Johnson noted that at the time of the incident he and defendant's mother were divorcing, which created some stress in the household.

¶ 23 Kim Warren, defendant's supervisor at a former job, testified that he was a good employee. Warren added that defendant got along well with his coworkers.

¶ 24 The trial court admitted a report from Dr. Rohi Pail, who had seen defendant since the accident. Pail's report indicated that defendant showed remorse and felt guilt about the incident. Pail diagnosed defendant with "major depression."

¶ 25 Defendant spoke in allocution, expressing his sorrow for the pain he had caused Shirley and her family. Defendant also apologized to his family and promised to work to "be better."

¶ 26 The prosecutor thereafter expressed the State's belief that the appropriate sentence would be 14 years in prison. In response, defendant's attorney pointed out that while tragic, the deaths and the speed at which defendant was driving were inherent in the crimes to which defendant had pleaded guilty. Defense counsel concluded by suggesting that the appropriate sentence would be probation.

¶ 27

D. The Trial Court's Findings and Defendant's Sentence

¶ 28

On this evidence, allocution, and argument, the trial court sentenced defendant as previously stated, explaining as follows:

"Okay. Well, everybody knows in the last two years I have been the traffic judge in Macon County. This year we have had, so far, about 650 DUI's. And what I've learned from this assignment is that drunk driving affects all social economic levels. One thing about this assignment, you see the rich and the poor and the middle class. Seems everybody has a problem with driving under the influence. However, I can't say that this assignment has not affected me to the extent that every time I go out to a restaurant and see people drinking, I just wonder how many of those people are going to get behind the wheel of the car and whether or not something is going to happen. Now when you sentence a person, you look at the good and the bad. First of all, he pled guilty. So I come from the school that I was brought up from *** that we always give consideration for a plea. Why do we give consideration for a plea[:] (1) [t]he first step in the rehabilitation process is the admission of guilt; (2) it saves the State time and money; [and] (3) there is a certainty of outcome and there is [generally] not [an] appeal ***. He doesn't have a criminal

background. That's kind of unusual, but not totally unusual.

Drunk driving is a different type of offense. Usually in criminal court, when I was in felony court, you could see a progression from juvenile and then misdemeanors and then felonies and then murder. DUI's are a separate category. It isn't like that, but it's true the young man has no convictions. So that's good. He graduated high school. He was working. These are all positive things which the Court has considered. Okay. Let's now consider the other side. The other side is, he killed one person. He maimed another. That lady needed numerous operations. What was he being stopped for. He was being stopped for a tail light. What does he do[?] He flees because he was afraid he was going to get arrested for being [under age]. Then what does he do[?] His car flies, he hits a house, he kills one person and maims another. Have I ever given probation for reckless homicide before and the answer is [']yes.['] One time I did. But in that case, the victim and the defendant had both been drinking together. That's a lot different than someone driving a car drunk, two people are sleeping in their house and one gets killed and one gets maimed. I have considered the factors of what's positive for him, but I believe that the factors that outweigh the positive are I'm supposed to consider that the defendant's conduct caused or threatened serious harm. Clearly that's true. Number 7

to me is the most important one in this case. The sentence is necessary to deter others from committing the crime. Because of what I see in traffic court because of the number of DUI's I see, because the breath alcohol content I see, I mean, it's high, it's just not .09 or .10. I see in the .20's. I have to send some type of message to the community about this. Otherwise, I would not have any credibility as a judge. I truly believe that. And I considered factor 20 about the speed. So[,] young man, as much as I hate to do it, I cannot give you probation. I must send a message to the community that this type of conduct will not be tolerated. However, I am going to consider the positive things that I said. I am not going to give you the maximum. I'm going to give you 7 years in the Department of Corrections."

¶ 29 E. Defendant's Motion To Reconsider Sentence

¶ 30 In November 2010, defendant filed a motion to reconsider sentence, arguing that the trial court considered factors in aggravation that were inherent in the crimes for which he pled guilty. Specifically, defendant claimed that the court's considering the excessive speed was inherent in the crimes of reckless homicide and fleeing. Defendant further asserted that the court impermissibly considered in aggravation the fact that a death resulted, which was inherent in the crime of reckless homicide. Defendant also complained that the court improperly considered the wrong BAC, 0.20, when defendant's BAC was actually 0.099.

¶ 31 Following an April 2011 hearing on defendant's motion to reconsider sentence,

the trial court rejected defendant's motion. The court concluded its findings, as follows:

"If anybody deserves to go to prison in a Reckless Homicide case, this young man deserves it.

Let's not forget that the daughter of these parents [was] in the home, and what did the young man say? She sees a car in the house. Now, imagine, how many people could ever say they saw a car in their house, and what does the young man say? 'I'm going to jail.'

He knew he had screwed up big time, and he had. I gave him a fair sentence."

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 Defendant argues that the trial court erred by improperly considering certain factors in aggravation at sentencing. Specifically, defendant contends that the court abused its discretion by considering (1) David's death and the excessive rate of speed defendant was driving—which were factors inherent to the offense of reckless homicide—in aggravation at the sentencing hearing, and (2) the wrong BAC as an aggravating factor. We disagree.

¶ 35 A reviewing court may not alter a defendant's sentence absent an abuse of discretion by the trial court. *People v. Stacey*, 193 Ill. 2d 203, 209-10, 737 N.E.2d 626, 629 (2000). "A sentence will be deemed an abuse of discretion where the sentence is 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.'" *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010) (quoting

Stacey, 193 Ill. 2d at 210, 737 N.E.2d at 629).

¶ 36 "The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference." *Alexander*, 239 Ill. 2d at 212, 940 N.E.2d at 1066. The trial court's judgment regarding sentencing is entitled to great deference because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the "cold" record. *Id.* at 212-13, 940 N.E.2d at 1066. The trial court is in the best position to weigh factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Id.* at 213, 940 N.E.2d at 1066.

¶ 37 A trial court runs afoul of the proscription against utilizing a factor inherent in an offense as an aggravating factor when "the record demonstrates that the circuit court focused primarily on *the end result of the defendant's conduct*." (Emphasis added.) *People v. Saldivar*, 113 Ill. 2d 256, 272, 497 N.E.2d 1138, 1144 (1986). Conversely, when the trial court's findings in aggravation are directed at "*the degree or gravity of the defendant's conduct*"—that is, the circumstances surrounding the offense—its findings do not violate the proscription against utilizing a factor inherent in an offense as an aggravation factor. (Emphasis added.) *Id.* at 271, 497 N.E.2d at 1144.

¶ 38 In *People v. Dowding*, 388 Ill. App. 3d 936, 943-44, 904 N.E.2d 1022, 1029 (2009), the Second District of this court explained the *Saldivar* standard that we have just outlined, ultimately concluding that the trial court impermissibly focused primarily on the end result. Before reaching that conclusion, however, the *Dowding* court further explained the applicable standard, as follows:

"In determining whether the trial court based the sentence on proper aggravating and mitigating factors, a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court. [Citations.] In determining the exact length of a particular sentence within the sentencing range for a given crime, the trial court may consider as an aggravating factor the *degree* of harm caused to a victim, even where serious bodily harm is arguably implicit in the offense of which the defendant is convicted. [Citations.] The trial court may also consider the *manner* in which the victim's death was brought about, as well as the *seriousness, nature, and circumstances* of the offense, including the nature and extent of each element of the offense. [Citation.] However, the trial court may *not* consider the end result, *i.e.*, the victim's death, as a factor in aggravation where death is implicit in the offense. [Citation.]" (Emphasis in original.)
Dowding, 388 Ill. App. 3d at 943, 904 N.E.2d at 1029.

¶ 39 In this case, we have outlined the trial court's findings at length to put the court's findings in aggravation and mitigation in their full context. Read in that full context, the record shows that the court's focus was not on the end result, *i.e.*, David's death and defendant's excessive speed, but on the gravity of defendant's conduct, or, put another way, the circumstances surrounding the crash that resulted in David's death and came about in part because of defendant's excessive speed. Specifically, the court noted that defendant "killed one person [and]

mained another," immediately added that defendant was "fleeing" a traffic stop "because he was afraid he was going to get arrested for being [under age]," and concluded by noting that it considered defendant's excessive speed. In context, the court was clearly outlining the manner in which David's death occurred, focusing on the senseless nature of defendant's acts, not the end result of those acts. A trial court does not commit error in sentencing a defendant for reckless homicide by mentioning that someone died. Contrary to defendant's contention, the trial court emphasized that it was sentencing defendant to send a "message to the community that this type of conduct will not be tolerated."

¶ 40 Accordingly, we reject defendant's claim that the trial court erred by considering certain factors in aggravation that were inherent in reckless homicide, the offenses to which he pled guilty.

¶ 41 In closing, we also reject defendant's assertion that he is entitled to a new sentencing hearing because the trial court utilized the wrong BAC as an aggravating factor. Apparently, defendant invites this court to infer that because the court noted at the sentencing hearing that defendant's BAC was "in the mid .20's," which was incorrect, it would have deviated further from the State's 14-year recommendation. Fortunately, defendant presented this argument to the court at the hearing on defendant's motion to reconsider sentence. Confronted with its misstatement about defendant's BAC, the court adhered to its previous sentencing determination, concluding that defendant's seven-year prison sentence was "a fair sentence."

¶ 42 **III. CONCLUSION**

¶ 43 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State's its \$50 statutory assessment as costs of this appeal.

¶ 44 Affirmed.

