2017 IL App (5th) 140551-U

NO. 5-14-0551

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Saline County.
	)	
v.	)	No. 12-CF-89
	)	
ROGER D. YOUNG,	)	Honorable
	)	Walden E. Morris,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's sentence was not an abuse of discretion; the defendant is entitled to $5 per day credit for presentence time served to be applied against assessed fines.

¶ 2 A jury convicted the defendant, Roger D. Young, of solicitation of murder for hire, and the circuit court sentenced him to 32 years in the Department of Corrections, plus 3 years of mandatory supervised release and a $10,000 fine. The defendant now appeals his conviction and sentence. The defendant argues that the trial court abused its discretion in imposing a 32-year sentence and that he is entitled to $5 per day of credit for presentence time served against his fines. The State agrees with the defendant that he is

entitled to the $5 per day credit but disagrees with the defendant's argument concerning the 32-year sentence. For the following reasons, we modify the defendant's sentence to allow him the $5 per day credit but otherwise affirm his sentence.

¶ 3 BACKGROUND

¶ 4 The defendant frequently drank beer at the American Legion Hall in Eldorado, Illinois, and often spoke with James Koker while at the establishment. Sometime in 2011, the defendant began asking Koker if he knew someone who could kill his wife, Linda Young. According to Koker, the defendant often talked about having Young killed, and he became more and more insistent about killing his wife during these conversations. Koker became concerned about these conversations.

¶ 5 On March 23, 2012, Koker met with a detective with the Illinois State Police to inform the police about the conversations. Koker told the detective that for the previous month and a half, the defendant had been speaking more seriously about having his wife killed. Koker agreed to serve as a confidential informant for the Illinois State Police and agreed to wear a wire.

¶ 6 On March 29, 2012, Koker met the defendant at the American Legion Hall, and he told the defendant that he could arrange a meeting between the defendant and a person who could potentially kill Young. A concealed recording device made an audio recording of this conversation that was played to the jury. On March 31, 2012, an undercover police officer drove Koker to the American Legion Hall in a van. The officer acted as a person who could murder Young in exchange for money. Koker went inside the American Legion Hall and returned to the van with the defendant. The defendant entered the van

and had a conversation with the undercover police officer. Surveillance equipment inside the van made an audio and video recording of the conversation. The defendant discussed with the undercover officer his desire to have his wife killed in exchange for a $5000 payment. The audio/video recording of this conversation was played for the jury at the trial.

¶ 7 Following the defendant's directions, the undercover officer drove the defendant and Koker to a hospital where Young worked. The defendant identified her car in the parking lot, noted her license plate number, and warned the undercover officer about cameras in the area of the hospital. The defendant showed the officer the route that Young would drive home from the hospital. The route home extended through several rural country roads. During the drive, the defendant pointed out secluded sections of the route and discussed possible places where she could be ran off the road.

¶ 8 The defendant wanted his wife killed in a way that her vehicle was also destroyed so he could recover insurance money on the destruction of the vehicle as well as her death. At the defendant's home, the undercover officer, the defendant, and Koker went inside where the defendant showed the officer assets which would serve as collateral for the $5000 payment that he would make after he received an insurance payout. The officer was able to continue the video and audio recording while inside the defendant's house. During their conversation, the defendant stated that the murder should take place the upcoming Monday or Tuesday at around 11:30 p.m. to 12:30 a.m. at the end of Young's work-shift. The undercover officer suggested that he shoot Young in the head, and the defendant agreed with that idea, indicating that the murder could be made to look like a

robbery. At his house and on the ride back to the American Legion, the defendant enjoyed a Keystone Light beer as he discussed the murder of his wife with the undercover officer. Back at the American Legion, he gave the undercover officer a $100 bill that he removed from his wallet as an advance for the murder.

¶ 9 The defendant testified on his own behalf, claiming that he remembered the van ride but nothing else from that morning. He claimed that he did not remember saying that he would give anyone money to kill his wife. He explained that he had an argument with her the day before and that he had been drinking all night and that morning prior to the van ride. He also claimed that he had taken six Lortab pills. The defendant's demeanor on the video/audio recording of the van ride, however, did not suggest that his faculties were impaired in any way.

¶ 10 Based on this evidence, after less than 20 minutes of deliberations, the jury found the defendant guilty of solicitation of murder for hire.

¶ 11 There is no transcript of the sentencing hearing. The parties submitted an agreed statement of facts in which they agreed that, for the sentencing hearing, a presentencing report was filed, that a victim impact statement was read, that the parties argued their positions, and that the defendant gave a statement of allocution. The substance of the arguments and the defendant's statement are not specified in the agreed statement of facts. The agreed statement of facts confirms that, in reaching its sentence, the circuit court reviewed the evidence at the trial and weighed and balanced each of the factors in aggravation and mitigation as well as the defendant's potential for rehabilitation. The

court imposed a sentence of 32 years in the Department of Corrections with a 3-year period of mandatory supervised release and a $10,000 fine, with credit for time served.

¶ 12 In a motion to reconsider the sentence, the defendant argued factors that he asserted weighed heavily in favor of a minimal sentence. The court, however, denied the motion to reconsider, and the defendant now appeals. He asks us to either modify his sentence or remand for a new sentencing hearing pursuant to Illinois Supreme Court Rule 615(b) (eff. Jan. 1, 1967).

¶ 13 ANALYSIS

¶ 14 This court will not reverse the trial court's sentence unless the trial court abused its discretion in sentencing. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). "[A] sentence within statutory limits will be deemed excessive and the result of an abuse of discretion by the trial court where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Id*. at 210. The trial court should consider "such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *Id*. at 209. The factors that the trial court should consider also include the defendant's criminal history, potential for reform, and the recognized interest in protecting the public and in providing a deterrent. *People v. Wilson*, 257 Ill. App. 3d 670, 704-05 (1993). The trial court is in a better position than a reviewing court to consider such factors, and its decisions with respect to sentencing are accorded great weight and deference. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). There is a strong presumption that the sentence is based on proper legal reasoning. *People v. Morrow*, 2014 IL App (2d) 130718, ¶ 14.

¶ 15 In the present case, we agree with the State that the circuit court did not abuse its discretion in sentencing the defendant. The sentencing range for solicitation of murder for hire, a Class X felony, is "not less than 20 years and not more than 40 years." 720 ILCS 5/8-1.2(b) (West 2012). The State correctly notes that the defendant's sentence of 32 years was just over the mid-point of the range for the offense. The agreed statement of facts of the sentencing hearing establishes that the court, in imposing this sentence, properly considered all factors in aggravation and mitigation as well as the defendant's rehabilitation potential. Nothing suggests that the court considered any improper factors or improperly weighted the factors it did consider. Given the circuit court's broad discretion in sentencing and the seriousness of the crime at issue, we cannot say that the defendant's sentence was greatly at variance with the spirit and purpose of the law.

¶ 16 On appeal, the defendant notes that he will have begun his sentence at the age of 64. He asks us to consider his life expectancy and conclude that the trial court's sentence is excessive because it is a *de facto* life sentence. He points out that a defendant convicted of solicitation of murder for hire must serve at least 85% of the sentence imposed in prison. See 730 ILCS 5/3-6-3(a)(2)(ii) (West 2012).

¶ 17 We agree with the State that there is no authority in Illinois that, with respect to offenses committed by older defendants, a sentence is excessive simply because the sentence for that person, because of his age, amounts to a possible life sentence. Although age is a factor that a court must consider in imposing a sentence, it is only one factor out of several. Here, the court did consider the defendant's age, but it also considered all other factors in aggravation and mitigation, including the seriousness of

the offense and the need to deter future conduct of this kind. These factors supported the trial court's sentence.

¶ 18 The evidence at the trial established that the defendant wanted to end Young's life so he could collect and enjoy life insurance proceeds upon her death. The evidence included his recorded conversation with the undercover police officer, who he thought was a person he could hire to kill Young. He took the undercover officer to his wife's place of employment and identified her vehicle in the parking lot. He laid out his wife's path home from work, indicating secluded places in the country along the route where the presumed killer could murder his wife. During the conversation, he stated that he wanted his wife's death to include the destruction of her vehicle so he could collect and enjoy vehicle insurance proceeds in addition to the money he hoped to collect and enjoy for her death. He agreed with the undercover officer's idea of shooting her in the head in order to make her death appear to be the result of a robbery. He casually drank a beer while plotting to end Young's life.

¶ 19 Under these facts, the defendant's age is not a factor so compelling that it allows us to impose a lighter sentence or to remand for a new sentencing hearing. The circuit court adequately considered, weighed, and balanced the appropriate factors, including the defendant's age, and it is not our duty to reweigh the factors involved in the lower court's sentencing decision. The circuit court's mid-range sentence of 32 years was not an abuse of discretion; therefore, we affirm. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010) (the power to reduce a sentence should be exercised cautiously and sparingly and cannot be exercised absent an abuse of discretion by the trial court).

¶ 20 The defendant argues that he is entitled to a credit of $5 per day of presentence time served against any assessed fines. *People v. Blalock*, 2012 IL App (4th) 110041, ¶¶ 22-24; 725 ILCS 5/110-14 (West 2012). The State has conceded this argument. Accordingly, we modify the defendant's sentence to allow him $5 per day credit of presentence time served against the assessed fines.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we modify the defendant's sentence to allow the defendant $5 per day credit of presentence time served against the assessed fines; all other aspects of the defendant's sentence are hereby affirmed.

¶ 23 Affirmed as modified.