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2015 IL App (3d) 140893-U

Order filed September 1, 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. 3-14-0893
)	Circuit No. 11-CF-263
BRADLEY BOAZ,)	
Defendant-Appellant.)	Honorable Cynthia M. Raccuglia, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice McDade and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to a total of 12 years' imprisonment on four counts of aggravated criminal sexual abuse.

¶ 2 Defendant, Bradley Boaz, appeals his cumulative sentence of 12 years' imprisonment on four counts of aggravated criminal sexual abuse, arguing that his sentence was excessive.

Because we find that defendant's sentence was not an abuse of discretion, we affirm.

¶ 3 **FACTS**

¶ 4 The State charged defendant by supplanting indictment with four counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2006)). Count I alleged that between May and August of 2006, defendant knowingly fondled the breast of T.B., defendant's stepdaughter, when she was under the age of 18, for the purpose of defendant's sexual arousal. Counts II through IV alleged that in August of 2008, defendant knowingly committed the following acts of sexual conduct with C.C., defendant's stepdaughter, when under the age of 18: (1) fondled her breasts (counts II and III); and (2) fondled her vagina (count IV).¹

¶ 5 Defendant entered an open plea of guilty to all four counts of aggravated criminal sexual abuse. As part of its factual basis, the State asserted that all four charges of aggravated criminal sexual abuse occurred on separate occasions.

¶ 6 At the sentencing hearing, the trial court noted that it had read defendant's presentence investigation report (PSI) and psychological evaluation. The PSI noted that defendant had been convicted of two traffic offenses and placed on court supervision for a third traffic offense. In addition, defendant was charged with attempted aggravated kidnaping while out on bond in the instant case. Defendant married Cynthia Hensley in 1977, and they had three sons and a daughter, K.B. Defendant and Cynthia divorced in 1988 but later moved back in together. Defendant helped raise Cynthia's daughters, T.B. and C.C. Defendant served in the United States Army from 1982 until he was honorably discharged in 1996. Defendant had been employed with the same company from 1996 until 2011. Defendant suffered from anxiety and had been prescribed Xanax and Prozac in the past.

¹ Subsequently, the State charged defendant by supplanting indictment with attempted aggravated kidnaping (720 ILCS 5/8-4(a), 10-2 (West 2010)) (count V). The State nol-prossed the aggravated kidnaping charge after sentencing.

¶ 7 The psychological evaluation stated that defendant reported severe pedophilic tendencies and/or behaviors. Defendant admitted to having a "severe level" of pedophilic fantasy. He acknowledged seeking and grooming underage victims for sexual contact. Defendant admitted that he actually engaged in a regular pattern of child molestations, regularly used force in sexual assaults, and engaged in incestuous assaults. The evaluation recommended that defendant be treated for pedophilia. The evaluation noted that defendant appeared to be mildly motivated to seek treatment for his sexual problems, but his motivation might not be sufficient for successful treatment. The evaluation stated that defendant must not be left alone with potential victims or be allowed in places where potential victims are available, including parks, schools, and malls. The evaluation noted that defendant had poor impulse control. It also recommended that defendant receive treatment for depression and anxiety. The evaluation stated that the psychological tests performed on defendant were designed for diagnosis and treatment purposes. Consequently, the findings of the tests focused on problems and may have deemphasized defendant's strengths.

¶ 8 Police Officer Todd Gordon testified that he interviewed defendant regarding the charges of aggravated criminal sexual abuse in the instant case. During the interview, defendant wrote a handwritten statement detailing the sexual activity that occurred between him and his daughter, K.B. K.B. did not confirm that the sexual contact had occurred.

¶ 9 The State introduced defendant's handwritten statement into evidence. In it, defendant stated that he began taking showers with K.B. when she was approximately six years old. Several times when they were in the shower, he placed his penis between K.B.'s legs. Over the next few years, defendant took showers with K.B. and simulated intercourse with her in the shower when no one was home. Defendant performed oral sex on K.B. in her bedroom on a few

occasions in 1998-1999. When K.B. started to develop breasts, "it got more involved."

Defendant would occasionally lie on top of K.B. in bed with his penis on the outside of her vagina. This usually occurred in the morning before school or work. The last time it happened, defendant used an "artificial vagina" on top of K.B. because she did not want his penis near her vagina. On another occasion in K.B.'s bedroom, defendant put his hand between her legs and put his middle finger into her vagina. K.B. cried, and defendant apologized and told her he did not mean to do it.

¶ 10 The statement went on to describe instances of sexual contact between defendant and his stepdaughters, T.B. and C.C. Defendant wrote that on one occasion in approximately 2007, he lifted T.B.'s swimsuit top and looked and touched her breasts. Defendant stated that "the first time [he] tried doing something with [C.C.]" was in approximately July 2008. He tried to hold C.C. and get her to lie down on a bed. Defendant believed that he may have touched C.C. on the vagina and breasts at that time. On another occasion, defendant put his hand under C.C.'s bra and touched her breast. C.C. got upset and immediately left the room. The last time defendant "tried anything" with C.C. was in August 2008 when he reached around her waist from behind and touched her breast. C.C. laughed. Defendant asked C.C. to lift her shirt and show him her breasts, which she did. Defendant touched C.C.'s breasts and told her she was beautiful.

¶ 11 Defendant went on to state that he had not had a sexual relationship with anyone but his former wife and had not had sex with her since 1992. Defendant concluded his statement by writing, "In spite of all the bad stuff, we are trying to remain a family. Hopefully we can get past this too."

¶ 12 Additionally, the trial court had read 15 letters of support from defendant's family and friends requesting leniency, including letters from Cynthia, K.B., T.B., and C.C.

¶ 13 Defendant gave the following statement in allocution at the sentencing hearing:

"I just want to say that I accept full responsibility for what I did. I'm sorry for what happened. I can't take it back. I never will be able to. The only thing I can do is some day make it up to my family. I'm thankful that they are supportive of me, and I would be nothing without them. It's going to be a long process no matter what happens, and I'm just thankful that it will happen some day. I accept whatever punishment you deem necessary. Thank you."

¶ 14 The trial court sentenced defendant to six years' imprisonment on each count of aggravated criminal sexual abuse. The court ordered that the sentence on count I run consecutively to the sentences imposed on counts II, III, and IV, which were to run concurrently with each other. Thus, defendant was required to serve a total of 12 years' imprisonment.

¶ 15 In terms of mitigating factors, the trial court noted that defendant had no criminal history beyond minor traffic tickets. The trial court also noted letters of support stating that defendant was a model individual, a veteran, helpful, intelligent, and good to others. The letters from defendant's family, including his children, stated that defendant did wonderful things for them and was their "rock." The court remarked that it had been a long time since it had seen such strong mitigating factors in a case.

¶ 16 The trial court went on to note that some of defendant's children who expressed love for defendant in their letters were his victims. They were sorry they even came forward and blamed themselves for the loss of their father and the destruction of their family. They had all forgiven defendant, did not want him to go to prison, and asked the court to be lenient. The trial court then stated: "Ironically, [defendant], the mitigating factors that I have just recited for the record make your aggravating factors extremely strong and outweigh substantially the mitigating factors

in this case." The court noted that a factor in aggravation was that defendant betrayed the trust of vulnerable individuals who depended on him for protection and could not protect themselves.

¶ 17 The trial court found it likely that defendant would continue to commit future crimes due to the longstanding nature of his activities. The trial court did not believe defendant was actually remorseful, but was only sorry he had gotten caught. The court did not think defendant believed his offenses were serious. The court believed that defendant thought his family could eventually forget what he had done and that they would be "one big, happy family again" because defendant had manipulated them into being dependent on him. The court noted that defendant wanted his family to forgive him and move on. The court stated:

"You have no appreciation, none, as to the harm and consequences of your actions, none. To even in a monotone voice say to this Court after what you have done to your own family that you just hope that they'll get over it and you're sorry and they'll move on is really hard to understand, but you do see it that simply, and *** that tells me that you can't even appreciate the criminality of your conduct and how harmful it is and either [*sic*] does your family, and that means to me you've committed the most atrocious crime and that is that you've taken advantage of people who really love you and still love you and continue to do so. If you're capable of doing that to your stepchildren and your family, you're capable of doing it to anyone who gets close to you and that I see as a danger to the public."

¶ 18 The court noted that the psychological evaluation indicated that defendant's rehabilitative potential was minimal because defendant lacked motivation. The court found that any rehabilitative potential was outweighed by the danger he posed to the public and his family.

¶ 19 The trial court gave very little weight to defendant's aggravated kidnaping charge because the court did not know whether it could be proven.

¶ 20 The trial court noted that there is a presumption of probation in cases where a defendant has a minimal criminal history. However, the court found that probation would deprecate the seriousness of the offense and the danger defendant posed to society. The court found that consecutive sentences were warranted for protection of the public. The court stated that had defendant not confessed to committing the charged crimes, it might have considered the maximum sentence of 28 years' imprisonment for the protection of the public.

¶ 21 Defendant filed a motion to reconsider sentence, which was denied.

¶ 22 ANALYSIS

¶ 23 On appeal, defendant's sole argument is that the trial court abused its discretion in sentencing him to 12 years' imprisonment because the trial court failed to give adequate consideration to the factors in mitigation, including the support of his family. We disagree.

¶ 24 A trial court has wide discretion in sentencing a criminal defendant. *People v. Markley*, 2013 IL App (3d) 120201, ¶ 31. The trial court's sentencing decision is granted great deference by reviewing courts because the trial court is generally in a better position to determine the appropriate sentence since it has the opportunity to weigh factors like "the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). It is not our duty to reweigh the factors involved in the trial court's sentencing decision. *People v. Coleman*, 166 Ill. 2d 247, 261-62 (1995).

¶ 25 "A sentence within the statutory limits will not be disturbed absent an abuse of discretion." *Coleman*, 166 Ill. 2d at 258. "A sentence will be deemed an abuse of discretion where the sentence is 'greatly at variance with the spirit and purpose of the law, or manifestly

disproportionate to the nature of the offense.' " *People v. Alexander*, 239 Ill. 2d 205, 212 (2010) (quoting *Stacey*, 193 Ill. 2d at 210).

¶ 26 At the time defendant was sentenced, the cumulative sentencing range defendant faced was between 3 years' and 28 years' imprisonment. 730 ILCS 5/5-8-1(a)(5), 5-8-4(b) (West 2006). Defendant's sentence was within the statutory range of punishment. After carefully reviewing the record, we conclude that the sentence imposed by the trial court does not represent an abuse of discretion.

¶ 27 Defendant pled guilty to four counts of aggravated criminal sexual abuse and admitted to touching his minor stepdaughters' breasts and vaginal areas on four different occasions. Further, defendant admitted that, prior to the abuse of his stepdaughters, he repeatedly sexually abused his daughter, K.B., starting when she was six years old. The abuse involving K.B. and defendant's stepdaughters spanned a period of 12 years. The psychological evaluation considered by the trial court indicated that defendant showed little motivation to seek treatment for his problems and that treatment may not be effective due to defendant's lack of motivation. In aggravation, the trial court noted that defendant held a position of trust or supervision to his stepdaughters as their stepfather and that defendant violated their trust in committing his offenses. See 730 ILCS 5/5-5-3.2(a)(14) (West 2006).

¶ 28 The record does not indicate that the trial court failed to consider any appropriate factor in mitigation. The trial court took note of defendant's employment history, lack of criminal record, veteran status, and letters of support from friends and family. Additionally, the trial court expressly considered the fact that defendant confessed, stating that it would have considered imposing a sentence closer to the maximum if defendant had not admitted to the crimes.

¶ 29 Given defendant's long history of sexually abusing his family members and evidence that treatment was not likely to be successful, the trial court did not abuse its discretion in declining to impose a sentence of probation due to the seriousness of the offenses and for the protection of the public.

¶ 30 We reject defendant's argument that the trial court did not give enough consideration to the mitigating factors in this case. Specifically, defendant contends, the trial court did not treat his family support as a factor in mitigation but rather unfairly used it against him by finding that defendant was not really remorseful and had manipulated his family into depending on him. However, the trial court is in the best position to determine defendant's credibility as it had the opportunity to observe his demeanor. *People v. Rayburn*, 258 Ill. App. 3d 331, 334 (1994) ("[A] trial judge is in a better position than a reviewing court to consider the defendant's credibility, demeanor, and moral character in arriving at a sentence.") Thus, we defer to the trial court's credibility determination. See *id.*

¶ 31 Again, the record does not show that the trial court failed to consider any mitigating factors in this case. Defendant's argument is a veiled attempt to have us reweigh the factors in aggravation and mitigation. We refuse to do so. See *Coleman*, 166 Ill. 2d at 261-62.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of La Salle County is affirmed.

¶ 34 Affirmed.