2016 IL App (3d) 140882-U

Order filed February 16, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0882 Circuit No. 13-CF-674
MEDARDO GONZALEZ-VAZQUEZ,	)	
Defendant-Appellant.	)	Honorable Sarah F. Jones, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant.

¶ 2 Defendant, Medardo Gonzalez-Vazquez, appeals from his sentence of consecutive terms of 11 years' imprisonment and 4 years' imprisonment, arguing that the trial court abused its discretion by failing to adequately consider mitigating factors in sentencing. We affirm.

¶ 3 FACTS

¶ 4 On May 15, 2013, defendant was charged by superseding indictment with three counts alleging that on or between February 1 through June 2, 2011, defendant, who was 17 years of age or older, committed: (1) criminal sexual assault (720 ILCS 5/12-13(a)(4) (West 2010)),[1] a Class 1 felony, in that he committed an act of sexual penetration with a minor child; (2) aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2010)),[2] a Class 2 felony, for knowingly committing a sexual act of penetration with the minor; and (3) aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2010)), a Class 2 felony, for placing his hands upon the breasts of the minor for the purposes of sexual arousal.

¶ 5 On September 11, 2013, defendant entered a blind plea to counts one and three, and the State agreed to *nolle prosequi* count two.

¶ 6 The State presented the factual basis for the guilty plea. In March 2013, the victim told her counselor that she had been raped by her mother's former boyfriend when she was 15 years old. Defendant, who was 35-years-old at the time, came into her bedroom one night, pulled her pants down, placed his penis inside her vagina, and placed his hands on her breasts. The Department of Child and Family Services reported the victim's story to the Joliet police department.

¶ 7 Defendant voluntarily spoke to the police in a video-recorded statement. He admitted that he lived with the victim and her mother for four months in 2011. Defendant further admitted that one night he came home, found the victim in her bedroom, undressed himself, pulled his

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[1]This section was subsequently renumbered as section 11-1.20 by Public Act 96-1551, Art. 2, § 5, effective July 1, 2011 (720 ILCS 5/11-1.20 (West 2012)).

[2]This section was subsequently renumbered as section 11-1.60 by Public Act 96-1551, Art. 2, § 5, effective July 1, 2011 (720 ILCS 5/11-1.60 (West 2012)).

pants off, placed his penis in her vagina, fondled her breasts, and possibly ejaculated inside her. Defendant believed the victim was 13 years old.

¶ 8 The court accepted the plea and entered a judgment on the two counts.

¶ 9 At the January 2014 sentencing hearing, the State presented the testimony of Detective Tizoc Landeros as aggravation evidence. Landeros had assisted in translating and communicating with defendant during the police investigation. Landeros said that defendant told the police that on the night of the offense, he had been out drinking, came home, and found a person lying on the bed. Defendant first thought it was his girlfriend, but later admitted that he knew it was her daughter. He believed the daughter was 13 years old. He placed his penis inside her and groped her breasts. Defendant believed that he ejaculated. Landeros said that the girl told her counselor soon after she and her mother moved out of defendant's house. Defendant also had a school picture of the girl in his wallet. On cross-examination, Landeros stated that defendant was honest and regretted what he had done.

¶ 10 In mitigation, defense counsel noted that defendant had a limited criminal history, had been an employed, productive member of society for the eight years he had been in the country, and took responsibility for his actions. Counsel also argued that it was an isolated incident that would not happen again. Defendant made a statement in allocution, stating that the girl was 15 years old, not 13 years old.

¶ 11 The court took the matter under advisement and decided the matter in February 2014. In rendering its decision, the court said:

> "Show that the Court considering all of the applicable factors in aggravation and mitigation, presentence investigation, the arguments and suggestions of counsel, the defendant's allocution,

> show as to the charge of criminal sexual assault he is sentenced to 11 years in the Department of Corrections. Count III aggravated criminal sexual abuse, he is sentenced to 4 years in the Department of Corrections consecutive to that count."

¶ 12 Defendant filed a motion to reconsider, which the trial court denied. Defendant then filed *pro se* motions to withdraw guilty plea and modify sentence, alleging ineffective assistance. The court held a hearing and determined that the allegations as to ineffective assistance of counsel had no merit. The court denied defendant's motions. Defendant appealed.

¶ 13 This court (by dispositional order (No. 3-14-0152 (July 1, 2014))) remanded the case back to the trial court for additional proceedings under Illinois Supreme Court Rules 605(b) and 604(d). Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001); Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). Defendant filed another motion to reconsider sentence, which the trial court denied. Defendant appeals. We affirm.

¶ 14 ANALYSIS

¶ 15 On appeal, defendant contends that "the sentence of consecutive terms of 11 years and 4 years' imprisonment, totaling a 15-year sentence, makes apparent that the court failed to adequately consider the defendant's significant mitigating factors," particularly "the defendant's remorse, lack of criminal history, rehabilitative potential, and entry of his blind plea, which spared the victim the trauma of trial and did not result in a benefit to the defendant."

¶ 16 A trial judge's sentencing decisions are given great deference and will not be altered by a reviewing court absent an abuse of discretion. *People v. Jackson*, 375 Ill. App. 3d 796, 801 (2007). A sentence which falls within the statutory range is not an abuse of discretion unless it is manifestly disproportionate to the nature of the offense or greatly at variance with the spirit and

purpose of the law. *People v. Alexander*, 239 Ill. 2d 205, 215 (2010). The trial court has this discretion because it is in a better position than the court of review to determine the punishment to be imposed as it sees firsthand the defendant's credibility, demeanor, moral character, mentality, social environment, habits, and age and is able to consider these factors over the course of the case. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). It is up to the trial court "to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case." *People v. Latona*, 184 Ill. 2d 260, 272 (1998). Even so, a court cannot ignore a pertinent mitigating factor (*People v. Burnette*, 325 Ill. App. 3d 792, 808-09 (2001)), although the weight to be given each factor depends on the facts and circumstances of each case. *People v. Gross*, 265 Ill. App. 3d 74, 80 (1994). When mitigating evidence is before the trial court, it is assumed that the court considered it, unless the record indicates otherwise. *People v. Burton*, 184 Ill. 2d 1, 34 (1998).

¶ 17 We construe defendant's argument as an invitation to reweigh the sentencing factors, which we refuse to do. First, we note that the sentences were each well within the relevant range: 4 to 15 years' imprisonment for criminal sexual assault (730 ILCS 5/5-4.5-30(a) (West 2010)) and 3 to 7 years' imprisonment for criminal sexual abuse (730 ILCS 5/5-4.5-35(a) (West 2010)). Second, when rendering its decision, the court said that it had considered "all of the applicable factors in aggravation and mitigation, presentence investigation, the arguments and suggestions of counsel, [and] the defendant's allocution" in reaching the decision. This statement shows that the sentencing judge adequately considered the appropriate factors, and there is no indication otherwise. Third, while defendant correctly states that the Illinois Constitution requires courts to determine a sentence based on both the seriousness of the offense and the potential for rehabilitation (Ill. Const. 1970, art. I, § 11), we emphasize that a defendant's

potential for rehabilitation is not entitled to greater weight than the seriousness of the offense (*People v. Coleman*, 166 Ill. 2d 247, 261 (1995)). The seriousness of the offense is the most important factor that a court considers in sentencing defendant. *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010). Defendant, a 35-year-old man, believed the victim to be 13 years old when he sexually assaulted and abused her. Though defendant may believe the mitigating factors show that he has the potential for rehabilitation, the court was not required to agree or to give any such potential more weight than the seriousness of the act.

¶ 18 Further, defendant contends that "the court's imposition of an additional 4-year term, for fondling the victim during a single sexual encounter which was not repeated, added to the defendant's already excessive sentence in light of the mitigation set out above." The court rejected a similar argument in *People v. Anderson*, 325 Ill. App. 3d 624, 637 (2001), where defendant was convicted of three counts of aggravated criminal sexual assault for using force to place his penis in the victim's vagina and anus and placing his fingers in the victim's vagina. *Id.* at 626. As these acts all took place during a single sexual encounter, defendant contended that his sentence was excessive, as it would have been "a much more grievous situation" had defendant committed a series of criminal sexual assaults as opposed to one sexual encounter. *Id.* at 637. The court, quoting *People v. Segara*, 126 Ill. 2d 70, 77 (1988), said:

> "To the victim, each rape was 'readily divisible and intensely personal; each offense is an offense against *a person*.' (Emphasis in original.) [Citation.] To permit a defendant to rape an individual several times over a period of time in the same place with little or no break between each act deprecates the heinous and violent nature of each act and the effect each act has upon the

victim." *Id.* at 77 (quoting *Pruitt v. State*, 382 N.E.2d 150, 154 (1978)).

As defendant was found guilty of three separate offenses of aggravated criminal sexual assault and the court considered the correct factors in sentencing him, the sentence was appropriate. *Id.* at 77-78.

¶ 19 Here, defendant pled guilty to criminal sexual assault and criminal sexual abuse predicated on separate acts during a single sexual encounter. He was correctly sentenced on both counts. See *Id.* at 77; *People v. Foley*, 206 Ill. App. 3d 709, 717 (1990) (holding that where defendant commits more than one criminal act in a single encounter, defendant may be convicted of and sentenced for more than one offense unless the charges involve precisely the same act). The fact that both counts took place in a single encounter did not make the situation any less serious or require any leniency in sentencing.

¶ 20 Overall, there is no indication in the record that the court failed to consider relevant mitigating factors. Moreover, the sentences imposed were not "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense[s]." See *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). The mandatory consecutive sentencing range for the two offenses to which defendant pled guilty is 7 to 22 years. We find no abuse of discretion.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 23 Affirmed.