

No. 1-12-1783

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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. 00 CR 16875 |
| |) | |
| WILLIE HAMPTON, |) | Honorable |
| |) | Michael Brown, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in resentencing defendant to four 21-year terms for aggravated criminal sexual assault, or to a 25-year term for armed robbery.

¶ 2 This case comes before us a third time after we remanded the matter to the trial court to resentence defendant Willie Hampton on four of his eight convictions for aggravated criminal sexual assault. *People v. Hampton II*, 406 Ill. App. 3d 925 (2010). In the present appeal, defendant asserts that the trial court erred in resentencing him to terms near the maximum of the sentencing range for his four aggravated criminal sexual assault convictions. He also maintains that the court improperly

imposed a 15-year firearm enhancement to his sentence for armed robbery. We affirm.

¶ 3

TRIAL

¶ 4 The evidence at the bench trial established that defendant, codefendant Cory Durr, and a third unknown man illegally entered the home of the victim, Y.N., at 2016 West 65th Street in Chicago at 3 a.m. on June 21, 2000. Y.N. testified that she was awakened by defendant, who placed a gun to her head and told her to give him money and drugs. Y.N. further testified that the offenders took \$100 from her brother, some jewelry, and a bag of her clothes. Defendant and the third unknown man also took Y.N. into her bedroom and committed four separate acts of sexual assault.

¶ 5 Codefendant Durr's statement, which was admitted at trial, revealed that he participated essentially as a look-out and knew the third man as Maurice Alexander. Defendant demanded money from Y.N. Defendant pulled out his gun when a man entered from the basement and made him lie on the floor. Durr saw defendant and Maurice sexually assault Y.N. in her bedroom.

¶ 6 Defendant presented four witnesses who testified that Y.N. denied that defendant was an offender when the police brought him to her house in a squad car after his arrest later that same morning. A fifth witness testified by way of stipulation that Y.N. said defendant was not one of her attackers.

¶ 7 At the close of this bench trial in 2002, the court convicted defendant of four counts of aggravated criminal sexual assault (ACSA) for committing the sexual assaults while armed with a firearm (Counts 22, 23, 24, and 25) and imposed four consecutive 21-year terms for these offenses, for a total of 84 years in prison. The court also convicted defendant of four counts of ACSA based on committing the sexual assault during the commission of another felony, *i.e.*, home invasion (Counts 1, 4, 7, and 10) and imposed four concurrent six-year prison terms for these offenses. In addition, the court convicted defendant of two counts of home invasion with a firearm (Counts 29 and 36) and imposed two concurrent 21-year prison terms for these offenses. Also, the court found

defendant guilty of armed robbery but did not impose a sentence for that offense. In sum, all terms were to be served concurrently with the four consecutive 21-year terms for ACSA while armed with a firearm, for a total of 84 years in prison.

¶ 8 FIRST DIRECT APPEAL

¶ 9 On appeal, this court in 2006 vacated defendant's convictions and sentences and remanded the case with directions for the trial court to conduct a hearing to determine whether defendant forfeited his right under the confrontation clause to challenge the admission of codefendant Durr's out-of-court statement. *People v. Hampton I*, 363 Ill. App. 3d 293 (2006). In addition, this court then addressed some sentencing issues in case the trial court on remand found that defendant forfeited his confrontation challenge and the convictions were reinstated. In particular, this court found that the 15-year mandatory add-on for ACSA while armed with a firearm was unconstitutional because it violated the proportionate penalties clause. *Id.* at 309-10.

¶ 10 ILLINOIS SUPREME COURT

¶ 11 After granting the State's appeal, the Illinois Supreme Court vacated this court's opinion addressing issues other than the possible confrontation clause violation. *People v. Hampton*, 225 Ill. 2d 238, 246 (2007). The supreme court specifically held that this court prematurely considered the constitutionality of the 15-year firearm penalty enhancement under the proportionate penalties clause. *Id.* at 245.

¶ 12 TRIAL COURT ON REMAND

¶ 13 On remand, the trial court held a hearing and found defendant had forfeited his confrontation challenge to the admission of codefendant Durr's statement. The trial court reinstated all his original convictions and the original sentences, totaling 84 years in prison.

¶ 14 SECOND DIRECT APPEAL

¶ 15 On appeal from the hearing on remand, we affirmed the trial court's forfeiture ruling,

addressed certain sentencing issues and remanded for resentencing with instructions. *People v. Hampton II*, 406 Ill. App. 3d 925 (2010). This court held that the 15-year add-on to each of the four sentences for ACSA with a firearm was unconstitutional as it violated the proportionate penalties clause, relying on *People v. Hauschild*, 226 Ill. 2d 63 (2007) (comparing armed robbery with a firearm and armed violence predicated on robbery with firearm). *Hampton II*, 406 Ill. App. 3d at 942. In addition, based on the one-act, one-crime doctrine, we held that one of the two counts of home invasion must be vacated because there was only one physical act of illegal entry. *Hampton II*, 406 Ill. App. 3d at 942-43. For the same reason, four of the eight counts of ACSA must be vacated because there were only four acts of penetration. *Hampton II*, 406 Ill. App. 3d at 942-43. We ordered that the mittimus be corrected to reflect a single conviction for home invasion and four convictions for ACSA, and remanded for resentencing. *Hampton II*, 406 Ill. App. 3d at 943.

¶ 16 REMAND FOR RESENTENCING

¶ 17 On remand, the State argued that defendant should be sentenced to the maximum term of years based "on the brutal nature of the attacks, the violence of it, the fact that a weapon was used, the fact that it occurred in somebody's home." In addition, the State noted that defendant had a criminal history, including drug and firearm convictions. In mitigation, defense counsel argued that defendant had been in custody for 12 years, committed the offenses at the age of 24, had four children, had a drug problem, and was previously employed as a factory worker and handy-man. Defense counsel further stated that defendant completed his GED while in prison, and requested minimum sentences on the remaining counts. In allocution, defendant stated that he was a model inmate and had a job in the Department of Corrections. He further stated that if he received the minimum sentence, he would be eligible to be transferred to a lower security prison where he could receive job training, drug treatment, and build a stronger relationship with his children.

¶ 18 Prior to delivering defendant's sentence, the court stated that it considered the facts and

circumstances of the case, and was aware of the aggravating and mitigating factors, as well as the parties' positions on the severity of the sentence. The court stressed that it reviewed the presentence investigation report, and considered defendant's statements in allocution. The court then imposed four consecutive 21-year terms for ACSA based on the commission of another felony (Counts 1, 4, 7, and 10). The court also reinstated one 21-year term for home invasion (Count 29), ordering it to run consecutively to the ACSA terms. Finally, the court imposed one 25-year term for armed robbery (Count 37), a count for which he was originally found guilty of but never sentenced on. The court ordered the 25-year term for armed robbery to be served concurrently with the 21-year term for home invasion and consecutively to the ACSA counts. The aggregate sentence totaled 109 years.

¶ 19

PRESENT APPEAL

¶ 20 On appeal, defendant maintains that the trial court should have imposed sentences on the ACSA counts premised on having a firearm (Counts 22, 23, 24, and 25) rather than on the ACSA counts premised on committing another felony, *i.e.*, home invasion (Counts 1, 4, 7, and 10). Defendant's position is without merit.

¶ 21 Defendant was found guilty of eight counts of ACSA, which was defined in section 12-14 of the Criminal Code of 1961 (Code). 720 ILCS 5/12-14 (West 2000). ACSA under subsection (a)(8) occurs where the offender commits a criminal sexual assault while armed with a firearm and is a Class X felony subject to a 15-year add-on due to the use of a firearm. 720 ILCS 5/12-14(a)(8), (d)(1) (West 2000). Four of defendant's ACSA counts (counts 22, 23, 24, 25) were premised on subsection (a)(8) and the original sentences for these counts were four consecutive 21-year prison terms, for a total of 84 years.

¶ 22 ACSA under subsection (a)(4) occurs where the offender commits a criminal sexual assault while committing another felony and is a Class X felony. 720 ILCS 5/12-14(a)(4), (d)(1) (West 2000). Four of defendant's ACSA counts (counts 1, 4, 7, 10) were premised on subsection (a)(4) and

the original sentences for these counts were four six-year prison terms, to be served concurrently with the aggregate 84-year term for the convictions under subsection (a)(8).

¶ 23 On remand, the court imposed a total of 84 years in prison by sentencing defendant to four consecutive 21-year terms for the ACSA counts (counts 1, 4, 7, 10) premised on committing the assaults while committing another felony (home invasion) under subsection (a)(4). Accordingly, defendant was sentenced to the identical prison term for ACSA at both the original sentencing (84 years for four counts of ACSA) and the resentencing on remand (84 years for four counts of ACSA).

¶ 24 Defendant's complaint that the circuit court sentenced him to the wrong counts of ACSA (counts 1, 4, 7, 10) is particularly unavailing where he never objected during the hearing on remand, and defense counsel instructed the court to sentence defendant on these four counts at the March 12, 2012 hearing as well as at sentencing on June 1. In particular, defense counsel argued in mitigation that,

"I would ask the Court, my position is *** that these sentences on 1, 4, 7, and 10 are six to 30 year offenses that he be imposed minimum sentence of six years on each of those four counts which would mean that he would have to do 24 years just on those four counts and another 21 on Count 29 so he would, in fact, be doing 45 years."

Where a party acquiesces in proceeding in a certain manner, he is not in a position to claim he was prejudiced thereby. *People v. Villarreal*, 198 Ill. 2d 209, 227 (2001). Therefore, defendant cannot now complain about being sentenced on the counts specifically requested by defense counsel.

¶ 25 Next, defendant contends that the trial court abused its discretion when it imposed 21-year terms for the ACSA counts because the original sentence for the same counts was the minimum 6-year sentence.

¶ 26 A trial court has broad discretion to determine an appropriate sentence, and a reviewing court may reverse only where the trial court has abused that discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). The reviewing court should not substitute its judgment for that of the trial court simply because it would have balanced the appropriate sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010). A sentence within the statutory range does not constitute an abuse of discretion unless it varies greatly from the purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Henderson*, 354 Ill. App. 3d 8, 19 (2004).

¶ 27 Here, defendant was sentenced on four counts (1, 4, 7, and 10) of ACSA under subsection (a)(4) of the Code, which is triggered when the criminal sexual assault is perpetrated during the course of the commission or attempted commission of any other felony, including the underlying felony here, *i.e.*, home invasion. 720 ILCS 5/12-14(a)(4) (West 2000).¹ A violation of this subsection is a Class X felony subject to a 6- to 30-year penalty. 730 ILCS 5/5-8-1(a)(3) (West 2000).² Accordingly, the 21-year sentence was well within the statutory guidelines.

¶ 28 Furthermore, the record is clear that the trial court did not abuse its discretion in sentencing defendant because it considered all of the factors in mitigation and aggravation. It is well-settled that in sentencing a defendant the court must carefully consider all of the factors in aggravation and mitigation. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). Where mitigating evidence is presented to the trial court, it is presumed, absent some indication to the contrary, other than the sentence itself, that the court considered it. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004).

¶ 29 Here, the trial court stated on remand,

"I'm aware of the statutory aggravating and mitigating factors. I'm

¹Effective July 1, 2011, 720 ILCS 5/12-14, was renumbered as 720 ILCS 5/11-1.30.

²Effective July 1, 2009, the sentencing range for a Class X felony is found in 730 ILCS 5/5-4.5-25.

aware of the parties positions with regard to sentencing. I'm aware of the presentence investigation, the current one in 2009 as amended. I've considered [defendant's] words, and I'm prepared to sentence [defendant] accordingly that takes all of those things into account."

We also note that, despite defendant's contentions to the contrary, the State did present aggravating factors at the resentencing hearing, including a discussion regarding his criminal background and the brutal nature of the crimes.

¶ 30 Nevertheless, defendant contends that his new 21-year prison sentences for ACSA imposed on remand violate the prohibition on increasing sentences on remand except for conduct following the original sentence. In essence, defendant contends that he originally received two distinct sentences, *i.e.*, six years for the Class X felony and the improper 15-year enhancement, for each of the four offenses of ACSA he was convicted of so that the trial court was required not to increase the sentences for his four ACSA offenses beyond six years each.

¶ 31 Section 5-5-4(a) of the Unified Code of Corrections (Code of Corrections) provides:

"Where a conviction or sentence has been set aside on direct review or on collateral attack, the court shall not impose a new sentence for the same offense or for a different offense based on the same conduct which is more severe than the prior sentence less the portion of the prior sentence previously satisfied unless the more severe sentence is based upon conduct on the part of the defendant occurring after the original sentencing." 730 ILCS 5/5-5-4(a) (West 2012).

¶ 32 The purpose of section 5-5-4 of the Code of Corrections is to prevent vindictiveness in resentencing a defendant for having exercised his appeal rights or his right to file a post-judgment motion. *People v. Woolsey*, 278 Ill. App. 3d 708, 710 (1996), citing *North Carolina v. Pearce*, 395

U.S. 711, 724-25 (1969). Where a defendant is resentenced because his original sentence was illegal, there is no basis for attributing the new sentence to vindictiveness for the appeal and thus section 5-5-4 of the Code is not implicated. *Woolsey*, 278 Ill. App. 3d at 710. Therefore, "section 5-5-4 of the Code only applies to an original sentence within statutory limits imposed upon an erroneously obtained conviction or to an original sentence within statutory limits later held to have been obtained or aggravated in error" and conversely "does not apply to the correction of an illegal sentence." *Woolsey*, 278 Ill. App. 3d at 710.

¶ 33 Here, this cause was remanded to the trial court for the correction of a then illegal sentence because the 15-year firearm enhancements originally imposed on defendant's 21-year sentences for ACSA were held unconstitutional. Because his original sentence was illegal, there was no basis for attributing the new 21-year terms imposed on remand to vindictiveness on the part of the trial court. *Id.* Moreover, defendant's sentences on his four counts of ACSA were not increased where the trial court sentenced him to the same 21-year sentence on remand. The overall increase in defendant's sentence on remand was not due to vindictiveness, but instead due to the addition of the 25-year sentence for armed robbery which is to be served *consecutively* with the aggregate 84-year sentence for ACSA, which explains the current total of 109 years.

¶ 34 In addition, the sentence for home invasion was properly corrected on remand. The original sentence included two counts of home invasion with two 21-year terms, to be served *concurrently* with the terms of ACSA. The current sentence on remand includes one count of home invasion with one 21-year term to be served *consecutively* with the terms for ACSA and *concurrently* with the term for armed robbery.

¶ 35 We find that our decision in *People v. Barnes*, 364 Ill. App. 3d 888 (2006), supports our conclusion that the trial court did not act vindictively in sentencing defendant on remand to four 21-year terms for his ACSA convictions. In *Barnes*, 364 Ill. App. 3d at 897-98, we recognized that the

imposition of an original sentence within a given range, increased by a mandatory enhancement, results in a single sentence and not "distinct, independent prison terms." In addition, we recognized that the use of an unconstitutional sentencing enhancement, renders the original sentence invalid, and "our supreme court has held that only valid sentences may serve as the baseline for assessment of compliance with prohibitions against increase." *Barnes*, 364 Ill. App. 3d at 898. We thus found that the imposition of a 17-year prison term on resentencing, following an original 25-year sentence that included an improper 15-year enhancement, was proper. In doing so, we reasoned that the new sentence was actually shorter than the total original sentence, and the original sentence was not a proper basis of comparison because it was invalid. *Barnes*, 364 Ill. App. 3d at 898. Similarly, in this case, defendant's original sentence of four 21-year terms for ASCA is not a proper basis of comparison because those sentences were found invalid, and, regardless, the present 21-year terms are the same as his original invalid terms.

¶ 36 Next, defendant contends that we should vacate his sentence for armed robbery because it is void where it presumably includes an unconstitutional firearm enhancement, relying on *Hauschild*, 226 Ill. 2d at 63. The State responds, and we agree, that the record does not show that the circuit court subjected defendant to the firearm enhancement when it sentenced him on remand.

¶ 37 During the resentencing hearing, the State and defense counsel disagreed over the sentencing range for the armed robbery conviction. The State initially maintained that the minimum sentence defendant could receive on the armed robbery count was 21 years, which included the firearm enhancement. However, during aggravation, the State specifically stated, "[w]ith respect to the armed robbery sentence the range [*sic*] between six to 30. I'm again asking that the defendant be sentenced to the maximum term of years allowed." In response, defense counsel requested that defendant be sentenced to the minimum term of years for armed robbery, but did not articulate a specific number. In ruling on the armed robbery conviction, the trial court stated, "[t]he sentence

1-12-1783

on count 37 will be 25 years in the Illinois Department of Corrections. It will be consecutive to Counts 1, 4, 7, and 10, but concurrent to counts [*sic*] 29."

¶ 38 In making its ruling, the court never discussed a 15-year firearm enhancement when imposing the 25-year sentence on defendant. Moreover, the 25-year sentence for armed robbery was within the statutory range for a Class X offense. See 720 ILCS 5/18-2(a)(2) (West 2000); 730 ILCS 5/5-8-1(a)(3) (West 2000). We thus find no merit to defendant's argument that his sentence for armed robbery presumably included an improper 15-year firearm enhancement.

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 40 Affirmed.