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2013 IL App (3d) 120148-U

Order filed December 19, 2013

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 10th Judicial Circuit,
Plaintiff-Appellee,)	Peoria County, Illinois,
)	
v.)	Appeal No. 3-12-0148
)	Circuit No. 11-CF-800
)	
ROBERT J. LAWSON,)	Honorable
)	Stephen A. Kouri,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not consider an improper aggravating factor or abuse its discretion in sentencing defendant.
- ¶ 2 Following a jury trial, defendant, Robert J. Lawson, was convicted of two counts of attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)) and one count of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1) (West 2010)). Defendant was sentenced to 45 years' imprisonment for each murder count, and 7 years' imprisonment for aggravated unlawful use of a weapon, with all sentences to be served consecutively. On appeal,

defendant argues that his sentences were excessive where the trial court relied on an improper factor in aggravation and failed to properly consider mitigating factors. We affirm.

¶ 3

FACTS

¶ 4 On August 30, 2011, defendant was charged by indictment with four counts of attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)), two counts of aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2010)), one count of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1) (West 2010)), and two counts of mob action (720 ILCS 5/25-1(a)(1) (West 2010)).

¶ 5 At trial, the evidence indicated that on August 15, 2011, at approximately 1 p.m., defendant rode his bicycle to a convenience store with a passenger on the back. Defendant got off his bicycle and approached a vehicle parked at the curb in front of the store. Defendant pulled out a handgun, opened the door to the vehicle, and fired the handgun into the vehicle at the two front-seat occupants. Defendant continued to shoot at the vehicle as it drove away from the scene. Both occupants were shot, but neither were fatally injured. One of the occupants received gunshot wounds to his leg and arm. The second occupant received a gunshot wound to his leg, which struck an artery and required the placement of a metal rod inside his leg. The jury found defendant guilty on all counts, except for the two counts of mob action.

¶ 6 On February 9, 2012, defendant's sentencing hearing was held, and defendant's presentence investigation report (PSI) was presented to the court. The PSI revealed that defendant was adjudicated delinquent for attempted burglary and burglary. Defendant committed numerous probation and parole violations. Defendant's adult record consisted of convictions for resisting a peace officer, unlawful possession of cannabis, and aggravated unlawful use of a

weapon. Defendant was on probation when he committed the instant offense.

¶ 7 Defendant's PSI also revealed that defendant was 24 years old and was unemployed, but had earned \$4,700 in 2011 when he babysat for his siblings. Defendant had nine children with five different women, had custody of one of the children, and was behind on his child support payments. When asked by the court if he wanted to make a statement in allocution, defendant maintained his innocence.

¶ 8 In sentencing defendant, the court stated that it considered the PSI, counsels' arguments, the statutory matters in aggravation and mitigation, defendant's criminal history, and the circumstances and nature of the offense. The court commented on the offensive nature of the crime, stating that the shooting occurred in broad daylight in a neighborhood, where defendant put his handgun into the vehicle and fired at the occupants. The court also commented on defendant's PSI, noting that defendant was 24 years old, and had fathered nine children with five different women. Five of those children were under the age of two years old and were with four different women. Defendant only earned \$4,700 in income in 2011. In determining the cost of incarceration, the court stated that "it would be cheaper, I think, for us to incarcerate [defendant] than to keep him out, not [that] that's even an option." The court sentenced defendant to 20 years' imprisonment, plus a 25-year firearm enhancement, for each murder count and 7 years' imprisonment for aggravated unlawful use of a weapon.

¶ 9 Defendant filed a motion to reconsider his sentence, arguing his sentences were excessive. The trial court denied the motion. Defendant appeals.

¶ 10 ANALYSIS

¶ 11 Defendant argues that his sentences were excessive where the trial court relied on an

improper factor in aggravation and failed to properly consider mitigating factors. Specifically, defendant argues that the trial court improperly considered the number of children defendant had fathered. He also argues that the court did not adequately consider the lack of fatal injuries during the offense, his rehabilitative potential, or the extent to which the mandatory 25-year firearm enhancements greatly increased the seriousness of his sentences.

¶ 12 The Illinois Constitution mandates that all penalties 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 sentence that falls within the statutory range for the offense will not be disturbed unless the trial court has abused its discretion. *People v. Flores*, 404 Ill. App. 3d 155 (2010). A sentence will be deemed an abuse of discretion where the sentence is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205 (2010).

¶ 13 In sentencing a defendant, the trial court is to consider all matters reflecting upon defendant's personality, propensities, purposes, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding. *People v. Reed*, 376 Ill. App. 3d 121 (2007). The court may inquire into a defendant's moral character, habits, social environment, abnormal tendencies, age, natural inclination or aversion to commit crime, and stimuli motivating his conduct, in addition to his family life, occupation, and criminal record. *Id.* A trial court is given wide latitude in sentencing a defendant, so long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation. *Flores*, 404 Ill. App. 3d 155. Given the deference afforded to a trial court's sentencing decision, the burden is on defendant to affirmatively establish that the sentence was based on improper considerations. *Reed*, 376 Ill. App. 3d 121.

¶ 14 The sentencing range for attempted first degree murder, a Class X felony, is between 6 and 30 years' imprisonment (730 ILCS 5/5-4.5-25(a) (West 2010)) with a mandatory 25-year enhancement if defendant personally discharged a firearm which proximately caused great bodily harm (720 ILCS 5/8-4(c)(1)(D) (West 2010)). Aggravated unlawful use of a weapon, a Class 2 felony, is punishable by a sentence of 3 to 7 years' imprisonment. 720 ILCS 5/24-1.6(d)(1) (West 2010). Here, the trial court sentenced defendant within the applicable sentencing range on all three convictions. The court imposed a sentence of 20 years' imprisonment for both murder counts, with the addition of mandatory 25-year enhancements, and 7 years' imprisonment for aggravated unlawful use of a weapon.

¶ 15 Despite his sentencing falling within the applicable statutory range, defendant claims that the trial court relied on an improper aggravating factor when imposing his sentence. At defendant's sentencing hearing, the trial court noted that defendant was 24 years old, earned an income of \$4,700 in 2011, and had fathered nine children with five different women. In considering the cost of incarceration, the court observed that it would be cheaper to incarcerate defendant than to keep him out of prison, "not [that] that's even an option."

¶ 16 Section 5-4-1(a)(3) of the Unified Code of Corrections requires the trial court to consider the financial cost of incarceration when sentencing a defendant. 730 ILCS 5/5-4-1(a)(3) (West 2010). Pursuant to this statute, the trial court properly considered this factor when sentencing defendant. In considering this factor, the court commented on the number of children defendant fathered. However, there is no indication that the court actually considered this evidence to be an aggravating factor in imposing defendant's sentence. Rather, the court emphasized the costs defendant imposed on society by fathering so many children without being able to support them.

Thus, the court determined that the cost of incarcerating defendant, a mitigating factor, was not present.

¶ 17 Furthermore, the court's observation was a fair comment on defendant's lack of responsibility in his personal life. That factor, in turn, was reflective of defendant's moral character and his potential for rehabilitation, which are important sentencing considerations. See *Reed*, 376 Ill. App. 3d 121. Accordingly, the court properly considered defendant's circumstances and the cost of incarceration, and we find no error.

¶ 18 Defendant further argues that the trial court did not adequately balance the seriousness of the offense and his potential for rehabilitation with the severe 25-year sentencing enhancements.

¶ 19 The trial court is not required to enumerate each factor considered in arriving at a sentence, nor is the court required to give greater weight to defendant's rehabilitative potential than to the seriousness of the offense or other aggravating factors. *People v. Houston*, 363 Ill. App. 3d 567 (2006). In announcing defendant's sentence, the trial court stated it had considered the PSI, counsels' arguments, the statutory factors in aggravation and mitigation, defendant's criminal history, and the circumstances and nature of the offense. Based on the record before us, we find nothing to suggest that the trial court ignored any mitigating factors.

¶ 20 Although defendant contends that his aggregate sentence was excessive in light of his rehabilitative potential, we find no error in the imposition of such a severe sentence because he seriously injured two victims during the instant offense, and caused one victim permanent injury. See *People v. Evans*, 373 Ill. App. 3d 948 (2007) (noting that the seriousness of the offense is the most important factor to consider). Defendant also had a significant criminal history and committed the instant offense while on probation. Therefore, considering defendant's

rehabilitative potential in light of his criminal history, the nature of the offense, and defendant's continued assertion of innocence in the face of strong evidence of guilt, we cannot say that the court abused its discretion when it weighed the factors. See *Alexander*, 239 Ill. 2d 205 (finding that where the sentencing court adequately considered the appropriate factors, a court of review may not reweigh the factors involved in a sentencing decision).

¶ 21

CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 23 Affirmed.