2017 IL App (1st) 150741-U
No. 1-15-0741
Order filed October 10, 2017
First Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 7993
	)	
JOHNNY GREEN,	)	Honorable
	)	Domenica A. Stephenson,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for second-degree murder is affirmed where the evidence supported the trial court's determination that defendant had an unreasonable belief in the need to use self-defense in an altercation with the victim. Additionally, no basis exists to disturb defendant's 25-year extended-term sentence.

¶ 2 Following a bench trial, defendant Johnny Green was convicted of the second-degree murder of Tyrone Chambers. The trial court sentenced defendant to an extended term of 25 years in prison. On appeal, defendant contends his conviction should be reversed because the

testimony at trial established he had a reasonable and justifiable belief in the need to defend himself due to Chambers' threat the previous day and display of a knife during the fatal altercation. Defendant further asserts that the court erred by relying, in aggravation of his sentence, on evidence of disciplinary infractions while in prison, and he argues that his 25-year term was excessive in light of various mitigating factors that the court did not weigh. He also contends the court abused its discretion in not expressly stating its reasons for imposing that sentence.

¶ 3 At trial, Julia Ann Mullen (Julia) testified that in 2008, she and Chambers lived in a second-floor apartment at 711 North Lockwood in Chicago. Their apartment was above an apartment occupied by defendant and his girlfriend, Yvette Bluntson (Yvette). On or about December 28, 2008, Julia and Chambers had an argument, and Chambers threw a television out of the apartment window and tore the telephone cord from the wall. Julia went to defendant's apartment to use their phone to call police.

¶ 4 Chambers left and returned the next day, apologizing to Julia. They saw defendant in the hallway, and Chambers asked defendant if he was involved with Julia. According to Julia, defendant responded that he "had his own woman." Chambers left, and Julia returned to the apartment alone.

¶ 5 About 30 minutes later, Yvette told Julia that defendant left with Julia's son, Louis Mullen (Louis). Louis came back later with another of Julia's sons, Charles Pettis, and said defendant "was stabbing on" Chambers. Julia said she did not immediately go to the police because she "wasn't in [her] right state" of mind.

¶ 6 Sheila Bluntson (Sheila), Yvette's sister, testified that at about 3 p.m. on December 29, she arrived at the apartment building. Chambers and Julia were talking in the hallway, and defendant was inside Yvette and Chambers' apartment. Defendant told Sheila that Chambers and Julia had been fighting and Julia "needed somebody there to defend her." Defendant and Chambers then spoke in the hallway with raised voices; however, Sheila could not hear what was said.

¶ 7 Defendant told Sheila that Chambers "didn't know how close he came to dying." Defendant raised the sleeve of his shirt and showed Sheila a knife. Sheila told defendant to "leave [things] alone" but defendant replied he was going to "stick [the knife] up his ass," referring to Chambers. Shortly after that remark, Sheila heard defendant ask Julia for Louis's phone number and heard defendant telling Louis on the phone to "get here."

¶ 8 Louis testified he lived with his mother and Chambers at the time of these events; three siblings also lived there, including Pettis. Louis had known Chambers for "quite a few years" and knew defendant and Yvette.

¶ 9 At 4 p.m. on December 29, Louis was not at the apartment building. Defendant called Louis and told him to come over because Chambers had "jumped on" Julia. While driving to the building, Louis called Pettis. Louis picked up defendant and drove to the corner of Laramie and Ohio, where they saw Chambers standing. Louis then called Pettis again and reported their location.

¶ 10 When Pettis arrived and they all got out of their cars, Chambers ran away. Defendant, Louis and Pettis chased Chambers. When they caught up to Chambers, Louis and Pettis punched

him. Louis testified Chambers was “balled up” and “on the ground.” Louis did not see a weapon in Chambers’ hand.

¶ 11 Louis saw defendant stab Chambers in the back with a kitchen knife several times while Chambers was “still balled up.” Louis and Pettis ran away from the scene. Defendant followed them and got into Louis’s car. While in the car, defendant broke the knife into parts. Louis asked defendant why he stabbed Chambers, and defendant responded he did so to “teach him a lesson.”

¶ 12 Pettis offered testimony largely consistent with that of Louis; however, contrary to Louis’s account, Pettis said Chambers was standing when defendant stabbed him. Following their substantive testimony, Louis and Pettis stated their testimony was in exchange for pleading guilty to conspiracy to commit first-degree murder in this case.

¶ 13 Teyrone Thomas testified that at 4 p.m. on December 29, he saw Chambers near the intersection of Laramie and Ohio. Thomas saw Chambers a short time later on the ground and stayed with him until police arrived. Thomas did not see any weapons on the ground near Chambers.

¶ 14 The State presented testimony that Chambers was pronounced dead at 4:34 p.m. An autopsy revealed Chambers died from seven stab wounds to his back and the back of his head.

¶ 15 The defense presented the testimony of Isaiah (Isaiah) Bluntson and defendant. Isaiah testified he was the son of defendant and Yvette and was good friends with Chambers. Isaiah and Chambers would smoke marijuana and drink alcohol together three or four times per week.

¶ 16 Isaiah had seen Chambers carrying a pocket knife and a kitchen knife in the past, including a time when Isaiah saw Chambers threaten defendant with a knife in the hallway. At that point in his testimony, Isaiah was not asked and did not specify when that incident occurred.

Isaiah could not say how many times he saw Chambers with knives, only that it happened "so many times."

¶ 17 Chambers came to defendant and Yvette's apartment looking for defendant. After being told defendant was not home, Chambers told Isaiah, "I'm a catch him on the slick side." When Isaiah relayed that message to defendant, defendant called Julia and asked her for her son's phone number. The next day, Isaiah saw Chambers speaking to defendant and Yvette in the hallway but could not hear what was being said.

¶ 18 On cross-examination, Isaiah said he did not see Chambers with a knife when Chambers and defendant were talking on December 29. He did not tell any police officers or detectives that he had previously seen Chambers with a weapon. He also did not tell anyone about Chambers' remark about "the slick side" until 2013 when he told a defense investigator. After defendant left on the day of the stabbing, he returned a short time later with Louis and Louis's brother.

¶ 19 Defendant testified that the day before the stabbing, he heard Chambers and Julia arguing upstairs. Julia walked down to defendant's apartment and asked Yvette what defendant said to Chambers. Defendant said he did not know what she meant, and Chambers approached the door. According to defendant, Chambers "proceeded [] like he was going to jump on her or put his hand on her," apparently referring to Julia.

¶ 20 Defendant asked Chambers what "his problem" was, and Chambers replied he was "sick and tired of the BS." Chambers displayed a knife, told defendant to stay out of "his business" and threatened to "carve his name in [defendant's] chest." Defendant said he felt nervous and scared by Chambers' threat.

¶ 21 At about 3 p.m. on December 29, defendant and Yvette heard Chambers and Julia arguing in the hallway. Chambers accused Julia of having a sexual relationship with defendant. Defendant denied that accusation. Defendant and Yvette returned to their apartment, and Chambers came to their apartment to talk to defendant.

¶ 22 After defendant relayed via Isaiah that he did not want to speak to Chambers, Chambers left. Isaiah told defendant Chambers said he will "catch [defendant] on the slick side," which defendant described as an old "street term" meaning that Chambers would "eventually catch you with your drawers down or attack you in some way or form or do some type of body harm [*sic*] to you." Defendant said he took Chambers' words as a threat and "felt very afraid."

¶ 23 Julia came to defendant's apartment to use their phone again, and defendant asked her for Louis's phone number. Defendant said he called Louis to tell him Julia was "in harm's way."

¶ 24 Louis arrived five or ten minutes later, and defendant told him Julia and Chambers had just been arguing. They left in Louis's car. Louis told defendant he was tired of Chambers and wanted to "kick his ass." Defendant tried to calm Louis down. Louis parked at Laramie and Ohio and spoke to Pettis about Chambers, who was nearby.

¶ 25 Defendant said he believed Chambers still had the knife he had threatened him with the previous day. When Louis and Pettis started to punch Chambers, defendant tried to break up the fight. When they stopped hitting Chambers, Chambers grabbed defendant and hit him.

¶ 26 A knife fell out of Chambers' hand and to the ground in front of defendant. Defendant retrieved the knife while Chambers was "hanging on" to him. Defendant testified he grabbed the knife and stabbed Chambers in the side and "we tussle and somehow his back was around me and I stabbed him again." Defendant said he stabbed Chambers several times because he was

afraid for his life. He disavowed Sheila's testimony that he showed her a knife on the day of the stabbing.

¶ 27 On cross-examination, defendant said he did not report the stabbing to police. He also did not tell detectives or investigators about Chambers' threat to carve his name in defendant's chest or that he tried to break up the fight between Chambers and Julia's sons. Defendant flushed the knife down a toilet after breaking it into pieces.

¶ 28 In the State's rebuttal case, the parties stipulated to defendant's 2005 conviction for unlawful use of a weapon by a felon. The parties also stipulated Yvette would testify that defendant made the "slick side" remark to Chambers.

¶ 29 The trial court found defendant guilty of second-degree murder. The court noted the testimony as to threats by Chambers the previous day and that Chambers held a knife the previous day, and the court also noted the conflicting testimony as to whether Chambers was standing or was on the ground when defendant stabbed him. The court concluded that defendant proved by a preponderance of the evidence that he believed he needed to act in self-defense against Chambers but found that defendant's belief was unreasonable.

¶ 30 At sentencing, the State presented the testimony of two witnesses in aggravation of defendant's sentence. Glen Jackson, chief records officer for the Illinois Department of Corrections (IDOC), testified that he had been in that position since 2004 and that part of his job duties entailed the maintenance of records pertaining to inmate files. Jackson identified defendant's disciplinary report and also identified defendant's inmate photograph and inmate number, stating those records were kept in the ordinary course of business at IDOC. Jackson testified as to the contents of defendant's disciplinary report. Defendant's file listed 16

disciplinary infractions that occurred between June 1999 and March 2009 during his incarcerations for prior offenses.

¶ 31 Jackson read each infraction into the record along with its punishment. Defendant's infractions ranged in nature from rules violations for which defendant received verbal reprimands to "assault, intimidation and threats and disobeying a direct order" for which defendant received a sentence of six months of "C grade status" or a reduction in privileges that represented the most severe punishment. On cross-examination, Jackson stated he had no personal knowledge of any of the incidents in defendant's inmate file.

¶ 32 Chicago police officer George Spacek testified as to defendant's arrest following an incident on March 16, 2005. Officer Spacek testified he and his partner approached defendant after seeing him discard items in a portable toilet near a gas station. Defendant pushed Officer Spacek away, and they struggled. Defendant pulled a handgun from his waistband, put the finger on the trigger, and pointed the gun at the officer's face. Officer Spacek pushed the weapon away, and he and his partner were able to subdue defendant and arrest him.

¶ 33 Also in aggravation, the State asserted that defendant was convicted of a 1983 murder and was 19 years old at the time of that offense. Defendant was sentenced to 40 years in prison in that case. The State reviewed facts from this court's opinion affirming that conviction (*People v. Green*, 177 Ill. App. 3d 365 (1988)).

¶ 34 The State argued to the trial court that it could impose an extended term sentence in this case because defendant was now convicted of a felony having previously been convicted of the same or greater class felony within 10 years. The State noted that defendant's time in custody for the 1983 murder tolled that 10-year period.

¶ 35 Defense counsel presented no evidence in mitigation of defendant's sentence but asked the court to impose the minimum possible sentence. Counsel asserted that defendant had a troubled youth and was remorseful about the 1983 murder, arguing that he had "atoned for" that crime. Counsel noted that defendant was employed at the time of the instant offense and was an "engaged parent."

¶ 36 Defendant addressed the court in allocution, apologizing to the Chambers family and asking the court to "have mercy on me and allow me back out there into society to continue to be the productive citizen that I was" when this incident occurred and to be present for his family.

¶ 37 In sentencing defendant to an extended term of 25 years in prison, the court stated:

> "I've had an opportunity to read the presentence investigation report; I've considered all of the statutory factors in aggravation and mitigation; I've considered the evidence that I heard in aggravation and mitigation.
>
> I do find that Mr. Green is eligible for an extended term sentence. It is the sentence of this court that you shall be sentenced to 25 years in the Illinois Department of Corrections. You are sentenced to an extended term."

¶ 38 Following the court's imposition of sentence and admonishment of defendant as to his right to appeal, defense counsel filed a motion to reconsider sentence which he presented to the court "with no argument." The court denied the motion, stating:

> "I have had an opportunity to review the defense motion to reconsider sentence, and this court has taken into consideration, as I said, all of the statutory factors of aggravation, mitigation. This Defendant does have an extensive criminal background.

> I did take into consideration, as well, family that is here, the prior work history and the potential of rehabilitation upon his release from the Department of Corrections. I find that the sentence is more than appropriate in this case[.]"

¶ 39 On appeal, defendant challenges the sufficiency of the evidence to support his second-degree murder conviction, contending his conviction should be reversed because his belief in the need to use deadly force to defend himself against Chambers was reasonable and justified. He argues Chambers' threat the day before the stabbing that he would carve defendant's chest with a knife created a reasonable doubt that he believed he needed to use force against Chambers was justified to prevent death or great bodily harm. Therefore, defendant asserts, the State did not present sufficient evidence that he lacked a reasonable belief in the need to act in self-defense.

¶ 40 Second-degree murder is a lesser mitigated offense of first-degree murder. *People v. Izquierdo-Flores*, 332 Ill. App. 3d 632, 637 (2002). Second-degree murder differs from its first-degree counterpart by the presence of a statutory mitigating factor such as serious provocation or an unreasonable belief in justification for the defendant's actions. *People v. Porter*, 168 Ill. 2d 201, 213 (1995). However, the burden of proof remains on the State to prove, along with the elements of the first-degree murder, the absence of circumstances at the time of the killing that would justify or exonerate the killing under a theory of self-defense. 720 ILCS 5/9-2(c) (West 2006).

¶ 41 To establish that a defendant acted in self-defense, the defense must present some evidence that unlawful force was threatened against him; the danger of harm was imminent; he was not the aggressor; that he actually believed a danger existed; that force was necessary to avert the danger and the type and amount of force was necessary; and his beliefs were

objectively reasonable.720 ILCS 5/7-1 (West 2006); *People v. Washington*, 2012 IL 110283, ¶ 35. Once the defendant has presented some evidence as to each of those points, the burden shifts to the State to prove beyond a reasonable doubt that the defendant did not act in self-defense. *People v. Hawkins*, 296 Ill. App. 3d 830, 837 (1998). If the trier of fact believes the State negates any of these elements beyond a reasonable doubt, then the State has carried its burden of disproving the defense. *People v. Harmon*, 200 Ill. App. 3d 411, 413 (1990). If the trier of fact determines that a defendant has proven the other elements of self-defense by a preponderance of the evidence but has failed to demonstrate his belief was reasonable, the defendant should be found guilty of second-degree murder. See *People v. Spiller*, 2016 IL App (1st) 133389 (citing *People v. Jeffries*, 164 Ill. 2d 114, 129 (1995)).

¶ 42 The reasonableness of an individual's belief that the use of deadly force was necessary depends on the surrounding facts and circumstances and is a question of fact. *Hawkins*, 296 Ill. App. 3d at 836 (citing *People v. Felella*, 131 Ill. 2d 525, 534 (1989)). It is the task of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, as well as the reasonable inferences to be drawn from the evidence. *People v. Enis*, 163 Ill. 2d 367, 393 (1994). A reviewing court may not disturb the trier of fact's determination that the defendant was not acting in self-defense unless that conclusion was so unreasonable or improbable that it creates a reasonable doubt of defendant's guilt. *People v. Peterson*, 273 Ill. App. 3d 412, 424 (1995).

¶ 43 Here, the trial court convicted defendant of second-degree murder based on its finding that he had an unreasonable belief in the need to use the amount and type of force that he used against Chambers. The trial court heard conflicting evidence about threats between defendant

and Chambers. Defendant testified that the day before the stabbing, Chambers threatened to "carve his name" in defendant's chest. However, the State presented testimony from Yvette's sister, Sheila Bluntson, that defendant in fact threatened Chambers. Sheila testified that defendant told her he would "stick [the knife] up his ass," referring to Chambers. As to the encounter itself, defendant testified Chambers had a knife that fell to the ground during the stabbing; however, Louis and Pettis testified they did not see Chambers holding a weapon. The trial court was within its purview to weigh that conflicting testimony and conclude that defendant's belief in the need to use self-defense was not reasonable, and viewing the testimony in the light most favorable to the State, as we are required to do, there is no basis to disturb that ruling.

¶ 44 Defendant's next contention on appeal is that his 25-year prison sentence should be reduced or this case remanded for a new sentencing hearing. Defendant raises three main points related to his sentencing.

¶ 45 First, defendant argues that in hearing Jackson's testimony as to the contents of his prison disciplinary record, the trial court based its sentencing decision on improper evidence in aggravation. He points out that the court cannot consider criminal acts that did not result in convictions unless proof of the underlying facts is offered, and he asserts that evidence of such incidents must be presented by a witness who can be confronted and cross-examined. He asserts that because Jackson had no personal knowledge of the incidents, the trial court had no means to weigh the reliability of his testimony.

¶ 46 Defendant contends he can raise his challenge to the evidence of his prison disciplinary record for the first time on appeal under either prong of the plain error doctrine. "[S]entencing

errors raised for the first time on appeal are reviewable as plain error if (1) the evidence was closely balanced or (2) the error was sufficiently grave that it deprived the defendant of a fair sentencing hearing." *People v. Ahlers*, 402 Ill. App. 3d 726, 734 (2010).

¶ 47 Under the first alternative of plain error, defendant contends the evidence at sentencing was closely balanced because the factors in mitigation of his punishment were substantial and the evidence as a whole supported a sentence closer to the statutory minimum. He further argues that under the second prong of plain error, Jackson's testimony as to his prison disciplinary record led the court to consider an improper factor in sentencing. In the alternative, defendant contends his counsel was ineffective in failing to challenge the trial court's admission of Jackson's testimony and that "the trial court likely would have imposed a lesser sentence had it not considered the improper evidence."

¶ 48 The State responds that no error occurred because the rules of evidence differ from those at sentencing. The State cites two cases in which records of the defendants' prison disciplinary infractions were presented as aggravating evidence at sentencing: *People v. Terrell*, 185 Ill. 2d 467, 506 (1998), and *People v. Ward*, 154 Ill. 2d 272, 328 (1992).

¶ 49 Whether this issue is reviewed for plain-error or for the ineffective assistance of counsel, the initial consideration is whether any error occurred. See *People v. Sargent*, 239 Ill. 2d 166, 189 (2010); *People v. Mahaffey*, 194 Ill. 2d 154, 173 (2000), *overruled on other grounds by People v. Wrice*, 2012 IL 111860, ¶ 75. We agree with the State that no error occurred in the presentation of Jackson's testimony at sentencing.

¶ 50 As the supreme court noted in *Terrell*, the ordinary rules of evidence are relaxed during the aggravation and mitigation stage of sentencing, and "the introduction of certain evidence is

allowed which would not ordinarily be admitted during the guilt phase of the trial." *Terrell*, 185 Ill. 2d at 506. Thus, "[a] defendant's prison records are properly admissible if they are deemed to be relevant and reliable." *Id.* (citing *Ward*, 154 Ill. 2d at 328-29). A prison custodian of records may introduce prison records at sentencing, even where the officers who wrote the reports do not testify. *People v. Jackson*, 182 Ill. 2d 30, 85 (1998) (prison disciplinary report regarding an incident in which gang literature was recovered from a defendant's cell was relevant and reliable even though the person who saw the literature in the defendant's possession was not called to testify at sentencing).

¶ 51 Defendant recognizes that authority but nevertheless asserts that *Terrell* and *Ward* conflict with two earlier Illinois Supreme Court cases. He cites *People v. LaPointe*, 88 Ill. 2d 482 (1981), and *People v. Ramirez*, 98 Ill. 2d 439 (1983), which hold that evidence of a defendant's prior crimes should be presented through the testimony of a witness with firsthand knowledge who can be cross-examined as to those events. See *Ramirez*, 98 Ill. 2d at 460-61. However as the State points out, the supreme court has even more recently reiterated that the contents of a prison incident report are admissible during the penalty phase of a sentencing hearing if relevant and reliable. See *People v. Casillas*, 195 Ill. 2d 461, 494 (2000).

¶ 52 Here, defendant argues the evidence was not reliable because the record of his infractions in prison and the dispositions listed on the report and testified to by Jackson were not based on Jackson's personal knowledge. Defendant also asserts that "no evidence [was] offered as to how the DOC arrived at its dispositions, by what procedure they were obtained, and whether [he] had an attorney or even a hearing for each of these infractions." However, *Terrell*, *Ward*, and *Jackson* support the reliability of Jackson's testimony, and defendant offers no specific support

that such evidence was required to render Jackson's testimony as to the contents of the report reliable. Therefore, the admission of Jackson's testimony about defendant's prison disciplinary report did not constitute error, and thus, there is no plain error. See *Thompson*, 238 Ill. 2d at 613. Furthermore, defendant's claim of counsel's ineffectiveness must fail, as his attorney did not provide deficient representation at sentencing by not challenging that evidence.

¶ 53 Defendant's second sentencing argument is that his 25-year term is excessive. He contends the court failed to consider mitigating factors including his employment despite prior mental health struggles and his expression of remorse at his sentencing hearing.

¶ 54 Defendant's sentence was within the statutory parameters. Defendant's conviction for second-degree murder was punishable by a sentence of between 4 and 20 years in prison. 730 ILCS 5/5-8-1(a)(1.5) (West 2006). The trial court may impose an extended-term sentence where a defendant is convicted of any felony, having been previously convicted of the same or similar class felony or greater class felony within 10 years after the previous conviction, excluding time the defendant spent in custody. 730 ILCS 5/5-5-3.2(b)(1) (West 2006). The State asserted that the trial court could impose an extended-term sentence, which is up to 30 years for this offense, based on defendant's prior murder conviction. See 730 ILCS 5/5-4.5-30(a) (West 2010). The court sentenced defendant to 25 years in prison.

¶ 55 A sentence within the statutory limits will not be deemed excessive unless it is greatly in variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A reviewing court grants great deference to the trial court's sentencing determination because the trial court is generally in a better position to consider factors such as the defendant's credibility, demeanor, general moral

character, mentality, social environment, habits and age. *People v. Higgins*, 2016 IL App (3d) 140112, ¶ 29. The court has wide latitude in sentencing a criminal defendant, so long as the court does not consider improper factors in aggravation or ignore relevant factors in mitigation. *Id*. Moreover, the weight to be assigned to factors in aggravation and mitigation and the balance between those two factors is a matter within the trial court's discretion. *People v. Lefler*, 2016 IL App (3d) 140293, ¶ 31. The trial court's sentencing determination is not to be disturbed absent an abuse of the trial court's considerable discretion. *Alexander*, 239 Ill. 2d at 212. Accordingly, this court will not substitute its judgment for that of the trial court merely because it would have balanced the appropriate sentencing factors differently. *Alexander*, 239 Ill. 2d at 212.

¶ 56 Where relevant evidence in mitigation of a defendant's sentence is before the court, it is presumed that the court considered that evidence, absent some evidence in the record to the contrary other than the evidence itself. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 64. Here, the trial court stated it had contemplated that evidence, remarking that it "considered all of the statutory factors in aggravation and mitigation; I've considered the evidence that I heard in aggravation and mitigation." The court did mention various mitigating factors in ruling on defendant's motion to reconsider his sentence. A sentencing court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors require the court to impose a minimum sentence. *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 123 (citing *Alexander*, 239 Ill. 2d at 214). The court imposed a 25-year prison term that was five years below the 30-year maximum sentence.

¶ 57 Defendant asserts the trial court should have given reduced weight to his prior conviction for murder because he was 19 years old at the time. Defendant asserts that offense has little

relevance to his character or rehabilitative potential at his current age of near 50 years old. Defendant cites *Miller v. Alabama*, 567 U.S. 460, 477-78 (2012), in which the United States Supreme Court held that a statute mandating a sentence of life imprisonment without the possibility of parole for juvenile offenders convicted of murder was unconstitutional. The Court noted that juvenile offenders differ from adults in their "lack of maturity and [] underdeveloped sense of responsibility." *Id.* at 471 (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)).

¶ 58 We do not find *Miller*, *Roper* or any of the cases addressing juvenile sentencing should have affected the trial court's consideration of defendant's previous conviction for murder in arriving at his sentence in this case. Although defendant asserts his age when he committed the 1983 murder should have been considered in mitigation of his current sentence, the State in fact argued to the trial court in aggravation of defendant's sentence that defendant was 19 years old -- an adult -- when he committed the 1983 offense. Therefore, the trial court was made aware of defendant's age at the time of the earlier offense, and the court was free to weigh that fact together with all other relevant factors in aggravation and mitigation of defendant's sentence. Defendant also committed the instant offense after completing his prison time for his murder conviction, thus demonstrating a lack of rehabilitative potential.

¶ 59 Defendant's third sentencing argument is that the trial court abused its discretion in imposing sentence because it offered no substantive explanation of how it arrived at his 25-year term. He notes that although the court recited specific factors such as his family members' presence, work history and criminal background in denying his motion to reconsider sentence, the court did not explain why it imposed a term that was 21 years greater than the minimum

possible sentence. He also argues an extended term sentence should not have been imposed in this case.

¶ 60 As defendant acknowledges, our supreme court has held that a trial court is not required to set out its reasons for imposing a particular sentence. In *People v. Davis*, 93 Ill. 2d 155, 162-63 (1982), the defendants in two consolidated cases asserted that the trial court had to state for the record the bases for imposing their sentences. On appeal, this court held that the defendants had waived that issue by failing to request that the sentencing judges explain their reasoning. *Id.* at 158-59. In affirming the appellate court, the Illinois Supreme Court noted that the trial court has "no independent duty" to provide reasons for a particular sentence. *Id.* at 162-63.

¶ 61 Defendant cites the special concurrence in *People v. Bryant*, 2016 IL App (1st) 140421, ¶¶ 25-35. In *Bryant*, the defendant argued on appeal that the trial court abused its discretion in failing to explain the basis for his 21-year Class X sentence, asserting that several mitigating factors supported a shorter prison term. *Id.* ¶ 12. This court affirmed, noting the defendant's concession to a consistent body of law holding that a sentencing court is not required to recite or assign a value to each factor in aggravation or mitigation of the sentence. *Id.* ¶ 16 (and cases cited therein). However, one justice urged sentencing courts to "as a matter of course explain to a criminal defendant the reasons behind the sentence." *Id.* ¶ 26 (Hyman, J., specially concurring).

¶ 62 Defendant notes that the supreme court's decision in *Davis* is controlling authority but contends he is preserving the issue for review based on the then-pending petition for leave to appeal in *Bryant*. Two days after the filing of defendant's opening appellate brief, the supreme court denied leave to appeal. *People v. Bryant*, No. 120980 (September 28, 2016). In conclusion on this issue, defendant has cited no controlling authority that the trial court was required to

recite every factor considered in aggravation and mitigation and the weight that it assigned to each. Accordingly, because we have rejected each of defendant's three arguments related to his sentence, the trial court's imposition of a 25-year extended-term sentence in this case is affirmed.

¶ 63 Finally, defendant contends the mittimus should be corrected to reflect a single conviction for second-degree murder instead of convictions on three counts of first-degree murder. Where there is only one murder victim, there can only be one conviction for murder. *People v. Jones*, 2014 IL App (1st) 120827, ¶ 63. The State agrees that correction should be made to the mittimus. Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we order the clerk of the circuit court of Cook County to correct the mittimus to reflect that single conviction.

¶ 64 In conclusion, defendant's conviction for second-degree murder and his sentence are affirmed. Even though defendant testified that he believed in the need to defend himself against Chambers, the trial court found that belief was unreasonable. In addition, in imposing defendant's 25-year extended-term sentence, the trial court could consider defendant's prison disciplinary record, as testified to by an IDOC official, in aggravation of defendant's sentence, and the court was presumed to have considered the mitigating evidence presented. Moreover, the trial court was not required to state its reasons for arriving at a particular term of years. The mittimus is to be corrected as stated above.

¶ 65 Affirmed; mittimus corrected.