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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 05-CF-602
)	
CESAR VELASCO,)	Honorable
)	Patricia Piper Golden,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to 20 years' imprisonment (on a 6-to-30 range) for attempted first-degree murder: we could not reweigh the mitigating factors, and, given the seriousness of this offense, the deterrence of similarly serious offenses was a valid aggravating factor despite the individualized nature of sentencing decisions.

¶ 2 Defendant, Cesar Velasco, appeals from his sentence of 20 years' imprisonment, imposed upon his conviction of attempted first-degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2004)).

We previously held that the appeal was untimely, and we therefore dismissed it. *People v. Velasco*, 2013 IL App (2d) 120254-U. However, defendant has obtained a supervisory order from the

supreme court, allowing us to consider the appeal on its merits. *Velasco v. Schostok*, No. 115823 (Apr. 25, 2013). We now hold that the sentence was within the court's discretion, and we thus affirm.

¶ 3

I. BACKGROUND

¶ 4 A grand jury indicted defendant on a count each of attempted first-degree murder, aggravated domestic battery, and aggravated battery. All three counts related to the hammer bludgeoning of Domingo Casarrubias-Barrera, defendant's housemate, which occurred on March 11, 2005. On February 17, 2006, defendant entered a blind guilty plea to the attempted murder count, and the State dismissed the other two charges, conceding that they would merge with the count to which defendant pleaded guilty.

¶ 5 For the factual basis, the State represented that the Elgin police had learned that the victim had suffered severe injuries from three hammer blows to the head. The police interviewed defendant, and he eventually admitted that he had inflicted the injuries. A medical witness would testify that the injuries had created a strong likelihood of death and had caused serious permanent disabilities. Defendant and the victim shared an apartment, and the incident took place in that apartment. Defendant initially told the police that a burglar had attacked the victim, but later he told the police that he had believed that the victim was reaching for a weapon. The police found nothing to suggest that the victim had any kind of weapon at hand. An officer's opinion based on a blood-spatter analysis was most consistent with the victim's having been lying down when defendant struck him.

¶ 6 The sentencing hearing started on July 14, 2006. Dr. Dennis Yung Kwan Wen testified that he had been called to Sherman Hospital on March 11, 2005, because the emergency room doctor

concluded that a neurosurgeon was needed to assess and treat the victim's injuries. The victim was not responsive and was bleeding profusely from multiple head wounds. His blood pressure was barely measurable.

¶ 7 Wen found three open wounds on the victim's head. Wound one was on the top of the head; beneath the visible laceration were multiple fragments of bone. Wound two was in the left forehead area and wound three was in the right temple area. Wound two had brain tissue oozing through the opening, and there were bone fragments. Wound three was bleeding profusely, but did not display obvious brain tissue or bone fragments. The medical staff stabilized the victim's blood pressure by suturing the wounds. He was admitted to the intensive care unit. Over the next three days, he continued to have bleeding and swelling of the brain. However, the openings in the skull acted to decompress the brain.

¶ 8 Wen said that the effects of wounds two and three were essentially those of a frontal lobotomy. The victim had surgery to remove damaged brain tissue and to reconstruct damaged portions of the skull. He was discharged from the hospital after a month and had patent cognitive deficits. The injuries had "completely shredded" the "lining of the brain major [*sic*]" (perhaps "dura mater") so that the victim was at risk of a cerebrospinal fluid leak even after surgery. Wen had examined the entire body of the victim and did not note any injuries to the hands or arms. He saw the victim for the last time a week after discharge. There remained difficulty with wound closure. Wen expected the victim to have at least some permanent disability. He thought that the victim might be able to function at a level at which simple employment would be possible and that he should be able to perform basic self-care functions. Because the victim returned to his home in Mexico, Wen lost contact with him.

¶ 9 Manuel Castro testified that he came from the same town in Mexico as the victim; the families were neighbors there, and he had known the victim for years. He said that the victim had been a calm and quiet but friendly person with no violent tendencies. He had been in contact with the victim's family after the injuries. The victim was "not functioning properly." He sometimes wandered naked away from his house, so that his wife had to go find him. He was not able to work.

¶ 10 The hearing resumed for a second and final day on August 1, 2006. Detective Richard Ciganek of the Elgin police testified that, on March 11, 2005, the police had received a call concerning an injured person and a possible burglary; Ciganek became the lead investigator on that case. The first officer on the scene entered the apartment, which appeared to have been ransacked, and found the victim lying in a pool of blood in a bedroom. Defendant was present when the first officer arrived. Defendant told officers that, at around 1:30 a.m., he had left the apartment, with the victim alone there, to get some food. He claimed that, when he returned, the victim was as the police saw him. He said that, because he was not sure whether the burglars had left, he had not entered the apartment. He had started knocking on doors of other apartments to get access to a phone, but no one opened a door to him. He then drove across Elgin to his landlord's house. He told the landlord that the victim was injured and that the landlord should go to the apartment. The landlord arrived at the apartment and saw that the victim had serious injuries; he called 911. That call was logged at 4:33 a.m. Defendant's account of events shifted in later interviews.

¶ 11 Defendant's brother, Ruben, told police that he and defendant had gotten off work at 1:30 a.m. and had gone back to the apartment to make dinner.

¶ 12 The police found no sign of forced entry to either the apartment door or the building door. Some neighbors had heard knocking before the police arrived, but had not spoken to anyone.

¶ 13 The police interviewed defendant again when they could show that the times he said he had done various things were incorrect. Defendant said that he had never thought that the original times he had given were exact. At that point, he denied any dispute with the victim.

¶ 14 The police then got a warrant for Ruben to record a conversation with defendant. When confronted with the recording of the conversation, defendant admitted that he had hit the victim with a hammer. He had disposed of the hammer in a restaurant dumpster. Asked about his relationship with the victim, defendant said that the victim was a dangerous person who had shot someone in Mexico. He also claimed that the victim kept “a stick” under his bed; the police did not find a stick. The victim was angry with defendant because defendant had had the phone service to the apartment shut off. They argued; the victim said that defendant was worthless and shoved him. Defendant had “slept with a chair underneath his bedroom door for a couple of days” before this fight because he was afraid of the victim. He thought that the victim might kill him. It was immediately after the argument that defendant hit him.

¶ 15 Officer Steve Bianchi, who had training in blood-spatter analysis, testified that he had been called to the scene to serve as an evidence technician. He noted no damage to doors or locks. In the room into which a person entered, he noticed what he thought were “cast-off patterns” of blood on the ceiling—this was not the room in which his fellow officers had found the victim. He explained that cast-off patterns result when an implement used to inflict injury gets blood on it and spreads the blood in a distinct pattern when the person wielding it swings it again. There was also blood spatter on the wall next to the bed such that Bianchi formed the opinion that the victim had been in bed when struck. He did not think that he was qualified to give an expert opinion, and did not express

great certainty about the victim's position. He later clarified that he was quite certain that, based on the marks and the victim's injuries, the victim's head had been near the pillow when it was struck.

¶ 16 Ruben testified on defendant's behalf. Both Ruben and defendant had come to the U.S. to help their family economically. Defendant had worked for a cleaning company. He was a "calm," "hard-working," and "responsible" person whom Ruben had never seen act violently. After his arrest, defendant told Ruben that the victim had been "bothering" him and had threatened to kill both of them. On cross-examination, Ruben admitted that he had not told the police anything about tension between defendant and the victim when they interviewed him. Notably, when Ruben spoke to defendant during the overheard conversation, defendant, despite admitting the battery, did not accede to Ruben's tearful request for an explanation of the crime.

¶ 17 Defendant gave a statement in allocution. He said that he was one of 16 children, but that only he and his brother were in the U.S. He said that he had entered his guilty plea because he wanted to take responsibility for what he had done, but that he did want to explain that he had not intended "to cause him problems." The more time that he had lived with the victim, the more he had become afraid of the victim. The victim had told him that "he had had somebody killed with whom he had had problems." The night of the incident, the victim got angry because defendant had disconnected the phone. Defendant was sitting in his chair and the victim was in his bed. The victim told defendant that "this was going to end today" because the victim was going to kill defendant. The victim went over to get something from under his bed, and defendant thought that it might be a gun. Defendant picked up a nearby hammer and hit the victim three times. After that, he did not know what to do. He understood now that he should have called the police, but, at the time, he "was not thinking right." He felt bad about the incident and his later lies and was unhappy

about the victim's condition. At the end of defendant's statement, the court set a new date of August 18, 2006, for the pronouncement of the sentence.

¶ 18 At that sentencing date, the court noted that the statutory range for the offense was 6 to 30 years' imprisonment with 3 years' mandatory supervised release. In mitigation, the court found that defendant had no criminal history. It also found that imprisonment would cause his dependents hardship. It further concluded that defendant had taken responsibility for the act and was remorseful.

¶ 19 In aggravation, it found that defendant's conduct caused serious harm; it explained that some attempted murders do not cause serious injury to the victim. The court also stated that a long sentence was necessary to deter others: a "particularly violent attack of this sort is a crime that is necessary to try to deter."

¶ 20 The court stated that it deemed defendant's claims of fear to be self-serving and described the act as "brutal": "Certainly this is not a self defense situation, although I am also certain *** that it did not occur in a vacuum and there was some history to it." It sentenced defendant to 20 years' imprisonment.

¶ 21 Defendant moved for reconsideration of his sentence. He asserted that the court had given insufficient weight to his lack of criminal history and the hardship for his family. The court denied the motion. Defendant appealed, and this court vacated the denial of the motion and remanded the matter for the filing of an attorney's certificate under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Velasco*, No. 2-08-0780 (2008) (unpublished order under Supreme Court Rule 23).

¶ 22 The trial court told defense counsel to file a new motion to reconsider along with his certificate. Counsel filed the certificate on November 23, 2010, and adopted the earlier motion to

reconsider. The court denied the motion on March 8, 2011. The court then raised a question of whether it should advise defendant that he was entitled to move to withdraw his guilty plea. The State encouraged such an admonition, and the court gave it. The court also told defendant that an appeal would be premature. Defendant asked if the public defender could help him file a motion; the court said that he was entitled to counsel and appointed the public defender.

¶ 23 On April 6, 2011, defendant filed a motion to withdraw the plea. On February 7, 2012, counsel told the court that he had spoken with defendant and learned that defendant had no interest in withdrawing his plea, but wanted further reconsideration of his sentence. The colloquy as transcribed left ambiguous whether counsel had withdrawn the motion, but the later comments of all involved implied that they believed it was withdrawn. Counsel said that, when he first understood what defendant wanted, he had not realized that the court had already denied a motion for reconsideration. Counsel therefore moved the court to allow rehearing of that motion. The State objected to that procedure, and the court denied the motion for rehearing on February 28, 2012. Defendant filed a notice of appeal that day.

¶ 24 This court dismissed the appeal as untimely, but suggested that a supervisory order might be available. The supreme court granted such an order, so that this court now can consider the appeal on its merits.

¶ 25

II. ANALYSIS

¶ 26 On appeal, defendant asserts that the court failed to give appropriate weight to his complete lack of a criminal record and the hardship that his imprisonment would cause his dependents. He further argues that, given the variability of sentences due to discretion in sentencing, any deterrent

is illusory. On this point, he cites *People v. Fern*, 189 Ill. 2d 48, 56 (1999) (quoting *People v. Welsh*, 99 Ill. App. 3d 470, 471 (1981)):

“[U]nder our sentencing system:

‘[S]entencing becomes an individualized proceeding but is sufficiently structured to prevent the prejudices of an individual judge from overcoming an evenhanded neutral approach. [Citation.] Like fingerprints or snowflakes, each one bears some similarities to the others, but no two are exactly alike. It therefore follows that sentencing is not an exact science and cannot be reduced to a mathematical formula. It further follows that one sentence is no precedent for another.’ ”

He argues that the individuality of sentencing means that there can be no general deterrence by an individual sentencing decision.

¶ 27 Illinois’s constitution requires that “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, § 11. A reviewing court should not disturb a sentence that is within the applicable sentencing range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). The sentencing range for attempted murder, a Class X felony, is no less than 6, and no more than 30, years. See 720 ILCS 5/8-4(c)(1) (West 2006); 730 ILCS 5/5-8-1(a)(3) (West 2006). In determining an appropriate sentence, relevant considerations include the nature of the crime, the protection of the public, deterrence, and punishment, but also the defendant’s rehabilitative potential. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). The weight that the trial court should attribute to each factor in aggravation and mitigation depends upon the particular

circumstances of the case. *Kolzow*, 301 Ill. App. 3d at 8. Provided that the trial court “ ‘does not consider incompetent evidence, improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the statutory range prescribed for the offense.’ ” *People v. Bosley*, 233 Ill. App. 3d 132, 139 (1992) (quoting *People v. Hernandez*, 204 Ill. App. 3d 732, 740 (1990)). Reviewing courts presume that a sentence within the statutory guidelines is proper. *People v. Bocclair*, 225 Ill. App. 3d 331, 335 (1992).

¶ 28 A sentence is an abuse of discretion only if it is at great variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Stacey*, 193 Ill. 2d at 210. “It is the province of the trial court to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case” (*People v. Latona*, 184 Ill. 2d 260, 272 (1998)), and the reviewing court may not substitute its judgment for that of the trial court merely because it might weigh the pertinent factors differently. *Stacey*, 193 Ill. 2d at 209. “The seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors.” *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). We presume a sentencing judge to have considered all relevant factors unless the record affirmatively shows otherwise. *People v. Hernandez*, 319 Ill. App. 3d 520, 529 (2001).

¶ 29 The sentence here was a proper exercise of the court’s discretion.

¶ 30 First, by arguing that the trial court gave insufficient weight to the mitigating factors, defendant is necessarily arguing that we should reweigh them. This we may not do. *People v. Woodard*, 307 Ill. App. 3d 304, 321 (2006).

¶ 31 Second, defendant’s argument concerning deterrence and the individuality of sentencing would mean that one statutory factor in aggravation—that “the sentence is necessary to deter others

from committing the same crime” (730 ILCS 5/5-5-3.2(a)(7) (West 2006))—could never be applied. Defendant is thus essentially asking this court to nullify this section. That is a legislative role.

¶ 32 A narrower and more defensible statement of defendant’s argument is that this factor in aggravation is reasonably applicable only to offenses that fall into typical patterns, such as some drug offenses, so that it is fair to speak of “the same crime.” That argument makes some sense considering the statutory factor in isolation. However, considering that the seriousness of the crime is the most important factor in determining an appropriate sentence, there is more to the issue. In a related context—an attorney discipline case—the supreme court said that “it is important to recognize the deterrent value of a sanction and the need to impress upon others the seriousness of the misconduct at issue.” *In re Twohey*, 191 Ill. 2d 75, 85 (2000). Courts also speak about the need to avoid a sentence that is so low that it will deprecate the seriousness of the offense and be inconsistent with the ends of justice. *E.g., People v. Vasquez*, 2012 IL App (2d) 101132, ¶ 71. Thus, in a more general sense, speaking of a need for a longer sentence for deterrence is essentially saying that something more is needed to properly express the intensity of society’s disapprobation for the particular offense. Broadly speaking, that more serious crimes receive longer sentences provides not just fairness but also a warning to others that—regardless of the legal classification of the offense—its seriousness will greatly affect the punishment. That is a kind of deterrence.

¶ 33 Certainly, the repeated hammer bludgeoning of the head of someone who is lying down is an unusually brutal attack. Also, that such an attack would cause serious brain injury was a near certainty. Further, given that the court largely discounted defendant’s claim to have feared the victim, the motive was enigmatic and possibly trivial—perhaps a dispute over discontinuation of telephone service. The court was in the best position to get some idea of what made defendant act

as he did, which was important to understanding the level of premeditation and provocation. In any event, as already stated, “[t]he seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors.” *Quintana*, 332 Ill. App. 3d at 109; see also *People v. Malin*, 359 Ill. App. 3d 257, 265 (2005) (“Although the defendant emphasizes that there were numerous factors in mitigation, the trial court was not obligated to place greater weight on these factors than on the need to deter others from committing similar crimes.”). By any measure, this was a very serious crime. Thus, the record here does not establish an abuse of discretion.

¶ 34

III. CONCLUSION

¶ 35 For the reasons stated, we affirm defendant’s sentence.

¶ 35 Affirmed.