2019 IL App (1st) 162003-U

No. 1-16-2003

Order filed February 7, 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. 14 CR 21069
	)	
VERONICA WILSON,	)	Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's 12-year sentence for second degree murder is affirmed over her contention that the sentence was excessive because the trial court failed to consider certain mitigating factors and improperly considered an aggravating factor.

¶ 2 Following a bench trial, defendant, Veronica Wilson, was found guilty of second degree murder (720 ILCS 5/9-2(a)(2) (West 2012)), and sentenced to 12 years' imprisonment. On

appeal, defendant argues that her sentence is excessive and that the trial court abused its discretion in sentencing by failing to consider multiple mitigating factors and improperly considering an aggravating factor. We affirm.

¶ 3 Defendant was charged by indictment with two counts of first degree murder for the death of her fiancé Andre Brown. She waived her right to a jury trial, and the case proceeded to a bench trial. Prior to trial, defendant informed the State that she would be raising the affirmative defense of self-defense. Because defendant does not challenge the sufficiency of the evidence to sustain her conviction, we recount the facts to the extent necessary to resolve the issue raised on appeal.

¶ 4 The facts adduced at trial showed that just after midnight on November 3, 2014, defendant made a 911 call reporting a domestic disturbance involving Brown, her fiancé, whom she lived with. During the call, a verbal altercation is heard in the background and defendant is heard saying, “Don't come up on me, Andre. Imma lay your ass down. I'm not playin'. I'm not f*** playin'.” Officer Creamer, who responded to the call, was dispatched to 78th Street and Coles Avenue.[1] Creamer did not find anyone present at the location upon arrival. A few minutes after the original call, the 911 dispatcher called defendant, who stated that she was "good."

¶ 5 Sometime later, Creamer, responded to another dispatch regarding a possible shooting on the 3000 block of East Cheltenham Place. Sergeant James Butler arrived on the scene just prior to Creamer in response to the same dispatch. There, Creamer and Butler observed an unresponsive man, later identified as Brown, laying on the sidewalk. It was later determined that

[1] Officer Creamer did not testify to his first name and it does not appear in the record.

Brown's death was caused by multiple stab and incise wounds. The knife used was never recovered.

¶ 6 Eventually, defendant walked up to the officers at the scene. Butler testified that defendant identified the man as her husband and that she had not seen him for a few hours. After getting her information, defendant was permitted to return home. Her phone number was later matched to that from the 911 call.

¶ 7 Detectives Michael Qualls and Sutherland, who were assigned to the case, arrived at the crime scene and reviewed a nearby building's video surveillance of the area. The surveillance revealed an altercation between two individuals, who were later identified as Wilson and Brown. Soon after, the detectives and Creamer went to defendant's apartment, where defendant was subsequently arrested as she matched the physical characteristics of the person observed in the video. At the time of arrest, it was also noted that defendant appeared to have blood stains on her pants. Defendant was then interviewed at the police station.

¶ 8 During her videotaped interview, defendant stated she had been in a romantic relationship with Brown for nearly two years and they lived together. Contrary to what she had stated at the crime scene, defendant explained that Brown left the apartment after dinner and when he returned, the pair began to argue because Brown accused her of infidelity. Defendant grabbed a knife and left the apartment, but Brown followed her. At this point, defendant made the 911 call described above. The argument continued, and Brown told her he was going to "stomp [her] ears together." Brown grabbed her and moved as though to strike her with his hand. Defendant then stabbed him multiple times. Defendant further stated that: she was under the influence of alcohol

and heroin that day; she knew Brown did not have a weapon on him at the time of the incident; and she had not intended to kill him.

¶ 9 At the close of the State's case, defendant moved for a directed finding. The court granted the motion on count 1 of the indictment, which alleged that she knowingly or intentionally stabbed and killed Brown (720 ILCS 5/9-1(a)(1) (West 2012)), but denied it in regards to count 2, which alleged that she stabbed and killed Brown, knowing that such act created a strong probability of death or great bodily harm (720 ILCS 5/9-1(a)(2) (West 2012)).

¶ 10 Defendant's theory of the case at trial was that she was acting in self-defense. The defense's case consisted of Brown's prior instances of domestic violence inflicted upon defendant. This included testimony from Tyree Gates, who witnessed Brown choking defendant and attempting to push her over a bridge on August 21, 2013 (though there was no evidence of an arrest from this incident), and Brown's September 11, 2014, conviction for domestic battery against defendant, to which the parties stipulated.

¶ 11 At the close of all of the evidence, the court found defendant guilty of the lesser-included offense of second degree murder under count 2 of the indictment because defendant acted with the unreasonable belief that the force she used was justified. Defendant filed a motion for a new trial, which the court denied.

¶ 12 At sentencing, the presentence investigation report (PSI) was entered into evidence, which stated that defendant, by her own admission, had been using heroin for years. It also included defendant's criminal history, which consisted of three drug possession convictions from 2003 and one prostitution conviction from 2004. In aggravation, the State noted defendant’s prior criminal history and that she had now escalated to the “most extreme of the violent

offenses." The State asked for the maximum sentence. Defendant's daughter, Dawn Wilson, testified that defendant was a recovering drug addict who was trying to "get" herself together. She also testified that defendant helped with childcare for her three children. In mitigation, defense counsel pointed out that defendant's prior convictions were from a decade ago and were not violent in nature. Additionally, counsel argued defendant was a battered woman, who did not intend to kill Brown that night. In asking for the minimum sentence of four years' imprisonment, counsel stated that defendant was unlikely to reoffend and was not likely to commit another violent crime. In allocution, defendant stated that she was sorry for what happened and she never intended to kill Brown.

¶ 13 In announcing sentence, the court noted that it was considering "the evidence presented in aggravation, mitigation, statutory factors in aggravation, mitigation, financial impact of incarceration, *** the arguments of the attorneys, and the defendant's allocution." The court also noted that there were "mitigating aspects of the case," but that defendant did have a criminal history, which although "drug-oriented[,] *** can't be denied." The court sentenced defendant to 12 years' imprisonment. Defendant's motion to reconsider sentence was denied.

¶ 14 On appeal, defendant contends that her 12-year sentence is excessive because the court failed to consider certain mitigating factors, specifically the remoteness and nonviolent nature of her criminal history, her history of drug abuse, and the domestic violence inflicted by Brown. She also argues that the court improperly considered the fact of Brown's death in aggravation. Defendant requests that we reverse her sentence and remand for resentencing. After reviewing the record, we decline to do so.

¶ 15 The Illinois Constitution requires a trial court to impose a sentence that balances the seriousness of the offense and the defendant's rehabilitative potential. Ill. Const. 1970, art. I, § 11; *People v. Lee*, 379 Ill. App. 3d 533, 539 (2008). To achieve such balance, the trial court must consider both aggravating and mitigating factors including: "the nature and circumstances of the crime, the defendant's conduct in the commission of the crime, and the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment and education." *People v. Maldonado*, 240 Ill. App. 3d 470, 485-86 (1992).

¶ 16 The trial court has broad discretion powers in imposing a sentence, and its sentencing decisions are entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). A reviewing court gives great deference to a trial court's judgment regarding sentencing because the trial court, " 'having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court." *Id*., quoting *People v. Fern*, 189 Ill. 2d 48, 53 (1999); see also *People v. Sullivan*, 2014 IL App (3d) 120312 ¶ 51. Accordingly, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 213. Pursuant to Illinois Supreme Court Rule 615(b)(4), reviewing courts have the power to reduce sentences (*People v. Jackson*, 375 Ill. App. 3d 796, 800 (2007)); however, "the scope of an appellate court's examination of a sentence imposed by the trial court is limited to whether the record discloses that the trial court abused its discretion" (*People v. O'Neal*, 125 Ill. 2d 291, 298 (1988)).

¶ 17 Here, we find that the court did not abuse its discretion in imposing a sentence of 12 years' imprisonment. Defendant was convicted of second degree murder, a Class 1 felony with a

statutory sentencing range of 4 to 20 years' imprisonment. 720 ILCS 5/9-2(d) (West 2012); 730 ILCS 5/5-4.5-30(a) (West 2012). In this case, the court's sentence falls within the statutory range, and thus, we must presume that it is proper. See *People v. Hamilton*, 361 Ill. App. 3d 836, 846 (2005). Such a sentence will only be overturned upon "an affirmative showing that the sentence imposed greatly departs from the spirit of the law or is manifestly contrary to constitutional guidelines." *People v. Boclair*, 225 Ill. App. 3d 331, 335 (1992). Defendant is unable to make such a showing.

¶ 18 Defendant argues that the trial court did not consider the remoteness and nonviolent nature of her criminal history, the history of domestic violence inflicted by Brown, and her heroin addiction. However, absent some indication to the contrary, the trial court is presumed to have properly considered all relevant factors and any evidence in mitigation or aggravation *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 48. Moreover, the court is not required to recite each factor considered or the weight given to the evidence presented (*People v. Merritte*, 242 Ill. App. 3d 485, 495 (1993); *People v. Garibay*, 366 Ill. App. 3d 1103, 1109 (2006)).

¶ 19 The record here shows that the trial court was aware of defendant's criminal background, including its remote and nonviolent nature, of Brown's violence towards defendant, and of her history of drug abuse. All of this information was presented to the court at sentencing, and nothing suggests that the court did not consider that evidence. In fact, contrary to defendant's contentions, the trial court specifically acknowledged defendant's criminal history and noted the "mitigating aspects" of the case, namely the history of domestic violence and alleged provocation. See *People v. Burton*, 184 Ill. 2d 1, 34 (1998) (a trial court's express mention of one mitigating factor does not mean that other mitigating factors were ignored in the court's decision

making process). Additionally, in issuing defendant's sentence, the trial court stated that it had considered the statutory factors in light of the aggravating and mitigating evidence, along with the financial impact of incarceration and defendant's allocution. The court also pointed out the seriousness of the offense and defendant's drug-oriented criminal history. See *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 123 (the sentencing court is not required to give greater weight to mitigating factors than to the seriousness of the offense). The sentence imposed is basically in the middle of the statutory range for this offense. Based on this record, we cannot say that the trial court abused its discretion in imposing a sentence of 12 years' imprisonment.

¶ 20 Nevertheless, defendant claims that the trial court failed to consider, in mitigation, her heroin addiction, as illustrated in the PSI. Although the trial court did not mention this at sentencing, as stated above, the court is not required to recite every factor considered. *People v. Holman*, 2014 IL App (3d) 120905 ¶ 73. That said, we also note that our courts have not conclusively determined whether drug addiction is a mitigating or aggravating factor. *People v. Smith*, 214 Ill. App. 3d 327, 339-40 (1991); *People v. Scott*, 225 Ill. App. 3d 938, 941 (1992). As such, a trial court, then, may consider it in either fashion. *Smith*, 214 Ill. App. 3d at 340. Second, the presence of a mitigating factor does not automatically entitle the defendant to the minimum sentence within the statutory range. *People v. Sharp*, 2015 IL App (1st) 130438 ¶ 133. Finally, given that the record shows that the trial court considered this mitigating evidence, it appears that defendant seeks to have this court reweigh the sentencing evidence. As previously mentioned, we are unable to do so. See *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46 (the reviewing court will not re-weigh evidence the trial court relied upon in sentencing the defendant).

¶ 21 Defendant's remaining argument is similarly unsuccessful. She claims that the trial court improperly considered in aggravation matters that are implicit in the offense, specifically the fact that the offense resulted in Brown's death. See *People v. Saldivar*, 113 Ill. 2d 256, 264-71 (1986) (sentencing judge could not consider victim's death in aggravation because death was implicit in offense of voluntary manslaughter). To support this contention, defendant points to the State's argument at sentencing that "defendant's actions resulted in the death of Andre Brown" and "[s]he's certainly moved to the most extreme of the violent offenses." However, although the State referenced Brown's death in its argument, there is no indication in the record that the court considered the fact of Brown's death as an aggravating factor in its decision to sentence defendant to twelve years' imprisonment. See *People v. Newlin*, 2014 IL App (5th) 120518 (the reviewing court found that the court did not consider the death of the victim as a factor in aggravation). Thus, defendant's argument is belied by the record and without merit.

¶ 22 Accordingly, we do not find that defendant's sentence was greatly at variance with the purpose and spirit of the law or manifestly disproportionate to the seriousness of the offense. See *Alexander*, 239 Ill. 2d at 212-15 (upholding the trial court's sentence because the appropriate factors were adequately considered and reversing the appellate court's finding of an excessive sentence because it had improperly reweighed the sentencing factors and substituted its own judgment for that of the trial court).

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

¶ 24 Affirmed.