SECOND DIVISION
June 9, 2015

No. 1-13-0839

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. 11 CR 8969
	)	
RODNEY JACKSON,	)	Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to seven years in prison for aggravated domestic battery, despite evidence of factors in rehabilitation, and the court did not give improper consideration to the degree of harm done to the victim.

¶ 2 Following a bench trial, the defendant, Rodney Jackson, was convicted of aggravated domestic battery. 720 ILCS 5/12-3.3(a) (West 2010). Defendant was eligible for an extended-term sentence due to his criminal history, and the trial court imposed the minimum extended term of seven years in prison. On appeal, defendant contends that sentence is excessive because

his most recent felony conviction occurred in 2001 and none of his criminal convictions resulted from violent offenses. He also argues his work history and completion of a substance abuse program demonstrated his rehabilitative potential. In addition, defendant asserts that in sentencing him, the trial court relied upon a factor inherent in the offense, namely the degree of bodily harm inflicted upon the victim. For the reasons set forth below, we affirm.

¶ 3 Defendant was charged with two counts of aggravated domestic battery. Those counts alleged that he intentionally or knowingly caused great bodily harm to Sharon Anderson, with whom he had a prior dating relationship. Defendant also was charged with three counts of aggravated battery and one count of domestic battery.

¶ 4 During a trial in which defendant acted *pro se,* Anderson testified she and defendant were romantically involved for five years and that their relationship ended in January 2011. On the evening of April 1, 2011, she was working as a cashier at Luigi's Pizzeria at 4212 West Madison Street in Chicago. Defendant called the restaurant several times that night, stating during one call, "Somebody in your family going to die tonight." Anderson could not recall what defendant said in the other calls and said she "kept hanging up."

¶ 5 When Anderson's shift ended at 3 a.m., her manager, Tom Roberson, locked the restaurant while she sat in his car because he was going to drive her home. Defendant drove alongside Roberson's car and then drove in reverse, parking behind Roberson's car. A man and a woman also were in defendant's vehicle. Defendant got out of his car and walked to the passenger window. Defendant told Anderson to get out of the car and talk to him.

¶ 6 Defendant opened the car door and punched Anderson in the face several times with a closed first. Defendant then put his hands around Anderson's neck and choked her. Anderson testified defendant tried to pull her out of the car by her hair, and she attempted to brace herself

so she would not fall out of the car. Defendant then resumed punching her. Before walking away, defendant said, "I told you I was going to get you." Roberson drove Anderson to the 11th District police station, where she reported the incident, and then to Mount Sinai Hospital. Photographs of Anderson's injuries were entered into evidence.

¶ 7 On cross-examination, Anderson stated Roberson was about 10 feet from the car when defendant approached. After leaving the hospital, Anderson returned to the police station.

¶ 8 Due to Roberson's ill health, the court allowed into evidence a transcript of testimony he gave at a preliminary hearing, in lieu of his live testimony at trial. The court reviewed that transcript, which is included in the record on appeal. Roberson's testimony at the preliminary hearing was largely consistent with Anderson's account. Roberson testified that when defendant approached his car, he told Roberson he just wanted to talk to Anderson. When defendant opened the car door, he said a few words and began punching her in the face with his fist. Roberson said defendant struck Anderson between 20 and 25 times. He also grabbed her by the hair and put his hands around her neck. Roberson testified that as he tried to flag down a squad car, defendant attacked Anderson for about five minutes. Roberson said Anderson was bleeding from her injuries. On cross-examination, Roberson said he spoke to defendant that night when defendant called the restaurant. Roberson stated there was blood on the front and back seats of his car.

¶ 9 Dr. Monica Pitzele testified that at about 4:20 a.m. on April 2, 2011, she was working at Mount Sinai Hospital when Anderson arrived with injuries to her face and neck. Dr. Pitzele was allowed to review Anderson's medical records during her testimony. A CT scan was performed on Anderson's face. Anderson's nasal bones and nasal septum were fractured. The State introduced into evidence six photographs of Anderson's injuries.

¶ 10 The trial court found defendant guilty of one count of aggravated domestic battery, merging the first five counts of the complaint into that count. The trial court found defendant not guilty of the sixth count of the complaint, which charged defendant with committing battery in violation of an order of protection.

¶ 11 In finding defendant guilty, the court stated, in pertinent part:

> "If you look at the photograph of Sharon Anderson, it looks like she went five rounds with Mike Tyson in his prime when he was still pretty good. Her face is swollen on both sides, more so on the left side than on the right side as well [*sic*]. She has got a mark across her neck or more than one mark across her neck. She testified that [defendant] tried to strangle her and choke her at that time.
>
> The doctor testified that there were fractured bones. Her nose was broken. There was another bone broken in her face as well. That shows anger, someone who is upset about something. This little woman was beaten up."

¶ 12 On January 16, 2013, the court held a sentencing hearing at which defendant was represented by counsel. A victim impact statement of Anderson was read, and the court reviewed the photographs of her injuries, which have been made part of the record on appeal.

¶ 13 The court received defendant's presentence investigation (PSI) report and noted defendant had a Class 2 felony drug conviction in 2001 and was serving a mandatory supervised release period for that offense in 2002, which was within 10 years of the instant sentencing. The court found defendant was eligible for an extended-term sentence.

¶ 14 Defense counsel pointed out in mitigation of defendant's sentence that 11 years had passed since defendant's Class 2 felony conviction. Counsel further argued:

"Prior to that the most recent – any criminal felony background is more than 21 years of age. Neither one of those offenses is a violent offense. * * * One of those is strictly a Class 4 felony possession. And the other one is another narcotics related offense. It appears to have been a Class 2. So no prior violent background."

¶ 15 Defense counsel told the court defendant had completed a substance abuse program, stating defendant "took it upon himself to enter that program because he, himself, recognizes that he has a problem with alcohol. And he wanted to address that problem." Counsel asserted defendant should receive the minimum sentence "because he's never had anything violent in his background." Defendant also addressed the court, reading from a prepared statement that he had "learned from my stay at Gateway Treatment Center that I have to be a responsible man not only for myself but also for my children."

¶16 The court made the following remarks in imposing sentence:

"When this matter took place it was April 2, 2011. At that time you had both your children. You talk about being a 'role model.' I'm not quite sure what a role model means in the circumstances here.

When you're out there beating up Sharon Anderson, your last thought you had was how are my kids doing. If someone was to say, 'Hey, Rodney, how are your kids doing? Your response prior to that time would have been, 'What kids? I got kids somewhere.

Sharon Anderson testified. And I've got photos of what she looked like after your encounter with her. I said this before. She looked like she went five rounds with Mike Tyson in his prime. In his prime he was a pretty good fighter.

He didn't beat up young girls however, like this girl. He did bad things, but he didn't beat up girls. These pictures are pretty hard to avoid without getting an impression of Rodney Jackson.

This girl's face was puffed out for about year [*sic*]. She had blood coming from her nose, from her mouth. This is a little – this is a small woman too. She said before she didn't want you anymore, leave it alone. That's all. Find someone else.

Why beat the girl up. She didn't do anything except say I don't want you anymore. That's her right to say that too. She didn't want you anymore. Hit the door, Rodney. That's it.

These photographs of what you did to that girl are pretty chilling, Mr. Jackson. What I said before like five rounds with Mike Tyson in his prime."

¶ 17 The court noted that defendant was required to serve 85 percent of the sentence imposed and the applicable sentencing range was 3 to 14 years in prison. The court continued to address defendant:

"You have to keep your hands – I don't want you bothering her anymore, just leave her alone. That's all. Leave her alone once you get out. The way you punch, you could have been a prize[] fighter, Mr. Jackson. You got a pretty big punch according to Sharon Anderson at least.

First of all – probation in any event. Even if it was not a mandatory prison term based on your prior record. That would not even be a possibility for a crime like this.

You got to realize at some point, Mr. Jackson, you do bad things, there are bad consequences. This girl was at work. She comes out of work, and you track her down and beat her up right outside where she works at.

That's not a nice thing to do. All right. The court considered the facts in aggravation and mitigation, the arguments by the lawyers, the statement by Rodney Jackson.

Apparently, he's done well in custody. He's going to be there a little longer. There are programs in the penitentiary, Mr. Jackson, for people who have issues with drugs. Try to get in one of those programs.

Also, you may get in – but I'm not sure about that or not about the issue of 'anger management.' Just seems so silly to go to prison for a girl that said I don't want you anymore. You could have found someone else.

The court's heard all the facts in aggravation and mitigation, the nature of the crime itself, the arguments by the lawyers, the information set forth in the PSI. The sentence will be seven years in the Department of Corrections[.]"

¶ 18 The court noted defendant would receive credit for time in custody and would serve 85 percent of his sentence. Defense counsel filed a motion to reconsider that sentence, which was denied.

¶ 19 On appeal, defendant first contends his seven-year sentence was excessive in light of his minimal criminal background and strong rehabilitative potential. He argues his most recent prior felony conviction was in 2001 and he had no prior convictions for violent crimes. He further asserts that his work history and voluntary completion of a substance abuse program demonstrate his strong rehabilitative potential.

¶ 20 All sentences reflect the seriousness of the offense committed and the objective of rehabilitating offenders to useful citizenship. *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. The trial court's sentencing determination is afforded deference to allow the trial court to

determine an appropriate term of years and balance the need to protect society with the rehabilitative potential of the defendant. *People v. Sharp*, 2015 IL App (1st) 130438, ¶ 133. The trial court has the ability to weigh factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age, and a reviewing court "must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial court's sentencing determination must be based on the particular circumstances of the case. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). Because one sentencing factor is the seriousness of the offense, the trial court is not required to give greater weight to mitigating factors than to the seriousness of the crime. *People v. Alexander*, 239 Ill. 2d 205, 214 (2010).

¶ 21 It is axiomatic that the trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference. *Alexander*, 239 Ill. 2d at 212. A reviewing court may not alter a defendant's sentence without finding that the trial court abused that discretion. *Alexander*, 239 Ill. 2d at 212. Where, as here, the sentence imposed is within the statutory range, this court can find an abuse of discretion only where the sentence is "greatly at variance with the purpose and spirit of the law." *Sharp*, 2015 IL App (1st) 130438, ¶ 134, quoting *People v. Center*, 198 Ill. App. 3d 1025, 1032 (1990). Such deference is afforded because the trial court has observed the defendant and the proceedings and thus "has a far better opportunity to consider these factors than the reviewing court" which relies on a "cold" record." *Fern*, 189 Ill. 2d at 53. Moreover, the reviewing court is not to reweigh factors that were considered by the trial court or substitute its judgment simply because it might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-14.

¶ 22 With those standards in mind, we consider the sentence imposed in this case. Aggravated domestic battery is a Class 2 felony. 720 ILCS 5/12-3.3(b) (West 2010). The normal sentencing range for a Class 2 felony is between 3 and 7 years in prison. 730 ILCS 5/5-4.5-35(a) (West 2010). Based on the aggravating factor of defendant's prior conviction of a felony of the same class as the instant offense within 10 years of the instant case, the trial court in this case could impose an extended-term sentence from 7 to 14 years in prison. 730 ILCS 5/5-4.5-35(a) (West 2010); 730 ILCS 5/5-5-3.2(b)(1)(West 2010). Accordingly, defendant's seven-year sentence is the minimum allowed for an extended term.

¶ 23 While defendant contends he should have received a lesser sentence due to the lack of violent offenses in his criminal background and the passage of time since his most recent serious crime, the record of defendant's sentencing hearing indicates those factors were presented to the trial court in mitigation of his sentence. The trial court was informed that defendant's most recent felony conviction was in 2001; indeed, the trial court found it could impose an extended-term sentence based on that conviction. The record also reveals defense counsel twice mentioned to the court that defendant's criminal history did not include previous crimes of violence. The trial court was not required to give more weight to defendant's criminal history than to the seriousness of the offense that he was found guilty of committing. See *Alexander*, 239 Ill. 2d at 214. Based on our review of the sentencing hearing, we cannot conclude the trial court abused its discretion in imposing a seven-year sentence.

¶ 24 Defendant further contends he should have received a lesser sentence because he had a good work history and voluntarily completed a substance abuse program. Again, the record establishes those facts were presented to the trial court in mitigation of defendant's sentence. Defendant's employment history was included in the PSI report considered by the court, and

defendant's completion of the substance abuse program was emphasized by defense counsel. We presume a trial court has considered all of the relevant factors of mitigation before it and that presumption cannot be overcome without affirmative evidence that the court failed to consider a factor. See *McWilliams*, 2015 IL App (1st) 130913, ¶ 27. The trial court is not expressly required to indicate its consideration of each mitigating factor and the weight to be assigned each factor. *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 43. It is apparent from defendant's extended term sentence that the court considered some factors in mitigation, given that the 7-year sentence imposed was in the lower half of the applicable range of between 3 and 14 years. 730 ILCS 5/5-4.5-35(a) (West 2010); 730 ILCS 5/5-5-3.2(b)(1)(West 2010).

¶ 25 Defendant's remaining contention on appeal is that the trial court relied on a factor inherent in the offense in imposing his sentence, namely the degree of harm inflicted on the victim. He points to the court's multiple references to Anderson's injuries and comparisons to former professional boxer Mike Tyson and argues those remarks indicate the court placed undue weight on the harm to the victim in arriving at his sentence.

¶ 26 A person commits aggravated domestic battery by knowingly causing great bodily harm, or permanent disability or disfigurement, in the commission of a domestic battery. 720 ILCS 5/12-3.3(a) (West 2010). Therefore, great bodily harm is an element of aggravated domestic battery. "Great bodily harm" has not been legally defined; however, this court has described it as requiring an injury more serious than ordinary battery. *People v. Lopez-Bonilla*, 2011 IL App (2d) 100688, ¶¶ 16-18 (sufficient evidence of great bodily harm found when victim was struck on the head with a gun, had his head slammed into a desk drawer with enough force to splinter the drawer and felt like he lost consciousness).

¶ 27 The trial court is generally prohibited from considering a factor implicit in the offense as an aggravating factor at sentencing. *People v. Phelps*, 211 Ill. 2d 1, 11 (2004). Thus, a single factor cannot be used as both an element of the offense and as a basis for imposing a harsher sentence than might otherwise have been imposed. *People v. Holman*, 2014 IL App (3d) 120905, ¶ 68. However, the court may consider as a sentencing factor the nature of the offense, including the circumstances and extent of each element as committed. *People v. Bowman*, 357 Ill. App. 3d 290, 304 (2005). As defendant acknowledges on appeal, a sentencing court may considered as a factor in aggravation the degree of harm inflicted by the defendant. See 730 ILCS 5/5-5-3.2(a)(1) (West 2010).

¶ 28 Whether a trial court relied on an improper factor when sentencing a defendant is a question of law that is subject to *de novo* review. *People v. Morrow*, 2014 IL App (2d) 130718, ¶ 14. Nonetheless, there is a strong presumption that the trial court based its sentencing determination on proper legal reasoning. *People v. Dowding*, 388 Ill. App. 3d 936, 942-43 (2009). The court in *Dowding* noted: "In determining whether the trial court based the sentence on proper aggravating and mitigating factors, a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court." *Dowding*, 388 Ill. App. 3d at 943.

¶ 29 A sentencing court in an aggravated domestic battery case can take notice of the harm done to the victim as an aggravating factor in sentencing without violating the rule against double enhancement. *People v. Arbuckle*, 2015 IL App (3d) 121014, ¶ 52-53. There, the Third District recently noted that "varying degrees" of great bodily harm can occur and held that the shattering of the victim's arm with a golf club met the standard of great bodily harm. *Arbuckle*, 2015 IL App (3d) 121014, ¶ 52-53. The court held the victim's bodily harm could be considered

as an aggravating factor to determine the length of a particular sentence, even where bodily harm was implicit in the underlying offense. *Arbuckle*, 2015 IL App (3d) 121014, ¶¶ 49-50.

¶ 30 Still, defendant argues that Anderson's injuries were serious but did not rise to the level of requiring prolonged hospitalization or causing permanent damage or disability. He thus contends her injuries were "not so severe as to constitute proper aggravation." The fact that Anderson's injuries did not rise to the level described by defendant does not weaken the trial court's finding that he inflicted great bodily harm upon her. The statutory definition of aggravated domestic battery expressly allows for either great bodily harm or the more serious circumstances of disability or disfigurement. 720 ILCS 5/12-3.3(a) (West 2010); see also *People v. Figures*, 216 Ill. App. 3d 398, 401 (1991) (great bodily harm is not dependent on the victim's hospitalization or permanent disability or disfigurement).

¶ 31 The court in this case was presented with evidence that established Anderson suffered great bodily harm so as to meet that element of the offense. However, we do not find the court improperly relied on that evidence in imposing defendant's sentence. Although defendant refers on appeal to his "unduly harsh sentence," the trial court imposed a term of seven years in prison, which was the lowest possible extended-term sentence.

¶ 32 In summary, the record in this case establishes the trial court was informed of the factors in mitigation that defendant cites on appeal and expressly mentioned several of those factors at sentencing. Furthermore, the court did not consider an improper factor in sentencing when it mentioned the harm to the victim, and the court did not abuse its discretion in imposing the lowest possible extended-term sentence in the applicable statutory range.

¶ 33 Accordingly, the judgment of the trial court is affirmed.

¶ 34 Affirmed.