2017 IL App (1st) 1151207-U

No. 1-15-1207

September 1, 2017

Fifth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the
	) Circuit Court of
Plaintiff-Appellee,	) Cook County.
	)
v.	) No. 10 CR 7622 (01)
	)
KEYANNA RICHMOND,	) Honorable
	) Luciana Panici,
Defendant-Appellant.	) Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions and sentences for heinous battery affirmed where: (1) *d*efendant forfeited claims that her sentences were excessive; (2) section 5-4.5-105 of the Uniform Code of Corrections (730 ILCS 5/5-4.5-105) (West 2016)) does not apply retroactively to warrant a new sentencing hearing to a matter pending on direct appeal; and (3) the former section 5-120 of the Juvenile Court Act (705 ILCS 5/5-120 (West 2010)) is not rendered unconstitutional because it

was subsequently amended to expand the definition of juveniles.

¶ 2 Following a simultaneous joint bench trial,[1] defendant Keyanna Richmond, who was 17 years old at the time of the offenses, was convicted of three counts of heinous battery, one enhanced with a finding of severe bodily harm, and three counts of aggravated battery/great bodily harm, and sentenced to an aggregate term of 15 years' imprisonment. On appeal, defendant does not contest the sufficiency of the evidence, but instead contends that: (1) her sentence is excessive in light of her young age, mental health problems and other mitigating factors; (2) she is entitled to a new sentencing hearing under revised section 5-4.5-105 of the Unified Code of Corrections (730 ILCS 5/5-4.5-105 (West 2016)) which amended mitigation factors related to a defendant's age; and (3) former section 5-120 of the Juvenile Court Act (705 ILCS 5/5-120 (West 2010)) violated equal protection by treating 17-year-olds charged with felonies different than other minors as demonstrated by subsequent amendments to that section. For the following reasons, we affirm the convictions and sentence of the trial court.

¶ 3 Briefly stated, defendant's conviction stemmed from an incident on March 24, 2010, in which she and her siblings, codefendant Janet and brother Tracey, went to her aunt's home in Ford Heights, after Janet had a heated text exchange with their cousin, Suprisa Villa-Gomez. According to evidence presented at trial, defendant and her siblings arrived at the home of Sally Villa-Gomez (their aunt), armed with socks filled

[1] Defendant's trial was held simultaneously with her codefendant and sister, Janet Richmond.

with rock and bottles of drain declogger (acid). When they arrived, someone from the car yelled "come outside b*tches." Suprisa, who was sitting in the living room with her sister, Katina Villa-Gomez, went outside and saw her three cousins get out of the car. Tracey swung a sock filled with a hard object at her, and they began to fight. Shortly thereafter, Sally and Katina also came out of the house. Suprisa saw a white bottle in defendant's hand, which defendant threw at her as she fought with Tracey. At that point, Suprisa and defendant began fighting. During the fight, Suprisa felt a burning sensation on her back and face, and went back into the house. A younger sister, Alexis, called for an ambulance. Suprisa subsequently had skin-graft surgery due to second and third degree burns, and has permanent scarring on her back and under her arm.

¶ 4 During defendant's fight with Suprisa, codefendant threw something at her aunt, Sally, from a bottle and Sally felt a burning sensation on her face. Sally subsequently suffered burns and permanent scars on her face and arm. Katina was also burned on her arm, stomach and legs, although she did not participate in the fighting. Defendant, who was also injured from the acid, made inculpatory statements to Cook County Sheriff Investigator Lester Rogers after being *Mirandized* while she awaited medical treatment. Codefendant also made an inculpatory statement to Investigator Rogers after being *Mirandized*.

¶ 5 Cook County Police Investigator Ronald Sachtleben investigated the scene outside of the Villa-Gomez home and collected various items, including two pairs of socks containing rocks, swabs from a "splash pattern" and a "pour pattern," and a

broken glass bottle containing an unknown liquid, subsequently identified as sulfuric acid.

¶ 6 Prior to defendant's bench trial, the State tendered defendant a plea offer of six years, which she rejected. At the close of the State's case, defendant moved for a directed finding on Count 10 (aggravated battery to Suprisa by striking her with a sock full of rocks), the State conceded and the trial court granted the motion. Defendant was then convicted of the remaining counts of heinous battery and aggravated battery/great bodily harm.

¶ 7 At the sentencing hearing, the trial court considered defendant's Presentence Investigation Report (PSI), factors in aggravation and mitigation, and defendant's statement of allocution. The court made a specific finding of severe bodily harm as to Count I, related to Suprisa, and sentenced defendant to nine years imprisonment. Defendant was then sentenced to concurrent terms of six years imprisonment on the other two counts of heinous battery, which would run consecutive to Count I, for a total of 15 years imprisonment. No motion to reconsider sentence was filed, and this timely appeal followed.[2]

¶ 8 Defendant first contends that her sentence was excessive in light of the presented mitigating factors. Specifically, she contends that her aggregate sentence of 15 years, which was three years above the minimum sentence, was excessive given the mitigating factors, including her youth, mental health problems, employment history,

[2] Defendant's notice of appeal incorrectly states that the date of judgment was November 13, 2014; however, the date of judgment was December 18, 2014; thus her appeal filed on January 15, 2015, was timely filed.

caregiver responsibilities for her two children, that she acted in concert with her older sister, as well as the lack of aggravating factors apart from those inherent in the offense itself.

¶ 9 The Illinois Constitution states that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, §11. "The trial court's determination as to the appropriate punishment is entitled to great deference and will not be altered absent an abuse of discretion." *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010); *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). This court will not disturb a sentence that falls within the statutory limits unless the trial court abused its discretion. *People v.* Brown, 2017 IL App (1st) 142877, ¶60. We may not substitute our judgment for that of the trial court merely because we may have weighed the sentencing factors differently. *Sims*, 403 Ill. App. 3d at 24; *People v. Streit*, 142 Ill. 2d 13, 19 (1991). The seriousness of the offense may outweigh mitigating factors and the goal of rehabilitation. *Sims*, 403 Ill. App. 3d at 24. Even where there is evidence in mitigation, the trial court is not obligated to impose the minimum sentence. *Sims*, 403 Ill. App. 3d at 24.

¶ 10 While acknowledging that she failed to preserve this issue for review (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), defendant concludes that her sentence is reviewable under the plain error doctrine.

¶ 11 To establish plain error, a defendant must first show that a clear or obvious error occurred. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008). In the sentencing context, a defendant must then show that (1) the evidence presented at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny her a fair sentencing hearing. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

¶ 12 Defendant contends that she is entitled to relief under the second prong of plain error as her sentence implicates her substantial rights. This court has previously rejected the principle that sentencing errors are always reviewable as plain error because they affect fundamental rights (see *People v. Rathbone*, 345 Ill. App. 3d 305, 310-11 (2003); *People v. Ahlers*, 402 Ill. App. 3d 726, 731-32 (2010); *People v. Hanson*, 2014 IL App (4th) 130330, ¶¶28, 29). Accordingly, defendant is not entitled to automatic review of her sentence and must meet the requirements of the plain error doctrine to avoid forfeiture.

¶ 13 As noted above, the first step of plain error review is determining whether any error occurred. *Brown*, 2017 IL App (1st) 142877, ¶63. Here, there was no error because defendant's aggregate sentence of 15 years was not an abuse of discretion. Defendant was convicted of three counts of heinous battery for throwing acid on her family members, each a Class X offense that carried a sentencing range of 6 to 45 years. 720 ILCS 5/12.4.1(West 2010). Prior to announcing sentencing, the trial court looked at defendant's PSI and noted "almost no" criminal history, as well as defendant's written statement in allocution. Specifically, the trial court stated that it was "weighing

the negative and positive factors in aggravation and mitigation," and that it was aware that there was severe bodily harm as to Suprisa. On Count I, which contained the finding of severe bodily harm, defendant was sentenced to a 9-year term. The remaining two counts were sentenced to concurrent 6-year terms, to be served consecutive to the 9-year term. The record does not show that the court only relied on the severe bodily harm finding in sentencing defendant, nor that the court gave it any particular weight in deciding defendant's sentence. Under these circumstances, we find that defendant has failed to establish any error by the court to support the first prong of plain error.

¶ 14 Even if we were to assume that the court considered an improper aggravating factor, defendant's argument of plain error still fails under the second prong of the plain error analysis. Defendant was convicted of throwing acid on her family members during a fight. Although defendant presented mitigating evidence, we do not find it to be closely balanced to the evidence of Suprisa's required surgery, injuries and permanent disfigurement, as well as evidence that defendant came to the victims' home armed with acid and ready to fight. We conclude that the evidence was not closely balanced. Moreover, contrary to defendant's assertion, any consideration of an improper aggravating factor, namely severe bodily harm as to Suprisa, was not so egregious as to deny defendant a fair sentencing hearing. Accordingly, defendant's has failed to establish plain error and her claim of excessive sentence is forfeited.

¶ 15 Alternatively, defendant contends that trial counsel was ineffective for failing to object and preserve this issue by filing a motion to reconsider sentence. We reject this

argument. To establish a claim for ineffective assistance of counsel, a defendant must show that counsel's representation fell below an objective standard of reasonableness and that defendant suffered prejudice as a result thereof. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010), citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Because there was no reversible error in defendant's sentencing hearing, she cannot establish the prejudice prong of the *Strickland* standard. See *People v. Caffey*, 205 Ill. 2d 52, 105-06 (2001).

¶ 16 Defendant next contends that she is entitled to a new sentencing hearing under revised section 5-4.5-105 of the Code of Corrections (730 ILCS 5/5-4.5-105 (West 2016)), effective January 1, 2016, which amended mitigation factors related to a defendant's age.

¶ 17 This Court has previously decided this issue in *People v. Wilson*, 2016 IL App (1st) 141500, and *People v. Hunter*, 2016 IL App (1st) 141904. In *Wilson*, the defendant contended that he was entitled to have his case remanded to the trial court for resentencing pursuant to the recently enacted Public Act 99-69, which became effective on January 1, 2016, on the basis that it should be applied retroactively to his case because its effective date was after his sentencing, but while his direct appeal was pending. *Wilson*, 2016 IL App (1st) 141500, ¶11. This court disagreed, finding that the plain language of the statute indicated a prospective application. *Id*. at ¶16.

Specifically, the court found that "the language of Public Act 99-69 demonstrated its temporal reach by stating, in relevant part, that 'on or after the effective date,' when an

individual 'commits an offense' and was under the age of 18 at the time it was committed, the sentencing court must consider the additional mitigating factors listed and could decline to impose any otherwise applicable sentencing enhancement." *Id*. The court further found that contrary to defendant's interpretation, the use of the present term "commits" immediately following the temporal element demonstrates the legislature's intent that the statute apply to offenses committed after the effective date. *Id.*; *Cf. Hyashi v. Illinois Department of Financial and Professional Regulation*, 2014 IL 116023, ¶17.

¶ 18 This court reached the same result in *Hunter*, where it again determined that the amended statute requiring consideration of mitigating factors when sentencing a defendant who was under 18 at the time of offense did not apply retroactively based on the plain language of the statute, to a case pending on direct appeal. *Hunter*, 2016 IL App (1st) 141904, ¶46.

¶ 19 We reach the same conclusion in the instant case. The plain language of the statute indicates that it applies to crimes committed on or after its effective date. Here, as defendant's convictions stemmed from actions committed in 2010, she is not entitled to a new sentencing hearing based on the amended section 5-4.5-105.[3]

[3] We distinguish *Wilson*, *Hunter*, the instant case from *People ex rel. Alvarez v. Howard*, 2016 IL 120729. In *Alvarez*, the defendant, who was 15 at the time the alleged offenses were committed, was initially being tried as an adult pursuant to the then effective Juvenile Court Act. Public Act 99-258 amended the Juvenile Court Act to raise the age for automatic prosecution to 16 while defendant's case was pending and it was subsequently transferred on motion to juvenile court. The State sought a finding that the amendment was to be applied prospectively only; the Supreme Court found that the juvenile transfer statute is purely procedural, that an amendment may be applied retroactively even though its implementation is delayed by the Effective Date, and because there is no

¶ 20 Finally, defendant contends that former section 5-120 of the Juvenile Court Act (705 ILCS 405/5-120 (West 2010)) violated equal protection by treating 17-year-olds charged with felonies different than other minors as demonstrated by subsequent amendments to that section.

¶ 21 Our Supreme Court has already considered a challenge to this amendment in *People v. Richardson*, 2015 IL 118255. In *Richardson*, at issue was whether the savings clause of the newly amended section 5-120 violated equal protection because it excluded 17-year-olds who allegedly committed offenses prior to the amendment's effective date. While defendant attempts to cast her argument as different from that raised in *Richardson*, it is in reality the same argument; namely that the prior version of this section treated 17-year-olds charged with crimes differently than other minors, as evidenced by the amendment, which included 17-year-olds.

¶ 22 Statutes are presumed constitutional and the party challenging a statute's validity bears the burden of demonstrating a clear constitutional challenge. *Richardson*, 2015 IL 118255, ¶8. We will uphold the constitutionality of a statute whenever reasonable possible. *Id.* Our review of a statute's constitutionality is *de novo*. *Id.*

¶ 23 In conducting an equal protection analysis, the reviewing court applies the same standards under both the United States Constitution and the Illinois Constitution. *Id.* at ¶9. The constitutional right to equal protection guarantees that similarly situation individuals will be treated in a similar manner, unless the government can demonstrate

constitutional impediment to retroactive application, the amendment applies to pending cases. *Alvarez*, 2016 IL 120729, ¶¶ 26, 28, 33.

an appropriate reason to treat them differently. *Id.* The equal protection clause does not forbid the legislature from drawing proper distinctions in legislation among different categories of people, but it does prohibit the government from doing so on the basis of criteria wholly unrelated to the legislation's purpose. *Id.* When an equal protection claim challenges a legislative classification, that classification " 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation.' " *People v. Watson*, 118 Ill. 2d 62, 67 (1987) (quoting *Eisenstadt v. Baird*, 405 U.S. 438, 447, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972)). Further, when legislative classification does not affect a fundamental right or discriminate against a suspect class, such as here, we apply a rational basis scrutiny and consider whether the challenged classification bears a rational relationship to a legitimate government purpose. *Richardson*, 2015 IL 118255, ¶9; *People v. Masterson*, 2011 IL 110072, ¶24.

¶ 24 In *Richardson*, the defendant claimed an equal protection violation because the savings clause of the amendment precluded it from applying to some 17-year-olds, such as him. The Supreme Court found that while a statutory amendment which applies to some but not to others may appear unfair to a certain extent, that fact does not defeat its constitutionality. *Richardson*, 2015 IL 118255, ¶10. Specifically, the Court noted,

"neither the fourteenth amendment nor the Illinois Constitution prevents statutes and statutory changes from having a beginning, nor does either prohibit reasonable distinctions between rights as of an earlier time and rights as they may be determined at

a later time." *Id*., citing *Braeburn Securities Corp. v. Smith*, 15 Ill. 2d 55, 62 (1958); see also *Sperry Hutchinson Co. v. Rhodes*, 220 U.S. 502, 505, 31 S. Ct. 490, 55 L. Ed. 561 (1911). The Court ultimately found that the legislature's chosen effective date bears a rational relationship to the legislature's goal of extending the exclusive jurisdiction provisions of the Juvenile Court Act. *Id*.

¶ 25 Similarly, we find that it was reasonable for the legislature to distinguish between offenses committed before and offenses committed after a certain effective date since applying the amendment to offenses committed before the effective date would require those cases to be transferred to the juvenile division and to begin anew. The fact that a statute is later amended does not affect its constitutionality; statutory changes must have a beginning. The legislature's subsequent amendment of section 5-120 of the Juvenile Court Act does not demonstrate that the prior version violated equal protection simply because it treated 17-year-olds differently. We find that defendant has not met her burden of establishing an equal protection violation.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, we affirm the judgment of the Circuit Court of Cook County.

¶ 28 Affirmed.