

2013 IL App (2d) 111120-U  
No. 2-11-1120  
Order filed August 26, 2013

**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  
SECOND DISTRICT

---

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lee County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-58
	)	
ERIC M. LEMONS,	)	Honorable
	)	Ronald M. Jacobson,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE SPENCE delivered the judgment of the court.  
Justices McLaren and Schostok concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant was not entitled to a new sentencing hearing on his guilty plea to second-degree murder: the trial court did not find, contrary to the factual basis for the plea, that the killing was unprovoked.

¶ 2 Defendant, Eric M. Lemons, was charged with first-degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2008)) in connection with the death of Todd Harn. Pursuant to an agreement with the State, the charge was reduced to second-degree murder as defined in section 9-2(a)(1) of the Criminal Code of 1961 (720 ILCS 5/9-2(a)(1) (West 2008)), which provides, in pertinent part, that an offender who would otherwise be guilty of first-degree murder is guilty only of second-degree

murder if “[a]t the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by the individual killed.” The parties did not reach any agreement as to the sentence for the offense. Following a sentencing hearing, the trial court imposed an extended-term sentence of 22 years’ imprisonment. On appeal, defendant contends that, in imposing sentence, the trial court found that he did not act under a strong provocation. Defendant argues that, because this finding is contrary to the factual basis for his guilty plea, the sentence must be vacated. As explained below, the record belies defendant’s characterization of the trial court’s findings, so we see no reason to disturb the trial court’s sentencing decision. We therefore affirm.

¶ 3 The factual basis for defendant’s plea, as recited by the prosecutor, was as follows:

“If this case were to proceed to trial the People would call various witnesses from the Lee County Sheriff’s Department and various civilian witness [*sic*], who would testify to the following. That on or about April 5th of 2009, at and within Lee County, this defendant was a resident in Ashton, Illinois, which is a city or town in Lee County. In addition, the victim in this matter Todd Harn was also a resident of Ashton, Illinois, who was—when he resided in Ashton resided with a roommate by the name of [Kaylyn] Gideon, [Kaylyn] Gideon’s child and another individual. The evidence will show that this Defendant had known [Kaylyn] Gideon and the victim in this matter, Todd Harn, for a period of several weeks. That through the course of the several weeks Todd Harn was engaging in significant abuse of [Kaylyn] Gideon, who at that time was seven months pregnant, and her two year old child. That over the period of those several weeks this Defendant witnesses numerous acts of abuse towards [Kaylyn] Gideon and her child.

That on the night of April 5, 2009, at and within Lee County, this Defendant had gone to the residence where [Kaylyn] Gideon was residing with Todd Harn. Alcohol was involved. There was a provocation between Todd Harn and this Defendant in which this Defendant obtained a seven pound rock and proceeded to strike the Defendant [*sic*] in the head, causing his death. The striking of the head with the rock occurred in such a way that it was exceptionally brutal or heinous and indicative of wanton cruelty, and the fact that it was a seven pound rock to the—to the victim’s head in such a way and at a minimum of four times, causing the death of Todd Harn. All this occurred in Lee County, State of Illinois.”

¶ 4 At defendant’s sentencing hearing, several members of Harn’s family read victim impact statements into the record. Their statements characterized Harn as a loving person. Harn’s mother wrote that, although Harn had “some demons,” he was “good natured most of the time.” She described how much Harn enjoyed family get-togethers and holidays. She also recounted that Harn had donated his own possessions to their church for a children’s program and had volunteered at a nursing home. On the other hand, there was evidence at the hearing that Harn had been abusive to Gideon and her child and to a former girlfriend. In allocution, defendant spoke of the abuse he had suffered while growing up. Defendant stated, “[Harn’s] abuse to a defenseless two year old boy and to that boy’s pregnant mother brought up boyhood pain and I needed to prevent another child from [being] abuse[d].” Defendant described an incident he witnessed in which Harn berated Gideon’s son with racial and antigay slurs and then blew marijuana smoke in the boy’s face. Defendant also related having learned that Harn “was pimping [Gideon] out to his friends and making her sell cigarettes on the street corner to make [Harn] extra money so he wouldn’t have to work.” Defendant described the events immediately preceding Harn’s death. Defendant stated that he confronted Harn

about his behavior. Harn told defendant that it was none of his business. When defendant responded that he was “making it [his] business,” Harn pushed defendant to the ground. Defendant then elbowed Harn in the face. When Harn fell, defendant kicked him in the head several times. Harn lost consciousness. Defendant stated that he was afraid that when Harn recovered he would seek revenge against defendant and his family. Defendant further stated, “I could have taken the self-defense route there and then but my fears and insecurities and my pain took over so I took a rock they use as a door stop and I killed [Harn] in three or four hits.”

¶ 5 Generally speaking, “[i]n determining an appropriate sentence, the defendant’s history, character, rehabilitative potential, the seriousness of the offense, the need to protect society and the need for deterrence and punishment are to be considered.” *People v. Johnson*, 2013 IL App (1st) 103361, ¶ 48. Sections 5-5-3.1 and 5-5-3.2 of the Unified Code of Corrections (730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2008)) set forth, respectively, various factors in mitigation and aggravation to be considered by the trial court when determining whether to impose a sentence of imprisonment and, where such a sentence is appropriate, the length of the prison term. “[T]here is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and thus we review the trial court’s sentencing decision with deference.” *People v. Dowding*, 388 Ill. App. 3d 936, 942-43 (2009). Furthermore, “the trial court is not required to specifically identify all factors in mitigation that it considered” and the trial court “is presumed to have considered all relevant factors, including the mitigating evidence presented, unless the record affirmatively shows otherwise.” *People v. Chirchirillo*, 393 Ill. App. 3d 916, 927 (2009). It is the defendant’s burden “to affirmatively establish that the sentence was based on improper considerations.” *Dowding*, 388 Ill. App. 3d at 943.

¶ 6 Pursuant to section 5-5-3.1(a)(3) (730 ILCS 5/5-5-3.1(a)(3) (West 2008)), it is a mitigating factor that “[t]he defendant acted under a strong provocation.” Referring to the trial court’s remarks when announcing its sentencing decision, defendant asserts that “[t]he judge said he had ‘struggled’ with whether [defendant] acted under strong provocation, and concluded that he did not.” Although defendant cites three pages from the transcript of the sentencing hearing, he does not identify any particular statement indicating that the trial court found that the crime was unprovoked. The trial court initially addressed the subject as follows:

“Did [defendant] act under a strong provocation? This is where the Court probably wrestled the most in this case as you can imagine. I’ve been around for awhile. I’ve got kids. I know that life is not easy. I know that Mr. Harn’s family saw him in the best possible light and there’s absolutely nothing wrong with that. That’s to be applauded. At the same time I’m also savvy enough to understand that there is truth behind other testimony that I heard today about the other side of Mr. Harn. In fact, if Mr. Harn’s family were honest with themselves, which I know they are, they would admit to themselves that Mr. Harn was, in fact, had those problems and that’s something that has to be confronted. On the other hand, the State argues that [defendant] is an animal, uncontrolled animal that has nothing but only a selfish attitude at this point, and frankly that may have been how to characterize him at the time that the incident occurred but we all make changes in our lives. We’re capable of making changes to change our conduct and our attitudes.”

¶ 7 These remarks seem to imply that the trial court concluded that, although Harn had provoked defendant, defendant was a person who was easily provoked and prone to violence. Perhaps the trial

court could have expressed its reasoning more clearly, but the court's remarks in no way suggest that defendant acted without provocation.

¶ 8 The trial court also touched on the subject of provocation when discussing another statutory mitigating factor—whether “[t]he defendant’s criminal conduct was induced or facilitated by someone other than the defendant” (730 ILCS 5/5-3.1(a)(5) (West 2008)). With reference to that factor, the trial court stated, “Was [defendant’s] conduct induced or facilitated by someone other than himself? *Other than the provocation factor* that we’ve discussed I find that that doesn’t apply.” (Emphasis added.) The trial court made no further mention of the subject of provocation when announcing its sentencing decision.

¶ 9 In light of the foregoing, we find no basis in the record for defendant’s argument that, contrary to the factual basis for the guilty plea, the trial court found that the killing was unprovoked. Accordingly, the judgment of the circuit court of Lee County is affirmed.

¶ 10 Affirmed.