2017 IL App (1st) 151640-U

No. 1-15-1640

Order filed September 29, 2017

Sixth Division

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. 13 CR 7217
	)	
EDDIE JACKSON,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's 12-year sentence for second degree murder is affirmed over his contention that the sentence was excessive in light of his advanced age, health condition, and expression of remorse.

¶ 2 Following a bench trial, defendant Eddie Jackson was convicted of second degree murder (720 ILCS 5/9-2(a)(2) (West 2012)) and sentenced, based on in his criminal background, as a Class X offender to 12 years' imprisonment. Defendant appeals, arguing that his 12-year sentence is excessive in light of his advanced age, his health problems, expression of remorse,

and the fact that the victim was the initial aggressor. For the reasons set forth herein, we affirm the judgment of the trial court.

¶ 3 Defendant was charged with two counts of first degree murder for the death of victim Marlon Vaughn. Defendant waived his right to a jury trial, and the case proceeded to a bench trial. Because defendant solely challenges his sentence, and not the sufficiency of the evidence to sustain his conviction, we recount the facts to the extent necessary to resolve the issue raised on appeal.

¶ 4 The evidence at trial showed that, in the early morning hours of December 1, 2012, defendant and five other men were walking through an alley behind 1254 South Sawyer Street. Defendant was holding his infant son in his arms. Defendant and one of the other men, Marlon Vaughn, were in an argument over the presence of the child. During the course of the argument, Vaughn slapped defendant in the face. In response, defendant set the child down on the ground and stabbed Vaughn once in the chest. The men then wrestled on the ground until Vaughn backed away from defendant. Defendant approached Vaughn with a hammer, but a witness told him to leave Vaughn alone. Vaughn later died as a result of the stab wound.

¶ 5 The trial court found defendant guilty of the lesser-included offense of second degree murder. In doing so, the court stated that, although defendant may have thought that he was acting in self-defense, his lethal response was disproportionate to Vaughn's slap in the face. The court denied defendant's motion for a new trial, and the case proceeded to sentencing.

¶ 6 In aggravation, the victim's sister, Bonnetta Vaughn, read a victim impact statement that had been prepared by her and her family members. The State argued that defendant's criminal history, dating from 1975 to 2012 and including seven felony and six misdemeanor convictions,

subjected him to a mandatory Class X sentence. Defendant's misdemeanor convictions consisted of domestic batteries and violations of an order of protection. The State recommended "a significant amount of time in the Illinois Department of Corrections."

¶ 7 In mitigation, defense counsel noted that defendant was 57 years of age and had seven children, three of whom were deceased. Counsel noted that defendant's last violent felony offense was an armed robbery conviction from 1992. All of defendant's subsequent convictions were either misdemeanors or controlled substance cases. Counsel asked the court for a minimum sentence of six years' imprisonment. In allocution, defendant apologized to Vaughn's family, stating that it was never his intention to take Vaughn's life.

¶ 8 After "[l]ooking at all the totality" of the evidence, the trial court sentenced defendant to 12 years' imprisonment. The court noted that defendant's criminal history was "somewhat old," and stated that defendant did not "go out on the street that day looking to kill somebody." However, it noted that stabbing Vaughn "was a bad reaction to somebody slapping him." The trial court denied defendant's motion to reconsider sentence. Defendant now appeals, arguing that his 12-year sentence is excessive.

¶ 9 A trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference on review. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). This is because a trial court has a superior opportunity "to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Although the trial court's consideration of mitigating factors is required, it has no obligation to recite each factor and the weight it is given. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11. Absent some indication to the contrary,

other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 10 In reviewing a defendant's sentence, this court will not reweigh the aggravating and mitigating factors and substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *People* v. *Busse*, 2016 IL App (1st) 142941, ¶ 20. Reviewing courts will not alter a defendant's sentence absent an abuse of discretion. *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 50. A sentence which falls within the statutory range is presumed to be proper and " 'will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.' " *People v. Brown*, 2015 IL App (1st) 130048, ¶ 42 (quoting *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 11 Here, we find that the trial court did not abuse its discretion in sentencing defendant to 12 years' imprisonment. Defendant was convicted of second degree murder, a Class 1 felony with a sentencing range of 4 to 20 years' imprisonment. 720 ILCS 5/9-2(d) (West 2012); 730 ILCS 5/5-4.5-30(a) (West 2012). Because of his criminal background, defendant was subject to mandatory Class X sentencing of 6 to 30 years. 730 ILCS 5/5-4.5-95(a) (West 2012); 730 ILCS 5/5-4.5-25(a) (West 2012). The trial court's 12-year sentence falls within the statutory range and, thus, we presume that it is proper. *Brown*, 2015 IL App (1st) 130048, ¶ 42.

¶ 12 Defendant does not dispute that he was subject to a mandatory Class X sentence, or that his sentence fell within the permissible range and is presumed proper. Rather, he argues that his sentence is excessive in light of his age, health problems, expression of remorse, and the fact that Vaughn was the initial aggressor. However, as noted above, absent some indication to the

contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19. That presumption may be overcome by an affirmative showing that the sentencing court failed to consider factors in mitigation *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. Defendant is unable to make such a showing.

¶ 13 The record shows that the trial court was aware of defendant's age and his health condition, as this information was contained in his presentence investigation report (PSI). Similarly, the trial court was aware of the age of defendant's prior convictions. The convictions were listed in defendant's PSI and were argued by the State in aggravation. Further, defense counsel argued in mitigation that defendant's latest conviction for a violent felony was from 1992, and that his subsequent controlled substance convictions stemmed from his struggles with substance abuse. The court also heard from defendant in allocution.

¶ 14 Given that all of the mitigating factors defendant raises on appeal were discussed in defendant's presentence investigation report or in arguments in mitigation, defendant essentially asks us to reweigh the sentencing factors and substitute our judgment for that of the trial court. As noted above, this we cannot do. See *Busse*, 2016 IL App (1st) 142941, ¶ 20 (a reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently). As the trial court is presumed to have considered all evidence in mitigation, and the evidence suggests that it did, we find that the trial court did not abuse its discretion in sentencing defendant to 12 years' imprisonment for second degree murder.

¶ 15 Defendant nevertheless argues that his expression of remorse and the fact that Vaughn instigated the incident warrant a reduction in his sentence. However, this court has stated that

"[i]n fashioning the appropriate sentence, the most important factor to consider is the seriousness of the crime." *Busse*, 2016 IL App (1st) 142941, ¶ 28. Here, the record shows that defendant, in response to being slapped in the face by Vaughn, stabbed him. After doing so, defendant approached Vaughn with a hammer, but abandoned the fight when a witness told him to leave Vaughn alone. Under these circumstances, we cannot say that defendant's 12-year sentence is manifestly disproportionate to the offense, and that the trial court abused its discretion in imposing the sentence.

¶ 16 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 17 Affirmed.