

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).

2014 IL App (3d) 120890-U

Order filed August 5, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Whiteside County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-12-0890
STEVEN J. BYRD,)	Circuit No. 11-CF-442
Defendant-Appellant.)	Honorable John L. Hauptman, Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Carter concurred in the judgment.
Justice Schmidt specially concurred.

ORDER

- ¶ 1 *Held:* The court did not abuse its discretion where, in sentencing defendant on conviction of an offense for which "great bodily harm" was an element, it considered the degree of harm done as a factor in aggravation.
- ¶ 2 Defendant, Steven J. Byrd, pled guilty to aggravated domestic battery, an offense that includes the infliction of "great bodily harm" as one of its elements (720 ILCS 5/12-3.3(a) (West 2010)). At sentencing, the court repeatedly referenced the degree of harm suffered by defendant's victim, and sentenced defendant to the maximum term of seven years' imprisonment.

Defendant appeals, arguing that the court considered an improper aggravating factor at sentencing. We affirm.

¶ 3

FACTS

¶ 4

On December 28, 2011, defendant was charged by information with aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2010)). That section provides: "A person who, in committing a domestic battery, knowingly causes great bodily harm*** commits aggravated domestic battery." 720 ILCS 5/12-3.3(a) (West 2010). The information alleged that defendant "intentionally or knowingly caused great bodily harm to Pamela Pessman in that said defendant repeatedly struck Pamela Pessman." The information was later amended to include a second count.

¶ 5

Defendant agreed to plead guilty to aggravated domestic battery, and in exchange, the State agreed to drop the second count, as well as two pending misdemeanors. At plea proceedings held on April 5, 2012, the State presented the following factual basis:

¶ 6

On the morning of December 27, 2011, the Whiteside County sheriff's department was notified that defendant had left the emergency room of CGH Hospital in Sterling, Illinois, against medical advice and without notifying anyone. Police located defendant at a motel where he was staying with Pessman. When Deputy Glenn Estrada arrived at the motel room, he noticed blood spattered about the handle of the door and on the ground outside the door. Upon entering, Estrada and Detective Sheldon Zulauf saw defendant and Pessman lying in bed together. Both were bleeding; defendant from his head and Pessman from her mouth. Pessman's eyes were both blackened and swollen, her lips were swollen and bloody, and bruises were located on her torso, neck, legs, and arms.

¶ 7

Pessman told police that she and defendant, along with mutual acquaintance James Cook,

had been drinking together earlier that evening. Defendant became agitated, and an argument ensued. Defendant began striking Pessman, then prevented Pessman from leaving the motel room or calling 911. Pessman stated that defendant struck her repeatedly with his fists, resulting in the observed injuries.

¶ 8 Cook told police that he did not see defendant actually strike Pessman, but observed the injuries and invited Pessman to his motel room in order to get away from defendant. Defendant made several attempts to retrieve Pessman from Cook's room. An altercation ensued between defendant and Cook, and Cook admitted to striking defendant and causing defendant's injuries. Defendant stated that he believed Cook had caused the injuries to Pessman.

¶ 9 The court accepted the factual basis and entered a finding of guilt on the charge of aggravated domestic battery causing great bodily harm. The matter proceeded to sentencing on June 5, 2012.

¶ 10 At sentencing, Deputy Estrada's testimony echoed the factual basis proffered by the State. The State also submitted into evidence a number of pictures of Pessman. These pictures largely reflected what had been stated in the factual basis: both of Pessman's eyes were blackened and swollen, her lips were swollen and bloody, and she had significant bruising on her cheeks, neck, and arms. Estrada testified that he saw Pessman two days after the incident, and noticed that her eyes and cheeks were still bruised and swollen. Pictures taken by Estrada that day and submitted into evidence reflected those observations. Defendant's presentence investigation indicated that the total restitution for Pessman's medical bills was \$12,463.

¶ 11 The court sentenced defendant to the maximum term of seven years' imprisonment. In imposing the sentence, the court thoroughly discussed all of the factors that led to the decision. In particular, the court pointed out that "[t]his was a vicious beating. I can't characterize it any

differently. *** [T]hese photographs are *** disturbing." The court also noted that "[t]he harm *** that was perpetrated upon [Pessman], *** it is frankly more than disturbing." Defendant appeals.

¶ 12

ANALYSIS

¶ 13

On appeal, defendant argues that his case should be remanded for resentencing because the trial court considered an improper aggravating factor. We review for an abuse of discretion. *People v. Abraham*, 257 Ill. App. 3d 587 (1993).

¶ 14

In general, the trial court has broad discretion when imposing a sentence, and the court's sentencing decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203 (2000). A trial court abuses its discretion when it considers an improper factor in aggravation at sentencing, but remand is not necessary if the improper factor did not lead to a more severe sentence. *People v. Cotton*, 393 Ill. App. 3d 237 (2009). Defendant contends that the consideration of the harm done to Pessman was improper because "great bodily harm" was an element of the offense for which he was convicted.

¶ 15

In *People v. Saldivar*, 113 Ill. 2d 256 (1986), our supreme court addressed this issue directly. The court stated that:

"Certain criminal conduct may warrant a harsher penalty than other conduct, even though both are technically punishable under the same statute. Likewise, the commission of any offense, *regardless of whether the offense itself deals with harm*, can have varying degrees of harm or threatened harm. The legislature clearly and unequivocally intended that this varying quantum of harm may constitute an aggravating factor." (Emphasis added.) *Id.* at 269.

Furthermore, the court found that:

"the severity of the sentence depends upon the degree of harm caused to the victim and as such may be considered as an aggravating factor in determining the exact length of a particular sentence, even in cases where serious bodily harm is arguably implicit in the offense for which a defendant is convicted. (Emphases in original.)
Id.

¶ 16 Despite these clear pronouncements, the *Saldivar* court found that the trial court had nevertheless considered an improper factor:

"[T]he record demonstrates that the circuit court focused primarily on the end result of the defendant's conduct, *i.e.*, the death of the victim, a factor which is implicit in the offense of voluntary manslaughter and which, under this court's reasoning in *People v. Conover* (1981), 84 Ill.2d 400, 404, cannot be considered in aggravation."
Saldivar, 113 Ill. 2d at 272.

Because of these seemingly conflicting rationales in the same supreme court decision, both defendant and the State here put primary reliance on *Saldivar* in making their arguments.

¶ 17 We find that the ultimate holding in *Saldivar*—regarding the offense of voluntary manslaughter—is distinguishable on its facts from the case at bar. The trial court in *Saldivar* had found that the victim had suffered "terrible harm" and noted that the defendant's conduct had caused a human life to be taken. *Saldivar*, 113 Ill. 2d at 264. The supreme court found that this alone was an improper consideration.

¶ 18 The offense of voluntary manslaughter is plainly one in which the harm caused—that is, death of the victim—does not occur in varying degrees. Thus the supreme court concluded that any aggravation must necessarily be based on the degree or gravity of the conduct that led to the ultimate harm. *Saldivar*, 113 Ill. 2d 256. The offense of aggravated domestic battery causing

great bodily harm, however, can certainly result in varying degrees of bodily harm.

¶ 19 The trial court here clearly indicated that it found the harm inflicted by defendant to be of a greater degree, referring to a "vicious beating" and calling Pessman's injuries both "disturbing" and "more than disturbing." Under *Saldivar*, a court may properly consider the degree of harm caused, even when great bodily harm is an element of the offense. Because the record indicates that the court did so here, we must affirm.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Whiteside County is affirmed.

¶ 22 Affirmed.

¶ 23 JUSTICE SCHMIDT, specially concurring:

¶ 24 I concur in the majority's judgment, but write separately to point out an additional basis for my concurrence. The defendant acknowledges on appeal that where a sentencing judge's consideration of an improper aggravating factor is significant, the case should be remanded for a new sentencing hearing. *People v. Negrete*, 258 Ill. App. 3d 27, 32 (1994). Remand may be forgone only where the State can demonstrate, by matters appearing in the record that the weight placed on the improper factor was so insignificant that it did not lead to a greater sentence. *People v. Bourke*, 96 Ill. 2d 327, 332 (1983).

¶ 25 The record demonstrates that even if the trial court considered an improper factor, defendant was not prejudiced. It is incomprehensible to me that any judge would sentence defendant to less than seven years in this case. Defendant has a long history of violent crime. These crimes include domestic battery convictions in 2002 and 2003; violations of orders of protection in 2004, 2005, 2006 and 2007; as well as aggravated battery in 2008. There is little doubt that defendant is incapable of controlling his violent instincts. Notwithstanding prior

convictions, defendant remained violent. He is literally the poster child for maximum sentencing. The trial court appropriately found that the public needed to be protected from defendant. Therefore, even if one assumes that the trial court considered an improper aggravating factor, the boatload of other aggravating factors clearly establish that defendant suffered no prejudice.