

No. 1-12-3241

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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.)	No. 08 CR 182
)	
BENNIE CASEY,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court did not abuse its discretion in imposing a sentence of 45 years' imprisonment for first degree murder.

¶ 2 Following a jury trial, defendant Bennie Casey was convicted of first degree murder and sentenced to 45 years in prison. On appeal, defendant contends that his sentence is excessive. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from the November 18, 2007, shooting death of Derrick Smith. Defendant and codefendant William Anderson, who is not a party to this appeal, were

tried for Smith's murder in separate but simultaneous jury trials.¹ The State's theory of the case was that the victim, a drug dealer, was shot by members of a rival gang as retaliation for an earlier beating inflicted by the victim's fellow gang members.

¶ 4 At trial, Erick Smith, the victim's identical twin, testified that the victim had been a member of the Four Corner Hustler street gang. According to Erick, around the time of the shooting, the Four Corner Hustlers were "into it" with the Gangster Disciple Travelers street gang. In particular, defendant, a Gangster Disciple Traveler, had been "feuding back and forth" with a Four Corner Hustler known as Rooster. Erick testified that at some point, some Four Corner Hustlers had "jumped on" defendant, "one thing led to another, it was a retaliation, and the retaliation was the cause of my brother's death."

¶ 5 Terrance Bridges, the victim's cousin, testified that an incident involving defendant and two Four Corner Hustlers took place the day before the shooting. According to Bridges, a Four Corner Hustler himself, he witnessed a fight between defendant, Rooster, and another Four Corner Hustler. Bridges tried to break up the fight but was unsuccessful. At some point during the fight, Rooster kicked out defendant's car window. Eventually, defendant broke away from the fight and fled.

¶ 6 Erick Smith was a witness to his brother's shooting. He testified that early on the morning in question, he and the victim were in a second-floor stairwell landing at 1936 West Washington, a building located in the Chicago Housing Authority's now-demolished Henry Horner Homes. The brothers smoked marijuana while the victim sold crack cocaine. Around 5:30 a.m., Erick

¹ Codefendant's conviction and sentence were affirmed in *People v. Anderson*, 2013 IL App (1st) 102852-U.

went downstairs to leave and came upon defendant and codefendant in the hallway on the ground floor. Defendant grabbed Erick's collar, pointed a Tec-9 semiautomatic pistol toward his stomach, and said, "Get the fuck out of the building." Erick left the building, but returned immediately once he realized the victim was still inside. Upon returning, he saw defendant fire his gun at the victim, who fell. Erick ran from the building. Codefendant, who had been standing next to defendant during the shooting, pursued Erick but ran into a pole. Defendant also chased Erick. As defendant ran, he pointed his gun at Erick and said, "I better not hear shit else about this." Defendant then ran from the scene.

¶ 7 Tongula Ayers testified that she bought heroin from the victim a few minutes before he was killed. After talking to the victim and Erick for about a minute, she went down to the ground floor to ingest the drugs and meet her friend Shanice Wright, who had been calling out to her. She saw defendant and codefendant entering the building, each holding a gun. When the men ordered Ayers and Wright out of the building, they left, but Ayers remained close to the building because she wanted to retrieve her bicycle, which was inside. Ayers testified that she saw Erick run out of the building, but then go back inside. She then heard one gunshot and saw defendant and codefendant run out of the building. Erick also ran from the building, yelling, "They shot my brother." Ayers stated that she rode her bike to a nearby fire station for help.

¶ 8 Shanice Wright testified that while she waited for Ayers on the ground floor of the building, she encountered defendant and codefendant, both of whom were armed. Codefendant pointed his gun at her and told her to be quiet. When Ayers got downstairs, codefendant ordered them to leave the building. Wright testified that she left, but Ayers stayed behind because she did not want to leave her bicycle.

¶ 9 The parties stipulated that if called as a witness, the medical examiner who performed the victim's autopsy would testify that the cause of the victim's death was a gunshot wound to his neck, and the manner of death was homicide.

¶ 10 Defendant did not testify.

¶ 11 The jury found defendant guilty of first degree murder. Thereafter, the trial court heard arguments on defendant's *pro se* claim of ineffective assistance of counsel, his motion for new trial, and his amended motion for new trial. The trial court denied all of the motions.

¶ 12 At the opening of defendant's sentencing hearing, both defense counsel and the prosecutor indicated that they had no corrections to the presentence investigation report, and the prosecutor read a victim impact statement written by the victim's mother. In aggravation, the prosecutor advised the trial court that defendant had received probation as a juvenile for possession of a stolen motor vehicle; that while on probation, he was charged with delivery of cocaine; that defendant was given probation a second time; and that when he violated probation again, he was sentenced to four years in prison. The prosecutor further advised the court that in 2005, defendant was convicted of a gun offense and sentenced to three years' imprisonment, and that it was while he was on parole for that conviction that he committed the murder at issue. The prosecutor also noted that the trial court had "excellent recall" of the facts of the case, that the victim was killed to exact revenge, and that defendant had portrayed himself as "some sort of a victim of multiple attorneys."

¶ 13 In mitigation, defense counsel advised the trial court that defendant's mother was a drug abuser, and that as a result, the Department of Children and Family Services separated defendant and his siblings when he was 12. Defense counsel stated that defendant had "some redeeming

points left in him" and asked the court for mercy. Defendant then addressed the court, stating that he was truly sorry about the victim's death, but denying that he murdered him.

¶ 14 The trial court sentenced defendant to 45 years in prison and subsequently denied his motion to reconsider sentence. Defendant appeals.

¶ 15 On appeal, defendant contends that his sentence is excessive. He argues that the trial court abused its discretion in imposing sentence because it failed to fully consider all the factors in mitigation. In particular, defendant argues that his minimal criminal background, history of steady employment, high school equivalency diploma, and supporting family, including four minor children, all indicate his rehabilitative potential. Defendant asks this court to either reduce his sentence or remand for resentencing.

¶ 16 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, 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. Rogers*, 197 Ill. 2d 216, 223 (2001); see also *People v. Valadovinos*, 2014 IL App (1st) 130076, ¶ 48. 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).

¶ 17 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 criminal background, employment history, education, and family support was included in the presentence investigation

report considered by the trial court. 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).

¶ 18 The trial court sentenced defendant to 45 years' imprisonment, a term within the permissible statutory range for first degree murder of 20 to 60 years. 730 ILCS 5/5-4.5-20(a)(1) (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." *Stacey*, 193 Ill. 2d at 210. Accordingly, we find no abuse of discretion in the length of defendant's sentence.

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

¶ 20 Affirmed.