2018 IL App (4th) 160640-U

NO. 4-16-0640

FILED
October 23, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
DANIELLE L. FISCHER,	)	No. 13CF461
Defendant-Appellant.	)	
	)	Honorable
	)	Robert Freitag,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Harris and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's sentence was not an abuse of discretion.

¶ 2 In April 2013, the State charged defendant, Danielle L. Fischer, with two counts of endangering the life or health of a child that resulted in death. 720 ILCS 5/12C-5 (West 2012). In December 2015, defendant entered into an open plea agreement. In April 2016, the trial court sentenced her to eight years in prison. 720 ILCS 5/12C-5(d) (West 2012). Defendant appeals, arguing the trial court's sentence was an abuse of discretion. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. The Charges, Bench Trial, and Plea Agreement

¶ 5 In April 2013, the State charged defendant with two counts of endangering the life or health of a child that resulted in death. 720 ILCS 5/12C-5 (West 2012). Count 1 alleged that, between February 2013 and March 2013, defendant willfully permitted the life of R.C. to be en-

dangered by allowing Nicholas Compton to provide care, which was the proximate cause of R.C.'s death. *Id.* Count 2 alleged that between March 15, 2013, and March 26, 2013, defendant willfully caused R.C.'s life to be endangered when she failed to take R.C. to the doctor, which proximately caused his death. *Id.* At the time of his death, R.C. was three years old.

¶ 6 In November 2015, the trial court began a bench trial in this case. Paramedic Matt Steinkoenig testified that on March 26, 2013, he was dispatched to defendant's residence for the report of a child in seizure. Steinkoenig testified that R.C. was "very thin," "you could see his bones," and "he had a lot of bruises on his body." First responders took R.C. to the hospital where he was pronounced dead. Steinkoenig's testimony was corroborated by the testimony of other first responders who were at the scene.

¶ 7 Multiple other witnesses testified that they observed R.C. with serious injuries and bruises in the weeks preceding his death. For example, Kristin Fannin, defendant's former neighbor, testified that R.C. "was very pale, very malnourished looking. His hair had looked like it had started falling out, and he had what looked to me like a rug burn on the right side of his face, and he was bruised." Fannin asked defendant about R.C.'s injuries, and defendant said, while giggling, that R.C. was injured in a shaving accident.

¶ 8 Midway through the bench trial, defendant entered into an open plea agreement—meaning that the State and defendant did not have an agreement regarding the punishment to be imposed. The trial court explained to defendant that she could be sentenced to parole or she could be sentenced to a prison term ranging between 2 and 10 years. 720 ILCS 5/12C-5(d) (West 2012). The court also explained that, upon discharge from prison, defendant would be subject to mandatory supervised release for one year. Ultimately, the court accepted the plea agreement and continued the matter for a sentencing hearing.

¶ 9 B. The Sentencing Hearing

¶ 10 In April 2016, the trial court conducted a sentencing hearing. Dr. Scott Denton, a forensic pathologist, described all of R.C.'s injuries. He noted that R.C. had injuries on his right forehead and mouth, a burn on his right check, injuries to the back of his head and his lower back, bruises along his spine and back, injuries to the eye, and bruises from blunt trauma. Denton concluded that the injuries were not accidental.

¶ 11 Defendant's presentence investigation report showed that she was employed full-time as a nursing assistant prior to her guilty plea and that she had no criminal history. The report indicated that defendant stated that she did not have any role in the death of R.C.

¶ 12 Detective Nicole Bruno testified that defendant said that she was afraid of taking R.C. to the hospital because she was worried that the Department of Children and Family Services (DCFS) would get involved due to the number of injuries R.C. had.

¶ 13 In closing argument, the State requested a prison sentence of 10 years—the maximum sentence—because defendant was a healthcare professional and should have recognized the seriousness of R.C.'s medical situation. Further, the State argued that defendant should have found alternative care rather than leaving R.C. with Compton.

¶ 14 Defense counsel argued that defendant worked long hours as a nursing assistant and that she was simply a single mother who made a mistake by entrusting her child to Compton. Defense counsel also argued that, due to her age and lack of a criminal record, she was unlikely to commit another crime in the future. Accordingly, counsel requested that the trial court sentence defendant to probation.

¶ 15 Defendant made a statement in allocution in which she stated that she was sorry for what had occurred and that she had been working hard to build a better life for her family.

¶ 16 C. The Trial Court's Sentence

¶ 17 Following closing argument, the trial court delivered its sentence. The court began by noting that it had considered the "applicable statutory factors in aggravation and in mitigation" and that "there are significant factors in mitigation in this case, principally that the defendant has no prior record. The court is also aware that the defendant in this case did not inflict any injury or any blow upon this young boy[.]" The court also noted that "much of the evidence presented by the State today goes to the nature and circumstances of the offense, and in that sense, it is truly not aggravating evidence, and it is not being considered by the court in aggravation as to what sentence ought to be imposed."

¶ 18 However, the trial court concluded that "some of the evidence presented here today goes to the character and attitudes of the defendant, and the court believes that's entirely appropriate to consider above and beyond the nature and circumstances of the offense[.]" The court stated that it was concerned "about what I see in the presentence report *** wherein you have indicated that you don't believe you have a role in [R.C.'s] death. I disagree with you. I think you do. *** [T]his court is already of the realization *** that your role in his death was significant." The court also mentioned defendant's failure to take R.C. to the doctor because she was afraid of DCFS taking him away.

¶ 19 In concluding, the trial court stated that "[w]hile there is significant mitigation in this case, I think the nature and circumstances of this offense and your character and attitude regarding it suggest that probation would, in fact, deprecate the seriousness of this offense and [would] not be consistent with the ends of justice." Thus, the court denied defendant's request for probation and sentenced her to eight years in prison. The court would later deny defendant's motion to reconsider her sentence.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Defendant appeals, arguing the trial court's sentence was an abuse of discretion. We disagree.

¶ 23 A. The Applicable Law

¶ 24 An individual is guilty of endangering the life or health of a child when he or she knowingly (1) causes or permits the life or health of a child under the age of 18 to be endangered or (2) causes or permits a child to be placed in circumstances that endanger the child's life or health. 720 ILCS 5/12C-5(a) (West 2012). The Unified Code of Corrections creates a presumption in favor of probation. *People v. Daly*, 2014 IL App (4th) 140624, ¶ 28, 21 N.E.3d 810. This presumption is overcome if the trial court concludes that probation would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice. 730 ILCS 5/5-6-1(a)(2) (West 2012). "A violation of this Section that is a proximate cause of the death of the child is a Class 3 felony for which a person, if sentenced to a term of imprisonment, shall be sentenced to a term of not less than 2 years and not more than 10 years." *Id.* § 12C-5(d).

¶ 25 The trial court has broad discretionary authority when selecting an appropriate sentence. *People v. Garcia*, 2018 IL App (4th) 170339, ¶ 37, 99 N.E.3d 571. The trial court's sentencing decision is entitled to great deference and weight. *People v. Mischke*, 2018 IL App (2d) 160472, ¶ 14. A sentence within the statutory limits will not be disturbed absent an abuse of discretion. *People v. Murray*, 2017 IL App (2d) 150599, ¶ 90, 94 N.E.3d 212. The trial court abuses its discretion "only when the sentence varies greatly with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." *Mischke*, 2018 IL App (2d) 160472, ¶ 14.

¶ 26 B. This Case

¶ 27 In this case, the trial court determined that probation would deprecate the seriousness of the offense and would be inconsistent with the ends of justice. The court, presented with a sentencing range of no less than 2 years and not more than 10 years, then sentenced defendant to 8 years in prison. 720 ILCS 5/12C-5(d) (West 2012).

¶ 28 On appeal, defendant argues the trial court abused its discretion in sentencing her to eight years in prison because "the mitigation was overwhelming and the court placed undeserved weight on the nature of the offense." We conclude that the trial court's sentence was not an abuse of discretion.

¶ 29 First, the record shows that the trial court did consider the mitigating evidence. The court stated that it considered "defendant's statement in allocution, *** and [the] applicable statutory factors in aggravation and in mitigation." The court further stated that "there is significant mitigation" because defendant did not have a criminal record and had never directly injured R.C. However, considering the seriousness of the offense, defendant's attempt to avoid detection by DCFS, and her claim that she did not contribute to R.C.'s death the trial court did not deem the evidence in mitigation "overwhelming," and neither do we.

¶ 30 Second, the trial court did not place undeserved weight on the nature of the offense. The court stated that "much of the evidence presented by the State today goes to the nature and circumstances of the offense, and in that sense, it is truly not aggravating evidence, and it is not being considered by the court in aggravation as to what sentence ought to be imposed." Instead, when sentencing defendant to eight years in prison, the court focused on defendant's attempts to avoid detection by DCFS, her claim that she did not contribute to R.C.'s death, and her "significant role" in R.C.'s death.

¶ 31 In summary, the trial court's sentence, which was within the statutory limits, was not an abuse of discretion. *Murray*, 2017 IL App (2d) 150599, ¶ 90. Defendant was a healthcare professional who should have seen the warning signs in R.C.'s health before he died. Defendant should have been concerned for the health of her child rather than the consequences of DCFS involvement. Simply put, the court's sentence did not violate the spirit and purpose of the law nor was it manifestly disproportionate to the nature of the offense. *Mischke*, 2018 IL App (2d) 160472, ¶ 14. Accordingly, we reject defendant's argument and affirm her sentence.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the trial court's judgment.

¶ 34 Affirmed.