

No. 1-12-2104

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 21009
)	
EFRAIN ALCARAZ,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held:* In imposing an aggregate sentence of 75 years for first degree murder and aggravated battery with a firearm, the trial court properly considered all relevant sentencing factors; judgment affirmed.

¶ 2 Following a jury trial, defendant Efrain Alcaraz was found guilty of first degree murder and aggravated battery with a firearm. He was sentenced to a 35-year prison term for murder, with a 25-year enhancement for personally discharging a firearm that proximately caused death to another person, and a consecutive 15-year prison sentence for aggravated battery with a

firearm. On appeal, defendant contends his aggregate 75-year sentence is excessive in light of his youth, work history, minimal criminal background, and potential for rehabilitation. We affirm.

¶ 3 The charges against defendant stemmed from two separate street shootings in the area of 23rd Street and Seeley in Chicago. The trial evidence established that defendant, a member of the Ambrose street gang, wounded Maximino Aguero, a member of a rival street gang, by shooting him in the back. A few minutes later and a short distance away, defendant fatally shot 15-year-old Danny Calderon in the back.

¶ 4 At trial, Daisy Baez testified that at about 11:25 p.m. on October 8, 2008, as she was sitting on a stoop on the east side of Seeley Avenue near 23rd Street, she observed a red Jeep circle the block several times. Two people were in the Jeep, which stopped at the corner of 23rd and Seeley. A man whom Baez identified as defendant climbed out. He was wearing a Yankees baseball cap and a dark "hoodie" sweatshirt. Baez also saw Maximino Aguero and Pedro Montalvo across the street, talking. Aguero and Montalvo were members of the Satan Disciple street gang, a rival of defendant's Ambrose street gang. Defendant crouched behind some cars, then stood up and pulled out a gun. He fired twice at Aguero and Montalvo. Aguero was shot in the back. Aguero and Montalvo testified at trial that neither of them saw the shooter. Baez ran past defendant and then ran west on 23rd Street. Defendant quickly walked east on 23rd Street. Baez looked around to see if defendant was gone and saw Danny Calderon come out of a house. Defendant fired about five shots at Danny and then entered the red Jeep, which drove away.

¶ 5 Fifteen-year-old Danny Caldaron and several other people had been watching movies that evening in an apartment at 2019 West 23rd Street. At about 11:30, Danny decided to go

home because he was hungry. A few seconds after he left, others in the apartment heard several shots and found Danny outside lying on the pavement. Someone jumped into a red Jeep double-parked nearby and the Jeep drove away. Responding police officers heard a flash message describing the Jeep, and they observed and curbed the vehicle. Defendant was in the front passenger seat. A blue Yankees cap on the Jeep dashboard and a black hooded sweatshirt on the front seat were recovered from the Jeep. The right cuff of the hooded sweatshirt was later determined to contain gunshot residue. Defendant and the driver were brought to 2302 South Damen for a show-up in which Baez identified defendant as the shooter. The parties stipulated that Danny died from multiple gunshot wounds: two to his back, one to the rear side of his right forearm, and one to the back of his right thigh.

¶ 6 At the conclusion of the trial, the jury found defendant guilty of first degree murder and aggravated battery with a firearm. The jury also found that defendant personally discharged the firearm proximately causing death to another person.

¶ 7 At the sentencing hearing, a jail corrections officer testified for the State that on April 28, 2011, he conducted a random search of the jail tier where defendant was housed while awaiting trial. The officer found concealed in defendant's trousers a paper clip with an end bent into a hook. Possession of such an item, used in the past as a makeshift handcuff key, was contrary to the rules of the jail. A victim impact statement from Danny's sister, Carolina Calderone, was read. In mitigation of sentence, defense counsel argued that defendant had a supportive family and a minimal criminal background. Defendant declined to make a statement in allocution.

¶ 8 The trial court stated it had read the presentence investigation (PSI) report. The report included defendant's age (he was 20 years old at the time of the offense) and his employment

history (he had worked construction and food service jobs since 2002). The report also included defendant's criminal record which the court noted was "somewhat minimal." The trial court noted that it had considered the evidence presented at trial, the evidence and arguments in aggravation and mitigation, and all of the statutory factors in aggravation and mitigation of sentence. For the first degree murder of Danny Calderon, the court sentenced defendant to 35 years plus a 25-year consecutive enhancement for personally discharging a firearm that proximately caused death to another person. As to the shooting of Maximino Aguero, the court also imposed a consecutive 15-year prison term for aggravated battery with a firearm. Defense counsel presented a motion to reconsider sentence, which the court denied. Defendant filed a timely notice of appeal.

¶ 9 On appeal, defendant contends that his aggregate prison sentence of 75 years, most probably a life sentence, is excessive on the grounds that it ignores important mitigating factors, namely, that he was only 20 years old at the time of the offenses, had an insignificant and nonviolent criminal history, and possessed a strong potential for rehabilitation. The State counters that defendant's sentences were appropriate where they were within the prescribed statutory ranges; his shooting the two victims in the back showed a callous disregard for human life; his gang affiliation supported the imposed sentences; his prior contacts with the criminal justice system, though minimal, had no discernible positive impact on him; and he violated jail rules while awaiting trial.

¶ 10 A trial court is accorded broad discretion in fashioning an appropriate sentence within the statutory limits prescribed by the legislature. *People v. Lindsey*, 2013 IL App (3d) 100625, ¶ 56; *People v. Lewis*, 243 Ill. App. 3 618, 631 (1993). A trial court's sentence is entitled to great

deference and weight because the trial court is in a superior position to make such a determination. *People v. Brazziel*, 406 Ill. App. 3d 412, 433 (2010). Absent an abuse of discretion, the sentence imposed by the trial court may not be altered upon review. *People v. Dizon*, 297 Ill. App. 3d 880, 890 (1998); *People v. Norton*, 244 Ill. App. 3d 82, 86 (1992).

When imposing sentence, a trial court should consider the statutory factors in mitigation and aggravation set forth in sections 5-5-3.1 and 5-5-3.2 of the Unified Code of Corrections. 730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2012). The sentencing factors include the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education. *People v. Willis*, 2013 IL App (1st) 110233, ¶ 123. If mitigating evidence is presented to the trial court, we must presume, absent some indication to the contrary other than the sentence itself, that the court considered it. *Id.* It is not this court's function to weigh the sentencing factors differently and substitute our judgment for that of the trial court. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010).

¶ 11 Here, defendant was convicted of first degree murder, which provides a sentence range of 20 to 60 years (730 ILCS 5/5-4.5-20(a)(1) (West 2012)), plus a mandatory enhancement of 25 years or up to a term of natural life where defendant personally discharged a firearm that proximately caused the death of another person (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012)). Thus, as to the murder conviction, defendant was subject to a sentence ranging from a minimum of 45 years up to a maximum of life in prison. Aggravated battery with a firearm (720 ILCS 5/12-4.2 (West 2008)), with which defendant was charged, was a Class X offense. Subsequently repealed in 2011¹ and incorporated into the aggravated battery statute as aggravated battery

¹ Repealed by P.A. 96-1551, Art. 5, sec. 5-6, eff. July 1, 2011.

based on use of a firearm (720 ILCS 5/12-3.05(e) (West 2012)), at defendant's sentencing, this offense remained a Class X felony with the same sentencing range in effect at the time of the 2008 offense, punishable by not less than 6 years and not more than 30 years (730 ILCS 5/5-4.5-25(a) (West 2012)). For this offense, the imposed sentence of 15 years was closer to the minimum than the maximum possible sentence. The sentences the court imposed were within the statutory guidelines, and we will not reduce a sentence within those guidelines absent an abuse of discretion. *People v. Blackwell*, 325 Ill. App. 3d 354, 361 (2001); *People v. Dinwiddie*, 299 Ill. App. 3d 636, 647 (1998); *People v. Rivera*, 251 Ill. App 3d 375, 381 (1993).

¶ 12 Defendant argues that the 75-year aggregate sentence he received is excessive in light of his youth, work history, minimal criminal background, and substantial rehabilitative potential, and that the trial court failed to give sufficient consideration to those mitigating factors. However, it is presumed that the trial court properly considered all sentencing factors and rehabilitative potential presented, and the burden is on the defendant to affirmatively show otherwise. *Brazziel*, 406 Ill. App. 3d at 434. Defendant cites his youth and immaturity as an important mitigating factor. He also asserts his criminal history prior to the October 2008 crimes at issue here was non-violent. It consisted of an arrest in September 2007 for possession of alcohol resulting in a three-month period of supervision, an arrest in October 2007 for drinking in a public way resulting in a six-month supervision term, and a September 2008 arrest for driving under the influence of alcohol resulting in a guilty plea and 40-day jail sentence.

¶ 13 With respect to defendant's age, the State responds that defendant was a 20-year-old adult, not a juvenile. We find no indication in the record that the trial court ignored the factor of defendant's age in sentencing him. Moreover, when the trial court determines that a severe

sentence is warranted, defendant's age has little import. *People v. Rivera*, 212 Ill. App. 3d 519, 526 (1991). As to defendant's minimal criminal record, the State contends that his contacts with the criminal system had no discernible positive impact on him. The State notes that, while awaiting trial, defendant was found in possession in the jail of a makeshift handcuff key. The State also asserts that defendant's gang affiliation was a factor a trial court may consider in aggravation of sentence. See *People v. Spears*, 256 Ill. App. 3d 374, 382-83 (1993); 730 ILCS 5/5-5-3.2(15) (West 2012).

¶ 14 The State also argues that the sentence imposed was warranted by the circumstances of the offense. Citing *People v. Weatherspoon*, 394 Ill. App. 3d 839, 862 (2009), the State contends that the seriousness of the crime for which a defendant is convicted is considered the most important factor in fashioning a sentence. We are aware of a number of authorities stating that proposition. See, e.g., *People v. Willis*, 2013 IL App (1st) 110233, ¶ 123; *People v. Blackwell*, 325 Ill. App. 3d 354, 361 (2001). Defendant demurs, contending there is no established precedent for that statement of law and that our supreme court has never elevated the seriousness of the offense above other sentencing factors. Nevertheless, it is beyond dispute that the seriousness of a crime is an important factor to be considered in imposing sentence. *People v. Golden*, 323 Ill. App. 3d 892, 905 (2001). The trial court is not required to accord greater weight to defendant's rehabilitation potential than the seriousness of the crime. *Lindsey*, 2013 IL App (3d) 100625, ¶ 59; *Blackwell*, 325 Ill. App. 3d at 361. The gravity and the circumstances of the offense are among the factors the trial court may consider when determining a sentence. *Buchanan*, 211 Ill. App. 3d at 323. The circumstances in the instant case included the fact that both Danny and Aguero were the unarmed victims of a surprise attack (see *People v. Sims*, 403

Ill. App. 3d 9, (2010)), and both victims were shot in the back (see *Golden*, 323 Ill. App. 3d at 905. The murder of Danny Calderon in particular was an unjustifiable and pointless killing of an innocent 15-year-old youth on a public street. See *People v. Salgado*, 287 Ill. App. 3d 432, 448 (1997).

¶ 15 Before sentencing defendant, the trial court stated it had considered all of the statutory factors in aggravation and mitigation of sentence. We find no evidence in the record that the court gave insufficient weight to the factors in mitigation of sentence which defendant urges for our consideration, and we conclude those factors do not suggest significant potential for rehabilitation.

¶ 16 As authority for his claim that the mitigating factors warrant a reduction of his sentence, defendant relies on several cases in which the trial court was found to have abused its discretion by imposing an excessive sentence. While we have examined those authorities, our supreme court has rejected the use of comparative sentencing from separate, unrelated cases as a basis that a particular sentence is excessive or that the sentencing court abused its discretion. *People v. Fern*, 189 Ill. 2d 48, 62 (1999).

¶ 17 In conformity with the above principles, we conclude the trial court did not abuse its discretion in sentencing defendant to 60 years in prison for first degree murder as enhanced and a consecutive term of 15 years for aggravated battery with a firearm. The judgment of the trial court is affirmed.

¶ 18 Affirmed.