SIXTH DIVISION
January 8, 2016

No. 1-14-0776

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. 06 CR 23476
	)	
DARIUS BAILEY,	)	Honorable
	)	Frank G. Zelezinski,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices HOFFMAN and DELORT concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Judgment affirmed over defendant's contention that the sentence imposed on remand was excessive; mittimus corrected.

¶ 2 Defendant Darius Bailey appeals from a resentencing order entered by the circuit court of Cook County on remand. He contends that the 60-year sentence imposed on his first degree murder conviction was excessive. He also requests that his mittimus be corrected.

¶ 3 Following a 2008 jury trial, defendant was convicted of first degree murder, home invasion and robbery in connection with the death of 80-year-old Robert Winter on September 19, 2006. The trial court originally sentenced defendant to concurrent, respective terms of natural life, 30 years, and 15 years' imprisonment. On appeal, this court affirmed defendant's sentence of natural life imprisonment, vacated the conviction and sentence for home invasion, reduced the conviction for robbery from a Class 1 to a Class 2 felony, and resentenced defendant to seven years' imprisonment on the robbery conviction. *People v. Bailey*, 2011 IL App (1st) 090074-U, ¶¶37, 41, 47. The supreme court ultimately vacated the circuit court's imposition of natural life imprisonment, and remanded the cause for resentencing on the murder conviction. *People v. Bailey*, 2013 IL 113690, ¶72.

¶ 4 On September 10, 2013, the circuit court conducted a resentencing hearing at which the parties rested on the presentence investigation (PSI) report offered at defendant's prior sentencing hearing and on the aggravation and mitigation then presented. Mitigation evidence included five letters from defendant's family members requesting the judge to sentence defendant to a term that would allow him to be released and spend time with his child. Defendant had no prior convictions, and speaking in allocution, he took full responsibility for his actions, stated that he was sorry for what he did, and that he has since focused on "bettering" himself. He further stated

that he has earned a general equivalency diploma (GED) and wanted to return to society and be a productive citizen.

¶ 5 In aggravation, Detective Brian Caridine of the Village of Dolton Police Department, testified that he investigated a residential burglary of an elderly man that occurred on September 12, 2006, in Dolton, Illinois. Jewelry and various DVD movies were taken from the home, and Detective Caridine subsequently learned that defendant attempted to pawn jewelry matching the description of the stolen items. Defendant admitted that he had attempted to pawn the rings in question, but stated that he had received them from Erica Garrett. She, in turn, told the detective that defendant said that he received the rings from burglarizing the Dolton home.

¶ 6 At the close of proceedings, the court resentenced defendant to 60-years' imprisonment for his murder conviction. In doing so, the court stated that it considered all factors in aggravation and mitigation, which "speak for themselves." The court then noted that the victim was a senior citizen in the safety of his home, and defendant invaded his home and murdered him. The court also noted that it considered the fact that defendant is trying to better himself, but could not forget the aggravating factors in this case and the seriousness of the matter. Defendant filed a motion to reconsider his sentence, which was denied by the court, and no timely notice of appeal was filed from that judgment.

¶ 7 On November 7, 2013, defendant filed a *pro se* post-conviction petition, alleging ineffective assistance of trial counsel for failing to file a timely notice of appeal following resentencing. Defendant alleged that he communicated his desire for a direct appeal to counsel,

and that counsel's failure to file a direct appeal denied him that right. He thus requested that the trial court enter an order allowing him to file a notice of appeal and appointing appellate counsel.

¶ 8 In support of his petition, defendant attached his own affidavit. He averred that after being resentenced on September 10, 2013, he "expressed" his desire to counsel to file a notice of appeal, and counsel told him that he would file one. The circuit court found defendant's petition "sufficient," and appointed counsel to represent him. On March 7, 2014, the court granted defendant's post-conviction petition, without objection by the State, and defendant was allowed to file a late notice of appeal.

¶ 9 In this court, defendant first contends that his sentence was excessive in light of his youth, and his rehabilitative nature. Defendant notes that he was 20 years of age when he was arrested, and had no prior convictions. He also had strong family support and expressed remorse, and claims that his 60-year sentence is a *de facto* life sentence. Defendant also contends that the court did not consider the financial impact of a lengthy sentence nor note his young age in announcing its sentencing determination. Defendant requests that this court reduce his sentence to one that more accurately balances the seriousness of the offense against the objective of restoring him to useful citizenship or remand for resentencing.

¶ 10 As an initial matter, the State points out that although it is aware of the sentence defendant is appealing from, defendant's notice of appeal lists the incorrect date and sentence. We observe that since the State filed its brief, we have allowed defendant to file an amended notice of appeal indicating that he is appealing the 60-year sentence entered on remand on

September 10, 2013. Accordingly, there is no jurisdictional issue. *People v. Gutierrez*, 2012 IL 111590, ¶¶8, 12.

¶ 11 Turning to the merits of defendant's appeal, we observe that the 60-year sentence imposed for first degree murder falls within the sentencing range of 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a) (West 2012). As a result, we may not disturb that sentence absent an abuse of discretion. *People v. Bennett*, 329 Ill. App. 3d 502, 517 (2002).

¶ 12 The record here shows that the court considered the aggravating and mitigating factors presented by the parties, and specifically noted that it considered that defendant was trying to better himself. In the absence of evidence to the contrary, we presume that the trial court considered the mitigating evidence before it (*People v. Burnette*, 325 Ill. App. 3d 792, 808 (2001)), including defendant's age, and also the financial impact of a lengthy incarceration (*People v. Acevedo*, 275 Ill. App. 3d 420, 426 (1995)).

¶ 13 It is well-settled that a trial court is not required to specify on the record the reasons for its sentence (*People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶24; *Acevedo*, 275 Ill. App. 3d at 426), nor give greater weight to defendant’s rehabilitative potential than to the seriousness of the offense (*People v. Phillips*, 265 Ill. App. 3d 438, 450 (1994)). Here, the evidence showed that defendant entered the home of the 80-year-old victim during broad daylight, and when confronted by the victim, defendant tied him up and choked him with his hands. When that was unsuccessful, he strangled the victim with an electrical cord, which he wrapped twice around the victim's neck and double knotted. Defendant then rifled through the victim's pockets, and took his checkbook, keys, and car. In announcing its sentencing

determination, the court specifically referred to defendant's attempt to improve himself, but also stated that it could not forget the seriousness of the crime and the aggravating factors attendant to it, then sentenced him to 60-years' imprisonment. We find no abuse of sentencing discretion by the court in doing so, and thus have no basis for interfering with the determination entered. *People v. Almo*, 108 Ill. 2d 54, 70 (1985).

¶ 14 In his reply brief, defendant, nonetheless, contends that the sentencing considerations surrounding the young age of juveniles should be extended to 20-year-old offenders, as a minor is someone who has not yet attained the age of 21 years. Relying on *Miller v. Alabama*, 132 S. Ct. 2455, 2465 (2012), and other Supreme Court cases, defendant notes that fundamental differences between juvenile and adult minds make minors less culpable and thus, entitled to additional constitutional protections. He contends that although these Supreme Court cases do not "speak" to sentences for those between ages of 18 to 21, it does not undermine an argument that the core teachings of these cases must be considered by a court when making a sentencing decision involving those ages 18 to 21. We find defendant's reliance on *Miller* and other Supreme Court cases misplaced, as they involved sentencing juveniles, which defendant is not, and do not establish an abuse of sentencing discretion by the court in this case.

¶ 15 The same holds for defendant's argument based on *People v. Mosley*, 2015 IL 115872, ¶¶39-42, where the supreme court acknowledged the immaturity and attendant characteristics of those between the ages of 18 and 21, and upheld the age restriction in the aggravated unlawful use of a weapon statute relating to those under 21. In this case the court was cognizant of defendant's age, but found that the aggravating factors warranted a lengthy term. It is not our

prerogative to reweigh the factors presented to the sentencing court and independently conclude that the sentence is excessive. *People v. Burke*, 164 Ill. App. 3d 889, 902 (1987).

¶ 16 Defendant also cites secondary materials and other jurisdictions in support of his position. We initially observe that this court is not bound by cases from foreign jurisdictions. *People v. Reatherford*, 345 Ill. App. 3d 327, 340 (2003). Moreover, the secondary sources cited by defendant are not relevant authority on appeal (*People v. Heaton*, 266 Ill. App. 3d 469, 476 (1994)), and 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, they will not be considered on appeal (*People v. Mehlberg*, 249 Ill. App. 3d 499, 531-32 (1993)).

¶ 17 Defendant also contends that his 60-year sentence is inappropriate as it is a *de facto* life sentence. However, the possibility that a sentence will result in incarceration for the balance of a prisoner's life does not convert an authorized sentence for a term of years into an unauthorized sentence. *People v. King*, 1 Ill. 2d 496, 503-04 (1953); *People v. Cavazos*, 2015 IL App (2d) 120444, ¶87. Here, we find no abuse of discretion in the sentence imposed by the court after consideration of the appropriate sentencing factors, and thus affirm its judgment.

¶ 18 Defendant next contends, and the State concedes that the mittimus should be corrected to reflect the mandates of this court and the supreme court vacating defendant's home invasion conviction and sentence, reducing robbery from a Class 1 to a Class 2 felony, and reducing the sentence for that offense to seven years' imprisonment. We agree and therefore direct the clerk to

amend the mittimus in this manner. Ill. S. Ct. Rule 615(b)(1) (eff. April 1, 2015); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Cook County, and order the mittimus to be corrected as indicated.

¶ 20 Affirmed; mittimus corrected.