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2018 IL App (3d) 170762-U

Order filed November 9, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal No. 3-17-0762
LARRY ROBINSON,)	Circuit No. 13-CF-1105
Defendant-Appellant.)	Honorable Kevin W. Lyons, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Carter and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not consider improper aggravating factors in sentencing defendant.

¶ 2 Defendant, Larry Robinson, appeals his conviction and sentence arguing that the circuit court considered improper aggravating factors during sentencing. We affirm.

¶ 3 **FACTS**

¶ 4 Defendant entered a partially negotiated guilty plea in which he pled guilty to aggravated robbery (720 ILCS 5/18-1(b)(1) (West 2012)). In exchange, the State dismissed a charge of armed robbery (*id.* § 18-2(a)(2)).

¶ 5 The factual basis for the plea established that on July 10, 2013, the victims, Mazin Al-Sayegh and Letha Tharil, were both working at the North Spring Meat Market in Peoria. Two masked men entered the store. One man carried what appeared to be a revolver. The man pointed the gun at the victims' heads and demanded money. The other man, defendant, reached over the counter and took money from the cash register. Defendant also took a BB gun that was kept under the counter and a pair of sunglasses. The two men then ran from the building and the police were called. The police later found the sunglasses, and the deoxyribonucleic acid (DNA) recovered from them matched defendant's DNA. The video recording of the crime is part of the record, and is consistent with the factual basis for the plea.

¶ 6 At the sentencing hearing, defendant made a statement in allocution. Defendant apologized and stated that he took responsibility for his actions. In addition, both a presentence investigation report (PSI) and a supplemental PSI were filed. The PSI contained a letter from one of the victims describing how defendant's crime affected his life. The victim stated that after the robbery, he lost "all interest in working in that area." The victim also said that he came to the United States on a small business visa to "live the American dream." The victim ultimately had to start a new line of work in a different area of town and sold the North Spring Meat Market because he and his family were too scared to continue there.

¶ 7 After defendant's statement in allocution, the court stated, "I've considered the [PSI], the evidence and the arguments of the lawyers and the statement of allocution give by the defendant. I've considered the statutory matters in aggravation and mitigation. Let me refer to them."

¶ 8 As to mitigation, the court found none of the statutory factors applied. The court found that defendant's conduct caused or threatened serious harm, and defendant had a history of prior delinquency or criminal activity. The court then mentioned that defendant's young age did go to his benefit, but the court noted that defendant had a history of criminal activity. The court described defendant's school conduct as "unspeakable." The court then found that a sentence was necessary to deter others from committing the same crime. The court went on to make the following observations:

"This venue, the place that you robbed, was at 511 Spring Street, what Peorians would call the heart of the north valley. It has a charming ring to it, but it's really not so very charming. It's not many blocks from here. It's in a place where people that are in their 60s and above tell fond stories about when they were a kid because Spring Street is perpendicular to two main arteries, Adams and Jefferson; and it connect[s] those arteries, streets, with the top of the hill. You go up Spring Street and you hit the hill, the East Bluff, and then you go up on to what was a beautiful drive. And you chose right in the middle of Spring Street to commit this act.

People invest money that they don't have and get lenders to lend money that they are cautious about lending to open up shops in areas like that because nobody else will. And the reason nobody else will has a name to it. It's, it should be called the [defendant] reason, because people come and want to shoot them. It doesn't really matter whether you shoot them. It does to them, and it does to me, because it feels like they're going to get shot. And it gets, it has been described for a hundred years what armed

robbery is like, but only in the last decade do we get to see it and hear it. Video and audio.

And you and your cohort came into this tiny little shop, an area where nobody else wants to build, nobody else wants to invest, because the [defendants] of the world will come and steal your stuff. And sometimes, when they steal your stuff, they put bullet holes in you and your blood leaks out; and when the police get there, you're dead. I ought to know.

I would normally say to you, [defendant], and I kind of have to say it here, but I'll leave one part off. I would normally say, [defendant], you have something going for you here. You did not murder these folks. And you may shake your head and say that's, I would never do such a thing. Killing somebody, when you are telling them to give you the fucking money and you have your finger on the trigger of a gun, is not even a thought away. It is an action that occurs before the thought even gets to your head."

The court explained further:

"I don't know this clerk. Apparently his name is, for the record, Mazin *** Al-Sayegh,*** and Letha Tharil ***. We call those cultural names. And, although people who don't have cultural names probably don't mean to be unkind, they say, well, that's a cultural name. Imagine if you're the person with a cultural name. You don't have to imagine it. You can go into any shop that invests their money or gets a lender to loan the

money, and they dot [*sic*] the [defendants] of Peoria. Because why? Nobody else will do it. But they will do that.

And then those cultural names are in the obituary; and, in the obituary, it says they were the owner of a market at the corner of Prospect and Forrest Hill maybe or Wisconsin and Frye. Boy, if there's any message that should go with this to another court it should be look at the video, look at the video, look at the video, look at the video, look at the video.

They put it into another paragraph, in case they missed that paragraph, they should look at the video. ***

* * *

The defendant, I acknowledge, did not shoot or murder the clerks. I believe they felt like they were a moment away, and you have, if you have not disappointed your family and, of course, you acknowledge you have, and they aren't much of a family, and I believe they are, and they are terribly disappointed in you. And the police couldn't stop you because you're pretty good at it. But somebody has to stop you."

¶ 9 Following this discussion, the court sentenced defendant to 30 years' imprisonment followed by a 2-year period of mandatory supervised release (MSR). However, the court would later reduce defendant's sentence to 28 years' imprisonment followed by a 2-year MSR term because it had failed to admonish defendant about MSR at the time of his plea.

¶ 10 Subsequently, defendant filed a motion to reconsider sentence. The motion alleged in relevant part that the circuit court erred during sentencing by considering the hypothetical effect

of defendant's and others' crimes on investment in the Peoria area. Defendant argued that the court's comments were not supported by evidence in the record and wrongly attributed the conduct of others to defendant.

¶ 11 At the hearing on the motion, the court again referred to the seriousness of the crime as demonstrated by the video recording. The court also reflected on his comments regarding the location of the crime. The court stated:

“But I think in terms of security and safety, people who are in a little, what some people would call a bodega, a little place, a little convenience store that maybe had been there before, had been popped up and didn't have a lot of people around or nobody that—it was an investment and it was a place where they had to be, and they kind of feel a little bit more alone.

And that's how it seemed here, that a bodega, a store, a little place had popped up and it was kind of struggling. I don't know if it was, but I'm just going to say that, you know, you got to walk before you can run.

And it was just kind of there. And in came two people with guns. Now all of a sudden, whatever work they had done was out the window because the feeling of the vendor then is, 'You can have it all. You can take it all.' Because the feeling of 'My life may be about to end' is so overwhelming, it's so compelling, that you can just take it all. And I think that when you're in a little place and there's just two little merchants in there, and somebody comes in with guns and wants your stuff, something can go wrong so quickly.

So although I hope that you're a different person now, you're older and I hope you're more reflective, it was a terrible thing and it requires some serious consequences. So I'll respectfully deny the amended motion to reconsider sentence."

¶ 12 Before the end of the proceedings, the State noted that defendant did not bring a gun to the store—his accomplice did. The court responded, "Right," and stated that defendant's sentence would remain the same.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant contends that the cause should be remanded for a new sentencing hearing. Specifically, defendant argues that the circuit court considered and relied upon improper aggravating factors when originally sentencing defendant. The question of whether a court relied on an improper factor when imposing a sentence ultimately presents a question of law to be reviewed *de novo*. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8. When determining the correctness of a sentence, the reviewing court should not focus on a few words or statements made by the circuit court, but should consider the record as a whole. *People v. Reed*, 376 Ill. App. 3d 121, 128 (2007). An isolated remark made in passing, although improper, does not necessarily require that defendant be resentenced. *Id.* Rather, defendant must show the circuit court relied on the improper fact when imposing defendant's sentence. *Id.* Viewing the record as a whole, we find the court only considered proper sentencing factors when it determined defendant's sentence.

¶ 15 Defendant argues that the record shows that the court relied upon improper aggravating factors when imposing his sentence. Specifically, defendant contends that the court improperly relied upon the following: (1) speculation or the court's private knowledge regarding business

investment and crime in Peoria, (2) the personal traits of the victims, and (3) crimes committed by others in Peoria for which defendant was not accountable. We discuss each argument in turn.

¶ 16 First, defendant contends that the court improperly relied upon its private knowledge regarding business investment and crime in Peoria. Specifically, defendant calls our attention to the court's discussion of the location of the crime and how crime prevents individuals from investing in the area. The court's discussion of the location of the crime, however, focused on deterrence and the protection of society. Both factors are proper sentencing considerations. See 730 ILCS 5/5-5-3.2(a) (7) (West 2012). The court began its discussion by noting that a sentence was necessary to deter others from committing similar offenses. Immediately following this statement, the court began discussing the specific location of the crime and the individuals who own businesses in that area. The court then commented how investment in the area of the crime was effected by crimes committed in the area. The court's comments are consistent with the victim's letter which explained how the victim sold his business and moved to a different area of town as a result of defendant's acts. Further, to the extent the court's comments did involve off-the-record knowledge of the area, those comments were universal in nature. That is, all business owners must be protected from individuals committing crimes on their property.

¶ 17 Next, defendant contends that the circuit court improperly relied on the personal traits of the victims. Defendant notes the court's discussion of how the victim's were "cultural." According to defendant, the court's comments were improper because the victim's ethnicity is not an element of the crime and their ethnicity did not place the victims in a position of vulnerability. We disagree with defendant's characterization of the court's remarks. Nothing in the court's discussion suggests that it found the victim's ethnicity to be an aggravating factor. Rather, the court merely described the nature of the offense. See *c.f. People v. Joe*, 207 Ill. App.

3d 1079, 1086-87 (1991). The court's comments were supported by the victim's letter to the court which explained how the victim had immigrated to the United States to start a business.

¶ 18 Last, defendant contends that the circuit court improperly considered crimes committed by others in Peoria outside the context of this case for which defendant was not accountable. Specifically, defendant argues that the court's consideration of this factor was improper because the court mentioned that similar crimes result in the killing of the victim. Because defendant was not the individual holding the gun and the victims were not killed, defendant argues that it the court improperly sentenced defendant for the conduct of others.

¶ 19 We find that it was proper for the court to consider the seriousness of the crime and to deter others from committing similar crimes. See 730 ILCS 5/5-5-3.2(a)(1), (7) (West 2012). It is clear from the video recording of the crime, that defendant and his accomplice threatened serious harm by bringing a gun to the robbery and pointing it at the victims. The court correctly noted that sometimes armed robberies result in the killing of the victim. The fact that the victims were not killed in this case is of no consequence. Defendant and his accomplice threatened serious harm. In other words, the court's discussion of this factor was not to hold defendant responsible for the acts of other criminals, but to deter others from committing similar crimes—*i.e.*, to prevent others from committing armed robberies that threaten serious harm.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 22 Affirmed.