2019 IL App (2d) 170053-U
No. 2-17-0053
Order filed August 2, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. WALTER L. WOODARD, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 08-CF-2002 Honorable Ronald J. White, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to 38 years' imprisonment for first-degree murder, as the court considered whether defendant was strongly provoked (and properly found that he was not) and considered defendant's rehabilitative potential.

¶ 2 Defendant, Walter L. Woodard, was convicted of first-degree murder (720 ICS 5/9-1(a)(1), (a)(2) (West 2008)) and sentenced to 45 years' imprisonment. He appealed, arguing that his sentence was excessive. This court determined that the trial court failed to consider whether defendant was strongly provoked when he attacked the victim, Allan Walker. Accordingly, we vacated the sentence and remanded the cause for a new sentencing hearing. *People v. Woodard*,

2013 IL App (2d) 120643-U. On remand, the court imposed a 38-year sentence. Defendant challenges that sentence on appeal. Specifically, defendant claims that his 38-year sentence is excessive because the trial court failed to consider (1) the fact that he was strongly provoked to kill Walker and (2) his rehabilitative potential. We disagree. Thus, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Trial and First Sentencing Hearing

¶ 5 Defendant witnessed the murder of his mother and father when he was very young. Left with no one to take care of him, he was placed in 28 foster homes during his childhood. In several of these homes, he was abused, and he developed many mental health issues that were never properly addressed.

¶ 6 Also during this time, defendant met Walker. Although Walker and defendant were close and considered each other brothers, Walker, like other people in defendant's life, acted violently toward defendant. Walker slammed defendant to the ground following a basketball game, attempted to hit defendant with a baseball bat when Walker's mother asked defendant to leave her home, and punched defendant in the face and cut him with a box cutter when defendant would not give Walker money. Walker was also abusive toward several women he dated. One of these women was Ashley Riley.

¶ 7 Riley testified at trial about the events leading up to Walker's death. She said that, at the end of May 2008, she and Walker were visiting with defendant, who was 20 years old at that time. The three were drinking outside of Walker and Riley's apartment when Walker fell asleep. Riley and defendant left Walker outside. Walker was angry about that and slapped Riley. This upset defendant.

¶ 8 At around 8 a.m. the next morning, Walker confronted defendant. Defendant told Walker that he was going to leave. Walker punched defendant in the face. At Walker's insistence, Riley attempted to attend to defendant's injury. Defendant refused her help. After repeatedly referring to himself as a soldier, Walker became angry. He grabbed a knife and confronted defendant. Riley took the knife from Walker, telling him that it was not worth it.

¶ 9 Walker and defendant then left together to get cigarettes. When they returned five minutes later, it appeared to Riley that the men had reconciled. Riley stated that both men were apologizing to each other and laughing.

¶ 10 Approximately 20 or 30 minutes later, Walker was talking to Riley about how much he loved defendant and needed to control his violent ways. Riley saw defendant, who was in another room, pacing around. Riley then saw defendant come at Walker from behind and stab him. Walker was stabbed a total of 15 times. As defendant was stabbing Walker, he was yelling about how Walker was dead and would not be able to harm him or Riley again.

¶ 11 Although no exact timeline was presented concerning when Riley called police and they arrived, one officer indicated that he heard the dispatch at around 10 a.m.

¶ 12 At defendant's sentencing hearing, the circumstances of defendant's upbringing were presented. Despite all the difficulties defendant faced, he graduated from high school and worked some. While awaiting sentencing, defendant got into some fights, at least one of which he instigated.

¶ 13 B. Second Sentencing Hearing

¶ 14 Defendant's second sentencing hearing was held in December 2014. Evidence presented at that hearing revealed that, between August 2008 and August 2011, defendant was involved in eight incidents with correctional officers. In some of these incidents he disobeyed direct orders

and in others he was fighting with other inmates and/or correctional officers. After one incident in August 2010, where defendant took property from another inmate and punched that inmate at least once, he was labeled a security risk.

¶ 15 In his statement to the court, defendant emphasized that jail was a difficult place to live and that how he behaved in jail did not represent his true character. Defendant also expressed remorse and told the court that he desired to be rehabilitated. To this end, he said that prison should be about rehabilitation and not revenge.

¶ 16 The trial court sentenced defendant to 38 years in prison. In doing so, the court addressed defendant's upbringing, noting that defendant spent 12 years in the custody of the Department of Children and Family Services. During that time, defendant committed various crimes, and the juvenile justice system repeatedly failed to help defendant. The court also found that defendant was truly remorseful.

¶ 17 However, the court then commented that defendant's attitude and character indicated that he was likely to commit another offense. It addressed the several incidents defendant was involved in in jail, noting that it would infer that defendant posed no problems in prison after 2011. The court asserted:

> "I hear you, young man. And you tell me the Winnebago County Jail is not my life, it's not who I am. And I have to make comments about that.
>
> You said this should never have happened. It should never have happened. I know why this happened. And I'll touch [on] that in just a moment. I wish it hadn't happened. I wish on May 27, [20]08, things would have been different for you and for Mr. Allan Walker. You tell me that the chances of this happening again are slim. You

ask for a lighter sentence. You asked me to rehabilitate and not do revenge. That's not what my job is and who I am.

Not too often have I been able to make this comment. You said that you are sorry for what happened, and you asked me to not judge you on what happened in jail, but that was presented to me so during that period of time when you were incarcerated here, during that period of time I consider, but I also have to consider what happened on May 27 of [20]08. So I have to consider that along with everything else and I'm going to consider everything."

¶ 18 The court then noted that "[t]here was more than an adequate cooling off time" before Walker was killed. The court said:

"I do not find that you acted under strong provocation. I want that clear on the record. Everything was fine. There was a substantial period of time had lapsed [*sic*]. No provocation. There was no testimony that [Walker] had a weapon, caused you any difficulty or problem once you had returned back and were in the apartment for a period of time."

¶ 19 Defendant filed a motion to reconsider, claiming that the court "failed to take into consideration the rehabilitative potential of the Defendant, and the statutory factors in mitigation as listed in 730 ILCS 5/5-5-3.1" The trial court denied the motion. This timely appeal followed.

¶ 20 II. ANALYSIS

¶ 21 At issue in this appeal is whether defendant's 38-year sentence is excessive. It is well established that the trial court is the proper forum to determine a sentence and that the trial court's sentencing decision is entitled to great deference and weight. *People v. Latona*, 184 Ill. 2d 260, 272 (1998). A sentence within the statutory range for the offense will not be disturbed

absent an abuse of discretion. *People v. Coleman*, 166 Ill. 2d 247, 258 (1995). A trial court abuses its discretion when the sentence "is 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).

¶ 22 In imposing a sentence, the weight to be attributed to each factor in aggravation and mitigation depends upon the circumstances of the case. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). While a sentencing court " 'may not refuse to consider relevant evidence presented in mitigation' " (*People v. Calhoun*, 404 Ill. App. 3d 362, 386 (2010) (quoting *People v. Heinz*, 391 Ill. App. 3d 854, 865 (2009)), it "has no obligation to recite and assign value to each factor presented at a sentencing hearing" (*People v. Hill*, 408 Ill. App. 3d 23, 30 (2011)). Where mitigating evidence was before the court, we presume that the sentencing judge considered the evidence, absent some indication to the contrary other than the sentence itself. *People v. Allen*, 344 Ill. App. 3d 949, 959 (2003).

¶ 23 Here, defendant was convicted of first-degree murder. 720 ILCS 5/9-1(a)(1), (a)(2) (West 2008). A defendant convicted of that offense faces a prison term between 20 and 60 years. 730 ILCS 5/5-4.5-20(a)(1) (West 2014). Defendant's 38-year sentence fell below the middle of this range. In fashioning this sentence, the court asserted that it considered "everything" presented to it. It commented on, among other things, defendant's horrible childhood and mental health issues, but it balanced against those facts many other considerations like the gravity of the crime and defendant's behavior in jail. When we reflect on all that was presented to the trial court, we cannot conclude that the trial court abused its discretion in imposing a 38-year sentence.

¶ 24 Defendant argues that his sentence is excessive because the court failed to consider (1) the fact that he was strongly provoked to kill Walker and (2) his rehabilitative potential. We consider each of these issues in turn.

¶ 25 First, we address whether the court considered that defendant was strongly provoked to kill Walker. Section 5-5-3.1(a) of the Unified Code of Corrections (Code) (730 ILCS 5/5-5-3.1(a) (West 2014)) lists a number of factors that "shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment." One of those factors is whether "[t]he defendant acted under a strong provocation." *Id.* § 5-5-3.1(a)(3).

> "While 'strong provocation' is not defined in the [Code], the similar term 'serious provocation' has a well-established meaning when considering whether an individual acted under serious provocation sufficient to reduce the offense of first degree murder to second degree murder, and is limited to the categories of substantial physical injury or assault, mutual quarrel or combat, illegal arrest, and spousal adultery." *People v. Powell*, 2013 IL App (1st) 111654, ¶ 36 (quoting *People v. Merritte*, 242 Ill. App. 3d 485, 492 (1993)).

"While strong provocation as a mitigating factor at sentencing encompasses a wider range of conduct than serious provocation for the purposes of second[-]degree murder [citation], the provocation must nonetheless be direct and immediate [citation]." *Id.*

¶ 26 Here, we cannot conclude that the court failed to consider whether defendant was strongly provoked to kill Walker. Rather, the court explicitly considered whether defendant was strongly provoked and found that he was not. The court observed that Walker had acted violently toward defendant in the past, including earlier on the morning of Walker's death. However, defendant willingly left the apartment with Walker after Walker attacked him. When

they returned, the men were apologizing to each other and laughing. Walker then went to help Riley, and defendant remained in the apartment.[1] From that point until the time that defendant stabbed Walker, nothing changed. Walker continued to express remorse for acting violently toward defendant and recognized that he needed to address his anger issues. Given that cooling-off period between when Walker attacked defendant and when defendant killed Walker, and despite Walker's past abuse of defendant and others, the court determined that defendant was not strongly provoked to kill Walker. We cannot conclude that the court erred in its assessment.

¶ 27 Defendant argues that the trial court erred both legally and factually in concluding that this cooling-off period negated a finding that defendant was strongly provoked. Legally, defendant contends that the court conflated strong provocation with serious provocation. Defendant seems to argue that, because the court found that there was a cooling-off period, which term is used in addressing whether a defendant was seriously provoked, the court evaluated whether defendant was strongly provoked in a limited way, rather than its more broadly intended way. We disagree. Nothing in the record indicates that the court was commenting on whether defendant was seriously provoked. Indeed, the record expressly reflects the exact opposite. Moreover, although the two terms are different, they are related, and defendant cites no authority indicating that whether there was a cooling-off period is irrelevant in assessing strong provocation.

[1] Defendant suggests that Walker locked him in the apartment. Given that defendant was found outside of the apartment after Walker was killed, we cannot say that he was unable to leave the apartment.

¶ 28 Factually, defendant claims that likely less than one hour passed between when Walker attacked defendant and when defendant killed Walker. [2] Defendant argues that, given this short length of time, the prior altercation necessarily strongly provoked defendant to kill Walker. Again, we disagree. " '[N]o yardstick of time can be used by the court to measure a reasonable period of passion.' " *People v. Yarbrough*, 269 Ill. App. 3d 96, 101 (1994) (quoting *People v. Harris*, 8 Ill. 2d 431, 435 (1956)). Rather, what constitutes a sufficient cooling-off period varies depending on the facts of each case. *Id.* Here, in our view, the length of time that passed is less important than what transpired during that length of time. It was only after both defendant and Walker apologized and joked around with each other that defendant attacked Walker.

¶ 29 We next consider whether the court failed to consider defendant's rehabilitative potential. One of the purposes of the Code is to "restore offenders to useful citizenship." 730 ILCS 5/1-1-2(d) (West 2014); see also Ill. Const. 1970, art. I, § 11. However, "[t]he possibility of an individual offender's rehabilitation is not the sole factor to be considered in sentencing." *People v. Gaines*, 88 Ill. 2d 342, 382 (1981). Indeed, courts have found that the seriousness of the offense should be afforded greater weight than a defendant's rehabilitative potential. *People v. Laliberte*, 246 Ill. App. 3d 159, 177 (1993). Factors that reflect on a defendant's rehabilitative potential include a defendant's remorse as well as the likelihood that the defendant's criminal conduct will recur. *People v. Balsar*, 178 Ill. App. 3d 876, 881 (1989).

¶ 30 Here, although the court found that defendant was truly remorseful and commented on many other mitigating factors, it also noted that defendant's criminal conduct was the result of circumstances likely to recur. For example, while the court considered the fact that defendant

[2] As the parties recognize, the record is unclear as to when exactly Walker was killed in relation to the earlier altercation.

posed no problems in prison, it also noted that defendant, only a few years earlier, exhibited horrible behavior in jail. Added to that was the serious nature of the offense defendant was convicted of. Defendant stabbed Walker, a man he considered a close friend and brother, multiple times while Walker had his back to defendant. After reviewing the record and the court's comments, we cannot conclude that the court failed to consider defendant's rehabilitative potential.

¶ 31 Defendant contends that the court explicitly said that it would not consider his rehabilitative potential. To support this contention, defendant cites the fact that the court said that defendant "asked me to rehabilitate and not do revenge" and then indicated that this was "not what my job is and who I am."[3] We do not read the court's comment as a refusal to consider defendant's rehabilitative potential. Rather, when we consider the entirety of the court's ruling, it is clear that the court was assuring defendant that it would not impose a sentence based on revenge.

¶ 32 Defendant also claims that *People v. Margentina*, 261 Ill. App. 3d 247 (1994), warrants a different conclusion. We disagree. There, the defendant, an intellectually gifted teenager who had a tumultuous upbringing, had a limited criminal background, and was "unusually cooperative [with his probation officer] and responsible," killed his stepfather's roommate after the roommate repeatedly abused the stepfather's dog and made a derogatory comment about a

[3] The State claims that defendant forfeited his challenge to the trial court's remark because he did not challenge it in the trial court. We disagree. In our view, the fact that defendant specifically raised the issue of his rehabilitative potential in his motion to reconsider his sentence preserved this issue for our consideration. See *In re Angelique E.*, 389 Ill. App. 3d 430, 432 (2009) (issues not raised in motion to reconsider sentence are forfeited).

girl the defendant dated. *Id.* at 248-49. The trial court found the defendant guilty of first-degree murder and sentenced him to 50 years' imprisonment. *Id.* at 247, 249. On appeal, the court determined that the sentence was excessive because the trial court failed to consider several mitigating factors, such as the defendant's rehabilitative potential. See *id.* at 250.

¶ 33 Here, while there are many similarities between the defendant in *Margentina* and defendant here, there are also many differences. For example, defendant was not a teenager when he killed Walker, his sentence was 12 years shorter than the defendant's in *Margentina*, and the animosity between defendant and Walker had attenuated when Walker was killed. Moreover, unlike defendant here, the defendant in *Margentina* was nothing but compliant and cooperative with correctional employees, and the trial court there did not find that the circumstances of the defendant's conduct were likely to recur.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 36 Affirmed.