FOURTH DIVISION
January 28, 2016

No. 1-13-4009

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 19978
	)	
TERRY JOE PAGE,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment entered on defendant's conviction for second degree murder affirmed over his claim that his sentence is excessive; mittimus corrected.

¶ 2 Following a jury trial, defendant Terry Joe Page was found guilty of second degree murder, then sentenced to 14 years' imprisonment. On appeal, defendant contends that his sentence is excessive given the mitigating evidence presented and his rehabilitative potential. He also contends that the mittimus should be corrected to reflect an additional day of presentence custody credit.

¶ 3 At trial, Shaunice Hopkins testified that on the night of October 16, 2010, she was staying with her boyfriend, Willie Harris, at Shinette Chinn's house at 54 West 118th Street in Chicago, Illinois. Chinn was the mother of defendant's eight-year-old son, Terrance, who also lived at this house with Chinn's other children, Hassan Grant, age 23, Nicole Seay, age six, and Nicholas Seay, age four.

¶ 4 Hopkins further testified that she and Harris were asleep in one of the bedrooms that morning and awakened at 2 a.m. to a loud thumping. When Harris opened the bedroom door, Hopkins heard defendant in the living room telling someone to call police because someone "might be dead." Hopkins then saw defendant approach Grant, who was sleeping in the bedroom across the hall, and ask him if he "want[ed] some," before leaving the house.

¶ 5 Hopkins walked into the living room and saw Lamar Seay, the father of Nicole and Nicholas, on the ground bleeding and barely breathing. Grant called police and Hopkins told the officers about defendant while Seay was taken away in an ambulance. On cross-examination, Hopkins stated that she regularly saw defendant at Chinn's house with his child and Seay's children.

¶ 6 Grant testified that on the night of the incident, defendant was watching a movie with Terrance, Nicole, and Nicholas at Chinn's home. Seay, who had just been released from prison, came to the house about 11 p.m. and was going to sleep on a mattress in the living room. Seay went to get Nicholas so that he could sleep with him, but Nicholas started crying. When defendant attempted to grab Nicholas, Seay pushed him away, and defendant pulled out a knife and stabbed Seay seven or eight times in his stomach and on the side of his body. Seay did not fight back, but attempted to protect himself.

¶ 7 Grant further testified that after the stabbing, defendant was looking for his glasses, which had fallen under Seay who was lying on the ground. Defendant threw Seay out of the way, retrieved his glasses, and then hit him in the head with a chair. Defendant told Seay that he was lucky he was leaving him alive, and then asked Grant if he "want[ed] some." Grant closed the door to his bedroom, called police, and defendant left the house. When the police officers arrived, Grant told them that defendant had stabbed Seay.

¶ 8 Chicago police detective Dan McGrath testified that he was called to the scene of the incident in question and observed that the residence was a mess. He searched the scene and did not find a knife, but did discover a blood stain on the ground. He interviewed Grant and then went to Christ Hospital where he learned that Seay had died.

¶ 9 Chicago police sergeant Emmit McClendon testified that he was assigned to the homicide investigation on October 18, 2010, and learned that defendant was living at a Salvation Army shelter at 2258 North Clybourn Avenue. Sergeant McClendon visited the shelter, learned from the staff that defendant wanted to turn himself in to police, and later took defendant into custody at that location. Doctor Mitra Kalelkar, deputy chief medical examiner in Cook County, testified as an expert in the field of forensic pathology that she determined, after an examination of Seay, that his death was the result of multiple stab wounds, one of which pierced his lung and heart. The State rested, and the court denied defendant's motion for a directed finding.

¶ 10 Defendant testified that on October 17, 2010, he was 55 years old, was walking with a cane because he was recovering from an Achilles injury, and had two children, Terrance and Terika. He further testified that he graduated from Michigan State University in 1977, had been "clean" for eight years, and was unemployed, but was volunteering and living at the Salvation

Army shelter. He testified that on the night of the incident he was in Chinn's room with the children when Seay came in to take Nicholas, who told defendant that he did not want to go with Seay. Defendant told him that Seay was his real father, and when Seay grabbed Nicholas by the arm to take him to the living room, Nicholas started to cry.

¶ 11 Defendant further testified that he waited for several minutes for Nicholas to stop crying, but he did not, so he left Chinn's room and went to check on Seay and Nicholas in the living room. Defendant saw Nicholas trying to get away from Seay, then grabbed Nicholas and told Seay to let him go because he was scared. Seay told defendant that Nicholas was his son, and confronted him face-to-face. Defendant started to walk away and told Seay to leave the house, but Seay attacked him and tried to throw him down, so he took out his knife and stabbed him twice in the side.

¶ 12 The two men broke apart and Seay lunged at defendant and walked into the knife, which defendant was holding out in front of himself for protection. Defendant and Seay fell on top of each other and defendant stabbed him twice more in the side. He then grabbed a chair and hit Seay in the head with it. Seay grabbed defendant's knife hand and tried to drive the knife at him, but defendant switched the knife to his other hand and stabbed Seay twice more. Defendant told Seay to go to the hospital and stood up to leave. Seay grabbed hold of a chain defendant had around his neck and tried to choke him, so defendant stabbed him again. Defendant saw Grant and asked him if he had anything to say, then grabbed his glasses and left the house. He spent the night with a friend, Ronald Johnson, before returning to the Salvation Army shelter where he was later arrested.

¶ 13 In rebuttal, Ronald Johnson testified that defendant did not spend the night with him following the incident, but he saw defendant that day when defendant told him about the stabbing. Following closing argument, the jury found defendant guilty of second degree murder.

¶ 14 At the sentencing hearing, Sandy Davenport, Seay's sister, read a victim impact statement in which she related that Seay wanted to take his children out of their current living situation, and that, after the incident, both of his children have needed counseling. She further stated that Nicholas had to be institutionalized because he tried to stab himself and others, and she asked for the "most allowable sentence."

¶ 15 In aggravation, the State pointed out that the evidence showed that defendant stabbed an unarmed man seven times, and his theory of self-defense was found unreasonable by the jury. The State noted that the medical examiner's testimony showed that defendant "literally stabbed [Seay] to death in the heart," and that by defendant's own testimony, he hit Seay with a chair after stabbing him. The State informed the court that defendant was 190 pounds while Seay was 130 pounds, and that Davenport's victim impact statement showed that defendant's actions caused long-lasting mental harm to Seay's children.

¶ 16 The State further informed the court of defendant's criminal history, which included a felony conviction for possession of a controlled substance in 1998 for which he received 410 probation, and a 2008 guilty plea to resisting an officer, for which he received 55 days' incarceration in Cook County jail. The State argued that the maximum sentence in this case was necessary to deter others from committing the same crime, and that defendant tried to blame his actions on drugs and alcohol, but, by his own admission, he had been sober since 2002. The State pointed out that defendant escalated the situation between him and Seay, and that defendant

asserted himself into the confrontation. The State concluded that defendant's testimony and criminal background reflect an anger issue and the circumstances of the case reflect defendant's complete lack of dignity toward another individual because he hit Seay after stabbing him and then fled the scene without helping. The State thus asked for the 20-year maximum sentence allowed by statute.

¶ 17 In mitigation, defense counsel argued that defendant was provoked by Seay's actions and that he felt threatened, even though the jury found defendant's belief that he was threatened unreasonable. Counsel pointed out that defendant had a minimal criminal history and successfully completed his 410 probation. Counsel asserted that an extended period of incarceration would create minimal deterrence because this was a unique set of circumstances where defendant merely reacted to Seay's threat after defendant told him to leave the house, and that there were substantial grounds tending to excuse or justify defendant's conduct.

¶ 18 Defense counsel further noted that defendant had led a law-abiding life for a substantial period of time before this incident, that he was clean and sober, and that he spent his free time with his son and Seay's two children while Seay was imprisoned. Counsel stated that defendant's actions were unlikely to recur, and that it was unlikely that defendant would commit another crime. Based on his good behavior during presentence custody, his age, his employment history, and his educational background, counsel asserted that defendant was likely to comply with a period of probation. Finally, counsel stated that defendant's life had been devoted to taking care of his son and that he travelled many miles from the Salvation Army shelter to do so, and asked for a sentence at the lower end of the sentencing range.

¶ 19 In allocution, defendant stated that he was sorry for his actions, especially to Seay's two children, with whom he was very close. He stated that he was not a bad person and had no intention of hurting anyone on the night of the incident. He further stated that he had a college education which enabled him to work in the area of mental health, was a member of Alcoholics Anonymous and Narcotics Anonymous, and had been clean and sober for 11 years. Defendant also stated that he was devoted to raising his son, Terrance, and that one of his "great mistakes" was leaving the scene of the crime, but he only did so because he was scared.

¶ 20 Defendant addressed his guilty plea for resisting arrest and stated that he was beaten by a police officer, but the officer wrongly accused him of hitting him. Defendant claimed that the State's witnesses, including Grant and Johnson, did not testify truthfully, and that Seay forced the confrontation, but the State "spun" the story against him. He stated that he was "vulnerable and defenseless" because of his Achilles injury. He did not deny stabbing Seay, but stated that "he did not die as a result of my actions." Finally, he asked the court for leniency and compassion and apologized for his actions.

¶ 21 In announcing its sentencing decision, the court stated that it:

> "considered the evidence at trial, the gravity of the offense, the presentence investigation report, the financial impact of incarceration, all evidence, information and testimony in aggravation and mitigation, any substance abuse issues and treatment, the potential for rehabilitation, the possibility of sentencing alternatives, the statement of the defendant, the victim impact statement and all hearsay presented and deemed relevant and reliable."

The court then sentenced defendant to 14 years' imprisonment, plus two years of mandatory supervised release, and awarded him credit for 1,143 days of presentence custody.

¶ 22 In this appeal from that judgment, defendant does not challenge the sufficiency of the evidence to sustain his conviction, but contends that his sentence is excessive. As evidence, he cites his educational background as a college graduate, his minimal criminal history, and his potential for rehabilitation. He also cites his age, 55 years, his volunteer experience, his close relationship with his son and Chinn's other children, the financial impact of his incarceration on the State of Illinois, and the minimal rehabilitation potential of a lengthy period of imprisonment.

¶ 23 The imposition of a sentence within the statutory range provided for the class of offense of which defendant was convicted is a decision committed to the sentencing court. *People v. Barney*, 111 Ill. App. 3d 669, 679 (1982). A reasoned judgment as to a proper sentence must be based upon the particular facts of each case (*People v. Smith*, 258 Ill. App. 3d 1003, 1028 (1994)), and a reviewing court will not disturb that sentence absent an abuse of discretion (*People v. Cabrera*, 116 Ill. 2d 474, 494 (1987)).

¶ 24 In this case, defendant was convicted of the Class 1 felony offense of second degree murder (720 ILCS 5/9-2 (West 2010)), which carries a sentencing range of 4 to 20 years' imprisonment (730 ILCS 5/5-4.5-30(a) (West 2012)). The 14-year sentence imposed by the trial court in this case fell within that prescribed range, and was entered after the court considered the appropriate sentencing factors, including the gravity of the offense, the financial impact of incarceration, and defendant's potential for rehabilitation. Under these circumstances, the sentence imposed by the court will not be disturbed unless it is greatly at variance with the

purpose and spirit of the law, or is manifestly disproportionate to the offense. *Cabrera*, 116 Ill. 2d at 493-94. We do not find this to be such a case.

¶ 25 The record shows that in making its sentencing decision, the trial court considered the same mitigating factors defendant brings to our attention. Although the court spoke in broad terms about the factors it considered, we observe that the trial court is not required to specifically identify all factors in mitigation that it considered (*People v. Chirchirillo*, 393 Ill. App. 3d 916, 927 (2009); *People v. Acevedo*, 275 Ill. App. 3d 420, 426 (1995)), nor is it required to recite and assign value to each factor presented at the sentencing hearing (*People v. Baker*, 241 Ill. App. 3d 495, 499 (1993)). Rather, it is presumed that the trial court properly considered all mitigating factors and rehabilitative potential before it, and the burden is on defendant to affirmatively show the contrary. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). Defendant has failed to do so here.

¶ 26 The trial court stated that it considered the nature of the offense, the information contained in the presentence investigation report, the financial impact of incarceration, defendant's potential for rehabilitation, and all evidence presented in aggravation and mitigation. Ultimately, the court determined that defendant's actions necessitated a sentence near the middle of the sentencing range. Although defendant repeatedly emphasizes his strong potential for rehabilitation, we observe that defendant's rehabilitative potential is but one factor for a sentencing court to consider, and it must be weighed against other countervailing factors. *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007). In this case, defense counsel argued defendant's rehabilitative potential and mitigating factors in an attempt to secure a lesser sentence; however, the term imposed by the court shows that it was not convinced by counsel's arguments given the

circumstances of the case. It is not our prerogative to reweigh these same factors and independently conclude that the sentence was excessive. *People v. Burke*, 164 Ill. App. 3d 889, 902 (1987).

¶ 27 Defendant contends, nonetheless, that the trial court failed to consider the financial impact of an extended period of incarceration on the State of Illinois and the "questionable" rehabilitative value of an extended period of incarceration. In support of this claim, defendant cites numerous secondary materials, which are not relevant authority on appeal. *People v. Heaton*, 266 Ill. App. 3d 469, 476 (1994). Moreover, insofar as they constitute an attempt by defendant to integrate expert opinion evidence into the record, which was not subject to cross-examination by the State or considered by the trier of fact, these materials will not be considered on appeal. *People v. Mehlberg*, 249 Ill. App. 3d 499, 531-32 (1993). In addition, in announcing its sentencing decision, the record shows that the trial court did consider the financial impact of incarceration, and defendant has failed to rebut that showing. *Acevedo*, 275 Ill. App. 3d at 426. In sum, we find no abuse of discretion in the sentence imposed, and, thus, have no basis for disturbing the court's sentencing decision. *Cabrera*, 116 Ill. 2d at 493-94.

¶ 28 Defendant next contends that this court should amend his mittimus to reflect that he spent 1,144 days in presentence custody. The record shows that defendant was arrested on October 18, 2010, and remained in custody until he was sentenced on December 5, 2013. At sentencing, the trial court awarded defendant credit for 1,143 of presentence custody, which was reflected on his mittimus. The State concedes, and we agree, that defendant is entitled an additional day of credit, and we therefore order the clerk to amend defendant's mittimus to reflect credit for 1,144 days in presentence custody. *People v. Whitmore*, 313 Ill. App. 3d 117, 121 (2000).

¶ 29 Accordingly, we order the clerk of the circuit court of Cook County to amend defendant's mittimus in accordance with this order, and affirm the judgment of the circuit court in all other respects.

¶ 30 Affirmed; mittimus corrected.