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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08-CF-3628
)	
ERNEST J. HUGHES,)	Honorable
)	Daniel B. Shanes,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to 22 years' imprisonment for home invasion: the sentence was justified by the seriousness of the offense and defendant's criminal history, which undermined his claim that the sentence did not reflect his rehabilitative potential.

¶ 1 Defendant, Ernest J. Hughes, pleaded guilty to home invasion (720 ILCS 5/12-11(a)(2) (West 2008)) and was sentenced to 22 years' imprisonment. He appeals, contending that the sentence was an abuse of discretion given his strong rehabilitative potential and his sincere expression of remorse. We affirm.

¶ 2 Defendant was charged with first-degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) and home invasion for an incident in which he and four codefendants forcibly entered the home of Bernard Phillips, hoping to steal money and drugs. Phillips was killed when he resisted.

¶ 3 After seven months in custody, defendant reached a deal with prosecutors to plead guilty to home invasion and testify against his codefendants in exchange for the dismissal of the murder charge.

¶ 4 Defendant's proffered testimony was that on August 25, 2008, he and the codefendants, all gang members, went to Phillips' house. All five men entered the house and searched for money and drugs. When Phillips became angry, defendant fired a shot into the floor, then escaped out of a window. As he was running, he heard two or three gunshots coming from the kitchen. As he climbed out the window, he realized that he had dropped his cell phone inside the house. He went back in but could not retrieve the phone.

¶ 5 At the sentencing hearing, defendant's mother, Regina Hughes, testified that she had had a cocaine problem since defendant was born, although she had been clean for three years. While raising defendant and her three daughters, she had no support from their fathers. Defendant's father lived with the family until defendant was five years old. He had not seen him since. She had noticed tremendous changes in defendant since his arrest. Now his focus was on his children and other family members. She described defendant as a loving person who had been involved with "negative people."

¶ 6 Michelle McBride had known defendant since he was very young. Defendant referred to her as his aunt. She testified that defendant felt confused and abandoned when his father left. McBride had visited defendant in jail and had noticed a big change in him. Even before being arrested, defendant was attempting to turn his life around.

¶ 7 Melvinesha Tucker testified that she and defendant have three children together, ages 3, 5, and 7. The last child was born a week before defendant went to jail. Before being arrested, defendant participated fully in the children's lives. Taking care of three children without a job and without defendant's help was very difficult.

¶ 8 In allocution, defendant told the court that he felt deep sorrow for the victim's family and for the pain that he had caused them. He asked them for forgiveness. He stated that it was difficult growing up in and out of institutions due to his mother's drug addiction. He had no male role models except for the gang members in his neighborhood. Defendant realized that he had to come to terms with his life and the lives of his children. His most important goal was to be a good parent.

¶ 9 The presentence report showed numerous juvenile arrests and adjudications between 1995, when he was nine years old, and 2002. He was sentenced to the juvenile department of corrections in 2002 and released in 2005. In 1999 he tested positive for cocaine and cannabis.

¶ 10 Defendant's adult criminal history included convictions of loitering, unlawful possession of a controlled substance—including a felony, for which he was sentenced to one year in prison—trespassing, possession of a firearm without a FOID card, occupying a drug premises, speeding, and two instances of driving while his license was suspended.

¶ 11 Noting that the offense caused serious harm, in that the victim died, and that defendant had two prior felony convictions, the trial court sentenced him to 22 years' imprisonment. The court denied his motion to reconsider the sentence.

¶ 12 Defendant did not file a timely notice of appeal, apparently because defense counsel forgot. On November 21, 2012, the trial court granted defendant leave to file a late notice of appeal. On July 5, 2013, the supreme court issued a supervisory order, directing this court to

allow the November 21, 2012, notice of appeal to stand as a valid notice of appeal. Thus, we have jurisdiction.

¶ 13 Defendant argues that the 22-year sentence was an abuse of discretion. He contends that his decision to come forward and testify against his codefendants, who were all fellow gang members, demonstrates his rehabilitative potential. He also points to his difficult upbringing, with a mother who abused drugs and a father who abandoned the family when defendant was young, his commitment to his family, and his participation in programs while in jail awaiting trial. He further points to his sincere expression of remorse for the surviving victims.

¶ 14 We will not overturn a sentence within the statutory limits absent an abuse of discretion. *People v. Perruquet*, 68 Ill. 2d 149, 153 (1977); *People v. Stroup*, 397 Ill. App. 3d 271, 274 (2010). An abuse of discretion occurs only where a sentence is at great variance with the spirit and purpose of the law or where it is manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). Because the trial court is in a superior position to evaluate the defendant's credibility and demeanor and to balance the various factors in aggravation and mitigation, we may not overturn a sentence merely because we might have weighed the pertinent factors differently. *Stacey*, 193 Ill. 2d at 209.

¶ 15 In sentencing a defendant, the trial court must consider the character and circumstances of the offense itself (*People v. Bowman*, 357 Ill. App. 3d 290, 304 (2005)) and the defendant's character, criminal history, mentality, social environments, habits, age, future dangerousness, and potential for rehabilitation (*People v. Thompson*, 222 Ill. 2d 1, 35 (2006)). "Of all these factors, the seriousness of the offense has been called the most important." *People v. McGowan*, 2013 IL App (2d) 111083, ¶ 11.

¶ 16 Here, the offense was extraordinarily serious, as defendant and his codefendants broke into Phillips' home with his wife and children present and killed him. Defendant was indicted for first-degree murder, but the State dismissed the charge in exchange for defendant's guilty plea.

¶ 17 Nevertheless, defendant insists that his decision to plead guilty and testify against his codefendants demonstrates his rehabilitative potential. However, it is equally likely that defendant took these actions in exchange for a generous plea bargain. As noted, the State dismissed a first-degree murder charge. It also amended the home invasion charge so that defendant would be eligible for day-for-day credit. Thus, defendant could serve as few as 11 years, barely half the minimum sentence he would have faced had he been convicted of first-degree murder.

¶ 18 The other factors defendant cites as evidencing his rehabilitative potential similarly do not persuade us to alter the sentence. That defendant expressed interest in supporting his family, participated in programs while in jail, and expressed remorse for his actions is laudable, but such actions are not uncommon for defendants in jail awaiting sentencing. Ultimately, defendant's claim of rehabilitative potential is dubious given his criminal history. Defendant has had nearly continuous contact with the criminal justice system since shortly before his ninth birthday. He reported that he began smoking marijuana at age 9 and drinking alcohol at 12. He has never held a job.

¶ 19 Moreover, the trial court expressly considered the mitigating factors that defendant cites. To disturb the sentence would require us to reweigh those factors, which we may not do. *Stacey*, 193 Ill. 2d at 209.

¶ 20 The judgment of the circuit court of Lake County is affirmed.

¶ 21 Affirmed.