2019 IL App (1st) 161330-U

No. 1-16-1330

Order filed March 14, 2019

Fourth 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. 12 CR 19336
	)	
JEROME GREEN,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice McBride and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's aggregate sentence of 65 years' imprisonment for committing first degree murder and personally discharging a firearm that proximately caused the victim's death is not excessive. The mittimus is corrected.

¶ 2 Following a bench trial, the trial court found defendant Jerome Green guilty of first degree murder and personally discharging a firearm that proximately caused the victim's death. Defendant was sentenced by the trial court to 40 years in the Illinois Department of Corrections for first degree murder and 25 years for personally discharging a firearm that proximately caused

the victim's death, for a total sentence of 65 years in prison. On appeal, defendant contends that his sentence is an excessive, *de facto* life sentence. He also contends that the mittimus must be corrected to reflect a single conviction for first degree murder.

¶ 3 For the reasons that follow, we affirm and order correction of the mittimus.

¶ 4 Defendant's conviction arose from the September 17, 2012, shooting death of Delon Brandon. Following his arrest, defendant was charged with six counts of first degree murder. The State proceeded to trial on all counts.

¶ 5 At trial, Kimberly Wilkins testified that defendant was the father of her son, Jerome Jr. However, in September 2012, she was in a dating relationship with the victim, Delon Brandon, who lived with her and her children. During the week leading up to the shooting, Jerome Jr. was staying with defendant. Wilkins testified that defendant had not returned Jerome Jr. to her on the agreed upon date, so on September 16, 2012, she confronted defendant and then went home and called the police. While she was outside talking to the officers, she received a phone call from defendant. Wilkins gave her phone to the police so he could talk with them. After the police left, Wilkins and Brandon argued with a neighbor who was friends with defendant and whom they believed had called defendant regarding the police being at Wilkins' house.

¶ 6 Wilkins testified that about 11:30 p.m., defendant showed up at her front door. Through the screen door, defendant said, "Tell your coward ass boyfriend I'm whipping him from woofing at my guys." After defendant left, Wilkins talked with Brandon. Shortly thereafter, Brandon went out to his car, drove around for a few minutes, and came right back. Wilkins, who was in the front yard with three of her daughters and her niece, saw Brandon exit his car and start

walking toward the house. He received a call, however, and returned to his vehicle, which was parked across the street.

¶ 7 As Brandon was entering his vehicle, Wilkins saw defendant walking toward him, holding a gun in his hand. Wilkins yelled "no" to defendant, but he did not stop, so she yelled a warning to Brandon that defendant was approaching. Brandon was able to enter his vehicle but could not close the door because defendant was pulling on the handle. While the two men were struggling with the car door, Wilkins heard a shot. The car door opened, and then Wilkins saw defendant point the gun at Brandon and shoot. Defendant fled. Wilkins ran to the car, where she saw Brandon "limped over" with blood coming from the back of his head. Eventually, police arrived and Brandon was taken from the scene in an ambulance.

¶ 8 Deana Gibson, Wilkins's daughter, testified that she was at home on the night in question when she heard defendant and Wilkins "having words" through the screen door. Before defendant left, she heard him say to Wilkins, "Tell that coward-ass nigger to leave my homies alone or I'm going to kill him." Some time later, while she was sitting on the front porch, she saw Brandon entering his parked vehicle while talking on his phone. Gibson then saw defendant run around the corner and up to Brandon's vehicle, carrying a handgun in his hand. Defendant and Brandon pulled the driver's door back and forth. Finally, defendant opened the door, pointed the handgun at Brandon's head, shot him, and ran from the scene.

¶ 9 Reginyka Benford, Wilkins's niece, testified that on the night in question, she was in Wilkins's front yard as Brandon was heading toward his car. She saw defendant stop his own vehicle nearby, exit the automobile with a weapon in his hand, and run up to Brandon. By this time, Brandon was sitting inside his car with the driver's door open. Defendant and Brandon

wrestled with the car door. Defendant opened the door, pointed the gun at Brandon, shot him, and ran off.

¶ 10 A medical examiner testified that Brandon died as a result of a single, close-range gunshot to the head, and that the manner of death was homicide.

¶ 11 Chicago police officer Antonio Guereca testified that about 12:26 a.m. on September 17, 2012, he received a flash message regarding the shooting. The message gave a description of the shooter, a car he might be driving, and his possible whereabouts. As Guereca and his partner approached the given location, Guereca spotted a car that matched the description and that was driving erratically. The officers curbed the car and Guereca approached the driver's side on foot. In court, Guereca identified defendant as the driver. When Guereca asked defendant to show him his hands, defendant shifted into drive and pulled away. Guereca and his partner ran back to their car and pursued defendant to a parking lot, where defendant exited his vehicle and started running. Guereca and his partner continued to follow in their automobile, but lost sight of defendant.

¶ 12 Chicago police officer David Perez testified that around 12:30 a.m., he and his partner monitored a flash message relating a possible flight direction of a shooter. Perez and his partner went to the area, where they encountered defendant, whom Perez identified in court. Defendant was walking in an alley, sweating profusely and breathing heavily. When Perez exited his vehicle and approached defendant on foot, defendant pointed behind him and stated, "He went that way." Perez told defendant to get on the ground, but defendant began running. Perez gave chase, eventually caught up with defendant, and placed him into custody.

¶ 13 The State presented evidence that the police collected fingerprints on the outside of the driver's door of Brandon's vehicle, one of which was later matched to defendant. The police also found a bullet in the car's floorboard and recovered a fired cartridge case and a magazine with two live cartridges from the area around Brandon's car. From the area near where the police located the car defendant used to flee, the police recovered a shirt that matched the description of the one he was wearing at the time of the shooting. DNA that matched defendant's profile was extracted from the collar of the shirt, and a DNA profile extracted from blood on the shirt was determined to match Brandon. Both cuffs of the shirt tested positive for gunshot residue. No weapon was recovered.

¶ 14 Defendant made a motion for a directed finding, which the trial court denied.

¶ 15 Defendant testified on his own behalf, admitting that at the time of the shooting, he was on parole for aggravated unlawful use of a weapon (AUUW). Defendant stated that on September 16, 2012, he did not bring Jerome Jr. back to Wilkins, as he was supposed to do, because he wanted to talk to her about Brandon "putting his hand on my son." As such, he went to Wilkins's house that night and argued with her through the screen door. He then walked across the street, where he spent about an hour talking with friends.

¶ 16 Around midnight or 1 a.m., defendant saw Brandon entering a vehicle on the street. Defendant walked up to the car and told Brandon he wanted to talk to him about Jerome Jr. When Brandon blew him off, defendant grabbed the handle of the driver's door. The two men struggled with the door, but eventually, defendant opened the door and attempted to pull Brandon out of the vehicle. As defendant did so, Brandon grabbed defendant's gun off defendant's right hip, where it had been tucked into his pants. Defendant testified that he grabbed

Brandon, they "got to tussling over the gun," and the gun went off. Then, the clip fell out, the gun went off a second time, and Brandon let go. Defendant was scared because the gun went off without anyone pulling the trigger, so he took off running.

¶ 17 Defendant testified that he got in his car and drove off. He was pulled over by the police, but "took back off" since he had a handgun in the vehicle. He drove for a while, got out of the automobile, removed his shirt, and ran. The police then found him in an alley. Later, he spoke with two detectives at a police station. He explained that he did not tell the police what had occurred "Because I didn't know what I was really there for." After about an hour, when the police said he was at the police station because he shot a person in the head, he told them he "didn't shoot nobody in the head."

¶ 18 The trial court found defendant guilty of first degree murder. In announcing its decision, the court stated, "Let me say for the record just so it's clear, the discharge of the firearm and that [defendant] did it is the proximate cause of death, and he did shoot the gun. So it is proximate cause as well as murder." The court subsequently denied defendant's motion for a new trial.

¶ 19 At sentencing, the trial court indicated it was in possession of the presentence investigation (PSI) report, and both parties stated they had no corrections or amendments to it. The prosecutor read two victim impact statements and argued that aggravating factors included that defendant committed the murder while on mandatory supervised release for AUUW, that he had a 2002 conviction for possession of a stolen motor vehicle, and that he had a prior conviction for cruelty to animals. The prosecutor asked for a sentence above the minimum. Defense counsel asked that the trial court consider imposing the minimum sentence, as such a sentence would

"virtually" be a life sentence given defendant's health and age, which was 32 at the time of sentencing. In allocution, defendant stated, "I just want to tell his family I'm sorry."

¶ 20 The trial court imposed a sentence of 40 years for first degree murder and 25 years for personally discharging a firearm that proximately caused the victim's death, for a total sentence of 65 years in prison. In the course of announcing the sentence, the trial court observed that when the murder occurred, defendant was a grown man with children, who should have had the ability to have composure. The court further noted that the murder was not a crime of passion, but rather, that defendant laid in wait for Brandon to leave the house and then ran up and shot him.

¶ 21 Defendant filed a motion to reconsider sentence. The trial court denied the motion, stating as follows:

> "The court in considering its sentence did not enter into this lightly. The court took into the fact [*sic*] the aggravating factors as well as mitigating factors. The court took into consideration the allegations of what happened here, the result, the manner in which it happened, the fact of [defendant] laying in wait for this person, the fact he was on mandatory supervised release, and noticing his criminal history. The court took into effect [*sic*] in what I saw about his background and about his four children. I took that all into effect [*sic*] and factored that in and the motion to reconsider sentence is denied."

¶ 22 On appeal, defendant contends that his 65-year sentence is unconstitutionally excessive where it amounts to a life sentence, "utterly foreswearing the possibility of rehabilitation." He argues that if he had received the minimum sentence of 45 years, he would have had a chance at being released when he is 74 and thus would have the opportunity to live "a year or two back in

society." Instead, he notes, his sentence sets his age at release at 94. Defendant argues that the sentence imposed by the trial court exceeds any need for punishment, protection of society, or deterrence, and leaves no possibility of rehabilitation. Defendant also asserts that the record shows some mitigating factors, such as his difficult childhood, struggles with depression and substance abuse, and status as a father of four children. He asks that this court vacate the 65-year sentence and impose the minimum sentence in its place.

¶ 23 The sentencing range for defendant's first degree murder conviction was 20 to 60 years in prison. 730 ILCS 5/5-4.5-20(a)(1) (West 2012). Defendant received 40 years. Based on the trial court's finding that defendant personally discharged a firearm causing death, he was subject to a mandatory enhancement of 25 years to natural life imprisonment. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012). The trial court imposed a 25-year enhancement, resulting in a total sentence of 65 years in prison. This sentence was well within the permissible statutory range. Therefore, it is presumed proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46.

¶ 24 Defendant has pointed to no authority in Illinois holding that, with respect to offenses committed by defendants who are not juveniles, a sentence is excessive simply because it amounts to a possible life sentence due to the defendant's age. A lengthy prison sentence will not be found improper merely because it arguably amounts to a *de facto* life sentence, so long as it is not otherwise an abuse of discretion. *People v. Martin*, 2012 IL App (1st) 093506, ¶ 50. Sentences within the permissible statutory range may be deemed the result of an abuse of discretion only where they are "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 25 Here, the record indicates that the trial court was well aware of defendant's position that even the minimum sentence in this case would amount to a virtual life sentence. Counsel made that argument at the sentencing hearing, and in the motion to reconsider sentence, counsel asserted that defendant's sentence was not determined with the objective of restoring him to useful citizenship and was not "in keeping with alternatives available to the court to assist the defendant in his rehabilitation." The court was also aware of the mitigating factors identified by defendant on appeal, as they were included in the PSI report and the court specifically stated it was aware of defendant's background and four children. Where mitigating evidence has been presented, it is presumed that the trial court considered it. *People v. Sven*, 365 Ill. App. 3d 226, 242 (2006).

¶ 26 Given the facts of this case, the interests of society, the trial court's stated consideration of the relevant aggravating and mitigating factors, and the circumstance that defendant was serving a term of mandatory supervised release when he committed the instant offense, we cannot find that defendant's sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210. Accordingly, we find no abuse of discretion. Defendant's contention that his sentence is excessive fails.

¶ 27 Defendant's second contention on appeal is that in keeping with the one-act, one-crime rule, the mittimus should be corrected to reflect a single conviction for first degree murder. The State concedes that where there was only one murder victim, the mittimus should be corrected to reflect a single conviction with a 40-year sentence for first degree murder and a consecutive

sentence of 25 years for personally discharging a firearm that proximately caused the victim's death. We agree with the parties.

¶ 28 At the sentencing hearing, the trial court sentenced defendant to 40 years in prison for first degree murder and an additional 25 years pursuant to the mandatory 25 years-to-life firearm enhancement. The mittimus does not reflect this judgment. Instead, it indicates two convictions for first degree murder: one for intentional murder (count 5) (720 ILCS 5/9-1(a)(1) (West 2012)), with a sentence of 40 years, and the other for "strong probability" murder (count 6) (720 ILCS 5/9-1(a)(2) (West 2012)), with a sentence of 25 years.

¶ 29 "Where the sentence indicated in the common law record conflicts with the sentence imposed by the trial judge as indicated in the report of proceedings, the report of proceedings will prevail and the common law record must be corrected." *People v. Peeples*, 155 Ill. 2d 422, 496 (1993). In addition, when multiple murder convictions have been entered for the same act, only the conviction for the most serious charge should be reflected on the mittimus. *People v. Walker*, 2011 IL App (1st) 072889-B, ¶ 39. Intentional murder is a more serious charge than strong probability murder. *Id.* As such, we order the mittimus to be corrected to reflect one count of intentional murder (count 5), for which defendant was sentenced to 40 years, and the 25-year firearm enhancement for personally discharging the firearm that proximately caused the victim's death. See *People v. Thompson*, 2013 IL App (1st) 113105, ¶ 124. Remand is unnecessary, as we may directly order the clerk of the court to correct the mittimus pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967).

¶ 30 For the reasons explained above, we affirm the judgment of the circuit court and order correction of the mittimus.

¶ 31 Affirmed; mittimus corrected.