2017 IL App (4th) 160575-U

NO. 4-16-0575

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 22, 2017
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Champaign County
DANIEL B. BALTIERRA,	)	No. 15CF1089
Defendant-Appellee.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The sentence of 30 years' imprisonment for predatory criminal sexual abuse of a child (720 ILCS 5/11-1.40(a)(1) (West 2010); 720 ILCS 5/12-14.1(a)(1) (West 2008)) is not an abuse of discretion.

¶ 2 For the offense of predatory criminal sexual abuse of a child (720 ILCS 5/11-1.40(a)(1) (West 2010); 720 ILCS 5/12-14.1(a)(1) (West 2008)), the trial court sentenced defendant, Daniel B. Baltierra, to 30 years' imprisonment. Afterward, the court denied his motion to reduce the sentence. He appeals. We affirm the trial court's judgment because we are unable to say the sentence is an abuse of discretion.

¶ 3 I. BACKGROUND

¶ 4 On March 7, 2016, defendant pleaded guilty to count II of the information, which alleged that, between January 2009 and November 2011, he committed predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2010); 720 ILCS 5/12-14.1(a)(1) (West 2008)). The victim was S.B., born December 6, 1998.

¶ 5 On May 5, 2016, at the sentencing hearing, the trial court heard the following evidence in mitigation. Defendant, age 47, was a college graduate and had been gainfully employed. See *People v. Todd*, 178 Ill. 2d 297, 327 (1997). He had no criminal record. See 730 ILCS 5/5-5-3.1(a)(7) (West 2012). From the 11 character-reference letters submitted on his behalf, he appeared to be an honest, caring, hard working person. See 730 ILCS 5/5-5-3.1(a)(9) (West 2012); *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). S.B. wrote that she and her brother wept over defendant's absence, that they needed their father in their lives, and that they did not want him to go to prison. See 730 ILCS 5/5-5-3.1(a)(11) (West 2012). As a child, defendant had suffered physical, sexual, and emotional abuse, which, according to a clinical psychologist, Judy K. Osgood, had given him post-traumatic stress disorder and had caused him to develop an addiction to child pornography. See 730 ILCS 5/5-5-3.1(a)(15) (West 2012); *People v. Baker*, 241 Ill. App. 3d 495, 498 (1993). Michael Kleppin, a psychologist and sex-offender evaluator, opined that defendant had a low to moderate risk of recidivism and that he had "protective factors present," which possibly would "assist in the reduction of [the] recidivist tendency." See 730 ILCS 5/5-5-3.1(a)(9) (West 2012). In his statement in allocution, defendant expressed remorse and acknowledged the lasting harm he had done (see *People v. Taylor*, 278 Ill. App. 3d 696, 700 (1996))—and, as we said, he had pleaded guilty (see *People v. Ward*, 113 Ill. 2d 516, 526 (1986)).

¶ 6 The only factor in aggravation the trial court cited was the need to deter others from committing the offense. See 730 ILCS 5/5-5-3.2(a)(7) (West 2012).

¶ 7 II. ANALYSIS

¶ 8 Defendant argues the trial court abused its discretion by sentencing him to 30 years' imprisonment. See *Perruquet*, 68 Ill. 2d at 154. He argues that, in the face of all the mitigating factors, the single aggravating factor of deterrence was insufficient to justify such a long sentence. He quotes *People v. Thomas*, 76 Ill. App. 3d 969, 976 (1979), in which the Fifth District said: "The concept of punishing one individual to possibly deter others is questionable both in terms of utility and fairness. To make an example of an offender so as to discourage others from criminal acts is to make him suffer not for what he has done alone, but because of other people's tendencies." *Thomas* in turn cited *People v. Knowles*, 70 Ill. App. 3d 30-33 (1979), in which the Fourth District said: "The theory of punishing one individual to deter other would-be offenders is at best of questionable value and is frequently used as a disguise for retribution and retaliation. Furthermore, to make an example of an offender so as to discourage others from criminal acts is to make him suffer not for what he has done alone but because of [o]ther people's tendencies." (Internal quotation marks omitted.)

¶ 9 We understand these philosophical objections to deterrence as an aggravating factor. As defendant acknowledges, however, the Fourth District, in *People v. Cameron*, 189 Ill. App. 3d 998, 1009 (1989), expressly declined to follow its decision in *Knowles*, holding, instead, that "a court [might] logically give reasonable consideration to the need for deterrence as a factor in the imposition of a sentence" (*id.* at 1010). For that matter, a court not only *may* consider the need for deterrence, but *must* consider it. Section 5-5-3.2(a)(7) of the Unified Code of

Corrections (730 ILCS 5/5-5-3.2(a)(7) (West 2012)) says that the necessity of deterring others from committing the same crime "*shall* be accorded weight" (Emphasis added); and, in its ordinary signification, "shall" is a word of command (*City of Chicago Heights v. Crotty*, 287 Ill. App. 3d 883, 885 (1997)).

¶ 10 Of course, the weight that a trial court gives to the need for deterrence must be, as *Cameron* says, "reasonable," as must be the weight it gives to the other sentencing factors. *Cameron*, 189 Ill. App. 3d at 1010. As we said, we are looking for an abuse of discretion (*Perruquet*, 68 Ill. 2d at 154), and unreasonableness is inherent in an abuse of discretion. A trial court abuses its discretion if no reasonable person could possibly agree with the trial court. *People v. Ramos*, 353 Ill. App. 3d 133, 137 (2004).

¶ 11 A reasonable person could agree with the sentence the trial court imposed in this case. See *Perruquet*, 68 Ill. 2d at 154; *Ramos*, 353 Ill. App. 3d at 137. The need for deterrence is not the only aggravating factor. There is also the violation of a trust. The court had to give weight to the fact that, as a "family member as defined in Section 11-0.1 of the Criminal Code of 2012" (See 720 ILCS 5/11-0.1 (West 2012)), "defendant held a position of trust." 730 ILCS 5/5-5-3.2(a)(14) (West 2012). A " '[f]amily member' is defined to include "a parent *** by *** adoption." 720 ILCS 5/11-0.1 (West 2012). The victim, S.B., was defendant's adopted daughter, and, as her father, he had a duty to protect her from harm, including the very type of harm that he himself inflicted upon her. By sexually assaulting her, defendant violated and abused a position of trust, a significant additional aggravating factor.

¶ 12 Granted, the trial court never mentioned this additional aggravating factor, the violation of a position of trust. Nevertheless, as defendant admits, a trial court need not recite every sentencing factor it considers. *People v. Padilla*, 91 Ill. App. 3d 799, 802 (1980). And,

besides, we review the trial court's judgment, *i.e.*, the sentence (*People v. Caballero*, 102 Ill. 2d 23, 51 (1984)), not the reasons the trial court gave for its judgment. *People v. Lee*, 344 Ill. App. 3d 851, 853 (2003).

¶ 13 Our review begins with the observation that the sentence, 30 years' imprisonment, falls within the range the legislature provided: "a term of imprisonment of not less than 6 years and not more than 60 years." 720 ILCS 5/11-1.40(b) (West 2010); 720 ILCS 5/12-14.1(b) (West 2008). "[W]henever a sentence falls within the statutorily mandated guidelines, we presume it to be proper and will not overturn it unless there is an affirmative showing that the sentence varies greatly from the purpose and the spirit of the law, or is manifestly disproportionate to the nature of the offense." *Ramos*, 353 Ill. App. 3d at 137. These qualifiers, "greatly" and "manifestly," fit in with our deferential standard of review. *Id.* To call the sentence an abuse of discretion, we would have to be able to say, without exaggeration, that the sentence is "arbitrary" and "unreasonable," a sentence with which no reasonable person could possibly agree. (Internal quotation marks omitted.) *People v. Sutherland*, 223 Ill. 2d 187, 272-73 (2006). We cannot say that in this case. Athough not *all* reasonable persons would necessarily agree, *a* reasonable person could agree that the aggravating factors in this case merited placing the sentence 24 years above the minimum, while the mitigating factors merited placing it 30 years below the maximum. We are unable to say that the trial court abused its discretion in weighing the sentencing factors, and it is not our place to reweigh them. See *People v. Alexander*, 239 Ill. 2d 205, 213 (2010).

¶ 14 III. CONCLUSION

¶ 15 For the foregoing reasons, we affirm the trial court's judgment, and we assess $50 in costs against defendant.

¶ 16 Affirmed.