

No. 1-11-2932

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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. 10 CR 16669
	)	
YAPHET CASTILE,	)	The Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Gordon and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court did not abuse its sentencing discretion in considering that the victim was "mentally challenged," nor was the 24-year prison sentence excessive for this recidivist offender.

¶ 2 Following a jury trial, defendant Yaphet Castile was found guilty of robbery and aggravated battery and, based on his criminal background, was sentenced to a Class X 24-year prison term for robbery, and a concurrent 5-year prison term for aggravated battery. Defendant

1-11-2932

filed a motion to reconsider the 24-year prison sentence, which the trial court denied. On appeal, defendant contends that the trial court abused its sentencing discretion because the court considered the victim to be mentally challenged and the 24-year prison sentence was excessive.

¶ 3 Michael Livingston, the victim, was homeless and resided in the Cornerstone shelter located at 4615 North Clifton Avenue in Chicago. Livingston sold "loose squares," meaning individual cigarettes, on the street for 50 cents each, to make money. At approximately 4:15 p.m. on September 5, 2010, Livingston was selling loose squares on the 4600 block of North Wilson Avenue, across the street from the Wilson Avenue el stop, when defendant crossed the street, proclaimed that he (defendant) was the Inca of the Latin Kings, and told Livingston that he (Livingston) could not sell anything on his (defendant's) land. Defendant punched Livingston on the left side of the head, took cash and cigarettes from Livingston's pockets, gave the cigarettes to a girl named Amanda, and returned to the el stop. Livingston returned to the homeless shelter, immediately called the police, and provided a detailed description of defendant. The police detained defendant and transported him to Livingston, who positively identified defendant as the offender.

¶ 4 Livingston was confused about right and left in that Livingston testified that defendant hit him on the left side of his face while Livingston pointed to the right side of his face. Livingston initially testified that defendant had a teardrop tattoo above his eye, while Livingston pointed below the eye as described by the prosecutor in court. Livingston then testified that the tattoo was below defendant's eye. Livingston also was confused about the name of defendant's street

1-11-2932

gang (Latin Kings or Lion Kings), gave conflicting testimony as to whether he did or did not describe Amanda to the police, was confused about the question, "When did you see the police report?", did not remember what he told the police about the amount of his money that was taken, and admitted that sometimes he had problems remembering things.

¶ 5 During closing arguments, the assistant State's Attorneys, without objection by defense counsel, maintained that Livingston had "a slight mental infirmity, as [the jury] saw from the witness stand," was easily confused, was a "seeming mental invalid of a person," was "weak or maybe a little slow," and lacked the "mental capacity to hold up a lie for almost one year." Defense counsel argued in part that Livingston could have been robbed by someone else because he may have had "mental difficulties" and he could not "keep straight his left from his right."

¶ 6 During sentencing, the court considered as an aggravating factor that Livingston did not know his right from his left, that he was "mentally challenged," and that defendant bullied Livingston, who was physically and mentally much weaker than defendant. The court also considered defendant's "very bad—to put it mildly—criminal record"; the need for the sentence to protect the public and to rehabilitate defendant, although the court questioned whether defendant could be rehabilitated; defendant's use of force and the lack of a serious injury to Livingston; defendant's family ties; the lack of indicia of a drug abuse problem; the nature and circumstances of the offense; defendant's character and background; the arguments in aggravation and mitigation; defendant's statement in allocution; the presentence investigative report with amendments; and the statutory factors in aggravation and mitigation. The trial court

1-11-2932

further observed that the victim was weak and that the court would have imposed the maximum sentence if there had been a serious injury.

¶ 7 During the hearing on defendant's motion to reconsider the sentence, the court acknowledged that it had considered Livingston's mental defect as an additional aggravating factor but stated, "I didn't mean to imply that he was retarded. Only that he was, obviously, not the sharpest bulb in the drawer there, sharpest knife in the drawer." The court further stated that that was something the court could consider.

¶ 8 On appeal, defendant contends that the trial court abused its sentencing discretion by relying largely on factors unsupported by the record. More particularly, defendant argues that the court heavily relied on an improper aggravating factor, namely, that Livingston was "mentally challenged" when there was no evidence that Livingston was mentally disabled from retardation or other developmental delays or impaired from drug or alcohol use, and there was no evidence that defendant was aware of Livingston's alleged mental challenges. Defendant accuses the court of making a medical finding without evidence. Defendant maintains that he targeted Livingston not because he was weaker, as the trial court believed, but because Livingston was on defendant's territory. Defendant also argues that the 24-year sentence was not commensurate with the crime because he threw only one punch, he did not use a weapon, Livingston was not injured, and the proceeds from the crime were minimal--\$22 and cigarettes. Defendant asks that the 24-year prison sentence be vacated and that the cause be remanded for a new sentencing hearing.

¶ 9 The trial court is vested with considerable discretion in imposing a sentence, and a sentence consequently will not be modified on appeal in the absence of an abuse of that discretion. See *People v. Garcia*, 296 Ill. App. 3d 769, 781 (1998); see also *People v. Perruquet*, 68 Ill. 2d 149, 153 (1977). A sentence within the statutory range is entitled to great deference on appeal. *Garcia*, 296 Ill. App. 3d at 781. The trial court is in a better position than a court of review to determine an appropriate sentence (*People v. Brooks*, 297 Ill. App. 3d 581, 585 (1998)) and to consider such factors as credibility, demeanor, moral character, mentality, social environment, habits, age, and inclination or aversion to commit crime (see *People v. McCain*, 248 Ill. App. 3d 844, 850 (1993); *People v. Marsan*, 238 Ill. App. 3d 470, 473 (1992); *People v. Riddle*, 175 Ill. App. 3d 85, 92 (1988)).

¶ 10 In *People v. Beals*, 162 Ill. 2d 497, 509 (1994), the trial court remarked that the defendant's conduct had "caused the ultimate harm. It caused the loss of a human life." The Illinois Supreme Court held that this "was simply a general passing comment based upon the consequences of the defendant's actions," because the trial court never indicated that it had "considered" the victim's death as a factor in aggravation. *Id.* at 509. The supreme court observed that even if the remark was improper, the record revealed that the trial court had placed little, if any, weight upon the victim's death, and the supreme court stated:

"Where it can be determined from the record that the weight placed upon the improperly considered aggravating factor was insignificant and that it did not lead to a greater sentence, remandment is not required." *Id.* at 510-11.

1-11-2932

¶ 11 We agree with the trial court and reject defendant's hypertechnical misinterpretation of the court's description of Livingston as mentally challenged. The court was not speculating and was not making a medical finding. The court was merely making a relevant, reliable observation based on Livingston's testimony, demeanor, and behavior, as the prosecutors and defense counsel had done during closing arguments, and the court was entitled to do so. The court never said that Livingston was retarded, or developmentally disabled. Indeed, the court explicitly commented that it had not meant to imply that Livingston was retarded. Therefore, the court did not rely on an improper aggravating factor.

¶ 12 Furthermore, as summarized above, the court considered all of the requisite factors in imposing sentence. The record discloses that defendant is a career criminal with an extensive, violent criminal history who victimizes strangers as well as people he knows. Prior probationary and prison sentences have had no rehabilitative effect on defendant. Given the circumstances, the 24-year prison sentence was not excessive.

¶ 13 The cases cited by defendant are distinguishable. For example, in *People v. Dempsey*, 242 Ill. App. 3d 568, 598 (1993), the trial court was prejudiced against the HIV-infected defendant, would have liked to have confined him in the manner that lepers used to be confined, and failed to consider "the requisite statutory factors" for sentencing. The trial court in the present case did not display any prejudice or bigotry against defendant and explicitly considered the statutory sentencing factors.

1-11-2932

¶ 14 We have considered, and rejected, all of defendant's contentions on appeal, and conclude that the trial court did not abuse its sentencing discretion and that remandment for resentencing is not warranted. See *Beals*, 162 Ill. 2d at 510.

¶ 15 The judgment of the circuit court is affirmed.

¶ 16 Affirmed.