

No. 1-11-2870

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. 04 CR 13669
)	
LAQUITA CALHOUN,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Quinn and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where trial court on remand for resentencing expressed disagreement with appellate court's reliance on mitigating factor and emphasized brutality of offense, but ultimately reduced defendant's murder sentence by half, court did not violate appellate court's mandate; the judgment of the trial court was affirmed.
- ¶ 2 Defendant Laquita Calhoun appeals from the trial court's 2011 resentencing on her conviction for the first degree murder of Alonzo Jones, whom defendant suspected of sexually assaulting her child. Defendant contends this court should reduce the 30-year sentence imposed on remand by the judge who presided at her jury trial or, alternatively, asks that this court remand her case for a third sentencing by a different judge. We affirm.

¶ 3 Defendant and five other people were charged with killing Jones on February 28, 2004, after Jones was accused of molesting defendant's one-year-old daughter. The trial court sentenced defendant to 60 years for murder and 7 years for kidnaping, with those terms to be served consecutively. The most pertinent facts of defendant's 2006 trial are set out in this order, and the facts are fully stated in this court's opinion on direct appeal, which resulted in the remand for resentencing. *People v. Calhoun*, 404 Ill. App. 3d 362 (2010).

¶ 4 The evidence at trial included defendant's videotaped statement to police, in which she described the events leading to Jones' death. Defendant, who was 23 years old at the time of this offense, noticed an abnormality in her daughter's vagina while bathing the child on February 28, 2004. When defendant asked her neighbor Jeanette Daniels, who had cared for the child that day, about the child's condition, Jones was present, as were several of the co-defendants in this case. One witness described Jones as mentally challenged. Defendant asked Jones if he had harmed her child, and Jones responded he did not "want to say it in front of the others." Defendant said Jones privately admitted to her that he "did it."

¶ 5 After Daniels told defendant that Jones had assaulted Daniels' child, defendant and her co-defendants attacked Jones. When Jones was able to escape the residence, defendant pursued him and pulled him back upstairs into the apartment. Jones was placed in the trunk of a car driven at various points by defendant and a co-defendant. After defendant's attempt to locate the child's father at his home was unsuccessful, defendant contacted Navon Foster, the father of her other children, and told him Jones had "hurt her baby." According to defendant's statement, she did not want Foster to "put his hands on" Jones but that she "wanted to beat his butt."

¶ 6 Defendant picked up Foster, and they drove with Jones still in the vehicle's trunk. After stopping to have a tire repaired, they drove to an alley, and defendant opened the trunk and told Jones to get out. Defendant struck Jones about 10 times in his back and head with a stick and

continued to strike Jones after he fell to the ground. Defendant got back into the vehicle, and Foster accidentally backed the car up over Jones' body as they attempted to drive away. As Foster drove away, defendant saw Jones crawling in the alley, and Foster drove around the block and returned to the alley, where he ran over Jones again.

¶ 7 Jones' body was found the following morning in the alley. Defendant turned herself into police on April 13, 2004, after learning of a warrant for her arrest. Defendant told police they returned to Daniels' apartment after leaving the alley and that she reported the event to her aunt.

¶ 8 Defendant's account of the events in Daniels' apartment was corroborated by her co-defendants and others present. Defendant's sister, Katherine, who was serving a 20-year sentence for her involvement in this crime when she testified at defendant's trial, gave a confession that was videotaped by police. Katherine told police that Jones deserved to die for molesting her child and when Jones begged them to take him to a hospital or police station, defendant responded Jones was "going to die tonight." Katherine also stated that when defendant could not contact the child's father, defendant said, "F— it. I will do this myself."

¶ 9 The jury found defendant guilty of first degree murder and kidnaping. In sentencing defendant to 60 years for murder, the trial court noted the medical examiner's testimony that Jones' chest had been crushed and that he had numerous sharp force injuries, or stabbings. Rejecting defense counsel's argument that defendant's actions were provoked by the abuse of her young child, the trial court said the crime was "carried out in a dispassionate, calculated manner," noting that Jones spent "[h]ours in the trunk of that car." The court said defendant had "unilaterally" decided that Jones was guilty of abusing her child and should die for his actions. The court said defendant had "committed a crime which warrants that she never see the street again, and that's the Court's intention, that she never see the street again." The court also imposed a consecutive seven-year sentence for kidnaping.

¶ 10 On direct appeal, this court remanded for a new sentencing hearing on defendant's murder conviction. *Calhoun*, 404 Ill. App. 3d at 390-91. Stating that the trial court failed to "recognize the full nature and extent of the provocation experienced by defendant upon her determination that [Jones] had apparently raped her infant daughter," this court noted defendant's belief in the assault was corroborated by Daniels' account that Jones had molested Daniels' child. *Id.* at 386. This court observed that the presence of strong provocation is a mitigating factor in sentencing, and serious provocation can arise from the physical injury or assault of family members, including children. *Id.* at 386-87. Moreover, the court noted the unlikelihood of defendant's recidivism due to the crime's personal nature. *Id.* at 388.

¶ 11 This court used the following language in remanding this case for resentencing:

"[W]e remand to the circuit court for a new sentencing hearing with instructions to the trial judge to give due reflection and implementation of the relevant mitigating factors. Based upon these mitigating factors, which include defendant's undeniably strong provocation, her lack of any venial criminal record, and the manifest unlikelihood of any repetition of this crime, we strongly believe that a proper sentence for[] this defendant would be at the minimal sentencing level for first degree murder, to which we would recommend that the presen[t] sentence be reduced."

¶ 12 Upon remand, a new sentencing hearing was held on September 2, 2011, by the judge who presided at defendant's trial. The court recounted the specific details of the crimes. The court began by noting it had reviewed the transcript of defendant's trial and the video of defendant's "somewhat exculpatory confession" and the videotapes of those who testified against defendant. The court also said it had reviewed the pre-sentence report for defendant.

¶ 13 After hearing arguments in aggravation and mitigation of defendant's sentence, the court noted it had observed the testimony of the witnesses at trial and viewed the photographs of Jones' injuries. The court reviewed the medical examiner's testimony of the extent of those injuries, noting there were more than 50 blunt force injuries and stab wounds, in addition to marks indicating that Jones had been dragged and run over by a car.

¶ 14 The court stated Jones' demise resulted from defendant's "subjective viewpoint based on nothing basically" that Jones molested defendant's infant. The court also noted that defendant failed to report any child abuse between February 28, when Jones was killed, and April 13, when defendant spoke to police. In addition, the court observed that no medical reports were submitted indicating the child in fact had been assaulted.

¶ 15 The court then specifically addressed the appellate court's directive on remand:

"One of the things they talk about is that they consider at least somewhat significant – is that [defendant] took steps to take responsibility for her actions by turning herself in to the police voluntarily and confessing to the crime."

¶ 16 The court rejected that notion, stated that defendant testified at a pretrial hearing that she did not know why the police wanted to speak to her. Characterizing defendant's confession as "self-serving" and "largely exculpatory," the court noted defendant's statement conflicted with the accounts of those in the apartment who testified that defendant said she wanted Jones dead.

¶ 17 The court stated it was not "callously indifferent to somebody whose child might have been sexually assaulted, who might react by doing something, even killing somebody" but stated the only evidence of abuse to defendant's child "came from the mind and the mouth" of defendant.

¶ 18 Addressing the "unusual circumstances" of the case as compared to the cases relied upon in the appellate opinion, the court on remand disagreed with the appellate court's characterization that defendant acted in response to an "undeniably strong" provocation. Noting the events in this case occurred over several hours, the court stated the nature of the crime is a major factor in determining an appropriate sentence. The court stated that although it disagreed with the appellate court's viewpoint in remanding the case, the court would reduce the 60-year sentence initially imposed, even in light of the brutality of the crime and defendant's lack of remorse. The court sentenced defendant to 30 years for first degree murder.

¶ 19 On appeal, defendant challenges the sentence imposed on remand, asserting the trial court disregarded the mandate that various mitigating factors be considered and rejected this court's determination that she acted under a strong provocation in committing the offense. Defendant asks that, in accordance with this court's directive, her 30-year sentence be reduced to the 20-year minimum term for murder or, in the alternative, that this case be remanded for a sentencing hearing before a different judge.

¶ 20 Defendant asserts the trial court in this case disregarded the appellate court's mandate by voicing disagreement with this court's assessment of the factors in mitigation of her sentence. Defendant argues the trial judge erred in rejecting this court's finding that she acted under a strong provocation and in concluding that the only evidence of assault to defendant's child was based on her own subjective belief. She points out Daniels told her in the presence of others in Daniels' apartment that Jones had molested Daniels' child.

¶ 21 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). However, in proceedings on remand, an appellate court's determination on an issue is binding on the trial court, and the appellate court on

subsequent appeal and the trial court on remand must proceed in accordance with the appellate court's decision. *People v. Colter*, 237 Ill. App. 3d 486, 488 (1992) (noting, though that balancing of aggravating and mitigating factors should be left to the trial judge).

¶ 22 In the case at bar, this court remanded for resentencing and expressly directed the trial court to consider the mitigating factors of provocation, defendant's lack of a serious criminal record, and the unlikelihood of recidivism due to the nature of this case. *Calhoun*, 404 Ill. App. 3d at 390. On remand, the court indicated it had reviewed the trial testimony and the videotaped statements of defendant and other witnesses and co-defendants. The court noted the lack of physical or medical evidence of the abuse of defendant's child.

¶ 23 In considering the factor of defendant's provocation, the trial court on remand voiced its disagreement with the appellate court's analysis of that factor but indicated it would reduce defendant's sentence as instructed. The judge, who presided over defendant's jury trial, also stated it considered the nature and circumstances of the crime to be an important aggravating factor. While provocation is among the statutory factors to be applied in mitigation of a defendant's sentence (see 730 ILCS 5/5-5-3.1(a)(3) (West 2004)), it is likewise imperative that the trial court take into account the personal history of the defendant and the nature and circumstances of the crime in imposing a sentence. *People v. Lampley*, 2011 IL App (1st) 090661-B, ¶ 39. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010).

¶ 24 First degree murder carries a sentencing range of 20 to 60 years in prison. 730 ILCS 5/5-8-1(a)(1)(a) (West 2004). In reviewing the appellate court's directive that defendant receive a sentence at the "minimal" level for murder, it is essential to note that the trial court on remand

reduced defendant's sentence to half of its earlier length. In reducing defendant's sentence from 60 years to 30 years, the court altered defendant's punishment from the maximum allowable term to a sentence that is at the mid-point of the lower half of the applicable range.

¶ 25 While defendant finds the opinions in *Colter* and *People v. Gurga*, 176 Ill. App. 3d 82 (1988), instructive, they indeed provide useful points of law but are distinguishable from the outcome in the instant case. In *Colter*, the appellate court stated that when a reviewing court vacates a sentence and remands the case to the trial court to consider a particular mitigating factor, the judge on remand should consider the matter "anew, relying on those factors which this court had previously found to weigh in favor of mitigation." *Id.* at 488. That occurred here, where the trial court significantly reduced defendant's sentence. In contrast, the trial courts on remand in *Colter* and *Gurga* disregarded the instructions of the appellate court and imposed the same sentence that was originally entered. See *Colter*, 237 Ill. App. 3d at 487; *Gurga*, 176 Ill. App. 3d at 83.

¶ 26 Here, the trial court reduced defendant's sentence for murder as directed by the appellate court but again noted the brutal nature of the crime and defendant's lack of remorse. Given those aggravating factors, the court did not violate the mandate of this court by sentencing defendant to half of her original term.

¶ 27 Accordingly, the judgment of the trial court is affirmed.

¶ 28 Affirmed.