

No. 1-12-3697

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 7139
	)	
PARISH ALLEN,	)	Honorable
	)	Angela Munari Petrone,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ELLIS delivered the judgment of the court.  
Justices Howse and Cobbs concurred in the judgment.

**O R D E R**

- ¶ 1 *Held:* Defendant's 23-year sentence for Class X felony of predatory criminal sexual assault of child affirmed. Sentence fell within applicable sentencing range and record established that trial court considered mitigating factors emphasized on appeal.
- ¶ 2 Following a bench trial in 2009, defendant Parish Allen was convicted of the Class X felony version of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2004)) and was sentenced to 23 years in prison. On appeal, defendant contends his sentence is excessive because he had no prior felony convictions, he had served no time in prison, and the

sentence was almost four times greater than the minimum six-year term for a Class X offense.

Defendant raises several additional arguments in support of a lower sentence and asserts the aggravating sentencing factors set out by statute do not support a 23-year prison term. We affirm.

¶ 3 Defendant was charged with two counts of predatory criminal sexual assault of a child, five counts of aggravated criminal sexual assault, and four counts of criminal sexual assault. To summarize the evidence presented at trial, Dawn Turnage testified that her son, G.D., told her that defendant sexually assaulted him on July 11, 2005, while Turnage was not at home. Turnage and defendant lived in an apartment at 5024 West Quincy in Chicago with their two children, and Turnage's three children from other relationships, including G.D., who was nine years old at that time.

¶ 4 Turnage said she and defendant argued frequently, and defendant had moved out of the apartment the previous month. Between 10 and 11 a.m. on July 11, defendant arrived at the apartment to watch the children at Turnage's request. Turnage testified that she left the apartment for two hours.

¶ 5 G.D. testified that, after his mother left, defendant told him to lie on the bed and pull his pants down, at which time defendant assaulted G.D. anally. Defendant told G.D. to be quiet and struck him on his buttocks and back with a belt to keep him silent during the sexual assault. G.D. told his mother what happened when she got home. G.D. testified that defendant had assaulted him the same way on at least two previous occasions. Medical testimony showed that G.D. had an anal tear consistent with his account. DNA tests revealed sperm stains on the child's underwear that matched defendant.

¶ 6 Defendant testified that on the day in question, he was bathing the children when Turnage returned home. They argued after Turnage accused him of sleeping with another woman.

Defendant testified that he then left the house and did not return to the apartment for several days. Defendant denied assaulting G.D. or striking him with a belt. Other witnesses, including defendant's family members, testified that Turnage framed defendant in the assault of G.D. because she was upset with him. Defendant testified that he and Turnage ended their relationship in September or October 2005, at which point he moved to Mississippi.

¶ 7 In finding defendant guilty of two counts of predatory criminal sexual assault, the trial court found G.D.'s testimony was credible, finding no signs that his testimony was rehearsed or fed to him by adults, and noting that his testimony was "not impeached on any substantive fact" and was "corroborated by the other evidence." The court merged defendant's convictions into a single count.

¶ 8 At sentencing in 2010, the State asserted, among other things, that defendant should receive an extended-term sentence based on his lack of regard for G.D.'s physical and psychological well-being. The trial court denied defendant's motion and heard arguments in aggravation and mitigation of defendant's sentence. The State provided to the court a written victim impact statement prepared by Turnage.

¶ 9 In mitigation, defense counsel urged the court to consider defendant's lack of a criminal background. The court noted that it had received defendant's pre-sentence investigation (PSI) report and that defendant's criminal history included a previous charge of aggravated criminal sexual assault that was stricken with leave to reinstate.

¶ 10 The court further stated:

"The defendant had a good childhood, he never experienced any physical, sexual or mental abuse, no involvement with [the Department of Children and Family Services], no family history of alcohol although he said there was substance abuse by his mother, that he had lived with his grandmother for the past 25 years as an adult []. He has 6 children from 4 different relationships, the oldest being age 8. It doesn't state here that he lived with any of the mothers of the children or that he provided any financial support to any of the children. The defendant dropped out of high school; however, he was employed. He said that he was the general manager at a Dunkin Donuts and then he left the State and worked in Brookhaven, Massachusetts at Lincoln Residential Center. He also worked in Cracker Barrel in Mississippi earning \$5.15 an hour.

I do want to add when the defendant was confronted here with the allegations the evidence was that he fled the state, that he left his own children and their mothers and they had no contact with him right after this allegation was made, and the police were not able to find him and he didn't come back to the State of Illinois for quite some time. That flight right at that exact moment that the allegation was made can also be construed as evidence of guilt. But I will also say that it worked to the defendant's favor that although he was making a lot of money [*sic*] he was employed while he was here in Illinois and he was employed while he was in Mississippi.

The defendant described his current health condition as good and [is] not taking any prescription medications, never had a serious illness or communicable disease. The defendant said he was never diagnosed with a psychological or behavioral or learning

disorder, never prescribed psychotropic medication, not feeling the need for any alcohol or substance abuse, not have [*sic*] any military background, liking to play video games."

¶ 11 The court asked defendant if he would like to make a statement in allocution, and the following exchange took place:

"DEFENDANT: Well, your Honor, I would just like to say that I do understand that I was found guilty, your Honor. I would just like to ask that you please take into consideration the fact that I was here in Cook County jail for three years and three months with no disciplinary actions that were taken against me. I'm not a bad person. When I did go to Mississippi I was living with my oldest daughter and my youngest son's mother. I love to work, that's something that I like to do, and I would just please ask the Court that – to please just give me another chance just [to] be in society. Thank you.

THE COURT: Anything else, Mr. Allen, or is that it?

DEFENDANT: No. And just try to get back out there to my kids and my family.

THE COURT: Okay. Thank you."

¶ 12 After hearing defendant's statement, the court noted he still had "expressed no concern at all to his support for [G.D.], the victim in this case." The court went on to state:

"The aggravation here are the facts of the arrest, the case really, the anal sexual assault [] needs to be called rape of a little boy, the assault that led to a tear of his anus and to the violations of the trust that the little boy [G.D.] had in the defendant. The defendant has many children. He does seem like he cared for some of them sometimes, he was working. One of the children, [G.D.], is the child that he abused. I'm not holding it against the defendant the fact that every one of his witnesses came into this court and

lied. That's not to be held against the defendant. I didn't believe for a minute that the DNA was planted on the child's underwear in an attempt to frame the defendant but I'm not holding that against the defendant either.

I'm looking at the facts of the case, and the fact that defendant has expressed no remorse whatsoever for what happened to the little boy, however, I don't think that [an] extended term [sentence] is applicable because the defendant is employed and has no substantive criminal background. There is some mitigation here. The defendant will be sentenced to a term of 23 years in the Illinois Department of Corrections. He was facing up to 60 years extended term."

¶ 13 Defendant filed a motion to reconsider his sentence, which the trial court denied, noting that it had taken "into account the defendant's lack of criminal background when [it] imposed sentence." The court also read a portion of Turnage's victim impact statement in which she said G.D. was "unable to get the memory of what [defendant] did to him out of his head."

¶ 14 On appeal, defendant contends the trial court abused its discretion in sentencing him to a 23-year term. We first address defendant's assertion that the trial court was mistaken as to the applicable sentencing range.

¶ 15 Defendant was subject to a sentence ranging between 6 and 60 years in prison. Defendant was convicted of predatory criminal sexual assault of a child based on an act of sexual penetration between defendant and a child less than 13 years old. 720 ILCS 5/12-14.1(a)(1) (West 2004). At the time of the crime, that offense was a Class X felony, which carried a sentence of 6 to 30 years in prison. 720 ILCS 5/12-14.1(b)(1) (West 2004); 730 ILCS 5/5-8-1(a)(3) (West 2004).

¶ 16 In addition, the trial court had the authority to impose an extended-term sentence of up to 60 years on defendant for the commission of that Class X felony under section 5-8-2(a)(2) of the Unified Code of Corrections (730 ILCS 5/5-8-2(a)(2) (West 2004)), because defendant was convicted of predatory criminal sexual assault of a child, and the victim was under the age of 18 at the time of the commission of the offense. 730 ILCS 5/5-5-3.2(c) (West 2004); see also *People v. Summers*, 353 Ill. App. 3d 367, 376-77 (2004) (extended-term sentence for predatory criminal sexual assault of child was permissible because legislature intended to allow court to consider victim's age as aggravating sentencing factor). The same range applied when defendant was sentenced in 2010. 720 ILCS 5/12-14.1(a)(1) (West 2010), now codified at 720 ILCS 5/11-1.40 (West 2014).

¶ 17 The record of defendant's sentencing hearing indicates that the trial court properly referred to its ability to impose a sentence of "up to 60 years extended term." In his reply brief, defendant concedes that, under *Summers*, he was eligible for an extended-term sentence. Thus, though the trial court chose not to impose that extended term, the record shows that the court considered the applicable sentencing range.

¶ 18 We now turn to defendant's specific challenges to the court's imposition of his 23-year prison sentence. Defendant first contends that the statutory aggravating factors do not support a 23-year sentence, and that his rehabilitative potential and lack of a serious criminal history weigh in favor of a shorter term.

¶ 19 Defendant contends that several mitigating factors relating to his background demonstrate his rehabilitative potential and support a lesser sentence. He points out that he had no prior felony convictions and had not previously been sentenced to prison. He emphasizes that he was

22 years old at the time of the offense, had been steadily employed, and did not abuse drugs or alcohol or participate in a gang. Furthermore, defendant argues that a 23-year sentence was excessive for this offense because his criminal act was "very brief in duration" and "did not involve conduct beyond the basic elements of the offense."

¶ 20 A reviewing court may not alter a defendant's sentence absent an abuse of discretion by the trial court. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). Where a sentence imposed is within the statutory range, this court can find an abuse of discretion only when the sentence is "greatly at variance with the purpose and spirit of the law." *People v. Sharp*, 2015 IL App (1st) 130438, ¶ 134 (quoting *People v. Center*, 198 Ill. App. 3d 1025, 1032 (1990)). We defer to the trial court's judgment on sentencing because the lower court, "having observed the defendant and the proceedings, has a far better opportunity to consider [sentencing] factors than the reviewing court, which must rely on the 'cold' record." *Alexander*, 239 Ill. 2d at 212-13 (quoting *People v. Fern*, 189 Ill. 2d 48, 53 (1999)). The trial court is in a superior position to weigh the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Stacey*, 193 Ill. 2d 203, 209 (1999). The trial court is thus far better suited to balance the need to protect society against the rehabilitative potential of the defendant. *Sharp*, 2015 IL App (1st) 130438, ¶ 133.

¶ 21 We will not reweigh the factors considered by the trial court, even if we would have balanced them differently. *Stacey*, 193 Ill. 2d at 209. Nor will we find that a minimum sentence is necessarily warranted simply due to the presence of some mitigating factors. *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010); *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998).



¶ 22 The record of defendant's sentencing hearing reveals that each factor that defendant describes on appeal was presented to the trial court in mitigation of defendant's sentence. The trial court was in possession of defendant's PSI report, which detailed defendant's date of birth and criminal background and noted that he had not been part of a street gang. The court expressly acknowledged defendant's work history and lack of alcohol or substance abuse. Even if the court did not explicitly set out each factor it considered in mitigation of defendant's sentence, a presumption exists that a trial court weighed all relevant factors in determining a sentence. *Payne*, 294 Ill. App. 3d at 260; see also *Flores*, 404 Ill. App. 3d at 158 (such presumption can be overcome only with explicit evidence from record that mitigating factors were not considered by trial court).

¶ 23 In addition, the State presented evidence of several aggravating factors that supported the imposition of a term greater than the minimum, including the serious nature of the offense and the fact that defendant was G.D.'s stepfather. See 730 ILCS 5/5-5-3.2(a)(1), (a)(14) (West Supp. 2005). The sentencing court is not required to give greater weight to a defendant's rehabilitative potential than it affords the seriousness of the offense. *People v. Coleman*, 166 Ill. 2d 247, 261 (1995).

¶ 24 Defendant finally contends that the trial court erred in considering his lack of remorse as an aggravating factor in sentencing. He asserts that, because he maintained his innocence and presented a defense involving Turnage's desire to seek revenge, he should not have been expected to display remorse for the crime.

¶ 25 However, in the case on which defendant relies for that assertion, the Illinois Supreme Court stated the opposite point, holding that a lack of remorse "may properly be considered in

determining sentences". *People v. Ward*, 113 Ill. 2d 516, 529 (1986). Indeed, contrary to defendant's suggestion, the supreme court has long held that lack of remorse is a proper sentencing consideration. See also *People v. Albanese*, 102 Ill. 2d 54, 80-81 (1984); *People v. La Pointe*, 88 Ill. 2d 482, 501 (1981); *People v. Morgan*, 59 Ill. 2d 276, 282 (1974). The supreme court in *Ward* did caution that lack of remorse should not be "automatically and arbitrarily applied as aggravating factors" but, instead, must be evaluated "in light of all the other facts of the case." *Ward*, 113 Ill. 2d at 529. The court specifically noted the superior position of the trial court in placing the lack of remorse in context, including the fact that the trial court can see many things not apparent from a cold appellate record, such as the defendant's "tone of voice, facial expression and general demeanor." *Id.* at 530.

¶ 26 Here, the trial court did not mechanically consider defendant's lack of contrition. Rather, the court considered defendant's lack of remorse in conjunction with numerous factors in mitigation of defendant's sentence, as evidenced in the record, as well as the factors in aggravation. The court's reference to defendant's lack of remorse was not error.

¶ 27 The trial court applied the correct sentencing range, considered defendant's arguments in mitigation of his sentence, and noted appropriate aggravating factors in this case. We find no basis to disturb defendant's 23-year sentence and affirm the trial court's judgment.

¶ 28 Affirmed.