2015 IL App (3d) 130967-U

Order filed September 24, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-13-0967 Circuit No. 11-CF-1925
CARL R. BLANKENSHIP,	)	Honorable Amy Bertani-Tomczak,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McDade and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing the defendant to a term of 14 years' imprisonment.

¶ 2 A jury found the defendant, Carl R. Blankenship, guilty of aggravated battery of a child, a Class X felony (720 ILCS 5/12-4.3(a), (b)(1) (West 2010)). The trial court sentenced the

defendant to a term of 14 years' imprisonment. On appeal, the defendant argues that the sentence constitutes an abuse of the trial court's discretion.[1]

¶ 3 FACTS

¶ 4 The State charged the defendant by indictment with one count of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2010)). The indictment alleged that on June 2, 2011, the defendant "knowingly by some means, caused great bodily harm to O.B., a child under the age of 13 years, in that he used force to cause head trauma to O.B." The cause proceeded to a jury trial on September 13, 2013.

¶ 5 The evidence showed that O.B. was born February 15, 2011, and was less than four months old on the date in question. The defendant testified[2] that on the night of June 2, 2011, he gave O.B. a bath in the kitchen. After bathing her, the child slipped from his hands and fell, head-first, onto the tile floor. O.B. began to cry but stopped after the defendant held her for a while. The defendant testified that he did not call 911 or take O.B. to the hospital because he thought she was okay.

¶ 6 Later that night, the defendant was lying on a bed with O.B. while his other daughter, A.B., jumped on the bed. A.B. landed on O.B., and again O.B. began to cry. The defendant testified that O.B. stopped crying within a couple of minutes. After putting A.B. to bed, the defendant gave O.B. a bottle and went to the bathroom. When he returned, O.B. was unresponsive and seemed to be having a seizure. He picked the child up and patted her on the

[1]The defendant does not challenge his conviction.

[2]The defendant testified on his own behalf, after the State had closed its case in chief. However, we begin our summary of the evidence with his testimony in order to better illustrate the facts of the case chronologically.

back, then began CPR. The defendant called his wife, Tori, who was O.B.'s mother, but she did not answer. He then called 911.

¶ 7 Police officer Henry Tough testified that he arrived at the apartment to find the door open and the defendant kneeling over O.B. performing CPR. Tough performed CPR and noticed that O.B. did not have any obstruction in her airway. Paramedic Michael Rodeghero carried O.B. to the ambulance while performing CPR. He testified that O.B. was not consistently breathing on her own and stopped breathing three or four times while in the ambulance. The defendant later explained to Tough that he had fed O.B., burped her, then laid her in her bassinet so he could use the bathroom. He repeated this statement the next day to the Department of Children and Family Services investigator Maurice Johnson. When Johnson explained that there was no way that O.B.'s injuries could have occurred the way the defendant claimed, the defendant told Johnson about how A.B. had fallen on O.B. in the bed.

¶ 8 Dr. Andrew Zwolski was in the emergency room at St. Joseph's Hospital in Joliet when O.B. arrived. He testified that a CT scan showed bilateral subdural hematomas, or bleeding on both sides of the brain. When Zwolski asked the defendant about the bruises on O.B.'s head, the defendant explained that he had dropped a cell phone on her.

¶ 9 Dr. Aras Zlioba testified that O.B. had a "very, very severe hemorrhage in the retina and subhyaloid space" in her right eye. Zlioba testified that retinal hemorrhages can sometimes occur if a child is shaken severely or suffers other trauma, or if the child has certain infections or diseases. Zlioba stated that, in his opinion, the nature and severity of O.B.'s hemorrhaging indicated that the cause was child abuse or shaken baby syndrome.

¶ 10 Dr. Amar Katherji, a pediatric neurologist, testified that he was brought into the case because O.B. was having seizures. An MRI performed the day after the incident showed

subdural hemorrhage but no skull fracture. Katherji testified that O.B. suffered from lack of oxygen to the brain and a shearing injury to the brain, in addition to the bleeding. The shearing injury was caused by a back and forth movement of the brain. In the absence of skull fractures, Katherji opined that the shearing injury was not caused by a fall. Considering the brain injury in conjunction with the retinal hemorrhage and the seizures, Katherji testified that shaken-baby syndrome or nontraumatic brain injury was the mostly like cause of the injuries.

¶ 11 Dr. Emmalee Flaherty testified that O.B. was transferred to Lurie Children's Hospital in Chicago on June 23, 2011, to have a "G tube" placed. The "G tube" was placed in O.B.'s stomach so she could receive food directly, a measure necessitated by her inability to swallow. While treating O.B., the only explanation for the injuries that Flaherty was aware of, was the defendant's explanation that he found O.B. unresponsive after giving her a bottle. Flaherty testified that O.B. had lost a significant amount of brain tissue in the three weeks since the incident. Flaherty stated that her exam indicated O.B. had grossly stable extensive cystic encephalomalacia, which she described as "big holes in her brain." Flaherty testified that those conditions could not have been the result of the defendant dropping O.B. or of A.B. falling on O.B. She opined that something happened on June 2, 2011, that involved "severe acceleration/deceleration forces."

¶ 12 The defendant testified that he did not immediately tell anyone about dropping O.B. after her bath because he was overwhelmed. Later, he did not tell anyone about that incident because he assumed they would accuse him of lying. He was scared that his children would be taken away and that he would be arrested. At the time, he was not aware that the information could have helped in O.B.'s treatment.

¶ 13 Following closing arguments, the court instructed the jury on aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2010)) and the lesser offense of reckless conduct (720 ILCS 5/12-5 (West 2010)). The jury found the defendant guilty of aggravated battery of a child.

¶ 14 The case proceeded to sentencing on December 6, 2013. The presentence investigation report (PSI) contained a victim impact statement from Tori in which she described the extent of O.B.'s injuries. In the years since the incident, O.B. remains developmentally equivalent to a 2½-month-old baby. She cannot walk, talk, stand, crawl, or roll over. She can see shadows, and knows when it is light or dark; however, she is legally blind. O.B. gets around by wheelchair, and has a second special chair to sit in because she is unable to hold herself up. She continues to have seizures. Tori also testified at the sentencing hearing, reiterating many of the facts found in the victim impact statement. Additionally, Tori noted that, according to doctors, 90 percent of O.B.'s brain is gone, and, as a result, her skull has stopped growing.

¶ 15 Tori also testified that the defendant had been the primary caregiver to the two children. She believed that the defendant loves his children. The defendant's mother and sister echoed these sentiments in their testimony, stating their belief that the defendant was a good father. The PSI showed the defendant had no prior criminal record. In his statement in allocution, the defendant stated that he had told the truth at trial, he loved his children, and he had "made a horrible mistake."

¶ 16 The court sentenced the defendant to a term of 14 years' imprisonment. In imposing sentence, the court noted that the jury had specifically considered and rejected a reckless conduct charge. The court stated that only the defendant knew exactly what happened, but his version of events was inconsistent with the medical testimony. The court also pointed out that the

defendant had not been fully forthcoming after the incident, which may have affected O.B.'s treatment. The court concluded:

> "I also know you have no prior criminal record, and I have to take that into consideration. I also take into consideration that you regret your actions. I also take into consideration that all the evidence indicates that you love both your daughters, and your ex-wife has said so[,] so taking all that into consideration, I am going to sentence you to 14 years in the Department of Corrections."

¶ 17 ANALYSIS

¶ 18 On appeal, the defendant argues that the sentence imposed by the trial court was excessive and that the court abused its discretion in imposing it. Specifically, the defendant contends the court failed to give proper consideration to the defendant's potential for rehabilitation.

¶ 19 A sentence will not be altered on appellate review unless the trial court has abused its discretion. *People v. Anderson*, 112 Ill. 2d 39, 46 (1986). A sentence constitutes an abuse of discretion only where it is manifestly unjust or palpably erroneous. *Id*. "Where a sentence falls within statutory guidelines, it is presumed to be proper and will be overturned only on an affirmative showing that it departs from the intent of the law or violates constitutional guidelines." *People v. Hamilton*, 361 Ill. App. 3d 836, 846 (2005).

¶ 20 In sentencing an offender, a trial court "must not only consider rehabilitative factors in imposing a sentence, it must also make rehabilitation an objective of the sentence." *People v. Wendt*, 163 Ill. 2d 346, 353 (1994). " '[I]t is presumed that the trial court properly considered all mitigating factors and rehabilitative potential before it; and the burden is on the defendant to affirmatively show the contrary.'" *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010) (quoting

People v. Garcia, 296 Ill. App. 3d 769, 781 (1998)). The degree of harm to the victim may be considered in aggravation, even where serious bodily harm is an element of the offense. *People v. Rennie*, 2014 IL App (3d) 130014, ¶ 29. A reviewing court does not substitute its judgment for that of the sentencing judge merely because it would have weighted the sentencing factors differently. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000).

¶ 21 In the present case, the defendant has not met his burden of affirmatively showing that the trial court failed to consider his rehabilitative potential in imposing sentence. Indeed, the defendant is unable to cite to any evidence in the record that might suggest the trial court ignored that requirement. Instead, the defendant simply recites the requirement that a sentencing court consider rehabilitative potential and argues that his actions "are highly unlikely to recur." We presume the trial court considered all mitigating factors, as well as the defendant's potential for rehabilitation, and the defendant has failed to rebut that presumption. See *Brazziel*, 406 Ill. App. 3d at 434.

¶ 22 Aside from the defendant's suggestion that the trial court failed to consider his rehabilitative potential, he argues more obliquely that the trial court failed to sufficiently consider certain nonstatutory factors in mitigation. Specifically, the defendant points out that he is young, he loves his children, his actions were the result of sleep deprivation, and he feels great remorse. These arguments are little more than an invitation for this court to apply *de novo* review and reweigh the sentencing factors anew. See *Stacey*, 193 Ill. 2d at 209. Given the horrific injuries sustained by the child in this case, however, and the relatively lenient sentence

imposed,[3] we may infer that the trial court not only *considered* the factors in mitigation suggested by the defendant, but put significant weight on them. The court's imposed sentence of 14 years' imprisonment for aggravated battery of a child was not an abuse of discretion. Accordingly, we affirm the sentence.

¶ 23 CONCLUSION

¶ 24 The judgment of the circuit court of Will County is affirmed.

¶ 25 Affirmed.

[3]The sentencing range for a Class X felony is between 6 and 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2010). The defendant's sentence of 14 years' imprisonment was thus less than 50 percent of his potential sentence.