2016 IL App (2d) 140927-U
No. 2-14-0927
Order filed September 21, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DEMETRICE TOMPKINS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 11-CF-2899 Honorable Daniel P. Guerin, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to 22 years' imprisonment (on a 10-to-30 range) for armed violence: despite the mitigating evidence, the sentence was justified by the seriousness of the offense.

¶ 2 Defendant, Demetrice Tompkins, appeals his sentence of 22 years' incarceration for armed violence (720 ILCS 5/33A-1(c)(2) (West 2010)). He contends that his sentence was excessive. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2011, defendant was charged with armed violence, attempted murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)), and aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2010)) for stabbing the victim, Crystal W. In June 2014, a jury trial was held.

¶ 5 Evidence at trial showed that defendant had periodically dated Crystal for approximately 20 years and that they had two sons together, ages 6 and 14. At the time of the crime, Crystal lived in Lombard with the children. Defendant had a key, but also lived with his mother in Chicago. Defendant's brother, James Kirkwood, lived nearby in the same apartment complex.

¶ 6 On December 11, 2011, Crystal drank alcohol and visited her sister overnight. The morning of December 12, 2011, she went to Kirkwood's apartment where her six-year-old son was staying and took her son home to feed him breakfast. They then returned to Kirkwood's apartment, where Kirkwood gave Crystal an alcoholic beverage. Defendant arrived, and an argument ensued. Defendant knocked the drink from Crystal's hand and accused her of seeing someone else. Crystal slipped and fell. She then told defendant that she would testify in court about a previous domestic violence incident. Kirkwood tried to restrain defendant, who was on top of Crystal, and defendant told him "I'm going to jail today." Defendant then dragged Crystal into the bathroom, where he punched Crystal in the face with a closed fist several times. Looking in the mirror, Crystal observed her eyes turn red and her nose bleeding.

¶ 7 Defendant left the bathroom and took a steak knife from the kitchen. Meanwhile, Crystal closed the door and braced it with her body to keep defendant out. Defendant forced his way back in and closed the door behind him. He stared at Crystal for a moment and pulled the knife from his pocket. When Crystal asked about the knife, he said "I'm going to jail for murder today." Defendant then slit Crystal's left wrist and stabbed her left forearm. Crystal fell back onto the toilet and asked defendant if he was "really going to do this," and "what about our

kids[?]" Defendant responded "[W]hat about them. You don't care." He then stabbed her twice in the upper part of the chest as she tried to get up. He next stabbed her twice in the abdomen. Crystal grabbed the knife by the blade to try to prevent defendant from further stabbing her and slipped into the bathtub. As defendant came toward her again, she called to Kirkwood for help and heard Kirkwood say that he had called 911. Defendant then dropped the knife and left.

¶ 8 Crystal remained in the bathroom for a while in shock and then walked toward the kitchen. She saw her son and told him to go to another room. Looking through the peephole in the door, she saw Kirkwood outside speaking with a police officer. She stepped outside and, when paramedics arrived, she was transported to the hospital. Crystal required staples to close many of her wounds. A treating physician testified that Crystal smelled of alcohol when she arrived. She had multiple bruises on her face, hemorrhages in both eyes, three lacerations to her left breast, three lacerations to her abdomen, and multiple lacerations to her left elbow, wrist, and fingers. Crystal had abdominal surgery the next day and was diagnosed with peritonitis because of puncture wounds to her intestines. She also had a perforated mid-small bowel. She was given vitamins due to a deficiency that was possibly caused by acute alcohol intoxication. She remained in the hospital for about a week.

¶ 9 Defendant was apprehended in Crystal's apartment holding the knife. He agreed to speak with officers and told them that he was upset that Crystal was drinking. He generally admitted to the crime, but said that he did not recall having a knife. He said that he shut the bathroom door so that his son would not see him hitting Crystal and that he stopped when Crystal pleaded with him not to let anyone else raise their children. He said that her words made him "snap out of it." Defendant said that voices told him to kill himself. He considered lunging at officers with the

knife so that they would kill him but he then thought about his children and surrendered. Defendant expressed remorse over what happened.

¶ 10 The jury found defendant guilty on all counts. At sentencing, the State conceded that the convictions of attempted murder and aggravated domestic battery should merge into the conviction of armed violence, based on the one-act, one-crime doctrine. The State asked for a sentence of 28 years. Defendant asked for 10.

¶ 11 The State presented evidence that Crystal had previously been charged with various crimes and had been placed on supervision for battery and driving under the influence. Defendant was previously convicted of domestic battery in a 1997 case involving Crystal and was arrested for domestic battery again in 2011. In the latter instance, officers responded to a domestic violence incident in Crystal's apartment during which an officer saw defendant strike Crystal several times about the head and face while she was seated in a chair. Defendant stated that they had been fighting because Crystal was intoxicated and would not let him sleep or get in his vehicle. Defendant had also been convicted in federal court of possession of a controlled substance with intent to deliver. The State argued that Crystal was lucky to be alive, noting that defendant left her in the bathroom to bleed out. The State further noted that defendant committed the crime with a child present.

¶ 12 Defense counsel argued that defendant grew up in a high crime area of Chicago without a father and had battled drug abuse, but had graduated high school. At the time of the incident he held two jobs and lived a sober lifestyle, although he suffered from depression. He had a child with another woman who did not allow him to have contact with the child, but he provided child support. He also had cared for two other children and remained in contact with those children and their children. He remained involved with his two children with Crystal and tried to

install wholesome values in his teenage son. Family members provided letters to the court stating that the incident was not consistent with his character.

¶ 13 Defendant made a statement in allocution, expressing remorse and telling the court that he hurt some very special people. He stated that, after his drug conviction, he worked hard to rehabilitate himself and raise his children, whom he did not want to be away from for very long. He said that he lived in an alcoholic environment for years and that it was hard to watch a person he loved have problems with alcohol. He had urged Crystal to seek help for drinking many times. He said that, at the time of the incident, his mind collapsed and something happened to him. Defendant begged for mercy and told the court that he was not the monster that he was portrayed to be.

¶ 14 The court discussed the aggravating and mitigating circumstances at length. In aggravation, the court, specifically stating that it was not taking into account factors inherent in the offense, noted the overall severity of the crime and the amount of injuries that Crystal suffered. The court stated that it was convinced that, but for a few words from Crystal about the children, defendant would not have stopped the attack. It also noted that defendant's young child was present and likely could hear the struggle. The court found that defendant had a criminal history, but not a significant one. The court did not put undue emphasis on the 2011 domestic battery incident since it was still pending, but noted that there was evidence that an officer saw defendant hit Crystal. The court further found that there was a need to deter others from committing similar crimes. In mitigation, the court found that defendant expressed genuine remorse and supported his children. The court also found various mitigating character traits and attitudes and noted that he had graduated from high school and had a stable work history. The court declined to find that defendant acted under strong provocation, stating that it did not find

grounds to excuse or justify his conduct. It also stated that it could not find that defendant's conduct was unlikely to recur. Ultimately, the court stated that the crime was an unprovoked, violent attack against an unarmed woman in the presence of her six-year-old child and, based on the balance of the aggravating and mitigating evidence, the court sentenced defendant to 22 years' incarceration with 85% of the sentence to be served because the crime involved great bodily harm (730 ILCS 5/3-6-3(a)(2)(iii) (West 2010)). Defendant's motion to reconsider was denied, and he appeals.

¶ 15 II. ANALYSIS

¶ 16 Defendant contends that his sentence was excessive based on the mitigating circumstances. The State argues that the sentence was appropriate in light of the aggravating circumstances.

¶ 17 "[T]he trial court is in the best position to fashion a sentence that strikes an appropriate balance between the goals of protecting society and rehabilitating the defendant." *People v. Risley*, 359 Ill. App. 3d 918, 920 (2005). Thus, we may not disturb a sentence within the applicable sentencing range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). A sentence is an abuse of discretion only if it is at great variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Id.* at 210. We may not substitute our judgment for that of the trial court merely because we might weigh the pertinent factors differently. *Id.* at 209.

¶ 18 In determining an appropriate sentence, relevant considerations include the nature of the crime, the protection of the public, deterrence, and punishment, as well as the defendant's rehabilitative prospects. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). The weight to be attributed to each factor in aggravation and mitigation depends upon the particular circumstances

of the case. *Id*. There is a presumption that the trial court considered all relevant factors in determining a sentence, and that presumption will not be overcome without explicit evidence from the record that the trial court did not consider mitigating factors or relied on improper aggravating factors. *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998). "The spirit and purpose of the law are promoted when a sentence reflects the seriousness of the crime and gives adequate consideration to a defendant's rehabilitative potential." *People v. Colbert*, 2013 IL App (1st) 112935, ¶ 24.

¶ 19 Here, defendant was sentenced for armed violence, a Class X felony with a minimum sentence of 10 years' incarceration. 720 ILCS 5/33A-1(c)(2), 3(a-5) (West 2010). Unless otherwise extended, the offense carried a maximum sentence of 30 years. 730 ILCS 5/5-4.5-25(a) (West 2010). The trial court carefully considered the mitigating evidence but also noted the circumstances of the crime, in which defendant violently attacked an unarmed woman in the presence of his young child. He then left and fled without regard for Crystal or his child. He had a criminal history, including instances of violence involving Crystal. The court found that the crime was unprovoked and was not unlikely to recur. Yet the court still sentenced defendant to a term eight years below the maximum and six below what the State requested.

¶ 20 Defendant notes various cases in which the appellate court reversed or reduced a sentence, based in part on a defendant's potential for rehabilitation. But those cases involved either a failure to consider mitigating factors or other circumstances not present here. *People v. Juarez*, 278 Ill. App. 3d 286 (1996) (record did not indicate that the court gave serious consideration to mitigating evidence or rehabilitative potential); *People v. Steffens*, 131 Ill. App. 3d 141, 152-53 (1985) (rehabilitative potential not adequately considered concerning a 16-year-old defendant from a poor social environment with no violent criminal history and who

expressed a desire to continue his education); *People v. Bailey*, 88 Ill. App. 3d 416 (1980) (two-year sentence for a nonviolent crime excessive when strong factors in mitigation were compared to a single factor in aggravation). Defendant also relies on cases involving extended-term sentences. *People v. Bedony*, 173 Ill. App. 3d 613 (1988); *People v. Treadway*, 138 Ill. App. 3d 899 (1985). Here, the sentence imposed and the court's statements concerning defendant's background and work history make clear that it balanced the factors in mitigation and considered defendant's rehabilitative potential in crafting the sentence. The court's manner of doing so was not unreasonable. Accordingly, the court did not abuse its discretion in sentencing defendant to 22 years' incarceration.

¶ 21 III. CONCLUSION

¶ 22 The trial court did not abuse its discretion when it sentenced defendant to 22 years' incarceration. Accordingly, the judgment of the circuit court of Du Page 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).

¶ 23 Affirmed.