



of a stain identified in the underwear. When questioned by the police, the defendant admitted that he was responsible for B.H.'s injuries but denied having had sex with her. B.H. later testified that the last thing she remembered before waking up in a hospital room 11 days after the attack was a man "lowering [her] to the ground." She further testified that she had no recollection of being sexually assaulted and still suffers short-term memory problems as a result of her head injuries.

¶ 4 In October 2009, the defendant was convicted of two counts of aggravated criminal sexual assault (counts I and II) (720 ILCS 5/12-14(a)(2) (West 2008)) and one count of aggravated battery (count III) (720 ILCS 5/12-4(a) (West 2008)). The trial court later sentenced the defendant to consecutive 25-year terms on counts I and II and a concurrent 5-year term on count III.

¶ 5 In pertinent part, count I alleged that the defendant had "placed his penis in the anus of B.H.," and count II alleged that he had "placed his penis in the vagina of B.H." On direct appeal, the defendant challenged the sufficiency of the evidence supporting his convictions on both counts, arguing that the State had failed to satisfactorily prove that either alleged act of sexual penetration had occurred. *People v. Recklein*, 2011 IL App (5th) 100215-U, ¶ 37. We agreed and reversed the defendant's conviction on count I. *Id.* ¶ 45. We reduced the defendant's conviction on count II to a conviction for the lesser-included offense of attempted aggravated criminal sexual assault (720 ILCS 5/8-4(a), 12-14(a)(2) (West 2008)), however, and remanded the cause for resentencing. *Id.* ¶ 49. The defendant has never challenged his conviction or sentence on count III.

¶ 6 In November 2012, the trial court held a resentencing hearing on count II. Noting the severity of B.H.'s injuries, the State argued that she had been "left for dead" and that the defendant had taken advantage of her willingness to help her friend. Referencing evidence that the "emotional and physical trauma" resulting from the attack had "changed [B.H.]

forever," the State further argued that the maximum extended-term sentence of 30 years on a finding that the defendant's conduct was exceptionally brutal and heinous was the only "appropriate" sentence under the circumstances. See 730 ILCS 5/5-5-3.2(b)(2), 5-8-2(a)(3) (West 2008).

¶ 7 In response, defense counsel maintained that although relevant to the defendant's aggravated-battery conviction that had been entered on count III, the State's brutal-and-heinous-conduct argument was misplaced with respect to the defendant's conviction for attempted aggravated criminal sexual assault. Asserting that on the night in question, the defendant had "committed the mistake of his life," counsel argued for a sentence on "the lower end" of the nonextended-term range of 4 to 15 years on count II. See 720 ILCS 5/8-4(c)(2), 12-14(d)(1) (West 2008); 730 ILCS 5/5-8-1(a)(4) (West 2008). The defendant did not make a statement in allocution, but when interviewed during the preparation of his presentence investigation report, he claimed that he was "not guilty of this offense."

¶ 8 When imposing sentence, the trial court suggested that the defendant had offered the police "excuses" for his behavior and had since influenced his family and friends to adopt an "unwillingness to accept what happened in this case." The court stated that it had considered the statutory factors in aggravation and mitigation that it deemed applicable and had further considered the arguments of counsel. In aggravation, the court specifically found that the defendant had a prior criminal record, that an appropriate sentence was "necessary to deter others from committing the same crime," and that "the defendant's conduct caused or threatened serious harm." See 730 ILCS 5/5-5-3.2(a)(1), (a)(3), (a)(7) (West 2008). In mitigation, the court found that "imprisonment of the defendant would entail excessive hardship to his dependents." See 730 ILCS 5/5-5-3.1(a)(11) (West 2008). Repeatedly describing the defendant's conduct as "vicious," the court also opined that he was a "predator" and a danger to the public.

¶ 9 The trial court ultimately ordered the defendant to serve a 15-year sentence on count II, concurrent with the 5-year sentence that had previously been imposed on count III. The court stated that it wished that it could have imposed a harsher punishment, but it did not believe that an extended-term sentence was statutorily authorized under the circumstances. The defendant subsequently filed a timely notice of appeal.

¶ 10 DISCUSSION

¶ 11 Suggesting that the trial court failed to recognize and adequately consider his rehabilitative potential, the defendant argues that the trial court erred in sentencing him to the maximum nonextended term of 15 years on his conviction for attempted aggravated criminal sexual assault. The State counters that the trial court did not abuse its discretion when imposing sentence and that the record supports the court's conclusions regarding the defendant's criminal character. We agree with the State.

¶ 12 "A reasoned judgment as to the proper sentence to be imposed must be based upon the particular circumstances of each individual case." *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). Additionally, "impressions about the individual being sentenced are proper factors for the court to consider in determining the appropriate sentence, as are all matters reflecting upon the defendant's personality, propensities, purposes, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding." *People v. Traina*, 230 Ill. App. 3d 149, 156-57 (1992).

¶ 13 "In determining a sentence, the trial court must balance the interests of society against the ability of a defendant to be rehabilitated." *People v. Weatherspoon*, 394 Ill. App. 3d 839, 862 (2009). "However, a trial court is not required to give greater weight to the rehabilitative potential of a defendant than to the seriousness of the offense." *Id.* "In fact, the seriousness of the crime committed is considered the most important factor in fashioning an appropriate sentence." *Id.* A defendant's lack of remorse is also a proper factor to consider. *People v.*

*Barrow*, 133 Ill. 2d 226, 281 (1989); *People v. Hall*, 159 Ill. App. 3d 1021, 1033 (1987).

¶ 14 "[T]here is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and thus we review the trial court's sentencing decision with deference." *People v. Dowding*, 388 Ill. App. 3d 936, 942-43 (2009). Accordingly, "[t]he burden is on the defendant to affirmatively establish that the sentence was based on improper considerations." *Id.* Because the trial court is in "the best position to fashion an appropriate sentence," where the record reveals that the court was aware of and considered the relevant factors in aggravation and mitigation, a reviewing court will not disturb a sentence falling within the allowable sentencing range absent an abuse of discretion. *People v. Murphy*, 322 Ill. App. 3d 271, 287 (2001). "A trial court abuses its discretion when its ruling is so arbitrary, fanciful, or unreasonable that no reasonable person would agree with it." *People v. McGregor*, 405 Ill. App. 3d 776, 779 (2010).

¶ 15 We cannot conclude that the trial court abused its discretion in imposing a 15-year sentence on the defendant's conviction on count II. The court considered the factors in aggravation and mitigation that it deemed relevant and understandably placed considerable emphasis on the vicious nature of the crime and the defendant's apparent lack of remorse. The trial court also deemed the defendant a danger to the public, and the record fully supports such a finding. In any event, "[i]t is well-established that the trial court has wide discretion in sentencing and is in a superior position to determine what is proper, and that we may not substitute our judgment merely because the factors to be considered might have been balanced differently." *People v. Shlimon*, 232 Ill. App. 3d 449, 458 (1992).

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, we hereby affirm the trial court's judgment imposing a 15-year sentence on the defendant's conviction on count II.

¶ 18 Affirmed.