2015 IL App (2d) 131094-U
No. 2-13-1094
Order filed September 23, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellee,	)	
v.	)	No. 10-CF-302
JACK L. SMITH,	)	Honorable Sharon L. Prather,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to an aggregate prison term of 24 years with day-for-day credit.

¶ 2 Following a stipulated bench trial, defendant, Jack L. Smith, was convicted of three counts of aggravated criminal sexual assault (see 720 ILCS 5/12-14(b)(1) (West 1994)) and one count of aggravated criminal sexual abuse (see 720 ILCS 5/12-16(d) (West 1994)). Defendant's convictions are based on sexual activity with three girls between January 1, 1995, and December 31, 1996. Each victim was less than 13 years old when the activity occurred, but the offenses were not reported until March 2010.

¶ 3 Defendant was sentenced to concurrent prison terms of 24 years for each aggravated criminal sexual assault and 7 years for the aggravated criminal sexual abuse. Defendant appeals, arguing that his sentence is excessive because (1) it is four times longer than the statutory minimum, (2) he will remain in prison until he is nearly 84 years old, (3) his incarceration burdens the taxpayers, (4) his criminal history does not include any felony convictions, and (5) he poses a low risk of recidivism. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Defendant was charged with engaging in sexual activity with three girls between January 1, 1995, and December 31, 1996. Each girl was less than 13 years old when the activity occurred. The offenses were unknown to law enforcement officials until March 2010, when the three girls reported them to a McHenry County sheriff's deputy. Defendant was born in June 1938, making him 56 to 58 years old at the time of the offenses and nearly 73 years old when the prosecution commenced.

¶ 6 On April 8, 2010, defendant was charged with three counts of predatory criminal sexual assault and one count of aggravated criminal sexual abuse. An amended indictment filed on June 5, 2013, alleged the same acts but described the offenses alleged in the first three counts as "the offense called aggravated criminal sexual assault through December 12, 1995, and after which [was] called predatory criminal sexual assault of a child." The amended indictment also alleged that the prosecution had commenced within the applicable limitations period and that defendant was eligible for "extended term sentencing" on each charge because the girls were under 18 years old at the time of the offenses. When defendant was arraigned on the amended indictment, he elected to be prosecuted under the statute as it existed on January 1, 1995.

¶ 7 On July 18, 2013, following a stipulated bench trial, the court found defendant guilty of

the three counts of aggravated criminal sexual assault and one count of aggravated criminal sexual abuse. Defendant filed a timely motion for a new trial, which was heard and denied on September 4, 2013. On September 25, 2013, defendant was sentenced to concurrent prison terms of 24 years for each aggravated criminal sexual assault and 7 years for the aggravated sexual abuse. At the hearing, the State requested a 37-year sentence, and the defense requested the minimum sentence of 6 years. The State and defense agreed that consecutive prison terms were not mandatory and that defendant was entitled to day-for-day credit against whatever prison terms were imposed.

¶ 8 On October 16, 2013, defendant filed a motion to reconsider the sentence, arguing that it was excessive. The motion was denied on October 18, 2013, and this timely appeal followed.

¶ 9 II. ANALYSIS

¶ 10 A. Sentencing

¶ 11 On appeal, defendant argues that his sentence is excessive because (1) it is four times longer than the statutory minimum, (2) he will remain in prison until he is nearly 84 years old, (3) his incarceration burdens the taxpayers, (4) his criminal history does not include any felony convictions, and (5) he poses a low risk of committing future offenses.

¶ 12 Illinois Supreme Court Rule 615(b)(4) (eff. Jan. 1, 1967) grants a reviewing court the power to reduce a sentence. However, the trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference because the court, having observed the defendant and the proceedings, has a far better opportunity to consider the sentencing factors than the reviewing court, which must rely on the "cold" record. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). Absent an abuse of discretion by the trial court, a sentence may not be altered on review. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). A

sentence within the statutory range will be deemed excessive and an abuse of discretion where it 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. The most important factor in imposing a sentence is the seriousness of the offense. *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007).

¶ 13 In 2013, defendant was 74 years old when he was convicted of three counts of aggravated criminal sexual assault and one count of aggravated criminal sexual abuse against three girls under the age of 13. Defendant elected to be prosecuted under the statutes as they existed on January 1, 1995, the time of the offenses. See *People v. Hauschild*, 226 Ill. 2d 63, 79 (2007) (defendant may choose to be sentenced under either the law in effect when the offense was committed or at the time of sentencing).

¶ 14 When the offenses occurred, aggravated criminal sexual assault against someone under 18 years old was a Class X felony punishable by a prison term of no less than 6 years and no more than 60 years. 720 ILCS 5/12-14(d) (West. 1994); 730 ILCS 5/5-5-3.2(c) (West 1994); 730 ILCS 5/5-8-1(a)(3) (West 1994); 730 ILCS 5/5-8-2(a)(2) (West 1994). Aggravated criminal sexual abuse was a Class 2 felony punishable by a prison term of no less than three years and no more than seven years. 720 ILCS 5/12-16(g) (West 1994); 730 ILCS 5/5-8-1(a)(5) (West 1994). The State conceded at trial that mandatory consecutive sentences were not required because the offenses were not committed during a single course of conduct. See 730 ILCS 5/5-8-4(a) (West 1994); *People v. Mescall*, 403 Ill. App. 3d 956, 963-64 (2010). However, defendant concedes on appeal that the trial court had discretion to impose consecutive sentences to prevent defendant from committing further crimes. See 730 ILCS 5/5-8-4(b) (West 1994). Any aggregate consecutive sentence could not exceed 120 years' imprisonment, the sum of the maximum extended terms for two of the Class X felonies. 730 ILCS 5/5-8-4(c)(2) (West 1994).

¶ 15 Thus, under the law in effect at the time of the offenses, the range of potential prison terms was 6 years, the minimum for each Class X felony, with all terms running concurrently, to 120 years, the maximum consecutive extended terms for two of the Class X felonies. In either case, the Class X terms would run concurrently with the term for the Class 2 felony. Defendant received an aggregate sentence of 24 years' imprisonment, which was within the permissible sentencing range. He points out that the sentence is four times longer than the statutory minimum, but the State responds that it is only 20% of the potential maximum. We hold that the 24-year sentence was not an abuse of discretion, as it reflects the seriousness of the offenses and accounts for defendant's lack of remorse.

¶ 16 Defendant was convicted of acts of sexual penetration against two girls and an act of sexual conduct with the third. The encounters consisted of fellatio, cunnilingus, and masturbation in defendant's home. The victims were under 13 years of age at the time, and the youngest reported five incidents against her when she was only four to six years old. Defendant invited the young victims to his home after school, where he groomed them for the sexual assaults by methodically creating a permissive environment where the girls could do or say whatever they wanted. The victims reported that defendant gained their trust by providing junk food, card games, dress-up clothes, cigarettes, alcohol, graphic sexual information, and animated and live-action pornographic films.

¶ 17 At sentencing, the State introduced victim impact statements and other evidence showing profound shame, disgust, and anguish caused by defendant's conduct. One victim reported feeling like she lost out on a normal childhood and that she still feels shame and embarrassment. Another reported depression, anxiety, and low self esteem. Defendant's willingness to repeatedly engage in sexual activity with very young girls caused serious and long-term harm.

¶ 18 Defendant claims he poses a low risk to reoffend, but the State presented a hand-written manifesto penned by defendant called "Sex Concent [*sic*] and Age Discrimination" in which he asserts that society should not interfere with the "right" of "older males" and "so-called children" to engage in sexual activity with each other. In the rambling and disturbing document, defendant likens the criminalization of sex with children to unlawful age discrimination, which exhibits his utter lack of remorse or contrition. Defendant often discussed with the youngest victim his beliefs about having sex with children. He told her that he would not have vaginal intercourse with a girl under the age of 12 but that he "would do all other stuff." Defendant also expressed a desire to start a "teen sex club" with kids in the neighborhood, and the initiation would require having sex with him first. Where, as here, a defendant demonstrates little or no remorse for his crimes, the court may consider that factor in imposing a harsher sentence. *People v. Baez*, 241 Ill. 2d 44, 136 (2011).

¶ 19 Defendant asks us to re-weigh the factors in aggravation and mitigation when he argues that a lesser sentence is appropriate based on his age, minimal criminal history, and the burden of his incarceration on taxpayers. The trial court was in the best position to fashion an appropriate sentence, and we will not substitute our judgment by reweighing the factors. Considering that defendant was eligible for a sentence of 6 to 120 years' imprisonment and that he believes he did nothing wrong, his 24-year sentence with day for day credit was not an abuse of discretion.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, the judgment of the circuit court of McHenry County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed the State's attorney fee of $50 under section 4-2002(a) of the Counties Code (55 ILCS 5/4-2002(a) (West 2014)) for the cost of this appeal. See *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 22 Affirmed.