2015 IL App (1st) 131084-U

THIRD DIVISION
August 12, 2015

No. 1-13-1084

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. 07 CR 15511
	)	
LAMAR STEPHENS,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Lavin and Mason concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Judgment entered on first degree murder conviction affirmed; sentencing claim forfeited; mittimus corrected.

¶ 2 Following a jury trial, defendant Lamar Stephens was found guilty of first degree murder and sentenced to 40 years' imprisonment. On appeal, Stephens does not contest the sufficiency of the evidence to sustain his conviction, but challenges the propriety of his sentence. He claims that the sentencing court considered improper evidence in aggravation, and failed to account for the financial impact of a lengthy period of incarceration. He also maintains that the mittimus

should be corrected to reflect the accurate amount of presentence custody credit to which he is entitled.

¶ 3 We hold that the sentencing court's admonishments satisfied Rule 605(a) (3), and Stephens has forfeited his sentencing claim. We also correct his mittimus.

¶ 4 Background

¶ 5 Stephens was convicted on evidence showing that he married the victim, Tonya Murray Stephens, in 2003, and they divorced in January 2007. On July 2, 2007, Stephens and the victim agreed to meet to discuss their relationship and the possibility of getting back together. They went to the Holiday Inn Express in Calumet Park, and there, Stephens and the victim got into a fight and he fatally strangled her. On July 4, 2007, Stephens gave a videotaped statement to Detective Anthony Beattie, in which he confessed.

¶ 6 At the close of evidence, the jury found Stephens guilty of first degree murder. The court denied Stephens's motion for a new trial, and the case proceeded to sentencing. The State presented, in aggravation, that Stephens was abusive towards the victim from the beginning of their relationship to the day he killed her, and presented victim impact statements from several witnesses, including the victim's daughter, Keanna Peppers. According to Peppers, most nights she would awake to her mother's cries for help and that police often were called to the house. Many times Peppers saw Stephens attempting to smother her mother with a pillow, and also witnessed his violent nature, including tearing doors off hinges, breaking phones, and spitting in her mother's face.

¶ 7 In further aggravation, the State presented three Chicago police reports alleging domestic abuse by Stephens towards the victim, dated September 21, 2002, December 14, 2003, and January 2, 2005, and two orders of protection that the victim had sought against Stephens. Also

presented was a copy of the dissolution of marriage judgment which showed that the ground for dissolution was mental cruelty.

¶ 8 Stephens's counsel objected to the three police reports. In response, the State cited their admissibility as evidence under the propensity statute, section 7.4 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.4 (West 2012)), and argued that, although the reports could have been admitted during trial, the State chose to save them for sentencing. The State also maintained that the reports described acts by Stephens against the victim, and met the standard for admissibility at sentencing as relevant and reliable.

¶ 9 The sentencing court allowed admission of the reports, the orders of protection, and the dissolution of marriage judgment.

¶ 10 The State outlined Stephens's 30-year criminal history, asserting that it showed an escalation in violence, and included multiple thefts and possession of stolen motor vehicles, burglaries to vehicles, and 1991 convictions of armed robbery and unlawful restraint for which he was sentenced to 20 years' imprisonment. As to crimes against the victim, the State noted that the police report from September 21, 2002, reflected that Stephens choked the victim and hit her in the mouth, from December 14, 2003, stated that Stephens threw the victim on the bed after fighting, and from January 2, 2005, reflected that Stephens choked the victim after which she obtained an order of protection against him. Another order of protection in May 2007 expired just a week before the murder.

¶ 11 In mitigation, Stephens presented his mother, Mosella Stephens. She testified that Stephens's father beat and hit him with his fist, starting when he was 7 years old, and physically abused her.

¶ 12 Stephens also presented clinical psychologist Dr. Joan Leska. She testified to having performed a psychological evaluation of Stephens involving seven separate sessions. Her examination revealed that Stephens appreciated the criminality of his actions, and had an IQ of 79 which bordered on the low average range. She testified that Stephens suffered from a major depressive disorder at the time he killed the victim, but it was without psychotic features, that is, he was not insane, and not associated with his conduct.

¶ 13 Dr. Leska further testified that Stephens's mother told her that Stephens had been physically and emotionally abused as a toddler until he was 16 years of age, and that early abuse affects every aspect of development, threatens relationships, and causes an inability to manage feelings such as anger. Dr. Leska described the relationship between Stephens and the victim, as documented in the police reports, to be volatile, and that Stephens was physically abusive which led to the orders of protection.

¶ 14 In allocution, counsel stated that Stephens was most sorry, and never intended for any of this to happen. He said he lost control.

¶ 15 The court sentenced Stephens to 40 years' imprisonment, noting review of the presentence investigation report, the testimony of the witnesses, including Stephens's mother and doctor regarding the abuse he suffered from an early age, and Stephens's statement in allocution. The court found Dr. Leska's testimony to be forthcoming, and that she considered Stephens as sane and responsible for his actions, and that Stephens blames his abusive childhood for his actions. The court reviewed Stephens's 30-year criminal history, his last punishment of 20 years' imprisonment, and that four years later, he committed this crime. The court observed that Stephens regularly lost control and hurt the victim, as reflected in the police reports and the two orders of protection. The court concluded that a sentence of 60 years' imprisonment would be

excessive, noting that there was some mitigation, but that the most relevant factor was Stephens's criminal history.

¶ 16 The court admonished Stephens of his right to appeal his sentence, and the steps necessary to perfect it. Stephens subsequently filed a motion to reconsider the sentence, essentially questioning the length of the sentence, which the court denied. In doing so, the court stated that it considered the necessary factors in aggravation and mitigation and entered an appropriate sentence.

¶ 17 Analysis

¶ 18 On appeal, Stephens first contends that this court should vacate his sentence and remand for resentencing because the court considered unreliable police reports in aggravation. Stephens acknowledges that he waived this issue by failing to raise it in his motion to reconsider sentence (*People v. Jackson*, 182 Ill. 2d 30, 68 (1998)), but urges us to review it because the failure to include the issue in his motion to reconsider sentence was due to deficient admonishments by the sentencing court under Supreme Court Rule 605(a)(3) (eff. Oct. 1, 2001). Specifically, Stephens claims that the court failed to admonish him of his right to challenge any aspect of the sentencing hearing, and therefore, principles of equity dictate that he should be free on appeal to raise any claim of error relating to the sentencing hearing as long as it is supported by the record, citing *People v. Henderson*, 217 Ill. 2d 449, 468 (2005).

¶ 19 We find that the admonishments complied with Rule 605(a)(3), and, any event, he forfeited this claim.

¶ 20 Rule 605(a) requires the trial court to advise defendant, in relevant part, that, before taking an appeal, if defendant seeks to challenge the correctness of the sentence or any aspect of the sentencing hearing, he or she must file in the trial court within 30 days of the date of the

sentence a written motion asking the court to reconsider the sentence or consider challenges to the sentencing hearing. Any issues or claims of error regarding the sentence or the sentencing hearing not raised in the written motion will be waived. The court is not required to strictly comply with Rule 605(a); remand is required only where defendant was prejudiced or denied real justice as a result of an inadequate admonishment. *Henderson*, 217 Ill. 2d at 463, 466.

¶ 21 The sentencing court admonished Stephens that he had the right to appeal his sentence, and to do so, he must file a notice of appeal within 30 days of the entry of the order disposing of his motion to reconsider sentence. The court further admonished Stephens that if he challenges the sentence, before taking an appeal, he must in writing tell the court the reasons within 30 days of sentencing and "*anything*" left out of his written motion would be waived "for all times." (Emphasis added.)

¶ 22 As the court said in *People v. Breedlove*, 213 Ill. 2d 509, 522 (2004), while Rule 605(a) informs a defendant who is convicted and sentenced after trial of what he or she must do to perfect an appeal, the rule was never intended to advise a defendant of every step necessary to preserve claimed errors for review. Contrary to Stephens's contention, the admonishments complied with Rule 605(a) by advising Stephens of the steps necessary to perfect an appeal and warning him that anything not included in the written motion to reconsider sentence would be waived for all times. "Anything" encompasses all aspect of the sentencing hearing, and thus *any* error not raised in Stephens's motion to reconsider is waived for review.

¶ 23 Nonetheless, Stephens argues that the court's consideration of the police reports in aggravation was plain error. Under the plain error doctrine, a defendant has a narrow and limited exception to the general waiver rule allowing a reviewing court to consider forfeited errors where the evidence at the sentencing hearing was closely balanced or where the error was so egregious

as to deny defendant a fair sentencing hearing. *People v. Polk*, 2014 IL App (1st) 122017, ¶15, citing *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Stephens contends his situation meets both prongs.

¶ 24 But, the evidence at the sentencing hearing was not closely balanced. See *People v. Hall*, 195 Ill. 2d 1, 18-19 (2000). The mitigation evidence showed (i) Stephens's father abused him emotionally and physically beginning at an early age, (ii) Stephens suffered from a depressive disorder, and abused alcohol and cocaine, and (iii) Stephens maintained a volatile relationship with the victim. The evidence in aggravation reflected a 30-year criminal history, starting at 16 years of age, escalating into violence, and culminating in the brutal strangulation of the victim.

¶ 25 We also find that Stephens's brief mention that the second prong of plain error was met because it affects his fundamental right to liberty is insufficient to raise plain error under that prong. *People v. Rathbone*, 345 Ill. App. 3d 305, 311 (2003). Stephens thus has forfeited plain error review under the second prong. *People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010)

¶ 26 Moreover, the record shows that the victim and Stephens had a volatile relationship. This was corroborated by the victim impact statement of Keanna Peppers, who stated that police had come to the family's house a number of occasions due to Stephens's violent behavior against the victim. See *People v. Harris*, 375 Ill. App. 3d 398, 409 (2007). The trial court placed little weight on the police reports; instead, emphasizing its reliance on Stephens's 30-year criminal history and other evidence in aggravation demonstrating Stephens's violent nature. Thus, Stephens has not established plain error under the second prong (*Hillier*, 237 Ill. 2d at 545) and there is no basis for the contention that the police reports lead to a greater sentence (*People v. Heider*, 231 Ill. 2d 1, 21 (2008)),

¶ 27 Stephens relies on *People v. Brown*, 91 Ill. App. 3d 163 (1980), a case remanded for resentencing after, over the defendant's objection, the trial court considered a presentence report's detailed entry of a conviction that was later reversed. *Brown*, 91 Ill. App. 3d at 168. Although, as in *Brown*, the sentencing court overruled the objection to the admission of the police reports, the court specifically stated that the most relevant factor in aggravation was defendant's criminal history. Moreover, in *Brown*, the information concerned a different victim whereas the police reports documented defendant's violent relationship with the same victim, and other evidence corroborated this violence. See *Harris*, 375 Ill. App. 3d at 409 (court may consider a defendant's "criminal conduct not resulting in prosecution or conviction"). Thus, we find *Brown* inapposite.

¶ 28 We also have considered *People v. Wallace*, 145 Ill. App. 3d 247, 256 (1986), cited by Stephens, and find his reliance misplaced. The only significant facts in aggravation noted by the trial court in *Wallace* were an incident in Gurnee which was substantiated, and a rape charge in South Carolina, which was hearsay, leading the reviewing court to find that the South Carolina rape charge influenced the trial court's sentencing decision. *Wallace*, 145 Ill. App. 3d at 254-56, By contrast, here there was an abundance of aggravating evidence other than the police reports, and the circuit court expressly stated that Stephens's criminal history was the most significant factor. Thus, the record supports the conclusion that the court placed little weight on the police reports as compared to the other evidence of the volatile relationship, and the reports did not lead to a longer sentence. *Heider*, 231 Ill. 2d at 21. Accordingly, we find no plain error.

¶ 29 Stephens also contends that the court failed to consider in mitigation the financial impact of a 40-year sentence. In the absence of evidence to the contrary, we presume that the trial court considered this mitigating evidence. Further, the trial court is not required to specify on the record its reasons for Stephens's sentence. *People v. Acevedo*, 275 Ill. App. 3d 420, 426 (1995).

¶ 30 Next, he contends, and the State concedes, that he is entitled to 1,995 days of presentence custody credit. We agree, and order that the mittimus be amended to reflect 1,995 days of pre-sentence custody credit. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 31 In light of the foregoing, we affirm the judgment of the circuit court of Cook County, and correct the mittimus as indicated.

¶ 32 Affirmed; mittimus corrected.