2015 IL App (1st) 130070-U

SIXTH DIVISION
May 1, 2015

No. 1-13-0070

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. 09 CR 10667
	)	
LAWRENCE SYKES,	)	Honorable
	)	Demenica A. Stephenson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 ***Held:*** We affirmed the judgment of the trial court over defendant's objections that he was provided ineffective assistance of trial counsel, as to possible *Lynch* evidence, and that his sentence was excessive in light of his mental health and criminal history, but we modified the fines and fees.

¶ 2 Following a bench trial, defendant Lawrence Sykes was convicted of first-degree murder and sentenced to 32 years' imprisonment. On appeal, defendant contends: (1) trial counsel was ineffective for failing to argue that evidence purporting to show the victim's aggressive nature was admissible under *People v. Lynch*, 104 Ill. 2d 194 (1984); his sentence is excessive in light of his mental-health status and his lack of significant and/or recent criminal background.

Defendant also raises issues as to the imposition of certain pecuniary fines and fees. We affirm the judgment of the circuit court, but vacate certain fees, and allow defendant credit for presentence custody against fines.

¶ 3 Defendant's conviction arose from a May 15, 2009, altercation which resulted in the stabbing death of Clemon Webb. The defense theory at trial was that Mr. Webb was the instigator and defendant stabbed him in self-defense.

¶ 4 Prior to trial, defendant's trial counsel filed a motion for a fitness hearing which attached an evaluation from clinical neuropsychologist Dr. Robert Hanlon, an associate professor of psychiatry and neurology at Northwestern University Feinberg School of Medicine. As set forth in his evaluation, Dr. Hanlon had concluded defendant was not fit to stand trial due to dementia caused by drug and alcohol abuse, schizophrenic-spectrum disorder, and low intellectual functioning. However, two State experts determined that defendant was fit to stand trial. Trial counsel subsequently filed a motion to withdraw the motion for a fitness hearing, which attached a later evaluation from Dr. Hanlon which set forth his findings that defendant's medication had been adjusted, and that he was now fit to stand trial. Nevertheless, the trial court held a fitness hearing and, ultimately, found defendant was fit to stand trial.

¶ 5 During opening statements, trial counsel asserted that Mr. Webb had produced a knife during an argument with defendant. Trial counsel stated that given the age and size disparity between the two men, "and certain other factors which will be brought out during the course of the trial *** [defendant] had no alternative but to defend himself at the time he was attacked by Mr. Webb."

¶ 6 Beatrice Gardner, testified that on May 15, 2009, she was 80-years old and she owned the

residence at 623 North Parkside Avenue in Chicago and had been married to 39-year-old Mr. Webb for five years. At the time of the incident, defendant had been renting a basement room for the past year, and others, including her daughters Kimberly Eaton and Patrice and Christina Mallett also lived at the residence.

¶ 7 On May 15, 2009, Mr. Webb drove Ms. Gardner home from work. Mr. Webb did not smell of alcohol and was not intoxicated. When they arrived at the residence at around 5 p.m., Ms. Mallett and defendant were standing there. Ms. Gardner, while still inside her vehicle, told them that she was going to raise their rent by $50-per-month. Defendant responded, "All right, okay, Miss B," then entered the basement of the residence. A short time later, defendant returned outside and motioned to Mr. Webb stating: "Come here, man. I want to speak to you." Defendant walked toward the front of the residence; Mr. Webb followed behind him. Ms. Gardner then got out of her vehicle and followed the two men. Defendant walked through the front gate and onto the sidewalk; Mr. Webb followed. Defendant told Mr. Webb that he had something for him. Defendant placed his hand into his jacket pocket, produced a knife, and stabbed Mr. Webb twice. The second strike of the knife hit Mr. Webb in the side; he fell forward, arms out, and knocked off defendant's glasses. Defendant fled down the street. Ms. Gardner brought Mr. Webb to the front stairs, screaming for Ms. Eaton. Ms. Eaton and Patrice came to the front yard with a towel and called for an ambulance. Mr. Webb was bleeding profusely from his wounds. While the women were waiting for the ambulance, defendant returned and began to search for his glasses and his cell phone in the grass and then he, again, fled down the street. An ambulance arrived and transported Mr. Webb to Loyola Hospital, where he died from his stab wounds.

¶ 8 Ms. Gardner identified various photographs: Mr. Webb's blood-soaked shirt; the towel; and defendant's glasses. Ms. Gardner stated that she did not see any weapons on her husband at the time of the incident and did not see him strike defendant. Ms. Gardner had never witnessed any confrontations between Mr. Webb and defendant prior to this incident; never heard Mr. Webb threaten defendant; and never heard defendant complain about Mr. Webb. On cross-examination, the court sustained objections to trial counsel asking Ms. Gardner about Mr. Webb's parole status at the time of the incident and whether he was required to complete anger management counseling.[1]

¶ 9 Kimberly Eaton, Ms. Gardner's daughter, testified that prior to the incident, Mr. Webb and Ms. Gardner were in their vehicle preparing to drive her to a friend's house, when defendant and Ms. Gardner began to have a conversation. Defendant then walked away and entered the basement of the residence. When defendant came back, he asked Mr. Webb to come over to him because he had something for him. Defendant led Mr. Webb from the back of the residence to the front with Ms. Gardner following Mr. Webb about four steps behind. Ms. Eaton eventually walked to the front of the residence where she saw Ms. Gardner holding Mr. Webb, who was bleeding from his chest, and defendant running south on Parkside Avenue. Ms. Eaton called 911. Defendant walked back to the residence, asked Ms. Gardner for his cell phone, and denied stabbing Mr. Webb. Defendant ultimately left without his cell phone. Ms. Eaton did not witness the stabbing and never saw defendant or Mr. Webb with a knife. She verified that defendant had been wearing glasses on that date.

¶ 10 Detective Timothy McDermott testified that he went to 623 North Parkside Avenue to

[1] In his brief, defendant, at times, states that trial counsel asked Ms. Gardner if Mr. Webb was on "probation." The transcript, however, states "parole."

investigate the incident after Mr. Webb was taken to the hospital. Detective McDermott saw blood on the front stairs of the residence and on the sidewalk just south of the front of the residence, and a pair of glasses on the parkway of the residence between the curb and the sidewalk. Detective McDermott showed a photograph of defendant to the other occupants of the residence and they identified defendant as the person who had stabbed Mr. Webb.

¶ 11 Detective McDermott saw defendant in an interview room at Area 5 police station. There were blood stains on his clothing, but defendant did not appear to be injured.

¶ 12 Chicago police Sergeant Andre Parham testified that he found defendant standing in front of a residence located at 4816 West Crystal Street in Chicago with blood stains on his jeans. Sergeant Parham arrested defendant and transported him to Area 5 police station.

¶ 13 The parties stipulated that if called as a witness, Dr. Kendall Crown of the Cook County Medical Examiner's Office would testify that he conducted an autopsy on Mr. Webb on May 16, 2009, observed a stab wound on Mr. Webb's upper-right chest and a stab wound and bruising on the left side of his chest, and concluded that Mr. Webb died as a result of the stab wounds and the manner of death was homicide. The parties also stipulated that if called as a witness, forensic scientist, Meredith Misker would testify that the DNA profile of the blood on defendant's clothing matched Mr. Webb's DNA profile.

¶ 14 After the State rested, defendant's motion for a directed finding was denied.

¶ 15 Defendant testified that on May 15, 2009, at around 5 p.m., he spoke with Ms. Gardner while Mr. Webb waited in Ms. Gardner's vehicle. Defendant told Ms. Gardner that Mr. Webb had been stealing from him. The conversation ended, and defendant walked to the front of the residence and out the front gate toward Central Avenue and Lake Street to get a "nip." As he

proceeded toward Lake Street, approximately three houses away from the residence, Mr. Webb called out to defendant. When defendant turned around, he saw Mr. Webb standing alone, approximately two feet away, holding a six-inch knife in his hand and saying "give me the damn money, don't give that b***h nothing." Defendant and Mr. Webb "got to tussling" for the knife and "all of a sudden the weapon hit [Mr. Webb's] lung." Mr. Webb, while holding the knife in his left hand, knocked defendant's glasses off with his right hand. Defendant was able to get the knife away from Mr. Webb and then swung the knife at Mr. Webb to defend himself. Both men fell to the ground while attempting to get control of the knife. Defendant, again, swung the knife at Mr. Webb, and then the fight stopped. Mr. Webb got up and walked toward the back of the residence. Defendant then walked to Ohio Street and Central Avenue where he told a man sitting on a porch to call 911.

¶ 16 Defendant further testified that Ms. Gardner was inside her vehicle and did not see the stabbing, and that the police arrested him around 9 p.m. at his godmother's home on Crystal Street. He did not speak to Detective McDermott and never told the detective that Mr. Webb pulled a gun on him. Defendant did not possess a knife between the time he left the residence and the time the police arrested him. After the fight with Mr. Webb, he did not return home to retrieve his cell phone, nor his glasses. Defendant further testified that Mr. Webb had previously broken into his room and had stolen a leather coat and cash, but he had never reported it to police. He said that Ms. Gardner and Mr. Webb had never questioned him about tools which had gone missing from the basement of the residence.

¶ 17 On rebuttal, Detective McDermott testified that after advising defendant of his *Miranda* rights, defendant told him that Mr. Webb drew a gun during the incident and that he was not

aware of how Mr. Webb had been stabbed.

¶ 18 On rebuttal, Ms. Gardner testified that three months prior to the incident, some tools went missing from the basement of the residence. At that time, in the backyard of the residence and in Mr. Webb's presence, she had accused defendant of stealing the tools.

¶ 19 During closing arguments, trial counsel argued that defendant acted in self-defense, and, in particular, that during the incident, Mr. Webb followed defendant and had produced the knife which caused his own death.

¶ 20 The trial court found defendant guilty of first-degree murder. In doing so, the trial court found that Ms. Gardner and Ms. Eaton were credible witnesses. The trial court further found that defendant's version of the events was incredible, nonsensical, and uncorroborated by the evidence. The trial court concluded that defendant did not act in self-defense when he stabbed Mr. Webb. Trial counsel filed a motion for a new trial, which was denied.

¶ 21 The trial court held a sentencing hearing on November 16 and November 27, 2012.

¶ 22 The presentence investigation report (PSI) showed that defendant was the father of one child, was unemployed, used drugs and alcohol, and had a criminal history. Trial counsel supplemented the PSI with Dr. Hanlon's two pretrial psychological evaluations of defendant.

¶ 23 In aggravation, the State presented Officer Wazney as a witness who testified that on October 4, 2008, he observed defendant engaged in a suspected drug transaction. An item recovered at that time tested positive for heroin.

¶ 24 The State introduced a victim impact statement from Ms. Gardner. In her statement, Ms. Gardner described her great loss as a result of Mr. Webb's murder.

¶ 25 The State argued, in aggravation, that defendant was a three-time felon convicted for

burglary in 1993, vehicular hijacking in 1994, and unlawful possession of a controlled substance in 2003. At the time defendant committed the murder in question, he had a pending case related to the possession of a controlled substance. The State noted that there were discrepancies between defendant's self-reporting in the PSI and defendant's reported information contained in Dr. Hanlon's psychological evaluations. For example, the PSI stated he only sold cocaine and never used it. However, defendant told Dr. Hanlon that he used both cocaine and heroin. Additionally, the medical records reviewed by Dr. Hanlon showed defendant had tested positive for controlled substances. The State contended that defendant tells the truth when it suits him. The State requested a sentence close to the maximum due to defendant's "cold and calculating actions," and to the brutal nature of the offense.

¶ 26 In mitigation, trial counsel presented the testimony of Dr. Hanlon. Following a 2011 neuropsychological evaluation of defendant, Dr. Hanlon concluded that defendant was mildly retarded and suffered from memory impairment; language deficits; and impaired thought and/or comprehension. Furthermore, defendant had been diagnosed with psychotic disorders by several doctors from 1998 through 2009. Following a 2012 neuropsychological evaluation, Dr. Hanlon observed that defendant's behavior control had improved due to better medical treatment, but he manifested dementia due to chronic substance abuse, as well as cognitive degeneration associated with schizophrenia. However, Dr. Hanlon ultimately determined that defendant was fit for trial.

¶ 27 In mitigation argument, trial counsel emphasized defendant's low IQ and noted that defendant's vehicular hijacking conviction did not involve weapons or violence. Trial counsel stated there was nothing in defendant's background which demonstrated that he deserved more

than the minimum sentence.

¶ 28 In allocution, defendant argued that he stabbed Mr. Webb in self-defense and that Ms. Gardner never left her vehicle during the altercation and had lied in her trial testimony.

¶ 29 At the conclusion of the sentencing hearing, the trial court sentenced defendant to 32 years' imprisonment and assessed $530 in various fines, fees, and costs including: a $200 DNA fee; $5 electronic citation fee; $30 Children's Advocacy Center fee; and a $15 State Police operations fee. Defendant filed a motion to reduce sentence which was denied.

¶ 20 On appeal, defendant first argues that trial counsel deprived him of his right to effective assistance where he failed to argue, in response to the State's objection, that testimony from Ms. Gardner about Mr. Webb having been on parole, which required anger management counseling, or had a history of violence was admissible under *Lynch*. Defendant has not met his burden of establishing ineffectiveness of his trial counsel.

¶ 30 Trial counsel is ineffective when: (1) counsel's performance falls below an objective standard of reasonableness; and (2) the deficient performance prejudiced the defendant to such an extent that he was denied a fair trial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A failure to make the requisite showing of either deficient performance, or sufficient prejudice, defeats a claim of ineffective assistance. *People v. Palmer*, 162 Ill. 2d 465, 475 (1994). To establish deficient performance, the defendant must overcome the presumption that the challenged action may have been the product of sound trial strategy. *People v. Simms*, 192 Ill. 2d 349, 361 (2000). To establish prejudice, the defendant must prove there is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *Id*. at 362. When a claim of ineffective assistance of counsel is raised on direct

appeal as here, "appellate counsel and the court must proceed on a trial record not developed precisely for the object of litigating or preserving the claim and thus often incomplete or inadequate for this purpose." *Massaro v. U.S.*, 538 U.S. 500, 504-05 (2003).

¶ 31 When a theory of self-defense is raised in a homicide case, evidence of the victim's violent and aggressive character is relevant to show who the aggressor was, and the defendant may show it by appropriate evidence. *Lynch*, 104 Ill. 2d at 200-01. Evidence of a victim's violent character may be offered in two circumstances: (1) to demonstrate that the defendant's knowledge of the victim's violent tendencies affected the defendant's perceptions of and reactions to the victim's behavior; and (2) to support the defendant's version of the facts where there are conflicting accounts of what happened, even if the defendant had no prior knowledge of the victim's violent acts. *Id*. at 199-200. In the second instance, which is relevant here, the victim's character is circumstantial evidence which provides the trier of fact with additional facts to decide what happened. *People v. Bedoya*, 288 Ill. App. 3d 226, 236 (1997).

¶ 32 Defendant acknowledges trial counsel did seek to elicit testimony from Ms. Gardner as to Mr. Webb's purported violent nature. However, defendant argues that trial counsel did not effectively argue this testimony was admissible under *Lynch*.

¶ 33 On cross-examination, trial counsel asked Ms. Gardner if Mr. Webb "was on parole, and part of his parole was anger management." The State objected to the question, but Ms. Gardner replied "no" to the question before the trial court ruled on the objection. The following colloquy occurred after Ms. Gardner was excused from the courtroom:

> "[TRIAL COUNSEL]: Your Honor, I am saying the alleged victim here was released on parole in August of 2008 to 623 North Parkside. The specifics of his parole

included anger management counseling. My client lived at 623 North Parkside during that time. The State specifically put their victim, their *Lynch* victim's history of violence and threats and things of that nature during that specific time period in issue by asking if this witness ever saw [Mr. Webb] argue with the defendant, threaten the defendant, do violence to the defendant, my client.

It is a perfectly reasonable question based upon the question they asked and the fact that she was allowed to answer.

THE COURT: State?

[ASSISTANT STATE'S ATTORNEY]: If I may, I don't believe it opens the door to what the victim may or may not have been convicted of, what he may or may not have been sentenced to because [trial counsel] has not told you that that had anything to do with the defendant himself.

Further, while [trial counsel] did tender me some police reports with regard to the victim in this case, they do not list outside from the commission what the sentence was, if there was any anger management or anything. I know he didn't list any witnesses in his answer. I don't know how he is intending to prove that up. So that's more of a procedural matter, but I don't believe we have gotten to the point where *Lynch* material is relevant. I don't believe that door was opened as counsel suggests.

* * *

[TRIAL COUNSEL]: We are not talking *Lynch* here. We are talking a simple question put to this witness that the witness was allowed to answer over our objection.

* * *

> [TRIAL COUNSEL]: We still submit that it is relevant at this point in time what this witness knows about this alleged victim's history for violence.
>
> * * *
>
> THE COURT: *** The State did ask the questions whether or not [Ms. Gardner] had witnessed any confrontations between the defendant and [Mr. Webb] before May 15, 2009 or if she had ever heard [Mr. Webb] threaten the defendant or if the defendant ever complained to her about [Mr. Webb]. I don't find that that opens the door. At this point, it doesn't open the door to get into the fact that Mr. Webb was on parole and ordered to go to anger management. It would be a different story if there was some confrontation or argument or something like that *** between the defendant and the victim, but I haven't heard that at this time. So the State's objection is sustained at this time."

However, Ms. Gardner's negative answer to trial counsel's question was not stricken.

¶ 34 Although trial counsel, at one point in the colloquy did state: "We are not talking *Lynch* here," he did earlier state that the State had placed the victim's *Lynch* history at issue. Further, the discussion relating to the State's objection centered on *Lynch*, and whether trial counsel at that time could elicit testimony from Ms. Gardner as to Mr. Webb's purported history of violence.

¶ 35 Under *Lynch*, a defendant may introduce evidence of a victim's violent characteristics only after evidence had been introduced that the victim was, or appeared to be, the assailant. *People v. Nunn*, 357 Ill. App. 3d 625, 631 (2005). At the point trial counsel sought to elicit the testimony as to Mr. Webb's violent nature, there was no evidence that Mr. Webb was the initial assailant, or instigated the argument, or first produced the knife. Furthermore, Ms. Gardner

testified that she had never before observed a confrontation between Mr. Webb and defendant; never heard Mr. Webb threaten defendant; and never heard defendant complain to her about Mr. Webb. We conclude that any argument as to *Lynch* would not have been successful to overrule the objection.

¶ 36 Additionally, defendant has not shown that testimony from Ms. Gardner as to Mr. Webb being on parole which required anger management counseling was "appropriate evidence" which would be admissible under *Lynch*. Under *Lynch*, the evidence of a defendant's violent character must be reliable and may be proved, for example, by a criminal conviction of a violent offense or "by first hand testimony as to the victim's behavior." *People v. Cook*, 352 Ill. App. 3d 108, 128 (2004). The record, as to the nature of the purported evidence here, consists only of the question asked of Ms. Gardner, as to Mr. Webb's parole status and anger management counseling, and the State's comments that trial counsel had provided it with police reports regarding an incident involving Mr. Webb. The State, however, said the reports did not support Mr. Webb's sentence or anger management counseling. Indeed, there is nothing in the record which supports that Mr. Webb ever committed acts of violence, and that Ms. Gardner ever witnessed those acts. The record does not show Mr. Webb was convicted of any offense or, whether that offense was one of violence which would be properly admitted under *Lynch*. Additionally, any testimony from Ms. Gardner regarding Mr. Webb's parole status would have amounted to inadmissible hearsay without the proper witnesses to prove up his parole status and requirement to participate in anger management counseling. See *People v. Simon*, 2011 IL App (1st) 091197, ¶ 72 (finding no abuse of discretion where the trial court did not allow *Lynch* evidence where it was based on hearsay). Thus, defendant failed to show the State's objection was sustained due to

ineffectiveness of counsel.

¶ 37 Defendant also failed to satisfy the second prong of *Strickland* where he does not sufficiently demonstrate how he was prejudiced from trial counsel's alleged failure to argue that Ms. Gardner's testimony was admissible under *Lynch*. First, Ms. Gardner actually answered "no" to the question of whether Mr. Webb was on parole and was required to undergo anger management counseling. Thus, there was no prejudice to the trial court's sustaining of an objection to a question which would not have elicited the desired testimony.

¶ 38 Further, defendant merely speculates that the outcome of the trial would have been different if Ms. Gardner would have testified to Mr. Webb being on parole for an unnamed offense, under unknown circumstances and facts, with a condition of anger management counseling. This is particularly true in light of the evidence which was not closely balanced as to defendant being the aggressor.

¶ 39 The trial court found Ms. Gardner and Ms. Eaton credible, and their testimony as a whole showed that defendant, after being told of a rent increase, intentionally drew Mr. Webb away from the others, pulled a knife from his jacket pocket, and then twice stabbed Mr. Webb. This testimony as to the stabbings was corroborated by the medical examiner's findings relating to Mr. Webb's stab wounds. Further, Ms. Gardner's testimony that the stabbing took place in front of the residence was corroborated by Detective McDermott, who found blood in front of the residence and Ms. Eaton's observations of the incident.

¶ 40 The trial court found that defendant's version of events was incredulous and uncorroborated by the physical evidence. Defendant's testimony—that the confrontation between himself and Mr. Webb occurred three houses away from the residence—was impeached

by the location of the physical evidence. Furthermore, defendant changed his story from the time he was arrested to the time of his trial. According to Detective McDermott, defendant told him that Mr. Webb pulled a gun on him and that he did not know how Mr. Webb was stabbed. At trial, however, defendant testified that he never spoke to Detective McDermott and never told him about a gun and that he took the knife away from Mr. Webb and stabbed the victim in self-defense. Despite the evidence as to the severity of Mr. Webb's wounds and that Ms. Gardner brought him to the front stairs, defendant testified that Mr. Webb walked away from the altercation to the back of the residence. We find that defendant has not shown that the admittance of testimony from Ms. Gardner as to Mr. Webb's supposed parole status and anger management counseling from an unknown crime would have had an effect on the outcome of the trial and there was no ineffectiveness of trial counsel.

¶ 41 Defendant next contends that his 32-year sentence was excessive where the trial court did not consider his mental health, or lack of significant or recent criminal background. Defendant requests that this court exercise its authority under Illinois Supreme Court Rule 615(b)(4) (Ill. S. Ct. R. 615(b)(4) (eff. Aug. 27, 1999)), and reduce his sentence to the minimum of 20 years' imprisonment.

¶ 42 Initially, we rejected the State's argument this claim is forfeited where it was not included in defendant's motion to reconsider his sentence. Defendant's motion to reconsider sentence did state that his sentence was excessive "in view of the [d]efendant's background and the nature of his participation in the offense." We agree with defendant that his use of the word "background" in his motion may be construed reasonably as referring to both his criminal and mental-health history. We, thus, address the merits of this issue.

¶ 43 A trial court has broad discretion in the determination of an appropriate sentence, and a reviewing court may reverse only where there has been an abuse of that discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). The reviewing court may not substitute its judgment for that of the trial court simply because it would have balanced the appropriate sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010). "Where mitigating evidence is before the court, it is presumed that the sentencing judge considered the evidence, absent some indication to the contrary, other than the sentence itself." *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004) (citing *People v. Allen*, 344 Ill. App. 3d 949, 959 (2003)).

¶ 44 The sentence for first-degree murder is to be a determinate term of not less than 20 years and not more than 60 years. 730 ILCS 5/5-8-1(a)(1)(a) (West 2008) (now codified at 730 ILCS 5/5-4.5-20(a) (West 2012). A sentence within the statutory range, does not constitute an abuse of discretion unless it varies greatly from the purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Henderson*, 354 Ill. App. 3d 8, 19 (2004).

¶ 45 The trial court, before imposing sentence, conducted a full hearing over two days and, after hearing the presentations, stated:

> "I've considered all of the factors, the statutory factors in aggravation and mitigation, I've read the PSI, including the attachment or supplement to the PSI *** those are the reports of Dr. Hanlon. I've already considered the testimony of the witnesses and the victim impact statement.
>
> In looking at this case the victim in this case was basically an innocent victim. You were told, accord[ing] to the testimony that I heard at trial, you were told that your rent was going to be raised and you went into the house and got a knife and then you

called the victim over and told him that you had something for him, walked with him to the front of the house and then stabbed him twice.

This clearly was not, and I found that it was not at trial, a case of self-defense. And the victim—you were unprovoked. This is—this stabbing just didn't have to happen.

In looking at your background, you do have three prior felony convictions. Two of them are for — [one] is a burglary, one is a drug case, and the other one is a vehicular hijacking. And it says with force, but your attorney told me that he looked into the facts in that case and that there was no bodily injury in that case.

Taking everything into consideration, I don't think that this case warrants the minimum sentence, but I also don't think it warrants the maximum sentence.

I find the appropriate sentence in this case is 32 years in the Illinois Department of Corrections to be followed by three years of mandatory supervised release."

¶ 46 Thus, the record shows that the trial court thoughtfully considered the testimony and evidence and weighed the appropriate mitigating and aggravating factors in sentencing defendant to a term within the permissible sentencing range. We, thus, do not find that the trial court abused its discretion.

¶ 47 In reaching this conclusion, we reject defendant's contention that the trial court failed to take into consideration his mental health. Significantly, mental-health issues are not included in the list of mitigating factors in section 5-5-3.1(a) of the Unified Code of Corrections. 730 ILCS 5/5-5-3.1(a) (West 2010); *People v. Brunner*, 2012 IL App (4th) 100708, ¶ 64; see also *People v. Coleman*, 183 Ill. 2d 366, 406 (1998) (quoting *People v. Tenner*, 175 Ill. 2d 372, 382 (1997) ("'information about a defendant's mental or psychological impairment is not inherently

mitigating'"). Nevertheless, the record here shows that the trial court did consider defendant's mental-health issues. The trial court specifically stated at sentencing that it had reviewed the reports of Dr. Hanlon, and considered the testimony of the witnesses, which included Dr. Hanlon. See *People v. Burke*, 164 Ill. App. 3d 889, 901 (1987) ("Where mitigation evidence is before the court, it is presumed that the sentencing judge considered the evidence, absent some indication other than the sentence imposed, to the contrary.").

¶ 48 Defendant's reliance upon *People v. Robinson*, 221 Ill. App. 3d 1045 (1991), to show that we have reduced a defendant's sentence where the trial court failed to take into consideration a defendant's mental condition as a mitigating factor, is misplaced. The *Robinson* court's discussion of the defendant's mental-health issues is *dicta* where it concluded the sentencing court abused its discretion because it "improperly considered the criminal acts of others in imposing sentence on defendant." *Id*. at 1052.

¶ 49 Defendant next contends that the trial court erred in treating his prior felony convictions as aggravating factors and not mitigating factors where there was a substantial amount of time between his prior felony convictions and the conviction at bar and the nonviolent nature of his past crimes. Defendant was convicted of possession of burglary in 1993, vehicular hijacking in 1994, and possession of a controlled substance in 2003. The trial court's recitation of defendant's background prior to imposing the sentence does not mean that it did not consider the nature of the crimes nor the time span. Further, we do not find his prior convictions were so remote that it would have been an abuse of discretion to have treated them as aggravation. Moreover, despite defendant's contention to the contrary, the trial court clearly took into consideration at sentencing the fact that his prior offenses were nonviolent when it specifically referenced this fact in

discussing what trial counsel told the trial court regarding the vehicular hijacking conviction.

¶ 50 Defendant also argues that the trial court gave no consideration to the financial impact of his incarceration. See 730 ILCS 5/5-4-1(a)(3) (West 2012) (sentencing court "shall" consider the financial impact of incarceration based on the financial impact statement filed with the clerk of the court). However, a trial court is not required to specify on the record its reasons for a defendant's sentence and, absent evidence to the contrary, the trial court is presumed to have performed its obligations and considered the financial impact statement before sentencing a defendant. *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 24. Defendant points to nothing in the record to rebut the presumption that the trial court acted in accordance with the law, including the consideration of the financial impact of incarceration, when it sentenced him to 32 years' imprisonment.

¶ 51 Defendant next contends, and the State concedes, that the $200 DNA analysis fee (730 ILCS 5/5-4-3(j) (West 2008)), and $5 electronic citation fee (705 ILCS 105/27.3e (West 2008)), must be vacated. We agree that the $200 DNA analysis fee must be vacated because defendant is already registered in the DNA database by virtue of his prior felony convictions. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). Furthermore, the $5 electronic citation fee cannot be imposed because a defendant must pay that fee only in a "traffic, misdemeanor, municipal ordinance, or conservation case," (705 ILCS 105/27.3e (West 2008)), and we vacate this fee.

¶ 52 Defendant finally contends, and the State agrees, that he spent time in custody prior to sentencing and is entitled to a $5-per-day custody credit to offset fines imposed by the trial court pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963. 725 ILCS 5/110-14(a) (West 2008). The parties agree that defendant served 1,291 days in presentencing custody,

which entitles him to a presentence custody credit of up to $6,455 against the fines imposed against defendant: the $30 Children's Advocacy Center (55 ILCS 5/5-1101(f-5) (West 2008)), and the $15 State Police operations (705 ILCS 105/27.3(a) (West 2008)), assessments. After applying defendant's $45 presentence custody credit and vacating the $200 DNA analysis fee and $5 electronic citation fee, his fines and fees order is reduced from $530 to $280.

¶ 53 For the foregoing reasons, we vacate the $200 DNA analysis fee and $5 electronic citation fee; find that defendant is entitled to a $5 per-day custody credit to offset the $30 Children's Advocacy Center and the $15 State Police operations assessments; and affirm his conviction in all other respects.

¶ 41 Affirmed as modified.