FOURTH DIVISION
August 13, 2015

No. 1-14-0281

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 16102
	)	
HERBERT McENTEE,	)	Honorable
	)	Diane Gordon Cannon,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Defendant's 20-year prison sentence for aggravated battery with a firearm is not excessive because the record establishes that the court thoroughly considered all appropriate factors.

¶ 2 Following a bench trial, defendant Herbert McEntee was convicted of aggravated battery with a firearm and sentenced to 20 years in prison. On appeal, defendant contends his sentence constitutes an abuse of discretion for providing little chance of restoring him to useful citizenship. Defendant also argues his sentence is excessive considering his criminal history, employability, the circumstances of the offense, and the cost of his incarceration. We affirm.

¶ 3 The evidence at trial established that Andrew McGee, the victim, had been friends with defendant since the 1980s and offered him a place in his home when defendant was living in a garage. Defendant and his girlfriend were arguing loudly at approximately 2:30 a.m. on June 26, 2011, disturbing both McGee and McGee's girlfriend. Ultimately, McGee removed the door from defendant's room. Defendant commented "you don’t believe I will put one in you" and then left with his girlfriend. Defendant and his girlfriend returned, and McGee allowed them back in. Defendant fired two shots into McGee, who was unarmed, and was resting in a chair. Defendant commented "I told you I was going to get you." Defendant then left the house holding hands with his girlfriend. Defendant was 41 years old when he shot McGee.

¶ 4 The court found defendant guilty of aggravated battery with a firearm. At sentencing, the parties agreed that defendant was previously convicted of criminal damage to state property (1987), robbery of an elderly person (1996), and battery and resisting a peace officer (2009). The criminal history report also shows that defendant was convicted for burglary in 1987. In aggravation, the State observed that McGee, age 51 at sentencing, was hospitalized for eight days, needed emergency surgery, and requires a colostomy bag for the foreseeable future. The injuries weakened his core and left arm, preventing him from lifting more than 25 pounds and

earning money through side jobs. Consequently, he may lose his home. According to the State, McGee wished to emphasize his decades of friendship with defendant and the "love and compassion" he displayed in sharing his home. The State did not suggest a sentence but indicated that McGee "wanted to see the defendant stay in prison forever for what he did for no reason."

¶ 5 In mitigation, defense counsel observed that defendant, age 44 at sentencing, was convicted only once in each of the last four decades and never sentenced to prison. The shooting was not gang-related and defendant had no gang involvement for many years. He did not graduate from high school but showed "initiative" and "personal responsibility" by learning a trade, obtaining a well-paying job as a plumber, and avoiding "a bad pattern of living on the streets and getting involved with drugs, [or] seriously involved with gangs." Given these circumstances, defense counsel argued against sentencing defendant "for the purpose of the safety of society" and stated that "no one is going to be more conflicted or harder on Mr. McEntee than himself."

¶ 6 Defendant's mother testified that he was a good son, uncle, and brother and that she did not know "how he got into his self [*sic*] like this." She said defendant "always worked and he has always helped everybody in the family." Defendant assisted her with cooking due to her arthritis, aided his grandparents, and helped his brother "do things around his building." She stated that defendant has nieces and nephews but no children and "[h]elped take care of everybody."

¶ 7 The presentencing investigation report (PSI) indicated that defendant is not married and has one biological child. Defendant is the second oldest of four siblings. His parents separated when he was 17 years old but his family was "close knit." From 1986 to 1996, defendant was a

member of the Gangster Disciples. He worked as a plumber since 1996 and was employed by a plumbing company in Dolton, Illinois, from 2000 to 2011. Defendant smoked marijuana on weekends from age 17 to 27, but stopped due to employment. He drank alcohol on weekends starting at age 16, but limited his drinking to two or three beers. He denied receiving treatment for substance abuse or mental health issues. Defendant declined to speak in allocution.

¶ 8 In imposing a 20-year sentence, the court stated that it considered the factors in aggravation and mitigation, the PSI, defendant's criminal and social history, and the facts heard at trial. The court stated that "[w]hile you may not be a Gangster Disciple, you are guilty of shooting a man who took you in off the street" and "[i]f a friend is not safe from your wrath, I do not know who is." Defense counsel made an oral motion to reconsider, observing that "by the time [defendant] gets out at an elderly age there is less of a chance for him to take up his job as a plumber and care for himself," creating a burden for society. The court denied the motion, citing defendant's criminal history and the fact that he inflicted great bodily harm by "opening fire on an unarmed man." The court stated that defendant was not "anywhere close to crime free" but that it considered his relative "lack of criminal history in not giving [him] the maximum 30-year sentence."

¶ 9 On appeal, defendant contends his sentence constitutes an abuse of discretion for providing little chance of restoring him to useful citizenship by supporting himself through work because he will be 59 years old when released on parole. Defendant also argues his sentence is excessive considering his criminal history, employability, the circumstances of the offense, and the cost of his incarceration.

¶ 10 A trial court has broad discretion in sentencing and will be reversed only where it abuses that discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A reviewing court gives substantial deference to the trial court's sentencing decision 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, moral character, mentality, environment, habits, and age. *People v. Snyder*, 2011 IL 111382, ¶ 36.

¶ 11 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. The trial court is presumed to have considered all relevant sentencing factors, both aggravating and mitigating, but is not obligated to recite or assign a value to each factor. *People v. Meeks*, 81 Ill. 2d 524, 534 (1980); *People v. Hill*, 408 Ill. App. 3d 23, 30 (2011). A reviewing court will not substitute its judgment merely because it would have weighed the factors differently. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010).

¶ 12 A sentence within the statutory range is presumed proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. Aggravated battery with a firearm is a Class X felony with a sentencing range from 6 to 30 years. 720 ILCS 5/12-4.2 (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). Accordingly, defendant's 20-year sentence is presumed proper.

¶ 13 We find the trial court did not abuse its discretion in imposing a 20-year sentence. The record shows the trial court directly addressed several mitigating factors that defendant argues on appeal, including his potential for useful citizenship, criminal background, and employability. At sentencing, defense counsel argued that defendant’s rehabilitative potential would be negated if

he left jail at an advanced age, unable to work. The court considered this argument in view of the seriousness of the offense, which is the most important factor in sentencing. *People v. Jackson*, 2014 IL App (1st) 123258, ¶¶ 52-53 (despite defendant's employment and family ties "the seriousness of an offense is considered the most important factor in determining a sentence"). Defendant fired two shots at McGee, who was unarmed and resting in a chair, after McGee objected to the noise that defendant and his girlfriend made while fighting in the middle of the night. Just before the shooting, McGee had let defendant back into the house even though defendant told him "you don't believe I will put one in you." McGee now requires a colostomy bag and experiences weakness in his left arm and core. The court found that the injuries inflicted and the act of "opening fire on an unarmed man" warranted the 20-year sentence. We cannot say the trial court erred in finding that these circumstances were not outweighed by defendant's potential to support himself as a plumber if he received a lesser sentence. *People v. Whitfield*, 2014 IL App (1st) 123135, ¶¶ 38-42 (rehabilitative potential did not outweigh seriousness of offense where defendant shot at unarmed victims multiple times without provocation). The court also observed that defendant was not "anywhere close to crime free" but refrained from imposing the maximum sentence due to his limited criminal history. *People v. Weiser*, 2013 IL App (5th) 120055, ¶ 35 (affirming sentence where trial court found "the maximum sentence permitted by statute would not be appropriate in light of the defendant's limited criminal history, but also noted that the mitigating effect of this factor was offset to some extent because [of] the defendant's [criminal] history."). Defendant's job skills were detailed in the PSI, which the court also acknowledged. *People v. Pearson*, 331 Ill. App. 3d 312, 320 (2002) ("[E]vidence submitted

in mitigation demonstrated defendant's ability to maintain a job and a strong family relationship, [but] rehabilitative potential need not be given greater weight than the nature of the offense.").

¶ 14 Defendant also fails to rebut the presumption that the trial court considered mitigating factors not recited in the record, including the cost of incarceration and the fact that the offense occurred under unusual circumstances. Defendant provides no evidence the court ignored the cost of his incarceration. *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 24 (presuming court considered financial impact). Likewise, defendant provides no evidence the court failed to consider that the shooting occurred after McGee removed the door to his room, a situation unlikely to recur. Rather, the court found the circumstances indicative of the danger defendant posed, stating that "[i]f a friend is not safe from [defendant's] wrath, I do not know who is." *People v. Black*, 223 Ill. App. 3d 630, 632-34 (1992) (where defendant killed victim for $250, court did not err in failing to find circumstances unlikely to recur because "[o]ne shudders to think of defendant's reaction in a disagreement over more serious matters."). The record shows that McGee removed defendant's door to stop defendant and his girlfriend from fighting in the middle of the night. McGee had been friends with defendant for more than 30 years and offered him a place in his home when defendant was living in a garage. Absent evidence that the court ignored mitigating factors, we will not disturb the sentence. *People v. Butler*, 2013 IL App (1st) 120923, ¶ 33 (affirming sentence where defendant was "unable to point to anything in the record that suggests that the trial court failed to consider any of the mitigating factors he presents.").

¶ 15 Defendant improperly introduces studies regarding his life expectancy. Such sources do not qualify as relevant authority on appeal and will not be considered. See, *e.g.*, *Vulcan*

Materials Co. v. Bee Construction, 96 Ill. 2d 159, 166 (1983); *People v. Mehlberg*, 249 Ill. App. 3d 499, 531-32 (1993).

¶ 16 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 17 Affirmed.