SIXTH DIVISION
October 16, 2015

No. 1-13-2160

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 169
	)	
ARTHUR GRADY,	)	Honorable
	)	Rosemary Grant Higgins,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice ROCHFORD and Justice DELORT concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court did not abuse its discretion in imposing a sentence of 60 years' imprisonment for first degree murder.

¶ 2 Following a jury trial, defendant Arthur Grady was convicted of first degree murder and sentenced to 60 years in prison. On appeal, defendant contends that his sentence is excessive and that the mittimus should be corrected to reflect 1,600 days of presentencing custody credit. For the reasons that follow, we affirm and order correction of the mittimus.

¶ 3 Defendant's conviction arose from the January 30, 2009 shooting death of Ralph Turner, Jr. Defendant was charged along with Aaron Bronson, who pleaded guilty and testified against defendant. The State's theory of the case was that defendant and Bronson planned to rob the victim, whom they had followed out of a casino, but that when the victim resisted, defendant shot him. The medical examiner who conducted the autopsy of the victim testified that the cause of death was one gunshot wound to the chest and one gunshot wound to the thigh.

¶ 4 At trial, the State presented evidence that on the night in question, the victim and a group of his friends went to the Horseshoe Casino in Hammond, Indiana. At the end of the evening, one of the men drove the victim and one of his friends to the victim's house in Chicago and dropped them off. The victim's friend testified that as he walked in the street toward his car, an SUV stopped in front of the victim's house and a man in a dark hoodie got out of the passenger seat. The man heard two gunshots before he ran away. A woman who lived down the block from the victim testified that she heard two loud noises just before 4 a.m. She then looked out her window and saw an SUV driving in reverse down the street.

¶ 5 A Chicago police officer testified that when he was on his way to the scene, he saw a person matching the general description given by the dispatcher. The officer stopped the man, identified in court as defendant, and conducted a protective pat-down search, but found no weapons. The officer found no investigative alerts or active warrants for defendant in the police computer system, so he released defendant.

¶ 6 Using information gleaned from a cell phone recovered at the scene of the shooting, video surveillance footage from the casino, and a photo array identification made by one of the victim's friends, a Chicago police detective identified defendant as a suspect in the shooting and

obtained a search warrant for his address. When the warrant was executed the day after the shooting, the police recovered two guns. A firearm expert determined that the fired bullet and bullet jacket found inside the victim's body were fired from one of the guns. Defendant was arrested at his residence, while Bronson was arrested nine months later in Indiana.

¶ 7 Aaron Bronson testified that he pleaded guilty to first degree murder in the instant case in exchange for a sentence of 24 years in prison. Bronson testified that on the night in question, he and defendant went to the Horseshoe Casino to gamble. At some point, defendant told Bronson that he had lost all his money, but that he saw a group of men who had about $30,000 and thought they should rob them. Bronson agreed to the plan. Later, defendant approached Bronson, told him the group was leaving, and directed Bronson to get his truck. Bronson testified that he retrieved his truck and then drove around until defendant called him to say it was time to pick him up. Bronson drove up to the valet and saw the group of men get into a Mercedes. After defendant got into Bronson's truck, Bronson followed the Mercedes to Chicago.

¶ 8 Bronson testified that the Mercedes stopped briefly and two of its passengers got out. Defendant jumped out of the truck with a gun and ran up to the victim. The victim punched defendant, who fell down toward the ground. Bronson put his truck in reverse and started to drive away. As he did so, he saw the second of the Mercedes' passengers running across the median and heard two or three gunshots. Bronson also saw defendant "hovered over" a man lying on the ground. Bronson did not wait for defendant, but fled to defendant's apartment. Defendant returned several hours later, reported that "he ain't get no money, and he got pulled over that night by the police and they let him go, and he lost his phone." Defendant also reported that he threw the gun, but told Bronson that he was going to go back to get it because it might

have his fingerprints on it. Defendant left, and when he came back, Bronson saw him with the gun. Bronson left for Indiana the next day.

¶ 9 Defendant testified that he and Bronson went their separate ways at the casino. Defendant walked around the casino to pass the time until Bronson was ready to leave. Whenever defendant heard people clapping and cheering, he would walk up to them to see what was going on. Among the tables he walked up to was the victim's. Defendant denied talking with Bronson about robbing anyone.

¶ 10 Eventually, defendant and Bronson decided to leave. Bronson got his truck and picked up defendant at the valet area. Defendant testified that he plugged his cell phone into the charger and went to sleep. When the truck came to a sudden stop, defendant woke up. Defendant looked out the window and saw two men walking on the sidewalk in opposite directions. Bronson got out of the truck, approached one of the men on the sidewalk, and engaged him in conversation. The man punched Bronson and both men fell to the ground. Defendant saw the second man turn back and head toward the fight. Defendant got out of the truck, intending to stop the fight, but when he heard two gunshots, he got back in the truck, put it in reverse, and drove off.

¶ 11 About two blocks away, defendant parked the truck. He could not find his cell phone, so he walked to a nearby gas station. While he was walking, he was stopped by the police, but then let go. Eventually, defendant went home, where the police arrested him the next day. According to defendant, the gun recovered from his apartment was Bronson's.

¶ 12 In rebuttal, the State introduced a certified copy of conviction for defendant's prior convictions of aggravated battery to a police officer and resisting / obstructing a police officer, causing injury.

¶ 13 The jury found defendant guilty of first degree murder, but also found that the State had not proven the allegation that defendant personally discharged a firearm that proximately caused death to another person. The trial court denied defendant's motion for a new trial.

¶ 14 At the sentencing hearing, the State presented certified copies of convictions reflecting that defendant had been convicted of possession of a controlled substance, aggravated battery to a police officer, and resisting and obstructing a police officer. In mitigation, defendant's grandfather testified that defendant was a smart man who was close to his two daughters. Defense counsel noted that defendant was working on an associate's degree at the time he was arrested, that he had worked in landscaping and painting, and had worked on housing development with the Woodlawn Organization. In allocution, defendant stated that he was sorry for the victim's family's loss, but maintained that he had nothing to do with Bronson's crime and stated that he should not have been held accountable for Bronson's actions.

¶ 15 The trial court indicated that it had listened to the testimony of all the witnesses and had reviewed the presentence investigation report. The court stated that defendant had excellent role models in his life, finished high school, and had continued with his education. The court also noted defendant's prior convictions and lack of remorse, stated that it accepted the scenario presented by Bronson, and observed that it was defendant who was "stalking" the victim and his friends at the casino. The trial court stated that it found defendant had very little, if any, rehabilitative potential because he had "all of those opportunities" but made more than one bad mistake. As such, the trial court sentenced defendant to 60 years in prison.

¶ 16 The trial court subsequently denied defendant's motion to reconsider sentence, reiterating that defendant had many opportunities in his life, but did not make the "right decisions," and that therefore, it found defendant had very little rehabilitative potential, if any.

¶ 17 On appeal, defendant contends that his sentence is excessive. He argues that the trial court abused its discretion in imposing what is essentially a life sentence where the jury found that he was not the shooter, but rather, was only accountable for his codefendant's actions; his criminal history was not extensive; his education and work history indicates that he has rehabilitative potential; and his codefendant received a 24-year sentence. Defendant further argues that the circumstances of the offense do not warrant a maximum sentence, because while he and Bronson planned to rob the victim, the murder was not premeditated.

¶ 18 Sentencing decisions are entitled to great deference on appeal because the trial court is in a superior position to fashion an appropriate sentence based on firsthand consideration of relevant sentencing factors, including the defendant's credibility, demeanor, moral character, mentality, social environment, habits, and age. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). We will not disturb a sentencing determination absent an abuse of discretion. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). Sentences within the permissible statutory range may be deemed the result of an abuse of discretion only where they are "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 19 Here, the record indicates that the trial court was well aware of the facts of the case, including the jury's finding that the State had not proved defendant personally discharged the firearm that caused the victim's death, as well as the testimonies of both defendant and

codefendant that while the robbery was planned, the shooting was not. The trial court also was aware of the mitigating factors defendant has identified on appeal. Not only was the information regarding defendant's criminal background, employment history, and education included in the presentence investigation report that was considered by the trial court, but it was also noted by the attorneys at the sentencing hearing. Where mitigating evidence has been presented, it is presumed that the trial court considered it. *People v. Sven*, 365 Ill. App. 3d 226, 242 (2006). As for defendant's argument that his sentence is disproportionate to Bronson's, it is well established that a sentence entered after a guilty plea does not provide a valid basis of comparison to a sentence imposed after a trial. *People v. Nutall*, 312 Ill. App. 3d 620, 635 (2000).

¶ 20 The trial court sentenced defendant to 60 years' imprisonment, a term within the permissible statutory range for first degree murder of 20 to 60 years. 730 ILCS 5/5-4.5-20(a)(1) (West 2010). The record indicates that the trial court properly considered the evidence in aggravation and mitigation. Given the facts of the case, the interests of society, and the trial court's consideration of relevant aggravating and mitigating factors, we cannot find that defendant's sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210. Accordingly, we find no abuse of discretion in the length of defendant's sentence.

¶ 21 Defendant's second contention on appeal is that the mittimus should be corrected to reflect 1,600 days of presentencing custody credit. The State concedes the issue. Accordingly, we order the clerk of the circuit court to correct the mittimus to reflect 1,600 days of presentence custody credit.

¶ 22 For the reasons explained above, we affirm the judgment of the circuit court and order correction of the mittimus.

¶ 23 Affirmed; mittimus corrected.