

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 130790-U

NO. 4-13-0790

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 5, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
STEVEN E. WILLIAMS,)	No. 11CF898
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed defendant's 25-year sentence, vacated that part of the sentencing order requiring him to reimburse the public defender, and remanded with directions.

¶ 2 In October 2011, defendant, Steven E. Williams, pleaded guilty to one count of predatory criminal sexual assault of a child. In November 2011, the trial court sentenced him to 25 years in prison. In December 2011, defendant filed a motion to reconsider his sentence, which the court denied.

¶ 3 On appeal, defendant argues (1) his 25-year sentence is excessive and (2) the trial court erred in ordering him to pay for the services of court-appointed counsel in the absence of a hearing. We affirm in part, vacate in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In June 2011, the State charged defendant by information with two counts of

predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2010)), alleging he committed an act of sexual penetration with the victim, who was under 13 years of age when the acts were committed, in that he placed his fingers inside her sex organ.

¶ 6 In October 2011, defendant entered an open plea of guilty to one count of predatory criminal sexual assault of a child. In its factual basis, the State indicated defendant's 12-year-old daughter stated that several times per month in the previous two years, defendant "had been entering her bedroom at night, kissing her, digitally penetrating her vagina and fondling and kissing her breasts." On one occasion, defendant asked her to perform oral sex on him but she refused. Defendant initially denied the assaults but later admitted there were three to four incidents. Defendant admitted "he French kisses her, penetrates her vagina with his fingers and admits fondling and kissing her breasts." The trial court accepted defendant's guilty plea.

¶ 7 In November 2011, the trial court conducted the sentencing hearing. The court considered a sex-offender risk assessment, the factors in aggravation and mitigation, and the arguments of counsel. The court found "a substantial amount of mitigation in the record," and it noted defendant was a Navy veteran, had a college degree, maintained employment, and had no prior criminal history. However, the court stated the sentence to be imposed had "to be one that will act as a deterrent to others from committing the same crime." After reiterating this was a "detractable offense" and stating a "substantial period of incarceration" was "the only appropriate deterrent factor for this type of an offense," the court sentenced defendant to 25 years in prison. The court also ordered defendant to pay \$750 for his court-appointed counsel.

¶ 8 In December 2011, defendant filed a motion to reconsider his sentence, claiming it was excessive. In September 2013, the trial court denied the motion, finding the sentence "would be an appropriate deterrent for other individuals similarly situated." This appeal

followed.

¶ 9

II. ANALYSIS

¶ 10

A. Sentencing

¶ 11 Defendant argues the trial court abused its discretion in sentencing him to 25 years in prison where the court disproportionately relied on the need to deter. We disagree.

¶ 12 The Illinois Constitution mandates "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. " 'In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed.' " *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)).

¶ 13 "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, 959 N.E.2d 656. Because a trial court has broad discretion in imposing a sentence, this court will not overturn the sentence absent an abuse of discretion. *People v. Chester*, 409 Ill. App. 3d 442, 450, 949 N.E.2d 1111, 1118-19 (2011). "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, 940 N.E.2d 1062, 1066 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000)).

¶ 14 In the case *sub judice*, defendant pleaded guilty to the offense of predatory criminal sexual assault of a child, a Class X felony (720 ILCS 5/12-14.1(a)(1), (b)(1) (West 2010)). A person convicted of an offense under section 12-14.1(a)(1) is subject to a sentencing range of 6 to 60 years in prison. 720 ILCS 5/12-14.1(b)(1) (West 2010). As the trial court's sentence of 25 years in prison was within the relevant sentencing range, we will not disturb the sentence absent an abuse of discretion.

¶ 15 The evidence indicates defendant was 49 years old at the time of sentencing. He had no criminal record. He served for 12 years in the United States Navy, has a college degree, and had a consistent work history at various jobs. Defendant also points out he assumed responsibility for his actions by pleading guilty.

¶ 16 The trial court found "a substantial amount of mitigation in the record." The court noted defendant's status as a veteran, his education, his employment history, and his lack of criminal history. In looking at factors in aggravation, the court stated, in part, as follows:

"What we have here is predatory criminal sexual assault, the defendant sexually assaulting his daughter, and a sad commentary on society, but this is an offense that occurs, and it occurs all too frequently. So the sentence that's imposed today, as the statute says, has to be one that will act as a deterrent to others for committing the same crime. This is a deterrable offense, unlike a lot of the offenses that the court deals with; but this is specifically a deterrable offense."

While acknowledging defendant pleaded guilty, the court stated he "minimized the numbers of times that he did it." The court stated it had "to fashion a sentence that will deter others from

committing the same type of offense" and believed "a substantial period of incarceration in the Illinois Department of Corrections is the only appropriate deterrent factor for this type of an offense, for other individuals similarly situated."

¶ 17 Here, the trial court considered the seriousness of the crime and the need to deter others and weighed those considerations against defendant's mitigating factors. Courts have noted the need to protect children and deter those who might commit sexual assault against them. See *People v. Calva*, 256 Ill. App. 3d 865, 875, 628 N.E.2d 856, 863-64 (1993) ("Given the abhorrent nature of the crime of aggravated criminal sexual assault and society's interest in protecting children from such acts, the need for deterrence would be an appropriate factor in aggravation."); *People v. Burton*, 102 Ill. App. 3d 148, 155, 429 N.E.2d 543, 548 (1981) (noting the need to deter others from committing sexual assaults against children). Defendant faced up to 60 years in prison for the charged offense, and the court's 25-year sentence was not at odds with the purpose and spirit of the law or disproportionate to the crime. We find no abuse of discretion.

¶ 18 B. Public-Defender Reimbursement

¶ 19 Defendant argues the trial court's order directing him to pay for the services of court-appointed counsel, imposed in the absence of a hearing, denied him due process. The State concedes the court's order directing defendant to pay for the services of court-appointed counsel should be vacated.

¶ 20 Section 113-3.1(a) of the Code of Criminal Procedure of 1963 (Code) provides, in part, as follows:

"Whenever *** the court appoints counsel to represent a
defendant, the court may order the defendant to pay to the Clerk of

the Circuit Court a reasonable sum to reimburse either the county or the State for such representation. In a hearing to determine the amount of the payment, the court shall consider the affidavit prepared by the defendant under Section 113-3 of this Code and any other information pertaining to the defendant's financial circumstances which may be submitted by the parties. Such hearing shall be conducted on the court's own motion or on motion of the State's Attorney at any time after the appointment of counsel but no later than 90 days after the entry of a final order disposing of the case at the trial level." 725 ILCS 5/113-3.1(a) (West 2010).

¶ 21 Section 113-3.1 requires the trial court to conduct a hearing into a defendant's financial circumstances and find an ability to pay before ordering him to pay reimbursement for his appointed counsel. *People v. Love*, 177 Ill. 2d 550, 555-56, 687 N.E.2d 32, 35 (1997).

"To comply with the statute, the court may not simply impose the fee in a perfunctory manner. [Citation.] Rather, the court must give the defendant notice that it is considering imposing the fee, and the defendant must be given the opportunity to present evidence regarding his or her ability to pay and any other relevant circumstances. [Citation.] The hearing must focus on the costs of representation, the defendant's financial circumstances, and the foreseeable ability of the defendant to pay. [Citation.] The trial court must consider, among other evidence, the defendant's financial affidavit. [Citations.]" *People v. Somers*, 2013 IL

114054, ¶ 14, 984 N.E.2d 471.

¶ 22 In this case, the trial court sentenced defendant to prison and then indicated it was going to assess a fee for court-appointed counsel. The court asked if defendant's unemployment status had changed, and after defense counsel stated it had not, the court ordered defendant to pay \$750 for the services of the public defender. No notice of the hearing was given and no questions were asked regarding defendant's financial resources or his present and future ability to pay for court-appointed counsel. Thus, the court erred in assessing the fee and that part of the court's sentencing order must be vacated.

¶ 23 As noted, the State agrees the reimbursement order must be vacated because no notice of a hearing was given and a complete hearing was not held. While conceding the error, the State contends the cause should be remanded for a new hearing on the public-defender reimbursement, citing this court's decision in *People v. Somers*, 2012 IL App (4th) 110180, 970 N.E.2d 606. Defendant, however, argues our supreme court's decision in *People v. Gutierrez*, 2012 IL 111590, 962 N.E.2d 437, requires us to vacate the fee without remanding the cause for a new hearing.

¶ 24 In *Gutierrez*, 2012 IL 111590, ¶ 3, 962 N.E.2d 437, the trial court sentenced the defendant to prison, and the circuit clerk imposed a \$250 public-defender fee. On appeal, the appellate court agreed with the defendant that the fee had to be vacated because he had not been provided with notice and a hearing before the fee was imposed. *Gutierrez*, 2012 IL 111590, ¶ 4, 962 N.E.2d 437. The court disagreed with the defendant's argument that the fee should be vacated outright and not remanded for a hearing. *Gutierrez*, 2012 IL 111590, ¶ 4, 962 N.E.2d 437. Instead, and despite the fact that the 90-day time period had expired, the appellate court remanded the cause for a hearing. *Gutierrez*, 2012 IL 111590, ¶ 4, 962 N.E.2d 437.

¶ 25 On appeal to the supreme court, the defendant argued the public-defender fee should have been vacated without remanding the cause for a hearing. *Gutierrez*, 2012 IL 111590, ¶ 19, 962 N.E.2d 437. Based on the statutory language, the defendant contended the hearing could take place no later than 90 days after the entry of the final order, and since the appellate court's remand order came almost two years after the trial court's final order had been entered, any hearing would not happen " 'within the specified time period.' " *Gutierrez*, 2012 IL 111590, ¶ 19, 962 N.E.2d 437 (quoting *Love*, 177 Ill. 2d at 556, 687 N.E.2d at 35). The State, however, argued "the 90-day period should be viewed as directory rather than mandatory." *Gutierrez*, 2012 IL 111590, ¶ 20, 962 N.E.2d 437.

¶ 26 The supreme court agreed the fee should be vacated but found it unnecessary to resolve whether the 90-day time limit was mandatory or directory. *Gutierrez*, 2012 IL 111590, ¶ 21, 962 N.E.2d 437. Instead, the court focused on the fact that neither the State nor the trial court made a motion for a hearing; the circuit clerk just imposed the fee on its own. *Gutierrez*, 2012 IL 111590, ¶ 21, 962 N.E.2d 437. Since neither the State nor the trial court sought the public-defender fee, the court concluded the fee should have been vacated outright. *Gutierrez*, 2012 IL 111590, ¶ 24, 962 N.E.2d 437.

¶ 27 In *Somers*, 2012 IL App (4th) 110180, ¶ 37, 970 N.E.2d 606, the trial court, at the sentencing hearing, ordered the defendant to pay \$200 for the services of the public defender. However, this court found the trial court failed to hold a hearing prior to imposing the fee. *Somers*, 2012 IL App (4th) 110180, ¶ 37, 970 N.E.2d 606. As the record showed the defendant was not given notice that the court was considering imposing the payment and he was not given an opportunity to present evidence or be heard regarding the fee, this court vacated the reimbursement portion of the sentencing order. *Somers*, 2012 IL App (4th) 110180, ¶ 37, 970

N.E.2d 606.

¶ 28 As in the present case, the State agreed in *Somers* the reimbursement order must be vacated and contended the cause should be remanded for a new hearing on the public-defender reimbursement. *Somers*, 2012 IL App (4th) 110180, ¶ 38, 970 N.E.2d 606. The defendant, as defendant does in the present case, relied on *Gutierrez* and argued the court should vacate the fee without remanding the cause for a new hearing. *Somers*, 2012 IL App (4th) 110180, ¶ 38, 970 N.E.2d 606.

¶ 29 We found *Gutierrez* distinguishable, noting the trial court ordered the fee at the sentencing hearing, "which was before the case had been disposed of for purposes of the 90-day period set forth in the statute." *Somers*, 2012 IL App (4th) 110180, ¶ 45, 970 N.E.2d 606. Although the court failed to comply with the *Love* requirements, "it did indicate its intent to order reimbursement and did so within the applicable time frame." *Somers*, 2012 IL App (4th) 110180, ¶ 45, 970 N.E.2d 606. Accordingly, we remanded for a proper hearing pursuant to section 113-3.1 of the Code. *Somers*, 2012 IL App (4th) 110180, ¶ 45, 970 N.E.2d 606.

¶ 30 In a similar case with a different defendant, the supreme court considered the issue of "whether the appellate court properly remanded the cause for a hearing on the defendant's ability to pay a public defender fee when more than 90 days had passed since the entry of the final order at the trial court level." *Somers*, 2013 IL 114054, ¶ 1, 984 N.E.2d 471. At sentencing, the trial court asked the defendant about getting a job when released from jail and whether he would use the money earned to pay his fines and costs. *Somers*, 2013 IL 114054, ¶ 4, 984 N.E.2d 471. After the defendant indicated he hoped to get a job and pay his fines, the court assessed a \$200 fee for the public defender. *Somers*, 2013 IL 114054, ¶ 4, 984 N.E.2d 471.

¶ 31 On appeal, the supreme court found "the trial court's few questions to defendant

about his employment status were insufficient to satisfy the statute." *Somers*, 2013 IL 114054, ¶ 14, 984 N.E.2d 471. However, the court found "the trial court did have some sort of a hearing within the statutory time period." *Somers*, 2013 IL 114054, ¶ 15, 984 N.E.2d 471. Thus, the court held, "because the trial court complied within the statutory time period, there is simply no impediment to remanding the cause for a proper hearing." *Somers*, 2013 IL 114054, ¶ 18, 984 N.E.2d 471.

¶ 32 Here, the trial court ordered the fee at the sentencing hearing, which was before the case had been disposed of for purposes of the 90-day period set forth in the statute. While the court was deficient in following the *Love* requirements, it did indicate its intent to order reimbursement and did so within the applicable time frame. As such, remand for a proper hearing pursuant to section 113-3.1 of the Code is appropriate.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm in part, vacate in part, and remand with directions. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 35 Affirmed in part and vacated in part; cause remanded with directions.