2017 IL App (1st) 151646-U

SECOND DIVISION
December 5, 2017

No. 1-15-1646

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County, Illinois.
	)	
v.	)	No. 13 CR 4193
	)	
LARRY PETERS,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's self-defense claim properly rejected because defendant was the aggressor, no revolver was recovered at the scene, and defendant conceded that the victim did not shoot at him. Prosecutor's questions and comments addressed the entirety of defendant's confession, but did not implicate defendant's right to remain silent. Defendant's sentence was within the prescribed statutory range and presumptively valid and is upheld against his claim that it is excessive.

¶ 2 Following a jury trial, defendant Larry Peters was found guilty of first-degree murder. The jury further found that he personally discharged a firearm that proximately caused Ronald's death. Peters was 65 years old at the time of sentencing and the trial court sentenced him to 66 years' imprisonment. Peters raises three claims of error on appeal: (1) his first-degree murder

conviction should be reversed outright because he had a genuine and reasonable belief in the need for self-defense, or alternatively, that his conviction should be reduced to second-degree murder; (2) the prosecution's improper comments about his failure to tell police after the murder that his brother had a gun warrant a new trial; and (3) his 66-year sentence was excessive in light of certain mitigating factors, including his lack of a criminal history and his age. Finding no error, we affirm.

¶ 3 BACKGROUND

¶ 4 The parties dispute the events leading up to Ronald's murder. At trial, the State argued that Peters shot Ronald, who was unarmed, three times, including once while Ronald lay on the ground in the street. Peters claimed that he shot his brother two times in self-defense after Ronald pulled out a revolver and he denied shooting Ronald in the street. The alleged revolver that Ronald had was never recovered.

¶ 5 Peters and Ronald lived in separate apartments in a two-story building located at 5832 South Shields in Chicago. Ronald lived on the first floor apartment with his daughter Ronisha, and Peters lived above them in the second floor apartment. The first and second floors had separate front entrances and the doors to each entrance were next to each other. The back of the building had a separate entrance for the first floor and a staircase connected the first floor to the second floor. The building was dilapidated, in disrepair, and had no heat.

¶ 6 On January 25, 2013, at approximately 2 p.m., Ronald and Ronisha were in the kitchen of their apartment when they heard a loud noise coming from upstairs, and some plaster fell from the ceiling. Ronald went to the back door and yelled upstairs, "Can you stop banging on the mother F'ing wall? The stuff is falling." Ronisha did not hear a response, and went to her bedroom.

¶ 7 A moment later, Ronisha heard Peters come down the back porch stairs and heard her father say, "Oh so you gonna shoot me." Ronisha walked toward the back porch and saw the two men struggling over Peters' shotgun. As the two men struggled, the gun went off and fired into the porch ceiling. After the gun went off, Peters said, "No, I'm trying to talk to you about something *** I'm trying to tell you something." Both men then calmly walked back into Ronald's apartment. Ronisha, thinking the argument was over, returned to her bedroom. Seconds later, she heard the two men talking and then heard a second gunshot coming from the living room. Ronisha hid in her closet and called her friend, Juanita Green, who lived two doors away. Ronisha told Juanita that her uncle was trying to shoot her father.

¶ 8 While in the closet and still on the phone with Juanita, Ronisha heard a third gunshot coming from the living room. Ronisha heard her father "moaning, like he's hurt. He was like, oh you shot me." Ronisha hung up on Juanita, ran out the back of the house, and jumped off the back porch into the gangway. When she got to the front of the gangway, she looked to her left and saw her father lying at the bottom of the front porch stairs bleeding and saw Peters standing on the front porch behind the screen door to the entrance of his apartment. Ronisha saw her father get up and start walking toward the curb of the street, but he fell and then crawled toward the middle of the street.

¶ 9 As Ronisha started to run to Juanita's house, she looked back and saw Peters walk down the front stairs. Still on her way to Juanita's house, Ronisha saw Juanita's father, Argentry Green, who told Ronisha to go inside his house and call 911. Ronisha called 911 while crying, but then handed the phone to Green, who told the dispatcher that someone had been shot and the offender was walking away. While she was still inside the house, Ronisha heard a fourth gunshot

and looked out the window to see her father lying in the street. Ronisha did not see Peters with a shotgun in the middle of the street.

¶ 10 Green and Deangelo Washington were Ronald's friends and were eyewitnesses to the shooting. Both testified they saw Peters walk out of the home, reload the rifle and shoot Ronald as he lay in the street. There were some inconsistencies between Green's and Washington's accounts regarding nonmaterial details. Also, Green acknowledged that he had vision problems in his right eye due to diabetes. Washington refused to give details to the 911 dispatcher, including his name, the victim's name, or the offender's name. When the dispatcher asked Washington, "Did you see who shot him?" Washington replied, "I just heard gunshots and went to the door, and he's lying out there in the middle of the street."

¶ 11 After the shooting, Officer Nicholas Ludwig received a dispatch describing the offender, and spotted Peters running into the intersection of 60th and Stewart. Ludwig pulled up next to Peters and exited his vehicle. When he approached Peters, Peters put his hands up and said that "he just shot his brother, and wanted to turn himself in." Peters did not mention anything about acting in self-defense or that Ronald had a gun, but did mention where the gun he used could be found. Although defense counsel originally objected to the question, "did [Peters] ever say anything to the effect, I had to shoot my brother?," the objection was withdrawn.

¶ 12 Upon arriving at the scene, detectives recovered a single barrel shotgun in the back yard. After each discharge, this type of weapon must be opened, the spent shell ejected and another shell loaded. Detectives also recovered three spent shells in the living room of the first floor apartment, and one spent shell inside the weapon. Detectives did not find any expended shotgun shells on the street or in front of the building. Detectives also did not recover any other weapon in the street where Ronald's body was lying or inside the first floor apartment.

¶ 13 Peters testified on his own behalf. He claimed that on January 25, 2013, Ronald became angry with him about something and came upstairs waving a revolver around. Ronald next fired the revolver into the air toward the back of the building, continued to curse and scream at him, and then went back downstairs. Afraid of what Ronald might do, Peters grabbed his shotgun from the attic and loaded the gun. When Ronald returned upstairs, Peters was standing at the door with his shotgun and the two began to struggle over the weapon. During the struggle, the gun discharged into the air. No one was hurt. The struggle continued and Ronald pulled Peters down the stairs to the back porch landing. When Ronald briefly went inside the house, Peters took the spent shell out of his shotgun and reloaded it because he was fearful and did not know what Ronald was going to do. Ronald then came back outside still angry and cursing and grabbed the barrel of the shotgun. Ronald and Peters continued to struggle over the shotgun eventually ending up inside in the living room where the gun went off while both men fell backwards. Peters held the shotgun under his right arm with the barrel of the shotgun pointing upwards and his hands were on the trigger when he fell backwards, landing on a couch. Ronald fell backwards and landed on the floor. Ronald was not crying or moaning in pain and Peters did not see any blood. Peters claimed later that this accidental gunshot had hit Ronald.

¶ 14 Peters stood up and Ronald remained lying on the floor. While Ronald was still lying on the floor, Peters saw him reach into his right front pocket, pull out a revolver and point it at him. Peters then took ammunition out of his pocket, opened the shotgun, pulled out the spent shell, reloaded the gun and then deliberately[1] shot Ronald thinking Ronald was about to shoot him. Peters shot Ronald in the left torso area. After he was shot, Ronald continued to point his gun at Peters, so Peters again reloaded his shotgun and deliberately shot Ronald a second time in the

[1] Peters throughout his testimony concedes that he deliberately shot his brother.

left torso area. Although Ronald pointed his revolver at Peters, he did not shoot at Peters. Ronald dropped the revolver to his side after Peters deliberately shot him a second time. Ronald then began scooting backwards to the front porch and eventually ended up outside on the sidewalk. Peters then stepped down the front porch stairs and walked down the gangway where he discarded the shotgun in the backyard. Peters left to report the shooting to the police and turn himself in. He denied shooting Ronald as he lay in the street.

¶ 15 Peters also detailed an incident five years earlier when he claimed Ronald assaulted him with a baseball bat. Although the police were called, Peters declined to press charges.

¶ 16 During cross-examination, the prosecutor elicited the following testimony regarding Peters' confession to the police:

> "Q: When the officers stopped you on the street, you didn't say any other thing to them about what had just happened aside from, I just shot my brother, did you?
>
> A: Any other thing like what?
>
> THE COURT: Next question.
>
> Q: You didn't say any other thing to them, right about what had just happened?
>
> A: I don't know in particular what you mean that I didn't say.
>
> Q: You said nothing else to those officers. You didn't tell them anything else?
>
> A: I told them I had just shot my brother.
>
> Q: And aside from I just shot my brother, you didn't say anything else, right?
>
> A: At that point he put me under arrest. He arrested me.
>
> Q: You didn't say anything else?
>
> A: No, I didn't.
>
> Q: He didn't tell you to shut up, did he?
>
> MR. WOLF [Defense attorney]: Objection.

THE COURT: Sustained."

Peters acknowledged that when he and Ronald were outside on the back porch, Ronald did not point the revolver at him and never said he was going to kill him or shoot him. Peters also acknowledged that Ronald never laid a hand on him that day and Peters did not see Ronald pull the revolver's trigger during the struggle inside the house.

¶ 17 Dr. Ponni Arunkumar performed Ronald's autopsy. Dr. Arunkumar observed two shotgun wounds on Ronald's left abdomen and another shotgun wound on his left rear thigh and left buttock area. Although there were three shotgun wounds, Dr. Arunkumar could not determine which shotgun wound occurred first, second, or third. The distance of the shotgun from Ronald's abdomen for both abdominal wounds was about three feet, and there was no evidence supporting close range firing with those wounds. The other bullet entered Ronald's left rear thigh and left buttock area, and exited his left buttock. This bullet was shot in an upwards direction and at close range—about a foot from Ronald's body. Any of the three shotgun wounds would have been fatal.

¶ 18 During closing argument, Peters argued that he shot Ronald in self-defense. In response, the prosecutor characterized Peters' self-defense claim as "ridiculous:"

> "MS. BAILEY: "What does this defendant do after he shoots his brother three separate times? He walks away, gets rid of that weapon, and he's running when he's stopped by a Chicago police officer. Now, he does tell the Chicago police officer, 'I just shot my brother.' Remember I asked Officer Ludwig, 'Did the defendant tell you anything, like his brother had a gun.'"
>
> MR. WOLF: Objection
>
> MS. BAILEY: No.
>
> THE COURT: As to that, overruled.

MS. BAILEY: Remember I asked Officer Ludwig, 'Did the defendant tell you he had to shoot his brother in self-defense?'

MR. WOLF: May I have a continuing objection?

THE COURT: That one is sustained.

MS. BAILEY: I guess the defendant is keeping that nugget of information to himself.

MR. WOLF: Your Honor –

THE COURT: Sustained."

¶ 19 After closing arguments, the jury was instructed on first-degree murder, second-degree murder, and self-defense. The jury found Peters guilty of first-degree murder and found that during the commission of the offense, he personally discharged a firearm that proximately caused Ronald's death.

¶ 20 At sentencing, the State offered no additional evidence in aggravation. Defense counsel argued in mitigation that Peters had no prior criminal history, was 65 years old at the time of sentencing, and believed he was acting in self-defense. Peters declined to address the court in mitigation. During sentencing, the trial court stated that Peters shot and killed his brother "in cold blood." Based on its consideration of all the evidence, the gravity of the offense, the pre-sentence report, and potential for rehabilitation, the trial court sentenced Peters to 66 years' imprisonment. The trial court denied Peters' motion to reconsider the sentence.

¶ 21 **ANALYSIS**

¶ 22 Peters first contends that the State failed to prove beyond a reasonable doubt that he did not act in self-defense when he shot Ronald.

¶ 23 Under Illinois law, an individual commits first-degree murder if, in performing the acts that cause a death, he "(1) intends to kill or do great bodily harm to that individual or another, or

knows that the acts will cause the victim's or another's death, or (2) knows the acts create a strong probability of death or great bodily harm to that individual or another." 720 ILCS 5/9-1(a)(1), (a)(2) (West 2012). To support a claim of self-defense, a defendant must present evidence on each of the following elements: "(1) unlawful force [was] threatened against the defendant; (2) the defendant [was] not the aggressor; (3) the danger of harm [was] imminent; (4) use of force was necessary; (5) the defendant actually and subjectively believed a danger existed that required the use of the force applied; and (6) the beliefs of the defendant [were] objectively reasonable." *People v. Lee*, 213 Ill. 2d 218, 224-25 (2004). After a defendant offers evidence supporting each self-defense element, the State then has the burden to prove beyond a reasonable doubt that the defendant did not act in self-defense. *People v. Jeffries*, 164 Ill. 2d 104, 127-28 (1995). If the State succeeds at negating any one of the six elements, the defendant's claim of self-defense fails. *Id.*

¶ 24 Peters admitted that he shot and killed Ronald, but argues that he did so in self-defense. He acknowledges that the success of his self-defense claim rests on whether his belief in the need to use deadly force "was objectively reasonable." Whether an individual had a reasonable belief that the use of deadly force was necessary depends on the surrounding facts and circumstances and is a question of fact. *People v. Sawyer*, 115 Ill. 2d 184, 193 (1986); *People v. Hawkins*, 296 Ill. App. 3d 830, 836 (1998). The trier of fact is not required to accept a defendant's claim of self-defense; rather, the trier of fact must consider the probability or improbability of the defendant's testimony, the circumstances surrounding the killing and the testimony of other witnesses. *People v. Rodriguez*, 336 Ill. App. 3d 1, 15 (2002). The trier of fact is entitled to choose among conflicting versions of events. *People v. Villarreal*, 198 Ill. 2d 209, 231 (2001). Therefore, a conviction will not be reversed "simply because the defendant tells us that a witness

was not credible." *People v. Byron*, 164 Ill. 2d 279, 299 (1995). In fact, we will 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 as to defendant's guilt. *People v. Felella*, 131 Ill. 2d 525, 34 (1989); *People v. Peterson*, 273 Ill. App. 3d 412, 424 (1995).

¶ 25 Viewing the evidence in the light most favorable to the State as we must (*People v. Gray*, 2017 IL 120958, ¶ 51), we find no basis to disturb the jury's rejection of Peters' self-defense theory**.** Although Peters points out discrepancies in the witnesses' testimony and offers his own version of the events, the jury was entitled to disbelieve Peters' version and believe the testimony of the other witnesses. Peters argues that the shot in the street "never happened" and was fabricated by the witnesses, who also happened to be Ronald's friends. But friendship with Ronald does not explain, and Peters offers no evidence as to why the witnesses would make up a story about him. Further, although Peters claimed to have twice shot Ronald deliberately while they were in Ronald's apartment, the undisputed evidence is that Ronald sustained three gunshot wounds. Although Peters surmised later that Ronald was hit a third time inside the apartment as they struggled over the gun, it was for the jury to determine whether that was, in fact, the case or whether Peters shot Ronald for a third time as he lay in the street.

¶ 26 The evidence reveals that Peters retrieved his shotgun from the attic and loaded the weapon after Ronald yelled at him to quiet down. Under these circumstances, a reasonable jury could have found that Peters was the aggressor, a finding that would negate entirely any self-defense claim. *Jeffries*, 164 Ill. 2d at 128. After the struggle between Ronald and Peters ended on the back porch, Peters chose not to leave, but chose to go inside with Ronald where their argument continued ending with Peters deliberately shooting Ronald, not once, but a second time

after reloading his shotgun. Peters argues that he acted out of fear for his own life, but he admitted that Ronald never shot at him and never verbally threatened to kill him. Moreover, Ronisha denied that her father had a revolver, and after the shooting, a revolver was never recovered on Ronald, near his body, or in his apartment. Thus, the only testimony in the record that Ronald had a revolver was Peters' own testimony, which the jury was not required to believe. See *Lee,* 213 Ill. 2d at 224–25 (the jury assesses the credibility of witnesses and resolves conflicts or inconsistencies in the evidence).

¶ 27 Importantly, Peters' own version of events would have required the jury to accept as true that Ronald had a revolver, but did not shoot back in self-defense, even after Peters shot Ronald and was reloading his shotgun. This defies reason. Nonetheless, even if the jury had believed Peters that Ronald had a gun, Peters admitted that Ronald never pointed his revolver at him when the argument first erupted outside on the back porch, Ronald did not verbally threaten to kill him, and Ronald did not lay a hand on him, which further supports a finding that Peters, and not Ronald, was the aggressor. Consequently, the record supports the jury's decision to discredit Peters' claim that his use of deadly force was justified. Accordingly, the State proved beyond reasonable doubt that Peters did not act in self-defense.

¶ 28 Alternatively, Peters argues that his conviction should be reduced to second-degree murder because he had an actual, albeit unreasonable, belief in the need to act with deadly force against his brother.

¶ 29 As relevant here, an individual commits the offense of second-degree murder when he commits the offense of first-degree murder and "at the time of the killing he or she believes the circumstances to be such that, if they existed, would justify or exonerate the killing under the principles of self-defense, but his belief is unreasonable." 720 ILCS 5/9-2(a) (West 2008). If the

State succeeds in negating any one of the six self-defense elements, the defendant's claim of self-defense fails and the trier of fact must then find the defendant guilty of either first- or second-degree murder. *Jefferies*, 164 Ill. 2d at 128. When a defendant is found guilty of second-degree murder, the trier of fact has essentially concluded that the defendant's self-defense claim was insufficient, but the defendant has proven by a preponderance of the evidence the existence of a mitigating factor sufficient to reduce the offense of first-degree murder to second-degree murder. *Id*.

Peters' claim that his conviction should be reduced to second-degree murder does not pass muster for the same reasons discussed above. The jury weighed the conflicting testimony that Peters presented during trial about Ronald having a revolver and that he was fearful for his life. Ultimately, the jury decided that the multiple eyewitnesses were more credible than Peters' own testimony. The jury also received the self-defense and second-degree murder instructions, and although the jury was given the option of finding Peters guilty of second-degree murder, it declined to do so. It is not the role of this court to retry the defendant, *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000), and we would simply be second-guessing the jury's verdict to reach a different result. Consequently, we reject Peters' claim that his conviction should be reduced to second-degree murder.

¶ 30 Peters next argues that the State impermissibly elicited evidence about his postarrest silence in violation of *Doyle v. Ohio*, 426 U.S. 610, 618 (1976), which prohibits a prosecutor from impeaching a defendant using his postarrest, post-*Miranda* silence. Specifically, Peters takes issue with the prosecutor's cross-examination of him, the examination of Officer Ludwig, and her comments during rebuttal closing arguments stressing that Peters did not tell the officer that Ronald had a gun or that he shot Ronald in self-defense.

¶ 31 Peters concedes that his claim of error regarding the improper questioning of Officer Ludwig was not preserved for review, but his other claims of error were properly preserved. Peters urges review of his forfeited claim under the plain-error doctrine. Even though Peters forfeited review of his claim regarding the prosecutor's examination of Officer Ludwig, the issues regarding the use of his postarrest silence are identical and so despite the forfeiture, we will consider all three instances. See *People v. Holmes*, 2016 IL App (1st) 132357, ¶ 65 (forfeiture is a limitation on the parties and not the reviewing court.) Ultimately, we find no error either in the questions posed to witnesses or in the prosecutor's argument.

¶ 32 Illinois, as a matter of evidentiary law, extends protection to a defendant regarding his or her silence both before and after *Miranda* warnings are given and prohibits impeaching a defendant with postarrest silence. *People v. Clark*, 335 Ill. App. 3d 758, 763 (2002). This evidentiary rule deems a defendant's postarrest silence " 'neither material nor relevant, having no tendency to prove or disprove the charge against a defendant.' " *Id*. (quoting *People v. McMullin*, 138 Ill. App. 3d 872, 876 (1985)).

¶ 33 Both parties cite to case law addressing statements a defendant made *after* being *Mirandized*. See *e.g.*, *People v. Toney*, 337 Ill. App. 3d 122, 160 (2003); *People v. Herrett*, 137 Ill. 2d 195, 207 (1990). But there is nothing in the record indicating that Peters received *Miranda* warnings before telling Ludwig that he shot his brother. In fact, the record supports the opposite conclusion. Given that Peters confessed to shooting Ronald after Ludwig exited his car and was approaching him, and before Peters was handcuffed, there is no evidence that Peters had been *Mirandized* before he told the officer that he shot his brother. Indeed, Peters testified that he was arrested *after* he confessed. Therefore, the postarrest, post-*Miranda* cases and arguments are inapplicable.

¶ 34 In any event, the testimony did not concern Peters' pre-*Miranda* or post-*Miranda* silence because Peters did not, in fact, remain silent. Not only did Peters fail to remain silent, he voluntarily confessed to the police that he shot his brother and told them where the weapon was located. Thus, the prosecutor did not comment on Peters' postarrest silence, but elicited testimony and commented on the inconsistencies between what Peters did and did not say to the police at the time he encountered Ludwig and his later trial testimony asserting that he acted in self-defense because his brother had a gun. The prosecutor properly commented on these inconsistencies and elicited testimony regarding Peters' complete conversation with Officer Ludwig, which occurred before he was arrested. See *People v. Irwin*, 2017 IL App (1st) 150054, ¶ 56 (prosecution's comment during closing that the defendant did not alert a police officer about a gun on the floor of a vehicle when he was directed out of the car was not a comment on defendant's postarrest silence because the defendant was not under arrest at that time).

¶ 35 Peters' reliance on *People v. Quinonez*, 2011 IL App (1st) 092333 ¶ 37, is misplaced. The defendant in *Quinonez*, unlike Peters, never made a statement to the police at the time of his arrest or at any time before trial. 2011 IL App (1st) 092333 ¶ 37. The *Quinonez* court held that the defendant's trial testimony could not have been inconsistent with his earlier statements because he never made a statement to begin with. *Id.*

¶ 36 We instead find this court's recent decision in *People v. Austin*, 2017 IL App (1st) 142737, closely analogous. In *Austin*, the arresting officer encountered the defendant who put his hands in the air and said, "I'm the guy you're looking for." *Id.* at ¶¶ 18-19. The defendant was handcuffed and did not make any further statements after being arrested. *Id.* at ¶ 61. The defense's theory at trial was that the weapon the defendant used could have been a BB gun. *Id.* at ¶ 22. The State argued in rebuttal that "Wouldn't he want the officers to know that? But no. He

hides it because he knows it's a real gun. He knows what the consequences are." *Id.* at ¶¶ 22-23. This court held that the prosecutor's remarks did not reference the defendant's postarrest silence, but rather "what he did not do or say during the commission of his crimes, prior to being arrested and given *Miranda* warnings." *Id.* at ¶ 61. Like *Austin*, the prosecutor here was not eliciting testimony addressing or commenting on Peters' postarrest silence, but referenced what Peters did or did not say before he was handcuffed and arrested. Consequently, we find no error because the testimony and argument never implicated Peters' right to remain silent. Since there was no error, Peters' argument that counsel was ineffective for failing to object to the prosecutor's examination of Officer Ludwig must also fail because any objection would have been meritless. *People v. Petty*, 2017 IL App (1st) 150641, ¶45.

¶ 37 Even if this Court found that there was a *Doyle* violation, it would not have changed the outcome of Peters' trial because of the overwhelming evidence of his guilt. To determine whether a *Doyle* violation is harmless beyond a reasonable doubt, a court should consider the following factors: "(1) the party who elicited the testimony about defendant's silence; (2) the intensity and frequency of the references to the defendant's silence; (3) the use that the prosecution made of defendant's silence; (4) the trial court's opportunity to grant a mistrial motion or to give a curative jury instruction; and (5) the quantum of other evidence proving the defendant's guilt." *People v. Hart*, 214 Ill. 2d 490, 517-18 (2005). Given (1) Peters' admission that he deliberately shot his brother; (2) the lack of any evidence that Ronald actually had a gun; (3) the relative insignificance of the evidence regarding Peters' conversation with Ludwig; and (4) Peters' incredible story that Ronald repeatedly allowed him to reload his shotgun without pulling the revolver's trigger, any error would be harmless beyond a reasonable doubt. Consequently, even if we found error, it would not warrant a new trial.

¶ 38 Finally, Peters contends that the trial court abused its discretion when it imposed a 66-year sentence–the equivalent of a *de facto* life sentence–because it failed to give adequate consideration to mitigating factors, including his law-abiding and productive life, age, and health issues, and his genuine belief that he had to act in self-defense. Peters also argues that the judge misstated the facts when he stated that Peters shot his brother "in cold blood."

¶ 39 A reviewing court will not disturb the sentence imposed by the trial court absent an abuse of discretion. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). If a sentence falls within prescribed statutory limits, an abuse of discretion occurs only if the sentence diverges greatly from the purpose and spirit of the law or is manifestly disproportionate to the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). We will not substitute our judgment for the trial court simply because we may have balanced the factors differently. *Id.* at 213.

¶ 40 Here, the trial court sentenced Peters to 66 years in prison after he was convicted of first-degree murder and the jury found that he personally discharged a firearm during the commission of the offense that proximately caused the death of another person. In Illinois, the sentencing range for first-degree murder is 20 to 60 years' imprisonment, absent any enhancements. 730 ILCS 5/5-4.5-20(a) (West 2012). However, if during the commission of the offense, the person personally discharges a firearm proximately causing death, this results in a mandatory enhancement of an additional 25 years to a term of natural life. 730 ILCS 5/5-8-1(a)(1)(d) (West 2012). Therefore, the minimum sentence Peters was eligible for was 45 years and the maximum was 85 years.

¶ 41 Importantly, even if this Court agreed that 66 years was excessive and Peters' sentence for first-degree murder should be reduced to 45 years, he would be required to serve his entire sentence with no good conduct credit. 730 ILCS 5/3-6-3(a)(2)(i) (West 2012). This would mean

at the very least, Peters would be in prison until he was 108 years old. Consequently, even if we agreed with Peters' argument, we could not afford him any meaningful relief given that even the minimum sentence is a *de facto* life sentence.

¶ 42 Nevertheless, the trial court did not abuse its discretion when it imposed a 66-year sentence, exactly in the mid-range of available sentences. Given Peters' conviction for first degree murder, his sentence was well within the prescribed statutory range, and therefore presumptively valid. *Hauschild*, 226 Ill. 2d at 90. Peters argues that the sentencing judge mischaracterized the facts and failed to consider that he acted in self-defense, but the trial court was not required to accept Peters' version of events, especially considering the jury rejected his self-defense theory. And whether Peters deliberately shot his brother twice inside his apartment or a third time out in the street (consistent with the autopsy finding of three gunshot wounds), the trial court's characterization of the murder as having been committed "in cold blood" is not inaccurate. Moreover, nothing in the record reveals that the trial court failed to consider relevant mitigating factors when determining the length of Peters' sentence. Without explicit evidence to the contrary, it is presumed that the trial court considered all relevant factors in mitigation. *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998). Accordingly, we do not find that the trial court abused its discretion in sentencing Peters to 66 years' imprisonment and affirm the judgment.

¶ 43 Affirmed.