2018 IL App (1st) 162348-U

No. 1-16-2348

Order filed July 11, 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. 15 CR 11836
	)	
JAMES PARSON,	)	Honorable
	)	Brian K. Flaherty,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Defendant's sentence of 25 years' imprisonment for aggravated battery is affirmed over his contention that his sentence is excessive in light of certain mitigating factors.

¶ 2 Following a bench trial, defendant James Parson was convicted of aggravated battery (720 ILCS 5/12-3.05 (e)(1) (West 2014)) and sentenced to 25 years' imprisonment. On appeal, defendant contends that his sentence is excessive. We affirm.

¶ 3 Defendant was charged, in pertinent part, with six counts of attempt first degree murder (720 ILCS 5/8-4(a) 720 ILCS 5/9-1(a)(1) (West 2014)), one count of aggravated battery (720 ILCS 5/12-3.05 (e)(1) (West 2014)), and two counts of aggravated discharge of a firearm (720 ILCS 24-1.2(a)(2) (West 2014)). Defendant waived his right to a jury trial and the case proceeded to a bench trial. Because defendant does not challenge the sufficiency of the evidence to sustain his conviction we recount the facts to the extent necessary to resolve the issue raised on appeal.

¶ 4 The facts adduced at trial show that on September 21, 2013, the victim, Rondale Standors, was with a group of individuals, standing near a parked car located on the 13800 block of Park Avenue in Dolton. At approximately 6:30 p.m., a maroon Chevrolet Impala drove past Standors. Defendant was in the passenger seat of the Impala and co-defendant, Andre Jackson[1] was driving. There was a third person in the rear seat. As the car was within eight feet of Standors, defendant leaned out of the passenger window, said "[w]hat's up now[?]" and fired eight or nine shots at him. Standors tried to run away, but was not able to because he was shot in both legs. Defendant yelled to Jackson to "pull off," and the Impala left the scene. Standors was eventually transported to Christ hospital where he underwent surgery for the gunshot wounds. He explained that a bullet still remains in one of his legs and that he walks with a "slight limp" as a result of the shooting.

¶ 5 Dolton police detectives Darryl Hope and Major Coleman arrived at the scene and interviewed Shaquilla Meeks and Akeem Evans, witnesses to the shooting. Hope used the information provided by Meeks to compile a photo array. Coleman went to Christ hospital on

[1] Andre Jackson is not a party to this appeal.

September 24, 2013, and showed Standors the photo array. Standors identified defendant from the photo array as the person that shot him. Meeks also identified defendant from the photo array as the person that shot Standors. Defendant was arrested and, on October 12, 2013, Standors identified him from a lineup as the shooter. Meeks also identified defendant from a lineup as the shooter.

¶ 6 A few days after the shooting, Standors and Meeks were interviewed by assistant state's attorneys (ASAs) at the Dolton police station and their statements were reduced to writing. In addition to describing the shooting, Meeks told the ASAs that on the evening of the shooting, a person named Blue met her at a gas station and asked her to come to an apartment in Calumet City. When Meeks arrived at the apartment, defendant was also present. Defendant told Meeks that if she said anything about the shooting, the same thing that happened to Standors would happen to her. Meeks understood this to mean defendant would kill her. Meeks also testified before a Cook County grand jury about the shooting.

¶ 7 At trial, Standors testified to being shot and the extent of his injuries. Standors did not identify defendant in court and could not remember going to the police station or speaking to an ASA. When confronted with his handwritten statement, Standors identified his signature, but could not remember signing the document. Standors also could not remember viewing a lineup and identifying defendant in the lineup. Standors denied telling the police and the ASA that defendant said "what's up now" and shot him.

¶ 8 Meeks likewise could not remember the details of the evening and attributed her memory loss to having been "jumped by four boys" and "tased in the eye" sometime after the shooting.

Meeks was confronted with her written statement and grand jury testimony, but did not remember speaking to the ASA or testifying before the grand jury.

¶ 9 The State called ASA Eleanor San and ASA Anna Sedelmaier that took the written statements from Standors and Meeks respectively, and published each statement to the court. ASA Jason Coehlo, who presented Meeks's testimony to the grand jury, was also called to testify to impeach Meeks.

¶ 10 Alfred Rowels testified that he is a convicted felon and was on probation at the time of his testimony. On the date of the shooting, Rowels was "just chillin" with some guys on Kanawha Street in Dolton when, about 6:30 p.m., he saw a burgundy Impala driving toward Park Street. Rowels recognized the Impala because he had seen the car a few times in the neighborhood. Rowels knew the driver of the vehicle and recognized defendant as the passenger. There was a third person in the back passenger seat, but Rowels was not able to identify this person. Defendant and the driver nodded to Rowels as they drove past him. A few moments later, Rowels heard about eight to ten gunshots from the next block and saw people running. Rowels left the area before the police arrived. Rowels identified defendant from a photo array and a lineup.

¶ 11 On cross-examination Rowels acknowledged that he did not see anyone with a gun nor did he see defendant shoot at anyone.

¶ 12 The parties entered into a stipulation that the eight shell casings recovered from the scene were all fired from the same gun.

¶ 13 The court found defendant guilty of aggravated battery and aggravated discharge of a firearm and not guilty of attempt first degree murder and aggravated discharge in the direction of a vehicle. Defendant's motion for new trial was denied.

¶ 14 At sentencing, the State relied on defendant's criminal history and asked that the court sentence him in the "upper range" of the Class X sentencing guidelines in order to deter others from committing similar crimes. In mitigation, defense counsel noted that defendant had a six year old daughter, who he supported financially along with supporting her mother. Counsel emphasized defendant's school history and pointed out that he had obtained his General Education Diploma (GED). Counsel also emphasized defendant's employment history, including the fact that he was employed at the time of the shooting.

¶ 15 Prior to pronouncing sentence, the court merged the aggravated discharge of a firearm into the aggravated battery count. In announcing sentence, the court noted that it reviewed its notes from the trial and the pre-sentence investigation (PSI) report. The court stated "I believe the State is correct when they talk about the defendant's conduct under the factors of aggravation. Defendant's conduct caused or threatened serious harm, and certainly threatened serious harm with Mr. [Standors] who got shot twice, and there were eight shell casings on the ground." The court pointed out that defendant has a history of prior delinquency or criminality, including a juvenile robbery for which probation was unsatisfactorily terminated. Defendant also had two cases involving delivery of a controlled substance. The court characterized the offense as "nothing other than a drive-by shooting" and agreed with the State that a sentence is necessary to deter others from committing a similar offense. The court explained that:

> "I don't think a week goes by that you don't read stories in the newspaper or see stories on TV regarding drive-by shootings. I mean, it seems now these drive-by shooting

> are occurring on the expressway where, again, it's people have to realize that, you know what, you're going to shoot out a window, you're going to have to suffer the consequences.
>
> So I think a message does have to be sent to the people in the neighborhood that [J]udges are going to treat this charge very seriously. Therefore, based on the factors in aggravation and mitigation, I don't find any factors in mitigation that are even relevant here. Reviewing the presentence investigation (PSI) and listening to the arguments of the lawyers, the sentence of this Court is going to be 25 years Illinois Department of Corrections, 3 years mandatory supervised release."

¶ 16 Defendant made an oral motion to reconsider sentence without objection by the State. The court denied the motion.

¶ 17 On appeal defendant solely contends that his 25-year sentence is excessive because the court failed to consider certain mitigating factors, including his age and that he did not have a criminal history of violence. Defendant further contends that the trial court improperly considered other crimes evidence of drive-by shootings on area expressways and wrongfully determined there were no relevant factors in mitigation. He requests this court reduce his sentence to the minimum statutory term of six years' imprisonment or remand the matter for a new sentencing hearing.

¶ 18 The State responds that defendant has waived his sentencing argument by not raising it in a written posttrial motion to reconsider sentence. The State argues that defendant has also forfeited this issue by failing to allege, in his brief, that the trial court committed plain error thus allowing for appellate review.

¶ 19 A careful review of the record shows that, after the court imposed sentenced, defendant indicated that he wished to file a written motion to reconsider his sentence. However, at the trial court's prompting, defendant proceeded on an oral motion to reconsider. The State did not object to this method of procedure. This court has previously recognized that, "if defendants allege

plain error in sentencing, or if defendants orally move to reduce their sentences without objection to this procedure by the State, the reviewing court may address such issues upon appeal despite defendant's failure to file a written postsentencing motion." *People v. Shields*, 298 Ill. App. 3d 943, 950-51 (1998); *People v. Davis*, 356 Ill. App. 3d 725, 733 (2005). Hence, we will consider defendant's sentencing argument.

¶ 20 A trial court's sentencing decisions are entitled to great deference on review and a reviewing court will only reverse a sentence when it has been demonstrated that the trial court abused its discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A trial court has broad discretionary powers in imposing a sentence because it has a superior opportunity "to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Absent some indication to the contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 21 In reviewing a defendant's sentence, this court will not reweigh these factors and substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *People* v. *Busse*, 2016 IL App (1st) 142941, ¶ 20. Moreover, a sentence which falls within the statutory range is presumed to be proper and " 'will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.' " *People v. Brown*, 2015 IL App (1st) 130048, ¶ 42 (quoting *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 22 Here, we find that the trial court did not abuse its discretion in sentencing defendant to 25 years' imprisonment. Defendant's aggravated battery conviction here is a Class X felony (720 ILCS 5/12-3.05 (e)(1) (West 2013)); and has a sentencing range of 6 to 30 years' imprisonment (730 ILCS 5/5-4.5-25(a) (West 2013)). Accordingly, defendant's 25-year sentence was within the permissible statutory range and thus it is presumed proper. *Sauseda,* 2016 IL App (1st) 140134, ¶ 19. "To rebut this presumption, defendant must make an affirmative showing that sentencing court did not consider the relevant factors." *People v. Burton,* 2015 IL App (1st) 131600, ¶ 38. Defendant has failed to make such a showing.

¶ 23 Defendant does not dispute that his 25-year sentence fell within the applicable sentencing range. Rather, he argues that the trial court did not consider his age and his minimal criminal history of non-violent offenses. He also maintains that the court improperly considered evidence of crimes outside of the record.

¶ 24 Contrary to defendant's argument, the record shows that this mitigation evidence was presented to the trial court before it imposed its sentence. As noted above, we presume that the trial court properly considered all mitigation evidence. *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. While a defendant's potential for rehabilitation must be considered, the trial court is not required to give more weight to a defendant's chance of rehabilitation than to the nature of the crime (*People v. Evans,* 373 Ill. App. 3d 948, 968 (2007)) or to explain the value the court assigned to each factor in mitigation and aggravation (*People v. Brazziel,* 406 Ill. App. 3d 412, 434 (2010). The sentencing court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factor either require a minimum sentence or preclude a maximum sentence. *People v. Harmon,* 2015 IL App (1st) 122345, ¶ 123.

¶ 25 The record clearly demonstrates that, in imposing sentence, the trial court considered the factors in aggravation and mitigation, and ultimately determined that the seriousness of the offense outweighed the mitigating factors and warranted a 25-year sentence. At sentencing, the court was presented with defendant's PSI report, which included his age and criminal history. The court expressly noted that it considered the PSI report. Defense counsel emphasized defendant's family history and lack of violent background. Counsel also emphasized defendant's work history and educational achievements. However, the court also heard evidence of the nature of the shooting, which it characterized as a "drive-by," and the extent of Standors injuries. See *Harmon,* at ¶ 123; *People v. Weatherspoon,* 394 Ill. App. 3d 839, 862 (2008) (the seriousness of the offense is the most significant factor in imposing sentence). The court pointed out that eight shots were fired on a residential street with multiple persons present on the street. The court determined that defendant's conduct endangered the public and there existed a need for deterrence. Given this record, defendant essentially asks us to reweigh the sentencing factors and substitute our judgment for that of the trial court. This we cannot do. See *Busse*, 2016 IL App (1st) 142941, ¶ 20 (a reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently).

¶ 26 In finding that the trial court did not abuse its discretion in imposing sentence, we are not persuaded by defendant's argument that the court blamed numerous drive-by shootings on him and made him responsible for the consequences of these crimes. The record shows that the court merely noted that defendant's crime was a drive-by shooting and that it needed to send a message to the community that this type of behavior will not be tolerated. The court did not abuse its discretion in doing so. See *People v. Kapadia,* 281 Ill. App. 3d 714, 717 (1996); *People*

v. Kloiber, 95 Ill. App. 3d 1061 (1981) ("When imposing a sentence, the court must consider the nature of the crime, the character and mentality of the defendant, the effect of the crime on the community, and the message it sends to society.").

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.