

No. 1-14-1373

**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).

---

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 7082
	)	
ESTEBAN FERNANDEZ,	)	Honorable
	)	Gregory R. Ginex,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE LAVIN delivered the judgment of the court.  
Presiding Justice Mason and Justice Fitzgerald Smith concurred in the judgment.

**O R D E R**

- ¶ 1 **Held:** Defendant's 16-year sentence for predatory criminal sexual assault of a child affirmed over claim that the sentence is excessive in light of certain factors in mitigation.
- ¶ 2 Following a jury trial, defendant Esteban Fernandez was found guilty of predatory criminal sexual assault of a child and criminal sexual assault of a family member. The court merged the counts and sentenced defendant to 16 years' imprisonment followed by 3 years of mandatory supervised release on his conviction for predatory criminal sexual assault of a child, a

Class X felony. On appeal, defendant contends that his sentence is excessive in light of certain factors in mitigation. For the following reasons, we affirm.

¶ 3 Because defendant does not contest his findings of guilt, we need not discuss in detail the evidence presented at trial. The evidence established, in relevant part, that defendant began living with his brother and sister-in-law when their daughter, the victim, was nine years old. At trial, the victim testified that for some time leading up to the assault, defendant would touch her under the pretext of giving her a massage, and then make her uncomfortable by working his way to her breasts and vagina. She would slap his hand away and repeatedly told him to stop. One day during the summer of 2008, when the victim's parents were not home, defendant restrained her on the couch and prevented her from moving her arms. He then pulled down her pants and underwear and penetrated her vagina with his penis. "It really hurt;" she told him to stop, and started crying. She was 12 years old at the time.

¶ 4 "After awhile[,] [defendant] stopped" and left the victim crying on the couch. She felt horrible and dirty but did not tell her parents when they came home because she "didn't want them to think bad of [her]. [She] didn't think they would believe [her]." Some time passed before she was able to confront defendant. She told him it was wrong, that he was her family, and asked him why he would do that to her. Defendant assured her that it was okay, and explained that a doctor told him it was normal, but she should keep it a secret. Following the assault, defendant continued living in her home. Maintaining contact with the victim during this time, he sent her text messages and asked if she wanted to go to Mexico with him. Unable to "hold it in any longer," on March 16, 2010, the victim told her mother what happened and her parents called the police that night.

¶ 5 Cicero police officer Lara testified that when she arrived at the victim's home, defendant told the victim's mother in Spanish that the victim "wanted it" and he "did nothing wrong."

Cicero police detective Eduardo Zamora testified that he read defendant his *Miranda* rights in Spanish and then interviewed him at the police station where defendant signed a handwritten statement. According to his statement, defendant's birth date was May 10, 1980, and the incident occurred in April or May of 2009. While defendant and the victim "were wrestling on the couch, \*\*\* [she] ended up on the bottom and her legs were up around [his] chest." They both pulled down her pants and he penetrated her vagina with his penis "for about four or five seconds."

¶ 6 The jury convicted defendant of predatory criminal sexual assault of a child and criminal sexual assault of a family member. Defendant filed a motion to reconsider the verdict, or alternatively, for a new trial, which the court denied.

¶ 7 At sentencing, the State presented a victim impact statement written by the victim and one from her mother. The victim's statement reflected the lasting impact defendant, "her own blood," imposed on her and her family. Following the assault, she felt helpless and dirty and things had not been the same since. She had nightmares that her uncle was going to "come back to kill and rape [her]." She became paranoid, and would flinch during ordinary social interactions. Whereas the victim used to be happy and energetic, she became more depressed, quiet, and isolated after the assault. With the support of her family and months of therapy, she began to realize that the assault was not her fault.

¶ 8 In her statement, the victim's mother described the impact of defendant's conduct on their family including, the guilt she felt for not taking care of her daughter.

¶ 9 In aggravation, the State argued that the victim's family took her older uncle into their home and the victim should have been able to trust him. Nevertheless, defendant began

"grooming" the victim by touching her inappropriately on many occasions before the assault.

After the assault, he spoke with the victim about taking her to Mexico; and in the presence of a police officer, he told the victim's mother, "that her daughter wanted this to happen, that it was her fault." The State recommended a 24-year sentence.

¶ 10 In mitigation, defense counsel argued that the minimum sentence was appropriate in light of the isolated nature of the single assault and the factors in mitigation. Specifically, although defendant's father was an abusive alcoholic, defendant had no substance abuse issues himself. He was a 33-year-old man with no prior arrests. He completed three years of college, had consistently maintained employment, and paid his brother \$300 for rent each month.

¶ 11 In allocution, defendant stated that this was his first criminal offense and that he wanted to restart his life in Mexico, where he hoped to resume working and start a family.

¶ 12 The court stated that it "read over the pre-sentence report [PSI] [it] also looked at the pre-trial report," which reflected that defendant attended college for three years and had "always worked very hard." The court noted that defendant had lived with his niece and her family for some time when he decided to take advantage of "this [venerable] young woman." In addition, when confronted with his actions, defendant "kind of indicated it was no big deal and that she wanted it making in effect the actions her fault." Addressing defendant, the court said, "I really don't think you understand what you did because I don't think you think you did anything wrong." The court stated that defendant "took away not only the virginity of this young woman but her honor, her self-respect, any outlook that she may have had in the future for a loving relationship with someone." In announcing sentence, the court acknowledged the "request of the State," and stated, "I understand what the defense is asking because you have no other background."

¶ 13 The court sentenced defendant to 16 years in the Illinois Department of Corrections to be followed by 3 years of mandatory supervised release. The court denied defendant's motion to reconsider sentence *instanter*.

¶ 14 On appeal, defendant maintains that the court abused its discretion in sentencing defendant to 16 years' imprisonment, to be served at 85%, without adequately weighing the isolated nature of the offense, the fact that this was his first criminal conviction, his education background, and history of consistent employment.

¶ 15 The trial court's sentencing decisions are entitled to broad deference on appeal. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000); *People v. Chew*, 2016 IL App (1st) 141494, ¶ 14. Reviewing courts must not disturb the sentence imposed by the trial court absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995); *People v. Guyton*, 2014 IL App (1st) 110450, ¶ 80. Where, as here, the sentence falls within the prescribed statutory limits, it 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. *People v. Snyder*, 2011 IL 111382, ¶ 36.

¶ 16 We find that the trial court did not abuse its discretion in imposing the 16-year sentence. Defendant was convicted of predatory criminal sexual assault of a child, (720 ILCS 5/12-14.1(a)(1) (West 2008))<sup>1</sup> a Class X felony which carried a sentencing range of 6 to 30 years (730 ILCS 5/5-8-1(a)(3) (West 2008))<sup>2</sup>.

¶ 17 In reviewing a trial court's sentencing determination, the trial court is presumed to have considered any evidence in mitigation that is before it and there is a strong presumption that the trial court imposed the sentence based on proper legal reasoning. *Guyton*, 2014 IL App (1st) 110450, ¶ 80. Here, the mitigating facts, including defendant's work and education history and

---

<sup>1</sup> Recodified as 720 ILCS 5/11-1.40 by P.A. 96-1551, Art. 2, § 5, (eff. July 1, 2011).

<sup>2</sup> Recodified in 720 ILCS 5/5-4.5-25(a) by P.A. 95-1052, § 5, (eff. July 1, 2009).

the lack of a prior criminal background were presented to the trial court in the PSI and at the sentencing hearing. At the hearing, defense counsel also highlighted the isolated nature of the assault. The court considered the circumstances surrounding the offense including his residence in the victim's home prior to the assault. The court noted that when confronted, defendant "kind of indicated it was no big deal" and that "she wanted it," thus blaming the victim for the actions. In announcing sentence, the court stated that it understood defendant's request because he had "no other background," rejected the State's 24-year sentencing recommendation, and then imposed a lesser term of 16 years, which was well within the statutory range.

¶ 18 Considering the factors in aggravation and mitigation, we find, contrary to defendant's contention, that his sentence was not "greatly at variance with the purpose and spirit of the law or manifestly in excess of the proscriptions of section 11 of article II of the Illinois constitution which requires that all penalties should be proportioned to the nature of the offense." *People v. Gooch*, 2014 IL App (5th) 120161 ¶ 8 (quoting *People v. Fox*, 48 Ill. 2d 239, 251-52 (1971)). We therefore find that the court did not abuse its discretion in sentencing defendant to 16 years in the Illinois Department of Corrections.

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.