

No. 1-11-0249

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 18809
	)	
TERRELL HORTON,	)	Honorable
	)	Marcus R. Salone,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE TAYLOR delivered the judgment of the court.  
Presiding Justice McBride and Justice Howse concurred in the judgment.

**ORDER**

¶ 1 *Held:* Judgment entered on defendant's conviction of second degree murder affirmed over his claim that his sentence was excessive.

¶ 2 Following a jury trial, defendant Terrell Horton was found guilty of second degree murder, then sentenced to 20 years' imprisonment. On appeal, defendant contends that his 20-year sentence is excessive in light of certain mitigating evidence.

¶ 3 The record shows, in relevant part, that on the evening of November 26, 2008, defendant, Denell Bruce, and Doni Bowens went to the Nadia Beauty Salon at 1910 East 87th Street, in

Chicago, to have their hair cut by Charles Price, aka "Chan." They had previously been drinking beer and cognac, and after they arrived, Bruce and defendant went to the liquor store and returned with more beer and cognac. Sometime thereafter, an argument erupted between defendant and Robert James, aka "Paco," and Price told defendant "no bullshit in the barber shop" and pushed him out the backdoor into the alley. Defendant became "angry" and "enraged" and made a phone call in which he gave someone his location. He then went around to the front of the salon and, with his brother William Bryant, aka "Little Bill," began pushing on the door as Price offered resistance from the other side. When they eventually got inside, a fight ensued during which defendant repeatedly stabbed the unarmed Price to death. Following deliberations, the jury found defendant guilty of second degree murder.

¶ 4 At sentencing, the State called correctional officer William Baker, of the Cook County Sheriff's Department in aggravation. He testified that on the afternoon of March 15, 2009, defendant was involved in a violent fist-fight with another inmate where both were "saying that they were going to kill each other." The State also called the victim's relatives to read their victim impact statements. The family noted that Price had recently moved to Chicago from Atlanta, Georgia, to help take care of his terminally ill grandmother, expressed displeasure with the jury's verdict, and requested that defendant receive the maximum sentence allowed by law.

¶ 5 In mitigation, Tamitha Horton, defendant's first cousin, and the mother of Price's two children, read a statement in which she noted that defendant is a "good person with a huge heart," and that he "has a disabled child who he loves dearly and struggled every day to figure out how he could care for her and make life easier for her." Frinora Moore, defendant's grandmother, also read a statement in which she noted that defendant diligently worked with his special needs daughter to teach her to walk and is "a great and loving father." Finally, Dana Peterson, the

grandmother of defendant's daughter, testified that defendant was "somebody [she] could always depend on" when it came to his daughter, stating:

"You know, there came a time where [defendant's daughter] came to stay with us. And working full time, we weren't getting a break. I could always depend on him to be there. When she went in the hospital, he was there. If he needed to spend the night, I couldn't be there, he was there. There was nothing that – it was never 'I'll see.' It was always 'not a problem, okay.' "

Peterson noted that defendant's daughter is 8 years old, but functions as an 18-month-old, and testified that she "couldn't have asked for a better – a better father for [her] granddaughter, especially with her special needs."

¶ 6 The State argued in aggravation that defendant has prior drug and weapon convictions, that his jailhouse fight indicated that he has no respect for the law, and that he "chose to behave in the manner that he did" despite having the opportunity to attend good schools. The State also argued that defendant is not such a good father, and asserted that he only rendered aid at times when Peterson and her family could not handle taking care of his daughter, and "should have been there to begin with." The State requested that defendant receive the maximum sentence of 20 years' imprisonment.

¶ 7 Defense counsel argued in mitigation that defendant was provoked by physical aggression from Price. Defense counsel also noted, *inter alia*, that defendant suffers from depression, that he was attempting to provide financially for his child and get an education, and that he made a "stupid decision" to begin drinking the morning of the incident.

¶ 8 In allocution, defendant apologized to Price's family and asked their forgiveness, noting that "[t]his is an extremely unfortunate situation that [he] never intended to happen." He also

requested a "favorable sentence" in order that he could have an "opportunity to be a father to [his] child."

¶ 9 In announcing sentence, the trial court noted, *inter alia*, that it believed that defendant committed murder, but stated, "I have no qualms with the jury's determination. I take exception to it, but I understand." The court then noted that it had considered all the matters properly before it, including defendant's PSI, and sentenced him to 20 years' imprisonment.

¶ 10 In this appeal from that judgment, defendant contends that his 20-year sentence for second degree murder is excessive in light of certain mitigating evidence. The State responds that the trial court did not abuse its discretion in sentencing defendant within the statutory guidelines, and that defendant's argument is an improper request for this court to re-weigh the factors in aggravation and mitigation and impose a lesser sentence.

¶ 11 It is well-settled that a reviewing court will not disturb the sentence imposed by the trial court absent an abuse of discretion. *People v. Cabrera*, 116 Ill. 2d 474, 494 (1987). Where, as here, the sentence falls within the prescribed statutory limits, it will not be disturbed unless it is greatly at variance with the purpose and spirit of the law or is manifestly disproportionate to the offense. *Cabrera*, 116 Ill. 2d at 493-94. A sentence will not be found disproportionate where it is commensurate with the seriousness of the crime, and adequate consideration was given to any relevant mitigating circumstances, including the rehabilitative potential of defendant. *People v. Perez*, 108 Ill. 2d 70, 93 (1985).

¶ 12 Defendant maintains that his 20-year sentence is excessive because his family depends on him as a father to his special needs daughter, who is legally blind, nonverbal, and functions at the level of an 18-month-old despite her 8 years of age. The record shows, however, that the trial court heard extensive evidence in mitigation regarding defendant's role as a father to his special needs daughter, and it is presumed to have considered that evidence in fashioning defendant's

sentence. *People v. Partin*, 156 Ill. App. 3d 365, 373 (1987). Thus, in requesting a reduction in sentence, defendant is essentially asking this court to re-balance the appropriate factors and independently conclude that his sentence is excessive, which is not our function. *People v. Burke*, 164 Ill. App. 3d 889, 902 (1987), citing *People v. Cox*, 82 Ill. 2d 268, 280 (1980).

¶ 13 In this case, defendant's conviction of second degree murder was a Class 1 felony (720 ILCS 5/9-2(d) (West 2008)) punishable by a sentence of 4 to 20 years' imprisonment (730 ILCS 5/5-4.5-30(a) (West 2010)). The 20-year sentence imposed by the trial court fell within this prescribed range and was not disproportionate to the offense where defendant, who had been drinking, forced his way into the salon after being ejected because of his behavior and repeatedly stabbed his unarmed victim to death at his place of work. The sentencing court is not required to give defendant's rehabilitative potential greater weight than the seriousness of the offense (*People v. Coleman*, 166 Ill. 2d 247, 261 (1995)), and, here, contrary to defendant's claim that "[i]ncarcerating [him] for the maximum amount of time allowed by law fails to reflect his potential for rehabilitation," the court could properly find that potential minimized by defendant's subsequent display of the same uncontrollable temper and aggression that resulted in his conviction when he fought in jail prior to sentencing and threatened to kill the other individual. *People v. Lambrechts*, 69 Ill. 2d 544, 560 (1977). Under these circumstances, we find no abuse of discretion in the term imposed by the trial court to permit any modification by this court (*People v. Almo*, 108 Ill. 2d 54, 70 (1985)), and, therefore, affirm the judgment of the circuit court of Cook County.

¶ 14 Affirmed.