

No. 1-13-0887 and 1-13-0888
(CONSOLIDATED)

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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.)	Nos. 11 CR 13754
)	11 CR 15059
)	
RAUL RODRIGUEZ,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice Gordon and Justice McBride concurred in the judgment.

O R D E R

¶ 1 **Held:** The trial court did not abuse its discretion in imposing consecutive prison terms and the sentences are not excessive.

¶ 2 Following separate bench trials, defendant Raul Rodriguez was convicted of two counts of aggravated battery in case No. 11 CR 15059 and four counts of aggravated battery in case No. 11 CR 13754. He was sentenced to a 5-year term of imprisonment on each case, with the

sentences to be served consecutively, for a total of 10 years in prison. On appeal, defendant contends that the trial court abused its discretion in sentencing him to consecutive prison sentences and that the sentences he received are excessive.

¶ 3 For the reasons that follow, we affirm.

¶ 4 The victim in case No. 11 CR 13754 was 14-year-old Ramon Franco. Franco testified that on the afternoon of May 22, 2011, he was walking to the corner store when he saw a friend from elementary school in the passenger seat of a van. The friend called to Franco, who walked toward the van. As Franco approached, the friend and three men Franco did not know jumped out of the van. He identified defendant as one of the men in a lineup and in court. Franco testified that one or two of the other men was holding a bat. The men chased Franco, saying things like "Get that motherfucker, beat the shit out of that nigger." Someone hit Franco in the head with a bat, and defendant grabbed the back of Franco's collar and threw him to the ground. Franco testified that he blacked out at that point, and the next thing he remembered was waking up on the ground, hearing an ambulance, and his uncle telling him not to get up. Franco spent the night in the hospital and was treated for a fractured orbital bone and bruising of internal organs. He testified that he was unable to finish 8th grade that spring because he injured his knee when he fell and could not walk.

¶ 5 Donald Pierson testified that around 5:30 p.m. on May 22, 2011, he was in a car, on his way to fix a friend's laptop, when he pulled up at a stop sign. He saw a young man, later identified as Ramon Franco, walk toward a van that was stopped at the corner. Four men jumped out of the van, some of them holding baseball bats. Pierson identified defendant as one of the men in a photo array, in a lineup, and in court. Defendant did not have a bat. Franco ran, and one of the men swung a bat at him. Defendant caught Franco, threw him to the ground, and

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started hitting him with his fists and kicking him. Pierson estimated that defendant struck Franco 10 or 15 times while the other men beat Franco with bats. The men were repeatedly yelling, "Kill the motherfucker."

¶ 6 Pierson testified that as the beating continued, the van started driving away. Pierson followed the van to read its license plate. The van went around the block, picked up the men who had been beating Franco, and then drove away. Pierson turned his attention to Franco, who was "in really bad shape." He asked a woman who had come out of her house to call the police and stayed with Franco until the police and an ambulance arrived.

¶ 7 The victims in case No. 11 CR 15059 were Carlos Perez and Diane Matamoros. At trial, Perez testified that about 9:15 p.m. on July 5, 2011, he and Matamoros, his girlfriend, were outside her house, leaning on his car and talking. A car pulled up next to them and the driver called out, saying, "Hey, what you is, drop the fork." After Perez said nothing in reply, the driver started screaming, saying things to the effect of, "Hey, motherfucker, I am talking to you, what you is and drop this and drop that." When Perez continued to ignore the driver, the driver told the car's passengers to get out and "get them motherfuckers, get 'em." Three men got out of the car and surrounded Perez and Matamoros. While defendant, whom Perez identified in a photo array and in court, stood nearby holding a bat, the other two men grabbed Perez and Matamoros by their shirts and pulled off the chains they were wearing around their necks. One of the men punched Matamoros in the face twice, causing the side of her face to swell and bruise, and the third man punched Perez once, giving him a black eye. Defendant and the other two men then got back into the car, which drove away.

¶ 8 Diane Matamoros testified that on the evening in question, she and Perez were standing near Perez's car outside her house when a car pulled up beside them and the driver started

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"saying some kind of gang signs" to Perez. When Perez responded, "I don't know, I am nothing," the driver told his three passengers to get out of the car. One of the men took the chain from her neck and hit her in the face, causing it to swell; another hit Perez. A third man was holding a bat. Matamoros testified that the three men then returned to the car and drove away from the scene.

¶ 9 The trial court convicted defendant of two counts of aggravated battery in case No. 11 CR 15059 and four counts of aggravated battery in case No. 11 CR 13754.

¶ 10 At the sentencing hearing, the trial court indicated that it had before it a presentence investigation report. Defense counsel argued in mitigation that defendant had "no background" and enjoyed the support of a good, hard-working family, in particular, parents who had been present for each and every court date. In aggravation, the prosecutor reminded the trial court of the violent nature of the offenses and defendant's apparent lack of remorse. The court sentenced defendant to a 5-year term of imprisonment on each case, with the sentences to be served consecutively, for a total of 10 years in prison.

¶ 11 On appeal, defendant contends that the trial court abused its discretion in sentencing him to consecutive prison sentences. He argues that the court did not set out a legitimate basis for imposing consecutive sentences and that the record does not support the "bare finding" that consecutive sentences were necessary for the protection of the public. He further argues that the sentences are excessive because they are disproportionate to the nature of the offenses and the trial court did not adequately consider the factors in mitigation.

¶ 12 Sentencing decisions are entitled to great deference on appeal because the trial court is in a superior position to fashion an appropriate sentence based on firsthand consideration of relevant sentencing factors, including the defendant's credibility, demeanor, moral character,

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mentality, social environment, habits, and age. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). We will not disturb a sentencing determination absent an abuse of discretion. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). Sentences within the permissible statutory range may be deemed the result of an abuse of discretion only where they are "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 13 Here, the record indicates that the trial court was well aware of the mitigating factors identified by defendant on appeal. The information regarding defendant's age, family support, and criminal history was included in the presentence investigation report considered by the trial court. In addition, defense counsel noted defendant's supportive family and lack of significant criminal history in mitigation. Where mitigating evidence has been presented, it is presumed that the trial court considered it. *People v. Sven*, 365 Ill. App. 3d 226, 242 (2006).

¶ 14 In contrast to the mitigation presented, in aggravation, the State noted that defendant had displayed no remorse for his behavior and reminded the trial court of the violent nature of the offenses, which occurred within two months of each other.

¶ 15 On each case, the trial court sentenced defendant to five years' imprisonment, a term within the permissible statutory range for aggravated battery, which is two to five years. 720 ILCS 5/12-3.05(h) (West 2010); 730 ILCS 5/5-4.5-40 (West 2010). The record indicates that the trial court properly considered the evidence in aggravation and mitigation. Given the facts of the cases, the interests of society, and the trial court's consideration of relevant aggravating and mitigating factors, we cannot find that defendant's sentences are "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense."

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Stacey, 193 Ill. 2d at 210. Accordingly, we find no abuse of discretion in the length of defendant's sentences.

¶ 16 As to the consecutive nature of the sentences, a trial court may impose consecutive sentences where, "having regard to the nature and circumstances of the offense and the history and character of the defendant, it is the opinion of the court that consecutive sentences are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record." 730 ILCS 5/5-8-4(c)(1) (West 2010).

¶ 17 Here, the trial court stated on the record that it found defendant was a danger to the community and a danger to the public. In making that finding, the court noted that defendant had been convicted in two separate cases where he was part of a predatory group, "beating up on people *** for no good reason other than you want to be tough and be violent." After hearing argument on defendant's motion for reduction of sentence, the trial court again noted that defendant had been convicted for two incidents and reiterated its finding that defendant was "a danger, a menace to society." The court denied the motion, observing that defendant had not acted on impulse, but rather, was a predator, and stating that it had an obligation to protect the public to the extent that it could.

¶ 18 Thus, the trial court set forth clear considerations explaining why the imposition of consecutive sentences was necessary to protect the public from further criminal conduct by defendant. The court's conclusion is consistent with the record and, therefore, is not an abuse of discretion. See *Stacey*, 193 Ill. 2d at 211 (affirming the imposition of consecutive sentences where the trial court concluded that doing so was necessary to protect the public from the defendant's conduct).

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¶ 19 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.