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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05 CR 17702
	)	
GREGORY OWENS,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE COBBS delivered the judgment of the court.  
Justices Howse and Ellis concurred in the judgment.

**O R D E R**

¶ 1 **Held:** On remand, trial court did not abuse its discretion in imposing a reduced 25-year sentence for murder conviction plus a 25-year firearm add-on penalty.

¶ 2 Following a remand for resentencing, the trial court sentenced defendant, Gregory Owens, to a reduced term of 25 years' imprisonment on his conviction of first degree murder and a 25-year firearm add-on penalty for personally discharging a firearm which caused the death. Defendant now appeals from that judgment, contending that his sentence was excessive because

the court misapprehended this court's decision by improperly considering, in aggravation, a factor inherent in the offense.

¶ 3 The evidence at trial showed that at 8:30 p.m. on February 3, 2005, a dice game was taking place in the basement at 9835 South Merrion Avenue in Chicago. The victim, Oscar Kelsey, began losing money, took the dice from the game and refused to leave. Teresa Hudson, the owner of the house where the game was being played, asked the victim to leave, and when he refused to do so, she threatened to call defendant, the victim's friend. When defendant arrived, he told the victim to leave Hudson's home, and they began to argue. The victim then attacked Hudson, was escorted out of the house by another person, and kicked the door, breaking the glass. When the victim stormed back into the house, a heated argument ensued between him and defendant, who pulled out his gun and shot the victim seven times at close range. Defendant was initially sentenced to 45 years' imprisonment for first degree murder, and a 25-year add-on penalty for personally discharging a firearm that caused the death.

¶ 4 On direct appeal, defendant challenged his sentence as excessive. *People v. Owens*, No. 1-10-0061 (2011) (unpublished order under Supreme Court Rule 23). This court found that the facts adduced at trial did not support a lengthy sentence of 70 years' imprisonment where defendant was not the aggressor and shot the victim after a heated argument during which defendant unreasonably believed he was acting in self-defense, making it unlikely that defendant would be a recidivist offender. *Owens*, order at 25-26. We also noted that, in sentencing defendant, the circuit court stated that defendant's conduct caused or threatened serious harm, which is an inherent factor in the offense of first degree murder, and therefore, vacated the

sentence and remanded for a new sentencing hearing, noting that a proper sentence would be near the minimum sentencing range for first degree murder followed by the mandatory 25-year enhancement term. *Owens*, order at 26.

¶ 5 On remand, a hearing was held, and defendant presented a mitigation witness, Wyandotta Humphries. She testified that her niece is defendant's ex-girlfriend, and they have two children together. She related that defendant supports the children, has a close relationship with them, and writes them letters. The State then noted that the court has the penitentiary records from the Illinois Department of Corrections (IDOC) which show that some disciplinary actions were taken against defendant since he was last sentenced, but that the IDOC records do not indicate any kind of violent behavior. Rather, the records reflect that defendant had pens, pencils, erasers and glue in his cell, which would be considered benign, but are contraband in the penitentiary. The State further asserted that the shooting was unjustified.

¶ 6 Defendant responded that he received two tickets for possessing benign items in the penitentiary, but that this should be considered in light of the fact that he shares a cell with another inmate. Defendant further noted that he had an abusive childhood and has played an active role in his children's life, and provided for them. With regard to the facts of the case, defendant insisted that he acted under strong provocation, has no violence in his background with only one prior conviction for possession of a controlled substance, and that the result of the circumstances is unlikely to recur. Defendant further noted that he was only 22 years old at the time of the shooting.

¶ 7 The State responded that the victim was unarmed and that defendant pulled out his gun, pointed it at the victim, and pulled the trigger six inches away from the victim's head. He then continued to shoot the victim six more times.

¶ 8 The circuit court sentenced defendant to 25 years' imprisonment for murder, plus the firearm add-on penalty of 25 years' imprisonment. In doing so, the court stated that there were only two factors in aggravation that apply to defendant. The court noted that defendant has a prior history of criminal activity, but that the crime was not a violent one. The court further stated:

"[T]he sentence is necessary to deter others from committing the same crime. We see these type of crimes occur all the time. Where what's basically should be resolved with fists or some type of force less than lethal force, the fact that someone is in possession of a handgun, is threatening with a handgun and all that, and the gun goes off. And someone is killed. So the sentence is necessary to deter others from committing the same crime. I don't believe any other factors in aggravation actually apply."

¶ 9 The court then noted, in mitigation, that defendant did not contemplate this act, and acted under strong provocation where there were substantial grounds tending to excuse or justify defendant's criminal conduct, though failing to establish a defense. The court also noted that the appellate court believed there was rehabilitative potential but that he did not see that, but would give defendant the benefit of the doubt and find that he might have some rehabilitative potential.

The court explained that, from the penitentiary standpoint, defendant is exhibiting rehabilitative potential in his incarceration and making the best of it.

¶ 10 Defendant subsequently filed a motion to reconsider sentence, alleging that the 50-year sentence was excessive. The circuit court denied the motion.

¶ 11 On appeal, defendant again contests the propriety of his sentence. He maintains that it is excessive where the circuit court misapprehended this court's mandate and improperly applied the law by considering factors inherent in the offense, namely, that someone was killed and that a gun was used.

¶ 12 The 50-year sentence (including the firearm enhancement) imposed against defendant fell within the statutory range for the offense of murder. 730 ILCS 5/5-4.5-20 (West 2012); 730 ILCS 5/5-8-1 (West 2012). As a result, we may not disturb that sentence absent an abuse of discretion. *People v. Bennett*, 329 Ill. App. 3d 502, 517 (2002).

¶ 13 Although a factor inherent in an offense may not be considered as a factor in aggravation at sentencing (*People v. Conover*, 84 Ill. 2d 400, 404 (1981)), every reference by a sentencing court to a factor implicit in the offense does not constitute reversible error (*People v. Burge*, 254 Ill. App. 3d 85, 91 (1993)). In setting a term of imprisonment, the trial court is not restrained from considering the circumstances of the offense, but rather, may consider the degree or gravity of defendant's conduct, *i.e.* the force employed and the physical manner in which the victim's death is brought about or the nature and circumstances of the offense, including the nature and extent of each element of the offense as committed by defendant. *People v. Saldivar*, 113 Ill. 2d 256, 271-72 (1986).

¶ 14 Here, the record shows that the court specifically stated that it only considered two aggravating factors, defendant's criminal history, which included one nonviolent offense, and the need to deter others from committing similar crimes. The court did not consider death or the use of a gun as aggravating factors, but, rather, commented on the repetitive occurrence of disputes being resolved by lethal force instead of something less, and the need to deter others from using a gun.

¶ 15 Considering the record as a whole, we find no improper consideration by the trial court by the mere mention of the fact that someone was killed by the use of a gun to resolve a dispute. *People v. Estrella*, 170 Ill. App. 3d 292, 297-98 (1988). This court observed in *People v. Barney*, 111 Ill. App. 3d 669, 679 (1982), that the statutory requirement that the trial court specify on the record the facts that led to its sentencing determination "was not intended to be a trap" for the sentencing court. We have also found that it is unrealistic to suggest that the court, in sentencing defendant, must avoid mentioning that someone has died or risk committing reversible error; and that the court only errs if it expressly states it was considering the death of the victim. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004). Here, it is clear that the court did not place undue emphasis on the victim's demise, or emphasize the end result of the crime or consider the death as an aggravating factor. *People v. Johnson*, 206 Ill. App. 3d 542, 550 (1990). Rather, the court merely acknowledged the seriousness of the offense, stressed the need to deter others from making the same mistakes, and did not violate the principle that a factor inherent in an offense should not be considered as an aggravating factor. *Benford*, 349 Ill. App. 3d at 735.

¶ 16 Notwithstanding, defendant further contends that the sentence is excessive in that the court failed to properly balance his rehabilitative potential, and that the mitigation in this case is greater than the aggravation which is "extremely weak – indeed almost absent." We observe that the court was not required to give greater weight to defendant's rehabilitative potential than to the seriousness of the offense (*People v. Phillips*, 265 Ill. App. 3d 438, 450 (1994)), which involved defendant using lethal force to resolve a dispute with his friend. The comments made by the court show that it was not convinced of defendant's strong rehabilitation potential, but gave him the benefit of the doubt in imposing a sentence close to the minimum.

¶ 17 The trial court has great latitude in determining and weighing factors in mitigation or aggravation, and this court gives great deference and weight to the sentence entered by the trial court. *People v. Nussbaum*, 251 Ill. App. 3d 779, 780-81 (1993). On this record, we find no reason to substitute our judgment for that of the trial court, and find that it did not abuse its discretion in imposing the near minimum sentence (*People v. Streit*, 142 Ill. 2d 13, 19 (1991); *People v. Crenshaw*, 2011 IL App (4th) 090908, ¶24), in compliance with this court's mandate (*Owens*, order at 25-26).

¶ 18 In passing, we note that defendant also asserts that the trial court improperly considered the IDOC disciplinary records which were not subject to cross-examination. Defendant, however, failed to object to the records below, and has thus waived the issue for review. *People v. Reed*, 177 Ill. 2d 389, 393-95 (1997). Since he has not argued for plain error review, he has forfeited it. *People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010).

¶ 19 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

1-13-2667

¶ 20 Affirmed.