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2013 IL App (3d) 110676-U

Order filed May 1, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-11-0676
	)	Circuit No. 07-CF-107
	)	
JOHN R. PITTS,	)	Honorable
	)	Amy Bertani-Tomczak,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE WRIGHT delivered the judgment of the court.  
Justices Lytton and O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court did not abuse its discretion when sentencing defendant where it properly considered factors in mitigation.
- ¶ 2 Defendant was convicted of three counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 2002)). On remand from this court for resentencing (*People v. Pitts*, No. 3-09-0439 (2011) (unpublished order under Supreme Court Rule 23)), the trial court sentenced defendant consecutively to 25 years' imprisonment for each count. Defendant appeals the court's

denial of his motion to reconsider sentence, arguing the trial court erred because it failed to consider certain mitigating factors when it sentenced defendant. We affirm.

¶ 3

### FACTS

¶ 4 A jury convicted defendant of three counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 2002)) arising out of a December 5, 2002 incident. Defendant abducted the victim at knifepoint, dragged her into the backseat of his vehicle, and drove her to a wooded area where he sexually assaulted the victim. Defendant then pulled the victim out of his car and drove off. The court originally sentenced defendant to 30 year terms of imprisonment for each count. Following defendant's first appeal, this court remanded the cause for resentencing, holding that the trial court erroneously relied on an amended version of section 12-14(d)(1) of the Criminal Code of 1961 which did not take effect until January 1, 2003. *Pitts*, No. 3-09-0439.

¶ 5 During the sentencing hearing on remand, defendant suggested certain mitigating facts should be considered by the judge including that this 41-year-old defendant suffered from a crack cocaine addiction at the time the sexual assaults occurred, and had since overcome his crack cocaine addiction while awaiting sentencing. Before announcing defendant's sentence, the trial court explained that it considered all applicable factors in mitigation and aggravation.

¶ 6 The court specifically discussed the serious harm caused to the victim and the strength of the victim's impact statement. The court also noted that although defendant did not have previous convictions for felony offenses, the State presented persuasive evidence during the sentencing hearing which connected defendant's DNA to other uncharged sexual assaults and also mentioned defendant had been implicated in an attempted abduction. The court stated:

“Because of the nature of the crimes, the serious harm you caused that continues

on to this date as far as the lasting effects of these types of crimes on the victims, I am gonna sentence you to 25 years as to each count. Sentences will be consecutive.”

¶ 7 Defendant appeals.

¶ 8 ANALYSIS

¶ 9 Defendant claims the trial court abused its discretion when resentencing him because the court: (1) failed to consider in mitigation defendant's drug addiction at the time of the offenses; (2) failed to consider defendant's subsequent recovery from drug addiction as it relates to his rehabilitative potential; and (3) imposed a *de facto* life sentence without properly considering defendant's age and rehabilitative potential.

¶ 10 At the time defendant committed the offenses involved in this appeal, aggravated criminal sexual assault was punishable by a term of imprisonment of not less than 6 years and not more than 30 years. 720 ILCS 5/12-14(d)(1) (West 2002); 730 ILCS 5/5-8-1(a)(3) (West 2002). A conviction for aggravated criminal sexual assault triggers mandatory consecutive sentences. 730 ILCS 5/5-8-4(a)(ii) (West 2002).

¶ 11 For a reviewing court to modify a sentence which falls within the statutory range, the sentence imposed must be a clear departure from the spirit and purpose of the law and the constitutional requirement that the sentence be proportionate to the nature of the offense. *People v. Miller*, 284 Ill. App. 3d 16 (1996); Ill. Const. 1970, art. 1, § 11. Absent an abuse of discretion, sentences imposed by a trial court within the range of punishment permitted by statute will not be disturbed on review. *People v. Stacey*, 193 Ill. 2d 203 (2000). A trial court has the discretion to impose a sentence within the statutory range even if that sentence amounts, in effect, to a *de facto* life sentence, so long as the court properly considers factors in mitigation and aggravation. See *People v. Martin*, 2012 IL App (1st) 093506.

¶ 12 Although a trial court has the discretion to consider drug addiction as a factor in mitigation, a court is not required to do so. See *People v. Smith*, 214 Ill. App. 3d 327 (1991). The constitutional requirement that a trial court consider a defendant's rehabilitative potential does not always mandate the court to grant the defendant an opportunity for rehabilitation. *People v. Bien*, 277 Ill. App. 3d 744 (1996). The seriousness of the crime committed is the most important factor in reaching a sentencing decision. *People v. Tye*, 323 Ill. App. 3d 872 (2001).

¶ 13 In the present case, the trial court found the offenses involved serious misconduct and announced that a minimum sentence was not in order. The court clearly stated it first considered all applicable factors both in mitigation and aggravation before pronouncing defendant's new sentence on remand. The court expressly considered the absence of previous felony convictions in defendant's favor. However, the court noted that the evidence persuaded the jury beyond a reasonable doubt, the victim presented a compelling impact statement presented to the court, and the State's DNA evidence linking defendant to another sexual assault and potential abduction could not be ignored. After making these observations, the court re-sentenced defendant to consecutive 25 year terms of imprisonment.

¶ 14 Based on this record, we conclude the trial court carefully considered the applicable factors in mitigation and aggravation before thoughtfully imposing sentences in this case. The record does not suggest the trial court abused its discretion.

¶ 15 **CONCLUSION**

¶ 16 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 17 Affirmed.