2017 IL App (2d) 150936-U
No. 2-15-0936
Order filed March 10, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CF-1458
RASHEE L. BELL,	)	Honorable Daniel B. Shanes,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to 22 years' imprisonment (on a 6-to-30 range) for armed robbery: his sentence was justifiably higher than that of his codefendant, as he was more involved in the offense and had a more serious criminal history; despite the mitigating evidence, which the trial court considered, his sentence was justified by the nature of the offense and his criminal history.

¶ 2 Defendant, Rashee L. Bell, appeals his 22-year sentence for armed robbery (720 ILCS 5/18-2(a)(1) (West 2012)) in connection with the May 23, 2013, death of Mutassem Abdelaziz. He contends that his sentence was excessive, especially when another person involved received a sentence of 10 years for the same crime. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was originally charged with eight counts of first-degree murder. Also charged were Douglas Alexander and Jamal Johnson. Defendant and Alexander later agreed to plead guilty to armed robbery in exchange for their testimony against Johnson.

¶ 5 At his guilty plea hearing, defendant's statement to the police was introduced into evidence. That statement showed that defendant first met Johnson at the home of the mother of defendant's child. Johnson told defendant that he sold cannabis and electronics, including cell phones. Defendant said that he knew someone who might be interested in buying phones and he exchanged phone numbers with Johnson. About an hour later, Johnson called and said that he wanted to sell four phones.

¶ 6 Johnson picked up defendant at his home. Also in the car were two others, Andrew Ayers and Marlin, whose last name is not in the record. They then drove to Marlin's apartment. Defendant saw a gun in Marlin's waistband and Johnson said to him, " 'I need a banger, gonna hit a lick.' " Johnson and Marlin went inside, but only Johnson returned to the car. He showed defendant and Ayers a gun in his waistband. They next drove to a parking lot where they met Alexander. Johnson again showed the gun and repeated that he was going to " 'hit a lick' " and was going to pull the gun and get money.

¶ 7 Defendant called Abdelaziz, whom he had known since 2006. He knew that he was helping set up Abdelaziz for a robbery but felt that there was not much he could do to stop it. Defendant arranged to meet Abdelaziz at a parking lot, and the group agreed that defendant would accompany Johnson since defendant was the initial contact with Abdelaziz and someone needed to be a lookout. Johnson and defendant drove Alexander's girlfriend's car to the meeting

location and defendant gave the phone to Johnson so he could discuss money with Abdelaziz. Alexander did not accompany them.

¶ 8 Abdelaziz arrived in a car with another person whom defendant had known for 10 to 15 years. Abdelaziz got out of the car and spoke to defendant, then returned to the car. Johnson told defendant to retrieve a bag from the backseat. Defendant thought that it felt too light to contain phones and told Johnson, " 'don't do this.' " Johnson replied, " 'I'm fittin' to get money,' " and defendant saw the handle of the gun in Johnson's waistband.

¶ 9 Johnson left and got into the backseat of Abdelaziz's car. Defendant heard two gunshots, jumped into the driver's seat, and pulled out of the parking space. Johnson ran toward him, holding his gun and threatening to shoot. Defendant stopped and let him in. Johnson realized that he left his phone in Abdelaziz's car but told defendant to keep driving. Johnson said that Abdelaziz had begun to fight and was dead.

¶ 10 Defendant drove back to the house where he and Johnson first met. Johnson tried to give the gun to defendant, who refused it. Johnson then drove away and left the car at an unknown location while defendant went inside and told the people there what happened. About 10 minutes later, Johnson returned and hid the gun under a couch cushion. He destroyed defendant's phone. Defendant heard Johnson say to get his lawyer ready and report his wallet and phone stolen. Defendant feared that Johnson would kill him because he had talked about the shooting. He tried to get Alexander's phone number because he wanted to call him and tell him to wipe the steering wheel of the car in case there were fingerprints.

¶ 11 On December 18, 2014, defendant was sentenced to 22 years' incarceration. The presentence investigation showed that he had an extensive juvenile record. As an adult, he pled guilty to robbery and was sentenced to probation. After twice violating probation, his probation

was revoked and, in November 2012, he was sentenced to 3½ years' incarceration. Defendant was released on March 19, 2013, and committed the current offense while on supervised release.

¶ 12 When he was 15, defendant was assessed as delayed to mildly mentally retarded. In 2007, he was found unfit to stand trial on charges of burglary, theft, retail theft, and criminal damage to property, based on depressive disorder and mild mental retardation. He was again found unfit in February 2009, with the evaluator noting that, due to the nature and severity of his cognitive deficits, it was unlikely that he would ever attain fitness. In August 2009, defendant was found unfit to stand trial on charges of robbery and aggravated robbery. A report stated that he had markedly impaired intellect and profound intellectual limitations along with depressive disorder and moderate mental retardation. Defendant was found fit in 2010 after an inpatient treatment program. The evaluator at that time questioned the previous moderate mental retardation diagnosis and instead listed it as mild. Defendant had stopped attending school after the tenth grade, and a psychologist noted in 2012 that obtaining a GED should not be mandated or expected. For the current case, a psychologist who had evaluated defendant five times over the previous seven years reported that his IQ score rose from 53 to 83. Defendant no longer qualified for a diagnosis of an intellectual disability and had improved to borderline intellectual functioning.

¶ 13 Defendant's mother testified that defendant had difficulty in school and was in special education classes. Defendant's mother had congestive heart failure, and his father was diabetic. Defendant assisted them both, and it had been a strain without him. Defendant expressed remorse and apologized to Abdelaziz's family.

¶ 14 In crafting the sentence, the trial court discussed the aggravating and mitigating circumstances at length. The court noted that defendant was originally charged with murder and

was guilty of that under an accountability theory but that the State agreed to charge him with armed robbery instead, which carried a sentence of 6 to 30 years, giving defendant a big benefit. The court remarked that defendant had referred to Abdelaziz as his friend, used that friendship to set him up to be robbed, drove Johnson to the scene of the crime, and helped Johnson escape the scene after the shooting. The court noted the similarity between the current offense and defendant's previous robbery charge, stating that probation was tried and did not go well. Then, two months after release from prison, defendant committed a new robbery. Thus, the court found that defendant was likely to reoffend. The court cited the need for deterrence and, while it recognized defendant's cognitive difficulties, it found that he did not meet the statutory definition of mentally disabled. The court indicated that the sentence would impress on defendant that he had been making wrong choices, but yet he would still be a young man when he was released.

¶ 15 The next day, Alexander was sentenced to 10 years' incarceration by the same judge. The presentence investigation showed that Alexander had an extensive juvenile record. As an adult, he violated probation by testing positive for cannabis, failing to complete substance abuse treatment and service hours, and failing to pay fines. During probation, he was arrested for aggravated battery with a firearm and criminal trespass to land, but the charges were nol-prossed. He was ticketed for possession of cannabis in October 2011, and his probation was terminated unsatisfactorily in February 2012. He had poor probation reporting habits. He had a history of behavioral problems and, as a juvenile, he had been diagnosed with ADHD with an IQ that placed him in the borderline range of intellectual functioning. However, he had graduated from high school and was in the process of registering for further education at the time of his arrest. There was evidence that, over the past few years, his attitude had changed and he had matured.

There was testimony that he worked and was a good father. He expressed remorse, apologized to Abdelaziz's family, spoke at length about the guilt that he felt, and stated that he would accept his sentence no matter what it was. He said that he planned to go to college when he got out of prison. There was conflicting evidence as to whether Alexander knew Abdelaziz before the crime, knew him well, or knew that Johnson planned to rob him. He did not testify against Johnson, and the State indicated that this was because he gave too many conflicting statements. Alexander's counsel noted that, regardless, he did agree to testify. In sentencing Alexander, the court noted that this was Alexander's first adult felony and found that his statement in allocution was a heartfelt and sincere statement of accountability. The court also noted that he was the least culpable of the people arrested for the crime.

¶ 16 Defendant filed a motion to reconsider his sentence, arguing in part that his sentence was too disparate to that of Alexander. That motion was denied, and he appeals.

¶ 17 II. ANALYSIS

¶ 18 Defendant contends that his sentence was excessive, arguing that the trial court failed to consider mitigating factors and that the sentence was excessively disparate to Alexander's sentence.

¶ 19 "[T]he trial court is in the best position to fashion a sentence that strikes an appropriate balance between the goals of protecting society and rehabilitating the defendant." *People v. Risley*, 359 Ill. App. 3d 918, 920 (2005). Thus, we may not disturb a sentence within the applicable sentencing range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). A sentence is an abuse of discretion only if it is at great variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Id*. at

210. We may not substitute our judgment for that of the trial court merely because we might weigh the pertinent factors differently. *Id*. at 209.

¶ 20 In determining an appropriate sentence, relevant considerations include the nature of the crime, the protection of the public, deterrence, and punishment, as well as the defendant's rehabilitative prospects. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). The weight to be attributed to each factor in aggravation and mitigation depends upon the particular circumstances of the case. *Id*. There is a presumption that the trial court considered all relevant factors in determining a sentence, and that presumption will not be overcome without explicit evidence from the record that the trial court did not consider mitigating factors or relied on improper aggravating factors. *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998).

¶ 21 "The arbitrary and unreasonable disparity between the sentences of similarly situated codefendants is impermissible." *People v. Stroup*, 397 Ill. App. 3d 271, 273 (2010). "However, fundamental fairness is not violated simply because one defendant is sentenced to a greater term than another." *Id*. "While defendants similarly situated should not receive grossly disparate sentences, equal sentences are not required for all participants in the same crime." *Id*. "A sentencing disparity may be justified by differing degrees of involvement in the crime or any differences in the codefendants' criminal history, character, or rehabilitative potential." *Id*. at 273-74. " 'It is not the disparity that controls, but the reason for the disparity.' " *Id*. (quoting *People v. Spriggle*, 358 Ill. App. 3d 447, 455 (2005)).

¶ 22 A disparate sentence may be supported by greater participation in the offense, lesser rehabilitative potential as evinced by a defendant's more serious criminal record, or lesser maturity. For example, where codefendants committed armed robbery, the defendant who

brandished the weapon may be subject to a harsher sentence than his accomplice. See *People v. Dimmick*, 90 Ill. App. 3d 136, 139 (1980) (citing cases).

¶ 23 Here, defendant had much greater participation in the crime than Alexander. As the trial court noted, defendant set up his friend to be robbed. He then drove Johnson to the scene, knowing Johnson's intentions, and he provided for Johnson's escape from the scene. Alexander did not take an active role in the crime beyond providing the vehicle that defendant used to drive Johnson to the scene. Defendant also had a more serious adult criminal record, having committed the crime just two months after having been released from prison for another robbery. In Alexander's case, this was his first adult felony. Alexander also portrayed more maturity than defendant, as illustrated by his attempts to attend college and his statement in allocution. The trial court had the discretion to take those factors into account. Accordingly, based on the differences between defendant and Alexander, the court did not abuse its discretion in ordering disparate sentences.

¶ 24 Defendant also suggests that his sentence was excessive because the court failed to consider his background, intellectual impairment, and expression of remorse. But the court discussed each of those factors. He also argues that the court sentenced him more severely based on speculation that he was guilty of murder and for purposes of "retribution." But the trial court's comments made clear that it sentenced defendant based on a balance of the mitigating and aggravating circumstances, including the nature of the crime and defendant's criminal history, both of which are proper sentencing factors. It then reasonably balanced those factors with concerns about allowing defendant the opportunity to be released at a still-young age for rehabilitative purposes. As a result, the trial court did not abuse its discretion in sentencing defendant to 22 years' incarceration.

¶ 25 III. CONCLUSION

¶ 26 Defendant's sentence was not excessive. Accordingly, the judgment of the circuit court of Lake County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 27 Affirmed.