

NOTICE
Decision filed 02/05/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 170373-U

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NOS. 5-17-0373 & 5-17-0374 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	Nos. 07-CF-51, 07-CF-1264
)	
ROBERT L. PLAIR,)	Honorable
)	Randall W. Kelley,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court did not err in denying defendant’s motion for reduction of his sentence where defendant did not show that the court’s imposition of a 22-year sentence was unauthorized by law or an abuse of discretion.
- ¶ 2 Defendant, Robert L. Plair, pled guilty to one count of armed violence and also admitted that he violated a condition of his probation imposed for violating an order of protection. The circuit court imposed a term of 22 years in prison for armed violence, terminated defendant’s probation as unsuccessful, and imposed a concurrent term of 6 years on the violation of the protective order. Following a postconviction hearing, the

circuit court denied defendant's motion to reconsider or reduce his sentence. Defendant appealed. For reasons that follow, the judgment of the circuit court is affirmed.

¶ 3 In February 2006, Patricia Taylor sought and was granted an order of protection against defendant pursuant to the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 *et seq.* (West 2006)). As part of the order of protection, defendant was directed to have no contact with Patricia Taylor. The two had a prior relationship. In January 2007, defendant was charged with violating an order of protection, subsequent offense, a Class 4 felony. On May 14, 2007, defendant pled guilty to that charge. In reciting the factual basis for the plea, the State indicated that it would introduce evidence to establish defendant entered Patricia Taylor's apartment, a protected location under the order of protection, displayed a knife, forced Patricia to lie down on the couch, and told Patricia that he would burn down her home. Defendant then left the building. The trial court determined that the factual basis was sufficient to support defendant's guilty plea. After admonishing defendant about his rights, the court sentenced defendant to 24 months' probation. The court further ordered defendant to undergo a mental health evaluation and to have no contact with Patricia Taylor.

¶ 4 On October 22, 2007, defendant was charged with two counts of armed violence against Patricia Taylor. Subsequently, the State filed a petition to revoke defendant's probation. On August 11, 2008, defendant reached a partial plea agreement with the State. Defendant pled guilty to one count of armed violence and admitted to the probation violation. In exchange, the State dismissed the second count of armed violence. In recounting the factual basis for defendant's plea, the State indicated that on October 20,

2007, Patricia Taylor was walking to a restaurant when she crossed paths with defendant. Defendant asked Patricia for money to buy beer. When Patricia refused the request, defendant pulled out a knife, with an eight-inch blade, and stabbed her in the chest and arm. Patricia received inpatient and outpatient treatment for her injuries. Defendant stipulated to the factual basis. The court found that defendant had been advised of the charges against him, the potential range of punishment for each charge, the consequences of his plea, and his constitutional rights. The court determined that there was an adequate factual basis to support the plea, and that defendant's guilty plea was knowing and voluntary. After admonishing defendant about his rights and the potential sentences on both the plea to the armed violence count and the admission of guilt to the probation violation, the court accepted defendant's guilty pleas and scheduled a sentencing hearing.

¶ 5 On September 29, 2008, defendant appeared for sentencing. The State offered the presentence investigation report and called Patricia Taylor to present her victim impact statement. Defendant presented no additional evidence, but he did address the court. Defendant expressed remorse for his conduct, noting it had been fueled by anger, alcohol, and drugs. He apologized to the victim and her family for the harm he had caused. The court found that defendant's mental illness and his substance abuse issues were factors in mitigation and defendant's extensive criminal history was a factor in aggravation. The court sentenced defendant to 22 years in prison and a 3-year period of mandatory supervised release on the armed violence charge. The court revoked defendant's probation and imposed a concurrent term of six years in prison on the protective order violation, with a recommendation for mental health and drug treatment. The court

informed defendant of his rights of appeal, and issued a separate order directing the court reporter to prepare a transcript of the sentencing hearing.

¶ 6 On October 26, 2008, defendant mailed a *pro se* motion for reduction of sentence. Defendant claimed that his sentence was too high for the offense because he did not kill anyone. Defendant stated that his sentence was supposed to be 6 to 30 years, not 10 to 30 years. He also noted that his children and his aging mother relied on him for care. Defendant's motion was file-marked October 31, 2008. In an order entered that same date, the circuit court noted defendant's motion was "received on 10-31-08." The court determined that jurisdiction was "now vested in the appellate court," and denied the motion. The order was served on defendant by certified mail on or about November 6, 2008. Defendant did not appeal.

¶ 7 In November 2010, defendant filed a *pro se* motion in the circuit court, seeking copies of the common law record and transcripts of the plea and sentencing proceedings. The court initially denied defendant's request, finding that the record and transcripts had been provided to defendant's court-appointed appellate attorney. On June 10, 2011, defendant filed a subsequent motion for the record and transcripts. Therein, defendant informed the court that his court-appointed attorney had not provided the transcripts to him, and that his family had been unable to obtain the transcripts. In an order dated May 11, 2012, the court granted defendant's request for the record and transcripts of the proceedings.

¶ 8 On February 22, 2013, defendant filed a *pro se* postconviction petition in which he raised several allegations of ineffective assistance of counsel, including claims that his

trial counsel failed to present a report of a psychological evaluation and other evidence of defendant's psychological condition at the time of the occurrence, and that counsel failed to immediately appeal defendant's sentence. Defendant also claimed his plea was not knowingly and voluntarily made. On May 10, 2013, the circuit court entered an order summarily dismissing defendant's petition. The court found that defendant failed to state a claim for ineffective assistance of counsel, and noted that the sentencing court had considered defendant's mental illness as a factor in mitigation. Defendant appealed. In an unpublished order entered June 29, 2016, this court reversed the summary dismissal of the *pro se* petition, and remanded the case to the circuit court for second-stage postconviction proceedings. 2016 IL App (5th) 130279-U (June 29, 2016).

¶ 9 On remand, defendant's court-appointed attorney filed an amended postconviction petition. In the amended petition, defendant alleged that his original motion for reduction of sentence had been timely filed under the mail box rule, and that he was denied due process and equal protection when the circuit court erroneously dismissed his motion as untimely. Defendant further alleged that he would have prevailed on the motion because his sentence was not proportionate to the alleged crime committed. In addition, defendant argued that his plea counsel was ineffective in failing to appeal immediately following sentencing, and that his guilty plea was not knowing and voluntary. The State filed a motion to dismiss defendant's petition, and argued that the petition was not timely filed and failed to satisfy the requirements under *Strickland v. Washington*, 466 U.S. 668 (1984). The court denied the State's motion to dismiss and ordered a third-stage evidentiary hearing.

¶ 10 During the third-stage proceedings, defendant's attorney notified the trial court that defendant would withdraw the allegations involving ineffective assistance of counsel and involuntariness of his guilty plea, but would proceed on the motion for reduction of sentence. With leave of court, defendant's counsel filed an amended motion to reduce or modify defendant's sentence. Therein, defendant argued that the 22-year sentence imposed was not in keeping with his "past history of criminality, occupational, or personal habits, mental history, family situation, economic status, or education," and that the sentence was "unduly harsh and not in keeping with the alternatives available to the court to assist the Defendant in his rehabilitation." Defendant attached two letters from members of the clergy who vouched for defendant's family ties and his rehabilitation.

¶ 11 During the hearing on the motion for reduction of sentence, defendant's counsel argued that the sentencing judge failed to consider all the factors in mitigation that were set forth in the PSI, including defendant's long history of serious mental illness and his serious substance abuse issues. In response, the State argued that the sentencing judge had considered the factors in aggravation and mitigation set forth in the PSI. The State pointed out that defendant had an extensive history of criminal convictions, including felony and misdemeanor assaults, and that prior attempts at rehabilitation had been unsuccessful. The State asked that the previously imposed sentence be maintained. After considering the record and the arguments of counsel, the circuit court denied defendant's motion to reduce or modify his sentence. The court specifically found the trial judge had properly considered all factors in aggravation and mitigation, including defendant's criminal history, and his mental illness and substance abuse issues. The court further

found the sentence imposed fell within the statutory range for the offense charged. Defendant appealed.

¶ 12 On appeal, defendant contends that the 22-year sentence is excessive. Defendant argues that the sentencing court failed to take into account significant mitigating factors, including his significant mental illness and repeated hospitalizations, his long history of untreated alcohol and drug addiction, his sincere remorse, and his family's support of his rehabilitation efforts. Defendant asks this court to reduce his sentence to the minimum of 10 years in prison, or, in the alternative, remand the matter for resentencing.

¶ 13 The trial court has broad discretion in imposing sentence. *People v. Jones*, 168 Ill. 2d 367, 373, 659 N.E.2d 1306, 1308 (1995). Where the sentence imposed by the trial court is within the statutory range of permissible sentences for the pertinent criminal offense, a reviewing court has the power to disturb the sentence only if it finds that the trial court abused its discretion in the sentence imposed. *Jones*, 168 Ill. 2d at 373-74. A sentencing determination will be deemed an abuse of discretion where the sentence is at great variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010). Where the reviewing court determines that the sentence imposed was not authorized by law, the reviewing court has the power to reduce the sentence without reaching the question of abuse of discretion. See Ill. S. Ct. R. 615(b)(4) (eff. Jan. 1, 1967); *Jones*, 168 Ill. 2d at 375. Our supreme court has counseled that a reviewing court's authority under Illinois Supreme Court Rule 615(b)(4) is to be exercised "cautiously and sparingly." (Internal quotation marks omitted.) *Alexander*, 239 Ill. 2d at

212; *Jones*, 168 Ill. 2d at 378. In considering the propriety of a sentence, a court of review must not substitute its judgment and reduce a sentence imposed by the trial court merely because the reviewing court would have weighed pertinent factors differently. *Alexander*, 239 Ill. 2d at 213.

¶ 14 In this case, the sentencing court imposed the 22-year sentence after considering appropriate factors in mitigation and aggravation, including defendant's mental health and substance abuse issues, his criminal history, and his rehabilitation potential. Defendant's action in this case was violent and unprovoked, and his victim suffered serious physical and emotional injuries. The sentence imposed is within the permissible statutory range for the armed violence offense. Additionally, the sentence is not at great variance with the spirit and purpose of the law, and it is not manifestly disproportionate to the nature of the offense. After reviewing the record, we do not find that the imposition of a 22-year sentence was unauthorized by law, or an abuse of discretion. Accordingly, the judgment of the circuit court of St. Clair County is affirmed.

¶ 15 Affirmed.