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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 Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08-CF-2002
)	
WALTER L. WOODARD,)	Honorable
)	Ronald J. White,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* Failure of the court to consider whether defendant was strongly provoked in sentencing defendant following a conviction of first-degree murder required remand for a new sentencing hearing.
- ¶ 2 Following a bench trial, defendant, Walter L. Woodard, was convicted of first-degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2008)), and he was sentenced to 45 years' imprisonment. Defendant timely appeals, arguing that his sentence is excessive. We vacate defendant's sentence and remand for resentencing, as the record suggests that, when the court sentenced defendant, it failed to consider whether defendant was strongly provoked to attack the victim.

¶ 3 Evidence presented at defendant's bench trial revealed that defendant and the victim, Allan Walker, were close friends for several years. During their relationship, Walker acted violently toward defendant by, among other things, "slam[ming]" defendant to the ground following a basketball game, attempting to hit defendant with a baseball bat when defendant was leaving Walker's house at the request of Walker's mother, and punching defendant in the face and cutting him with a box cutter when defendant would not give Walker more than \$15 for gas. In addition to treating defendant poorly, Walker also battered several women with whom he had had relationships.

¶ 4 In May 2008, Walker continued to exhibit this type of violent behavior. On the evening of May 26, 2008, Walker slapped his girlfriend, Ashley Riley, whom he had acted violently toward in the past, in front of defendant, because Walker, who had fallen asleep outside, believed that Riley and defendant were going to abandon him. Walker's act of slapping Riley upset defendant. The next morning, Walker and defendant got into an argument about defendant "'respect[ing Walker's] house,'" and, after defendant indicated that he was going to leave, Walker punched defendant in the face. At Walker's request, Riley went to attend to defendant's injuries, but defendant refused any help, saying that he was "a soldier." While this was happening, Walker was in the kitchen "trying to calm himself down." However, "[Walker was] getting mad because [defendant] ke[pt] going on [about being a soldier]." Eventually, "[Walker] got [so] mad [that he] grabbed a knife." Wielding that knife, Walker confronted defendant. Riley grabbed Walker's arm, told Walker "'it's not worth it,'" and removed the knife from Walker's grasp.

¶ 5 Soon thereafter, Walker and defendant left the apartment to get cigarettes, and, when they returned five minutes later, it appeared that the men had reconciled. However, about 20 or 30 minutes later, when Walker, who was emotionally upset, was telling Riley how much he cared for

defendant and needed to control his violent ways, defendant, who was pacing around the apartment, stepped behind Walker and stabbed him multiple times. In doing so, defendant screamed, “ ‘You mess with me, you messed with the wrong one’ ” and “ ‘He’s dead.’ ” Defendant also yelled to Riley, “ ‘Don’t worry about him any more, he’s dead.’ ”

¶ 6 In finding defendant guilty of first-degree murder, the court rejected defendant’s claim that he acted in self-defense or under a “serious provocation” (720 ILCS 5/9-2(a)(1) (West 2008)). The court found that, because there was a “cooling off period” between when Walker attacked defendant and when defendant stabbed Walker, neither defense applied.

¶ 7 Evidence presented at defendant’s sentencing hearing revealed that defendant’s parents were both murdered when defendant was young and that defendant spent time in 28 different foster homes after that. Despite the horrible conditions under which he was raised, defendant managed to get his high school diploma and worked several jobs before quitting each one. While defendant was in jail awaiting trial, he was involved in many verbal and physical fights, at least one of which he instigated. The court, in sentencing defendant, spent a great deal of time outlining all of the factors it considered in aggravation and mitigation. Although, during closing remarks, it was argued that defendant was “picked on” by Walker, the court did not address whether, and to what extent, if any, defendant acted under a “strong provocation” (730 ILCS 5/5-5-3.1(a)(3) (West 2008)).

¶ 8 At issue in this appeal is whether defendant’s 45-year sentence is excessive. It is firmly established that the trial court must determine a sentence and that the trial court’s sentencing decision is entitled to great deference and weight. *People v. Latona*, 184 Ill. 2d 260, 272 (1998). The trial court is charged with the duty of balancing relevant factors and making a reasoned decision as to the appropriate punishment in each case. *Id.* When a sentence falls within the statutory limits for the

offense, it will not be disturbed absent an abuse of discretion by the trial court. See *People v. Coleman*, 166 Ill. 2d 247, 258 (1995). A trial court abuses its sentencing discretion when the penalty imposed “is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.” *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 9 Here, defendant was convicted of first-degree murder. A defendant convicted of first-degree murder faces a prison term between 20 and 60 years. 730 ILCS 5/5-8-1(a)(1) (West 2008). Defendant’s 45-year sentence falls within this range. Nevertheless, because the record suggests that the court failed to consider a potentially relevant factor in mitigation, we must vacate defendant’s sentence and remand this cause for a new sentencing hearing.

¶ 10 Section 5-5-3.1 of the Unified Code of Corrections (Code) (730 ILCS 5/5-5-3.1 (West 2008)) lists a number of factors that “shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment.” Since this language is mandatory and not directory, a sentencing court “ ‘may not refuse to consider relevant evidence presented in mitigation.’ ” *People v. Calhoun*, 404 Ill. App. 3d 362, 386 (2010) (quoting *People v. Heinz*, 391 Ill. App. 3d 854, 865 (2009)). However, “[t]he trial court has no obligation to recite and assign value to each factor presented at a sentencing hearing.” *People v. Hill*, 408 Ill. App. 3d 23, 30 (2011). “Where relevant mitigating evidence is before the court, it is presumed that the court considered it absent some indication in the record to the contrary other than the sentence itself.” *People v. Dominguez*, 255 Ill. App. 3d 995, 1004 (1994) (citing *People v. McCain*, 248 Ill. App. 3d 844, 853 (1993)).

¶ 11 Section 5-5-3.1(a)(3) of the Code lists one of the factors that must be considered. 730 ILCS 5/5-5-3.1(a)(3) (West 2008). It provides that, in sentencing a defendant, the court must consider in mitigation whether “[t]he defendant acted under a strong provocation.” 730 ILCS 5/5-5-3.1(a)(3)

(West 2008). Although “strong provocation” has not been defined, courts have taken guidance from the definition of “serious provocation,” which can reduce an offense to second-degree murder (720 ILCS 5/9-2(a)(1) (West 2008)). *Calhoun*, 404 Ill. App. 3d at 386. “Serious provocation” is “conduct sufficient to excite an intense passion in a reasonable person” (720 ILCS 5/9-2(b) (West 2008)) and arises from, among other things, “substantial physical injury or assault [or] mutual quarrel or combat” (*Calhoun*, 404 Ill. App. 3d at 387). Although what constitutes “serious provocation” is helpful in determining whether there was “strong provocation,” “strong provocation as a mitigating factor at sentencing encompasses a wider range of conduct than that defined as serious provocation under the second degree murder statute.” *People v. Merritte*, 242 Ill. App. 3d 485, 493 (1993). Accordingly, a defendant might not have been seriously provoked for purposes of reducing the defendant’s conviction to second-degree murder, but the defendant might have been strongly provoked for purposes of reducing the defendant’s sentence. See *id.* at 492-93.

¶ 12 The evidence presented in this case revealed that Walker had repeatedly acted violently toward defendant. On the day of the offense, Walker punched defendant in the face and threatened him with a knife about 30 minutes before defendant stabbed him. In convicting defendant of first-degree murder, the court found that defendant was not seriously provoked. However, despite argument at sentencing suggesting that defendant might have been strongly provoked, the court did not address whether that factor applied. We again observe that the court was not required to recite that factor and is presumed to have considered it. However, given that the court was very thorough in articulating the factors it considered, we believe that the presumption is rebutted. To us, the record indicates that the court believed that, because it had found no serious provocation, it had also found no strong provocation. This belief was erroneous, and it warrants a new sentencing hearing.

We stress that we do not hold that defendant was strongly provoked such that his 45-year sentence is excessive. We hold only that the trial court must consider to what extent, if any, defendant was strongly provoked and resentence him accordingly. We further note that the trial court considered victim-impact statements from the victim's aunt, uncle, and a cousin. The legislature has allowed for the admission of such evidence only with respect to an individual who is a "spouse, guardian, parent, grandparent, or other immediate family or household member." 725 ILCS 120/6(a) (West 2008).

¶ 13 For these reasons, we vacate the 45-year sentence imposed by the circuit court of Winnebago County and remand this cause for a new sentencing hearing.

¶ 14 Vacated and remanded.