

No. 1-11-1714

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. 06 CR 25753
)	
JIMMIE MARSHALL,)	Honorable
)	Angela Munari Petrone,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Connors and Justice Hoffman concurred in the judgment.

ORDER

¶1 **Held:** The trial court did not abuse its discretion when, after considering evidence in mitigation and aggravation, the court sentenced defendant to 20 years in prison for second degree murder. Defendant's mittimus must be corrected to reflect the two-year term of mandatory supervised release which accompanies a Class 1 felony.

¶2 Following a bench trial, defendant Jimmie Marshall was convicted of second degree murder and sentenced to 20 years in prison. On appeal, he contends that his sentence is excessive in light of certain mitigating evidence. He also contends that the trial court erred when it imposed the three-year term of mandatory supervised release (MSR) that accompanies a Class X felony when he was convicted of the Class 1 felony of second degree murder. We affirm, but correct the mittimus.

¶ 3 Defendant and codefendant Nicholas McReynolds were charged with first degree murder, felony murder, and robbery after an October 2006 fight resulted in the death of the victim Steven Chrapusta. The matter proceeded to joint bench trial where the State's theory of the case was that defendant and codefendant beat the victim and then took certain personal items.¹ Defendant, on the other hand, argued that he was acting in self-defense when the intoxicated victim, who was over six feet tall and weighed 266 pounds, acted as the initial aggressor in the fight.

¶ 4 Walter Gardner, who had previously been convicted of possession of a controlled substance, testified that early in the morning on October 15, 2006, he went to the front of his house where he saw Daris Williams, whom Gardner described as a "pimp." He also saw two young black men walking down the street toward him. The men, who sounded drunk, were talking about fighting. They then turned back in the direction from which they had come and later walked back toward Gardner carrying a dark bag. When he looked down the street, he saw someone on the ground. Gardner later told the police which direction the two men had gone, and subsequently identified defendant and codefendant.

¶ 5 Karen Pearson, who worked as a prostitute and had previously been convicted of, *inter alia*, felony prostitution, testified that she saw two men stomping, kicking, and jumping up and down on a third. She heard the person on the ground tell them to stop and leave him alone. When that man tried to get up and get away, the other two men would not release him. Although the two men walked away, they then turned around and began to beat the man on the ground again.

¶ 6 Daris Williams, who had prior felony convictions for burglary and possession of a controlled substance, testified that defendant and codefendant kicked a man who was on the ground. He denied watching the fight, clarifying that he merely "passed through," that is, drove by. When defendant and codefendant later walked past Williams's parked van, they were going through "some papers" and tossing them on the ground. He saw them pass by the van again and when they returned, they

¹ We have affirmed codefendant's 20-year sentence for second degree murder in case number 1-11-3566. *People v. McReynolds*, 2013 IL App (1st) 113566-U.

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were carrying a backpack. During cross-examination, Williams denied telling codefendant's counsel that he did not see the fight, and only knew what Pearson told him.

¶ 7 Officer Anthony Torres testified that as he approached the victim, he observed that the victim had head injuries. He spoke to Gardner, who described the clothing of two male suspects and their direction of travel. Torres then sent out a flash message. Defendant and codefendant were later brought to the scene and identified by Gardner and Williams as the men who beat and stomped on the victim.

¶ 8 Sergeant John Gartner testified that when he observed defendant and codefendant dropping items, he rolled down his car window and motioned them over. As the men walked up to his car, defendant dropped a handful of papers on the ground. Gartner observed blood on their clothing and shoes. The men were then detained.

¶ 9 Amanda Soland, who was previously a forensic scientist with the Illinois State Police, testified that she tested blood from the victim in order to obtain a DNA profile. She then conducted DNA analysis on, among other samples, defendant's jeans. The test revealed a DNA profile which matched that of the victim.

¶ 10 Assistant Medical Examiner Steven Miles White testified that he reviewed the victim's autopsy protocol. The victim was six feet, two inches tall, weighed 266 pounds, and suffered from cirrhosis of the liver. The victim had a blood alcohol level of .226. In White's opinion, the victim died of cerebral and facial injuries caused by blunt head trauma.

¶ 11 Defendant testified that he was 19 years old at the time of the victim's death. He worked as a tumbler and earned enough money to help his mother with expenses. Defendant and codefendant were good friends. On the night in question, defendant and codefendant were walking when codefendant yelled across the street at the victim asking if the victim had a cigarette. The victim replied that he did not. Codefendant then asked if the victim had change, and crossed the street to follow up on this question. Defendant followed. When defendant concluded that the victim "ain't got no damn change," the victim turned to him and told him that he had "nothing" to do with the

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situation. Defendant noticed that the victim smelled of liquor. Ultimately, defendant told codefendant that they should leave. As they tried to leave, the victim swung at defendant. Defendant ducked and then hit the victim. The victim then kicked defendant in the stomach and defendant fell to the ground. The three men began to fight. At one point, the victim fell to the ground and grabbed defendant's leg, causing defendant to fall on top of the victim. Defendant hit the victim to make the man let go. As defendant got up, the victim began to kick him and codefendant. They responded by kicking the victim. When defendant saw blood coming from the victim's nose, he told codefendant that they should leave. When they left, the victim was on the ground "snoring." They later went back because defendant had dropped his hat.

¶ 12 Defendant said that he was afraid when the victim swung at him because the victim was a "big guy" and smelled of liquor. On cross-examination, defendant admitted that, when he spoke to police, defendant denied running into the victim and did not say that he defended himself because he did not want what he said to be used to make him look like a bad person. On redirect examination, defendant explained that he only later told officers what happened because he was told he could see his mother if he did.

¶ 13 Cleodos Ferguson testified that in October 2006, he was a manager at Jack Clark's Recovering Community. When police spoke to him about the victim shortly after October 15, Ferguson stated that the victim had been a resident, but had been involuntarily discharged for being under the influence of alcohol.

¶ 14 In finding defendant guilty of second degree murder, the court stated that although the victim was physically larger than defendant, he was impaired by poor health and extreme intoxication. However, the court concluded that defendant had met his burden to prove, by a preponderance of the evidence, that he was acting under the unreasonable belief that he was protecting himself and codefendant when he punched and kicked the victim. The court characterized this belief as unreasonable because, even if the victim swung first, once the victim was "down," there was no need to continue striking him.

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¶ 15 At sentencing, victim impact statements from the victim's girlfriend and parents were presented to the court. The State argued that nothing justified the circumstances of the victim's death and urged the court to sentence defendant to the maximum sentence of 20 years in prison. The defense responded that defendant grew up in public housing, his mother had an alcohol problem, and that he left school early because of a learning disability. However, he had obtained his high school diploma while incarcerated. The defense also highlighted defendant's career as a tumbler, and his ability to contribute to his family's expenses. Defendant then apologized to the victim's family and asked for their forgiveness.

¶ 16 In sentencing defendant, the court noted that defendant had a "rough" childhood in public housing, that his mother suffered from alcohol dependence, and he had a learning disability. The court then stated that defendant had joined a tumbling team, made money which he used to help his mother with expenses, and had earned his high school diploma while incarcerated. Defendant's prior criminal record included a conviction for possession of a controlled substance, and a misdemeanor charge of criminal trespass to real estate. The court noted in aggravation that defendant's conduct in the instant case caused the victim's death and that defendant had "somewhat" of a prior criminal history. The court then stated that although defendant believed that he was acting in self-defense, the court had found that belief to be unreasonable. The court noted that while defendant seemed very remorseful at sentencing, when he spoke to the police immediately following the incident, he displayed the "opposite" character and attitude. Ultimately, the court sentenced defendant to 20 years in prison.

¶ 17 On appeal, defendant contends that the trial court imposed an excessive sentence in light of certain mitigating evidence, including his youth at the time of the crime, his minimal criminal record, his steady employment, and his apology to the victim's family.

¶ 18 A trial court has broad discretion in determining the appropriate sentence for a particular defendant and its determination will not be disturbed absent an abuse of that discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A sentence within the statutory range will not be considered

excessive unless it varies greatly from the spirit of the law or is manifestly disproportionate to the nature of the offense. *People v. Brazziel*, 406 Ill. App. 3d 412, 433-34 (2010). When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, *inter alia*, a defendant's age, habits, credibility, criminal history, character, education, and environment, as well as the nature and circumstances of the crime and the defendant's actions in the commission of that crime. *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010).

¶ 19 Here, defendant was convicted of second degree murder, a Class 1 felony with an applicable sentencing range of between 4 and 20 years in prison. 720 ILCS 5/9-2(d) (West 2006), 730 ILCS 5/5-8-1(a)(1.5) (West 2006).

¶ 20 The record reveals that at sentencing, the parties presented evidence in aggravation and mitigation including the circumstances of the crime, and defendant's family, educational, work, and criminal background. In sentencing defendant, the court noted that defendant had a rough childhood in public housing, but that defendant had joined a tumbling team and earned money to help his mother with expenses. The court also noted that defendant had earned a high school diploma while incarcerated, that defendant had "somewhat" of a criminal history, and that although defendant was remorseful at sentencing, he displayed a different attitude immediately following the crime. Ultimately, this court cannot say that a prison sentence of 20 years was an abuse of discretion when, even if defendant believed he had to protect himself and codefendant, he continued to beat the victim after the victim fell to the ground. See *Patterson*, 217 Ill. 2d at 448 (a trial court has broad discretion in sentencing).

¶ 21 Defendant, on the other hand, contends that the trial court must not have considered the evidence presented in mitigation because the court still sentenced him to the maximum applicable sentence of 20 years in prison.

¶ 22 However, this court has previously recognized that the "existence of mitigating factors does not require the trial court to reduce a sentence from the maximum allowed." *People v. Phippen*, 324 Ill. App. 3d 649, 652 (2001); see also *People v. Smith*, 214 Ill. App. 3d 327, 339 (1991) (the

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existence of mitigating factors does not automatically oblige the trial court to reduce a sentence from the maximum sentence allowed, and where mitigation evidence was presented to the trial court, it is presumed that the court considered that evidence absent some contrary indication other than the sentence ultimately imposed). At sentencing, the trial court noted defendant's prior employment, his high school diploma, and that he only had "somewhat" of a criminal history. Here, the trial court considered not only the mitigation evidence presented by defendant, but the fact that defendant's actions, continuing to beat the victim after the victim was on the ground, caused the victim's death (see *Raymond*, 404 Ill. App. 3d at 1069), and ultimately concluded that the maximum sentence was warranted (*Pippen*, 324 Ill. App. 3d at 652). Based on these facts, we cannot say that trial court abused its discretion when it sentenced defendant to 20 years in prison. See *Patterson*, 217 Ill. 2d at 448.

¶ 23 Defendant next contends that his mittimus must be corrected to reflect the two-year term of MSR that accompanies a Class 1 felony (see 730 ILCS 5/5-8-1(d)(2) (West 2006)), rather than the three-year term that accompanies a Class X felony. The State concedes, and we agree, that because defendant was convicted of the Class 1 felony of second degree murder (720 ILCS 5/9-2(d) (West 2006)), he is subject to a two-year term of MSR upon his release from prison (730 ILCS 5/5-8-1(d)(2) (West 2006)). Therefore, pursuant to our power to correct a mittimus without remand (*People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008)), we direct the circuit court clerk to correct the mittimus to reflect a two-year term of MSR.

¶ 24 Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct the mittimus to reflect a two-year term of MSR. We affirm the circuit court of Cook County in all other aspects.

¶ 25 Affirmed; mittimus corrected.