

No. 1-12-1011

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. 07 CR 4585
)	
JAMES HAMPTON,)	Honorable
)	Domenica A. Stephenson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Connors and Justice Hoffman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Twenty-year sentence for predatory criminal sexual assault of a child was not excessive; mittimus corrected.
- ¶ 2 Following a jury trial, defendant was found guilty of predatory criminal sexual assault of a child and sentenced to a 20-year term of imprisonment. On appeal, defendant contends that his sentence is excessive, and that his mittimus should be corrected to reflect an additional day of presentence credit.
- ¶ 3 Defendant was charged with two counts of predatory criminal sexual assault of a child resulting from the events that transpired on August 19, 2005, and August 20, 2005. At trial, defendant was convicted of one count of predatory criminal sexual assault of a child on evidence

showing that on the night in question, when he was 31 years old, he had sex with the victim, C.S., who was 12 years old, in a hotel room. This evidence included the testimony of C.S., defendant's statement acknowledging that he had sex with C.S. in a hotel room on that date, and expert testimony that semen that was found on C.S. during a sexual assault examination conducted on August 20, 2005, matched defendant's DNA profile.

¶ 4 At sentencing, the State introduced C.S.'s victim impact statement, in which she stated that defendant took her innocence and childhood from her, that his actions have affected her physically and emotionally, and, as a result, her personality has changed from outgoing and energetic to quiet and showing no emotion. In aggravation, the State pointed to defendant's history of adult criminal convictions, as reflected in his presentence investigation report (PSI), including three drug-related convictions, and one conviction for unlawful use of a weapon. The State argued, *inter alia*, that defendant had no respect for the law, given his criminal history and admitted previous participation in a gang, and requested that defendant be sentenced to the maximum term of 30 years' imprisonment.

¶ 5 In mitigation, defense counsel pointed to the nine letters that were submitted on defendant's behalf from various family members and a chaplain at the Cook County jail, describing their feelings for defendant and the positive role he plays in their lives. Counsel pointed out that the PSI reflects that defendant's upbringing was chaotic, that he was physically abused by several men with whom his mother was in a relationship, and that he never had a positive male role model in his life. Counsel also pointed out that the PSI reflects that defendant's mother's parental rights were terminated when he was seven years old, and that he grew up in a neighborhood where he saw a woman rolled up into a rug and burned to death, and argued that defendant became involved gangs because he was seeking structure. Counsel asked

the trial court to consider the minimum sentence in light of what defendant had to overcome in his life.

¶ 6 Defendant spoke in allocution, stating that he took full responsibility for his role in this case, and that he realized that he made a mistake. He stated that he was sorry for what he did to C.S. and her family, and asked the court to show mercy so that he could be a father to his seven children and show society that he can be a positive and productive person.

¶ 7 The trial court stated that it considered all matters in aggravation and mitigation, including all of the letters that were submitted on defendant's behalf, defendant's statements in allocution, and had reviewed the PSI. The court stated that although it appreciated the fact that defendant apologized for what occurred, that his actions were not a mistake, but rather, were a choice. The court further stated that although defendant was not raised in the best environment and did not have the best or ideal upbringing, many people in similar situations do not live a life of crime. The court stated that in looking at all of the factors in aggravation and mitigation, and the facts of the case, this was "clearly" not a case for the minimum sentence. The court thus sentenced defendant to a 20-year term of imprisonment, followed by a 20-year term of mandatory supervised release (MSR).

¶ 8 Defense counsel subsequently filed a motion to reconsider sentence, arguing that defendant's sentence was excessive, and that the court erred in sentencing defendant to a 20-year term of MSR. At the hearing on the motion, the trial court stated that defendant's 20-year sentence was "more than appropriate," and denied that portion of the motion to reconsider, but granted the MSR-related portion of the motion. In doing so, the trial court admonished defendant that his MSR-term would be "three years to life," and would be determined by the Department of Corrections.

¶ 9 On appeal, defendant does not contest the sufficiency of the evidence to sustain his conviction, but argues that his 20-year sentence is excessive in light of his abusive upbringing, minor criminal history, strong family ties, stated desire to improve himself, and earnest remorse for his actions. He further contends that the trial court failed to give adequate consideration to the financial costs of incarcerating him for 20 years. He thus requests that this court reduce his sentence.

¶ 10 The sentencing range for predatory criminal sexual assault of a child is 6 to 30 years. 720 ILCS 5/12-14.1(a)(1) (West 2005); 730 ILCS 5/5-8-1(a)(3) (West 2005). Where, as here, the sentence imposed by the court falls within the statutory range for the offense of which defendant is convicted, it may not be disturbed unless it constitutes an abuse of discretion. *People v. Gutierrez*, 402 Ill. App. 3d 866, 900 (2010). Such a sentence will be found excessive only if it is manifestly disproportionate to the nature of the offense or if it is at great variance with the spirit and purpose of the law. *People v. McGee*, 398 Ill. App. 3d 789, 795 (2010). We do not find this to be such a case.

¶ 11 Defendant's sentence fell within the appropriate sentencing range, and was imposed after the trial court heard arguments from both counsel and stated that it had considered the evidence in aggravation and mitigation, including the PSI, the numerous letters submitted on defendant's behalf, and defendant's own words. Although the trial court did not specifically mention each of the mitigating factors upon which defendant now relies, such as the cost of his incarceration, the trial court is not required to recite and assign a value to each mitigating factor (*People v. Meeks*, 81 Ill. 2d 524, 534 (1980)), and is presumed to have considered all relevant factors absent a contrary showing in the record (*People v. Franks*, 292 Ill. App. 3d 776, 779 (1997)). We find none here. It is not our function to reweigh the factors considered by the court and substitute our

opinion for that of the trial court (*People v. Coleman*, 166 Ill. 2d 247, 261-62 (1995)), and here we find no abuse of discretion in the 20-year sentence imposed by the court (*McGee*, 398 Ill. App. 3d at 794-95).

¶ 12 Defendant next contends, the State concedes, and we agree that he is entitled to credit for 1,748 days he spent in pretrial custody. Defendant is entitled to receive credit for each day spent in pretrial custody, excluding the day the mittimus is issued. 730 ILCS 5/5-4.5-100(b) (West 2012); *People v. Williams*, 239 Ill. 2d 503, 509 (2011). Here, defendant is entitled to 1,748 days credit because he was arrested on February 7, 2007, and was sentenced on November 21, 2011. Although the duration between those two dates is 1,748 days, defendant was only given credit for 1,747 days.

¶ 13 Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), and our authority to correct a mittimus without remand (*People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008)), we direct the clerk of the circuit court to correct the mittimus to reflect 1,748 days of presentence custody credit.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed, mittimus corrected.