

No. 1-12-1010

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 18355
)	
BERNARD MIMS,)	Honorable
)	Nicholas R. Ford,
Defendant-Appellant.)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant's 70-year sentence, including 20-year enhancement for discharge of a firearm, imposed on remand was within statutory range for first degree murder, and record showed that mitigating evidence was presented to court, sentence will not be disturbed on appeal; the judgment of the trial court was affirmed.

¶ 2 Defendant Bernard Mims comes before this court a third time after two prior remands for resentencing on his conviction for the 2000 murder of Dwayne Baker and the attempted murders of Darrell Garrett and Edward Ross. In this appeal, defendant contends the 70-year sentence for

murder that the trial court imposed on remand was excessive in light of his minimal criminal history, record of gainful employment and troubled childhood. We affirm.

¶ 3 At defendant's bench trial in 2006, the State presented testimony that Baker, Ross and Garrett were Cook County corrections officers working as part-time security officers at an apartment building. The prosecution witnesses testified that defendant was a gang member and between midnight and 1 a.m. on October 12, 2000, defendant fired an assault weapon at the officers, fatally striking Baker. The witnesses testified defendant was a gang member and fired at the men because he thought Baker was a member of a rival gang. Garrett and Ross were not injured.

¶ 4 At sentencing, the State presented evidence of a prior conviction. The trial court noted that the presentence investigation report lacked information other than defendant's criminal history and the official version of the offense. Defense counsel requested a continuance to prepare a complete report, explaining that because he had advised defendant to not speak about the offense to the probation officer, defendant could have misunderstood that to mean he should not provide any information, including potentially mitigating facts. The trial court denied defense counsel's request, telling counsel he could present mitigating evidence in court. Defendant's mother testified about his family and educational background and work history.

¶ 5 The trial court sentenced defendant to a total of 95 years in prison. Defendant's 75-year sentence for murder included a 20-year enhancement for personally discharging the firearm during the commission of a murder, pursuant to section 5-8-1(a)(1)(d)(ii) of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(d)(ii) (West 2000)). Defendant also was sentenced to two concurrent 20-year terms for attempted murder. On direct appeal, this court affirmed defendant's convictions but vacated his sentence and remanded for resentencing following the preparation of

a complete presentence report. *People v. Mims*, No. 1-06-2812 (2008) (unpublished order under Supreme Court Rule 23).

¶ 6 In the resentencing on remand, a different judge presided and considered a new presentence investigation report, which included mitigating evidence. The court sentenced defendant to the same consecutive terms of 75 years for murder and 20 years for attempted murder. Defendant appealed, arguing that the court relied on an improper factor in resentencing. This court concluded the trial court operated under the mistaken belief that defendant shot and killed more than one person. *People v. Mims*, 2011 IL App (1st) 092826-U, ¶ 20. The case was remanded to the trial court for a second resentencing, the result of which is the sentence now being appealed.

¶ 7 On remand, the case was considered by the same judge who resentenced defendant following his first appeal. The court acknowledged its previous error and noted that only one person was injured in the shooting. A new presentence investigation report was prepared, and the judge heard arguments in aggravation and mitigation. Defendant also addressed the court. The court sentenced defendant to 70 years for murder, which included the firearm enhancement, and also two concurrent terms of 20 years for attempted murder, to be served consecutively to the murder sentence, for a total term of 90 years.

¶ 8 In this appeal, defendant challenges that sentence, contending the 70-year term is excessive given his lack of a violent criminal history, his difficult childhood and his gainful employment prior to his arrest. Defendant argues the instant offense marked his first conviction for a serious violent crime and his first offense as an adult. He asks this court to reduce his sentence or remand his case again for resentencing.

¶ 9 In proceedings on remand, while the trial court must proceed in accordance with the appellate court's decision, the balancing of aggravating and mitigating factors should be left to

the trial court. *People v. Colter*, 237 Ill. App. 3d 486, 488 (1992). Because the trial court has broad discretionary powers in imposing a sentence, its sentencing decisions are entitled to great deference and are not disturbed absent an abuse of that discretion. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). The sentence imposed by the trial court will not be disturbed so long as the sentence is within the statutory range, proper factors in aggravation and mitigation are considered, and the sentence is not "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. McGhee*, 2012 IL App (1st) 093404, ¶ 58, quoting *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000).

¶ 10 The sentencing range for first degree murder is 20 to 60 years in prison. 730 ILCS 5/8-1(a)(1) (West 2000). In addition, the trial court found defendant was subject to a 20-year sentence enhancement for personally discharging a firearm. See 730 ILCS 5/5-8-1(a)(1)(d)(ii) (West 2000). Thus, defendant's sentencing range for the first degree murder conviction was 40 to 80 years. The 70-year sentence imposed by the court (50 years plus the 20-year enhancement) is therefore within the applicable statutory range and is, in fact, 10 years below the maximum penalty.

¶ 11 The record reflects that the mitigating evidence detailed by defendant on appeal was presented to the trial court. The court received a complete presentence report which detailed defendant's criminal history, including two juvenile convictions and six adult convictions. The report also described defendant's childhood and his employment between 2000 and his incarceration for these offenses.

¶ 12 Defendant was convicted of first degree murder. The trial court is not required to give greater weight to a defendant's rehabilitative potential than to the seriousness of the offense. *People v. Gutierrez*, 402 Ill. App. 3d 866, 902 (2010). "In fact, the seriousness of the crime is considered the most important factor in fashioning an appropriate sentence." *Id.* Although

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defendant argues he is serving a *de facto* life sentence, the legislature has seen fit to impose stiff penalties for his crime, with an enhancement when committed with a firearm, to assure a lengthy sentence to such offenders. The imposition of such a sentence within statutory limits does not constitute an abuse of discretion. See *People v. Martin*, 2012 IL App (1st) 093506, ¶ 50 (similarly rejecting defendant's protestation of a "*de facto* life sentence").

¶ 13 In summary, because the sentence falls within the applicable range and the trial court was presented with the evidence in mitigation that he now emphasizes on appeal, we find no reason to disturb defendant's sentence.

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

¶ 15 Affirmed.