2018 IL App (1st) 152165-U

No. 1-15-2165

Order filed March 21, 2018

Third 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. 14 CR 17569
	)	
EDDIE MOSBY,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Howse and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's 10-year sentence for aggravated battery was not excessive, as the record establishes that the trial court considered the circumstances of the case and all appropriate factors.

¶ 2 Following a bench trial, defendant Eddie Mosby was convicted of three counts of aggravated battery (720 ILCS 5/12-3.05(a)(1) (West 2014)) and sentenced to an extended-term sentence of 10 years' imprisonment in the Illinois Department of Corrections (IDOC). On appeal, defendant contends that the trial court abused its discretion in sentencing him to the

maximum sentence despite his history of mental illness, non-violent criminal background, and self-defense claim. We affirm.

¶ 3 Defendant was charged with one count of attempt first degree murder, two counts of armed violence, and four counts of aggravated battery. At trial, Warren Calhoun testified that, on September 21, 2014, while in the hallway of his apartment complex, he and defendant, his neighbor, had a verbal confrontation about statements defendant made about Calhoun's wife. After the confrontation, Calhoun and defendant went into their respective apartments.

¶ 4 Defendant began "beating" on Calhoun's front door, yelling that "he was going to kill [Calhoun] and [his] bitch." Calhoun thought defendant had a gun and called the police. He had been waiting outside for them for two minutes when defendant came out, walking towards Calhoun with his hand behind his back. Calhoun backed away from defendant and went "around a car." He stumbled and defendant came from behind Calhoun's back shoulder and stabbed him in the chest. Calhoun "took off" running and defendant chased after him, yelling, "I am going to chase you until you pass out and then I am going to kill you." Calhoun saw a police vehicle and ran to it for help. He was hospitalized for five days, suffering from a punctured lung for which he received stitches. The "kitchen butcher knife" used by defendant was entered into evidence.

¶ 5 Chicago police officer Milot Cadichon testified that, on September 21, 2014, at approximately 4:11 p.m., he was responding to a call about a person with a gun when he saw defendant chasing Calhoun. He stopped his vehicle and Calhoun "collapsed" on the hood of his car, bleeding from his chest. Defendant was subsequently arrested.

¶ 6 The court denied defendant's motion for directed findings.

¶ 7 Defendant testified that, on September 21, 2014, he was leaving his apartment when Calhoun "put his finger" in defendant's face and said, "I got a bone to pick with you. Bitch mother fucker. You said that you were going to slap my wife." Defendant asked Calhoun if they could talk about it, but Calhoun began punching defendant, striking him in the ear and mouth, "breaking [his] partials." Defendant ran into his apartment and called the police.

¶ 8 Once the police arrived, defendant went outside with a steak knife in his hand because he was afraid of Calhoun. The police car pulled off and defendant ran to the gate attempting to stop it. Calhoun "came from around the back of the building" and attempted to attack defendant. Calhoun was "reaching and driving for something" and tried to "swing" on defendant, so defendant "hit him with the knife." He then chased after Calhoun "to make sure that he wasn't hurt or nothing like that." Calhoun ran to a police vehicle, and defendant was subsequently arrested.

¶ 9 Chicago police detective Ranzzoni testified that Calhoun told him that he put his finger in defendant's face and told defendant he would "fuck [defendant] up" if he touched his wife.

¶ 10 The parties stipulated that, on September 21, 2014, at 3:57 and 3:58 p.m., the City of Chicago Office of Emergency Management Communications (OEMC) received calls from defendant. It was also stipulated that OEMC received a call from Calhoun at 4:05 p.m.

¶ 11 The trial court found defendant guilty of three counts of aggravated battery and merged the convictions into the conviction premised on great bodily harm. It found defendant not guilty of the remaining charges. The court denied defendant's motion for a new trial, noting there was no doubt that defendant caused great bodily harm, and the case proceeded to sentencing. Defendant's class 3 conviction carried a sentencing range of 2 to 5 years in prison and an

extended range of 5 to 10 years. 720 ILCS 5/12-3.05(a), (h) (West 2014); 730 ILCS 5/5-4.5-40(a) (West 2014).

¶ 12 Defendant's presentence investigation report (PSI) was made part of the record. It showed defendant had been sentenced on seven prior felony convictions: manufacture/delivery of heroin (2005 - 5 years IDOC), possession of a controlled substance (2005, 2003, 1995 - 1 year, 1 year and 3 years IDOC, respectively), theft (2002 - two days Cook County Department of Corrections), criminal drug conspiracy (1994 - 3 years IDOC), and delivery of a controlled substance (1994 - 3 years IDOC after probation violated).

¶ 13 The State argued in aggravation that Calhoun received "significant" injuries from defendant. Defendant stabbed Calhoun in the chest, puncturing his lung, and then chased after him down the street while threatening to kill him. The State argued that defendant was eligible for an extended term and requested the maximum sentence of 10 years.

¶ 14 Defense counsel argued in mitigation that defendant testified credibly. He asserted defendant had the knife with him for protection from Calhoun, who had started the confrontation. Counsel stated that defendant maintained regular contact with his 83-year-old, blind and "nearly deaf" mother and had four sons. Defendant graduated from high school and attended some college until he dropped out to support his family. He suffered from high blood pressure since 1994 and had been taking medication to manage it. Counsel informed the court that defendant was diagnosed with "bipolar schizophrenia" and had been taking medication for it since 2005.[1] Defendant believed his medications were working for him, continued to use them, and saw the

[1] As defendant's brief correctly notes, defendant's PSI indicates that he was diagnosed with schizophrenia and bipolar disorder.

"positive effects" the medication had on his life and day-to-day living skills. Counsel requested defendant receive the minimum sentence.

¶ 15 The court granted the State's request for an extended-term sentence based on defendant's background and sentenced him to 10 years' imprisonment. The court denied defendant's motion to reconsider sentence. This appeal followed.

¶ 16 On appeal, defendant contends that his 10-year sentence is excessive in light of his mental health problems, self-defense claim, and lack of recent or prior convictions. Additionally, he asserts that the trial court cited "no aggravating factors at all at sentencing, suggesting a failure to consider seriously the relevant bases for a sentence." He requests that we reduce his sentence.

¶ 17 As an initial matter, the State alleges that defendant has forfeited review of his excessive sentence claim by failing to raise his claim with specificity in his post-sentencing motion. See *People v. Terrell*, 185 Ill. 2d 467, 516 (1998). Defendant asserts he did not fail to properly preserve his claim. He notes that although "he did not specifically cite to the trial court's failure to give sufficient weight to his mental illness as a factor in mitigation," he did argue that "the trial court improperly considered aggravating matters that are implicit in the offense" and the mental health aspect was just one facet of his excessive sentence claim on appeal. We find that defendant's motion to reconsider sentence was sufficient to preserve his excessive sentence claim for review.

¶ 18 A trial court's sentencing decision is reviewed under an abuse of discretion standard of review. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A sentence is considered to be an abuse of discretion where it is " 'greatly at variance with the spirit and purpose of the law, or

manifestly disproportionate to the nature of the offense.' " *Id.* The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, social environment, habits, and age. *Id*. at 212-13. A reviewing court "must not substitute its judgment for that of the trial court merely because it would have weighed [the] factors differently." *Id*. at 213.

¶ 19 A sentence that falls within the statutory range is presumed to be proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. Defendant was convicted of Class 3 aggravated battery with a sentencing range of two to five years' imprisonment. 720 ILCS 5/12-3.05(a)(1), (h) (West 2014); 730 ILCS 5/5-4.5-40(a) (West 2014). Based upon a prior Class 1 felony conviction, defendant was eligible for an extended-term sentence with a sentencing range of 5 to 10 years' imprisonment. 730 ILCS 5/5-8-2(a) (West 2014); 730 ILCS 5/5-4.5-40(a) (West 2014). Thus, although defendant received the maximum 10-year sentence, it is presumed to be proper, as it falls within the statutory guidelines. *Knox*, 2014 IL App (1st) 120349, ¶ 46.

¶ 20 Defendant concedes that his sentence falls within the applicable statutory sentencing range for his offense. Nevertheless, he argues that his sentence is excessive in light of his mental health problems, self-defense claim, and lack of recent or violent prior convictions.

¶ 21 A sentence should reflect both the "seriousness of the offense" and "the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11; *People v. Jones*, 2015 IL App (1st) 142597, ¶ 38. However, the seriousness of an offense, and not mitigating evidence, is the most important factor in sentencing. *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 123.

The trial court is presumed to consider "all relevant factors and any mitigation evidence presented" (*People v. Jackson*, 2014 IL App (1st) 123258, ¶ 48), but "has no obligation to recite and assign value to each factor" (*People v. Perkins*, 408 Ill. App. 3d 752, 763 (2011)). Rather, a defendant "must make an affirmative showing the sentencing court did not consider the relevant factors" where, as here, it is essentially argued that the court failed to take factors into consideration. *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38.

¶ 22 Defendant cannot make such a showing. The record shows the trial court was made aware of defendant's mental health issues, self-defense claim, and nonviolent prior convictions prior to sentencing. The court specifically referred to defendant's PSI, which outlined, *inter alia*, his history of mental health issues and medications, and it heard defense counsel's arguments in mitigation pertaining to defendant's mental health. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 20 (presuming that the trial court considered mitigating evidence presented, including factors mentioned in the PSI). Similarly, defendant's PSI outlined his prior convictions and thus the court was aware of the nonviolent nature of each prior offense and that defendant's last conviction was in 2005, nine years before he committed the instant offense. It was aware of defendant's self-defense claim from having heard defendant's trial testimony, counsel's closing argument, and his argument at sentencing.

¶ 23 We presume that the court considered all of the mitigating evidence contained in the record. See *People v. Anderson*, 325 Ill. App. 3d 624, 637 (2001). And, having considered them, the court was not then required to lend more weight to these mitigating factors than to the seriousness of the offense, in which he stabbed Calhoun so hard that he punctured his lung. *Harmon*, 2015 IL App (1st) 122345, ¶ 123. Moreover, defendant's lengthy history of felony

convictions and incarceration alone may warrant a sentence "substantially above the minimum." *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009); *People v. Hill*, 408 Ill. App. 3d 23, 29-30 (2011) (defendant's nonviolence and addiction did not mandate a reduced sentence whether he had 13 prior drug-related convictions).

¶ 24 Notwithstanding, defendant maintains that "the court cited no aggravating factors at all at sentencing, suggesting a failure to consider seriously the relevant bases for a sentence." We reiterate that the court was not required to cite any aggravating or mitigating factors and its failure to do so has no bearing on whether defendant's sentence is excessive. See *People v. Williams*, 223 Ill. App. 3d 692, 701 (1992) ("[t]he trial judge is not required to set forth each and every reason or specify the weight given each factor considered in the sentencing decision"). Defendant has failed to affirmatively show that the trial court did not adequately consider the either aggravating or mitigating factors in sentencing and we will not substitute our judgment for that of the trial court by reweighing them on review. *Jones*, 2015 IL App (1st) 142597, ¶ 40 (declining to reweigh factors considered at sentencing). Accordingly, we find that the trial court did not abuse its discretion in sentencing defendant to 10 years' imprisonment.

¶ 25 For the foregoing reasons, we affirm the judgment and sentence of the trial court.

¶ 26 Affirmed.