

No. 1-12-0655

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 08 CR 19003 |
| |) | |
| ANTOINE LACY, |) | Honorable |
| |) | Kenneth J. Wadas, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

ORDER

¶ 1 **Held:** We uphold the sentence imposed by the trial court against defendant’s challenge that the judge improperly considered factors inherent in the offense as aggravating factors.

¶ 2 Following a jury trial, defendant Antoine Lacy was convicted of first degree murder and sentenced to 60 years’ imprisonment. On appeal, he contends on appeal that the trial court erred by considering an element inherent in the offense as aggravating factors at sentencing. For the reasons stated below, we affirm.

¶ 3 Defendant and codefendants Luis Pena, Joseph Chico, and Raymond Jones were charged with first degree murder in the shooting death of Nequiel Fowler on or about September 1, 2008. The indictment alleged that defendants were armed with firearms and that Pena personally discharged a firearm causing Fowler's death. Chico pled guilty to conspiracy to commit murder in exchange for his testimony, and defendant was tried simultaneously with Pena before separate juries.

¶ 4 The evidence at trial was that, on Labor Day, September 1, 2008, 10-year-old Fowler was playing outside near 87th Street and Exchange Avenue in Chicago with her blind younger sister and neighbor children when she was fatally shot after someone yelled "King killer!"

¶ 5 Chico testified that he, defendant, and Pena were members of the Latin Dragons gang, hostile to the nearby Latin Kings gang to the point where Dragons members would kill Kings members on sight. On the day of Fowler's death, Chico, Pena, and defendant went to the vicinity of 87th and Exchange. On the way there, defendant phoned another Dragons member to obtain a gun, told Chico and Pena that codefendant Jones (a friend of Dragons members) had a gun, met with Jones, and left in a car with another man to go to 87th and Exchange, which was Kings "territory." Later, defendant phoned Chico to report seeing three Kings members on Exchange Avenue. About a minute after that, defendant met Chico and brought him to Pena and Jones outside Jones' home nearby. Defendant told Pena to go shoot some Kings members nearby. Jones went into his home briefly to change his shirt, in case the Kings members had seen him earlier, but Pena was still wearing his blue shirt from earlier in the day. Defendant left with Chico in his car, and as they were leaving heard several gunshots nearby. A few minutes later, Pena got into Chico's car, now wearing a white T-shirt.

¶ 6 Defendant's roommate and Pena's cousin, another Dragons member, corroborated that defendant, Pena, and Chico were Dragons members and were together on Labor Day 2008. Jones' father testified that Jones had a gun a few days before Labor Day 2008. He saw Jones with defendant and codefendants outside his home on Labor Day; he later heard gunshots, followed by Pena returning holding a blue cloth that he gave to Jones. Police found a gun and blue shirt in Jones' home; the gun was shown to have fired a bullet recovered from Fowler's body and the bullets and shell casings found at the scene, and the blue shirt bore gunshot residue and DNA consistent with Pena.

¶ 7 On this evidence, the jury convicted defendant of first degree murder but found him not guilty of committing the offense while armed with a firearm.

¶ 8 The pre-sentencing investigation report (PSI) indicated that defendant, 29 years old in 2012, had multiple convictions for cannabis offenses and a 2005 conviction for aggravated unlawful use of a weapon by a felon and aggravated assault. Defendant was raised by his mother with four step-siblings and denied any childhood abuse or neglect. He had no children and was never married, was financially supported by his girlfriend before this offense, completed elementary school but was expelled from high school in his senior year due to a prior imprisonment, and he had some prior unskilled employment. Defendant reported no physical or mental illness, drank alcohol socially and used marijuana, and admitted that he was under the influence of marijuana at the time of this offense. Defendant admitted membership in the Latin Dragons since age 11.

¶ 9 At the sentencing hearing, the parties accepted the PSI as described above. Fowler's mother read her victim impact statement describing Fowler's short life and the impact of seeing her die. Fowler's grandmother read her victim impact statement describing the emotional impact

of Fowler's death on herself, Fowler's mother, and Fowler's two siblings, in particular her blind sister who was with her when she was shot and killed. Following arguments in aggravation and mitigation, the court sentenced defendant to the maximum prison term of 60 years. The court listed and considered factors in aggravation and mitigation from the Code of Corrections. 730 ILCS 5/5-5-3.1(a), -3.2(a) (West 2010). As to causing or threatening serious harm, the first statutory aggravating factor, the court said:

“Normally that would be inherent in the nature of the charge, but the evidence actually did point out that the defendant was more than encourager and orderer of the conduct which resulted in the death of the victim by ordering shots to be fired at the Latin Kings. *** There is kind of a causation factor here where maybe but for the defendant's conduct, the ultimate acts would not have happened.”

The second statutory aggravating factor did not apply, but the third – defendant's prior convictions – did, as did the factors of deterrence, being on parole at the time of the offense, and past gang-related offenses. The court explained *seriatim* why none of the statutory mitigating factors applied. The court denied defendant's motion to reconsider his sentence. This appeal followed.

¶ 10 On appeal, defendant contends that the trial court erred by considering an element inherent in the underlying offense as an aggravating factor at sentencing.

¶ 11 First degree murder is punishable by 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a) (West 2010). A sentence within the statutory limits is reviewed on an abuse of discretion standard, so that we may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. So long as the trial court does not consider incompetent evidence or improper

aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). This broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010).

¶ 12 In imposing a sentence, the trial court must balance the relevant factors, including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *Alexander*, 239 Ill. 2d at 213. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Snyder*, 2011 IL 111382, ¶ 36. The court does not need to expressly outline its reasoning for sentencing, and we presume that the court considered all mitigating factors on the record absent some affirmative indication to the contrary other than the sentence itself. *People v. Powell*, 2013 IL App (1st) 111654, ¶ 32; *People v. Brewer*, 2013 IL App (1st) 072821, ¶ 55. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Alexander*, 239 Ill. 2d at 214; *Brewer*, 2013 IL App (1st) 072821, ¶ 57.

¶ 13 Here, it is readily apparent from the record that the court correctly applied the statutory aggravating and mitigating factors. In relevant part, the court did not make Fowler's death an aggravating factor on its own; rather, the court found an aggravating factor in defendant's active encouragement and enabling of the fatal shooting, among many other things. It was not improper for the court to give controlling weight to the severity of the offense. Viewing the

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record as a whole and taking defendant's background into account, we cannot find that the court did not abuse its discretion in imposing sentence herein.

¶ 14 Accordingly, the judgment of the circuit court is affirmed.

¶ 15 Affirmed.