2018 IL App (1st) 160629-U

No. 1-16-0629

Order filed May 31, 2018

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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 9163
	)	
MARCHO GATEWOOD,	)	Honorable
	)	Thomas V. Gainer, Jr.,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Gordon and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's sentence for aggravated domestic battery is not excessive or an abuse of discretion where the trial court corrected its misapprehension of the applicable good-conduct credit and reduced the sentence from 10 to 8 years' imprisonment.

¶ 2 Following a bench trial, defendant Marcho Gatewood was convicted of three counts of aggravated domestic battery and sentenced to concurrent terms of eight years' imprisonment. On appeal, defendant solely contends that his sentence is excessive and that the trial court abused its discretion when, in correcting its misapprehension of the percentage of time he would be

required to serve under the truth-in-sentencing statute, the court imposed a sentence with an "effective" term almost two years longer than the original five-year "effective" term it intended to impose. We affirm.

¶ 3 Defendant was charged with three counts of aggravated domestic battery, three counts of unlawful use of a weapon by a felon (UUWF), and five counts of aggravated battery. At trial, Janee Ridley testified that in May 2014, she and defendant had been dating for five months, and he lived with her and her five children. On the morning of May 10, defendant awoke and left with Ridley's car while she remained in bed. During the day, Ridley twice called defendant and asked him to return her car, but he did not.

¶ 4 About 3 p.m., defendant returned home with the car, but refused to get out when Ridley attempted to get in the driver's seat. As Ridley reached through the passenger's window to retrieve items from the glove compartment, defendant drove away.

¶ 5 Defendant did not answer Ridley's repeated phone calls. Sometime between 7 and 8 p.m., defendant answered and refused to return her car. Ridley grabbed a hammer, screwdriver and knife, and walked around the neighborhood looking for her car. She found it in front of defendant's friend's house. Ridley called defendant and told him to give her the car keys, or she would smash a window. Defendant refused. Ridley then removed the license plates from her vehicle, slashed two tires with the knife, and smashed a window with the hammer.

¶ 6 As Ridley walked away, defendant came outside and said "bitch, I'm gonna kill you." Ridley ran. Defendant got in the car and drove toward her. He then exited the car and chased her on foot.

¶ 7 Ridley ran inside their apartment and dead-bolted the door. Defendant kicked in the door. Defendant hit Ridley on her head and arms with a cooking pot six or seven times. She fell to the floor in a fetal position. Defendant straddled Ridley, choked her with both of his hands around her neck, and stated "I will kill you, bitch." Ridley could not breathe, and felt dizzy.

¶ 8 Defendant stopped choking Ridley and began repeatedly hitting her on her arms and torso with a ceramic bowl. As he did so, the bowl broke. Ridley's arms were cut in three places and bleeding profusely. Defendant grabbed a knife and stated "you knew I was going to bring your car back. Now I'm finna go to jail." Ridley ran outside. Defendant came outside and told Ridley he should have killed her and buried her body, and he could have killed her, but he loved her. Ridley received 42 stitches in her arm, which is scarred, very sensitive, and painful to the touch.

¶ 9 Chicago police officer William Seski testified that about 9:47 p.m. on May 10, he drove down the street and observed Ridley covered in blood. Defendant emerged from a gangway yelling "I should kill you, bitch" and "sorry I didn't kill you." Defendant admitted that he hit Ridley with a bowl, and Seski arrested defendant.

¶ 10 The State presented certified copies of defendant's three prior felony convictions. Defendant moved for a directed finding, which the trial court granted as to the three UUWF counts, but denied as to the other charges.

¶ 11 Defendant testified that he purchased the car, but put it in Ridley's name. On May 10, he told Ridley that he was going to visit a relative and would be back shortly. Ridley called him several times, was upset, and asked him to come home. About 3 p.m., defendant drove home and told Ridley that he would drive her where she needed to go. Ridley yelled and swore at him. Defendant told her that he did not want to argue and drove away.

¶ 12 Ridley called defendant several more times. She arrived at his friend's house and told defendant to come outside. Ridley was holding a knife. Defendant went outside and observed his car window was broken. He asked Ridley "what is wrong with you?" Defendant told Ridley that he would get the car fixed, and that he was going to pack his belongings and leave. Ridley swore at him, threatened to destroy everything he owned, and left.

¶ 13 About 20 minutes later, defendant went home to retrieve his belongings. Ridley refused to open the door, and defendant kicked it in. Ridley approached defendant with a knife in her hand, and yelled and swore at him. Defendant held his hands out in front of him to defend himself, and threw a bowl at her. He pushed Ridley to the floor. He picked up the knife from the floor, and Ridley left the house. Defendant denied that he hit Ridley with a pot, and he denied that he told Seski that he hit her or threatened to kill her.

¶ 14 The trial court found that Ridley had done "something ridiculous" to the car; however, that incident was over when she went home. The court found Ridley's testimony credible, and noted her "severe" injuries depicted in the photos. The trial court found defendant guilty of three counts of aggravated domestic battery and five counts of aggravated battery.

¶ 15 At sentencing, the State argued in aggravation that defendant had a significant criminal history which subjected him to mandatory sentencing as a Class X offender. Defendant's prior convictions included possession of a stolen motor vehicle, armed robbery, UUWF, misdemeanor battery, and a 2002 Nevada conviction for "coercion with force or threat" for which he was sentenced to five years' imprisonment. The State also referred to photographs depicting the stitches in Ridley's arm, and the door defendant kicked open with the deadbolt locked in place. The State requested a significant sentence above the six-year minimum term.

¶ 16 In mitigation, defense counsel argued that Ridley provoked the entire incident when earlier that day she had stalked the neighborhood looking for defendant, who had her car. Counsel noted that Ridley slashed the tires of her own car with a knife, and broke her car window with a hammer. Counsel pointed out that the couple was no longer together, and therefore, the incident would be unlikely to occur again.

¶ 17 In allocution, defendant apologized for "the whole incident," stating that he never meant for it to happen. Defendant stated that he thinks about the incident every day, that he learned a valuable lesson from his mistakes, and that he would "never, ever, do anything like that again in my life." Defendant stated that he has changed while in jail, and that he wants to move on with his life and be a successful, law-abiding citizen who pays taxes.

¶ 18 The trial court noted that one count of aggravated domestic battery was based on the strangulation, the second was based on causing great bodily harm while striking Ridley about the body, and the third was based on causing her permanent disfigurement. The court merged the five counts of aggravated battery into the aggravated domestic battery counts.

¶ 19 The court stated that it reviewed the presentence investigation report (PSI) and noted that defendant had "a significant criminal history" that subjected him to mandatory sentencing as a Class X offender. The court stated that defendant caused serious physical harm to Ridley, which was demonstrated in the photographs as well as the scars the court observed on her arm as she sat six feet away during her testimony. The court acknowledged that Ridley had damaged her own car when defendant refused to return it to her. However, it found that her conduct did not amount to the type of strong provocation that would mitigate defendant's actions. The court stated that defendant had the opportunity to simply walk away, but instead, he went to her home and

engaged in a physical attack which left her "scarred for life in a very serious way." The court found that there were "simply no grounds tending to excuse or justify his criminal conduct." The court stated that it considered all of the factors in aggravation and mitigation, and determined that the appropriate sentence for the three counts was concurrent terms of 10 years' imprisonment.

¶ 20 Immediately thereafter, defendant filed a written motion to reconsider the sentence. The following colloquy then occurred:

> "[DEFENSE COUNSEL]: Judge, I would adopt my earlier argument and just point out to Your Honor that this would be at 85 percent, it's not 50 percent.
>
> THE COURT: Oh, I'm sorry, I thought it was 50 percent.
>
> [DEFENSE COUNSEL]: It's not.
>
> THE COURT: Okay. Well, it was not my intention to sentence him to that. The sentence is eight years in the Illinois Department of Corrections, not ten."

¶ 21 On appeal, defendant solely contends that his sentence is excessive and that the trial court abused its discretion when, in correcting its misapprehension of the percentage of time he would be required to serve under the truth-in-sentencing statute, the court imposed a sentence with an "effective" term almost two years longer than the original five-year "effective" term it intended to impose. Defendant argues that by initially sentencing him to 10 years at 50%, the court clearly intended that he serve five years in prison. Defendant asserts that when the court resentenced him to eight years at 85%, he will now spend nearly seven years in prison. Defendant claims the sentence is therefore excessive because he is required to serve more time than the five years the court believed was warranted by the aggravating and mitigating factors, and the good-conduct

credit. Defendant asks that this court either reduce his sentence, or vacate it and remand the case for resentencing.

¶ 22 The State responds that there was no abuse of discretion where the trial court corrected its misapprehension by reducing defendant's sentence to eight years, which is within the Class X sentencing range and reflects the seriousness of the offense. The State argues that the sentence adequately reflects the court's consideration of the factors in aggravation and mitigation, as well as good-conduct credit. The State asserts that the court's comment that "it was not my intention to sentence him to that" meant that it did not intend to sentence defendant to 10 years' imprisonment at 85%. It further asserts that defendant's argument incorrectly presumes that he would earn all of the possible good-conduct credit and be released after five years, and that the court intended he serve only five years. The State points out that under the truth-in-sentencing statute, defendant is eligible for release after five years, but not entitled to it.

¶ 23 Class X offenders are subject to a sentencing range of 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2014). The trial court has broad discretion in imposing an appropriate sentence, and where, as here, that sentence falls within the statutory range, it will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). An abuse of discretion exists where a sentence is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010).

¶ 24 The Illinois Constitution mandates that criminal penalties be determined according to the seriousness of the offense, and with the objective of restoring the offender to useful citizenship. Ill. Const.1970, art. I, § 11; *People v. Ligon*, 2016 IL 118023, ¶ 10. In light of these objectives,

"[t]he trial court is charged with fashioning a sentence based upon the particular circumstances of the individual case, including the nature of the offense and the character of the defendant." *People v. Fern*, 189 Ill. 2d 48, 55 (1999). The court's sentencing decision is entitled to great deference because, having observed the defendant and the proceedings, it had the opportunity to weigh defendant's demeanor, credibility, general moral character, mentality, habits, social environment and age. *Alexander*, 239 Ill. 2d at 213. "The sentencing judge is to consider 'all matters reflecting upon the defendant's personality, propensities, purposes, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding.' " *Fern*, 189 Ill. 2d at 55 (quoting *People v Barrow*, 133 Ill. 2d 226, 281 (1989)).

¶ 25 Here, we find no abuse of discretion by the trial court in sentencing defendant to a term of eight years' imprisonment, which falls within the statutory range and is only two years above the minimum term. *Jones*, 168 Ill. 2d at 373-74. The record shows that in imposing the sentence, the court stated that it considered all of the factors in aggravation and mitigation, as well as the information contained in the PSI. The court specifically noted that defendant had "a significant criminal history." The court also pointed out that defendant caused serious physical harm to Ridley, including permanent disfigurement of her arm, and that his attack left her "scarred for life in a very serious way." The court found that there were "simply no grounds tending to excuse or justify his criminal conduct."

¶ 26 Moreover, the record shows that although the court initially misapprehended the percentage of time defendant would be required to serve under the truth-in-sentencing statute, when defense counsel pointed out the error, the court immediately corrected itself by reducing defendant's sentence from 10 years to 8 years. Defendant's argument that the court intended that

he serve only five years in prison is without merit, and was previously rejected by this court in a previous case with nearly identical circumstances.

¶ 27 In *People v. Davis*, 405 Ill. App. 3d 585, 602 (2010), the trial court initially sentenced the defendant to a term of 10 years' imprisonment at 50%. The court then learned that the defendant was subject to 85% good-conduct credit and reduced his sentence to 7½ years. *Id.* On appeal, the defendant argued that when the court initially sentenced him, it intended that he serve five years in prison, but under the new sentence, he would "effectively" be serving a longer term. *Id.*

¶ 28 This court found that Davis' argument was based on both speculation and a misunderstanding of good-conduct credit. *Id.* Under the truth-in-sentencing statute, a defendant generally receives day-for-day good-conduct credit. *Id.* (citing 730 ILCS 5/3-6-3(a)(2.1) (West 2000)). However, a defendant who has been convicted of certain offenses, including aggravated domestic battery, receives no more than 4½ days of good-conduct credit for each month of his prison sentence. 730 ILCS 5/3-6-3(a)(2)(ii) (West 2014). This court explained that the statute "governs only the *potential* credit that a defendant may receive," and that the actual awarding of any good-conduct credit is contingent upon his behavior in prison, with no guarantee that he will receive any credit. (Emphasis in original.) *Id.* at 603. We further noted that the calculation of how much credit, if any, a defendant receives is within the discretion of the Department of Corrections, not the trial court. *Id.*

¶ 29 Consequently, this court found that the amount of credit that the defendant would actually receive remained to be seen and was not a matter within the determination of the trial court's sentencing order. *Id.* We further found that it was therefore improper to compare the amount of time the defendant might serve under a 10-year sentence with the amount of time he

might serve under a 7½ -year sentence. *Id.* We also rejected the argument that the trial court intended to impose a sentence by which the defendant's projected time actually spent in prison would be the same as that under the original 10-year sentence because such a result was not possible. *Id.* Even if the court imposed the minimum six-year term, the defendant would be required to serve a minimum of 61.2 months in prison rather than 60 months. *Id.* Accordingly, we found that the defendant's arguments were purely speculative, and that the trial court did not abuse its discretion. *Id.*

¶ 30 We agree with the reasoning in *Davis*, and similarly reject defendant's argument in this case. Defendant was never sentenced or entitled to an "effective" term of five years' imprisonment. Such a term was not even possible. Furthermore, we agree with the State that when read in context, the court's comment that "it was not my intention to sentence him to that" meant that the court did not intend to sentence defendant to 10 years' imprisonment at 85%. The record shows that the trial court immediately corrected its error by reducing defendant's sentence from 10 to 8 years, thereby giving proper consideration of the effect of good-conduct credit.

¶ 31 This court will not reweigh the sentencing factors or substitute our judgment for that of the trial court. *Alexander*, 239 Ill. 2d at 213. Based on the record before us, we cannot say that the sentence imposed by the court is excessive, manifestly disproportionate to the nature of the offense, or that it departs significantly from the intent and purpose of the law. *Fern*, 189 Ill. 2d at 56. Accordingly, we find no abuse of discretion by the trial court.

¶ 32 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 33 Affirmed.