

No. 1-12-2611

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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. 06 CR 21440
)	
TREMAINE JOHNSON,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justices McBride and Taylor concurred in the judgment.

O R D E R

¶ 1 *Held:* Sentence of 55 years' imprisonment for first degree murder by firearm was not excessive; defendant's offense was notably merciless, and the court heard and considered the mitigating factors now cited by defendant.

¶ 2 Following a jury trial, defendant Tremaine Johnson was convicted of first degree murder and sentenced to 55 years' imprisonment. On appeal, defendant contends that his sentence is excessive in light of his lack of violent criminal history, rehabilitative potential, and mitigating factors including childhood abuse, mental illness, and drug abuse.

¶ 3 Defendant was charged with first degree murder for, on or about August 12, 2006, fatally shooting Hector Jimenez; that is, personally discharging a firearm that proximately caused death.

¶ 4 The evidence at trial was that defendant killed ice cream vendor Jimenez in his ice cream truck with a single gunshot to the abdomen. Defendant and Taheedah Cooper approached Jimenez's truck and, after Cooper ordered ice cream, defendant briefly stuck his hand, holding a gun, through the truck's sales window. After a popping noise, the truck rolled away before colliding with a car. While defendant walked in the other direction, Cooper went to the bleeding Jimenez and took his wallet. There was money in cash boxes inside the truck, but when Jimenez's wallet was found in the sewer about a block from the scene,¹ it had no money in it.

¶ 5 Savarsia Florence saw defendant holding a gun, but did not hear gunshots, and saw Cooper with the wallet. Florence testified that Cooper later threatened her not to mention her in relation to the incident, though Cooper did not tell Florence not to mention defendant. Patrick Murphy saw defendant near the ice cream truck, then heard a popping noise and saw defendant walking away with a gun. Donna Murphy saw defendant and Cooper near the truck, heard a pop, and saw defendant leave while Cooper followed the truck. Donna did not see a gun.

¶ 6 Following closing argument, instruction, and deliberation, the jury found defendant guilty of first degree murder and that, during the commission thereof, he personally discharged a firearm proximately causing the death of another. Defendant's post-trial motion was denied.

¶ 7 The pre-sentencing investigation report (PSI) showed defendant's other convictions: possession of a weapon in a penal institution punished by five years' imprisonment in 2010, and

¹ The incident occurred in the 1800 block of south Harding Avenue in Chicago, while the wallet was found in a sewer catch-basin in the 1800 block of south Springfield Avenue, the next street east of Harding.

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four controlled substance offenses punished in 2004, 2003, 2002, and 2001 by prison terms of four years, four years, one year and one year respectively. He also had a juvenile disposition of probation for attempted armed robbery. Defendant was born in 1984 and raised with three siblings by his mother and father, both employed, in a childhood defendant described as normal and without abuse. He maintains relationships with his parents and siblings. He has never married nor fathered any children, resided with his mother before his arrest, and was supported financially by her. He was educated through the sixth grade and never employed. He reported good physical health, and he denied mental illness or treatment. He admitted to using marijuana with PCP and to being a "lieutenant" in the Unknown Vice Lords street gang.

¶ 8 Defendant filed a supplement to the PSI. Psychologist Dr. Aaron Malina issued a neuropsychological evaluation of defendant in July 2008. Defendant had no history of psychiatric treatment but had prior suicide attempts and a diagnosis of adjustment disorder and major depressive disorder. In August 2006, about a week after the shooting, defendant was brought to a hospital upon his claim to be hearing voices; he was diagnosed with schizophrenia but had no auditory or visual hallucinations or suicidal or homicidal ideations so he "was not felt to be psychotic" and was discharged. In August 2007, defendant attempted suicide by hanging in jail, reporting "that his mind was racing and he was paranoid." Defendant admitted using PCP, "ecstasy" and marijuana, drinking alcohol intermittently, and being a gang member. He claimed physical abuse by his mother, and that he was raised by "his mother and 'the street' in the absence of his imprisoned father. He was allegedly struck on the head in 2004, suffering swelling but not losing consciousness, lacerated his thumb in a knife fight in 2006, fractured his right ankle in 1999, and had a concussion when he was 17 years old from falling off a motorbike.

¶ 9 When Dr. Malina interviewed defendant, he denied committing the shooting, reported "that he always feels sad" and is often nervous, reported sleeping poorly and missing sleep for days at a time, and claimed to have no appetite. He was prescribed Sinequan and Prozac, the former to help him sleep. He told Dr. Malina that "I've been blamed for shit my entire life, how can I not blame myself?" and "I don't trust any mother fucking body, the human race ain't shit." He reported hearing a female voice telling him "you ain't going to be shit" and had attempted suicide by shooting himself (the gun failed to fire) and stepping in front of a bus in addition to the hanging attempt. To Dr. Malina, defendant seemed "fidgety at times," "needed significant encouragement to answer questions," and "remained disengaged throughout much of the day."

¶ 10 Various tests were administered to defendant. He was "mildly impaired" verbally and in abstract reasoning, his recall or memory was "severely impaired," his "attention span was inconsistent," and his "level of engagement in testing was suboptimal" so that "his test findings can be invalid and should be interpreted with significant caution." While he self-reported "depressive symptoms and moderate to severe anxiety," he "completed a more comprehensive measure of psychopathology in an *invalid* manner" (emphasis in original) that Dr. Malina attributed to "carelessness." That said, he showed severe depressive symptoms, active suicidal ideation, and paranoid symptoms including "the belief that others are trying to harm and discredit him." He claimed that "the goals of the prosecutor and judge are to 'kill' him" and was skeptical of defense counsel, but was able to describe the charges against him and aware of the need to behave in court.

¶ 11 Dr. Malina issued another report in October 2008 after meeting defendant in jail. His mood was "dysphoric" but improved from July. He was taking Prozac, Depakote, Geodon, and

Sinequan, and his sleep had improved. While his appetite had not improved, he had gained 60 pounds in jail. A mental status examination found him alert and oriented with attention, comprehension, memory, and expression within normal ranges. He maintained skepticism regarding counsel and a belief that the judge was biased against him. Dr. Malina found him improved and fit to stand trial.

¶ 12 At the sentencing hearing, defendant corrected the PSI: defendant has a daughter named Tasha, drank alcohol as well as used marijuana, denies that he "held rank in a gang," and has both physical ("voluminous medical history" including "seven screws in his right ankle") and mental health issues noted in the defense supplement. Caroline Jimenez, the victim's mother, read her victim-impact statement: she was no longer a mother, the victim would not fulfill his plans to finish school and marry, the victim's family "missed and loved" him, and he had loved making customers happy by selling ice cream. Defendant interjected that "I didn't kill your son." The State read the victim-impact statement of the victim's father, Richard Jimenez: he is disabled, and the victim "assisted me with many tasks I could no longer perform," and he missed the victim every day as a son and best friend due to the "senseless, reckless act of one thoughtless individual."

¶ 13 The State argued that defendant killed Jimenez out of "greed over a few loose dollars" and that his refusal to obey the law even in jail as shown by the weapons conviction was consistent with "his wild, wild West Side actions when he killed Hector Jimenez." The court asked if defendant was on parole at the time of the shooting, as the PSI did not reveal; the State confirmed that he was not. Defendant argued that his "educational background, his social development, his problems with drugs and alcohol and his mental health" were all mitigating

factors, and that none of his convictions before the instant offense were violent, so that he had rehabilitative potential and should not be imprisoned "for the rest of his life." Defendant chose not to address the court personally.

¶ 14 The court stated that it read the PSI, the defense supplement, and the victim-impact statements, and recalled the trial testimony. The court stated that it weighed a sentence fair to defendant, Jimenez, and the community, and considered both aggravating and mitigating factors. The court noted that defendant had prior felony convictions, albeit "most" non-violent, and found that he likely had "limited cognitive capabilities" but was also "an angry young man" as shown in the supplement where "either he feels that he has not been treated fairly or does not have a proper respect for the people around him." The court found that his "senseless act of violence" was not committed "in the spur of the moment or because of sudden and intense passion" and that Jimenez "did nothing wrong" and "didn't even have time to turn over the dollar or coins that he might have had in his pocket in order to prevent this from occurring." The court noted that first degree murder has a 20 to 60 year prison range but bears another 25 years with the aggravating factor of causing death by personally discharging a firearm, for an overall range of 45 to 85 years. After confirming that defendant was 27 years old, the court sentenced him to 55 years' imprisonment.

¶ 15 Defendant's motion to reconsider his sentence was denied, and this appeal followed.

¶ 16 On appeal, defendant contends that the court abused its discretion by sentencing him to 55 years' imprisonment, in that it gave insufficient weight to his lack of violent criminal history, rehabilitative potential, and mitigating factors including childhood abuse, mental illness, and drug abuse.

¶ 17 First degree murder is punishable by 20 to 60 years' imprisonment, or an extended term of up to 100 years' imprisonment, or natural life imprisonment under specified aggravating circumstances. 730 ILCS 5/5-4.5-20(a); 5-8-1(a)(1)(c); 5-8-2 (West 2010). Moreover, "if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court." 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010).

¶ 18 A sentence within 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 range. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 56. 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).

¶ 19 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. *Jones*, 2014 IL App

(1st) 120927, ¶ 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. *Id.*, citing *Alexander*, 239 Ill. 2d at 214.

¶ 20 Here, as the jury found that defendant personally discharged a firearm causing death, he was subject to imprisonment for 45 to 85 years or up to natural life. We find the trial court's characterization of defendant's offense was reasonably based on the evidence: defendant shot Jimenez to death as he sold ice cream, without giving him a viable opportunity to hand over money. The crime was not notably brutal physically but was particularly merciless. The court stated that it read the PSI and defense supplement, demonstrating this by referring to matters therein, and expressly acknowledged that it must balance mitigating factors and a sentence fair to defendant as well as aggravating factors and a sentence fair to the victim and society. Notably, the court considered the defense supplement and its allegedly mitigating factors a double-edged sword, showing cognitive deficiency but also an "angry young man" without "proper respect for the people around him." We do not find that inference or characterization to be unreasonable. We conclude that the court did not abuse its discretion in imposing a 55-year prison sentence, near the low end of the applicable range.

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

¶ 22 Affirmed.