

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
TRESHAUN M. JAKE,)	No. 12CF1318
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding (1) defendant's ineffective-assistance-of-counsel claims should be brought in a postconviction action and (2) the trial court did not abuse its discretion in sentencing defendant to 65 years in prison.

¶ 2 In October 2013, a jury convicted defendant, Treshaun M. Jake, of first degree murder in the July 4, 2012, death of Desirae Austin. The trial court subsequently sentenced him to 65 years' imprisonment.

¶ 3 Defendant appeals, asserting (1) defense counsel provided ineffective assistance of counsel and (2) his 65-year sentence was excessive. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2012, the State charged defendant with three counts of first degree murder arising from the death of Desirae. Count I charged defendant with felony murder, alleging he, or one for whose conduct he was legally responsible, while committing the forcible

felony of mob action and armed with a firearm, knowingly and by the use of force disturbed the public peace by discharging a firearm in the direction of Johnnie Campbell and Rajon Campbell, thereby causing the death of Desirae (720 ILCS 5/9-1(a)(3) (West 2010)). Count II alleged defendant, without lawful justification and with the intent to kill or do great bodily harm to Desirae or another, discharged a firearm in Desirae's direction, thereby causing her death (720 ILCS 5/9-1(a)(1) (West 2010)). Count III alleged defendant, without lawful justification, discharged a firearm in the direction of Desirae or another, knowing the act created a strong probability of death or great bodily harm, thereby causing Desirae's death (720 ILCS 5/9-1(a)(2) (West 2010)).

¶ 6 A. Trial

¶ 7 In October 2013, defendant's jury trial commenced. We have summarized only the evidence necessary for the disposition of this appeal.

¶ 8 On July 4, 2012, an altercation broke out near the dimly lit intersection of Cruising Lane and Thornton Drive in Champaign, Illinois. The altercation occurred shortly after 10 p.m., following a nearby fireworks display, as the crowd dispersed from the festivities.

¶ 9 Johnnie Campbell testified, that evening, he got into an argument with Antwan Anderson and Phil Myrick in the street in front of 1605 Cruising Lane. Upon realizing the argument was escalating to a physical confrontation, Johnnie briefly left the scene and enlisted the aid of his brother, Rajon Campbell. Upon his return, Johnnie testified he observed an unspecified number of individuals coming around the corner carrying guns. One of those individuals, defendant, joined Phil and Antwan. According to Johnnie, defendant, Phil, and Antwan all held guns. At this time, the streets were crowded with dozens of people. Johnnie testified someone began shooting, at which time he and Rajon ran. Tiffany Dishman, who was

watching the altercation, observed defendant shoot his gun in the air. Tiffany said, at the urging of the crowd, defendant then leveled his gun at Johnnie and Rajon and started firing. Ranece Fondia, who lived at 1605 Cruising Lane, observed defendant firing into the crowd. She knew the shots came from defendant's gun because she saw the flash with each shot. She then fled inside her house. On cross-examination, Ranece testified she recognized defendant because she had known him for a long time and denied telling police she only later learned the shooter was defendant. In contrast, Howard Britt, Jr., who lived at 1608 Cruising Lane, testified defendant was not among the "bunch of boys" involved in the altercation. Britt also noted the darkness made it difficult to see.

¶ 10 When the gunfire ended, Desirae was lying in the middle of the street with a fatal gunshot wound to the chest. While Tiffany attempted to help Desirae, Anthony Meads, who was convicted of the same offense in a separate trial, walked down the street and fired a shotgun into the air twice. Ranece returned to her porch and overheard an exchange between Antwan and defendant. She testified she overheard Antwan say, "you shot that girl," and defendant respond, "I don't give a [f***]."

¶ 11 While conducting the investigation, officers discovered numerous shell casings in the vicinity of 1607 Cruising Lane, including casings from a .9-millimeter Luger, a shotgun, a .40-caliber gun, and a .45-caliber gun. Defendant and Anthony were standing in the driveway at the time police discovered the shell casings and were immediately taken into custody for further questioning. Anthony had a .45-caliber handgun on his person, which was later determined to be the gun that fired the fatal shot. At the time of his arrest, defendant possessed no weapons, bullets, or other items of evidentiary value. No forensic evidence—fingerprints, gunshot residue, or deoxyribonucleic acid—demonstrated defendant or Anthony fired the .45-caliber handgun.

¶ 12 In an interview defendant gave the police on July 4, 2012, defendant stated he was walking with his girlfriend, Khdijah, to meet her mother at the time the shooting occurred. He said he arrived at his friend Antwan's house, 1607 Cruising Lane, to discover police on the scene conducting an investigation. He told police he was not involved in any altercations or shootings that evening. Police had difficulty locating any eyewitnesses on the night of the shooting; rather, most witnesses were located later in the investigative process. As a result, defendant was released after questioning on July 4, 2012, and was rearrested in August 2012 after investigators received more information.

¶ 13 Defendant reiterated his July 4, 2012, statements during two August 2012 interviews. Additionally, Shalonda Foreman, Khdijah's mother, testified she was on the phone with defendant and Khdijah from approximately 10 p.m. until 10:40 p.m. as they provided directions to help her navigate her car through the busy city streets. According to Shalonda, she then picked defendant and Khdijah up and, shortly thereafter, dropped defendant off at an alley.

¶ 14 Following deliberations, the jury found defendant guilty of first degree murder.

¶ 15 B. Posttrial Proceedings

¶ 16 1. *Posttrial Motion*

¶ 17 In November 2013, defendant filed a motion for a new trial, asserting (1) the evidence was insufficient to support a guilty verdict; (2) the court erred in giving several jury instructions over defendant's objection; and (3) the verdict was "the result of passion, bias, and prejudice on the part of the jury." Following a December 2013 hearing, the trial court denied the motion.

¶ 18 2. *Sentencing*

¶ 19 The trial court then immediately proceeded to sentencing, where the following evidence was considered.

¶ 20 In preparing the presentence report, defendant refused to fill out the social-history form or participate in the interview. Nevertheless, he told the reporter to include a statement that he was innocent. The majority of the information included in defendant's social history was taken from his prior cases.

¶ 21 The presentence report revealed, in 2010, defendant accrued a felony conviction for the Class 2 felony of attempted residential burglary, for which he was sentenced to probation (Champaign County case No. 10-CF-1233). In 2011, defendant was adjudicated a delinquent minor for the misdemeanor offense of criminal damage to property (Champaign County case No. 10-JD-67). He received a sentence of probation. He subsequently violated his probation and was resentenced to an additional term of probation; however, he was unsuccessfully discharged during the pendency of the present case.

¶ 22 Defendant was single, with no children. He had a good relationship with his parents. Further research revealed defendant had been arrested for domestic battery against his stepfather, who had also filed two orders of protection against defendant. As a child, defendant initially lived with his mother, but he moved in with his father after his mother's drug use led to involvement by the Department of Children and Family Services. At age 16, defendant moved back in with his mother after being struck by his father.

¶ 23 Defendant attended traditional school through his junior year of high school. During his senior year, he was expelled from school for fighting. He then enrolled in an alternative school but later dropped out. After leaving his alternative school, defendant participated in Lincoln's Challenge; however, he was discharged from the program after being

disrespectful to staff and students. Defendant hoped to return to Lincoln's Challenge, but a positive test for marijuana precluded him from rejoining the program. Prior to his arrest, defendant had intended to take his general equivalency degree (GED) exam.

¶ 24 As of October 2011, defendant was employed as a driver for Advantage Auto in Champaign, but otherwise he had no history of long-term or stable employment. Champaign County probation records demonstrated defendant had undergone psychological testing while on probation, which demonstrated defendant was in "good" emotional health with no discernible psychological disorders.

¶ 25 Defendant had previously reported drinking alcohol on occasion and using cannabis regularly. He was ordered to complete inpatient substance-abuse treatment as part of a probation sentence; however, he was unsuccessfully discharged in December 2010 for leaving the facility and not returning.

¶ 26 Attached to the presentence report, the State provided numerous victim-impact statements from Desirae's family describing their grief and the impact of their loss. The State then presented the following evidence in aggravation. Staci Sherrick, employed by the Champaign County sheriff's office, testified she conducted disciplinary hearings at the Champaign County jail. While in custody pending the outcome of the present case, defendant had been disciplined 13 times for various misconduct, including (1) disobeying orders, (2) flooding his cell on numerous occasions, (3) tampering with the locks, and (4) engaging in altercations with others. As a result of a physical altercation, the inmate fighting with defendant was hospitalized. He also threw his bed down the stairs. According to Sherrick, defendant said he frequently flooded his cell for the purpose of making corrections officers clean it up.

¶ 27 Sergeant Michael Johnson with the Champaign County sheriff's office corroborated Sherrick's testimony based on his personal experiences with defendant in the jail. Johnson also testified, while defendant was not physically violent with officers, he was verbally abusive. As a result of his pervasive misconduct, defendant was housed in a locked-down unit.

¶ 28 Defendant presented no evidence in mitigation.

¶ 29 In imposing sentence, the trial court said it considered the presentence report, the arguments of counsel, the evidence presented in aggravation, and the statutory factors in mitigation and aggravation. The court noted defendant's age and stated, "[o]ne would hope that someone this young would have some rehabilitative potential, although [defendant] is doing the best he can to dissuade the court of that." The court found no further factors in mitigation applicable to defendant. In aggravation, the trial court noted defendant's criminal history and juvenile adjudication, particularly that defendant failed to follow the rules of probation. The court also highlighted numerous times the need to deter individuals from committing such crimes in the future. In particular, the court found defendant's decision to fire a gun indiscriminately into a crowd after a perceived slight to be egregious. This led to dozens of rounds being fired the evening of July 4, 2012, which led to the death of an innocent victim. The court expressed amazement no one else was injured or killed due to defendant's total disregard for safety.

¶ 30 The trial court also distinguished between defendant and Anthony, his codefendant, who received a sentence of 50 years after being convicted following a separate trial. The court noted Anthony was identified as possessing a shotgun and firing it twice in the air after Desirae's death, whereas witnesses identified defendant as introducing the gun to the altercation and firing it into the crowd.

¶ 31 The trial court imposed a sentence on count I, the felony-murder charge, of 65 years' imprisonment, which included a 15-year firearm enhancement.

¶ 32 In December 2013, defendant filed a motion to reconsider his sentence, asserting the sentence was excessive given his history of criminality, mental history, family situation, economic status, education, and occupational or personal habits. In February 2014, the trial court denied defendant's motion to reconsider.

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 On appeal, defendant argues (1) defense counsel provided ineffective assistance of counsel and (2) his 65-year sentence was excessive. We address these arguments in turn.

¶ 36 A. Ineffective Assistance of Counsel

¶ 37 Defendant first asserts defense counsel provided ineffective assistance of counsel, thus requiring his conviction to be reversed for a new trial. Specifically, defendant contends defense counsel failed to (1) file a motion to quash defendant's July 4, 2012, arrest and suppress statements arising from that arrest; (2) object to prejudicial hearsay statements; (3) perfect impeachment of the State's witnesses; and (4) tender a jury instruction regarding witnesses' prior inconsistent statements. Defendant raised none of these issues before the trial court. The State asserts these issues would be better addressed through a collateral attack, pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2012)).

¶ 38 A defendant bears the burden of demonstrating his defense counsel provided ineffective assistance of counsel. *People v. Valladares*, 2013 IL App (1st) 112010, ¶ 52, 994 N.E.2d 938. The defendant must demonstrate both that defense counsel's (1) performance fell below an objective standard of reasonableness; and (2) deficient performance resulted in

prejudice to the defendant such that, but for counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984). Where a defendant raises an ineffective-assistance-of-counsel claim that requires us to consider matters not addressed in the trial court, that claim is better brought in a collateral proceeding, like a petition for postconviction relief, which would allow the defendant to fully develop the record necessary to assist the reviewing court in adjudicating the claim. See *People v. Kirklin*, 2015 IL App (1st) 131420, ¶ 127, 29 N.E.3d 481; *People v. Kunze*, 193 Ill. App. 3d 708, 725-26, 550 N.E.2d 284, 296 (1990). Accordingly, we must determine whether an adequate record exists for us to review defendant's ineffective-assistance-of-counsel claims on direct appeal.

¶ 39 *1. Motion To Suppress Statements*

¶ 40 Defendant first asserts defense counsel provided ineffective assistance of counsel by failing to file a motion to quash his arrest and suppress statements he made to police on July 4, 2012.

¶ 41 In *People v. Henderson*, 2013 IL 114040, ¶ 15, 989 N.E.2d 192, the supreme court held, to successfully challenge defense counsel's failure to file a motion to suppress, "the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed." In making this determination, the supreme court considered the circumstances under which an ineffective-assistance-of-counsel claim should be considered on direct appeal versus a collateral attack. *Id.* ¶ 21. Where a defendant files a direct appeal challenging defense counsel's failure to file a motion to suppress, "the record will frequently be incomplete or inadequate to evaluate that claim because the record was not created for that purpose." *Id.* ¶ 22. Therefore, in situations such as those, a collateral attack is a more appropriate mechanism for

Strickland, given that it appears that an argument can be made that defense counsel's inaction fell within the bounds of reasonable trial strategy." *Id.*

¶ 47 We have no record developed from the present proceedings that would allow us to determine whether defense counsel's failure to file a motion to suppress defendant's statements, object to certain hearsay statements, perfect his impeachment of the State's witnesses, or tender the jury instruction regarding prior inconsistent statements constituted ineffective assistance of counsel. Nevertheless, defendant asks this court to consider the merits of his ineffective-assistance-of-counsel claim. We decline, absent the necessary record, to attempt to determine whether defense counsel's actions constituted unreasonable conduct or, in the alternative, trial strategy.

¶ 48 B. Sentencing

¶ 49 Defendant next asserts the trial court abused its discretion by imposing an excessive sentence. We disagree.

¶ 50 In determining an appropriate sentence, the court must consider "the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education." *People v. Maldonado*, 240 Ill. App. 3d 470, 486, 608 N.E.2d 499, 509 (1992). It is not the role of this court to substitute its judgment for that of the trial court merely because we would have reached a different conclusion. *People v. Alexander*, 239 Ill. 2d 205, 213, 940 N.E.2d 1062, 1066 (2010). Rather, we review the trial court's sentence for an abuse of discretion. *Id.* at 212, 940 N.E.2d at 1066. "A sentence will be deemed an abuse of discretion where the sentence is 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.'" *Id.* (quoting *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000)).

¶ 51 A first degree murder conviction carries with it a sentencing range of 20 to 60 years' imprisonment, a range which is also subject to additional firearm enhancements. 730 ILCS 5/5-4.5-20(a) (West 2012); 730 ILCS 5/5-8-1(a)(1)(d)(i) (West 2012). In this instance, defendant received a 50-year sentence with a 15-year firearm enhancement, for a cumulative sentence of 65 years' imprisonment.

¶ 52 Defendant asserts the trial court failed to give adequate consideration to mitigating factors that demonstrated his rehabilitative potential. See *People v. Brown*, 243 Ill. App. 3d 170, 176, 612 N.E.2d 14, 19 (1993) (the trial court abused its discretion in sentencing the defendant to 45 years' imprisonment without adequately considering the defendant's rehabilitative potential).

¶ 53 First, defendant argues his young age—19 at the time he committed the offense—supports a lesser sentence. In support, defendant relies on cases such as *Graham v. Florida*, 560 U.S. 48 (2010) (holding juveniles cannot face mandatory life sentences), and *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012) (holding juveniles cannot be subject to capital punishment), and articles discussing the brain development of juveniles. Defendant's reliance on these sources is unpersuasive as defendant was not a juvenile at the time he committed these offenses, nor did he receive a mandatory life sentence.

¶ 54 Defendant's reliance on *People v. Clark*, 374 Ill. App. 3d 50, 75, 869 N.E.2d 1019, 1042 (2007), *Brown*, 243 Ill. App. 3d at 176, 612 N.E.2d at 19, *Maldonado*, 240 Ill. App. 3d at 486, 608 N.E.2d at 510, and *People v. Anderson*, 142 Ill. App. 3d 240, 243, 488 N.E.2d 557, 558-59 (1985), is similarly misplaced because the sentences for those defendants were determined not only based on the defendants' ages, but on the specific circumstances underlying those cases. In *People v. Fern*, 189 Ill. 2d 48, 55, 723 N.E.2d 207, 210 (1999), the supreme

court rejected such cross-case comparisons as a basis for challenging a defendant's sentence. Though defendant correctly notes "there is no magic switch buried in the 18th-birthday cake that, when flipped, transforms a child into a grown-up in full possession of adult maturity and good judgment," his youth does not automatically override the significant evidence in aggravation presented in this matter. Rather, the defendant's youth and rehabilitative potential are but two factors the court considers in imposing sentence. See *People v. Garibay*, 366 Ill. App. 3d 1103, 1109, 853 N.E.2d 893, 898 (2006) (the defendant's youth does not necessarily outweigh other relevant sentencing factors).

¶ 55 Second, defendant asserts his rehabilitative potential was apparent in his minor criminal history, which consisted of a misdemeanor criminal damage to property conviction and a Class 2 attempted residential burglary conviction. In making this argument, defendant overlooks that at his "young age" of 19, he had already accumulated a misdemeanor adjudication and a serious felony conviction, which demonstrates a lack of willingness or ability to follow the law. He also committed the present offense while on probation for the attempted residential burglary charge. Defendant did not display a long criminal history because, as defendant points out repeatedly, he was only 19 years old when he committed the murder offense. He had, however, been expelled from school, dropped out of his alternative school, and was terminated from Lincoln's Challenge. While incarcerated, he had been disciplined on 13 occasions for various acts of misconduct, including tampering with locks and fighting with other inmates.

¶ 56 Third, defendant argues his strong family ties support a finding that he could be rehabilitated. While his family may have been willing to assist him, there was a troubled history between defendant and his father. Moreover, his mother behaved in such a manner that caused defendant, as a teen, to relocate to his father's home. Finally, defendant's family ties were unable

to deter defendant from the conduct that places him before this court. This lack of stability fails to demonstrate a strong foundation upon which defendant could rely.

¶ 57 Defendant argues the facts presented at sentencing create strong evidence in mitigation sufficient to overcome the lengthy sentence imposed by the trial court. We disagree.

¶ 58 Defendant was convicted of first degree murder after he indiscriminately fired a gun into a crowd during a street altercation. As a result, an innocent bystander was killed. As the trial court pointed out, it was amazing more people were not hurt or injured by his actions. Defendant asserts the murder itself "was not particularly gruesome or tortuous," and is thus undeserving of such a lengthy sentence. While Desirae's death might not have been "gruesome" or "tortuous" based on a textbook definition, defendant put the lives of dozens of people at risk when he fired into the crowd. His callous remark afterwards, that he did not "give a [f***]" he killed someone, further demonstrates his mentality and general moral character. Moreover, while in custody pending trial, defendant repeatedly engaged in misconduct in the Champaign County jail, flooding his cell on numerous occasions, threatening corrections officers, and fighting other inmates, thus further showing a lack of moral character and tendency for lawless behavior. Additionally, the trial court properly considered its sentence as a deterrent for future defendants. See 730 ILCS 5/5-5-3.2(a)(7) (West 2012). In imposing sentence, the trial court stated it considered all of the factors in aggravation and mitigation, and even noted defendant's age and his hope that defendant possessed some rehabilitative potential. However, the goal of rehabilitation is not weighed any heavier than the seriousness of the offense. *People v. Coleman*, 166 Ill. 2d 247, 261, 652 N.E.2d 322, 329 (1995).

¶ 59 We also decline to compare defendant's sentence with that of his codefendant, Anthony Meads. The record before us provides no information regarding Anthony's criminal

history, personal history, or other factors considered by the trial court in imposing sentence. It is therefore impossible for us to determine the sentences were disparate. See *People v. Kline*, 92 Ill. 2d 490, 509, 442 N.E.2d 154, 163 (1982). To the extent the codefendants may have received disparate sentences, the trial court found defendant to be more culpable, as the person who aggravated the altercation by firing his gun into the crowd. Anthony, by contrast, fired his shotgun into the air twice after the altercation had ended. Thus, the court's decision to sentence defendant more harshly was not an abuse of discretion.

¶ 60 Accordingly, we conclude the trial court's imposition of a 65-year sentence (a 50-year sentence plus a 15-year firearm enhancement) was not an abuse of discretion.

¶ 61 III. CONCLUSION

¶ 62 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$75 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 63 Affirmed.