

No. 1-13-0953

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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. 12 CR 8572
)	
RONALD HAMILTON,)	Honorable
)	Maura Slattery-Boyle,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Liu concurred in the judgment.

O R D E R

- ¶ 1 **Held:** Sentence of 20 years' imprisonment affirmed over contention that court considered an improper factor, and that it was excessive; mittimus modified; order imposing fines, fees and costs corrected.
- ¶ 2 Following a bench trial, defendant Ronald Hamilton was convicted of attempted first degree murder; two counts of unlawful use of a weapon by a felon (UUWF); aggravated battery; and domestic battery. He was then sentenced to 20 years in prison for the attempted murder

conviction, and lesser concurrent terms on the other offenses. On appeal, defendant contends that the 20-year sentence cannot stand because the trial court considered a factor inherent in the offense; and alternatively, that the sentence is excessive. Defendant also requests that his mittimus be modified to reflect a single conviction of attempted murder, where the trial court merged the remaining convictions into that count, and that the order assessing fines, fees and costs be corrected.

¶ 3 The record shows that defendant was arrested following a stabbing incident which occurred on April 17, 2012, on the south side of Chicago. At trial, the victim, Rosa Norris, testified that she was defendant's ex-wife, and although they were divorced at the time of the incident and she had an outstanding order of protection against him, they lived together. Defendant left the apartment about 2 p.m. that day and made several phone calls to her in which he sounded progressively more upset. When defendant returned to the house, his speech was slurred, he was not walking straight, and appeared very intoxicated. At first, he was in a good mood and asked for something to eat, and Norris went in the kitchen to prepare food for him. Then, defendant, who was in the living room, started to call her names like "bitch, slut, tramp," and Norris heard him coming towards the kitchen, where she was washing dishes. Defendant grabbed two butcher knives from the dish rack. Norris started to walk back towards the pantry door and could not remember what defendant was saying. At that point, she felt the knives hit her, and she ran into the pantry, put her body against the door, and saw that she was bleeding from her chest. Through the pantry door, she said, "Ronnie, you stabbed me," and he responded, "I ain't stabbed you yet. Wait, bitch, I am going to stab you up."

¶ 4 When Norris heard him walk away from the door, she came out of the pantry and ran out the back door of the apartment. She heard him yelling from the back porch, and started running,

afraid for her life. Norris testified that she has three slipped discs in her back, but she ran because when she looked back, she saw defendant chasing her with two knives in his hands. She ran in a zig zag pattern through the street so that defendant could not throw the knives straight into her. When she could not run anymore, she started running around a parked car. She asked defendant what was wrong, and he said, "bitch, I am going to stab you up." At that point, a police car drove by, and the officers made defendant drop the knives and arrested him. They asked Norris if she needed medical treatment, and she declined.

¶ 5 On cross-examination, Norris testified that she told the Assistant State's Attorney that she and defendant had been together three years, but that the written statement signed by her reflected incorrectly that they had been married three years. Norris stated that her memory comes and goes, that she was in a state of shock at the time of the incident, and that she was on probation for possession of a controlled substance.

¶ 6 Chicago police officer Manuel Arroyo testified that he and his partner were patrolling the 4900 block of South Damen Avenue, when from a distance of 20 feet, he observed Norris running across the street, screaming, "he's trying to kill me." Defendant was chasing her with two shiny objects in his hands. Officer Arroyo and his partner exited the vehicle, approached defendant, who had a knife in each hand, and asked him to drop them. Defendant threw the knives up in the air, and the officers took him into custody and recovered the knives that had fallen to the ground. At that time, Norris was crying and had a lot of blood on her shirt in the chest area. The officers called an ambulance, but Norris did not go to the hospital at that time.

¶ 7 The State submitted an order of protection entered on April 13, 2011, and valid until April 14, 2013, in which defendant was enjoined from contacting Norris. The State also entered certified copies of defendant's prior convictions for domestic battery, manufacture and delivery

of a controlled substance, and UUWF into evidence. Defendant's motion for directed finding was denied, and the parties stipulated that if called to testify, Detective Frank Szevo would testify that Norris made a statement on April 18, 2012, that she was married to defendant for approximately three years. Following closing arguments, the court found defendant not guilty of violating the order of protection and aggravated domestic battery, but guilty of attempted first degree murder, two counts of UUWF, aggravated battery, and domestic battery.

¶ 8 At the sentencing hearing, the State argued in aggravation that this was a violent crime, where the victim could have suffered serious injury or death if the police had not arrived to stop defendant in time. The State then addressed defendant's potential for rehabilitation, recounting his lengthy criminal history, which involved nine prior felony convictions and three domestic battery convictions, and pointed out that defendant has continued to commit violent and nonviolent offenses since a young age, and was a menace to society. The State recommended that the court impose a sentence of at least 20 years' imprisonment.

¶ 9 In mitigation, defense counsel noted that defendant's prior convictions were drug charges, and that the prior domestic battery convictions were misdemeanors. He also pointed out that defendant may have been inebriated at the time of the incident, the victim had a criminal background, including a domestic battery conviction, and that they had an unhealthy relationship. Counsel pointed out that the victim's stab wounds were minor, and she did not seek medical attention for them. Counsel also argued that while defendant and the victim should not come into contact with each other, defendant was not a danger to society. Counsel then referred to defendant's difficult family history and his substance abuse problems with alcohol and drugs, and informed the court that defendant wished to get treatment for those problems. Given the

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nature of the crime, defense counsel requested the minimum term of six years. In allocution, defendant apologized for the incident and his actions.

¶ 10 In announcing its sentencing decision, the trial court noted defendant's lengthy criminal history, and stated that it was required to look at the facts and charges in this case. The court then observed:

"I understand the domestic violence. I understand that extreme, the fact that people choose to be together. Last year you got 120 days. In '02 you got another 120. I don't know if these were all with the same victim. I assume they are but you know the things you've elevated from past drug cases to now violent crimes and beyond * * * and but for the fact that they saw you running past the front of the car with two knives in your hand, it could have been much more deadly, but it wasn't. Thank goodness. But that still doesn't mitigate for you. The gratuitous act of the police officers being on the scene doesn't mitigate the situation."

The court also noted that defendant did not have an ideal childhood or family relationship, and that he had an addiction problem, however, no matter how many times he was placed in custody or required to complete probation, he had become more violent, noting:

"You've definitely become more violent in nature as the years have gone on which is kind of shocking because it should be reversed but for the fact the police arriving this may have been more deadly of a situation than it was."

The court then sentenced defendant to 20 years in prison, followed by three years mandatory supervised release (MSR) on count 1, attempted first degree murder. The court also granted the victim a two year order of protection, then reviewed the sentences for each of the offenses:

"You will be placed on three years [MSR], (inaudible) on count five which is class two. These will all merge.

Just so we are clear, I will sentence him to seven years [in prison] on count seven, which is a plea of not guilty going on the class three, so seven years [in prison] on the aggravated battery with a deadly weapon, also a class three, that's count 11. Plea of not guilty, finding of guilty, seven years [in prison] and domestic battery. Plea of not guilty, finding of guilty, six years [in prison]. These will all merge. You will be placed on three years [MSR] in regards to Counts 1 and 2. In regards to count 7, 11, and 4, that is two years mandatory supervised release."

The court ruled that defendant was entitled to 275 days of pre-sentencing custody credit.

¶ 12 The written order entered by the court states:

"Sent (20) yrs IDOC Ct 1
Ct 5 – (7) yrs IDOC / Ct 7 (7) yrs IDOC
Ct 11 (7) yrs IDOC / Ct. 14 6 yrs IDOC
Credit (275) day TCS"

¶ 13 Defendant's mittimus lists all the offenses of which he was found guilty, and their corresponding sentences as indicated by the court, and also states that "It is further ordered that all counts merge / 3 years MSR."

¶ 14 Defendant filed a motion to reconsider his sentence asserting that the sentence was excessive given his age, and the nature of his prior convictions. He also claimed that the court considered an improper factor. The court denied the motion.

¶ 15 On appeal, defendant contends that this court should vacate his sentence and remand for resentencing because the trial court improperly considered a factor inherent in the offense as an aggravating factor. He refers specifically to the court's statement that "it could have been much more deadly, but it wasn't."

¶ 16 It is undisputed that defendant's sentence of 20 years' imprisonment falls within the statutory range of six years to 30 years provided for attempted first degree murder, a Class X felony. 720 ILCS 5/8-4(c)(1) (eff. Jan. 1, 2010); *People v. Lopez*, 166 Ill. 2d 441, 450 (1995). The Illinois Constitution provides that penalties are to be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. Perruquet*, 68 Ill. 2d 149, 154-55 (1977). A reasoned sentence must be based on the particular circumstances of each case (*Perruquet*, 68 Ill. 2d at 154), and depends upon many factors (*People v. Saldivar*, 113 Ill. 2d 256, 268-69 (1986)), including the defendant's criminal history, defendant's potential for reform, and the recognized interest in protecting the public and in providing a deterrent (*People v. Wilson*, 257 Ill. App. 3d 670, 704-05 (1993)). "The trial court is in the best position to balance the appropriate factors and tailor a sentence to the needs of the case" (*Wilson*, 257 Ill. App. 3d at 704), and accordingly, the sentence will not be reversed on appeal absent an abuse of discretion (*People v. Stacey*, 193 Ill. 2d 203, 209-210 (2000)).

¶ 17 Defendant contends that the trial court considered the fact that Norris could have died, but did not, which was a factor inherent in the offense of attempted murder. Generally, a factor

implicit in the offense for which defendant has been convicted cannot be used as an aggravating factor in sentencing for that offense. *People v. Ferguson*, 132 Ill. 2d 86, 97 (1989). Whether a trial court relied on an improper factor when sentencing defendant is a question of law, subject to *de novo* review. *People v. Morrow*, 2014 IL App (2d) 130718, ¶ 14. There is, however, a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and 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. *Id.*

¶ 18 Here, there is no indication that the trial court considered a factor implicit in the offense as an aggravating factor. The record reveals that the trial court specifically reviewed defendant's criminal history, and noted that defendant's crimes were becoming increasingly violent, so that he had "elevated from past drug cases to now violent crimes and beyond." The court also took the circumstances of the current offense into account, observing that "but for the fact that [the police] saw [defendant] running past the front of the car with two knives in [his] hand, it could have been much more deadly, but it wasn't[,]" and that the involvement of the police did not mitigate the fact that this was a violent crime. The court again noted that defendant had "definitely become more violent in nature as the years have gone on." These comments indicate that the court was reviewing the circumstances surrounding the offense, and reflecting on the increasing violence of defendant's criminal offenses, as demonstrated by his behavior vis-à-vis the victim here. These comments do not indicate that the court "considered" the victim's near-death as an aggravating factor justifying a longer sentence; but rather that in reviewing the circumstances of the case, the court took notice of defendant's increasing tendency towards violence (*People v. Beals*, 162 Ill. 2d 497, 509 (1994)), which impacts his rehabilitative potential

and the safety of the public, which are proper sentencing considerations (*People v. Garibay*, 366 Ill. App. 3d 1103, 1109 (2006)). Accordingly, we find no error here.

¶ 19 In reaching this conclusion, we are not persuaded by defendant's reliance on *People v. Saldivar*, 113 Ill. 2d 256 (1986), or *People v. Conover*, 84 Ill. 2d 400 (1981), and find them factually distinguishable. In both cases, the trial court expressly cited an element of the crime as an aggravating factor, and thus the supreme court found that it had erred. See *Saldivar*, 113 Ill. 2d at 272 ("The number one factor in aggravation* * * is the terrible harm that was caused to the victim. And the victim is dead today."); *Conover*, 84 Ill. 2d at 402 (the trial court cited defendant's receipt of compensation in the form of the burglary's proceeds as an aggravating factor). Here, the circuit court made no express statements that it was using the fact that the victim could have died, but did not, as an aggravating factor. As this court has previously observed, "[i]t is unrealistic to suggest that the judge sentencing a convicted [criminal] must avoid mentioning the fact that someone has [almost] died or risk committing reversible error." *People v. Barney*, 111 Ill. App. 3d 669, 679 (1983). Thus, considering the record as a whole, we find no consideration of an improper factor by the court in reaching its sentencing decision. *Morrow*, 2014 IL App (2d) 130718 at ¶ 14.

¶ 20 Defendant next contends that the sentence is excessive in light of the facts of the case, the nature of the injury Norris received, and his age, arguing that a 20-year sentence at his age of 59 years is effectively a life sentence and "negate[s] any possibility of rehabilitation." We disagree. The seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors, and the statute does not mandate that the absence of aggravating factors requires the imposition of the minimum sentence. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). "The trial court is in the best position to balance the appropriate

factors and tailor a sentence to the needs of the case" (*Wilson*, 257 Ill. App. 3d at 704), and we will not disrupt its decision absent an abuse of discretion (*Stacey*, 193 Ill. 2d at 209-210).

¶ 21 Here, the trial court was cognizant of the facts of the case, including the nature and extent of Norris' injury, defendant's age, and his lengthy criminal history. The court specifically noted that defendant's crimes were becoming increasingly more violent as he got older, indicating that it believed that defendant lacked rehabilitative potential (*Quintana*, 332 Ill. App. 3d at 109), and subsequently sentenced him to 20 years in prison, which falls in the middle of the permissible sentencing range (*Lopez*, 166 Ill. 2d at 450). The court's careful deliberation of the record shows that it did not act arbitrarily, and properly weighed the appropriate aggravating and mitigating factors in reaching its decision. Accordingly, we do not find the sentence excessive and will not disturb the court's decision. *Quintana*, 332 Ill. App. 3d at 110.

¶ 22 Defendant next contends that his mittimus should be modified to reflect a single conviction for attempted murder, arguing that the trial court merged the remaining convictions into this count. Our review of the record shows that there is a discrepancy between the circuit court's written order and its oral pronouncement. At the sentencing hearing, the trial court entered separate sentences on attempted first degree murder, two counts of UUWF, aggravated battery and domestic battery, and indicated that "these will all merge." In its written order, however, the court indicated that defendant would be sentenced to 20 years on count 1 (attempted first degree murder), seven years on count 5 (UUWF), seven years on count 7 (UUWF), seven years on count 11 (aggravated battery), and six years on count 14 (domestic battery), with no reference to merging of any counts. The mittimus, in turn, lists all of defendant's convictions, and their respective sentences, and notes, "It is further ordered that all counts merge / 3 years MSR."

¶ 23 Although the written order of the circuit court is evidence of the judgment of the circuit court, the trial judge's oral pronouncement is the judgment of the court. *People v. Smith*, 242 Ill. App. 3d 399, 402 (1993). "When the oral pronouncement of the court and the written order are in conflict, the oral pronouncement controls." *Id.* As such, we find that the trial court intended to merge all the counts into defendant's conviction for attempted murder.

¶ 24 The State, nevertheless, objects, and contends that the mittimus is correct because none of the offenses can merge with count 1. The State argues that in order for the counts to merge, the offenses must be lesser included offenses of the most serious offenses. As defendant correctly points out, however, the one-act, one-crime doctrine involves a two-step analysis. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). First, we must determine whether defendant's conduct involved multiple acts or a single act: multiple convictions are improper if they are based on precisely the same physical act. *Id.* Second, if we find that the conduct involved multiple acts, then we must determine whether any of the offenses are lesser-included offenses: if an offense is a lesser-included offense, multiple convictions are improper. *Id.*

¶ 25 Here, we need not reach the second step of the analysis. Defendant's convictions for UUWF, aggravated battery, and domestic battery, all stem from the same act, *i.e.*, defendant's attempt to kill the victim by throwing knives at her, which constituted a substantial step towards the commission of first degree murder. The State focuses on the second step of the analysis in its brief, and does not argue that it charged or proved separate acts, nor does it provide any compelling reasons for this court to find otherwise, especially where the trial court indicated twice during sentencing that the convictions would merge. Pursuant to our authority under Supreme Court Rule 615(b) (1) (eff. Aug. 27, 1999), we therefore direct the clerk of the court to modify defendant's mittimus to reflect a single conviction for attempted first degree murder.

¶ 26 Defendant next requests that the order assessing fines, fees and costs be corrected.

Whether fines and fees are properly assessed is subject to *de novo* review. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007). Defendant contends, the State concedes, and we agree, that defendant is entitled to a credit of \$5-per-day for the 275 days he spent in pre-sentence custody amounting to a total of \$1375, which can offset certain fines imposed by the circuit court. 725 ILCS 5/110-14 (eff. Jan. 1, 2005). These include the mental health court fine of \$10; the youth diversion/peer court fine of \$5; the drug court fine of \$5; the Children's Advocacy Center fine of \$30; the domestic violence fine of \$200; and the State Police operations charge of \$15.

Additionally, defendant argues, the State concedes, and we agree that the protection order violation fine for \$20 should not have been assessed against him since he was not convicted of that offense. 730 ILCS 5/5-9-1.11(a) (West 2012).

¶ 27 Defendant further contends that his pre-sentence custody credit should be used to offset the \$10 domestic battery fine imposed on him; however, the additional domestic battery penalty is not considered a part of the fine for purposes of any reduction in the fine for time served either before or after sentencing. 730 ILCS 5/5-9-1.6 (West 2012). Accordingly, we reject defendant's request for the domestic battery fine to be included in the fines which can be offset by his pre-sentence custody credit.

¶ 28 Defendant also contends that his pre-sentence custody credit should be used to offset the \$50 court system fee, which is a fine, and is erroneously listed under a section of the order assessing fines, fees and costs that does not allow for the pre-sentence custody credit offset. The State argues, on the other hand, that the court system fee is not a fine, but a fee, and that it cannot be offset by the pre-sentence custody credit. We reject the State's contention. Following the logic of the supreme court in *People v. Graves*, 235 Ill. 2d 244, 254-55 (2009), the Second and Third

Districts of this appellate court have found that the court system fee is a "fine" used to finance the court system, and therefore defendant is entitled to \$5-per-day credit against that fee for time spent in pre-sentence custody. See, *e.g.*, *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17; *People v. Dillard*, 2014 IL App (3d) 121020, ¶¶ 10, 15. We find these opinions well-reasoned, and, accordingly, defendant's pre-sentence custody credit can be used to offset the \$50 court system fee. *Id.*

¶ 29 In sum, we find that the \$10 mental health court fine; the \$5 youth diversion/peer court fine; the \$5 drug court fine; the \$30 Children's Advocacy Center fine; the \$200 domestic violence fine; the \$15 State Police operations charge; and the \$50 court system finance fee, which total \$315, must be fully credited for the time defendant served in custody before sentencing. *Wynn*, 2013 IL App (2d) 120575 at ¶ 18. The total defendant owes in fines, fees and costs should be reduced to \$705, and based on the fines offset by his pre-sentence custody credit, the mittimus should be corrected to reflect that defendant owes the court \$390. Pursuant to our authority under Supreme Court Rule 615(b) (1) (eff. Aug. 27, 1999), we direct the clerk of the court to correct the order imposing fines, fees and costs accordingly.

¶ 30 Thus, we affirm defendant's sentence, modify his mittimus to reflect a single conviction for attempted first degree murder, and correct the order imposing fines, fees and costs as indicated.

¶ 31 Affirmed, as modified.