

NOTICE
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2013 IL App (4th) 121053-U
NO. 4-12-1053
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
November 8, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Logan County
JEREMY S. YATES,)	No. 11CF5
Defendant-Appellant.)	
)	Honorable
)	Thomas M. Harris, Jr.,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* Pursuant to *Anders v. California*, 386 U.S. 738 (1967), we grant the office of the State Appellate Defender's motion to withdraw and affirm the trial court's judgment where no meritorious issues could be raised on appeal as to whether the trial court considered mitigating evidence and defendant's sentence was excessive.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. For the reasons that follow, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2011, defendant, Jeremy S. Yates, was indicted for attempt (murder) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)) and robbery (720 ILCS 5/18-1(a) (West 2010)).

¶ 5 In November 2011, defendant pleaded guilty to the charges. According to the factual basis, on the night of January 7, 2011, defendant patronized a bar in Latham and was

alone with the bartender as she was closing for the night. The bartender was counting the receipts and money from the night. Defendant then beat her, took the money and the bartender's billfold, and left her bleeding on the floor. The victim suffered multiple injuries, including a broken wrist, jaw, and several ribs. She also suffered injuries to her face and head requiring multiple surgeries.

¶ 6 In February 2012, the trial court held a sentencing hearing. The State introduced a presentence investigation report (PSI). The PSI reflected defendant was 33 years old. He had a 1997 felony domestic battery conviction, a 2005 burglary conviction, and a 2006 aggravated battery conviction. The PSI indicated defendant had violated his probation in the domestic battery and burglary cases. The report included multiple letters from defendant's family, friends, and community members.

¶ 7 The State introduced evidence in aggravation, including photographs of the crime scene, the victim, and items located during the search of defendant's apartment. The victim testified as to her injuries and stated she was in the hospital for over two months, required reconstructive surgery to her face, and continues to suffer from neurological problems.

¶ 8 In mitigation, defendant offered evidence from multiple witnesses. Defendant's uncle, a member of the Christian Motorcyclist Association and a prison minister, testified he had ministered to defendant and seen a positive change in defendant. Defendant's cousin described defendant as "[v]ery caring, nurturing, a family man, very helpful." His sister described the relationship between defendant and his daughter as "great" and his daughter as "a daddy's girl." Defendant made a statement in allocution and apologized to the victim and her family.

¶ 9 The trial court stated it considered the PSI, letters, testimony, financial impact of

incarceration, and aggravating evidence. The court expressly stated it "considered any evidence that was offered in mitigation." The court commented this was "an incredibly brutal crime" and the victim "suffered a brutal beating." As to the letters, the court stated they were "written from the heart" and described defendant as "compassionate, loving, [and] caring." But the court noted "there is a complete disconnect between the individual who is described in those letters and the individual who appears before me in court and who has admitted his guilt" to robbery and attempt (murder). The court stated "I have considered the evidence that would weigh in mitigation and I have considered [defendant's] potential for rehabilitation and I have considered the fact that he has accepted responsibility for his actions ***." The court stated "I believe the acts and the consequences, as amply demonstrated here in court, would justify maximum sentences in both cases." The court sentenced defendant to 25 years' imprisonment for attempt (murder) and a consecutive 5 years' imprisonment for robbery.

¶ 10 In February 2012, defendant filed a motion to reconsider his sentence and the trial court denied the motion. This court twice summarily remanded for defense counsel's compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Yates*, 2012 IL App (4th) 120141-U; *People v. Yates*, 2012 IL App (4th) 120643-U.

¶ 11 In May 2013, OSAD moved to withdraw as counsel, attaching to its motion a brief in conformity with the requirements of *Anders v. California*, 386 U.S. 738 (1967). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by June 21, 2013. Defendant has filed none. After examining the record and executing our duties under *Anders*, we affirm the trial court's judgment and grant OSAD's motion to withdraw.

¶ 12

II. ANALYSIS

¶ 13 OSAD asserts the record shows no meritorious issues that can be raised on appeal. Specifically, OSAD contends (1) the record shows the trial court considered the relevant factors in mitigation, and (2) defendant's sentence is not excessive. We agree.

¶ 14 "A sentence which falls within the statutory range is not an abuse of discretion unless it is manifestly disproportionate to the nature of the offense." *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)). "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.

¶ 15 "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)). A court that examines a PSI is presumed to have considered the defendant's potential for rehabilitation. *People v. Babiarz*, 271 Ill. App. 3d 153, 164, 648 N.E.2d 137, 146 (1995). Rehabilitative potential is not entitled to greater weight than the seriousness of the offense. *People v. Coleman*, 166 Ill. 2d 247, 261, 652 N.E.2d 322, 329 (1995).

¶ 16 At the sentencing hearing, the trial court stated it considered the PSI, the letters submitted in support of defendant, the testimony, defendant's decision to plead guilty, and any

other evidence in mitigation. As the court noted, the character evidence reflected a "disconnect" with the crimes to which defendant pleaded guilty. The evidence showed defendant's actions resulted in serious bodily injury to the victim with lasting effects to her physical and mental health. The fact defendant had on two occasions been unsuccessful in completing probation spoke to his rehabilitative potential. The court noted defendant's actions would justify the maximum sentences, but chose to impose sentences below the maximum. The record reflects the court carefully considered defendant's evidence in mitigation, his potential for rehabilitation, and the seriousness of the offense.

¶ 17 Attempt (murder) is a Class X felony (720 ILCS 5/8-4(c)(1) (West 2010)) and is punishable by 6 to 30 years' imprisonment (730 ILCS 5/5-4.5-25(a) (West 2010)). Robbery is a Class 2 felony (720 ILCS 5/18-1(b) (West 2010)), which is punishable by 3 to 7 years' imprisonment (730 ILCS 5/5-4.5-35(a) (West 2010)). The trial court sentenced defendant to 25 years' imprisonment for attempt (murder) and 5 years' imprisonment for robbery.

¶ 18 Because defendant's sentences are within the appropriate sentencing ranges, and the trial court considered the evidence in mitigation when imposing defendant's sentence, no colorable argument can be made that the court abused its discretion in fashioning an appropriate sentence for defendant.

¶ 19 III. CONCLUSION

¶ 20 We affirm the trial court's judgment and grant OSAD's motion to withdraw.

¶ 21 Affirmed.