FOURTH DIVISION
September 22, 2016

No. 1-14-0371

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. 09 CR 10746
	)	
WILLIE WILSON,	)	Honorable
	)	Timothy Joseph Joyce,
Defendant-Appellant.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held*: A defendant cannot challenge alleged deficiencies in a presentence investigation report on appeal when any such deficiencies are due to his own refusal to cooperate. The trial court did not abuse its discretion when sentencing defendant to 60 years in prison for murder when defendant stabbed the mother of his child over 60 times in the family home.

¶ 2 A jury found defendant Willie Wilson guilty of first degree murder and the court sentenced him to 60 years' imprisonment. On appeal, defendant contends that the trial court erred when it sentenced him without a complete presentence investigation report (PSI). Defendant

further contends that the trial court abused its discretion when it failed to consider certain evidence in mitigation and relied upon its own "subjective feelings" at sentencing. We affirm.

¶ 3 Defendant was charged with two counts of first degree murder in relation to the stabbing death of the victim, the mother of his son, Tammy McClellan.[1]

¶ 4 At trial, the victim's cousin, Benta Christina Joyce, testified that she picked the victim up around 7:00 p.m. on May 17, 2009, for an early birthday celebration. The victim's birthday was the following day. They went to a liquor store, purchased alcohol, and met friends. Around 10:30 p.m., the victim asked Joyce to take her home. Once there, the victim and Joyce sat in the victim's dining room and talked. During this conversation, the victim stated that she and her son, DeShawn, were moving because the victim was not happy with defendant. The victim told Joyce that the relationship "just wasn't working out." When Joyce later walked toward the kitchen, she saw defendant sitting at the edge of DeShawn's bed facing towards the dining room. Defendant was "sitting there like he was waiting." Upon returning to the dining room, Joyce told the victim that they should lower their voices " 'cause maybe [defendant] hear[d] us."

¶ 5 DeShawn McClellan testified that in May 2009, he was 15 years old and lived with his parents, the victim and defendant. However, DeShawn and the victim were planning to move out "in a week." DeShawn was in bed when the victim and Joyce came home. Defendant was in an adjacent room. At one point, DeShawn woke up and saw the victim walking by his bedroom. The victim stated she was going to take a shower. DeShawn fell asleep again.

[1] Although the defense asserted at trial that defendant and the victim were married in 2008 and the record contains a marriage certificate, there was no evidence at trial that the victim told anyone about the wedding.

¶ 6 When DeShawn next woke up, he heard the victim and defendant arguing. The victim told defendant that "she don't want him there no more and he gotta go." He saw defendant and the victim walk past his room. DeShawn heard the victim again tell defendant "to go," and defendant respond that he had nowhere to go. He then heard the victim call the police. When the victim hung up, DeShawn heard a "big boom" like something was "knocked down." The victim screamed at DeShawn to run and go call the police. He ran out the back door and went next door to his grandmother's home. Once there, DeShawn told his grandmother to call the police and waited there until officers arrived.

¶ 7 During cross-examination, DeShawn testified that when the victim and defendant walked past his bedroom, he saw what he thought was a knife in the victim's hand.

¶ 8 Diane McClellan, the victim's mother, testified consistently with DeShawn that the victim and DeShawn were moving out of the apartment they shared with defendant and that DeShawn rang the doorbell and asked her to call the police. While waiting for the police to arrive, she heard "a loud noise" at the victim's home as well as "loud" and "angry" talking. Diane also heard a sound "[l]ike something was being thrown around the room."

¶ 9 George Heard, the victim's downstairs neighbor, testified that on the evening of May 17, 2009, he heard a "lot of bumping and, *** pushing around and running back and forth" from upstairs. He then heard "somebody fall to the floor and *** a scary scream." He did not call the police because there "was always fighting upstairs."

¶ 10 Terrene Robinson, a 911 operator, testified that she received a call from the victim at approximately 12:51 p.m. on May 18, 2009. The victim stated that "her child's father was threatening her" with a knife. A recording of that call was then played for the jury.

¶ 11 Forensic investigator Brian Smith testified that he collected blood from multiple areas of the victim's home, including the dining room, hallway, enclosed porch, and bedroom where the victim was found. Smith recovered a "stainless steel China steak knife" that was hidden inside a toy truck on the dining room floor and a stainless steel butter knife from the dining room floor.

¶ 12 Chief medical examiner Dr. Steven Cina testified that he reviewed the case file detailing the victim's autopsy. The victim sustained approximately 65 "sharp force injuries" all over her body including her arms, legs, chest, back, and buttocks. The stab wounds to the left breast and left side of the back, for example, "went all the way through the rib cage area and into the left lung resulting in massive internal bleeding." He characterized some of the wounds to her arms as defensive wounds. Cina opined that the victim "died of multiple stab and incised wounds."

¶ 13 Lynn Shannon testified that she met defendant in 1996 and that they had an "off and on" dating relationship for about 10 years. Shannon testified that on April 23, 2007, she tried to break up with defendant and asked him to leave her home, but defendant would not go. Defendant refused to leave, telling Shannon, " 'Bitch, I'll kill you. I'll beat you so bad, wouldn't nobody recognize you.' " Shannon called the police. When officers arrived, defendant again refused to leave, stating that the apartment was "his castle" and that "he wasn't going nowhere." The officers "got to tuggling" with defendant and additional officers then arrived. Shannon and her three children were asked to leave the apartment. The officers then subdued defendant with pepper spray, and took him from the apartment.

¶ 14 Ultimately, the jury found defendant guilty of first degree murder. The trial court then ordered a presentence investigation. At a posttrial hearing, the PSI was tendered to the parties. The PSI stated, *inter alia*, that:

"This investigator attempted to interview the Defendant on December 10, 2013. This investigator asked the Defendant to have a seat to begin the interview, and the Defendant replied, 'I don't know who you are.' This investigator replied by introducing himself and advising the purpose was to conduct [the] Presentence Investigation interview ordered by the court. Mr. Wilson stated, 'I'm not talking to you!' This investigator stood and said that the Judge would be notified of his unwillingness to go forward with the investigation interview. Mr. Wilson replied, 'F*** you, and f*** the judge!'

This investigator notified Judge Joyce of the Defendant's response and indicated that a No-Contact Presentence Investigation would be prepared for the Defendant's return court date, December 19, 2013."

The court inquired whether there were any corrections or amendments to the PSI. The State asked to add a conviction for false imprisonment in Gwinnett County, Georgia case 01-B-1458.3, which resulted in a four-year sentence. The following exchange then occurred:

"DEFENSE COUNSEL: I have told Mr. Wilson he had a choice to speak to the probation officer. I'll ask him again on the record if he wants to speak to the probation officer before submitting this case with the PSI. Do you understand my question, Mr. Wilson?

DEFENDANT: Yes.

DEFENSE COUNSEL: Do you understand that you have a right to speak to a probation officer and answer the probation officer's questions?

DEFENDANT: I don't want to speak to him.

THE COURT: I'm sorry. What did you say, Mr. Wilson?

DEFENDANT: No, I do not wish to speak to him.

THE COURT: Okay. That's fine.

DEFENSE COUNSEL: That being the case, I have no corrections, additions or deletions."

¶ 15 In aggravation, Officer Efrain Carreno testified that he and his partner were on patrol on the evening of July 29, 2008, when they observed defendant and a group of males gambling on the sidewalk. As the officers approached one of the men ran away and Carreno's female partner gave chase. When Carreno approached defendant, defendant "clenched his fists in an aggressive manner" and acted "like" he was going to punch Carreno. Defendant then stated something like " 'Y'all going to get shot over here.' " Defendant next stated that Carreno's partner was " 'lucky' " that the man she chased did not shoot her. Defendant further stated " 'We don't shoot for the chest; we shoot for the head with hollow points.' " Although defendant tried to "defeat the arrest" he was taken into custody. Defendant later told Carreno's partner, " 'Bitch, you going to get hurt; once I get out you're not going to get shot, you're going to come up missing and things will happen to you when you're missing.' "

¶ 16 The State then presented certain victim impact statements. The victim's brother, Philip McClellan, indicated that DeShawn told him what to write in the statement that Philip was about to read. The statement indicated, in pertinent part, that since the victim's death DeShawn had received counseling to help him cope with nightmares, flashbacks, and problems "dealing with hearing people argue or speak in an angry manner." Diane McClellan's statement indicated that the victim was her confident and best friend, and that the victim's death left a hole in Diane's

heart. The State then argued in aggravation that defendant had a lengthy criminal history including aggravated assault of a peace officer, resisting a police officer and possession of ammunition without a Firearm Owners Identification Card.

¶ 17 In mitigation, trial counsel argued that he was "in a difficult position here with the pre-sentence investigation," and that in counsel's opinion, defendant was mentally ill. Counsel explained that defendant would not cooperate with counsel, the probation officer or the psychiatrist hired to evaluate defendant. Counsel further argued that the victim brought the knife to the fight and "put" defendant out of the "marital residence."

¶ 18 The trial court asked defendant whether defendant wished to say anything before the court imposed sentence. The court noted that defendant was "shaking [his] head in a negative manner," however, the court requested a verbal "yes or no." Defendant did not respond. Trial counsel then asked defendant to answer the court "out loud." Counsel then stated that defendant responded to counsel's question by shaking "his head from side to side which is commonly understood as the negative, but he is refusing to answer me out loud just as he is refusing to answer the Court out loud." The court agreed counsel's description "accurately" reflected how defendant "comported himself just now." The court further stated, based upon its prior conversations with defendant, that the court was "confident that despite his decision not to answer audibly he has the where-with-all to do so but is deciding not to." The court again asked whether defendant wished to say anything. Defendant did not respond.

¶ 19 The trial court then stated it had reviewed the PSI, and considered the evidence and the parties' arguments. The court was unpersuaded by trial counsel's provocation argument, finding that the victim "armed herself out of fear" and "did one thing indicative of not looking to

provoke anybody which is she called the police." The court stated that it believed Officer Carreno "without qualification," but noted that Carreno was "less than crystal-clear" about some details due to the passage of time. Therefore, the court gave "little weight" to Carreno's testimony in crafting defendant's sentence. With regard to the PSI, the court noted that defendant refused to speak with the probation officer, stating "quote, f*** you and f*** the judge." The court stated that defendant's statement showed the court that defendant knew "what's going on and is making a decision not to actively involve himself in the process which he has the right to do."

¶ 20 In sentencing defendant to 60 years in prison, the court stated it was "difficult to conceive why anyone would stab the mother of their child that many times," and noted that the victim's death occurred minutes after DeShawn "left to seek help for his mother, [against] his father." The court then stated:

> "And as horrid and horrific as it must have been for [the victim] in those last moments of her life as she consciously suffered the assault that led to the multitude of wounds that caused her death, the horror that DeShawn must suffer now, suffered then and will probably suffer for the rest of his life is similarly beyond measure and comprehension to me.
>
> And having been in the criminal justice system in one capacity or another for almost the last 30 years I still can't wrap my mind around what that poor young man did suffer, suffers now and will continue to [suffer]. It is beyond that pale. And it is for this reason, [defendant], that notwithstanding the excellent arguments of your attorneys, *** in support of more lenient sentence I am, in fact, going to sentence you to the maximum

> sentence of 60 years in the Illinois Department of Corrections fully cognizant, frankly, that that may well be a life sentence, but I think anything less would be a disservice to our community and to your own son."

Defendant filed a motion to reconsider sentence, which the trial court denied.

¶ 21 On appeal, defendant first contends that the trial court erred in sentencing him "in the absence" of a PSI prepared in accordance with the mandates of section 5-3-2 of the Unified Code of Corrections (the Code) (see 730 ILCS 5/5-3-2 (West 2012)). Defendant notes that the PSI lacks information regarding his physical and mental history and condition, family situation and background, economic status, education, occupation, and personal habits. He further argues that he was denied the effective assistance of counsel at sentencing when counsel incorrectly advised or misled him into believing that the PSI was something defendant could waive.

¶ 22 In response, the State contends that defendant forfeited this issue for review because he failed to challenge the completeness of the PSI in the trial court. The State further asserts that defendant cannot now challenge the PSI when his own conduct was the reason it was incomplete, highlighting the facts that defendant refused to participate in the PSI interview and told the probation officer " 'F*** you, and f*** the judge!' "

¶ 23 Pursuant to section 5-3-1 of the Code, "[a] defendant shall not be sentenced for a felony before a written presentence report of investigation is presented to and considered by the court." 730 ILCS 5/5-3-1 (West 2012). The PSI must contain, *inter alia,* information regarding a defendant's criminal history, education, family situation and background, as well as information about the effect the offense had on the victims. 730 ILCS 5/5-3-2 (West 2012). Our supreme court has held that a presentence investigation and written report are mandatory legislative

requirements which cannot be waived unless both the State and defendant agree to the imposition of a specific sentence. *People v. Youngbey*, 82 Ill. 2d 556, 561, 564-65 (1980) (the PSI is for the enlightenment of the court as well as for the benefit of the defendant, and as such, it is not a personal right of the defendant which can be waived).

¶ 24 In those cases where the trial court considers a presentence report, any objection to a deficiency in that report is deemed waived by the defendant's failure to object. *People v. James*, 255 Ill. App. 3d 516, 530 (1993). Additionally, a defendant cannot object to the incomplete nature of a PSI when the deficiency is due to his own absence or refusal to cooperate. *Id*. at 530. It is the duty of the parties to bring to the attention of the sentencing authority any alleged deficiency or inaccuracy in the presentence report. *People v. Meeks*, 81 Ill. 2d 524, 533 (1980) ("any objections to the sufficiency of the report must first be presented to the trial court").

¶ 25 Here, it is undisputed that defendant refused to speak with the probation officer. When the trial court asked if the parties had corrections or amendments to the PSI, trial counsel stated that he told defendant that defendant had the choice to speak to the probation officer and asked again "for the record" whether defendant wanted to speak with a probation officer before submitting the case to the court for sentencing. Defendant stated that he did not want to speak with the probation officer. Thus, the record reveals that defendant's refusal to speak to the probation officer was the reason for any alleged deficiencies in the PSI and defendant cannot now challenge the PSI on appeal. See *James*, 255 Ill. App. 3d at 530 (a defendant cannot object to the incomplete nature of a PSI when the deficiency is due to his own absence or refusal to cooperate).

¶ 26 Defendant, however, contends that the trial court "was without authority to sentence [defendant] in the absence of a PSI prepared in accordance with Section 5-3-2" of the Code. We disagree.

¶ 27 This is not a case where a written PSI was not prepared when the record reveals that a written PSI was presented to the trial court at sentencing and the parties had the opportunity to correct or modify the PSI. See *Youngbey*, 82 Ill. 2d at 565 (the PSI report is a "mandatory, reasonable legislative requirement"); *People v. Walton*, 357 Ill. App. 3d 819, 822 (2005) (in the absence of a written PSI, the cause must be remanded for resentencing). Rather, in this case defendant refused to take part in the preparation of the PSI, and now attempts to use that refusal to argue on appeal that the resulting PSI was "woefully inadequate." See *People v. Villareal*, 198 Ill. 2d 209, 227 (2001) (to permit a defendant to use the exact ruling or action he procured in the trial court as a vehicle for reversal on appeal "would offend all notions of fair play"). Although defendant correctly argues that a PSI is not the personal right of a defendant and cannot be waived, we cannot agree with his conclusion, unsupported by caselaw, that a defendant cannot waive or refuse to speak to a probation officer. We also note that were this court to accept defendant's argument that his refusal to take part in the presentence investigation results in the inability of the trial court to sentence him, unless and until the trial court is presented with a PSI created with his involvement, he theoretically could never be sentenced.

¶ 28 Ultimately, defendant cannot challenge any alleged deficiencies in the instant PSI on appeal because they are the direct result of his refusal to cooperate in the preparation of the document. See *James*, 255 Ill. App. 3d at 530. Therefore, his argument must fail.

¶ 29 Similarly, defendant cannot establish that he was prejudiced by trial counsel's alleged advice that "the PSI was a right that he could waive" when a written PSI was presented to the court at sentencing and defendant's refusal to speak to the probation officer was the reason for the PSI's alleged deficiencies. Consequently, his claim of ineffective assistance of counsel must fail. See *People v. Bailey*, 364 Ill. App. 3d 404, 408 (2006), citing *Strickland v. Washington*, 466 U. S. 668 (1984) (a defendant establishes ineffective assistance of counsel by showing counsel's representation fell below an objective standard of reasonableness and that the result of the proceeding would have been different but for the complained of error).

¶ 30 Defendant next contends that the trial court abused its discretion in sentencing him to 60 years in prison because the court failed to consider, in mitigation, "the full nature and extent of provocation" that defendant felt because the victim and DeShawn were "leaving him" and because he was "being thrown out of the marital home." He also contends that the trial court improperly relied upon its "subjective feelings" regarding the offense and the "past and future suffering" that DeShawn will experience when imposing the maximum 60-year sentence.

¶ 31 A sentence within statutory limits is reviewed on an abuse of discretion standard, so that this court may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. So long as the trial court does not consider improper aggravating factors or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable range. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 56.

¶ 32 When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, *inter alia*, a defendant's age,

criminal history, character, education, and environment, as well as the nature and circumstances of the crime and the defendant's actions in the commission of that crime. *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010). The court does not need to expressly outline its reasoning when crafting a sentence, and we presume that the court considered all mitigating factors absent some affirmative indication to the contrary other than the sentence itself. *Jones*, 2014 IL App (1st) 120927, ¶ 55. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Id*. "Even where there is evidence in mitigation, the court is not obligated to impose the minimum sentence." *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010).

¶ 33 The record reveals that at sentencing, the parties presented evidence in aggravation and mitigation including defendant's criminal history, the "provocation" defendant faced when the victim, who was armed with a knife, "put" him out of the family home, and trial counsel's belief that defendant was suffering from a mental illness. In sentencing defendant to 60 years in prison, the trial court stated that it was unpersuaded by counsel's provocation argument when the victim "armed herself out of fear" and called the police. The court also noted that the victim and defendant shared a child, defendant stabbed the victim "many times," and that DeShawn would continue to suffer as a result of this offense. Based on our review of the record, this court cannot say that a prison term of 60 years was an abuse of discretion when defendant stabbed the victim over 60 times in the family home. See *Snyder*, 2011 IL 111382, ¶ 36.

¶ 34 Defendant, however, contends that the trial court failed to consider in mitigation how he was provoked by the victim's decisions to leave him and to bring a knife to their confrontation. It

is presumed that the court properly considered the mitigating factors presented and it is the defendant's burden to show otherwise. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). Here, defendant cannot meet that burden, as the trial court specifically stated that it was not persuaded by trial counsel's provocation argument. The court also stated that "notwithstanding the excellent arguments *** in support of a more lenient sentence," the court was imposing a 60-year sentence. We reject defendant's conclusion that the trial court abused its discretion merely by giving the evidence presented in mitigation a different weight than defendant would prefer (see, *e.g.*, *People v. Hay*, 362 Ill. App. 3d 459, 468-69 (2005)); the trial court was not required to impose a minimum sentence merely because mitigation evidence existed (*Sims*, 403 Ill. App. 3d at 24).

¶ 35 Defendant next contends that the trial court improperly relied upon its own subjective feelings about the crime and DeShawn's suffering. Although defendant is correct that the trial court characterized this offense as horrific and "beyond the pale," and stated that DeShawn suffered and will continue to suffer as a result of this offense, considering the record as a whole, we cannot agree with defendant's conclusion that the court improperly considered its own feelings about the offense when imposing sentence.

¶ 36 The trial court is presumed to know the law and apply it properly. *People v. Phillips*, 392 Ill. App. 3d 243, 265 (2009). A reviewing court presumes that the trial court based its sentencing determination on proper legal reasoning. *People v. Dowding*, 388 Ill. App. 3d 936, 942-43 (2009). We therefore review the trial court's sentencing determination with great deference, and "[t]he burden is on the defendant to affirmatively establish that the sentence was based on improper considerations." *Id.* at 943. "In determining whether the trial court based the sentence

on proper aggravating and mitigating factors, a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court." *Id*.

¶ 37 Initially, we note that the evidence at trial established that the victim suffered approximately 65 "sharp force injuries" to the arms, legs, chest, back, and buttocks. The stab wounds to the left breast and left side of the back had such force that they went through the ribs "into the left lung." The evidence also established that defendant and the victim shared a son, that the offense was allegedly precipitated by the victim's decision to leave defendant, and that blood was found in almost every room in the family home following the offense. When crafting a sentence, the trial court may consider the nature and circumstances of the offense and defendant's actions in the commission of the offense. See *Raymond*, 404 Ill. App. 3d at 1069. Here, the trial court properly considered the number of blows and the force involved, as well as the fact that the victim and defendant shared a son and that that confrontation that led to the victim's death began when that teenaged son was in the home.

¶ 38 With regard to the trial court's comments regarding DeShawn's alleged suffering, considered in context, those comments were a response to the victim impact statement Philip McClellan wrote at DeShawn's direction which indicated that DeShawn was receiving counseling to cope with nightmares and flashbacks.

¶ 39 Looking at the record as a whole, defendant has not established that his 60-year sentence was based upon the trial court's improper consideration its own feelings about the offense or DeShawn's mental state because the record indicates that the trial court relied upon the circumstances of the offense for its conclusion that it was "horrid" offense and upon evidence that DeShawn was undergoing counseling for its conclusion that DeShawn suffered as a result of

his father stabbing his mother to death. See *Dowding*, 388 Ill. App. 3d at 943. Therefore, defendant's argument must fail.

¶ 40 Ultimately, the trial court did not abuse its discretion when it considered the evidence in mitigation and aggravation (*Jones*, 2014 IL App (1st) 120927, ¶¶ 55-56), and sentenced defendant to a 60-year prison term (*Snyder*, 2011 IL 111382, ¶ 36).

¶ 41 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 42 Affirmed.