2016 IL App (2d) 140830-U
No. 2-14-0830
Order filed September 21, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TERRENCE P. WINSLOW, Defendant-Appellant.	)	Appeal from the Circuit Court of Lake County. No. 13-CF-1446 Honorable Daniel B. Shanes and Mark L. Levitt, Judges, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not abuse its discretion in denying defendant a continuance of trial in light of new evidence: in ruling that the new evidence would likely not affect defendant's strategy, the court invited defendant to raise the issue at trial if he found otherwise, and he never did; the court was not required to recite all the pertinent considerations; (2) the trial court did not abuse its discretion in sentencing defendant to 24 years' imprisonment (3 years above the minimum) for home invasion: despite the mitigating evidence, defendant's sentence was justified by the seriousness of the offense.

¶ 2 Following a jury trial, defendant, Terrence P. Winslow, was convicted of home invasion (720 ILCS 5/19-6(a)(3) (West 2012)) and sentenced to 24 years' imprisonment. He appeals,

contending that (1) the trial court abused its discretion by refusing to continue his trial after defendant learned that, three days before his trial was to begin, a codefendant had pleaded guilty and given a statement implicating defendant in the offense; and (2) his sentence was an abuse of discretion. We affirm.

¶ 3 Defendant's case was called for trial on Monday, December 9, 2013, before Judge Daniel B. Shanes. Defense counsel, Lawrence Sommers, requested a continuance. He argued that a codefendant, Demeko Chastang, had entered a negotiated plea the previous Friday. As part of the plea agreement, he gave a statement that Sommers thought was a "considerable departure" from his earlier statements and was "very incriminating" of defendant. Although Sommers had heard a general outline, he had not received the complete statement.

¶ 4 The prosecutor assured the court that he did not intend to call Chastang as a witness, except perhaps in rebuttal. He said that a court reporter was working on a transcript of the statement, and he expected it to be available that afternoon.

¶ 5 Sommers expressed concern that the specific contents of the statement might alter his defense strategy in some way, perhaps, by way of example, by revealing additional witnesses. He was also concerned that, if Chastang were called in rebuttal, he would need the statement to prepare for cross-examination.

¶ 6 Judge Shanes stated that he had presided over the hearing where Chastang made the statement and that Chastang did not say anything that would be of apparent use to the defense in this case. The court reiterated that defendant would probably have the transcript by the end of the day. Chastang would not likely be a witness for either side, and there was not "any realistic likelihood that he assists the defense in this case."

¶ 7 Judge Shanes denied the motion to continue and sent the case to Judge Mark L. Levitt for trial. Judge Shanes noted that, if something in the transcript were truly surprising, defendant could raise the issue again before Judge Levitt, who would likely be sympathetic given the late disclosure. The trial proceeded for two more days and defendant did not raise the issue again.

¶ 8 The evidence at trial, briefly summarized, was that, on May 23, 2013, Kristen Howard, Andre Judon, and Howard's son and daughter were awakened by the sound of men yelling, "police, get on the ground." Three men dressed in black entered Howard's bedroom. One was holding a gun. The men demanded money and drugs. One of the men punched Judon in the face, kicked him, stomped on his neck, and hit him with a pistol.

¶ 9 Police responding to the call found two men inside the home lifting a television set. When they saw the police, they dropped the television and ran. One man, later identified as Chastang, ran into a wall, fell down, and was arrested. The second man ran through a door leading to the backyard. The third man dove through the bedroom window. Later that morning, other officers found defendant, wearing black clothing, in a nearby park.

¶ 10 Howard's son viewed defendant in a showup and was about 70% certain that defendant was one of the intruders. Defendant eventually gave a statement in which he admitted committing the home invasion with Chastang and Tiron Washington.

¶ 11 The jury found defendant guilty. At the sentencing hearing, four witnesses, including two Evanston police officers, testified about defendant's respectful demeanor and strong family orientation. They described the positive impact he was having in the community as a youth role model. One witness testified that defendant had a gift for working with kids and that he was a father and basketball coach. Defendant's criminal record shows an adult conviction of battery, as well as convictions of traffic offenses and minor drug or alcohol violations.

¶ 12 The trial court sentenced defendant to 24 years' imprisonment. While home invasion is normally a Class X felony punishable by a sentence of 6 to 30 years' imprisonment (730 ILCS 5/5-4.5-25(a) (West 2012)), a conviction of home invasion under section 19-6(a)(3), where the offender while armed with a firearm uses force or threatens the imminent use of force upon any person or persons within the dwelling place, requires that 15 years be added to his prison term. (720 ILCS 5/19-6(a)(3), (c) (West 2012)). Thus, defendant's sentence consists of a base term of 9 years' imprisonment, plus the 15-year add-on. Defendant timely appeals.

¶ 13 Defendant first contends that the trial court erred by denying his motion for a continuance. He contends that the eleventh-hour decision by his codefendant to plead guilty and implicate defendant in the crime severely impaired his ability to prepare his defense.

¶ 14 It is well settled that granting or denying a continuance is within the trial court's sound discretion, and we will not interfere with that decision absent a clear abuse of discretion. *People v. Chapman*, 194 Ill. 2d 186, 241 (2000). However, "[w]here it appears that the refusal of additional time in some manner embarrassed the accused in the preparation of his defense and thereby prejudiced his rights, a resulting conviction will be reversed." *People v. Lewis*, 165 Ill. 2d 305, 327 (1995).

¶ 15 Whether there has been an abuse of discretion necessarily depends upon the facts of each case, and "[t]here is no mechanical test *** for determining the point at which the denial of a continuance in order to accelerate the judicial proceedings violates the substantive right of the accused to properly defend." *People v. Lott*, 66 Ill. 2d 290, 297 (1977). Factors a court may consider in deciding whether to grant a defendant a continuance include the defendant's diligence, the defendant's right to a speedy, fair, and impartial trial, and the interests of justice. *People v. Walker*, 232 Ill. 2d 113, 125 (2009). Other relevant factors include whether defense

counsel was unable to prepare for trial because he or she had been held to trial in another cause, the history of the case, the complexity of the matter, the seriousness of the charges, docket management, judicial economy, and inconvenience to the parties and witnesses. *Id*. at 125-26.

¶ 16 Defendant cannot show that he was prejudiced by the denial of a continuance. His argument to the contrary rests upon speculation that the full transcript of Chastang's statement might have contained something that would have been useful to the defense or altered the defense strategy in some way. However, defendant does not point to anything specific that would in fact have altered his trial strategy. Moreover, the trial court made every effort, short of granting a continuance, to accommodate the defense, given the unfortunate timing of Chastang's statement.

¶ 17 By the time defendant's case was called for trial, Sommers knew at least the gist of the statement. Although it implicated defendant, defendant had already admitted participating in the crime with Chastang and Washington. Thus, this could not have come as a complete surprise.

¶ 18 Moreover, the prosecutor represented that he did not intend to call Chastang as a witness, except perhaps in rebuttal, and Chastang did not testify. Thus, the defense did not need the transcript to prepare for cross-examination. Judge Shanes, who presided over Chastang's guilty plea hearing, noted that the statement did not contain anything useful to the defense. He believed that a full transcript would be available later that afternoon, probably before jury selection was completed, and invited Sommers to renew his motion before Judge Levitt if in fact the transcript contained anything surprising. Although the trial lasted two more days, defendant never raised the issue again.

¶ 19 In his brief on appeal, defendant does not suggest that the transcript actually contained anything that would have required the defense to change course. He argues only that the

statement "carried the potential to drastically alter the defense's strategy." Thus, defendant cannot demonstrate that the denial of a continuance actually prejudiced him.

¶ 20 Defendant argues that the trial court failed to consider any of the *Walker* factors other than docket management and judicial economy. However, *Walker* expressly stated that it was not creating a mechanical test. Thus, the trial court was not required to recite and assign a value to each factor.

¶ 21 In *Walker*, defense counsel requested a continuance, stating that she was not prepared for trial because she had been on trial in two other matters, one of which concluded after 7 p.m. the previous day. The trial court summarily denied the motion, finding " 'irrelevant' " defense counsel's explanation that she was not ready for trial. *Walker*, 232 Ill. 2d at 117. The supreme court reversed. The court, noting that the entire exchange between the trial court and defense counsel occupied less than one page of transcript, found that the trial court completely failed to exercise its discretion in ruling on the motion. *Id.* at 126. The supreme court further noted that the trial court displayed a hostility to defense counsel that was not justified by the record or explained by the trial court. *Id.* at 128-29.

¶ 22 Here, by contrast, the hearing occupies 12 pages of transcript, showing a thoughtful consideration by the trial court of the issues involved. The court responded to counsel's arguments and made an effort to accommodate the defense, suggesting that the issue could be revisited if the transcript in fact contained anything surprising. However, defendant never availed himself of this opportunity. It would elevate form over substance to hold that the court erred in denying a continuance merely because it failed to recite all of the *Walker* factors.

¶ 23 Defendant next contends that his sentence was an abuse of discretion. He notes that, although there is no evidence that he personally brandished a gun, he is subject to a mandatory

15-year add-on because a gun was used during the crime (720 ILCS 5/19-6(a)(3), (c) (West 2012)), resulting in a minimum sentence of 21 years. He contends that, given the substantial mitigating evidence, a sentence three years in excess of the minimum was an abuse of discretion.

¶ 24 A trial court's sentencing decision is entitled to great deference, and we may not disturb a sentence unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). A sentence that falls within the statutory range is not an abuse of discretion unless it varies greatly from the purpose and spirit of the law or is manifestly disproportionate to the nature of the offense. *People v. Averett*, 381 Ill. App. 3d 1001, 1020-21 (2008). Because the trial court is in a superior position to evaluate the defendant's credibility and demeanor and to balance the various factors in aggravation and mitigation, we may not overturn a sentence merely because we might have weighed the pertinent factors differently. See *Stacey*, 193 Ill. 2d at 209.

¶ 25 In sentencing a defendant, the trial court must consider the character and circumstances of the offense itself and the defendant's character, criminal history, mentality, social environments, habits, age, future dangerousness, and potential for rehabilitation. *People v. McGowan*, 2013 IL App (2d) 111083, ¶ 11. "Of all these factors, the seriousness of the offense has been called the most important." *Id.* A sentencing court is not required to give greater weight to a defendant's rehabilitative potential than to the seriousness of the offense. *People v. Spencer*, 229 Ill. App. 3d 1098, 1102 (1992).

¶ 26 Here, the trial court appropriately balanced the substantial mitigating evidence against the seriousness of the crime. The court found "extremely mitigating" defendant's lack of a significant criminal record and his expression of remorse to the victims. Nevertheless, the court recognized that defendant's conduct had "devastated the entire family."

¶ 27 Indeed, Howard testified at sentencing that her sense of pride and security in owning her own home was taken away when the front door was kicked in. She watched her husband being beaten to the point that she thought he would be killed. He continued to experience pain. He was unable to concentrate at work and could no longer work overtime. He is startled by noises, cannot trust anyone, and cannot sleep. It took Howard a week to return to her home and more than a month to return to her bedroom.

¶ 28 Howard said that her children's spirits had been broken. Her son had been accepted to West Point, but nearly ruined his future by trying to buy a gun to protect his family, and was prevented from doing so only by his age. He receives counseling while at West Point. Howard's nine-year-old daughter refuses to be alone in the house, always needing to be in sight of her family, even when bathing or playing in the yard. As the family dog now barks at noises and strangers, she fears that he will be killed for barking. She positions herself so that she can see down the hall from her bed and sleeps only when her body cannot physically be awake any longer.

¶ 29 Despite evidence of the devastating impact of the offense on the victims, defendant's sentence was only three years above the minimum, as the trial court expressly considered the mitigating evidence. Given the seriousness of the offense, the court was not required to impose the minimum sentence even in the presence of mitigating evidence. See *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010) (presence of mitigating factors does not require the court to impose the minimum sentence available).

¶ 30 The judgment of the circuit court of Lake County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 31 Affirmed.