

reduce his sentence to six years' imprisonment. We decline that invitation and affirm.

¶ 4

I. BACKGROUND

¶ 5 In November 2010, a Mason County grand jury indicted defendant for predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 2006)) and four counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2006)) for conduct with A.M.L., who was under 13 years of age.

¶ 6

A. Defendant's Jury Trial

¶ 7 In January 2012, defendant's jury trial commenced and the following evidence was presented: A.M.L.'s birthday is August 10, 1995. After her tenth birthday, defendant, her maternal grandfather, started to kiss A.M.L. by holding her head and inserting his tongue into her mouth. He would do this with his eyes closed and moan. Defendant also rubbed her chest and back, both over and under her clothing. He started to rub A.M.L. every time after he kissed her. Approximately 20 times, defendant rubbed A.M.L.'s vagina with his hand, both over and under her clothing. One time A.M.L. was watching television in the basement of her grandparents' house when defendant told her to sit near him. He rubbed, underneath her clothing, her stomach and her back. He then inserted his finger into her vagina. A.M.L. testified this caused her to have difficulty peeing and hurt for several days. In late May 2007, when A.M.L. was 11 years old, she was playing the piano at her grandparents' house when she got up to go to the bathroom. When she came out of the bathroom defendant told her to come over and sit next to him on the bed. He took his glasses off and started kissing A.M.L. He took off her glasses and shoved her down on the bed. When she tried to get back up he shoved her down again. She said "no" and defendant said "that is it for now" and let her go. A.M.L. told her older sister, A.E.L., about this

incident the next day. She testified she confided in her sister because she "couldn't take it any more."

¶ 8 A.E.L. testified in late May 2007, A.M.L. told her defendant had been hurting her. When A.M.L. was 10 years old, A.E.L. went out to the barn to call defendant and A.M.L. in for lunch. She saw A.M.L. sitting on a barrel and defendant was touching and kissing her inappropriately. A.E.L. got their attention but no one said anything. Around Christmas, A.M.L. appeared upset and asked if she could sleep in A.E.L.'s bed. A.M.L. told her things were happening to her and she was scared. The next morning, A.E.L. said she was going to tell their mother, but A.M.L. told her to forget about it and she was lying.

¶ 9 Defendant testified A.M.L. was at his house with two other children in late May 2007. She knocked the children down and kicked them. Defendant then "unloaded on her" and told her she was not to come over again. In the evening, she came back over to the house and came into defendant's bedroom. He was sitting on the bed and A.M.L. approached him and "crawled up in [his] lap to kiss [him]." He told her he was mad at her and she did not "need to be kissing [him]." He testified A.M.L. initiated the rubbing by taking hold of his hand and then moving it around on her body. She asked him to "french kiss" her four or five times and defendant "thought [he] could get closer to her and maybe find out who was messing with her" and learn where she was learning this behavior. He also testified A.M.L. once reached for his pants zipper and said she wanted to see "it" and defendant told her she did not need to see "it." On another occasion, they were watching television and she used his hand to rub her stomach. When she "shoved [defendant's] hand right down in her clothes," he jerked his hand out and scolded her.

¶ 10 The jury found defendant guilty of all five counts.

¶ 11 B. Sentencing and Posttrial Motions

¶ 12 In March 2012, the trial court held a sentencing hearing. The presentence investigation report (PSI) stated defendant's date of birth is October 9, 1938, and indicated he had no prior criminal history. In mitigation, defendant presented character evidence from his son, a church pastor, the mayor of San Jose, and other members of the community. These witnesses proffered defendant had been a law-abiding citizen his whole life, was a man of good character, and his incarceration would be a hardship on his wife, who was paralyzed.

¶ 13 In aggravation, the trial court found defendant was in a position of trust; the conduct, namely defendant's digital penetration, caused or threatened serious harm; and a sentence was necessary to deter others from committing the same crime. In mitigation, the court found defendant's conduct was unlikely to recur, he had no prior criminal history, and his imprisonment would entail excessive hardship on his dependent, his wife. The court added:

"Number one, I cannot get out of my mind the picture of this eleven[-]year[-]old girl testifying on that [children's advocacy center] hearing. She was so innocent, so trusting and you violated that trust and that innocence for your own pleasure and I have just the hardest time in the world getting that out of my mind. These good folks came here in support of you. I take their testimony as heart felt and I believe them, that is what they think about you. But the other side of that coin is [A.M.L.]. That is why she went to your house, because things were tough at home. She looked for a

safe harbor for protection. And yet it wasn't there. [Defense counsel] argues well she hasn't gone to [a] counselor in the last five years. Maybe because she went to you and trusted you and she can't trust anymore. Maybe she just can't trust any counselor at this point. Maybe she lost her trust in all people at this point. These things and in my mind mitigates against the minimum sentence that [defense counsel] has recommended."

The court sentenced defendant to eight years' imprisonment for predatory criminal sexual assault and four concurrent three-year prison sentences for aggravated criminal sexual abuse. The court ordered the aggravated-criminal-sexual-abuse sentences to run consecutively to the predatory-criminal-sexual-assault sentence.

¶ 14 In March 2012, defendant filed a motion to reconsider sentence. The trial court denied the motion.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant argues the trial court abused its discretion in sentencing him to eight years' imprisonment for predatory criminal sexual assault. Defendant contends his sentence is effectively a life sentence and should be reduced as he was a "productive and helpful member of society, had lived a lawful life, and was 73 years old at the time of sentencing."

¶ 18 A. Standard of Review

¶ 19 A sentence which falls within the statutory guidelines is not an abuse of discretion unless it is manifestly disproportionate to the offense and cannot be justified by any reasonable

review of the record. *People v. Mays*, 2012 IL App (4th) 090840, ¶ 66, 980 N.E.2d 166 (quoting *People v. Jackson*, 375 Ill. App. 3d 796, 800, 874 N.E.2d 592, 595 (2007)); *People v. Phippen*, 324 Ill. App. 3d 649, 651-52, 756 N.E.2d 474, 477 (2001). "A reviewing court must afford great deference to the trial court's judgment regarding sentencing because that court, having observed the defendant and the proceedings, is in a far better position to consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits than a reviewing court, which must rely on a 'cold' record." *People v. Little*, 2011 IL App (4th) 090787, ¶ 24, 957 N.E.2d 102.

¶ 20 "A trial court is presumed to have considered all of the relevant evidence of mitigation before it." *People v. Somers*, 2012 IL App (4th) 110180, ¶ 24, 970 N.E.2d 606 (quoting *People v. Bailey*, 409 Ill. App. 3d 574, 594, 948 N.E.2d 690, 710 (2011)). "The most important sentencing factor is the seriousness of the offense." *People v. Flores*, 404 Ill. App. 3d 155, 159, 935 N.E.2d 1151, 1155-56 (2010).

¶ 21 B. The Applicable Sentencing Range and Factors

¶ 22 Predatory criminal sexual assault is punishable by 6 to 60 years' imprisonment. 720 ILCS 5/12-14.1(b)(1) (West 2006). Factors in aggravation include (1) "the defendant's conduct caused or threatened serious harm"; (2) "the sentence is necessary to deter others from committing the same crime"; and (3) "the defendant held a position of trust or supervision such as, but not limited to, [a] family member." 730 ILCS 5/5-5-3.2(a)(1), (7), (14) (West 2012). Factors in mitigation include (1) the defendant has no history of prior criminal activity, (2) the defendant is unlikely to repeat his criminal conduct, and (3) his imprisonment would entail excessive hardship on his dependents. 730 ILCS 5/5-5-3.1(a)(7), (8), (11) (West 2012).

¶ 23

C. Defendant's Sentence

¶ 24

Here, the trial court sentenced defendant to eight years' imprisonment, which is two years above the minimum and 52 years below the maximum allowed. Defendant's "lawful life" and age are not entitled to greater consideration than the seriousness of the offense. See *People v. Coleman*, 166 Ill. 2d 247, 261, 652 N.E.2d 322, 329 (1995) (rehabilitative potential is not entitled to greater weight than the seriousness of the offense). This is an offense the legislature has determined is serious enough to be punishable by up to 60 years' imprisonment. The record shows the court expressly rejected sentencing defendant to the six-year minimum and carefully and thoughtfully reflected on how defendant's conduct abused his familial relationship with A.M.L. and may have long-term effects on her life. The court considered the relevant factors in mitigation and aggravation and did not abuse its discretion.

¶ 25

III. CONCLUSION

¶ 26

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 27

Affirmed.