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2015 IL App (3d) 140032-U

Order filed February 20, 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 13th Judicial Circuit, La Salle County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0032 Circuit No. 12-CF-354
CHAMARR L. PENNYWELL,)	
Defendant-Appellant.)	Honorable Cynthia M. Raccuglia, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The defendant's 15-year prison sentence for aggravated battery was not an abuse of discretion. (2) The sentencing order is modified to reflect the correct date that the defendant was taken into custody.

¶ 2 The defendant, Chamarr L. Pennywell, pled guilty to aggravated battery (720 ILCS 5/12-3.05(b)(1) (West 2012)) and was sentenced to 15 years' imprisonment. On appeal, the defendant argues that: (1) his sentence should be reduced because the trial court placed undue weight on aggravating factors and did not adequately consider significant mitigating factors; and (2) the

sentencing order states an incorrect amount of presentence custody credit. We affirm as modified.

¶ 3

FACTS

¶ 4

On August 2, 2012, the defendant was charged by information with two counts of aggravated battery, and the court issued a warrant for the defendant's arrest. On the same date, the defendant was placed under arrest.

¶ 5

On February 22, 2013, the defendant entered an open plea of guilty to the first count of aggravated battery. In exchange for the plea, the State dismissed the second count. According to the State's factual basis, on July 31, 2012, the defendant's infant daughter, the victim, was transported to the hospital by ambulance. The doctors told the police that the victim was suffering from injuries consistent with child abuse including a broken hard palate, bruising, and a brain hemorrhage. The resulting investigation determined that the victim was in the defendant's custody at the time the injuries occurred. In an interview with police, the defendant admitted that he had "taken the child by the ankles and slammed [her] down on the mattress."

¶ 6

During the sentencing hearing, the defendant called psychiatrist Joseph W. Chuprevich to testify. Chuprevich interviewed the defendant on January 15, 2013. Chuprevich stated that the defendant used marijuana to self-medicate as a result of chronic anxiety, depression issues, and possible post-traumatic stress disorder. The defendant's typical day included taking what he thought was a "pain pill" after work, which he later learned was Allegra. Chuprevich also noted that the defendant had a difficult childhood, which included: seeing his mother get sexually assaulted, his father threatening him with a gun, and watching a murder. Chuprevich opined that the defendant did not hurt the victim in a volitional, angry way. The court inquired if Chuprevich's opinion would change if he knew that the defendant's wife—who was also the

mother of the victim—reported that the defendant initially attempted to care for the crying victim. However, when the victim did not stop crying, the defendant became frustrated, took the victim by her legs, hit her on the ground three times, and panicked when he saw blood. Chuprevich acknowledged that the defendant's version of events differed from that provided by the defendant's wife.

¶ 7 In allocution, the defendant stated that he "never told [his] wife anything" and he was unsure where her statements to the court came from. The defendant expressed remorse for the injuries he caused to the victim and the suffering caused to his family and the community.

¶ 8 The court stated that it was "sorry for the life that [the defendant] had" and that his background was a mitigating factor, but "not a big one." The court found that the defendant had told Chuprevich that he had no memory of the incident, but, in a letter to the court, the defendant had described the incident. In the letter, the defendant said that on the night of the offense he thought his wife was going to be home and he took some sleeping pills. However, the defendant's wife had to go to the hospital, and she left the defendant with the victim. The defendant fell asleep with the victim on his chest and awoke when he heard a high-pitched scream. The defendant thought that he had lain on top of the victim. The defendant initially tried to feed and burp the victim, but after the victim continued to cry, the defendant leaned his back against the wall and fell asleep. When the defendant awoke, blood was coming out of the victim's nose, and she was having trouble breathing. The defendant picked up the victim and cleaned up the blood, and when her breathing worsened, he called 911.

¶ 9 The court found that the defendant had "told so many stories about what happened" but all of the stories focused on the defendant, when the issue was the well-being of the victim. The court noted the defendant held a position of trust with respect to the victim. The court

acknowledged that the defendant had admitted his guilt and had mental and psychological issues rooted in his childhood, but the court noted that it needed to "send a message in this case" and "punish" the defendant for lying and not accepting the consequences for his actions. The court sentenced the defendant to 15 years' imprisonment. The defendant filed a motion to reconsider sentence, which the court denied. The defendant appeals.

¶ 10

ANALYSIS

¶ 11

I. Excessive Sentence

¶ 12

The defendant argues that his sentence is a result of an abuse of discretion because the trial court placed undue weight on aggravating factors and failed to adequately consider significant mitigating factors.

¶ 13

The trial court has broad discretion in imposing a sentence, and a sentencing decision will not be disturbed absent an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A sentence that falls within the statutory range will not be deemed an abuse of discretion unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Merrick*, 2012 IL App (3d) 100551, ¶ 31. A court of review gives great deference to the trial court's judgment because the trial court, having observed the defendant and the proceedings, is better situated to consider a defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Alexander*, 239 Ill. 2d at 213.

¶ 14

Here, the defendant was convicted of aggravated battery, a Class X felony, punishable by 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2012). The trial court sentenced the defendant to 15 years' imprisonment, a sentence in the middle of the sentencing range. In imposing the sentence, the trial court noted several factors in mitigation and aggravation.

Specifically, the court noted in mitigation that the defendant had admitted his guilt and had psychological issues stemming from his childhood. In aggravation, the court noted that the defendant held a position of trust with the victim, his version of events was inconsistent, the defendant failed to take responsibility for his actions, and there was a need to "send a message." Although the "need to a send a message" is not a factor in aggravation, a trial court may consider the need for deterrence in formulating a defendant's sentence. 730 ILCS 5/5-5-3.2(a)(7) (West 2012). As a result, we conclude that the trial court adequately weighed the factors in mitigation and aggravation in rendering the defendant's 15-year prison sentence. The resulting sentence was not the result of an abuse of discretion.

¶ 15 II. Presentence Custody Credit

¶ 16 The defendant argues that the presentence custody credit portion of his sentencing order is erroneous as it does not state the actual date that he was taken into custody. The State concedes that the defendant is entitled to six additional days of credit for time spent in presentence custody that resulted from this error.

¶ 17 A defendant is entitled to credit for all time spent in presentence custody on the offense for which the sentence was imposed. 730 ILCS 5/5-4.5-100(b) (West 2012). In the instant case, the written sentencing order awarded credit for the period of August 8, 2012, to April 11, 2013. The returned warrant indicates that the defendant was taken into custody on August 2, 2012, and the defendant appeared in custody before the court on August 3, 2012. However, contrary to the defendant's argument and the State's concession, the award of 253 days' credit in the sentencing order is correct and accurately reflects the amount of days between the defendant's arrest and sentence. Therefore, we amend the sentencing order to reflect the correct custody date of August 2, 2012, and otherwise affirm.

¶ 18

CONCLUSION

¶ 19

The judgment of the circuit court of La Salle County is affirmed as modified.

¶ 20

Affirmed as modified.