

THIRD DIVISION
November 10, 2015

No. 1-14-0263

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 09 CR 18615 |
| |) | |
| ALEXANDER YRACHETA, |) | Honorable |
| |) | Carol A. Kipperman, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's 20-year prison sentence for second degree murder is not excessive, as the record establishes that the trial court considered the nature and circumstances of the case and all appropriate factors.

¶ 2 Following a jury trial, defendant Alexander Yracheta was found guilty of second degree murder and sentenced to 20 years' imprisonment. On appeal, defendant contends that his sentence was excessive in view of the nature and circumstances of the case and his age and background at the time of the offense. We affirm.

¶ 3 The evidence introduced at trial will be discussed to the extent necessary to understand the issue on appeal. Defendant was charged with first degree murder for killing his brother, Anthony Yracheta. The State's evidence established that at the time of the murder, defendant, age 18, and the victim, age 22, were living at 2430 Oak Park in Berwyn with their parents, sister, both their girlfriends, and the brother of the victim's girlfriend.

¶ 4 Ashley Melendez, the victim's girlfriend, testified that she picked up the victim at a friend's house about 1 a.m. on September 27, 2009. The victim consumed 12 beers during the night and was in a good mood. When they arrived home, the dog was barking and the victim went to investigate. Melendez followed the victim and saw him in defendant's first-floor bedroom, located near the kitchen, punching defendant in the ribs. She told the victim to stop and defendant fled the room, bumping into her in the doorway. The victim turned to defendant's girlfriend, Elizabeth Rivera, who was sitting on the bed, and spoke angrily to her. Defendant ran back into the room with a kitchen knife and stabbed the victim in the chest once or twice, breaking the knife. They wrestled and the victim fell to the floor. Defendant punched him in the face more than five times while Melendez grabbed defendant's hair and told him to stop. Defendant then fled to a neighbor's house.

¶ 5 On cross-examination, Melendez estimated that at the time of the murder, defendant was five feet two inches tall and 110 pounds, while the victim was six feet three inches tall and 175 pounds. The victim was strict with defendant and punched him on at least one occasion before the night of the murder. According to Melendez, the victim disliked Rivera, who was pregnant, and believed that Rivera was trying to lure defendant to her side.

¶ 6 Marcus Aguilar, Melendez's brother, saw defendant leave the house without emotion, walking with "his head up high."

¶ 7 Rivera testified that on the day before the murder, she argued with defendant because her mother wanted her to move home. About midnight, defendant came to their room drunk and they had sex. The dog began barking and the victim knocked on the door. When Rivera answered, he told her the room was not hers and that he wanted to talk to defendant. He entered and asked if defendant and Rivera were fighting, which defendant denied. The victim accused defendant of lying. He pointed his finger in Rivera's face and balled his fist but did not hit her. Instead, he punched defendant in the arm three times, knocking him down. Rivera ran from the room and saw defendant behind her in the kitchen. When she returned, the victim was on the floor and defendant was gone. Before the morning of the murder, Rivera never saw the victim strike defendant but heard him criticize defendant's drug use, drinking, partying, and relationship with her.

¶ 8 On cross-examination, Rivera testified that while the victim was knocking on the door, defendant told her that he was scared and asked for his pocketknife. When the victim entered the room, he told Rivera that he wanted her out of the house and that she was lazy and ruining defendant's life.

¶ 9 James Filkins, the Cook County medical examiner, testified that he performed an autopsy on the victim and determined that he died from multiple stab wounds. The victim was stabbed in the heart and back, and, near the same time, received two black eyes and a broken jaw. The victim also received a laceration beneath his chin and a fractured tooth. At the time of death, the victim's blood alcohol level was .08

¶ 10 Officer Trofimchuk testified that he arrested defendant at a neighbor's house. On cross-examination, Trofimchuk stated that defendant was visibly shaken and crying.

¶ 11 Defendant testified that the victim abused him since the age of six, when the victim would tie him to a chair and beat him. When defendant told their mother, the victim would make him kneel and kick him with steel-toe boots. The victim forced defendant to fight other children and would hit defendant for refusing to drink the victim's urine. When they got older, the victim struck defendant when he did not produce enough music for their band. The victim also abused their parents, including instances where he beat their mother until she lost consciousness, shoved her into the wall, poked her face, and stabbed her with a pocketknife. On other occasions, he broke his father's nose, beat him with a pool stick, and attacked his father's friend, Alfred Martinez.

¶ 12 During defendant's testimony, while the parties engaged in a sidebar in the judge's chambers, the State spread of record that defendant was addressing the members of the jury and asking them not to judge him because of tattoos on his face. The State also noted that during testimony, defendant was seen shaking his head and mouthing the words "that's not what happened." The court observed that during the sidebar, defendant was singing loudly enough to be heard in chambers. Subsequently, the court admonished both defendant and the jury and defendant resumed his testimony.

¶ 13 Defendant testified that on the night of the murder, he arrived home about midnight, recorded music in the basement, and drank some beer. Afterwards he went upstairs to his room, where he and Rivera had sex. The victim entered the room, demanding to know why the dog was barking. Defendant was scared and looked for his pocketknife because he knew the victim would

hit him. The victim punched him in the face and also struck Rivera when she tried to break up the fight. Defendant grabbed a knife that was on his television set and stabbed the victim because he feared for his safety and the safety of Rivera and their unborn child. The knife broke instantly. The victim grabbed defendant's shirt but defendant pushed him down and punched him in the face six times because he did not want the victim "to get up and hurt me."

¶ 14 Defendant's mother, father, and Martinez testified and described instances where the victim physically abused each of them.

¶ 15 Defendant's neighbors, Joseph Chiero and Dorothy Chiero, both testified that defendant came to their house at approximately 1:30 a.m. and appeared to be hysterical.

¶ 16 In rebuttal, the State called Detective Zarbock, who testified that in an interview after the murder, defendant admitted that he retrieved the knife from the kitchen table. The State also entered into evidence a photograph of the kitchen table, which defendant had marked and initialed to indicate where he took the knife.

¶ 17 The jury convicted defendant of second degree murder.

¶ 18 At sentencing, the parties stipulated that while in jail defendant had been charged with possession of a tool to defeat a security mechanism and possession of a weapon in a penal institution. The parties also stipulated that Officer Kamenjarin would testify that on September 5, 2011, he was assisting defendant back to his cell following a medical call but defendant refused to enter. After multiple verbal commands, defendant complied and slid a playing card with torn pieces of bed sheets into the locking mechanism of his cell door in order to prevent the door from locking. Kamenjarin recovered the device and defendant admitted responsibility. The State argued that "given the defendant's charges and the facts of this case along with the other

corresponding case of having a *** weapon in the penal institution," defendant's use of a device to defeat a security mechanism was "a very serious matter."

¶ 19 Defendant testified that he had been raped in jail and kept the tool because "I just don't like being in a cell, you know what I'm saying? Just in case something happens, I just want to be able to go out myself." He further testified that he kept a shiv because the Latin Folks gang designated him to be killed.

¶ 20 Defendant's mother testified that he was a kind and loving person. Defendant's father testified that defendant "never lifted his hand to his mother, me, or anyone else." He described defendant as being polite, good in school, and a talented musician. He did not know that defendant had been beaten over the years.

¶ 21 According to the presentence investigation report (PSI), defendant was 18 years old at the time of the offense and 22 years old at sentencing. He had seven siblings, including the victim and another deceased brother. He described his childhood as "really rough," stating that his father hit his mother, both parents used cocaine, and his family members sold drugs. In school, defendant was prescribed Ritalin for attention deficit hyperactivity disorder and took special education classes. After two years of high school, he worked as a dishwasher for one month and then worked full time at a carpet company. He first tried alcohol and marijuana at age 10 and had an alcohol problem "every day since fifteen." He began hearing voices at age 12 and drank to self-medicate. He also used ecstasy, mushrooms, and Xanax. Defendant attempted suicide in jail and was diagnosed with schizophrenia, anxiety, and depression, but reported that medication had been helpful. He believed that Melendez and Rivera lied at his trial but stated that "I'm a changed

man and I just want to go home and be a father to my son," who was then three years old and living with Rivera.

¶ 22 In aggravation, the State argued that the PSI and the facts of the case contradicted the mitigation testimony. The State described defendant as a "professional victim" who did not take responsibility for the murder and blamed his problems on others. Additionally, the State urged that defendant was "acting a fool" throughout his trial and persisted in making excuses for possessing contraband in jail. In view of defendant's lack of remorse and refusal to take responsibility for the murder, the State requested the maximum 20-year sentence.

¶ 23 In mitigation, defense counsel argued that defendant acted due to "extreme provocation," as the victim had abused defendant and their parents for a "lifetime." On the night of the murder, defendant did not want his girlfriend to suffer similar abuse. Defense counsel likened the victim to "the terminator" and argued that defendant's conduct in stabbing and then punching him was understandable because it prevented the victim from attacking him again. Moreover, defendant was undersized, had no prior record, and was "a victim his whole life." Defense counsel asked for a sentence toward the minimum, noting that defendant also faced mandatory consecutive sentencing for possessing the shiv. Defendant declined the court's invitation to speak in allocution.

¶ 24 In imposing a sentence, the court stated:

"I've heard the arguments made by the State and by your attorney. I have heard the statements of your family. I must say that this is a particularly sad case, the victim being your own brother.

I have read the presentence investigation report. I've heard your—you know, the statements. Frankly, the Court feels that the sentence should not be at the minimum range given the fact that the victim was your brother, that after you stabbed him you punched him, broke his jaw. The court finds that considering everything that the sentence should be the maximum."

¶ 25 The court sentenced defendant to 20 years' imprisonment.

¶ 26 At the hearing on defendant's motion to reconsider sentence, defendant told the court that he was sorry for what he did and "didn't mean to do it," but that "[i]t's hard to be remorseful when I spent four and a half years in jail, crying and apologizing." The court denied the motion.

¶ 27 On appeal, defendant contends that his sentence is excessive given the nature and circumstances of the case, his age, and his background. Defendant argues that the murder should not be considered "in a vacuum," but rather, in the context of the victim's long history of abuse toward defendant and their parents. According to defendant, the victim was an uncontrollable "violent monster" whose hostility reached a "new level" when he entered the bedroom, and, for the first time, physically and verbally abused Rivera. Defendant finally fought back because he was terrified that the victim would beat him and his pregnant girlfriend. Consequentially, the victim "reaped what he sown [*sic*]." Moreover, defendant notes that he was 18 years old at the time of the murder, had no adult criminal record, and the only aggravating evidence regarding his criminal history was his pending charge for possession of a tool to defeat a security mechanism.

¶ 28 As a threshold matter, we note for the record that the brief filed by private counsel for defendant here utterly fails to comply with Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013).

The statement of facts contains not one citation to the record and the argument section fails to cite even a single authority, much less acknowledge the deferential standard of review applicable to our review of a trial court's sentencing decision—the prime issue in this cause. Counsel additionally fails to certify that his brief is in conformance with the form required under the rule.

¶ 29 With that said, we now take the time to reaffirm that deferential standard and the legal principles that accompany it. That is, we review for abuse of discretion to determine whether a sentence is excessive. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Id.* at 212-13.

¶ 30 A sentence should reflect both the seriousness of the offense and the objective of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. However, the seriousness of the offense is the most important factor in fashioning an appropriate sentence. *People v. Willis*, 2013 IL App (1st) 110233, ¶ 123. The trial court is presumed to consider all relevant factors and any mitigation evidence presented but is not obligated to recite or assign a value to each factor. *People v. Meeks*, 81 Ill. 2d 524, 534 (1980); *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 48. To rebut this presumption, a defendant must make an affirmative showing that the trial court did not consider the relevant factors. *Jackson*, 2014 IL App (1st) 123258, ¶ 48. A reviewing court will not substitute its judgment merely because it would have weighed the factors differently. *Alexander*, 239 Ill. 2d at 213.

¶ 31 A sentence within the statutory range is presumed proper and will not be disturbed absent an affirmative showing that the sentence is at variance with the purpose and spirit of the law or is manifestly disproportionate to the nature of the offense. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. Second degree murder is a Class 1 felony with a sentencing range of 4 to 20 years. 720 ILCS 5/9-2(d) (West 2008); 730 ILCS 5/5-4.5-30(a) (West 2008).

¶ 32 We cannot say that defendant's sentence was excessive. The 20-year term is presumed proper, as it falls within the sentencing range for second degree murder. Further, it is plain from the record that the trial court considered the nature and circumstances of the case in sentencing defendant. The court heard trial testimony from Melendez, Rivera, and defendant, who described the victim's relationship with defendant, his attitude toward Rivera, and the confrontation in defendant's bedroom. Melendez and defendant also described the violent manner in which defendant killed the victim, which the medical examiner explained in detail. Moreover, the court heard testimony from defendant, his parents, and Martinez describing the victim's long history of alleged abuse towards each of them. Having been apprised of the background and circumstances of the murder, the court concluded that defendant's prison term "should not be at the minimum range given the fact that the victim was your brother, [and] that after you stabbed him you punched him, [and] broke his jaw." *People v. Brunner*, 2012 IL App (4th) 100708, ¶ 66 (affirming sentence despite defendant's "dismal life history"); see also, *People v. Oaks*, 2012 IL App (3d) 110381, ¶ 27 (abusive childhood does not negate amount of extreme and violent force defendant inflicted upon victim). Rather, after "considering everything," the court concluded that "the sentence should be the maximum." *People v. Starnes*, 374 Ill. App. 3d 132, 143 (2007) (trial

court is best positioned to determine appropriate sentence considering facts and circumstances of case).

¶ 33 We also note that the court expressly stated that it considered arguments from counsel, testimony from defendant's parents, defendant's statements, and the PSI. Thus, the court was aware of defendant's age, background, and minimal criminal record at the time of the murder. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55 (because most important sentencing factor is seriousness of offense, mitigating factors neither require minimum sentence nor preclude maximum sentence). Defendant has made no affirmative showing that the trial court failed to consider any of these factors, and we will not reweigh the factors on review.

¶ 34 The trial court also had the opportunity to observe defendant throughout the proceedings and was aware of his disruptive conduct at trial. The record shows that defendant addressed the jury during a sidebar, sang loudly enough to be heard in the judge's chambers, and, during testimony, shook his head and mouthed the words "that's not what happened." The court was permitted to consider defendant's conduct along with other evidence of defendant's credibility, demeanor, general moral character, and mentality. *Alexander*, 239 Ill. 2d at 212-13; *People v. Moody*, 66 Ill. App. 3d 929, 931 (1978) (trial court "may consider the defendant's character as demonstrated by his conduct during trial and up to the time sentence is actually imposed"). Additionally, the court heard the stipulations regarding defendant's charges for possession of a tool to defeat a security mechanism, including the testimony of Officer Kamenjarin, and possession of a weapon in a penal institution. *People v. Richardson*, 123 Ill. 2d 322, 361-62 (1988) (at sentencing, court may consider evidence of alleged offenses if relevant and reliable). We give great deference to the trial court's judgment, as the trial court has a far better

opportunity than a reviewing court to consider these factors in determining an appropriate sentence. *Alexander*, 239 Ill. 2d at 212-13. In view of the nature and circumstances of the case and the factors in aggravation and mitigation, we find that defendant's sentence was an appropriate exercise of discretion and the 20-year term was not excessive.

¶ 35 For the foregoing reasons, we affirm defendant's sentence.

¶ 36 Affirmed.