2013 IL App (1st) 113566-U

FIRST DIVISION
September 16, 2013

No. 1-11-3566

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
	)	
NICHOLAS MCREYNOLDS,	)	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.

O R D E R

¶ 1 ***Held:*** The trial court did not abuse its discretion when, after considering evidence in mitigation and aggravation, the court sentenced defendant to an aggregate term of 24 years in prison. 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 Nicholas McReynolds was convicted of second degree murder and theft. He was sentenced to 20 years in prison for the second degree murder conviction and to a consecutive term of 4 years for the theft. 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 Jimmie Marshall 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 in case number 1-11-1714. *People v. Marshall*, 2013 IL App (1st) 111714-U.

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

¶ 7 The parties stipulated that Allen Milan, a law student clerking for the Public Defender's Office would testify that Williams stated during a conversation that he did not see the fight and that the information that he had was based on what he heard from Pearson.

¶ 8 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.

¶ 9 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, codefendant dropped a handful of papers on the ground. Gartner observed blood on their clothing and shoes. The men were then detained. Officer Anthony Miceli testified that a protective putdown of defendant recovered a cellular phone and charger.

¶ 10 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 sweatshirt. The test revealed a DNA profile which matched that of the victim.

¶ 11 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.

¶ 12 Defendant testified that in October 2006, he worked as an acrobat. He characterized codefendant as a brother. On the night of the victim's death, he and codefendant were walking when he saw the victim on the other side of the street. Defendant yelled to ask if the victim had a cigarette.

An argument started when the victim "started going off on" him. Defendant could tell the victim was drunk by the way that he smelled. When codefendant came over and asked what was going on, the victim told him that it had nothing to do with him, and then "swung" at codefendant. The victim missed, but codefendant punched the victim. The victim responded by kicking codefendant in the stomach. Codefendant fell to the ground. When the victim tried to "charge" codefendant, defendant jumped between them, and was hit by the victim. The three men fought, and, ultimately, the victim fell to the ground. Defendant then kicked the victim a few times in the chest and face. Codefendant also kicked the victim in the face. Although defendant and codefendant left, they went back for codefendant's hat. At that point, defendant grabbed the victim's bag. Defendant did not know why he grabbed the bag.

¶ 13 During cross-examination, defendant testified that he was scared during the fight with the victim. In addition to taking the victim's bag, he also took the victim's cellular phone. Defendant admitted that when he spoke to the police, he initially denied being present and did not say anything about having to defend himself. Rather, he indicated that certain blood on his clothing was from an earlier "play fight" with codefendant.

¶ 14 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.

¶ 15 In finding defendant guilty of second degree murder and theft, the court stated it did not appear that the taking of the victim's property was related to the beating of the victim. The court then determined that defendant had met his burden of proving, by a preponderance of the evidence, that he believed he was defending himself and codefendant when he punched and kicked the victim. However, the court concluded this belief was unreasonable because, even if the victim swung first, once he was "down," there was no need to keep striking the victim.

¶ 16 At sentencing, victim impact statements from the victim's girlfriend and parents were presented to the court. The State then argued that defendant's actions on the day of the victim's death were "evil" and purely motivated by a desire to obtain the victim's property. The defense responded that defendant had grown up in public housing, highlighted that defendant had obtained his high school diploma while incarcerated, and explained that defendant hoped to open a barber shop. The defense also stated that defendant had worked as a tumbler, helped his mother with expenses, and did not have a juvenile criminal record. The defense finally argued that the circumstances of the victim's death were an "aberration" for defendant. Defendant then apologized to the victim's family, and asked for their forgiveness.

¶ 17 In sentencing defendant, the court noted that defendant reported a "pretty good childhood" with no abuse, was employed prior to his incarceration, and had helped his mother with expenses. In other words, he was a productive citizen. The court then highlighted that defendant obtained his high school diploma while incarcerated which showed "good use of his time." The court also noted in mitigation that defendant had no history of criminal activity. Turning to aggravation, the court stated that defendant's actions caused serious harm and that a sentence was necessary in order to deter others from committing the same crime. The court noted that although defendant apologized to the victim's family, the court had to admonish defendant during trial to stop laughing and smirking, which was "in direct contrast to his demeanor today." Ultimately, based on what the court observed about defendant, as well as evidence in aggravation and mitigation, the court sentenced defendant to 20 years in prison for the second degree murder conviction, and to a consecutive term of 4 years for the theft conviction.

¶ 18 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 strong family ties, his lack of a criminal record, his steady employment, and his apology to the victim's family.

¶ 19 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).

¶ 20 Here, defendant was convicted of second degree murder and theft and sentenced to a total of 24 years in prison. Second degree murder is 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). Theft is a Class 3 felony with an applicable sentencing range of between two and five years in prison. 720 ILCS 5/16-1(b)(4) (West 2006); 730 ILCS 5/5-8-1(a)(6) (West 2006).

¶ 21 The record reveals that at sentencing, the parties presented evidence in aggravation and mitigation including the circumstances of the crime, defendant's lack of a criminal record, and defendant's family, educational and employment background. In sentencing defendant, the court noted that defendant reported a "pretty good childhood," had worked as tumbler and earned money to help his mother with expenses. The court also noted that defendant had earned a high school diploma while incarcerated and that defendant no history of criminal history. With regard to defendant's apology to the victim's family, the court stated that defendant had smirked and laughed during trial, which was a contrast to his demeanor at sentencing. Ultimately, this court cannot say that a prison sentence of 24 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 and then took the victim's personal property. See *Patterson*, 217 Ill. 2d at 448 (a trial court has broad discretion in sentencing).

¶ 22 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 for second degree murder and to one year less than the maximum for theft.

¶ 23 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. Pippen,* 324 Ill. App. 3d 649, 652 (2001); see also *People v. Smith*, 214 Ill. App. 3d 327, 339 (1991) (the 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 employment as a tumbler, the fact that he helped his mother with the family's expenses, that he made good use of his time in jail by obtaining his high school diploma, and that he did not have a criminal history. Here, the trial court considered not only the mitigation evidence presented by defendant, but the fact that defendant continued to beat the victim after the victim was on the ground, which caused the victim's death, and then took the victim's personal property. See *Raymond*, 404 Ill. App. 3d at 1069. Ultimately, the court concluded that the maximum sentence was warranted for second degree murder and that a sentence of four years was warranted for theft. *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 an aggregate sentence of 24 years in prison. See *Patterson*, 217 Ill. 2d at 448.

¶ 24 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.

¶ 25 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.

¶ 26 Affirmed; mittimus corrected.